

DECISIONS AND REPORTS ON RULINGS
OF THE ASSISTANT SECRETARY OF LABOR
FOR LABOR-MANAGEMENT RELATIONS

Pursuant to Executive Order 11491

Volume 1

January 1, 1970, through December 31, 1971

This volume includes Assistant Secretary Decisions
Nos. 1 - 122 and Reports on Rulings Nos. 1 - 43.

U. S. DEPARTMENT OF LABOR
Labor-Management Services Administration





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PREFACE

This Volume of Decisions and Reports on Rulings of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491*, covers the period from January 1, 1970, through December 31, 1971. It includes: (1) Summaries of Decisions and the full text of Decisions of the Assistant Secretary after formal hearing or stipulated record (A/SLMR Nos. 1 - 122); and (2) Reports on Rulings of the Assistant Secretary (originally referred to as Reports on Decisions), which are published summaries of significant or precedent-setting rulings by the Assistant Secretary on requests for review of actions taken at the field level (R A/S Nos. 1 - 43).

*Executive Order 11491 was amended by Executive Order 11616 on August 26, 1971, and by Executive Order 11636 on December 17, 1971.



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TYPE OF CASE

CHALL = Challenged Ballots Resolution
 CU = Clarification of Unit
 DR = Decertification of Exclusive Representative
 OBJ = Objections to Election
 RO = Certification of Representative (Labor Organization Petition)
 ULP = Unfair Labor Practice

<u>A/SLMR NO.</u>	<u>CASE NAME</u>	<u>DATE ISSUED</u>	<u>AREA OFFICE CASE NO(S).</u>	<u>TYPE OF CASE</u>	<u>PAGE</u>
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TYPE OF CASE

DR = Decertification of Exclusive Representative
 GEN = General Matters
 OBJ = Objections to Election
 REP = Representation Matters
 RO = Certification of Representative (Labor Organization Petition)
 S = Standards of Conduct
 ULP = Unfair Labor Practice

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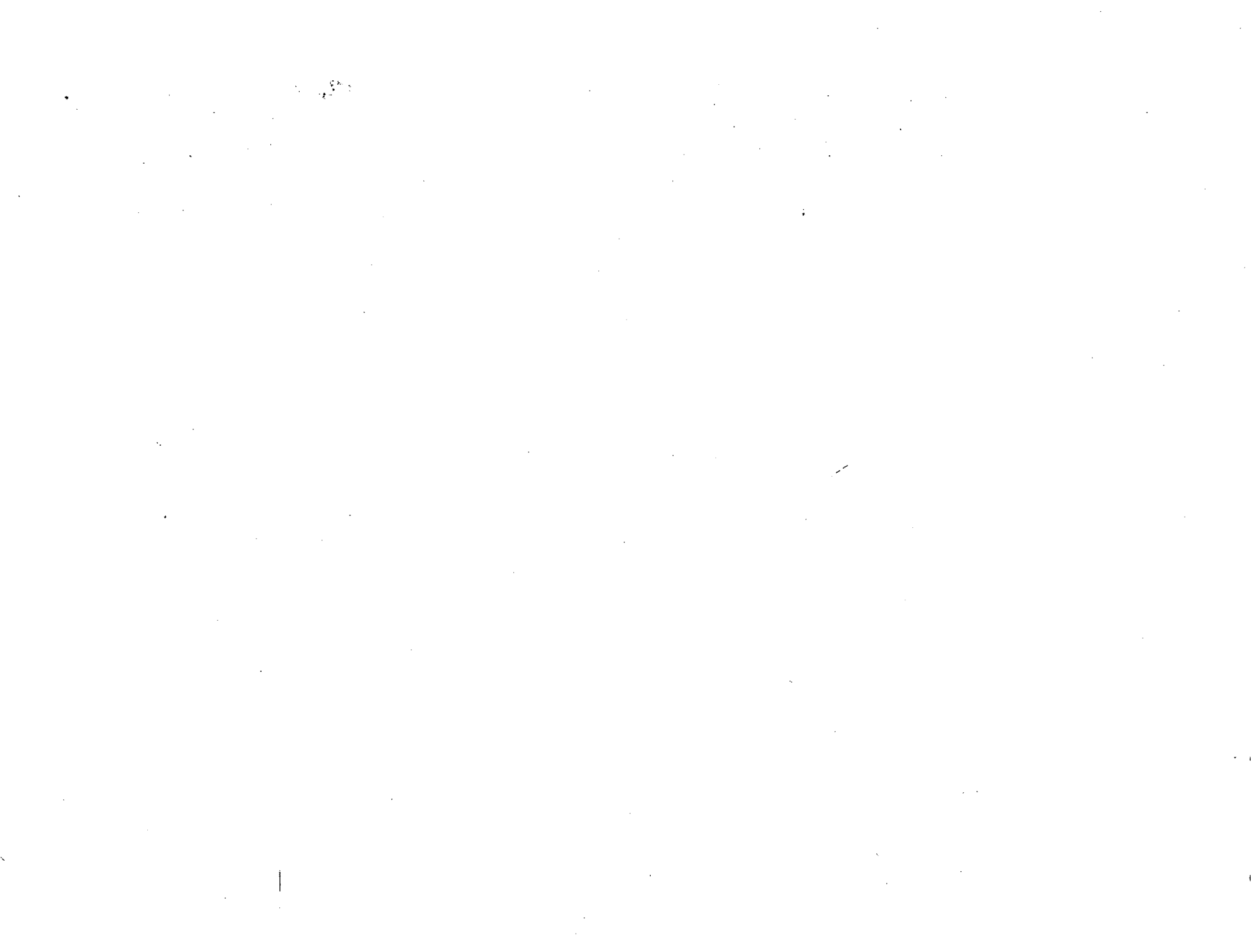
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DECISIONS
OF THE
ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

Nos. 1 - 122

January 1, 1970, through December 31, 1971



November 3, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Charleston Naval Shipyard
A/SLMR No. 1

This case arose as a result of unfair labor practices complaints filed by the Federal Employees Metal Trades Council (MTC) of Charleston, South Carolina, alleging that the Charleston Naval Shipyard had violated Section 19(a)(1) and 20 of Executive Order 11491 by restricting Shipyard employees from engaging in any type of electioneering activity on the Shipyard's premises until campaign procedures were established. MTC charged that the Shipyard's restrictions interfered with, restrained or coerced employees in the exercise of rights assured by Executive Order 11491. The Shipyard defended its conduct on the basis that it had acted in accordance with outstanding directives of the Department of Defense and the Civil Service Commission.

A hearing was held before a Hearing Examiner who issued his Report and Recommendations on July 13, 1970. The Hearing Examiner concluded that:

- (1) based on the similarity of the relevant language of the Labor-Management Relations Act, as amended, and Executive Order 11491, decisions under the statute dealing with employee rights in solicitation and in distribution of literature are applicable under the Order;
- (2) with respect to the Shipyard's contention that it had acted in accordance with outstanding government directives, the rights of employees under the Executive Order were not diminished "by erroneous rulings of the Civil Service Commission or the Department of Defense"; and

- (3) the regulations governing union electioneering activities promulgated by the Shipyard violated Section 19(a)(1) of the Executive Order since such rules infringed on the employees' right under Section 1 of the Order to "assist a labor organization."

Upon review of the Hearing Examiner's Report and Recommendations and the entire record of the case, the Assistant Secretary found that:

- (1) with respect to the Hearing Examiner's rationale concerning the controlling effect of decisions under the Labor-Management Relations Act, as amended, decisions under the Act would not be controlling under Executive Order 11491. Rather, in deciding cases under the Order, the Assistant Secretary said he would take into account the policies and practices developed in the Federal sector and other jurisdictions as well as the experience gained in the private sector;
- (2) the Shipyard's contention that he was without authority to find that it had violated the Order because its conduct was based on directives issued by the Civil Service Commission and the Department of Defense was incorrect. In this regard, he stated that neither the Study Committee's Report and Recommendations, which preceded the Order, nor the Order itself, indicated that in the processing of unfair labor practices complaints the Assistant Secretary was bound to accept as determinative those directives or policies of the Civil Service Commission, the Department of Defense, or any other agency, which, in his view, contravened the purposes of the Order; and

(3) in the absence of any evidence of special circumstances which would have warranted the Shipyard's limiting or barring employees' solicitation during their non-work time and the distribution of campaign materials on its premises by Shipyard employees during their non-work time and in non-work areas, the Shipyard's restrictions interfered with employee rights assured under Executive Order 11491 and were therefore violative of Section 19(a)(1). In reaching this decision, the Assistant Secretary reviewed the practice developed in the Federal sector pursuant to a Civil Service Commission Personnel Manual Letter in which agencies were advised, in situations involving challenges to an incumbent labor organization's representative status, not to authorize the use of their premises until campaign procedures were established to either an incumbent exclusive representative or a challenging labor organization for the purpose of conducting membership or election campaigns. He concluded in this regard that this practice did not achieve the equality sought among contending labor organizations, but rather worked to the detriment of a challenging union which, unlike the incumbent, had not enjoyed the advantage of a prior relationship among the unit employees and also deprived these employees of the opportunity to become informed.

In conjunction with his finding that the Shipyard's conduct violated Section 19(a)(1) of the Executive Order, the Assistant Secretary ordered the Shipyard to cease and desist from engaging in such conduct and also required that a notice to all employees be posted on the Shipyard's premises advising that the Shipyard will not promulgate or maintain the no-solicitation - no-distribution rules found to be in derogation of the Executive Order.

- 3 -

A/SLMR No. 1

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

CHARLESTON NAVAL SHIPYARD

Respondent

and

FEDERAL EMPLOYEES METAL TRADES
COUNCIL, METAL TRADES DEPARTMENT, AFL-CIO

Complainant

Case Nos. 40-1940(CA)
40-1950(CA)

DECISION AND ORDER

On July 13, 1970, Hearing Examiner Frederick U. Reel issued his Report and Recommendations in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices and recommending that it take certain affirmative action as set forth in the attached Hearing Examiner's Report and Recommendations. Thereafter, the Respondent filed exceptions and a supporting brief with respect to the Hearing Examiner's Report and Recommendations and the Complainant filed an answering brief. The Civil Service Commission and the Department of Defense which, upon the invitation of the Hearing Examiner, had submitted statements to him in connection with their respective positions in this matter, also filed exceptions and supporting statements to the Hearing Examiner's Report and Recommendations.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Assistant Secretary has considered the Hearing Examiner's Report and Recommendations and the entire record in the subject cases 1/, including the exceptions, statements of positions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Hearing Examiner only to the extent consistent herewith.

1/ The formal papers in the instant cases, i.e. - the Complaints, the Notice of Hearing, etc. were not formally introduced into the record by the Hearing Examiner. However, on the record, he clearly indicated that such documents would be included in the file which would be considered by the Assistant Secretary. In these circumstances, the record in the instant cases transferred to the Assistant Secretary was determined to have properly included the formal papers within the meaning of Section 203.22(b) of the Rules and Regulations.

The complaints in the instant cases filed by the Charleston Metal Trades Council 2/ (herein called the Union) against the Charleston Naval Shipyard (herein called the Shipyard) alleged violations of Sections 19(a)(1) and 20 of Executive Order 11491 based on the Shipyard's notice of February 18 and its subsequent memoranda of March 16 and 27, 1970. The Union contends that the notice and memoranda effectively coerced, restrained, and intimidated employees in the exercise of their rights assured under Executive Order 11491. The Shipyard, on the other hand, defends its conduct in issuing the above-mentioned directives on the basis that it was merely acting in accordance with outstanding instructions of the Civil Service Commission 3/ which provide, in part, that during the period subsequent to the filing of a valid challenge requiring a redetermination of exclusive status, an "agency should not authorize the use of agency facilities to either the incumbent exclusive or the challenging organization(s) to conduct membership or election campaigns." 4/ In this respect, the Shipyard contends that the Assistant Secretary of Labor is without authority to find that a directive, regulation, order or policy issued by the Civil Service Commission, Department of Defense, or any other "higher authority" over the Shipyard is invalid because such a determination would violate Sections 4(b) and 25(a) of the Order.

The Hearing Examiner concluded that the directives governing union electioneering activities promulgated by the Shipyard 5/ interfered with,

2/ The Complainant's name appears in the case caption as amended at the hearing.

3/ See Civil Service Commission's Federal Personnel Manual Letter 711-6 dated December 14, 1966.

4/ Federal Personnel Manual Letter 711-6 also provides, in part, that "There shall be no restriction at any time on the right of employees to freedom of normal person-to-person communication at the workplace provided there is no interference with the work of the agency. Employees may engage in oral solicitation of employee organization membership during non-work periods on agency premises."

5/ The Shipyard's notice of February 18, 1970, provided, in pertinent part, that:

- a. Neither the currently recognized Charleston Metal Trades Council nor the challenging National Association of Government Employees shall conduct any type of electioneering on Naval Base premises until campaign procedures are established. Prohibited actions include:

- (1) posting or distribution on Naval Base premises of any poster, bulletin or other material which relates to the challenge;
- (2) Meetings on Naval Base premises for the purpose of electioneering or campaigning;
- (3) Solicitation of authorization revocations by the challenged union on Naval Base premises;
- (4) Solicitation of further authorizations by the challenging union on Naval Base premises.

restrained, or coerced employees in the rights assured by Executive Order 11491 since such rules infringed on the employees' right under Section 1 of the Order to "assist a labor organization." In reaching his recommendation, the Hearing Examiner relied on precedent developed under the National Labor Relations Act. He reasoned that in view of the similarity of language between Sections 7 and 8(a)(1) of the Act and Sections 1 and 19(a)(1) of the Order, that "the decisions under the statute dealing with employee rights in solicitation and in distribution of literature are applicable under the Order (footnote omitted)." The Hearing Examiner also rejected the Shipyard's contention that in issuing the disputed regulations it was acting under a legal obligation to follow the directives of the Civil Service Commission and the Department of Defense. In this regard he stated that rights of employees established under the Executive Order "are not diminished by erroneous rulings of the Civil Service Commission or the Department of Defense."

There is no indication in the reports and recommendations which preceded Executive Orders 10988 and 11491 that the experience gained in the private sector under the National Labor Relations Act would necessarily be the controlling precedent in the administration of labor-management relations in the Federal sector. Thus, many of the provisions of Executive Order 10988 constituted clear attempts to take into account situations peculiar to Federal sector labor-management relations. 6/ Moreover, in 1969, when it was determined that improvements in the Federal labor-management relations program were warranted, it was made clear by the Study Committee that the proposed changes dealt only with deficiencies found to exist under Executive Order 10988, and there was no intention to adopt some other model for Federal labor-management relations. 7/

5/ (Continued)

- b. The prohibitions stated in paragraph 3a above, apply equally to employees and non-employee representatives of the organizations involved....

The Shipyard's memorandum of March 16, 1970, as amplified on March 27, 1970, placed certain restrictions on the Union's stewards with respect to the time allowed for their conducting of union business. The March 16 memorandum also stated, in part, that "Electioneering or campaigning at this time is prohibited."

6/ See e.g. Section 3(a) of Executive Order 10988 which provided for three different types of recognition arrangements - informal, formal or exclusive.

7/ See the introduction to the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service dated August 1969.

Based on the foregoing, it is my belief that decisions issued under the Labor-Management Relations Act, as amended, are not controlling under Executive Order 11491. I will, however, take into account the experience gained in the private sector under the Labor-Management Relations Act, as amended, policies and practices in other jurisdictions, and those rules developed in the Federal sector under the prior Executive Order. Accordingly, I reject the reasoning of the Hearing Examiner in the instant case insofar as he implies that all of the rules and decisions under the Labor-Management Relations Act, as amended, would constitute binding precedent on the Assistant Secretary with respect to the implementation of his responsibilities under Executive Order 11491.

Also, I reject the Shipyard's assertion that I am without authority to determine whether directives or policy guidance issued by the Civil Service Commission, Department of Defense or any other agency are violative of the Order when those directives or policies are asserted by the activity as a defense to allegedly violative conduct. Both the Study Committee's Report and Recommendations and the Order itself clearly indicate the role which the Assistant Secretary was intended to play in the processing of unfair labor practices complaints under the Order. Thus, the Study Committee's Report and Recommendations stated that the lack of a third party process in resolving unfair labor practice charges was a serious deficiency under the prior Federal Labor-Management program. To rectify this deficiency, it was recommended that the Assistant Secretary of Labor for Labor-Management Relations be authorized to issue decisions to agencies and labor organizations subject to a limited right of appeal to the Federal Labor Relations Council. The Study Committee stated that as the Assistant Secretary issues decisions a body of precedent would be developed from which interested parties could draw guidance. The recommendations of the Study Committee culminated in Section 6(a)(4) of the Order which provides, in part, that the Assistant Secretary of Labor for Labor-Management Relations shall "...decide complaints of alleged unfair labor practices and alleged violations of the standards of conduct for labor organizations." Hence, neither the Study Committee's Report and Recommendations nor the Order itself require that in processing unfair labor practices complaints I am bound to accept as a determinative those directives or policies of the Civil Service Commission, the Department of Defense or any other agency which in my view contravene the purposes of the Order. 8/

8/ The Shipyard's contention that Sections 4(b) and 25(a) of the Executive Order preclude the Assistant Secretary from finding that directives, etc. issued by the Civil Service Commission and the Department of Defense are invalid is rejected. Thus, Section 4(b) merely defines the overall responsibility of the Federal Labor Relations Council under the Order and Section 25(a) sets forth the Civil Service Commission's technical assistance role to the agencies with respect to their respective Federal labor-management relations programs. In my view, neither of these Sections was intended to limit the authority of the Assistant Secretary in the manner stated by the Shipyard.

Accordingly, I reject the Shipyard's contention that I am without authority to find a violation in the instant case because its conduct was based on directives issued by the Civil Service Commission and the Department of Defense. 9/

As did Executive Order 10988, Executive Order 11491 guarantees to employees of the Federal Government the right "to form, join and assist" a labor organization "without fear of penalty or reprisal." 10/ Section 19(a) (1) of Executive Order 11491 states that "Agency management shall not interfere with, restrain or coerce employees in the exercise of the rights assured by this Order." That provision raises the basic issue to be resolved herein, i.e. - were the Shipyard's attempts to control employee electioneering on its premises, as evidenced by its February 18 notice to employees and its subsequent memoranda of March 16 and 27, in derogation of expressly guaranteed employee rights under Executive Order 11491? 11/

In attempting to resolve this issue, I have carefully reviewed the policy and practice developed in the Federal sector under Executive Order 10988 pursuant to the Civil Service Commission's Personnel Manual Letter 711-6. As noted above, such policy and practice was adopted to cover a particular period prior to the execution of an election agreement when a valid and timely challenge had been filed with respect to an incumbent labor organization's exclusive representative status. During this period, agencies were counseled not to authorize the use of their facilities to either the incumbent exclusive representative or the challenging organization for the purpose of conducting membership or election campaigns. 12/ The Civil Service Commission contended that this procedure represents "the most reasonable approach we have discovered to achieving among the contending

9/ Neither the Civil Service Commission nor the Department of Defense contends that the Assistant Secretary is without authority in this respect.

10/ See Section 1(a) of Executive Order 10988 and Section 1(a) of Executive Order 11491.

11/ As noted in footnote 2 of the Hearing Examiner's Report and Recommendations, the subject cases involve only the rights of employees and not the rights of non-employee union representatives.

12/ As noted above in footnote 4 and as distinguished from the Shipyard's directives herein, normal employee "person-to-person communication at the workplace" was permitted under Federal Personnel Manual Letter 711-6 and employees were allowed to "engage in oral solicitation of employee organization membership during non-work periods on agency premises."

unions the requisite fairness or equality of opportunity which alone can guarantee a genuinely free and representative election." 13/ The Shipyard and the Department of Defense offered further justification for the Civil Service Commission policy on the grounds that the Government, as an employer, is "more neutral" in these matters than private employers and that there exists a substantial past practice under this policy which, if changed, would result in instability in Federal labor-management relations. 14/

The basic rules governing employee solicitation and distribution were established by the Supreme Court in Le Tourneau Co. of Georgia v. NLRB, 324 U.S. 793 (1945) and Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945). The Court held that the enforcement of no-distribution and no-solicitation rules against employees during their non-working time was unlawful except where there were unusual circumstances present.

In the instant cases there is no evidence to establish that employee solicitation activity with respect to the forthcoming election or their distribution of campaign literature had the effect or would have had the effect of creating a safety hazard or interfering with work production or the maintenance of discipline in the Shipyard. Moreover, the argument that a moratorium on electioneering prevents the incumbent from exercising its natural advantage over the challenger is likewise unpersuasive since equality also can be maintained by granting full communication rights to both unions. A prohibition on any reasonable form of solicitation or election campaigning, works not only to the detriment of unit employees who may seek to become informed, but also to the detriment of the challenging union, which, unlike the incumbent, has not enjoyed the advantage of a prior relationship among the unit employees. I conclude, therefore, that the purposes sought to be achieved by the operation of the Shipyard's rules are neither attained, nor do they justify limiting the employees' right established under Executive Order 11491 "to assist a labor organization."

Accordingly, in the absence of any evidence of special circumstances which would have warranted the Shipyard's limiting or banning employee solicitation during nonwork time and the distribution of campaign materials on its premises during employee nonwork time and in nonwork areas, I find

13/ This position of the Civil Service Commission was expressed in a letter from its General Counsel to Hearing Examiner Reel dated July 2, 1970.

14/ In its exceptions to the Hearing Examiner's Report and Recommendations, the Department of Defense contended, among other things, that to the extent the Shipyard's notice of February 18, 1970, attempted to restrict the solicitation rights of individual employees it was too broad since Section 11 of Federal Personnel Manual Letter 711-6 made it clear that nothing therein was intended to interfere with freedom of normal person-to-person communication at the workplace which does not disrupt work operations. The Department of Defense further asserted that a valid and meaningful distinction should be made between such constitutionally protected communication on the one hand, and, on the other, participation in organized electioneering activities on behalf of a union on activity premises during a period before mutually agreed upon rules for such electioneering have been adopted.

that the Shipyard's notice of February 18, 1970, and its subsequent memoranda of March 16 and 27, 1970, 15/ interfered with employee rights assured under Executive Order 11491, and were therefore violative of Section 19(a)(1) 16/ of the Order. 17/

CONCLUSION

By promulgating and maintaining a rule which prohibits employees from engaging in solicitation on behalf of the Union or any other labor organization during nonwork time and from distributing literature for the Union of any other labor organization on Activity premises in nonwork areas during nonwork time, the Shipyard has violated Section 19(a)(1) of the Executive Order.

THE REMEDY

Having found that the Shipyard has engaged in certain conduct prohibited by Section 19(a)(1) of Executive Order 11491, I shall order the Shipyard to cease and desist therefrom and take specific affirmative action, as set forth below, designed to effectuate the policies of the Order.

15/ As noted above, the Shipyard's memoranda of March 16 and 27, 1970, placed certain restrictions on the Union's stewards with respect to their handling of union business at the facility. Under these restrictions, before being granted time off to carry out their responsibilities to the unit employees, stewards were required to specify to management representatives the type of union business to be conducted and, unless such business was included on a list of 18 permissible activities, excused time would be denied. The Shipyard admitted that the desire to limit electioneering activities was one of the reasons for issuance of these memoranda. Although, under Article VI, Section 5 of the parties' agreement, stewards must first obtain oral permission from their supervisor when they desire to leave their work area to transact appropriate union business during work hours, insofar as the Shipyard's March 16 and 27 memoranda constituted a broad restriction against electioneering by stewards during their nonwork time, they violated Section 19(a)(1) of the Order.

16/ The alleged violation of Section 20 in the complaint is inapplicable inasmuch as unfair labor practices violations are cognizable only under Section 19 of Executive Order 11491.

17/ The fact that the Government, as an employer, must remain neutral during an election campaign was not considered to require a contrary result. Thus, standing alone, this factor would not warrant a curtailment of employee rights under the Order.

ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the Charleston Naval Shipyard shall:

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

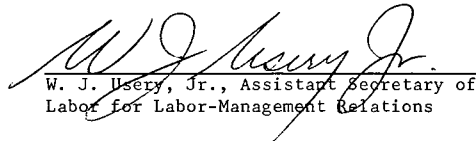
1. Cease and desist from:

- (a) Promulgating or maintaining a no-solicitation rule which restricts Shipyard employees from engaging in solicitation on behalf of the Union or any other labor organization at the workplace during their nonwork time providing there is no interference with the work of the agency.
- (b) Promulgating or maintaining a rule which prohibits Shipyard employees from distributing literature on behalf of the Union or any other labor organization on Shipyard premises in nonwork areas during their nonwork time.
- (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

- (a) Distribute to all employees to whom the memoranda of March 16 and 27 were distributed the attached notice marked "Appendix." Copies of said notice shall be signed by the Commanding Officer of the Shipyard and shall be posted and maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted including all places where the February 18 notice was posted. The Shipyard Commander shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.
- (b) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within 10 days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D.C.
November 3, 1970


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

FEDERAL EMPLOYEES METAL TRADES COUNCIL
METAL TRADES DEPARTMENT, AFL-CIO

Complainant

and

CHARLESTON NAVAL SHIPYARD

Respondent

Patrick C. O'Donoghue, Esq., and
Douglas L. Leslie, Esq., of
Washington, D. C., for the
Complainant.

L. Neal Ellis, Esq., Legal Counsel,
Office of Civilian Manpower
Management, Navy Department,
Washington, D. C., for the
Respondent.

Frank A. Bartaimo, Esq., Assistant
General Counsel, Department of
Defense, submitted a brief
amicus curiae.

Anthony L. Mondello, Esq., General
Counsel, Civil Service Commission,
submitted a letter in lieu of a
brief amicus.

Before: Frederick U. Reel, Hearing Examiner.

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding, 1/ heard at Charleston, South Carolina, on June 16, 1970, arises under Executive Order 11491, and was initiated by complaints filed March 12 and 26, 1970, in which complainant (herein called the Union) alleged that Respondent violated Sections 19(a)(1) and 20 of that Order by restricting the right of employees to solicit on behalf of the Union and to distribute literature. The complaints were consolidated for purposes of the hearing by order of the Regional Administrator, Atlanta Region, on April 24, 1970, who thereafter issued the notice of hearing.

1/ The caption of the proceeding reflects a change in the name of the complainant since the filing of the complaints herein.

At the hearing both parties were represented by counsel, who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, submit oral arguments and file briefs. At the opening of the hearing Respondent filed a motion to dismiss, as to which ruling was reserved and which is herewith denied for reasons set forth in the course of this Report and Recommendations.

During the course of the hearing it became evident that the validity of certain regulations of the Civil Service Commission and of the Department of Defense might be relevant to the decision in this case. Accordingly, and with full notice to the parties, the Hearing Examiner after the close of the hearing invited those agencies to state their position in this matter. Such statements were duly received and have been considered, together with the briefs filed by the parties hereto. Upon such consideration and upon the entire record in this proceeding, I make the following:

Findings of Fact

I. The Applicability of the Executive Order

Section 1 of Executive Order 11491 declares that "Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right." Section 19(a) provides that "Agency management shall not (1) interfere with, restrain or coerce an employee in the exercise of the rights assured by this Order." The Union is a "labor organization" as that term is used in Section 1 and defined in Section 2(e) of the Order. The Commanding Officer of the Respondent is "agency management" as that term is used in Section 19 and defined in Section 2(f) of the Order.

II. The Unfair Labor Practices

A. Background

For several years the Union has been the bargaining representative of some 5000 employees of the Respondent. The parties have a current collective-bargaining agreement which provides, inter alia, for a grievance procedure culminating in "advisory arbitration" not binding upon the Respondent. The contract also provides (Article VI, Section 4) that "Reasonable time off during work hours will be authorized without loss of pay or benefits, to permit the recognized union stewards . . . to carry out their responsibilities to the employees in the unit." The succeeding section of the contract provides that a union representative desiring to leave his work area on "appropriate" union business during work hours "shall first obtain oral permission from his supervisor," and upon entering another work area "will first advise the appropriate supervisor of his presence and the name of the employee to be contacted. The supervisors involved will grant permission promptly in these instances unless compelling work commitments dictate otherwise."

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During 1969 another organization, the National Association of Government Employees (herein referred to as NAGE), commenced efforts to unseat the Union as the bargaining representative of Respondent's employees. In January 1970 NAGE filed a formal challenge to the exclusive recognition afforded the Union, and petitioned for an election. The election has not as yet been conducted. Both before and after the filing of the NAGE challenge, however, supporters of that organization and supporters of the incumbent Union engaged in activity in the Shipyard on behalf of their respective organizations. Also, the Shipyard officials observed that after NAGE appeared on the scene the stewards serving the Union substantially increased the amount of time they were devoting to Union business during working hours.

In December 1966 the United States Civil Service Commission addressed to the "Heads of Departments and Independent Establishments" a letter (FPM Letter No. 711-6) furnishing "guidance as to appropriate agency policy in the situation where one employee organization holds exclusive recognition under Executive Order 10988 /predecessor to Executive Order 11491 on the subject of federal employee labor relations/, and one or more employee organizations seek to compete with the recognized organization for the right of exclusive recognition." The letter stated in part:

Once exclusive recognition has been granted in a given unit and until a valid, timely challenge has been presented and rules governing campaigning established, no assistance should be given by the agency to any other employee organization, including any organization holding informal recognition, for the purpose of aiding it to solicit membership or authorization cards. This means the agency should not grant the use of meeting rooms during nonwork hours, permission to distribute literature, or permission to nonemployees to solicit membership on agency premises. An agency should not allow the use of bulletin boards to any employee organization other than the exclusive representative, but may authorize an organization with informal recognition to post a notice of a meeting of its members to be held off agency premises.

The Department of Defense in its Directive No. 1426.1 on "Labor-Management Relations in the Department of Defense," issued March 26, 1970, "in order to promote effective, equitable, and uniform implementation within the Department of the policies, rights, and responsibilities prescribed in Executive Order 11491," states in Article VII, Section A:

1. Solicitation of Membership and Support. Labor organizations will be afforded opportunities to solicit membership and/or support among employees of DOD activities. Subject to the conditions herein, normal security regulations, and reasonable restrictions with regard to the frequency, duration, locations, and number of persons involved in such activities, labor organization representatives will be permitted, upon request,

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to distribute literature or to hold organizational meetings at the activity. Permission may be withdrawn, however, with respect to any such activities which interfere with the work of the activity. Permission may not be extended for such activities among employees in a unit where another labor organization has been granted exclusive recognition unless a valid, timely challenge to such recognition has been filed and rules for election campaigning adopted.

B. Respondent's Notice of February 18 and its Memoranda of March 16 and 27

On February 18, 1970, Respondent, acting through its Commanding Officer, posted the following notice at the Shipyard:

Subj: Regulations governing Union Electioneering Activities

Ref: (a) Executive Order 11491

1. Purpose. To advise all employees of the Shipyard of the Department of the Navy policy governing a situation where one employee organization holds exclusive recognition, and one or more employee organizations seek to compete with the recognized organization for the right of exclusive recognition.

2. Discussion. The exclusive recognition afforded the Charleston Metal Trades Council in the Shipyard has been challenged in a timely manner by the National Association of Government Employees. The material submitted by NAGE in support of the challenge has been delivered to the Department of Labor and the Shipyard is awaiting guidance on how to proceed under reference (a) with the validation of support authorizations from among members of the unit. Validation of the challenge would result in an election being held.

3. Policy. In order that fair and impartial treatment of all parties to the action will result, and because the issuance of reference (a) on 1 January 1970 which resulted in some instances of conflict with directives based on Executive Order 10988, the predecessor to reference (a), and for the purpose of clarifying the existing situation, the following local regulations are established effective this date regarding union activities related to the challenge.

a. Neither the currently recognized Charleston Metal Trades Council nor the challenging National Association of Government Employees shall conduct any type of electioneering on Naval Base premises until campaign procedures are established. Prohibited actions include:

(1) Posting or distribution on Naval Base premises of any poster, bulletin or other material which relates to the challenge;

(2) Meetings on Naval Base premises for the purpose of electioneering or campaigning;

(3) Solicitation of authorization revocations by the challenged union on Naval Base premises;

(4) Solicitation of further authorizations by the challenging union on Naval Base premises.

b. The prohibitions stated in paragraph 3.a., above, apply equally to employees and non-employee representatives of the organizations involved. Non-employee representatives who violate the policy stated herein may be denied access to the Shipyard until such time as the challenge may be validated and any ensuing campaign and election are completed.

c. The Charleston Metal Trades Council, as recognized exclusive representative of the unit involved in the challenge, is still entitled to the privileges negotiated in Article III, Section 9, of the current Agreement between the Shipyard and the Council.

4. Action. Management, including all levels of supervision in the Shipyard, will make every effort to prevent occurrences of activities prohibited by this Notice. All instances of possible violations will be reported immediately to the cognizant Department of Office Head, who shall conduct a prompt investigation. Completed investigations, along with reports on any action taken, shall be forwarded without delay to the Director of Industrial Relations. Where there is evidence of violation of this Notice by employees such action as deemed appropriate under established disciplinary procedures should be taken. Recommended action involving non-Federal personnel shall be submitted to the Shipyard Commander via the Director of Industrial Relations.

5. Cancellation. This Notice is cancelled 30 June 1970.

The parties stipulated that the notice of February 18 was enforced in accordance with its terms. Several weeks later, on March 16, 1970, the Commanding Officer of the Shipyard sent the following memorandum to his immediate subordinates, and furnished a copy thereof to the president of the Union:

Subj: "Time Allowed" for Charleston Metal Trades Council Officers, Chief Stewards and Shop Stewards

Ref: (a) Charleston Naval Shipyard - Charleston Metal Trades
Council Negotiated Agreement of 19 March 1968
(b) Executive Order 11491 of 29 October 1969

1. It has come to my attention, and I am sure it is obvious to you, that certain officials of the Charleston Metal Trades Council, particularly Chief Stewards and Shop Stewards, recently have been using more than normal numbers of work hours for the conduct of union business. It is not my intention to in any way disrupt or limit the Stewards' responsibilities for servicing the Agreement or representing members of the Charleston Metal Trades Council unit as provided for in reference (a). However, with overhead costs of operating the Shipyard rising and the need for increased financial responsibility in the face of higher material and labor expenditures, coupled with budgetary limitations, it is my intention to insure that the Shipyard will receive full productive effort from each and every available member of the work force. Particular attention should be given to any situation where a given representative of Council has, over the life of reference (a), spent only a reasonable amount of time on Council business, for example 25% to 35%, and now requests permission to spend full time or substantially full time thereon.

2. If any Shipyard supervisor is approached by a Charleston Metal Trades Council Chief or Shop Steward who requests, in accordance with reference (a), permission to leave the job for the purpose of conducting union business, the supervisor shall ascertain the type of union business to be conducted and shall approve the request only if the business to be conducted is in accordance with the provisions of reference (a).

3. For information, among the major reasons for Stewards' participation in servicing the Agreement, representing members of the unit, conducting Union business are listed below. This list is not necessarily all inclusive, but should cover all but a very few of the types of situations in which absence from the job of a Chief Steward or Shop Steward should be approved unless compelling work commitments dictate otherwise.

[There follows a list of 18 permissible activities]

4. Electioneering or campaigning at this time is prohibited. Moreover, solicitation of membership or dues, and the conduct of internal business of the Metal Trades Council or any of the affiliated unions on official time is specifically prohibited by Section 20 of reference (b).

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5. Except for those council officials who have, throughout the life of reference (a), been spending full time on Council business, Council representatives should not be granted blanket excusal. While reason must be applied, they should be required to furnish sufficient information regarding the business to be conducted to enable management to make reasonable and just determination as to the propriety of excused time. Failure to establish a reasonable basis or refusal to furnish such information should be considered grounds for refusing the excused time. If excusal is denied, the employee must be informed of the reasons and sufficient documented records shall be retained to enable the Shipyard to defend its action should a complaint be filed.

On March 27 the Commanding Officer amplified his memorandum of March 16, again sending a copy to the union president. This memorandum, after quoting Article VI, Section 5, of the contract, states:

It is my interpretation of the foregoing and my position that a Chief Steward or Steward who desires to leave his work area on Council business needs to inform the supervisor of:

- a. Where he is going;
- b. The name, if known, of the person or persons whom he plans to contact;
- c. The general type of business to be conducted: i.e., "to work on grievance," "to attend a Cafeteria Board meeting," "to discuss a complaint," etc.; and,
- d. Approximately how long he expects to be gone.

Only if he is in receipt of this type of information can a supervisor properly determine if the business to be conducted is "appropriate," as described in Article VI, Section 5 of the Agreement.

I also repeat that it is not my intention to inhibit in any way the union's responsibility for servicing of the Agreement or for representing members of the unit in accordance with Agreement.

Respondent admitted at the hearing that the desire to limit electioneering activities at the Shipyard was one of the reasons for the issuance of the March 16 memorandum.

C. Contentions of the Parties

The Union urges that the notice of February 18 insofar as it restricts employees from "any type of electioneering on Naval Base premises until campaign procedures are established" is an unfair labor practice as employees are protected by the Executive Order in engaging in "electioneering"

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on nonwork time and also in nonwork areas. The Union at the hearing stated that the same rights were possessed by those employees supporting a rival organization. With respect to the memorandum of March 16, as amplified March 27, the Union again relies on the invalidity of the restriction, therein repeated, on electioneering. The Union expressly disclaimed any contention that the restrictions which the March 16 and 27 memoranda imposed on stewards (i.e., the requirement that they divulge to their supervisor certain information concerning the purpose and probable duration of their absence) was inherently unlawful. The Union does contend, however, that because the restrictions announced in those memoranda had their genesis, at least in part, in Respondent's desire to control union activity because of the impending election, the memoranda were tainted by that illegal objective.

Respondent contends that its notice and memoranda were in accordance with outstanding government directives, binding upon it, and indeed were prompted by requests of the Union itself which had sought to restrict solicitation by its rival. Respondent, desiring to preserve the possibility of a fair election, decided to impose on the incumbent union the same restrictions which Respondent understood it had to impose on the challenger. Finally, Respondent suggests that rules developed under the National Labor Relations Act need not be followed under the Executive Order.

As noted above, Respondent at the opening of the hearing filed a motion to dismiss. Insofar as the complaint attacked the February 18 notice, Respondent urged that it was willing to modify the notice, that it had solicited suggestions and proposed modifications from complainant, and that no such proposal had been received. Respondent submitted as a part of its motion a proposed version of the notice, which, however, retained restrictions on "electioneering" on the Shipyard at all times, although it expressly permitted employees to solicit on behalf of the Union during nonworking time. Respondent rested this portion of its motion on 29 CFR 203.7, which states that the Regional Administrator may dismiss a complaint under the Executive Order if he "determines . . . that a satisfactory offer of settlement has been made."

Respondent also moved to dismiss the complaint with respect to the March 16 memorandum, urging that the complaint on its face alleged a violation of the contract between the parties, which contract provides "a complete, exclusive and adequate remedy for the matters complained of . . ."

D. Position of the Civil Service Commission
and of the Department of Defense

General Counsel of the Civil Service Commission states that "we have no current intention of recommending to the Commission that it rescind or change the advice given in the letter /FPM Letter No. 711-6/." He further states:

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With specific reference to the use of agency facilities, it is our view that a union with exclusive recognition should have full opportunity to exercise the rights that come with that recognition. However, we believe that exclusive rights do not properly extend to the use of agency facilities for election campaigning. Within the context of labor-management relations (and this would be so under E.O. 10988 and E.O. 11491) agency facilities are made available for the purposes of representation of employees to agency management. In our judgment, once a valid and timely challenge to exclusivity has been made, neither the incumbent nor the challenging union should be permitted to use agency facilities (bulletin boards, meeting rooms, etc.) for representation election campaigning, until rules have been established, preferably through an election agreement, on use of such facilities. This is the most reasonable approach we have discovered to achieving among the contending unions the requisite fairness or equality of opportunity which alone can guarantee a genuinely free and representative election.

The Department of Defense suggests that a prohibition of campaigning or electioneering until election rules have been worked out is a reasonable means of avoiding disruption of work. It further suggests, as does Respondent, that decisions under the National Labor Relations Act need not be applied under the Executive Order.

Conclusions

Turning first to the Motion to Dismiss, it is hereby denied. With respect to the claim of settlement, the amended notice now suggested by Respondent is not "a satisfactory offer of settlement" as it retains some of the features the complainant found objectionable in the original notice. Respondent's professed readiness to accommodate itself to modifications proposed by Complainant does not require dismissal. Complainant seeks rescission of the notice, and is under no legal obligation to propose modifications. With respect to the alleged failure to exhaust the contractual provisions for relief, it should be noted that those procedures culminate in "advisory arbitration," not binding on Respondent. What is at issue in this case is the extent of employee rights under the Executive Order, a question of law, not of fact, and any resolution thereof, whether by agreement or by arbitration, which did not resolve the legal issue or which resolved it contrary to the provisions of the Executive Order would be no bar to maintaining this action under the Order.

Coming to the merits, the Executive Order is plainly modeled on the provisions of the National Labor Relations Act. The Order assures employees the right "to form, join, and assist a labor organization" and makes it an "unfair labor practice" for "agency management" to "interfere with, restrain, or coerce an employee in the exercise of the rights" so "assured." The statute provides in Section 7 for the right to "form, join, or assist labor organizations," and makes it "an unfair labor practice" for an employer to "interfere with, restrain, or coerce employees in the exercise

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of the rights guaranteed in Section 7." The inconsequential variances in the text mark no difference in result: so far as we are here concerned the decisions under the statute dealing with employee rights 2/ in solicitation and in distribution of literature are applicable under the Order. These rules, recently reiterated by the National Labor Relations Board in cases decided in June 1970, 3/ may be succinctly stated as follows:

1. Employees are free to engage in oral solicitation on behalf of a labor organization anywhere on the employer's premises in nonworking time.

2. Employees are free to distribute union literature in nonworking areas of the employer's premises.

3. Rules limiting solicitation or distribution, presumptively valid under the foregoing principles, may be invalid if adopted for a discriminatory purpose. 4/

Applying those principles to the rules against "electioneering" adopted by the Respondent, it seems clear that the rules are invalid in that they restrict solicitation even during nonworking time and restrict distribution of literature in nonworking areas. Moreover, Respondent admits that the memorandum of March 16 was caused, at least in part, by a desire to control "electioneering" of a nature which, as I interpret the Executive Order, is protected thereby. It follows that the complaints are well taken and should be sustained.

In this connection I should add that I find no warrant anywhere in the Executive Order for the distinction which Respondent and the other Government agencies here represented purport to find between "electioneering" or "campaigning" on the one hand and other union solicitation or distribution of literature on the other. The Executive Order assures employees the right to "assist" a labor organization. Protection of this right must be balanced against the Government's interest, as an employer, in maintaining discipline and production. But this balance is no different from that struck under the National Labor Relations Act. To be sure, under the Executive Order, as under that Act, special circumstances may be shown in particular cases, or in particular types of cases, necessitating a different rule from that generally applicable. But no special circumstances are shown here, and none

2/ By agreement of the parties the instant case concerns only the rights of employees, and not the rights of other union representatives.

3/ Motorist Insurance Agency, Inc., 182 NLRB No. 142; Furnas Electric Co., 183 NLRB No. 1.

4/ There are exceptions to these rules in special circumstances, not presented here.

are even suggested except that the Government as employer is more neutral in these matters than a private employer. Assuming this to be true, it in no way detracts from the general protection which the Executive Order affords in terms substantially identical to those in the Act. Stated conversely, there is no more reason to permit Respondent to restrict or prohibit "electioneering" or "campaigning" under the Executive Order than there is to permit a private employer to do so under the National Labor Relations Act. Such restrictions, insofar as they limit union activity on an employee's free time or in nonwork areas, are invalid as infringements of the right to "assist" a labor organization.

Respondent further defends its actions on the ground that it was legally obligated to follow the directives of the Civil Service Commission and the Department of Defense. The directive of the latter is dated subsequent to the notices here complained of, and that of the former was issued pursuant to an earlier Executive Order, not here invoked. But aside from those deficiencies in the suggested defense, I would not regard it as adequate. We are here concerned with the rights of employees under the Executive Order. These rights are not diminished by erroneous rulings of the Civil Service Commission or the Department of Defense. The question is not whether Respondent acted in good faith, but whether its action infringed those rights. Hence there is no need here to enter the legal thicket surrounding the question whether in other circumstances a member of the Armed Forces, such as the Commanding Officer of the Shipyard, is absolved of personal responsibility because he followed improper orders of his superiors.

RECOMMENDATIONS

In framing appropriate relief in this case, it should be noted that the Union expressly disclaimed at the hearing any contention that Respondent would violate either the contract or the Executive Order if, for nondiscriminatory reasons, Respondent imposed on the Union stewards the restrictions set forth in the memorandum of March 27. Also, in fairness to the Respondent, it must be observed that the broad restrictions it promulgated, albeit unlawful, resulted from its effort to reconcile the provisions of the Executive Order with the directive of the Civil Service Commission quoted above. Moreover, the Union itself, acting through its local president, was in large part at fault in this matter in that it urged Respondent to curtail the activities of supporters of a rival organization, although such curtailment is not permissible under the Executive Order, as the Union, speaking through its counsel, now acknowledges.

I recommend that the Commanding Officer of the Respondent post at the Shipyard at all places where the notice of February 18, was posted, and distribute to all persons to whom that notice and the memoranda of March 16 and 27 were distributed, the following notice:

TO ALL CIVILIAN EMPLOYEES OF THE CHARLESTON NAVY YARD
THIS NOTICE IS POSTED PURSUANT TO EXECUTIVE ORDER 11491 BY DIRECTION
OF THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

December 23, 1970

1. All civilian employees of the Shipyard have the right to engage on the premises of the Shipyard on nonworking time in activities on behalf of the Federal Employees Metal Trades Council or any other labor organization.

2. All civilian employees of the Shipyard have the right to distribute literature in nonworking time in nonworking areas of the Shipyard on behalf of the Federal Employees Metal Trades Council or any other labor organization.

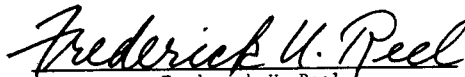
3. The Federal Employees Metal Trades Council as recognized exclusive representative of the ungraded employees of the Shipyard (except Supervisors, Patternmakers, Patternmaker Apprentices, Planners and Estimators, Ship Progressmen and Ship Schedulers) is entitled to the privileges negotiated in its current agreement with the Shipyard. Pursuant to that agreement Chief Stewards and Stewards may leave their work area to transact appropriate council business during work hours, but must first obtain oral permission from their supervisor. Permission will be granted unless compelling work commitments dictate otherwise.

4. All previous notices and memoranda inconsistent herewith are hereby cancelled.

The foregoing notice should be signed by the Commanding Officer of the Naval Shipyard and should remain posted for a period of at least 60 days. Nothing in these recommendations is intended to preclude Respondent from posting again, if it so advised, the restrictions on Chief Stewards and Stewards which it promulgated on March 16 and 27, provided that its purpose in so doing is solely to further the productive activity of the Navy Yard, and it is not motivated in any way by a desire to control lawful electioneering activity.

Copies of this Report are being forwarded to the Civil Service Commission and to the Department of Defense as well as to the parties and their respective counsel. I direct the attention of all interested counsel and of the parties to Section 203.22(c) through 203.26 of the Rules and Regulations of the Department of Labor covering subsequent steps in this proceeding.

Dated at Washington, D.C.
July 13, 1970


Frederick U. Reel
Hearing Examiner

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

PORTSMOUTH NAVAL SHIPYARD, APPRENTICE TRAINING SCHOOL
A/SLMR No. 2

The subject case, involving a representation petition filed by the National Association of Government Employees (NAGE) seeking an election among the employees designated as teachers in the Apprentice Training School at the Portsmouth Naval Shipyard, presented the following questions:

- (1) Whether the teachers were engaged in Federal personnel work within the meaning of Section 10(b)(2) of the Order and were therefore exempt from the coverage of the Order?
- (2) Whether the unit sought by the NAGE covering the teachers in the Apprentice Training School was appropriate or whether the teachers belong properly in the existing bargaining units at the Activity represented either by the American Federation of Technical Engineers, Local 4, AFL-CIO (AFTE) or American Federation of Government Employees, Local 2024, AFL-CIO (AFGE)?

With respect to the first issue, the Assistant Secretary concluded that the employees in the petitioned for unit did not engage in personnel work within the meaning of Section 10(b)(2) since they did not develop the training program set up for apprentices, nor select the required courses for such apprentices. Moreover, they were not consulted by management with respect to manpower or skill needs of the Shipyard or as to the development of employee policies and procedures. In these circumstances, since the evidence established that the employees in the claimed unit were engaged solely in teaching apprentices, the Assistant Secretary found that they were not exempted from the coverage of the Order.

With respect to the second issue, the Assistant Secretary found that the employees in the Apprentice Training School, who were classified as teachers in the Civil Service Commission's classification series GS-1710, constituted an appropriate unit.

He noted particularly that all of the petitioned for employees taught apprentices academic courses, had the same educational backgrounds, were considered professional employees, taught in the same separate area, had the same duties, were supervised by the same individual, and did not interchange with any other employees at the Shipyard. He also found the evidence established that at no time were the employees in the claimed unit represented by the AFTE or the AFGE.

In these circumstances, the Assistant Secretary directed an election based on the view that these employees had a clear and identifiable community of interest separate and apart from other employees at the Shipyard including those represented by the AFTE or the AFGE.

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

PORTSMOUTH NAVAL SHIPYARD, APPRENTICE
TRAINING SCHOOL

Activity

and

Case No. 31-3211(E0)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Petitioner

and

AMERICAN FEDERATION OF TECHNICAL
ENGINEERS, LOCAL 4, AFL-CIO

Intervenor

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2024, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer William O'Loughlin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. National Association of Government Employees, herein called the Petitioner, seeks an election in a unit of all teachers at the Apprentice Training School in the Portsmouth Naval Shipyard.

The Activity is of the view that the employees sought by the Petitioner are personnel employees within the meaning of Section 10(b)(2) of the Order and therefore are not entitled to exclusive recognition under the Order. In the alternative, it contends, in agreement with the Intervenor, the American Federation of Technical Engineers, Local 4, AFL-CIO, ^{1/} herein called AFTE, and the American Federation of Government Employees, Local 2024, AFL-CIO, herein called AFGE, that the unit requested is inappropriate because the employees sought by the Petitioner should be included in either the bargaining unit the AFTE represents currently or the bargaining unit the AFGE represents currently.

The Portsmouth Naval Shipyard, which includes various offices, departments, divisions and committees, is under the command of a Shipyard Commander. The Industrial Relations Office is responsible to the Commander for organization, administration and supervision of the Shipyard's Industrial Relations Department. Within the framework of this Department, is the Training Division which contains, among others, the Management Development Branch, which, in turn, employs the employees covered by the petition.

With respect to the bargaining history prior to the filing of the petition, the Activity accorded exclusive recognition to the AFTE for all graded professional and nonprofessional technical employees in the engineering sciences and associated fields in the Portsmouth Naval Shipyard, excluding supervisors and managerial executives. ^{2/}

^{1/} The name of this labor organization appears as amended at the hearing.

^{2/} This recognition followed an election held on November 7, 1963, which resulted from an arbitrator's decision. The evidence established that the employees in the claimed unit did not participate in the election of November 7, 1963, and were not covered by the contract which was executed subsequently on September 14, 1967.

Also, prior to the filing of the petition, the Activity accorded exclusive recognition to the AFGE for "all graded nonprofessional employees of the Portsmouth Naval Shipyard, excluding technical and professional employees, fire fighters, security guards, graded supervisors at the GS-9 level and above and employees in personnel work other than in a purely clerical capacity." The Activity and the AFGE executed a contract on April 22, 1968. ^{3/}

The record indicates that until 1969 neither the AFTE nor the AFGE made any attempt to represent the petitioned for employees. In the early part of 1969, James Hudson, one of the employees in the claimed unit, applied for a promotion from his branch to another and was denied such promotion on the grounds that he did not meet the minimum experience requirements. As a result, the teachers discussed this problem with both the AFTE and the AFGE representatives. The two labor organizations decided that the teachers belonged properly within the AFTE's unit and on May 20, 1969, they documented this agreement by executing a "Memorandum of Understanding" which was submitted to the Activity's Industrial Relations Office. In a reply to the labor organizations dated July 8, 1969, the Activity stated that the employees involved "are employees engaged in Federal personnel work in other than a clearly clerical capacity. Therefore, in accordance with Section 6 of Executive Order 10988, it is not appropriate to include these employees in the AFTE unit." No further action was taken by either the AFTE or the AFGE concerning representation of the employees in the claimed unit.

With respect to the contention that the employees in the claimed unit are engaged in Federal personnel work and should thereby be excluded from the coverage of the Order, the evidence established that the employees sought to be represented by the Petitioner are classified as teachers. They teach courses in science, mathematics, drafting, English, and basic organization and management concepts to apprentices employed by the Shipyard. Each shop within the Shipyard has a training plan which is assigned by the shop and the head of the Training Division. This plan sets up a sequence of required courses for the apprentices related to the work to be performed by them. Although the teachers determine the most efficient ways in which to implement the planned program by selecting the texts to be used and the manner in which the course is presented, the training program is developed by the employee development specialists rather

^{3/} As noted above, the AFGE's recognized unit expressly excluded professional employees. Neither of the above-mentioned contracts are currently in effect.

than by the teachers. It is clear from the record that the teachers are not consulted by management with respect to immediate or long-range manpower or skill needs in the Shipyard, or as to the development of employee policies and procedures, all of which functions fall within the category of personnel work. 4/

Based on the foregoing, it is clear that the employees in the claimed unit are engaged solely in teaching apprentices and not in Federal personnel work within the meaning of Section 10(b)(2) of the Executive Order. Accordingly, I find their exclusion from coverage of the Order on this basis to be unwarranted.

I also find that the unit petitioned for is appropriate. The evidence establishes that the teachers are classified employees graded at the GS-9 level, that their required academic background includes either a college degree or its equivalent and that all parties consider them to be professional employees. Also, they spend about 85 to 90 percent of their working time performing actual teaching, and their classrooms, which were set up specifically for their work, are located in a separate building on the Activity's premises. The teachers in the claimed unit work under the same immediate supervisor and there is no interchange between them and other Shipyard employees. Based on the

4/ The petitioned for employees are included in the Civil Service Commission's classification series GS-1710. This series is defined by the Civil Service Commission as consisting of "all positions which involve advising on, administering, supervising, or performing research or other professional work in the field of education and training..." The standards further describe the GS-1710 series as an educational vocational training series including "positions that require the application of full professional knowledge of theories, principles, and techniques of education and training in such areas as instruction, guidance counseling, education administration, development or evaluation of curricula, instructional materials and aids, and educational tests and measurements..."

foregoing, I find that an election in the unit sought by the Petitioner is warranted 5/ since the employees in the unit sought have a clear and identifiable community of interest separate and apart from other employees at the Activity 6/ including those represented by the Intervenors.

I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All teachers at the Apprentice Training School, Portsmouth Naval Shipyard, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

5/ The evidence establishes that at no time did either the AFTE or the AFGE represent the teachers in the petitioned for unit as part of their respective recognized units at the Activity.

6/ There are two other groups of employees at the Activity who instruct employees. In my view, they do not share a community of interest with the employees in the petitioned for unit. One group teaches a single specialized course, "radiological classifications." Employees in this group are not considered professionals, are not required to have a college education or its equivalent, and do not interchange with employees in the claimed unit. Another group of employees, who are designated as trade theory instructors, instruct apprentices only in trade related information. They are ungraded employees who are not required to have a formal education and are recruited from the ranks of journeymen in the production department. There is also no evidence that they interchange with employees in the claimed unit.

December 29, 1970

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees. 7/

Dated, Washington, D.C.
December 23, 1970


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

7/ The AFTE stated at the hearing that in the event an election is ordered, it does not desire to have its name placed on the ballot. In view of the above finding that the petitioned for employees are not included within the unit represented by the AFGE and the fact that it did not submit to the Area Administrator union authorization cards or a membership list in support of its intervention in the petitioned for unit, I consider that the placement of the AFGE's name on the ballot is not warranted.

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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

THE VETERANS ADMINISTRATION HOSPITAL, AUGUSTA
A/SLMR No. 3

This case, which arose as a result of representation petitions filed by two labor organizations, the Georgia State Nurses Association, American Nurses Association, (GSNA) and the American Federation of Government Employees, Local 217, AFL-CIO, (AFGE) presented a question as to the composition of a unit of registered nurses for purposes of exclusive recognition.

The GSNA requested a unit of nurses including all staff nurses, nurse instructors, head nurses, nurse anesthetists, and the clinical coordinator at the Veterans Administration Hospital, Augusta. The AFGE requested a unit of staff nurses and nurse instructors. The Activity opposed the inclusion of head nurses, nurse anesthetists, and the clinical coordinator in the claimed unit on the basis that head nurses are "supervisors" within the meaning of the Order, that nurse anesthetists do not have a community of interest with staff nurses, and that the clinical coordinator position is one of "managerial extension."

With respect to the head nurses, the Assistant Secretary found that they were "supervisors" within the meaning of Executive Order 11491 and should be excluded from the petitioned for unit inasmuch as they responsibly directed the work of ward employees by planning the goals and objectives of the ward, assigning subordinate nursing personnel to teams and tours of duty, designating duties of team leaders and team personnel and designating patients to respective teams for care. The Assistant Secretary noted that in the exercise of authority, the head nurse used independent judgment and in this respect differed from the permanent evening or night staff nurse who performed duties, except on rare occasions, solely within the plan established by the head nurse for providing safe nursing care on a 24-hour basis within the particular ward. In reaching his determination, the Assistant Secretary also noted the head nurse's role in evaluating the performance of staff nurses.

The Assistant Secretary concluded that nurse anesthetists did not have a community of interest with staff nurses so as to warrant their inclusion in a unit of staff nurses in this case. He noted that the skills and education of nurse anesthetists differed from those of staff nurses, that their work site was confined to the operating room area rather than the ward, that they did not share common supervision with staff nurses, and that their promotional ladder was different from that of staff nurses.

With regard to the clinical coordinator, the Assistant Secretary found that although this position did not fall within the definition of "supervisor", the evidence established that the employee in this classification constituted a "management official" within the meaning of the Order and, accordingly, should be excluded from the petitioned for unit. The Assistant Secretary determined in this regard that the assigned functions (which include assisting the head nurse in controlling, directing, coordinating and evaluating such matters as standards of clinical practice, quality and quantity of nursing care, development of nursing skills, implementation of new techniques and advising the Chief Nurse on clinical aspects of the nursing program and on directions, changes and improvements therein) placed the interests of the clinical coordinator more closely with personnel who formulate, determine and oversee hospital policy than with personnel in the proposed unit who carry out the resultant policy.

A/SLMR No. 3

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

THE VETERANS ADMINISTRATION HOSPITAL, AUGUSTA ^{1/}

Activity

and

GEORGIA STATE NURSES ASSOCIATION, AMERICAN
NURSES ASSOCIATION

Case No. 40-1930 (RO)

Petitioner

THE VETERANS ADMINISTRATION HOSPITAL, AUGUSTA

Activity

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 217, AFL-CIO ^{2/}

Case No. 40-1948 (RO)

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer William D. Sexton. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

^{1/} The name of the Activity appears as amended at the hearing.

^{2/} The name of the Petitioner appears as amended at the hearing.

Upon the entire record in these cases, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In Case No. 40-1930(RO), Petitioner, Georgia State Nurses Association, American Nurses Association, herein called GSNA, seeks an election in a unit of all staff nurses, nurse instructors, head nurses, nurse anesthetists and the clinical coordinator at the Veterans Administration Hospital, Augusta.

In Case No. 40-1948(RO), Petitioner, American Federation of Government Employees, Local 217, AFL-CIO, herein called AFGE, seeks an election in a unit of staff nurses and nurse instructors at the Veterans Administration Hospital, Augusta.

The Activity contends that head nurses are supervisors within the meaning of the Order, that nurse anesthetists do not have a community of interest with staff nurses, that the position of clinical coordinator is one of "managerial extension", and therefore these positions should be excluded from a unit determined to be appropriate.

The Veterans Administration Hospital, Augusta, Georgia is comprised of 2 physical plants, namely: the Linwood Division which is staffed and equipped primarily to handle neuro-psychiatric patients, and the Forest Hills Division which is staffed and equipped to handle general medical and surgical patients. Each Division has its own Chief of Staff, who reports to the Hospital Director. Total employment at the Hospital, including all of the various services in both Divisions, amounts to 1,090 full-time employees and about 200 temporary or part-time employees. In the Nursing Service at Linwood about 300 nursing personnel are employed of which 21 are head nurses and 41 are staff nurses; in the Forest Hills Nursing Service nursing personnel number 180 of which 8 are head nurses and 61 are staff nurses. Additional nursing personnel, not included in the units being sought, consists of licensed practical nurses and nursing assistants.

The Nursing Service at Linwood has 1,000 beds which are distributed among 6 psychiatric units. Each of the units is comprised of 2 or more wards for a total of 21 wards. A head nurse is in charge of each ward and reports to the nurse coordinator (a position distinct from "clinical coordinator") in charge of the particular multi-ward unit. The nurse coordinator reports to the Assistant Chief, Nursing Service who in turn reports to the Chief, Nursing Service.

At Forest Hills, the Nursing Service has 323 beds. There is a surgical section comprised of 2 wards, a medical section comprised of 4 wards, the operating room and recovery room section, and an admission and outpatient section. Each ward has a head nurse in charge who reports to the Assistant Chief, Nursing Service, who reports to the Chief, Nursing Service.

The Nursing Service at both Divisions operates on three shifts. The Chief, Nursing Service at Linwood and Forest Hills, is in charge of the administration of the entire Nursing Service program in the respective Divisions. Immediately under the Chief are the Assistant Chief (day, evening, night), and the Associate Chief for Education. At Linwood, nurse coordinators report to the Assistant Chief, and head nurses to the nurse coordinator. There are no nurse coordinators in the Forest Hills Division and therefore head nurses report to the Assistant Chief.

The concept of team nursing prevails in both Divisions. Under this concept, ward personnel are assigned to teams under the leadership of a designated team leader who is a staff nurse.

With respect to history of bargaining, the record reveals no prior grant of exclusive recognition covering a unit of nurses at the VA Hospital in Augusta.

Head Nurses

Testimony indicates that the head nurse has administrative and clinical responsibility for providing continuity of nursing care on a 24-hour basis, assigns ward staff to teams, assigns tours of duty, designates the team leader, specifies professional duties of the team leader as well as duties of nursing assistants, and assigns patients to a team for care. In addition, the head nurse develops goals and objectives for the unit, prepares the yearly leave schedule for the unit, and provides for staff development through orientation and in-service training programs to meet individual and group staff needs. The head nurse also rotates personnel from one tour to another as necessary and approves leave requests.

Typically the tour of duty for the head nurse is the day tour. The record discloses that a permanent evening or night staff nurse, who is assigned responsibility for the ward's operation on the evening and night tours, operates the unit within the framework of the overall plan established by the head nurse for providing nursing care. Control of the ward's 24-hour operation is maintained by the head nurse through meetings held with the oncoming evening shift to discuss condition of patients, give instructions on treatments to be administered, and

communicate other information related to the Hospital's administration. Contact with the night shift is maintained through similar meetings held in the morning with the off-going night personnel to receive reports on evening and night tour activities and the condition of patients. Head nurses are relieved on weekends and for vacations by staff nurses. During such periods, according to the record, the staff nurse does not assume the overall planning function of the head nurse and does not change the emphasis of the program established by the head nurse.

The record reveals that the head nurse may spend 2-3 hours a day at the desk performing administrative functions. The remainder of the time may be spent in making rounds with the doctor, dispensing medication, occasionally performing staff duty floor work, and resolving administrative and clinical problems which arise. In addition, the head nurse attends periodic meetings with higher supervisory personnel, as well as meetings with other head nurses and subordinate personnel.

The head nurse makes an annual proficiency rating on each ward staff nurse, and generally on day tour nursing assistants. The permanent evening or night tour staff nurse rates the nursing assistants. The outcome of these ratings may serve as a basis for promotion or disciplinary action. Testimony indicates that while higher levels of supervision have the authority to change the rater's evaluation, ordinarily this evaluation is endorsed by the approving official. The record indicates that the nurse's proficiency rating is one of the factors considered by the Nurse Professional Standards Board in considering and recommending promotions.

The record contains several examples where recommendations for awards were initiated by head nurses and staff nurses. Such recommendations pass through successive levels of higher supervision for endorsement, and if concurred in, are sent to the final approving authority. Also, testimony reveals that grievances, such as those concerning days off, tour assignments and the like, are taken up with the head nurse by ward personnel, and in general are resolved at the ward level.

Head nurses do not always receive a higher salary than staff nurses. All registered nurses are under the same pay system and their level of pay is determined by grade. Thus, a head nurse can, and in some cases does, receive less salary than a subordinate staff nurse in the same unit.

Based on the foregoing, I find that the head nurses are "supervisors" within the meaning of the Order inasmuch as the head nurse responsibly directs the work of ward employees by planning the goals and objectives of the ward, assigning subordinate nursing personnel to teams and tours of duty, designating duties of the team leader and team personnel, and assigning patients to respective teams for care. Also, it appears that

in the exercise of authority the head nurse uses independent judgment and in this respect differs from the permanent evening or night staff nurse who performs assigned duties, except on rare occasions, solely within the plan established by the head nurse for providing safe nursing care on a 24-hour basis. In these circumstances and noting also the head nurse's role in evaluating the performance of staff nurses, I conclude that this classification of employees should be excluded from the petitioned for unit.

Nurse Anesthetists

Nurse anesthetists are employed only in the Forest Hills Division, are assigned to the Surgical Service, work only in the operating room and are not a part of the Nursing Service. They are under the supervision of the Chief Anesthetist, whose direct supervisor is the Chief of Surgery, who reports to the Chief of Staff. While nurse anesthetists are registered nurses, to qualify as an anesthetist, they must complete training in a certified School of Anesthesiology. They do not perform work similar to that of staff nurses, nor is there any interchange between staff nurses in the Nursing Service and nurse anesthetists in the Surgical Service. The starting salary and grade for nurse anesthetists is higher than that of regular beginning registered nurses and their professional competence with respect to promotions is evaluated by the anesthetist and Physician Professional Standards Board as distinguished from the Nurse Professional Standards Board which evaluates the competence of registered nurses in the Nursing Service. The record demonstrates that the skills and education of nurse anesthetists differ from those of staff nurses, that their work site is confined to the operating room area rather than the ward, that they do not share common supervision with staff nurses, and that their promotional ladder is different from that of staff nurses.

In view of the foregoing, I find that nurse anesthetists do not have a community of interest with staff nurses and should therefore be excluded from the petitioned for unit.

Clinical Coordinator

The record reveals that the clinical coordinator is a newly established position and exists only in the Forest Hills Division Nursing Service. The functions of the clinical coordinator are to assist the head nurse in planning, controlling, directing, coordinating and evaluating such matters as: standards of clinical practice, quality and quantity of nursing care, development of nursing skills, and implementation of new techniques. Testimony indicates that the clinical coordinator visits the wards and assists the head nurse in developing nursing care plans for the entire ward.

The clinical coordinator advises the Chief Nurse on clinical aspects of the nursing program, and on directions, changes and improvements. No administrative or supervisory duties are performed by the clinical coordinator. However, the coordinator regularly attends the Nursing Service administrative staff meetings composed of top supervisory personnel such as the Chief Nurse and Assistant Chief Nurses.

Although, based on the foregoing, the record established that the clinical coordinator is not a supervisor, I find that a community of interest between the clinical coordinator and nonsupervisory nurses does not exist. Rather, the record indicates that the functions assigned the clinical coordinator 3/ place the interests of an employee in this classification more closely with personnel who formulate, determine and oversee Hospital policy than with personnel in the proposed unit who carry out the resultant policy. Accordingly, I find that the clinical coordinator is a "management official" within the meaning of the Order and as such must be excluded from the proposed unit.

Based on the foregoing, I find that the following employees sought by both Petitioners constitute a unit appropriate for purposes of exclusive recognition within the meaning of Section 10(b) of Executive Order 11491:

All staff nurses, including regular part-time staff nurses, public health nurse, and nursing instructors at the Veterans Administration Hospital, Augusta, but excluding Chief Nursing Service, Assistant Chief Nursing Service, Associate Chief Nursing Service for Education, Unit Coordinators, Public Health Nurse Coordinator, Head Nurse, Nurse Anesthetist, Clinical Coordinator, employees engaged in Federal personnel work other than in a purely clerical capacity, other professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall

3/ Such functions include assisting the Head Nurse in controlling, directing, coordinating and evaluating such matters as standards of clinical practice, quality and quantity of nursing care, development of nursing skills, implementation of new techniques and advising the Chief Nurse on clinical aspects of the nursing program and on directions, changes and improvements therein.

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supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by Georgia State Nurses Association, American Nurses Association; or by American Federation of Government Employees, Local 217, AFL-CIO; or by neither.

Dated, Washington, D.C.:
December 29, 1970

W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY, DEFENSE
CONTRACT ADMINISTRATION
SERVICES REGION (DCASR), 1/
ATLANTA, GEORGIA

Agency and Activity

Case No. 40-2009 (RO)

Defense Supply Agency
Defense Contract Administration Services Region
(DCASR), Atlanta, Georgia
A/SLMR No. 4

and

LOCAL 1761, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES 2/

Petitioner

DECISION AND ORDER

The subject case involving a representation petition filed by Local 1761, National Federation of Federal Employees, presented the question whether a unit consisting of all nonsupervisory General Schedule and Wage Board employees working in the Activity's Atlanta field operations branch office is appropriate.

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

In all the circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this determination, the Assistant Secretary relied on the fact that there had been substantial transferring of employees into and out of the claimed unit to other subdivisions of the Activity's region, and that the Activity had established an area of consideration for promotional opportunities for most of the employees in the petitioned for unit on a broad division-wide rather than on a branch-wide basis. Also, he viewed as particularly relevant the fact that the employees in the claimed unit performed functions identical to those performed by similarly situated employees throughout the Activity's region.

Upon the entire record in this case, including the Activity's brief, the Assistant Secretary finds:

In these circumstances, the Assistant Secretary concluded that the employees in the unit sought by the Petitioner did not possess a clear and identifiable community of interest and, accordingly, he ordered that the petition be dismissed.

1. The labor organization involved claims to represent certain employees of the Activity.

2. No question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. Petitioner, Local 1761, National Federation of Federal Employees, herein called NFFE, seeks an election in a unit of all nonsupervisory Wage Board and General Schedule employees employed by the Activity's Atlanta field operations branch located in Forest Park, Georgia; Cordele, Georgia; and Columbia, South Carolina. 3/ The Defense Contract Administration Services Region (DCASR), Atlanta, Georgia, herein called the Activity, contends that the claimed unit is inappropriate because it would not promote effective dealings and efficiency of operations.

1/ The names of the Agency and Activity appear as amended at the hearing.
2/ The name of the Petitioner appears as amended at the hearing.
3/ The Petitioner's claimed unit appears as amended at the hearing.

The Activity administers the procurement and distribution of goods for the Department of Defense and other federal agencies throughout the seven south-eastern states and the Caribbean. Currently, there are approximately 1500 employees employed in the Activity's region. The Activity's Regional Office, located in Atlanta, Georgia, is subdivided, functionally, into several offices and directorates. One of these directorates, the Directorate of Quality Assurance is divided into several divisions. The Operations Division of this Directorate is subdivided, geographically, into three main operational divisions located at Birmingham, Alabama; Orlando, Florida; and Atlanta, Georgia. The record discloses that each of the three operational divisions perform substantially identical functions.

The Atlanta Operations Division is subdivided into five field operations branches. 4/ The Atlanta field operations branch, which contains all of the petitioned for employees, encompasses the entire state of Georgia and part of South Carolina. It, in turn, is divided into four sections. Sections one and two are located at the branch office at the Atlanta Army Depot, Forest Park, Georgia. Section three is located at Cordele, Georgia, approximately 100 miles from the branch office in Forest Park. Section four is located at Columbia, South Carolina, some 230 miles from the Forest Park branch office.

There are thirty-nine quality assurance representatives and four clerical employees in the claimed unit. 5/ Quality assurance representatives are responsible for insuring that the quality of commodities produced by a contractor complies with the standards outlined in the procurement contract. These representatives often are required to travel to a contractor's plant for the purpose of inspecting the commodities involved and, depending on the type of commodity produced, a representative might travel from his assigned section into the geographic area of another section.

The Atlanta Operations Division has approximately 150 employees. The employees assigned to the branches within this Division, including the Atlanta field operations branch, perform essentially the same functions.

There is one central personnel office located within the Regional Office at Atlanta, Georgia. Such matters as reductions in force, promotion policies, and classification designations originate from this office.

4/ These branches are located in Atlanta, Georgia; Avco, Charleston, South Carolina; Charlotte, North Carolina; Condec, Charlotte, North Carolina; and Knoxville, Tennessee.

5/ Currently there are no wage board employees in the petitioned for unit.

Further, the ultimate authority to negotiate or bargain with a labor organization is exercised by the Activity's Regional Commander, who is a commissioned officer in one of the branches of the Armed Forces.

The Regional Personnel Office compiles registers of eligible applicants for employment which are circulated to all supervisors within the Region including the supervisors of the four sections of the Atlanta field operations branch. 6/ These section chiefs have the authority to make the final determination whether to hire a particular applicant on the register. They also are responsible for the day-to-day direction of all employees within their assigned section and have the authority to settle grievances at their initial stages.

The Activity has established an area of consideration for promotional opportunities for grades GS-12 and above throughout the entire Region. The area of consideration for grades GS-6 through GS-11 is on a Division-wide basis and the competitive area for grades GS-5 and below is within the particular community in which the employee is assigned. The evidence established that for fiscal year 1970 nine employees in the Atlanta field operations branch transferred to other branches within the Atlanta Operations Division. Additionally, at least two employees transferred into the Atlanta field operations branch from other branches within the Atlanta Operations Division. 7/

Based on the foregoing, I find that the unit sought by the NFFE does not constitute an appropriate unit for the purpose of exclusive recognition under Executive Order 11491. The record reveals that there is substantial transferring of employees in the petitioned for unit to other branches within the Atlanta Operations Division. Also, the area for consideration for promotional opportunities for a majority of the employees in the claimed unit is on a Division-wide basis and is not confined solely to the area encompassed by the Atlanta field operations branch. In these circumstances and noting the fact that similarly situated employees performing identical job functions in the Atlanta Operations Division are not included in the claimed unit, I find that the unit sought by the NFFE is not appropriate. Accordingly, since I find that the employees in the requested unit do not possess a clear and identifiable community of interest, I shall dismiss the petition herein.

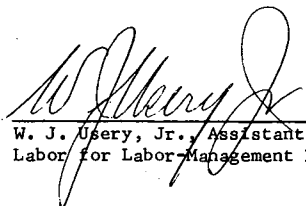
6/ The parties stipulated that these section chiefs were "supervisors" within the meaning of Section 2(c) of Executive Order 11491.

7/ Two other employees transferred into the Atlanta field operations branch from branches outside the Atlanta Operations Division.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 40-2009(RO) be,
and it hereby is, dismissed.

Dated, Washington, D.C.
January 15, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES ARMY ENGINEER DIVISION, NEW ENGLAND
A/SLMR No. 5

This case involved representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 2995, (AFGE) and the National Federation of Federal Employees, Local 1164, (NFFE). The AFGE sought a unit of nonprofessional employees "stationed" at the Activity's Headquarters in Waltham, Massachusetts. The NFFE sought a unit of nonprofessional employees and professional employees employed at the Activity's Headquarters and its field facilities.

The Assistant Secretary found that a unit comprised solely of the nonprofessional employees "stationed" at the Activity's Headquarters, as proposed by the AFGE, would be inappropriate because it included certain employees who spent substantial portions of their working time in the field while excluding other field employees. Further, the Assistant Secretary noted the Activity's centralized administrative and supervisory structure, the integration of its work processes within the various Headquarters and field segments, the similarity of job classifications at Headquarters and in the field, and the fact that there had been transfers of employees between the Activity's Headquarters and its field components. These factors were found to weigh heavily in favor of the Division-wide unit of professional and nonprofessional employees sought by the NFFE. In view of the foregoing, the Assistant Secretary found that a clear and identifiable community of interest existed among all of the Activity's employees. Further, the Assistant Secretary found that the Division-wide unit composed of all professional and nonprofessional employees working at the Activity's Headquarters and field facilities would promote effective dealings and efficiency of agency operations.

In these circumstances, the Assistant Secretary ordered that the petition filed by the AFGE be dismissed and directed that elections be held first to ascertain the desires of the professional employees as to their inclusion in a unit with nonprofessional employees and then to determine whether or not the employees desired union representation.

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UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES ARMY ENGINEER DIVISION,
NEW ENGLAND 1/

Activity

and

Case No. 31-3177(E0)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2995

Petitioner

UNITED STATES ARMY ENGINEER DIVISION,
NEW ENGLAND

Activity

and

Case No. 31-3214(E0)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1164

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer

1/ The name of the Activity appears as amended at the Hearing.

Robert J. Tighe. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of the Executive Order 11491.

3. In Case No. 31-3177(E0), Petitioner, American Federation of Government Employees, AFL-CIO, Local 2995 (hereinafter referred to as AFGE), seeks an election in a unit of all nonprofessional, nonsupervisory employees of the United States Army Engineer Division, New England (hereinafter referred to as the Activity), "stationed" 2/ at the Activity's Headquarters in Waltham, Massachusetts. In Case No. 31-3214(E0), Petitioner, National Federation of Federal Employees, Local 1164, (hereinafter referred to as NFFE), seeks an election in a unit of all nonsupervisory professional and nonprofessional employees of the United States Army Engineer Division, New England, assigned to the Activity's Headquarters in Waltham, Massachusetts, and its field facilities. 3/ At the hearing, the Activity took a neutral position with respect to the appropriateness of the units proposed by the Petitioners.

The main function of the United States Army Engineer Division, New England is the construction, operation and maintenance of flood control and local flood protection structures, as well as the improvement and maintenance of navigable waterways. The Activity's Headquarters located in Waltham, Massachusetts, has 14 organizational components and employs approximately 453 employees. It is responsible also for the administration and operation of 5 additional field facilities. 4/ These field facilities, excluding the Cape Cod Canal, employ approximately 107 employees. General responsibility for the administration of the entire

2/ The record reveals that the term "stationed" was intended to include employees, who, although listed among the employees working at the Activity's Headquarters in Waltham, Massachusetts, may be physically located in the Activity's field operations for substantial periods of time.

3/ The parties agreed to exclude from the proposed units, employees assigned to the Activity's Cape Cod Canal facility who already are represented.

4/ These facilities include the Cape Cod Canal, the Rivers and Harbors Area, the Ansonia Area, the Completed Dams and the Completed Hurricane Barriers.

operation rests with the Division Engineer who is located in the Executive Office at the Activity's Headquarters. The Personnel Office, the Office of the Comptroller, the Office of Administrative Services, the Engineering, Construction and Operations Divisions, and other administrative offices are located also at the Activity's Waltham, Massachusetts headquarters.

The Personnel Office handles all personnel matters, including employee grievances arising in the Headquarters and the field. 5/ The Office of Administrative Services and the Activity's other administrative offices provide the work force with transportation, supplies and other necessary services. The Engineering Division, which is the largest component, 6/ performs some of the Activity's essential technical functions. These include the obtainment of technical data through periodic surveys which are conducted in the field by teams composed of professional and nonprofessional personnel. 7/

With respect to the bargaining history prior to the filing of the subject petitions, the Activity accorded exclusive recognition to the AFGE under Executive Order 10988, covering a unit of maintenance and operating employees at the Cape Cod Canal. Also, formal recognition was granted by the Activity to the AFGE under Executive Order 10988 in a unit composed of nonprofessional employees stationed at the Activity's Headquarters. 8/

The record discloses that the field facilities are separated geographically from the Activity's Headquarters. However, supervision of employees assigned to the Activity's Headquarters and the various field facilities is maintained through a well-defined chain of supervision which begins with the Executive Office at the Activity's Headquarters.

According to the classification standards which apparently are applied uniformly throughout the Activity, the engineers and

5/ The record shows that the Division Engineer and the Director of Civilian Personnel have the authority for approving labor-management agreements involving the Activity.

6/ It contains 268 employees, as compared to 44 employees in the next largest component.

7/ While these teams are composed of personnel from the Activity's Headquarters, they generally include at least one employee from the field.

8/ The record further shows that formal and informal recognition also was granted to labor organizations, including the International Organization of Masters, Mates and Pilots (AFL-CIO) and the National Association of Government Employees, for units of employees assigned to the Activity's field operations.

other professional employees comprise more than one-third of the entire work force. Engineers are assigned to the Engineering Division as well as to other components at the Activity's Headquarters and in the field. 9/ This situation is true also with respect to technicians and clerical employees.

The record further shows that employees have "bumping rights," which they can exercise against other employees on a Division-wide basis; that there has been transferring of employees between the Activity's Headquarters and its field components; that cafeteria and parking facilities at the Activity's Headquarters are used by both professional and nonprofessional employees; and that the Activity publishes a newspaper which contains items of interest to all of its employees. As indicated above, all personnel matters, including the processing of grievances, are handled by the Personnel Office at the Activity's Headquarters.

It is clear from the record that the unit sought by the AFGE covering all nonprofessional, nonsupervisory employees "stationed" at the Activity's Headquarters in Waltham, Massachusetts would encompass not only the employees who work solely at Headquarters but also certain employees who spend a substantial portion of their working time in the field. The establishment of such a unit would result in the inclusion of some employees assigned to the field, while excluding other field personnel. In these circumstances and considering the Activity's centralized administrative and supervisory structure, the integration of its work processes within the various Headquarters and field segments, the similarity of job classifications at Headquarters and in the field, the fact that there have been transfers of employees between Headquarters and its field components, and the fact that "bumping rights" are on a Division-wide basis, I find that the unit sought by the AFGE is not appropriate.

I also find, based on the foregoing, that the Division-wide unit of professional and nonprofessional employees, as proposed by the NFFE, is appropriate. As noted above, the record reveals that there is substantial integration of functions between the Activity's Headquarters and its field facilities. Supervision of employees assigned to the various organizational components in the Headquarters and field facilities is maintained through a chain of supervision which begins with the Executive Officer in the Division's Headquarters. The Engineering Division, which is

9/ While the engineers in the Engineering Division generally perform their duties at Division Headquarters, they also make trips to the field to gather information necessary to accomplish the Activity's mission.

the Activity's largest component, includes both professional 10/ and nonprofessional technical employees who, in many instances, perform duties both at the Activity's Headquarters and in its field facilities. Also, there is evidence that employees have transferred from job to job within the Division and that they have "bumping rights" on a Division-wide basis. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the NFFE. Moreover, such a comprehensive unit will, in my view, promote effective dealings and efficiency of agency operations.

I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Headquarters and field professional and non-professional employees of the United States Army Engineer Division, New England, excluding employees assigned to the Cape Cod Canal, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall therefore direct separate elections in the following voting groups:

Voting Group (a): All Headquarters and field professional employees of the United States Army Engineer Division, New England excluding all nonprofessional employees, employees assigned to the Cape Cod Canal, employees engaged in Federal personnel work, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All Headquarters and field employees of the United States Army Engineer Division, New England, excluding

10/ Apparently the Petitioners agreed to adopt the Activity's classification of employees as to their professional or nonprofessional status. Since the record does not set forth sufficient facts in this respect, I will make no findings as to which employee classifications constitute professional employees.

professional employees, employees assigned to the Cape Cod Canal, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether they desire to be represented by the NFFE, the AFGE, or neither. 11/

The employees in the professional voting group (a) will be asked two questions on their ballot: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether they wish to be represented for the purpose of exclusive recognition by the NFFE, the AFGE or neither. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as non-professional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether the NFFE, the AFGE or no labor organization was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All Headquarters and field professional and non-professional employees of the United States Army Engineer Division, New England, excluding employees assigned to the Cape Cod Canal, all employees

11/ As the AFGE's showing of interest is sufficient to treat it as an intervenor, I shall order that its name be placed on the ballot. However, because the unit found appropriate is larger than the unit it sought initially, I shall permit it to withdraw from the election upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision.

engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

- (a) All Headquarters and field employees of the United States Army Engineer Division, New England, excluding professional employees, employees assigned to the Cape Cod Canal, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.
- (b) All Headquarters and field professional employees of the United States Army Engineer Division, New England, excluding all nonprofessional employees, employees assigned to the Cape Cod Canal, employees engaged in Federal personnel work, management officials, and supervisors and guards as defined in the Order.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 31-3177(E0) be, and it hereby is dismissed.

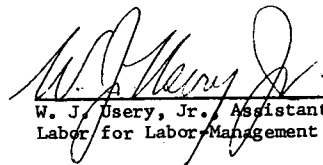
DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause, since the designated payroll period and who have not been rehired or reinstated before the election date.

-7-

Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1164, or by the American Federation of Government Employees, AFL-CIO, Local 2995, or by neither.

Dated, Washington, D.C.
January 15, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor Management Relations

-8-

SUMMARY OF DECISION AND DIRECTION OF
ELECTIONS ISSUED BY THE ASSISTANT SECRETARY
FOR LABOR-MANAGEMENT RELATIONS UNDER
SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, ALAMEDA, CALIFORNIA
A/SLMR No. 6

The subject case involving representation petitions filed by two labor organizations, United Association of Plumbers and Gas Fitters, AFL-CIO, Local No. 444 (Plumbers) and International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge 739, (IAM) presented the question whether a unit consisting of plumbers, pipefitters and related classifications working in the Activity's maintenance division (Plumbers) or a residual base-wide blue collar unit (IAM) was appropriate.

In all the circumstances, the Assistant Secretary concluded that both petitioned for units may be appropriate and accordingly, he directed that a self-determination election be held. He provided that if a majority of the employees petitioned for by the Plumbers select that labor organization, a separate unit would be appropriate and that a residual base-wide blue collar unit, excluding plumbers, pipefitters and related classifications also would be appropriate. If, however, a majority of the employees petitioned for by the Plumbers did not select that labor organization, their votes would be pooled with the ballots of the employees voting in the residual base-wide election and a residual base-wide blue collar unit would be appropriate.

With respect to the appropriateness of the residual base-wide unit, the Assistant Secretary found that the employees in this proposed unit worked generally under uniform terms and conditions of employment. Moreover, it was noted that these employees included all of the remaining unrepresented blue collar employees at the Activity. In determining that a unit of plumbers, pipefitters and related classifications, including insulators and refrigeration and air conditioning mechanics, also may be appropriate, the Assistant Secretary relied on the fact that most of the time plumbers, pipefitters and related classifications at the Activity worked in two closely related shops in the same building and were supervised by pipefitter foremen. Additionally he noted particularly that Section 10(b) of Executive Order 11491 provides, in part, that a unit may be established on a craft basis.

The Assistant Secretary also was of the view that the evidence was insufficient to establish that a unit limited to plumbers, pipefitters and related classifications would not have the effect of promoting effective dealings and the efficiency of agency operations within the meaning of Section 10(b)

of the Executive Order. In this regard, he noted that there was a history of recognition of labor organizations by the Activity in separate units, including craft units, and there was no evidence that such relationships failed to promote effective dealings and the efficiency of agency operations.

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

DEPARTMENT OF THE NAVY,
ALAMEDA NAVAL AIR STATION

Agency and Activity

and

Case No. 70-1512(RO) 1/

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO, LODGE 739

Petitioner

and

UNITED ASSOCIATION OF PLUMBERS AND
GAS FITTERS, AFL-CIO, LOCAL 444

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Henry C. Lee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ Two separate petitions were filed in the subject case. However, apparently in view of their related nature, the Area Administrator assigned the same case number to both petitions.

Upon the entire record in this case, including the briefs filed by the Activity and Petitioner, United Association of Plumbers and Gas Fitters, AFL-CIO, Local 444, herein called Plumbers, 2/ the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge 739, herein called IAM, seeks an election in a unit of all ungraded nonsupervisory employees working in Supply, Public Works, Air Operations and others under the Activity command but excluding all employees who are graded, temporary limited, managerial, supervisors, guards, and those already covered by exclusive recognition. The Plumbers seek an election in a unit of all ungraded employees at the Activity in the following classifications including apprentices: 3/ Plumber, plumber helper, pipefitter, pipefitter helper, refrigeration and air conditioning mechanic, refrigeration and air conditioning mechanic helper, insulator and insulator helper in the Maintenance Division of the Public Works Department, but excluding all management officials, supervisors, guards, and employees engaged in Federal personnel work in other than a purely clerical capacity.

The Activity contends that the unit described in the IAM petition is appropriate within the meaning of Section 10(b) of Executive Order 11491. On the other hand, it contends that the unit described in the Plumbers' petition is not appropriate because it does not consist of employees with a clear and identifiable community of interest and it further asserts that such a unit would neither promote effective dealings nor efficiency of agency operations.

There is no history of bargaining with respect to the employees covered by the petitions in the instant case. However, the Activity previously accorded exclusive recognition under Executive Order 10988 to certain labor organizations, including the IAM, in six separate units. Two of these units are located in the Maintenance

2/ The Plumbers also filed a motion to strike portions of the Activity's brief on the ground that such portions were unsubstantiated by the record testimony. Inasmuch as the evidence adduced at the hearing adequately sets forth the facts necessary to reach a determination of the unit issues in this representation proceeding, the motion is denied.

3/ Although the unit sought by the Plumbers' petition did not include the apprentice classification, the Plumbers amended their petition at the hearing to include apprentices.

There is a four-year apprenticeship program within the Activity's Maintenance Division under the control of the Activity's Industrial Relations Department. Each craft within the Division provides its own instructor. A plumbing apprentice will cover all fields within the "pipe shop" and after a four-year period, he will become a journeyman pipefitter.

Division of the Public Works Department 4/ which performs the maintenance for all buildings and public utilities within the Air Station. 5/

The employees sought to be represented by the Plumbers are employed in either the Emergency Service section of the Emergency Service and Building Trades Branch or in the Metal Trades Branch of the Maintenance Division. 6/ The Metal Trades Branch consists of three "work centers" or shops located in the same general area of the Public Works building. One of these "work centers," which is commonly referred to as the "pipe shop," contains employees sought by the Plumbers' petition. 7/ The employees in the "pipe shop" are divided into two crews 8/ with each crew operating under the direction of a pipefitter foreman. These foremen give job orders to the plumbing employees under their supervision and generally supervise the plumbing duties on the particular job involved. They also have authority to grant time off and sick leave and are responsible for evaluating the work of the men under their supervision for the purpose of promotion or disciplinary actions.

The Emergency Service section of the Emergency Service and Building Trades Branch, which also contains employees sought to be covered by the Plumbers' petition is responsible for answering emergency calls throughout the Air Station. The complement of this section consists of a group of employees of various skills including a "leader pipefitter," one plumber and seven pipefitters. 9/ Although all of the employees in this section are under the overall supervision of a "maintenance foreman," the "leader pipefitter" is directly responsible for the supervision of the plumber and pipefitter employees. 10/

4/ The operations of the Alameda Naval Air Station consist of several separate departments. The Public Works Department is comprised of the following divisions - Maintenance, Administrative, Engineering, Transportation, Maintenance Control, Housing, and Utilities.

5/ The IAM was recognized previously for a unit of machinists and tool room attendants and pursuant to an arbitration decision under Executive Order 10988, the International Brotherhood of Electrical Workers was recognized for a unit of electricians and related classifications.

6/ The Maintenance Division consists of five branches: Emergency Service and Building Trades Branch, Metal Trades Branch, Electrical Branch, General Services Branch and NARF Janitorial (Janitorial Branch).

7/ The other two "work centers" in the Metal Trades Branch employ, among others, machinist and sheet metal employees.

8/ One of the crews performs work connected with preventative maintenance while the other crew handles specific jobs.

9/ Other types of employees in this section include electricians, carpenters, a glazier, a sheetmetal worker, and an iron worker.

10/ The "leader pipefitter" has essentially the same supervisory authority as is exercised by the pipefitter foremen in the Metal Trades Branch.

All of the employees in the Maintenance Division (with the exception of the janitorial employees) work out of the same building. The maintenance jobs usually require the services of most of the crafts working together. The tools used by the maintenance employees, including plumbing employees, are channelled through the Maintenance Department's Central Tool Room. Maintenance employees work under a common promotional system, utilize a common dispensary, have the same basis for compensation and fringe benefits, have common overtime practices, and utilize the same mobile equipment. They also have common rest rooms and share the same lunch breaks.

Although there are occasions when plumbing employees help other craft employees on particular jobs by performing electrical, carpentry, and painting services, such non-craft work is merely incidental to their overall plumbing duties. Thus, employees in the "pipe shop" perform plumbing work about 98 or 99 percent of the time and plumbing employees in the Emergency Service section spend about 90 percent of their time on plumbing work.

Most of the plumbing employees in the Emergency Service section are transferees from the "pipe shop" and when technical problems arise in an emergency situation or additional employees are required on a particular job, plumbing employees from both branches consult with each other and work together.

Employees classified as insulators and refrigeration mechanics work in the "pipe shop" under the supervision of the pipefitter foreman. An insulator is normally called upon to correct a hazardous condition where heat and cold might affect the personnel. Although, he does not work solely with plumbers and pipefitters, the majority of an insulator's skills are associated with the pipefitting craft. Refrigeration mechanics have skills which, in certain respects, also are similar to those of pipefitters. Also, the Plumbers' apprenticeship program is similar to that of refrigeration mechanics and generally refrigeration mechanics are qualified to perform pipefitting work. 11/

Based on the foregoing, I find that the unit petitioned for by the Plumbers is appropriate for the purpose of exclusive recognition under Executive Order 11491. The record reveals that the employees sought to be represented by the Plumbers work in two closely related work centers within the same building. The "pipe shop" is comprised almost entirely of plumbing and related craftsmen who are supervised by pipefitter foremen. Although the Emergency Service section is comprised of employees from various crafts, the plumbing employees in that section work under the direction of a "leader pipefitter" and they enjoy a close working relationship with the "pipe shop" employees. In this latter regard, the record establishes that plumbing employees are shifted back and forth between these two work centers and that nearly every plumbing employee has at one time worked in both work centers.

11/ The Plumbers has its own apprenticeship program for refrigeration mechanics in which refrigeration mechanic apprentices usually spend approximately the first three years of the program in association with the pipefitters and thereafter, they branch off into the refrigeration and air conditioning portion of the program.

In these circumstances and noting the fact that Section 10(b) of the Order specifically provides, in part, that a unit may be established on a craft basis, I find that a self determination election in the unit sought by the Plumbers is warranted since the employees constitute a functionally distinct craft with a clear and identifiable community of interest. 12/

I find that insufficient evidence was offered to establish that the unit sought by the Plumbers would not promote effective dealings and the efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491. Particularly noted in this regard was the fact that under Executive Order 10988 the Activity accorded exclusive recognition to various unions covering six separate units and that two of these units involved certain employees in the Maintenance Division. There was no evidence in the record that such relationships had either hampered the Activity's operations or precluded effective dealings between the parties.

Also, I find that the unit petitioned for by the IAM constitutes an appropriate unit. The record demonstrates that the employees in the unit requested by the IAM generally have the same terms and conditions of employment. Moreover, this group of employees includes all of the remaining unrepresented blue collar employees at the Activity. In these circumstances and in the absence of any other labor organization seeking to represent these remaining blue collar employees on any other basis, I find that the unit sought by the IAM petition and supported by the Activity is appropriate for the purpose of exclusive recognition under Executive Order 11491. 13/

4. Having found that the employees petitioned for by the Plumbers may, if they so desire, constitute a separate appropriate unit, I shall not make any final unit determination at this time, but shall first ascertain the desires of the employees by directing elections in the following groups:

Voting Group (a): All ungraded employees at the Alameda Naval Air Station in the following classifications including apprentices; Plumber, Plumber Helper, Pipefitter, Pipefitter Helper, Refrigeration and Air Conditioning Mechanic, Refrigeration and Air Conditioning Mechanic Helper, Insulator, Insulator Helper in the Public Works Department, Maintenance Division, but excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All ungraded employees at the Alameda Naval Air Station working in Supply, Public Works, Air Operations and any others under the Activity Command, but excluding all employees voting in group (a), employees already covered by

12/ Under all the circumstances, the classifications of refrigeration and air conditioning mechanic and insulator should be included in the unit sought by the Plumbers. The record revealed that the employees in these classifications work under the direct supervision of the pipefitter foremen in the "pipe shop" and the majority of their skills are associated with those performed by pipefitter employees.

13/ Based on the foregoing, I also find that the unit sought by the IAM but excluding those classifications sought by the Plumbers may be an appropriate unit.

exclusive recognition, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 14/

If a majority of the employees voting in group (a) select the union (Plumbers) seeking to represent them separately, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Area Administrator supervising the election is instructed to issue a certification of representative to the labor organization seeking to represent them separately. In such event, the Area Administrator is instructed to issue either a certification of the results of the election or a certification of representative for voting group (b) which I also find to be an appropriate unit for the purpose of exclusive recognition. However, if a majority of the employees voting in group (a) do not vote for the union (Plumbers) which is seeking to represent them in a separate unit, the ballots of the employees in such voting group will be pooled with those of the employees voting in group (b). 15/ If a majority in voting group (b) including any votes pooled from voting group (a), votes for the IAM, that labor organization shall be certified as the representative of employees in groups (a) and (b) which under the circumstances I find to be an appropriate unit for the purpose of exclusive recognition.

DIRECTION OF ELECTIONS

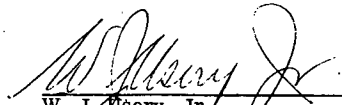
Elections by secret ballot shall be conducted among employees in the voting groups described above, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the voting groups who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who have quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible in voting group (a) shall vote whether they desire to be represented for the purpose of exclusive recognition by United Association of Plumbers and Gas Fitters, AFL-CIO, Local 444; or by International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge 739; or by neither. Those eligible in voting group (b) shall vote whether or not

14/ In its petition the IAM seeks to exclude temporary limited employees. Inasmuch as the record contains no evidence with respect to this category of employees, no finding is made at this time as to their eligibility.

15/ If the votes are pooled, they are to be tallied in the following manner: The votes for the Plumbers, the labor organization seeking a separate unit in group (a), shall be counted as part of the total number of valid votes cast but neither for nor against the IAM, the labor organization seeking to represent the residual, base-wide unit. All other votes are to be accorded their face value.

they desire to be represented for the purpose of exclusive recognition by International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge 739.

Dated, Washington, D. C.
January 15, 1971



W. J. Usery, Jr.
Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
A/SLMR No. 7

The subject case involving a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 2257 (AFGE) seeking an election among the employees of the Millers Ferry Powerhouse presented the following questions:

- (1) Whether the agreement between the Activity and the National Federation of Federal Employees, Local 561 (NFFE) would act as a bar to an election?
- (2) Whether the unit sought by AFGE covering the employees of the Millers Ferry Powerhouse, which is one of 5 powerhouses in the Activity's Mobile District, was appropriate?

With respect to the first issue, the Assistant Secretary noted that the powerhouse in question was not in operation at the time the agreement between the Activity and the NFFE was entered into; that after the Millers Ferry Powerhouse became operational the agreement was not applied to its employees; and finally, that the evidence did not establish that Millers Ferry Powerhouse constituted an addition or accretion to the NFFE's previously recognized unit. Based on the foregoing circumstances, the Assistant Secretary concluded that the agreement in question was not a bar to the holding of an election as had been contended by the Activity and the NFFE.

The Assistant Secretary also found that Millers Ferry Powerhouse constituted an appropriate unit. He viewed as particularly relevant the lack of interchange between these employees and the employees of the other powerhouses within the Mobile District. Contrary to the contention of the Activity and the NFFE, the Assistant Secretary was of the view that there was insufficient evidence to establish that "effective dealings" and "efficiency of agency operations" would not be promoted by the establishment of a

powerhouse unit at Millers Ferry Powerhouse. In this regard, he noted that the Activity had in the past granted exclusive recognition covering powerhouse facilities in the Mobile District on less than a District-wide basis to both the AFGE and the NFFE and that there was no evidence that such bargaining relationships in any way precluded effective dealings between the parties or hampered the efficiency of agency operations.

A/SLMR No. 7

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

UNITED STATES ARMY CORPS OF ENGINEERS,
MOBILE DISTRICT 1/

Agency and Activity

and

Case No. 40-1953(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2257 2/

Petitioner

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 561

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The names of the Agency and Activity appear as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. American Federation of Government Employees, AFL-CIO, Local 2257, herein called the Petitioner, seeks an election in a unit of all employees employed at Millers Ferry Powerhouse, Camden, Alabama, excluding professional employees, management officials, and supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity and guards. 3/

The Activity and the National Federation of Federal Employees, Local 561, herein called the Intervenor, contend that the employees being sought are covered by a signed agreement and that, the petition filed by Petitioner is untimely since it was filed more than 90 days prior to the terminal date of the agreement. The Activity further contends that the unit sought is inappropriate since, in its view, the appropriate unit consists of all power projects of the Mobile District. The Intervenor contends that the employees properly should be included in the more comprehensive unit it represents currently.

The Mobile District of the Activity is composed of 13 separate divisions with approximately 37 project offices of which 5 are hydro-power projects. 4/ The headquarters office of the District is located in Mobile, Alabama with project offices in Alabama, Florida, Georgia, Kentucky, Mississippi and Tennessee. These projects vary in size from one employee at several locations to 700 at the largest facility. The hydro-power branch division has under its jurisdiction five powerhouse projects including the Millers Ferry Powerhouse.

With respect to the bargaining history prior to the filing of the petition, the Activity accorded exclusive recognition to the Petitioner for all nonsupervisory employees located in the Jim Woodruff, Florida, and Walter F. George, Alabama powerhouses, and the Jim Woodruff, Columbia, and Walter F. George locks on the Chattahoochee River. A collective bargaining agreement covering

these employees was executed on December 9, 1964. The Activity also accorded exclusive recognition to the Intervenor for all non-supervisory, nonprofessional employees of the Mobile District excluding, among others, the employees of the powerhouses and locks covered by the agreement between the Activity and the Petitioner. An agreement covering these employees was executed on September 10, 1968. 5/

As stated above, the Activity and the Intervenor contend that their current agreement constitutes a bar to an election. In this regard, the evidence reveals that the Millers Ferry Powerhouse was not in operation at the time the agreement between the Activity and the Intervenor was executed and that after the Powerhouse became operational, the agreement was not applied to its employees. 6/ Nor does the evidence establish that the Millers Ferry Powerhouse would constitute an addition or accretion to the Intervenor's previously recognized unit. It is supervised separately by its own superintendent and, except for some minimal transferring of employees when the powerhouse became operational, there is no interchange of personnel among the powerhouses in the Mobile District. 7/ Based on the foregoing, I find that the agreement between the Activity and the Intervenor does not bar an election among the employees in the petitioned for unit.

The Millers Ferry Powerhouse is a multi-purpose project designed primarily for navigation and power. Its employees are responsible for project maintenance which includes preventative maintenance, major overhaul, and modification and procurement of power facilities. These foregoing functions are essentially similar to those of the other powerhouses within the Mobile District. The power project superintendent at the Millers Ferry

5/ This agreement was amended on November 11, 1969, to exclude additionally the Columbia, Black Warrior and Tombigbee Reservoirs. Both of the above-mentioned agreements are in effect currently.

6/ In support of its contention that the employees employed in the Millers Ferry Powerhouse had knowledge of the existence of the Intervenor's collective bargaining agreement which it asserts covers such employees, the Intervenor attached to its brief in the subject case copies of letters alleged to have been mailed to several of the employees employed in the Millers Ferry Powerhouse. These letters were not introduced into evidence at the hearing, nor is there any evidence of receipt of such letters by the employees to whom they were addressed. No motion was made to reopen the record to include copies of these letters. In any event, the letters contain no reference to any collective bargaining agreement which might be construed to cover the Millers Ferry Powerhouse employees.

7/ The majority of the employees hired at the Millers Ferry Powerhouse were hired from outside the Corps of Engineers.

3/ The unit appears as amended at the hearing.

4/ The terms powerhouses and power projects are used interchangeably.

Powerhouse plans the work of the employees and has authority to make work assignments, grant leave, train employees and resolve grievances. The Millers Ferry Powerhouse is separated geographically from the other projects within the District and there is no interchange among the employees of the various powerhouses. In these circumstances and noting particularly the geographic separation between powerhouse facilities in the Mobile District, the lack of employee interchange, and the substantial degree of control over employee terms and conditions of employment exercised by the power project superintendent, I find that the Millers Ferry Powerhouse employees have a clear and identifiable community of interest.

With respect to the question whether a unit limited to one powerhouse facility would promote effective dealings and efficiency of agency operations, it is noted that the Activity has in the past granted exclusive recognition for powerhouse facilities in the Mobile District on less than a District-wide basis to both the Petitioner and the Intervenor and there is no indication that such bargaining relationships in any way precluded effective dealings between the parties or hampered the efficiency of agency operations.

I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All employees at the Millers Ferry Powerhouse, Camden, Alabama, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

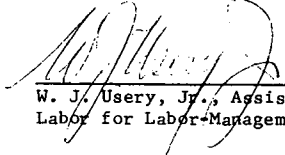
DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for

- 4 -

cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by American Federation of Government Employees, AFL-CIO, Local 2257. 8/

Dated, Washington, D. C.
January 15, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

8/ In all the circumstances, including the above finding that the agreement between the Activity and the Intervenor does not bar an election in the petitioned for unit, the fact that the Intervenor did not submit to the Area Administrator union authorization cards or a membership list in support of its intervention, and the fact that the record reveals that the Intervenor represents only one employee in the petitioned for unit, the placement of the Intervenor's name on the ballot is not warranted.

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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES NAVAL CONSTRUCTION BATTALION CENTER
A/SLMR No.8

This case arose as a result of a representation petition filed on March 27, 1970, by the American Federation of Government Employees, Local 1422, AFL-CIO (AFGE), seeking an election in a unit of most of the Wage Board employees at the United States Naval Construction Battalion Center, Davisville, Rhode Island.

Since 1963, the employees in the petitioned for unit and the graded employees at the Center had been represented in a single unit by the National Association of Government Employees (NAGE). The AFGE contended that its petition, which, in effect, constituted an attempt to "carve out" the Wage Board employees from the previously established unit, was for an appropriate unit since, among other things, the Wage Board employees worked under an identical wage system and had similar working conditions. The Activity and the NAGE took the position that the claimed unit was inappropriate since graded and Wage Board employees shared a substantial community of interest. Moreover, they contended that separate units would not promote effective dealings and efficiency of Agency operations.

Upon review of the entire record of the case, the Assistant Secretary found that:

- (1) the unit petitioned for by the AFGE was inappropriate, and accordingly, he ordered that the petition be dismissed. He found the Wage Board employees had a substantial community of interest with all other employees at the Activity. Because of significant interchange between Wage Board and graded employees, evidence of Wage Board and graded employees working side by side, and common supervision, he found the Wage Board employees did not constitute a separate or distinct grouping of employees entitled to separate representation.
- (2) where the evidence shows an established, effective, and fair collective bargaining relationship is in existence, covering an appropriate unit, he will not permit severing from that unit except in unusual circumstances.

A/SLMR No. 8

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

UNITED STATES NAVAL CONSTRUCTION BATTALION CENTER 1/

Activity

and

Case No. 31-3246 E.O.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1422, AFL-CIO

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL RI-14

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Anthony D. Wollaston. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief, 2/ the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. No question concerning the representation of certain employees of the Activity exists within the meaning Section 10 of Executive Order 11491.

1/ The Activity's name appears in the case caption as amended at the hearing.
2/ The Intervenor, the National Association of Government Employees, Local RI-14, herein called NAGE, filed an untimely brief which has not been considered.

3. Petitioner seeks a unit composed of: All nonsupervisory Wage Board employees at the United States Naval Construction Battalion Center, Davisville, Rhode Island, but excluding all management officials or supervisors, all employees engaged in Federal personnel work in other than a purely clerical capacity, all guards, all professional employees, and all ungraded nonsupervisory Wage Board employees who are employed in the Administration and Comptroller, FASCO (Facilities System Office) and Security departments of the Activity. It is the Petitioner's position that the employees it seeks to represent constitute an appropriate unit because they have a clear identifiable community of interest in that they work under an identical wage system and have similar working conditions. Moreover, in most cases, they have similar skills and occupations. The Petitioner also asserts that in the private sector the National Labor Relations Board has found appropriate similar separate units of clerical employees and production and maintenance employees.

The Activity contends the unit sought by the Petitioner is inappropriate because Wage Board employees do not constitute either a craft or a distinct functional group who have special interests sufficiently different from graded employees to warrant their severance from an existing unit that has been in existence since January 1963. ^{3/} Its position is that ungraded and graded employees share a substantial community of interest which is shown by the fact they work together, many of them side by side, under common supervision and share common benefits. Further, the Activity states that separate units will not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of the Executive Order, but rather will lead to general labor unrest. In this regard, the Activity believes separate units would necessitate separate contracts which may result in different working conditions, benefits and personnel policies. In turn, this would tend to confuse employees and promote jealousy which would impair the efficient operations of the Activity. Moreover, it is asserted that the present flexibility of assigning employees from one group to another, i.e. graded to ungraded and vice versa, would be substantially curtailed if not eliminated.

^{3/} Sometime in 1962 or 1963, an election was held on an Activity-wide basis that included both graded and ungraded employees. Both the NAGE and the American Federation of Government Employees, AFL-CIO, herein also referred to as AFGE, were on the ballot with the NAGE winning the election. After this election, an agreement was signed, and thereafter until February 7, 1970, the Activity and the NAGE were bound contractually. During this period, once prior to the renegotiation of the second contract, and again in 1968, the AFGE challenged the exclusive representative status of the NAGE, but no election resulted in either instance as the AFGE was unable to establish a sufficient showing of interest.

The Intervenor is in agreement with the Activity that the unit sought by the AFGE is inappropriate. It points out that all the employees are currently covered by the same personnel offices, personnel policies, and the identical grievance procedures and that the work integration and work flow is such that the stability of the operation demands an Activity-wide unit. Further, in agreement with the Activity, it points to the employees' community of interest and history of the parties' bargaining relationship which has produced stability in labor relations.

The Activity is engaged in preserving, storing and providing shipping facilities for mobilization, advance base stock, servicing naval construction units, and has facilities to provide engineering and technical services as required. Its operations are conducted at Davisville, Rhode Island, on a base which is about three miles long, covers 1900 acres and has approximately 300 buildings. The total employee complement consists of approximately 719 employees which includes approximately 59 graded supervisors; 303 graded employees; 35 ungraded supervisors; and 322 ungraded employees. ^{4/} The chief office at the Activity is the Command Office, which has under it 14 departments or offices, which in turn, depending on their size, are split into divisions, branches or sections.

The employees sought to be severed by the Petitioner from the existing unit, with four individual exceptions, are concentrated in the Supply Department, where there are employed approximately 163 Wage Board employees, and the Construction Equipment Department, herein called CED, where there are employed approximately 155 Wage Board employees. The record also reveals that there are approximately 94 graded employees in the Supply Department and approximately 17 graded employees in CED.

CED consists of four divisions: Administrative Division; Production and Quality Control Division; Equipment Overhaul and Repair Division; and Transportation Equipment Maintenance Division.

The Administrative Division, which performs the normal administrative requirements for CED, contains only graded employees who are not being sought by the Petitioner. Nor is the Petitioner seeking the graded office employees and Scheduling Branch employees in the Production and Quality Control Division. There is, however, a branch in this latter Division, the Inspection Branch,

^{4/} General Schedule employees are referred to as graded, GS or white collar employees, and Wage Board employees are referred to as wage grade, ungraded or blue collar employees.

which is comprised of 15 inspectors who are Wage Board employees and are covered by the petition. These inspectors receive shop repair orders or equipment work orders from the graded employees of the Scheduling Branch and, after looking at the equipment, they write up the work to be accomplished. The inspectors spend their time in the various shops at the Activity.

The third division in CED, Equipment Overhaul and Repair Division, is under the general supervision of a Wage Board employee and all of the employees in this Division are Wage Board employees. This Division has four branches: Auto Equipment Repair Branch; Construction Equipment Repair Branch; Service Equipment Repair Branch; and Shop Support Branch. The employees in this Division are primarily automotive mechanics, heavy duty equipment mechanics, craftsmen and specialists.

The remaining division in CED, the Transportation Equipment Maintenance Division contains two branches--the Automotive and Ground Support Equipment Maintenance Branch, and the Construction and Material Handling Equipment Maintenance Branch. There are 22 Wage Board employees, primarily mechanics, who work in the Automotive and Ground Support Equipment Maintenance Branch and 16 Wage Board employees, primarily mechanics, who work in the Construction and Material Handling Equipment Maintenance Branch. In addition to these Wage Board employees, there are three graded employees in this Division.

With respect to the work performed in CED, the record reveals the graded schedulers hand deliver their orders to ungraded inspectors, and schedulers and inspectors work together several hours a day. Further, in connection with their work, the schedulers contact Wage Board supervisors in the shop about the status of work and also talk to Wage Board mechanics in the shops about details of the work being done. Production scheduling clerks, who are graded, schedule equipment being processed through the shop and it is necessary that they have contact with ungraded employees. The graded preventive maintenance clerk schedules work that is to be done in the shop (primarily by ungraded employees), and handles calls such as tire and battery trouble calls and then transmits instructions directly to the tire man or battery man, who are ungraded, as the case may be. Ungraded employees in the repair and maintenance branches make contact with graded warehouse employees or supervisors when they go into the warehouse to work on equipment. After CED repairs or overhauls equipment, it is brought to the completed line from which it is taken to its ultimate destination by storage or supply area employees. Graded employees in the Supply Department have occasion to enter shop areas where ungraded employees work to check or search for equipment. Counter men, who are graded and who work in the Supply Department, come into contact with mechanics who are

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ungraded, when mechanics come to them for parts. The counter men and mechanics both work in the shops. A production controller, who is graded, works in the same office as the ungraded inspectors and has contact with the inspectors on a continuing basis as to the status of equipment.

With respect to working conditions in CED, the Wage Board employees generally work in shop areas which are as large as 100 feet by 100 feet, whereas the graded employees generally work in or out of offices. The shop areas are heated by steam heat with blowers and the office areas are heated by radiators. The office areas are cooled by fans in the summertime, but the only fan in the shop area is located near the welders. Shop doorways open to the outside and, in bad weather when the doors are required to be open to let pieces of large equipment through, rain or snow may come through the door openings, whereas the office areas do not have this problem. Shop employees wear safety equipment when required. ^{5/} Some Wage Board employees, such as mechanics, wear coveralls or rent working clothes, but other Wage Board employees, such as inspectors, wear regular street clothes. The noise level in the shops is higher than that in the office areas and shop employees are subject to various fumes, but there are exhaust fans to carry these fumes out of the shops. However, fumes and element problems are not exclusive with Wage Board employees, as on occasion graded employees also work in the shops. Shop employees, in varying degrees, are subject to industrial accidents, and on occasion work in the shops requires climbing for both graded and ungraded employees. At times, shop employees are required to work outside in bad weather, although this work is kept at a minimum. The work in the shop areas is dirtier than that encountered by office employees, but both groups have wash-up time.

With respect to labor relations in CED, the record reveals that according to provisions in their agreement, the Activity meets with the NAGE representatives on a monthly basis. It is Department policy that supervisors have the authority to settle grievances. On occasion, labor or personnel problems are taken up directly with the civilian head of the Department, and in other instances, problems go to him if they are not resolved at a lower level. The evidence reveals that the majority of union complaints or problems involve Wage Board employees, although the procedures apply equally to graded and ungraded employees.

The second department in which the Petitioner is seeking to represent employees is the Supply Department. This Department is responsible for the receipt, storage maintenance, shipment, preservation, packing and shipment of pre-position war reserve stocks, and for outfitting the Atlantic Battalions. It contains 8 divisions, 11 branches and 14 sections including 39 storage buildings plus about 12 other office and work areas located throughout the base.

^{5/} The agreement between the NAGE and the Activity covered, among other things, safety equipment.

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Although the Supply Department has a relatively large structure, the record in the subject case is confined mainly to the functions of the Material Division, where both graded and ungraded employees are employed in the five following branches: Freight Terminal Branch; Storage Branch; Labor and Equipment Branch; Shop Stores Branch, and Packing and Preservation Branch. These five branches have a total of 10 sections.

The Freight Terminal Branch contains two sections -- the Receiving, Inspection and Delivery Section and the Shipping Section. This Branch is responsible for receiving, inspecting, delivering, and shipping by land, air and water, and for securing the materials and equipment at times of shipment. The supervisor of this Branch is graded.

The Storage Branch is located in 39 different buildings and is responsible for the physical handling of all the materials in the war reserve stocks and for maintaining materials that belong to the Construction Battalion Atlantic. Most of the employees in this branch are ungraded, but the supervisor is graded.

The Labor Equipment Branch is responsible for providing services to station departments and tenant activities throughout the base. There is one graded clerk in this branch, and the other employees who are ungraded, work as heavy laborers and lift operators.

The Shop Storage Branch supplies all the station departments and activities with the materials they require.

The Packing and Preservation Branch has several locations throughout the Activity. It also has a field truck that operates throughout the area. With the exception of one graded clerk, all of the employees in this Branch, who are principally packers and mechanics, and the supervisor in charge, are Wage Board employees.

The record reveals that within the Supply Department there is a substantial amount of interchange of employees from one job to another, as well as interrelationships between graded and ungraded employees. With respect to the Freight Terminal Branch, graded employees arrange for the shipping, and ungraded employees do the physical loading and actual shipping. There is a liaison section of three graded employees who are assigned to the Receipt Control Branch of the Control Division, but who work in the Receiving, Inspection and Delivery Section of the Freight Terminal Branch. These graded employees have a record of all materials due to come in, and when the material is received, the ungraded receiving employees unload the truck, place the material on the receiving floor, pull the vendor's slip, and give it to the graded liaison employees, who, in turn, based on the

purchase order number, pull the corresponding paper work so that the receiving employees can ascertain where the material is to be delivered. An ungraded supervisor in the receiving building supervises a graded supply clerk in his office, and a graded traffic clerk supervises ungraded stock men in the transit shed.

Although most of the employees in the Storage Branch are ungraded and work throughout the 39 warehouses, employees from the Technical Requirements Division, who are all graded, work with and assist them. In addition, there are three graded equipment specialists assigned to the Storage Branch, who perform the same type of work as the ungraded employees in the Storage Branch. These equipment specialists are supervised by a Wage Board supervisor.

The record establishes that the ungraded employees in the Labor and Equipment Branch work with all of the various departments on the base and on occasion are assigned to graded jobs where backlogs exist. Further, in the Ship Stores Branch, there are employees, both graded and ungraded, who work together. 6/ Also, a graded supervisor supervises ungraded employees in the holding room where if orders cannot be filled, they are held until they are filled.

With respect to working conditions in the Supply Department, at least half of the 39 warehouses in the Supply Department are not heated, and this primarily affects Wage Board employees although graded employees might work as long as three days continuously in an unheated warehouse. Toilet facilities are not available in all of the 39 warehouses and on occasion employees have to go as far as one hundred yards to get to toilet facilities. If the weather is bad, this would necessitate going through rain or snow to get to these facilities. There are three cafeterias on the base, and in this regard, the record revealed that both Wage Board and graded employees often experience difficulty in obtaining hot meals within the limits of their lunch periods. Various ungraded employees get dirty or hazardous pay if they are working jobs or areas where this pay is given. Also, some ungraded employees work in buildings where the doors are open for ventilation purposes, and when it snows or rains, the snow or rain comes in through the doorways.

With regard to labor relations practice in the Supply Department, monthly meetings are held between management and the Union and such items as personnel matters, overtime, complaints, working conditions and promotion policies are discussed. About 99 percent of the complaints registered have been concerned with ungraded employees. The record reveals that the

6/ For example, ungraded mechanics obtain repair parts from graded countermen.

Department has an "open door" policy, and the Union can bring matters to the attention of top management of the department in the event matters are not resolved at a lower level.

AFGE specifically proposes to exclude four Wage Board employees from its proposed unit. Two of these employees, a multilith operator and a film stripper, are employed in the Administration and Comptroller Office. The Operations Branch of the Facilities System Office (FASCO) and the Security Department employ the other two employees who are classified as warehousemen.

The two Wage Board employees in the Administration and Comptroller Office work in the Office Services Division. In addition to these Wage Board employees, there are eight graded employees in this Division. The multilith operator works primarily in the multilith room, but delivers completed work assignments to the mail room and picks up work upon request. The film strip assembler works primarily in the room where his camera and other equipment is located. The film strip assembler also operates the multilith machine when it is required by the workload. A graded clerk works with the multilith operator and the film strip assembler. This clerk receives work to be done and assigns it on a priority basis to these two Wage Board employees. In addition, the clerk operates the duplicating and collating machines and keeps records. On occasion, where there is a heavy workload or absenteeism, she operates both the multilith and blueprint machines. On the other hand, when she is absent from work, the two Wage Board employees share her duties insofar as possible.

The Wage Board warehouseman in the operations branch of FASCO works with 20 graded employees. He is responsible for moving stock into the stockroom and supplying the computer and key punch operators with supplies. He also maintains the stockroom including records, and operates the bursting and decollating machinery in the preparation of output print reports. He spends about 40 percent of his time in the supply room, about 40 percent of his time with the computer operators, and the balance of his time is spent going between the two areas. In the absence of the warehouseman, graded employees perform his work and the warehouseman has the same hours and benefits as the graded employees.

The other warehouseman whom the Petitioner seeks to exclude works in the Security Department. The record establishes that he works for the barracks administrator and has charge of the material for the barracks.

With respect to overall working conditions at the Activity the record reveals that the hours of work are the same for graded and Wage Board employees. Snack bar or cafeteria facilities are available to both graded and Wage Board employees, as are restroom facilities. All facilities or privileges accorded to graded employees are accorded to Wage Board employees. The Activity has a merit promotion program which applies to both graded and Wage Board employees, and the same criteria is used in granting merit promotions to both classes of employees. The Activity has a performance rating system in which a supervisor rates employees, and the next higher supervisor reviews the rating and a rating is given. If an employee is not satisfied with his rating he can appeal to a Performance Rating Board whose members are appointed by the Commanding Officer of the base. The members of the Board who are graded and Wage Board employees pass judgment on both graded and Wage Board employees. The record shows that in two reductions in force, one on December 18, 1969, and one on June 17, 1970, there were some 15 transfers from graded to Wage Board positions, and from Wage Board to graded positions. Both groups are paid by check, the graded employees every other Thursday, and the Wage Board employees every other Friday. Wage Board employees and graded employees up to a certain grade punch a time clock.

The evidence also establishes that the last negotiated agreement between the Activity and the NAGE was signed on behalf of the NAGE by six employees; three Wage Board employees and three graded employees. An extension of this agreement was signed by the local President of the NAGE, a Wage Board employee. In regard to the current officers of the NAGE at the Activity, there are three graded and five Wage Board employees. Also, at the Activity, there are four Regional Directors of the NAGE, two from each group; and on the Board of Directors, there are five graded employees and one Wage Board employee. There are three graded and eight Wage Board stewards in the Supply Department and all eight stewards in CED are Wage Board employees. In the seven year period that the NAGE has represented the employees, approximately 25 grievances reached the hearing stage, and of this number approximately 15 involved Wage Board employees. The record shows that if problems are not resolved at the lowest possible level (as most of them are), they are taken to the division head; from the division head they are taken to the Board of Directors; from there to the Commanding Officer and then on to either the Civil Service Commission or the Secretary of the Navy, according to the agreement.

Based on the foregoing, I find the employees in the unit sought by the Petitioner do not possess a clear and identifiable community of interest that would entitle them to separate representation.

In reaching this conclusion I have taken into consideration the fact that where, as here, a petitioner is seeking to sever a group of employees from an established, represented unit there are various interests which are affected and must be taken into account. These include the effect severance would have on the effectiveness of employee representation; the past history of bargaining; the stability of labor relations as related to effective dealings and the efficiency of agency operations; the appropriateness and distinctness of units; and the overall community of interest of the employees involved.

In the subject case the NAGE has represented the graded and the Wage Board employees at the Activity for approximately seven years. The record indicates Wage Board employees play a prominent role in the administration of the NAGE and there is no indication that the AFGE is either more or less qualified than the NAGE to represent the employees in the proposed unit. At best, it would be speculative as to how the AFGE would represent the employees in the proposed unit whereas the record shows that the manner in which the NAGE has represented employees on an Activity-wide basis for seven years has resulted in stable labor relations at the Activity. In these circumstances, the introduction of an additional agreement, would, in my view, tend to promote neither effective dealings nor efficiency of Agency operations.

Further, I do not agree with the Petitioner's claim that the unit it seeks to represent will insure a clear identifiable community of interest among the employees concerned. The Petitioner is seeking to specifically exclude some of the Wage Board employees while otherwise seeking to include all the Wage Board employees. Further, the Petitioner is not seeking a distinct, homogeneous group of craftsmen or employees, but instead as the record reveals, is seeking a group possessing varying degrees of assorted skills. There is no evidence of uniform separate supervision, and in fact, some Wage Board employees work directly under the supervision of graded supervisors and some graded employees work directly under the supervision of Wage Board Supervisors. In some cases, graded and Wage Board employees work side by side doing the same type of work and in cases of temporary absences or workload, graded employees do the work of Wage Board employees, or vice-versa. Further, graded and Wage Board employees share the same working areas in some instances, and the record gives numerous examples of necessary day-to-day contact between graded and Wage Board employees. Various facilities on the Base are used in an equal manner by graded and Wage Board employees. Moreover, Wage Board and graded employees have transferred categories when reductions in force have occurred, and there have been assignments from one group to the other in order to maintain the efficiency of the Activity.

In sum, there are a number of pertinent factors present in this case which support a finding that an Activity-wide unit of Wage Board and graded employees is appropriate. These include the fact that all employees have the same benefits and hours; and that there is employee interchange and transfer within the unit, common labor policies, integrated operations, bargaining history, and centralized administration.

In reaching a decision in a proposed severance case as this, a determination must be made as to whether the benefits that might reasonably accrue to the employees being sought for severance exceed the benefits to be derived from maintaining an existing relationship. The relevant factors in this case cited above convince me that the advantages of continuing the existing bargaining relationship at the Activity exceed the possible consequences of separate representation for the employees sought by the Petitioner. Here the evidence shows that the NAGE has represented all the employees for the past seven years, and its relationship with the Activity has resulted in stable labor relations at the Base. In turn, as shown by the record, this relationship appears to have promoted effective dealings and efficiency of Agency operations. The benefits and labor policies which have been made applicable to all employees reveal that the interests of the Wage Board employees have not been neglected. Finally, as previously found, the employees sought by the Petitioner do not have a separate community of interest.

Although each case can be expected to have its individual differences, the general theory of a severance case remains the same. Therefore, for future guidance, I conclude it will best effectuate the policies of the Executive Order that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances. 7/

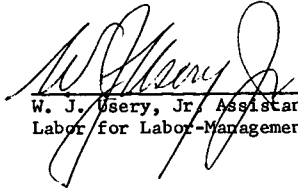
As there are no unusual circumstances present which preclude applying the criteria set forth above to the facts of this case, I find the interests of all employees and the Agency would be better served by continuing the existing bargaining relationship. Accordingly, I find the unit sought by the Petitioner is inappropriate for the purpose of exclusive recognition, and shall, therefore, dismiss the petition.

7/ As to units which have no prior history of bargaining, they will be decided on a case-by-case basis consistent with the requirements of Section 10 of the Executive Order.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 31-3246 E.O. be, and it hereby is, dismissed.

Dated, Washington, D.C.
January 15, 1971



W. J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Pennsylvania National Guard
A/SLMR No. 9

This case involved representation petitions filed by two labor organizations, the Association of Civilian Technicians, Inc. (ACT) and the American Federation of Government Employees, AFL-CIO, Local 3005 (AFGE). The ACT sought a unit of all Wage Board and General Schedule Army National Guard technicians in the State of Pennsylvania. The AFGE sought a unit of all technicians at the Hunt Armory installation of the Army National Guard in the State of Pennsylvania. These petitions presented the questions whether a state-wide unit sought by the ACT consisting of various Army National Guard installations was appropriate and whether a single installation-wide unit at the Hunt Armory sought by AFGE was appropriate for the purpose of exclusive recognition under Executive Order 11491.

Under all the circumstances, the Assistant Secretary found that the state-wide unit petitioned for by the ACT was appropriate, and, accordingly, he directed that an election be held in this unit. In reaching this determination he noted particularly that within their respective Wage Board and General Schedule classifications all Army National Guard technicians within the State had the same basis for compensation; their hours of employment did not vary; there was a degree of employee interchange between installations; and promotion opportunities were available on a state-wide basis.

The Assistant Secretary also found that the unit sought by the AFGE covering Army National Guard technicians at a single installation within the State (the Hunt Armory) was not appropriate, and therefore, he ordered that the petition filed by the AFGE be dismissed. In this regard, he noted that the employee who carried out the supervisory functions at the Hunt Armory performed his duties under clearly defined regulations and policy guidelines. He noted also factors concerning the uniform terms and conditions of employment among the Army technicians throughout the State and the fact that the employees at the Hunt Armory will have an opportunity to vote in a more comprehensive unit on whether or not they desire union representation.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

PENNSYLVANIA NATIONAL GUARD 1/
(HUNT ARMORY)

Activity

and

Case No. 21-1876(RO)
formerly 44-1876(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3005

Petitioner

PENNSYLVANIA NATIONAL GUARD

Activity

and

Case No. 20-1856(RO)
formerly 45-1856(RO)

PENNSYLVANIA STATE COUNCIL,
ASSOCIATION OF CIVILIAN TECHNICIANS, INC.

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer William B. Kane. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The name of the Activity appears as amended at the hearing.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In Case No. 21-1876(RO) Petitioner, American Federation of Government Employees, AFL-CIO, Local 3005, herein called AFGE, seeks an election in a unit of all nonsupervisory technicians at the Hunt Armory installation of the Army National Guard in the State of Pennsylvania. In Case No. 20-1856(RO), Petitioner, Association of Civilian Technicians, Inc., herein called ACT, seeks an election in a unit of all nonsupervisory Wage Board and General Schedule Army National Guard technicians in the State of Pennsylvania. The Activity contends that in order to promote effective dealings, the appropriate unit herein should be found to be state-wide.

The Adjutant General of the Pennsylvania National Guard administers the technicians personnel program of the Pennsylvania Army and Air National Guard. He administers this program on a state-wide basis. The function of these employees is to carry on the day-to-day administration, supply and maintenance activities of the National Guard in order that it be in the highest state of readiness in case of mobilization. Of the approximately 1,800 technicians employed by the Pennsylvania National Guard, about 1,060 are Army National Guard employees. 2/ These latter employees are located at approximately 110 facilities throughout the State with the employment at each facility varying in size from 1 employee to 145 employees.

All of the General Schedule and Wage Board Army National Guard technicians within the State of Pennsylvania have the same basis for compensation within their respective classifications. The work of Army National Guard technicians in like positions throughout the State is the same and the hours of their employment do not vary. There is a degree of interchange of employees between installations and promotion opportunities are available to qualified individuals from outside the particular area involved. Further, payroll records are maintained centrally and payroll distribution is handled on a state-wide basis.

At each installation within the State a staff administrative assistant is charged with the day-to-day supervision of the work performance of the employees assigned to his command. He has authority to make work assignments, grant leave, and make recommendations for salary increases, disciplinary actions and the selection of new employees.

2/ Neither of the petitioners in the subject cases sought to include Air National Guard technicians in their petitioned for units. Nor did the Activity contend that such employees shared a community of interest with the petitioned for employees.

With respect to bargaining history prior to the filing of the subject petitions, the Activity accorded exclusive recognition to the ACT under Executive Order 10988 at two installations within the State of Pennsylvania. However, there has not been any negotiated agreements between the Activity and the ACT with respect to those installations or any of the other installations in the State. The evidence also established that the AFGE has been consulting with the Activity at the Hunt Armory with respect to certain terms and conditions of employment at that location.

In all the circumstances, including the fact that within their respective Wage Board and General Schedule classifications, all Army National Guard technicians within the State of Pennsylvania have the same basis for compensation, the fact that their hours of employment do not vary and there is a degree of employee interchange between installations, and the fact promotion opportunities are available to qualified individuals from outside the particular local area involved, I find that the state-wide unit petitioned for by the ACT is appropriate. Accordingly, I find that the following state-wide unit of Army National Guard technicians is appropriate for the purpose of exclusive recognition under Executive Order 11491.

All Wage Board and General Schedule Army National Guard technicians in the State of Pennsylvania excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

I also find that in the particular circumstances involved herein, a separate unit of Pennsylvania Army National Guard technicians employed at the Activity's Hunt Armory installation is not appropriate. The evidence demonstrates that the staff administrative assistant, who carries out supervisory functions at the Hunt Armory, performs his duties under clearly defined regulations and policy guidelines. Further, there are uniform terms and conditions of employment among Army National Guard technicians throughout the State, some interchange of employees and promotion opportunities are available on a state-wide basis. In these circumstances and considering the fact that the technicians at the Hunt Armory will have an opportunity to vote in a more comprehensive unit on whether or not they desire union representation, I find that the unit sought by the AFGE is not appropriate, and that, accordingly, its petition should be dismissed.

-3-

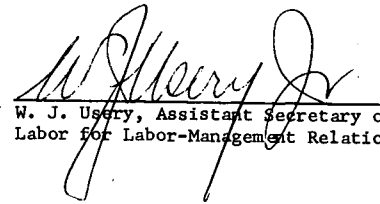
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 21-1876(RO) be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the Pennsylvania State Council, Association of Civilian Technicians, Inc. 3/

Dated, Washington, D.C.
January 25, 1971


W. J. Usery, Assistant Secretary of
Labor for Labor-Management Relations

3/ As the AFGE's showing of interest is insufficient to treat it as an intervenor in Case No. 20-1856(RO), the placement of its name on the ballot is not warranted.

- 4 -

January 29, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC.
A/SLMR No. 10

This case arose as a result of a petition filed by the Professional Air Traffic Controllers Organization (PATCO), requesting a nationwide unit of all nonsupervisory Air Traffic Control Specialists, with certain specified exclusions. The Federal Aviation Administration challenged the status of PATCO as a labor organization on the basis that PATCO had engaged in a strike and as a result thereof was disqualified as a labor organization within the meaning of Section 2(e)(2) of Executive Order 11491. Similar challenges were made by the Air Traffic Control Association (ATCA) and by the National Association of Government Employees (NAGE) which also filed an unfair labor practice complaint against PATCO, alleging that PATCO had engaged in a strike of Air Traffic Controllers in violation of Section 19(b)(1) and (4) of the Executive Order. Thereafter, PATCO challenged the status of ATCA as a labor organization on the grounds that it does not meet the general requirements of the main provisions of Section 2(e) of the Executive Order in that it does not exist, in whole or in part, for the purpose of..."dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees..."; and that ATCA falls within the disqualification set forth in Section 2(e)(1) of the Executive Order in that it..."consists of management officials or supervisors..."

A consolidated hearing on the issues was held before a Hearing Examiner. Upon review of the Hearing Examiner's Report and Recommendations and the entire record of the case, including the exceptions, statements of positions and briefs, the Assistant Secretary found that:

- (1) ATCA is a labor organization within the meaning of Section 2(e) of the Executive Order.
- (2) PATCO called the controllers' strike, assisted or participated therein, and condoned the strike by failing to take effective affirmative action to prevent or stop it. Further, as a result of these acts, PATCO lost its status as a labor organization within the meaning of Section 2(e)(2) of the Order.

- (3) PATCO engaged in conduct violative of Section 19(b)(4) of the Executive Order in that it called or engaged in a strike, work stoppage or slowdown, or condoned such activity by failing to take affirmative action to prevent or stop it.
- (4) PATCO's conduct, while violative of Section 19(b)(4) of the Executive Order, does not also constitute a violation of Section 19(b)(1) since it was not shown that the strike constituted interference, restraint or coercion of employees within the meaning of the Executive Order. In addition, the evidence does not warrant a finding that PATCO committed independent acts of interference, restraint or coercion against individual controllers.
- (5) The strike and the attendant disqualification under Section 2(e)(2) operated to nullify all petitions filed by PATCO. Accordingly, all pending PATCO petitions are to be dismissed. Similarly, any PATCO requests or motions to intervene also will be dismissed along with any unfair labor practice complaints pending as of the date of the Decision and Order.

In regard to the remedy to be applied in this situation the Assistant Secretary required that:

- (1) PATCO-MEBA be barred from the use of the Executive Order until it demonstrates to the satisfaction of the Assistant Secretary that it has complied with his Decision and Order and will comply in the future with the provisions of the Executive Order. The period of bar is to be a minimum of 60 days from the date of posting or mailing (whichever is later) of the Notice to Members and Employees required by the Decision and Order.
- (2) PATCO establish new showings of interest in order to participate, either as petitioner or intervenor, in future representation matters. Any new showings of interest are to be in the form of authorization cards which reflect PATCO's affiliation with the National Marine Engineers' Beneficial Association, AFL-CIO (MEBA) and the card must be dated at least ten days after the posting or mailing of the Notice to All Members and Employees, whichever is later.

- (3) PATCO-MEBA cease and desist from the conduct found violative and post in all of its national and local business offices and meeting places for a period of 60 consecutive days a prescribed Notice to All Members and Employees, signed by its present national president and board chairman. Further, to insure that all controllers are made aware of the content of the Notice, PATCO-MEBA is required to mail a copy of the signed Notice to each of its members and the Federal Aviation Administration is required to post the Notice at places where it customarily posts information to its controllers.
- (4) FAA and PATCO-MEBA be precluded from entering into or giving effect to any dues deduction agreements during the period of bar. This prohibition shall apply also to the PATCO locals having exclusive and formal recognition granted under Executive Order 10988.

A/SLMR No. 10

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC. 1/

Respondent

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.

Complainant

Case No. 46-1698(CO)

and

FEDERAL AVIATION ADMINISTRATION

Activity

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC. 1/

Petitioner

Case No. 46-1593(RO)

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC:
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES: AIR TRAFFIC CONTROL ASSOCIATION, INC.: NATIONAL FEDERATION OF FEDERAL EMPLOYEES: AND INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS

Intervenors

DECISION AND ORDER

On October 5, 1970, Hearing Examiner Louis Libbin issued his Report and Recommendations 2/ in the above-entitled proceeding, finding that Professional Air Traffic Controllers Organization, Inc. (PATCO) had engaged in a strike in violation of Section 19(b)(4) of Executive Order 11491 and was, as a result thereof, disqualified as a labor organization within the meaning of Section 2(e)(2) of the Order. Having found that PATCO engaged

1/ Now affiliated with National Marine Engineers' Beneficial Association, AFL-CIO, (MEBA)

2/ References to the Hearing Examiner's Report and Recommendations will be referred to in this Decision as HERR followed by a page number.

in violative conduct, the Hearing Examiner recommended that it be required to take certain affirmative action as set forth in the attached Report and Recommendations. The Examiner also found that the Air Traffic Control Association, Inc. (ATCA) is a labor organization within the meaning of Section 2(e) and 2(e)(1) of the Executive Order. On or about November 2, 1970, the Complainant, National Association of Government Employees, Inc. (NAGE); the Activity, Federal Aviation Administration (FAA); and the intervening Air Traffic Control Association, Inc. (ATCA); filed exceptions, with supporting briefs, to the Hearing Examiner's Report and Recommendations.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in the subject case, including the exceptions, statements of positions and briefs, I adopt the findings and recommendations of the Hearing Examiner to the extent that they are consistent with the following:

A. THE ATCA ISSUE

PATCO has challenged the labor organization status of the Air Traffic Control Association, Inc. (ATCA) on the grounds that (1) it does not meet the general requirements of the main provisions of Section 2(e) of the Executive Order in that it does not exist, in whole or in part, for the purpose of "...dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees..."; and that (2) ATCA falls within the disqualification set forth in Section 2(e)(1) of the Executive Order in that it "...consists of management officials or supervisors..."

After carefully reviewing the evidence presented I adopt the findings of the Hearing Examiner that ATCA is a labor organization within the meaning of Section 2(e) of the Executive Order.

B. THE LABOR ORGANIZATION STATUS OF PATCO UNDER SECTION 2(e)

The record clearly supports the Hearing Examiner's finding that PATCO, by its conduct and activities in February, March and April 1970, assisted or participated in a strike against the Government of the United States within the meaning of Section 2(e)(2) of the Executive Order. The Hearing Examiner properly rejected PATCO's contentions that it did not in any way authorize, assist, or participate in the controllers' "sickout;" that the controllers were acting individually rather than concertedly; and that the controllers' work stoppage was justified because of unsafe and dangerous conditions. 3/ HERR 17-22.

I find, therefore, in agreement with the Hearing Examiner, that PATCO called the controllers' strike, assisted or participated therein, and condoned the

3/ PATCO filed no exceptions to the HERR

strike by failing to take effective affirmative action to prevent or stop it. I, therefore, conclude that as a result of these acts, PATCO lost its status as a labor organization within the meaning of Section 2(e)(2) of the Order.

C. THE UNFAIR LABOR PRACTICE ISSUES

The evidence supports the Examiner's finding that PATCO engaged in conduct violative of Section 19(b)(4) of the Executive Order in that it called or engaged in a strike, work stoppage or slowdown, or condoned such activity by failing to take affirmative action to prevent or stop it.

While the conduct engaged in by PATCO clearly falls within the prohibition contained in Section 19(b)(4), PATCO argues that no violation of Section 19(b)(4) can be found since the very conduct in which it engaged served to deprive it of its status as a labor organization within the meaning of Section 2(e)(2). Thus, the argument continues, if PATCO is found not to be a labor organization within the meaning of Section 2(e) of the Executive Order (essentially because it called or engaged in a strike) it cannot be held accountable for a violation under Section 19(b) which prohibits "labor organizations" from engaging in certain practices such as calling or engaging in a strike. Acceptance of this argument would effectively nullify Section 19(b)(4) of the Executive Order. Therefore, the argument must be rejected.

Accordingly, I adopt the finding of the Hearing Examiner that PATCO violated Section 19(b)(4) of the Executive Order. HERR 23-24. Also, I accept the Hearing Examiner's finding that PATCO's conduct in this situation, while violative of Section 19(b)(4) of the Executive Order, does not also constitute a violation of Section 19(b)(1) since it has not been shown that the strike constituted interference, restraint or coercion of employees within the meaning of the Executive Order. In addition, the Hearing Examiner correctly concluded that the evidence does not warrant a finding that PATCO committed independent acts of interference, restraint or coercion against individual controllers.

D. PATCO'S REPRESENTATION PETITIONS

On February 18, 1970, PATCO filed a petition for certification as exclusive bargaining representative for a nationwide unit of all "non-supervisory Air Traffic Control Specialists," with certain specified exclusions. 4/ PATCO also has filed several other petitions requesting certification as exclusive representative of employees in various bargaining units less than national in scope. I do not find it necessary to enumerate each of these "local" petitions as my decision on the nationwide petition will be applied to all petitions filed by, or in behalf of, PATCO. As discussed above, after filing its nationwide petition PATCO participated in and condoned a work stoppage, which I find disqualified it as a labor organization entitled to the rights afforded by the Order. Consequently, I find that the strike and the attendant disqualification under Section 2(e)(2) operated to nullify any petitions filed by PATCO. Therefore, I will not accept as valid any presently pending or future

4/ The petition was amended on February 27, 1970 to exclude "management officials, employees engaged in Federal personnel work, guards and supervisors."

petitions or showings of interest filed by, or in behalf of, PATCO until such time as I have found it to be in compliance with this Decision and Order. Moreover, I conclude that further processing of the present petitions will not effectuate the policies of the Order. Accordingly, I shall order that all pending PATCO petitions be dismissed. ^{5/} Similarly, any PATCO requests or motions to intervene presently pending before the Department of Labor also will be dismissed. And lastly, if PATCO has any unfair labor practices complaints pending as of the date of this Decision and Order these too shall be dismissed. However, any individuals named in any such complaints may refile complaints in their own names notwithstanding the timeliness proviso of Section 203.2 of the Regulations, provided that each such complaint is refiled within 30 days of its dismissal.

E. THE UNFAIR LABOR PRACTICE REMEDY

This Executive Order attempts to balance two principal aims: (1) that employees (here, the controllers) are entitled to representation by the organization of their choice; and, (2) that labor organizations be deterred effectively from violating the provisions of the Executive Order.

Despite the flagrant nature of the violation, I believe that permanent debarment of PATCO as an employee representative might deprive controllers of their freedom of representation to an unwarranted extent. However, I feel that some period of debarment is required for two reasons:

1. To provide PATCO with an adequate opportunity to comply with the affirmative provisions of my remedial Order, and
2. To serve notice on all labor organizations that the United States Government will not condone violations of the Executive Order.

Accordingly, until such time as the Professional Air Traffic Controllers Organization, Inc., affiliated with the National Marine Engineers Beneficial Association, AFL-CIO (PATCO-MEBA) can demonstrate to my satisfaction that it has complied with my Decision and Order, and that it will comply in the future with the provisions of the Executive Order, I shall not permit it to utilize the procedures available to a labor organization within the meaning of Section 2(e) of the Executive Order. In this regard, I shall not entertain any submission by PATCO-MEBA to this effect until 60 days from the date of posting or mailing, whichever is later, of the appended Notice to Members and Employees which is referred to below.

^{5/} Recognitions granted to PATCO under Executive Order 10988 are not affected by this Order. However, PATCO may not file unfair labor practice complaints with the Assistant Secretary concerning these units until such time as PATCO regains its status as a labor organization under the Executive Order.

I find that the nature of the violative conduct in which PATCO engaged dictates that it establish new showings of interest in order to participate, either as petitioner or intervenor, in future representation matters. Any new showings of interest should be in the form of authorization cards which reflect PATCO's affiliation with the National Marine Engineers Beneficial Association, AFL-CIO (MEBA) and the cards must be dated at least ten days after the posting or the mailing of notices to employees or members, whichever is later.

I shall order that PATCO-MEBA cease and desist from the conduct herein found violative, and that it post for a period of 60 consecutive days an appropriate notice to employees and members, signed by its present national president and board chairman, in all of its national and local business offices and meeting places. Further, to insure that all controllers are made aware of the content of this notice, I shall (1) require PATCO-MEBA to mail a copy of the signed Notice to each of its members at his last known home address and (2) require the Federal Aviation Administration to post the Notice at places where it customarily posts information to its controllers. Accordingly, within fourteen days of the date of this Decision and Order, PATCO-MEBA shall furnish FAA with sufficient copies of the signed Notice to meet FAA's posting requirements.

The record reflects that the dues deduction agreement between FAA and PATCO presently is suspended. It is my opinion that the suspension should be continued during the period in which PATCO-MEBA is barred from filing petitions or complaints. Therefore, I shall order that FAA and PATCO-MEBA be precluded from entering into or giving effect to any dues deduction agreements with FAA during the period of bar. This prohibition shall apply also to the PATCO locals having exclusive and formal recognition granted under Executive Order 10988.

ORDER

Pursuant to Section 6(b) of the Executive Order and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that:

1. All pending petitions and unfair labor practice complaints filed by or on behalf of PATCO be dismissed and that before the filing of any future petitions or complaints PATCO-MEBA demonstrates to the satisfaction of the Assistant Secretary that it has complied with this Decision and Order, and will comply in the future with the provisions of Executive Order 11491.
2. All of PATCO's pending requests or motions for intervention in representation proceedings currently before the Department of Labor be dismissed.

3. Future showings of interest submitted by PATCO-MEBA be in the form of authorization cards dated at least ten days after the posting or the mailing of notices to employees or members, whichever is later.

4. PATCO-MEBA, its officers, agents, and representatives, shall:
(a) Cease and desist from:

(1) Calling or engaging in any strike, work stoppage or slowdown against the Federal Aviation Administration or any other agency of the Government of the United States, or from assisting or participating in any such strike, work stoppage or slowdown.

(2) Condoning any such activity by failure to take effective affirmative action to prevent or stop it.

5. FAA and PATCO-MEBA are prohibited from entering into or giving effect to any dues deduction agreements during the period that PATCO-MEBA is barred from utilizing the procedures established under Executive Order 11491.

6. PATCO-MEBA take the following affirmative action to effectuate the purposes and provisions of the Executive Order:

(a) Post at its national and local business offices and in normal meeting places copies of the attached notice signed by the national president and board chairman of PATCO-MEBA which is marked "Appendix." Said copies of the notices shall be posted for a period of 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by PATCO-MEBA to insure that said notices are not altered, defaced, or covered by other material.

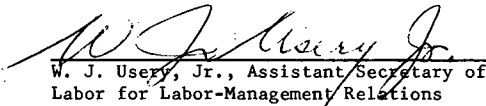
(b) Mail a copy of said notice to each of its members at his last known home address.

(c) Furnish sufficient copies of said notice to the Federal Aviation Administration for posting at places where it customarily posts information to its controllers. Notices should be furnished to FAA within 14 days of the date of this Decision and Order.

(d) At such time as PATCO-MEBA believes that it can meet the requirements as a labor organization under Section 2(e) of the Executive Order, but in no event sooner than the expiration of the 60-day posting period, it may furnish to the Assistant Secretary of Labor for Labor-Management Relations a specific account, in writing, of the steps it has taken to comply with this Decision and Order, as well as steps it has taken to insure future compliance with Executive Order 11491 and the regulations pertaining thereto. PATCO-MEBA shall serve copies of such account simultaneously upon

all other parties to this proceeding and furnish the Assistant Secretary with a statement that such service has been made. Other parties will have five days from service of PATCO-MEBA's account within which to file comments with the Assistant Secretary.

Dated at Washington, D. C.:
January 29, 1971


W. J. Useery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

APPENDIX

NOTICE TO ALL MEMBERS AND EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

We hereby notify you that:

WE WILL NOT call or engage in a strike, work stoppage or slowdown against the FEDERAL AVIATION ADMINISTRATION or any other agency of the United States Government.

WE WILL NOT assist or participate in such a strike.

WE WILL NOT condone any of the above-mentioned activities and WE WILL take affirmative action to prevent or stop them in the event they reoccur.

WE WILL NOT enter into or give effect to any dues-deduction agreements during the period of time we are barred from the use of Executive Order 11491.

Professional Air Traffic Controllers Organization, Inc., Affiliated with National Marine Engineers' Beneficial Association, AFL-CIO

Dated _____ By _____ President

Dated _____ By _____ Board Chairman

This Notice must remain posted for 60 consecutive days from the date of posting, and must be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the nearest Area or Regional Office of the Labor-Management Services Administration, U. S. Department of Labor or with the Assistant Secretary of Labor for Labor-Management Relations, Washington, D. C. 20210.

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

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC.

Respondent

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.

Case No. 46-1698 (CO)

Complainant

and

FEDERAL AVIATION ADMINISTRATION

Activity

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION

Petitioner

Case No. 46-1593 (RO)

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; AIR TRAFFIC CONTROL ASSOCIATION, INC.; NATIONAL FEDERATION OF FEDERAL EMPLOYEES; and INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS

Intervenor

Charles J. Peters, Esq., George H. Foster, Esq., and Jonathan E. Hill, Esq., of Federal Aviation Administration, Washington, D. C., for the Activity, FAA.
William B. Peer, Esq., of Barr & Peer, Esqs., Washington, D. C., for Petitioner-Respondent PATCO.
Gordon P. Ramsey, Esq., and James F. Hostetler, Esq., of Gadsby & Hannah, Esqs., Washington, D. C., for Complainant-Intervenor NAGE
James D. Hill, Esq., Washington, D. C., for Intervenor ATCA.

James L. Neustadt, Esq., and
Raymond J. Malloy, Esq.,
Washington, D. C., for Intervenor
AFGE.

Irving I. Geller, Esq., Washington,
D. C., for Intervenor NFFE.

Louis P. Poulton, Esq., and Edward
Katze, Esq., Washington, D. C.,
for IAM.

Before: Louis Libbin, Hearing Examiner.

REPORT AND RECOMMENDATIONS

Statement of the Case

This consolidated representation and complaint proceeding arises under Executive Order 11491 and was heard in Washington, D. C., on various dates between May 26 and June 19, 1970. The representation petition was initiated by petitions (Case No. 46-1593) filed pursuant to Section 6 of the Executive Order on February 18 and 27, 1970, by Professional Air Traffic Controllers Organization, Inc., herein called PATCO, as a labor organization seeking certification as exclusive bargaining representative for a nationwide unit of all "non-supervisory Air Traffic Control Specialists," with certain specified exclusions. The Federal Aviation Administration, the Activity named in said petitions, has challenged, among other things, the status of PATCO as a labor organization as defined in Section 2(e) of the Executive Order. Identical challenges, among others, were also made by two of the Intervenor, National Association of Government Employees, Inc., herein called NAGE, and Air Traffic Control Association, Inc., herein called ATCA. Thereafter, PATCO challenged the status of ATCA as an Intervenor on the ground that it is not a labor organization within the meaning of Section 2(e) of the Executive Order. In addition, on May 8, 1970, NAGE filed an unfair labor practice complaint (Case No. 46-1698) against PATCO, alleging violations of Sections 19(b)(1) and (4) of the Executive Order.

On May 13, 1970, the Regional Administrator issued two separate Notices of Hearing to be conducted on the same date. One was in the representation case "concerning the labor organization status" of PATCO and ATCA. The other was in the complaint case "concerning the alleged violations" of Sections 19(b)(1) and (4) of the Executive Order. By Order, dated that same day, the Regional Administrator consolidated the two cases into one proceeding.

At the hearing, PATCO, FAA, NAGE and ATCA were represented by counsel, who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, submit oral arguments and file briefs on the issues herein set forth.

At the request of counsel for FAA, I directed counsel for PATCO to submit for the record, after the close of the hearing, a statement indicating whether or not the telephone numbers listed on FAA Exhibit No. 14 are numbers of any PATCO employees or officials in the Washington Metropolitan area as of

the date of the telephone calls on FAA Exhibit 14. This statement was received from PATCO on July 21, 1970, and has been marked and placed in the official exhibit folder as PATCO Exhibit No. 28. On August 4, 1970, ATCA filed a Motion to correct the Record to show the receipt in evidence of ATCA Exhibit Nos. 11, 12 and 13, and the rejection of ATCA Exhibit Nos. 14, 15, 16 and 17. Said Motion is hereby granted, without objection. In the same document ATCA seeks reconsideration of my ruling rejecting ATCA Exhibit Nos. 14 to 19, inclusive. Upon reconsideration, I adhere to my original ruling and deny ATCA's request for the receipt in evidence of these exhibits. I have previously denied, by Order dated July 31, 1970, PATCO's Motion to admit into evidence PATCO Rejected Exhibit No. 26.

In August 1970, PATCO, FAA, NAGE and ATCA filed timely detailed and comprehensive briefs, which I have fully considered. For the reasons hereinafter indicated, I find that (1) PATCO was not a labor organization within the meaning of Section 2(e)(2) of the Executive Order but nevertheless was and is a labor organization within the meaning of Section 19(b) of said Order, (2) ATCA is a labor organization within the meaning of Section 2(e) and 2(e)(1) of said Order, and (3) PATCO violated only Section 19(b)(4) of said Executive Order.

Upon the entire record ^{1/} in the case and from my observation of the witnesses who testified under oath, I make the following findings:

I. The Issues

Under Executive Order 11491, an agency may grant exclusive recognition only to representatives which are labor organizations. Insofar as here relevant, Section 2 of the Order states:

(e) "labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which --

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike, or imposes a duty or obligation to conduct, assist or participate in such a strike;

^{1/} Obvious inadvertent errors in the typewritten transcript of the testimony have been noted and corrected in the Appendix, attached to this Report.

5 FAA, NAGE and ATCA contend, and PATCO denies, that PATCO falls
wit in the second exclusion and therefore is not a labor organization. PATCO
con tends, and ATCA denies, that ATCA fails to meet the general requirements
of the main provisions of Section 2(e), that it also falls within the first
exclusion and that for each of these reasons ATCA is not a labor organization.

10 With respect to the alleged unfair labor practices, NAGE contends,
as its complaint alleges, and PATCO denied, that PATCO engaged in conduct
violative of Section 19(b)(1) and (4) of the Executive Order. These sections
make it an unfair labor practice for a "labor organization" to--

(1) interfere with, restrain, or coerce an employee in the
exercise of his rights assured by this Order;

15 * * *

(4) call or engage in a strike, work stoppage, or slowdown;
picket an agency in a labor-management dispute; or condone any
such activity by failing to take affirmative action to prevent
or stop it;

20 NAGE further contends that PATCO is a labor organization for purposes of
Section 19(b) even though it is found not to be a labor organization for
recognition purposes under Section 2(e)(2).

25 Thus, the issues litigated in this proceeding are (1) the labor
organization status of PATCO (a) within the meaning of Section 2(e)(2) of the
Executive Order and (b) within the meaning of Section 19(b) of said Order;
30 (2) the labor organization status of ATCA within the meaning of Section 2(e)
and 2(e)(1) of the Order; (3) whether PATCO engaged in conduct which constituted
unfair labor practices within the meaning of Section 19(b)(1) and (4) of the
Order; and (4) the nature of the remedy in the event that issues (1) and/or (3)
are decided adversely to PATCO.

35 II. The PATCO Issues

A. Conduct and Activities in 1970

40 1. The evidence ^{2/}

(a) The Baton Rouge dispute

45 In early 1970 there existed between PATCO and FAA a festering and
serious dispute of long standing concerning FAA's proposed transfer of three
PATCO member controllers from the Baton Rouge, Louisiana, Tower to another
facility. The three controllers were first informed by FAA of the proposed
transfer in September 1969. The FAA's position was that the transfers were
necessary to correct operational shortcomings at the Baton Rouge Tower. The
50 three controllers and PATCO felt that the proposed transfers were discrimi-
natorily motivated and constituted an attempt by FAA to "break PATCO at
Baton Rouge." After charging discrimination, the three controllers filed

^{2/} The findings in this section are based on admissions and credited exhibits
and testimony which have not been contradicted.

formal grievances. An FAA Examiner began his inquiry into the grievances
but in October 1969 was temporarily enjoined from proceeding by a federal
court order because of the controllers' claim that the agency's grievance
procedure did not accord them due process. On November 4, 1969, the
5 federal court denied the controllers' petition for a preliminary injunction.
Thereafter, on December 8, 1969, FAA's Examiner sustained the transfers.
This determination was upheld by an FAA appeals officer on January 15, 1970.
However, the transfer was held in abeyance pending a further appeal by the
controllers to a U.S. District Court.

10 (b) PATCO Board of Directors meets, announces
withdrawal of certain services
on February 15

15 The National Board of Directors of PATCO met at San Francisco,
California, from January 23 to 25, inclusive. F. Lee Bailey, PATCO's
Executive Director ^{3/} and General Counsel, was in attendance, as well as all
the National Directors and many facility representatives. "The main topic
discussed was the Baton Rouge case and what we would do if the transfers
20 were made." Captain Young of TWA-ALP (Airline Pilots Association) was
present and stated that "95 percent of all TWA pilots would back PATCO in
whatever they decided to do." Richard Mac Sparran, president of PATCO
Washington Center and present as that center's representative, admitted
that "what they were mentioning at this point in the hearings was whether
25 or not we would strike." The decision reached on January 25 was embodied
in a telegram to Secretary of Transportation Volpe, with copies to all
members.

30 The telegram of that date informed the Secretary that the Board
of Directors had resolved "that as of February 15, 1970 all optional air
traffic service rendered by our membership above and beyond those that
they are required to perform by their contract and by regulations will be
withdrawn, specially including the services of the many controllers who
are in a present condition of fatigue and who are medically entitled to
35 a period of respite for the preservation of their own health." Reference
was also made to the proposed transfer of the PATCO members in Baton Rouge
and the dispute with the Administrator over this matter. A request was
made for a meeting not later than the first week in February "to resolve
the problems and differences that have precipitated this resolution,"
40 adding that under certain conditions the Board of Directors "would be
amenable to some kind of realistic mediation to be handled by the various
associations who would be most directly concerned with the withdrawal
of the described services."

45 ^{3/} PATCO contends that Bailey's title was Acting Executive Director
because the position of Executive Director was vacant. However Bailey
has referred to himself as Executive Director in his correspondence
and in an affidavit submitted to a federal court and appearing in a
PATCO Special Bulletin. In any event, my findings and conclusions are
50 the same even if his title was Acting Executive Director.

This telegram was referred for reply to Federal Aviation Administrator Schaffer. By reply letter dated January 30, and addressed to PATCO Board Chairman Rock, Schaffer advised that "any such concerted action on the part of your membership to withhold services will constitute an illegal strike"; pointed out that "in the final analysis it is the air traffic controllers who have most to lose by jeopardizing their careers"; and counseled that "for these reasons advice by the Board of Directors of PATCO to the membership to withhold services is a disservice to those members." The letter also stated that "the public statements of PATCO officials and the resolution set forth in your telegram make it difficult for either the Secretary or me to meet with officials of your national organization."

(c) PATCO officials address controllers

On February 2 or 3 PATCO Executive Director and General Counsel Bailey and PATCO Board Member and Western Coordinator Green spoke at a PATCO controllers' meeting held in Lancaster, California. Bailey and Green were introduced by Robert Biava, PATCO's Western Regional Vice President and Chapter President of the Los Angeles Traffic Control Center. Bailey stated, among other things, that the situation that existed at Baton Rouge "should be of major concern" and that "some direct and deliberate action would have to be taken." In response to a question from a controller as to what course of action could be taken, Bailey "made the comment referring to a sick out." Green elaborated on what Bailey had said and stated that "in order to accomplish this particular goal that there was going to be a massive effort . . . throughout the ranks of all the controllers." Robert Biava stated that February 15 was the tentative date.

(d) Executive Director Bailey's press conference of February 13

On February 13, PATCO President Hayes and Executive Director and General Counsel Bailey held a press conference in the O'Hare International Airport terminal building in Chicago, Illinois. Bailey referred to the fact that on January 25, PATCO Board of Directors had notified the Secretary of Transportation that on February 15 "they would withdraw all optional services, which would include the service of any controller who is working in a condition of fatigue." He stated that in view of the failure to mediate the dispute, he "would anticipate as one who has talked with controllers from Honolulu to New York that there will be an impact on the system, and that it will occur on Sunday, the 15th day of February." In response to a reporter's question as to whether this "is a last resort for you," Bailey replied,

I think it is, and I think if this should have disastrous consequences, such as the threatened jailing of all the Directors as the FAA has proposed, I think the system will suffer a blow that it won't recover from. The FAA might destroy the organization, but they will not have an Air Traffic System when they are through.

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When asked by a reporter "why did you pick February 15," Bailey replied,

There was a resolution passed in October that if the FAA used a punitive transfer to get rid of certain controllers in Baton Rouge, Louisiana, there would be a demonstration in the system. On January 15th the FAA issued an order transferring those controllers.

They refused to move. They have since been fired. But on that date, the President, Mr. Hayes, and Chairman of the Board, said that there will be a thirty-day cooling off period to see what we can do. After that came the resolution. And since that time there has been nothing except a threat from the Administrator to jail the air traffic controllers.

In answering a reporter's question as to the possible effect of a "walkout" on the system, Bailey pointed out that the "centers have a profound effect on the whole country" and "any one center could tie up the United States." In answer to a reporter's question as to what it would take to keep the controllers working after February 15, Bailey stated,

I don't think there's any possibility of negotiating the matter, unless there is recognition of the organization without which the dialogue is impossible. And an agreement that the Baton Rouge situation will be fully and fairly litigated, not the way the FAA handled it, and that was a secret hearing.

Bailey again gave his version of the Baton Rouge situation, stating that "the dispute was that they were moved out in order to break up the organization at the tower, and for no other reason. That is not a legitimate reason for moving."

(e) February 15 withholding of services does not take place

The February 15 withholding of services by controllers did not occur. At a meeting of controllers in Lancaster, California, held about February 23 or 24 and presided over by PATCO Board Member Biava, PATCO Board Member and Western Coordinator Green explained to the membership that "the reason that the proposed sick out was not called was that PATCO had entered into talks . . . with various heads of FAA and the Department of Labor" and that PATCO did not want to misuse its power.

(f) FAA meets with PATCO and other employee organizations on February 26

On February 26, FAA held a meeting with PATCO and other employee organizations representing controllers for the purpose of considering their reactions to the Corson Committee Report 4/ and its recommendations pertaining

4/ The Corson Committee, consisting of eight members, was appointed by Transportation Secretary Volpe on August 8, 1969. Its Report, filed on January 29, 1970, is entitled "Air Traffic Controller Committee Report."

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to controllers. At this meeting, PATCO Board Chairman Rock demanded immediate action on nine additional recommendations which he read from a prepared text. He then threatened that if PATCO's additional recommendations were not promptly adopted, the FAA would again face a confrontation similar to the recent one, and concluded with the warning that "you are facing a revolution." These nine points were listed in a PATCO newsletter of March 2. FAA did not adopt PATCO's nine points.

(g) Meetings with PATCO on Baton Rouge dispute

At meetings with PATCO and FAA representatives, held on February 15 to 17, "fact finding" proceedings were agreed upon to review the evidence and merits of the Baton Rouge controllers' case. PATCO contended that after the first meeting of the "fact finding" panel on February 27, Secretary Volpe began to restrict the scope of the panel. PATCO thereupon became apprehensive of FAA's "good faith," PATCO further contended that during the second meeting of the panel with mediator Schultz on March 11, "it became obvious that the DOT/FAA had no intention of allowing mediation and further restricted the scope of the responsibilities of the panel." On March 13, FAA announced the Secretary's decision to affirm the transfer order. PATCO concluded that the agreed-upon "fact finding" proceedings "were initiated and culminated in bad faith on the part of the DOT and FAA." All of the foregoing is recited in PATCO's newsletter of March 19, which also includes PATCO Executive Director Bailey's affidavit reviewing the proceedings on the Baton Rouge situation.

(h) The Van Sant notes

Henry Van Sant was a member of PATCO's Board of Directors as well as Chairman of the Honolulu PATCO unit and a controller at the Honolulu approach control facility. He made notes on PATCO stationery of conference telephone calls concerning the "sick out." The first page of notes states that the conference telephone call was at "12 noon Washington," and lists the following eight numbered quoted items (underlining in the original):

- 1) Reason FAA Backdown on Fact Finding Committee Recommendation.
Wednesday March 25th Day Shift
Nation wide. Reason Wednesday AM because Congress adjourns Easter Wed PM No Planes to go Home.
- 2) Call in Fatigue - only you can determine this.
If you call in any other way make sure you protect yourself.
- 3) Call in One Hour before Time of Watch and no sooner.
- 4) Be prepared to stay out at least 10 days or possibly longer.
- 5) Nine points in last Newsletter
Major points.
- 6) Return only after they are in writing and ratified by membership with conference call to Board of Directors. Public 24 HR Notice But Not Date
ALPA 48 HR Notice
Defense Dept 24 HR Notice
- 7) Meeting March 24th 8:00 pm
- 8) Good luck to You & Your Postman.

The contents of these notes, in the light of the record evidence that the "sick out" began on the day shift of March 25, establishes that they were made on or before March 22. On the back of these notes appear the names of 14 PATCO officials, with a certain day of the week circled after each name. In addition, there are listed three first names which are the first names of three additional PATCO officials.

The second page of notes states that "National Officers are expected to be arrested. Conference call

12:00 Noon West"

It then adds that

"Mike or F. Lee Bailey To The Restraining Order
will go on TV and Advise to go
Back but to completely ignored."

The remaining pages of notes list the number of controllers at various facilities. At the bottom of one page, there appears the notation:

"Bailey
Pistol at Back of His Head"

(i) PATCO officially announces withholding of controller services commencing March 25

By letter dated March 23, Michael J. Rock, PATCO Chairman of its Board of Directors, informed Defense Secretary Melvin Laird that the "resentment and frustrations" of the "nation's air traffic controllers"

attitude has been crystallized since the Federal Aviation Administrator, John Shaffer, stated on Friday, March 13, 1970, that the three controllers at Baton Rouge are to be transferred effective March 30. This announcement was in direct violation of an express agreement between the Professional Air Traffic Controllers' Organization, the Federal Aviation Administration, the Department of Transportation and the Federal Mediation and Conciliation Service. A previous agreement to that effect was struck during negotiations that barely averted a nationwide disruption of air traffic on February 15th. This breach has dramatically brought home to the Air Traffic Controller that the final door to meaningful dialogue between the controller and the Federal Aviation Administration leadership has been closed in his face.

Rock then announced that--

This organization's membership has advised its leadership that effective 8:00 a.m. Eastern Standard Time on March 25, 1970, all optional air traffic services rendered above and beyond those they are required to perform by their contract and regulations will be withdrawn; specifically, the service of many controllers who are in a present condition of fatigue and who are medically entitled to a period of respite for the preservation of their own health.

A copy of this letter was sent by Rock on March 24 to Secretary of Transportation Volpe.

On the same date, March 24, PATCO published a press release which stated:

Airlines, air travelers, and the flying public are hereby notified that swift, severe dissipation of air traffic services will commence throughout the country approximately 0800 EST on Wednesday, March 25, 1970.

The release reiterated PATCO's version of the Baton Rouge transfers, and the February 15th averted crisis which it had precipitated. In referring to the proposed withdrawal of services, the release stated:

This will, of course, cause air traffic across the nation to be brought to a standstill. Provisions have been made, however, for the requirements of national defense and for the servicing of the essential military and civilian facilities in the Far East and other isolated areas.

* * *

Mr. Rock has further stated, "Many will call it a strike, a walkout, a sickout and will condemn it; however, I see it as a demand for reform, 'Operation Reform.'"

Attached to the press release was Rock's March 23 letter to the Secretary of Defense.

On March 24, FAA Administrator Shaffer sent to PATCO Board Chairman and President a telegram in which he stated, among other things, the following:

YOUR THREAT AGAINST THE OPERATION OF THE AIR TRAFFIC SYSTEM IS OF DEEP CONCERN TO THE FEDERAL AVIATION ADMINISTRATION. STRIKES AGAINST THE FEDERAL GOVERNMENT ARE IN VIOLATION OF FEDERAL LAW. EMPLOYEES WHO ENGAGE IN SUCH ACTIONS ARE SUBJECT TO SERIOUS PENALTIES, INCLUDING SEPARATION FROM THE SERVICE AND THE APPLICATION OF CRIMINAL SANCTIONS. I URGE YOU, THEREFORE, TO CAREFULLY CONSIDER THE PROVISIONS OF EXECUTIVE ORDER 11491 AND THE LAW AS CONTAINED IN PUBLIC LAW 89-554, AND TO TAKE PROMPT, AFFIRMATIVE AND PUBLIC ACTION TO ADVISE ALL PATCO OFFICERS AND MEMBERS ACCORDINGLY. A COPY OF THIS TELEGRAM IS BEING SENT TO ALL FACILITIES FOR THE INFORMATION AND GUIDANCE OF CONTROLLERS.

(j) Communications with membership

During this period PATCO field representatives were being notified to inform the membership that the withholding of services would begin on March 25. Facility representatives were being informed by telephone to hold meetings of the facility members in the early morning hours of March 25 to determine the number of controllers who would participate, to report their information back to PATCO, and also to pass the word on to other facility representatives. The PATCO Honolulu command post initiated a series of phone calls to the representatives in Hawaii to call Henry Van Sant at 262-6681 in Honolulu, collect, to learn the March 25 date. This is listed as the telephone

number of Henry Van Sant, a member of PATCO's Board of Directors, in setting up a conference telephone call for Board Chairman Rock on March 26. When Hilo Tower Facility Representative Glendon Richards made this call on March 22, collect to Van Sant, as he had been instructed, the call was accepted and the person who answered stated,

Glendon, March 25 is the date. It will begin on the 8 o'clock shift. Protect yourself, and we are stressing the nine points in the PATCO bulletin. Be prepared for 10 days.

At a PATCO meeting held on March 23 or 24 at the home of one of the controllers, Richards reported the information he had received from Honolulu in his collect telephone call and there was a discussion about it by the members.

A meeting of the members of the Los Angeles Tower facility was held on the afternoon of March 24 at the home of Controller Cook, and was attended by PATCO Board Member and Western Regional Coordinator Robert Green. William Randall, assistant facility representative who chaired the meeting, stated that he had been to Washington and had spent a day in PATCO's Washington office where he received detailed instructions on the "sick-out" which he wanted to pass on. He then stated that "we were definitely going to go out," that the date was Wednesday, March 25, on the 8 o'clock day shift, and that they should "call in and request sick leave two hours prior to the start of that shift, and each subsequent shift we were scheduled for, until the sickout was terminated." Randall informed the members "which facilities across the nation that we could expect the most support from, which would be the strongest, and/ which ones we were concerned about." He asked for the support of as many controllers as possible. The suggestion was made that "it would be a good idea to get a doctor's certificate if they could."

A meeting of the facility at the Fort Worth, Texas, center was held about 4:15 a.m. (CST) on March 25, at the Astoria Coffee Shop. During the meeting, Fort Worth Area Branch Secretary-Treasurer Craig Mitchell was called from the room by an employee of the Coffee Shop. Upon his return about 4:45 a.m. (CST), he announced that "we are in" or "it is on." This meant, according to one controller, that some air traffic controllers "would probably not go to work."

Two conference telephone calls were made on March 25 by PATCO Business Manager Russell V. Sommer from a PATCO Washington telephone to key PATCO officials throughout the United States. The first conference call was at 5:45 a.m. (EST). It was designated as an "emergency or something like that" and was given a priority by the telephone company. The second conference call was at 9 a.m. 5/

5/ While not specifically admitting having made these calls, Sommer testified that he did make quite a few conference calls, that "it is possible" he made these two calls, but that he did not "recall" making them. He further testified that any disparity in the billing for the calls would have been brought to his attention and he did not know of any disparity having been brought to his attention.

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(k) Withdrawal of controllers' services
begins March 25

Beginning with the day shift on March 25, abnormal absenteeism began at many of the FAA air traffic control facilities throughout the United States. Although previously announced as a "withdrawal of optional services," it was in fact a withdrawal of general services, as PATCO later publicly admitted. Controllers throughout the country began calling in sick. For the two work shifts for that day, commencing with the day shift, the abnormal absenteeism of air traffic controllers scheduled to work throughout the entire air traffic system was 19.8 percent. 6/

The United States immediately began filing complaints for injunctive relief against PATCO, and on that day obtained from the District Court for the District of Columbia a Temporary Restraining Order which enjoined PATCO and its officials from "continuing, encouraging, ordering, aiding, engaging or taking any part in any work stoppage or slowdown" relating to any air traffic.

(l) Bailey's prerecorded telephone
message to controllers

A tape recording of a statement made by PATCO Executive Director Bailey on March 26 7/ was provided on the "PATCO Central" telephone number which is the number of PATCO Central Regional Vice President and Coordinator Noel Keane at Overland Park, Kansas. This is the same telephone number which was called for Keane in setting up PATCO Business Manager Sommer's conference call of 5:45 a.m. on March 25. Keane is also one of the PATCO officials whose name appears on the list of PATCO officials on the back of the first page of the Van Sant notes. The message available on this PATCO Central phone had Bailey making the following statements to the controllers:

Now, Gentlemen, I've been waiting to see what would happen in the FAA's attempt to remedy the walkout, and the following tactics have been used. I want you to listen to me very carefully because I'm about to go before the national TV cameras to give the best and most honest message I can to your membership. I will give you the best legal advice that I can and put my neck out as far as I think that I should and I want you to abide by it. I'd like you to pass it on. Several things have happened. First of all, Bill Flener waived all currency requirements. Second, Jack Shaffer says that he will work controllers 12 hours a day, 6 days a week if he gets the money to cease the walkout. Based on that -

6/ FAA's statistics show that the normal absenteeism rate for controllers for the 5 days immediately preceding March 25 was approximately 4 percent on a daily basis. In computing the "abnormal absenteeism" rate, the FAA deducted the normal absenteeism rate of 4 percent from the "actual absenteeism" rate on each day.

7/ Although the recorded transcript in evidence was made on March 27, the contents, in the light of Bailey's March 26 evening nationally televised press conference, clearly indicates that Bailey's statement was recorded on March 26.

based on what I'm told by your own people who had controlled airplanes, there is no question but what the illegality of those orders requires all controllers who wish to obey the law to simply walk out flat, on their facilities. We do not know where these practices are in use and we have no means to know. They may be in use anywhere. So I'm going to ask your chairman and your president as experts in air traffic control simply declare these practices inherently dangerous. I'm going to add to that legal opinion that these men should immediately leave their facilities and not work them again until those orders are countermanded. And I say to you that New York Center, which is closed down to a man, has been notified, through Chief Boyle, coming from Jack Shaffer.

(m) Nationally televised press conference
of Bailey and Rock on March 26

At 8:30 p.m. on March 26 at the Sonesta Hotel in Washington, D. C., PATCO Executive Director Bailey, Board Chairman Rock and President Hayes held a nationally televised press conference. Flanked by Hayes and Rock, Bailey addressed the audience of reporters as follows:

All right, gentlemen. This conference is called because of very recent developments. First of all the evening absenteeism is definitely on the upswing independent of this conference or any result from it. I have been most quiescent as to what the controllers should do, but the issue is no longer fatigue. The issue is safety. On this day, the FAA announced that it would hold the system together by working controllers twelve hours a day, six days a week, and they have formally waived the requirement that a man be current and proficient in order to work. Based on that, no air traffic controller should accept the jeopardy of working alongside such a person, and I must recommend that as a lawyer, and as a pilot, and as one who has conferred at great length with all of the directors and the gentlemen on my left and right, that everyone walk out of every FAA facility until those orders are countermanded.

When asked if he was calling a strike, Bailey replied, "No, sir. I am calling a walkout" Bailey also stated that:

I have just talked to the directors in every community around the country. The rate of absenteeism is increasing . . . this is no longer a question of what the individual will do. It's a question of what they ought to do and I must advise them as I see fit.

Rock added that:

What I have seen today, and the reports we have of unqualified people working air traffic control positions with thousands and thousands of peoples' lives in jeopardy, I am telling the air traffic controllers to walk out of those facilities before they kill.

When asked if it would not be better "to tell the men to go back to work so that you could have qualified men there" if "safety is such a terrific provision," Rock replied, "my men cannot go back to work under those conditions."

(n) PATCO press release of March 27

The next day, March 27, PATCO issued a press release which commenced:

The Professional Air Traffic Controllers Organization today (Friday) announced that more than 3,500 of its affiliated air traffic controllers on the morning, afternoon and evening watches had responded to Thursday night's call for a general withdrawal of services. By Saturday, PATCO predicted, more than 4,000 controllers will be out.

The "Thursday night's call" was an obvious reference to the nationally televised news conference held that evening when Bailey and Rock called for a walkout of the controllers.

The press release further stated that Board Chairman Rock declared that "safety-conscious controllers across the nation are responding with great enthusiasm to PATCO's 'Operation Reform,'" and that "Rock predicted that the controllers' withdrawal of service would continue to grow in number and geographic distribution."

(o) Continued communications with controllers

A meeting of controllers for the Los Angeles Tower held at the home of a controller on the afternoon of March 25 was attended by PATCO Director and Western Regional Coordinator Green. The purpose of the meeting was to get the support of as many controllers as possible. A conference call was held between PATCO representatives of each of the facilities within the Western Region for the purpose of getting up-to-date information as to the number of controllers not reporting for scheduled work. Green presided over this call, verified the numbers and answered questions. As the telephone call came in, a tape recording was made and played back for controllers who arrived late. Green spoke to the controllers at this meeting. He "was very eloquent in his speech, his characterization, his request for us to participate" in this effort. He again informed the controllers "about the A.L.P.A. participating as soon as they were aware of the fact that there were not journeymen controllers handling the control positions." He made statements such as "we have all got to get together and do something." Such meetings continued also on a daily basis.

Another meeting of controllers held in Polindale, California, on March 26 was presided over by Green and PATCO Western Regional Vice President Biava. Green had given the controllers the address of the home of the controller at which this meeting was held. At this meeting Green stated that the "sick out was successful at this point and the only thing that could help it would be more participation." Green then played a 3 or 4 minute tape of a conversation with Executive Director Bailey where Bailey stated that "fatigue

was no longer the issue but it was now safety, inasmuch as unqualified people were supposedly working positions vacated by others." Biava then stated that he would like to know "who is with us now?" Then, whenever a controller at the meeting "called in sick," there was a "cheer and a congratulation." Green personally thanked at least one of the controllers who "called in sick" at that meeting.

After PATCO Official Green had attended a meeting of the Los Angeles Tower controllers at the home of a controller on March 27, he and two other Tower representatives drove to Lancaster, California, where they participated in a meeting with controllers of the Los Angeles Air Traffic Control Center. The purpose of this meeting was to try to get more controllers at the Los Angeles Center to participate because "their sickout count was relatively lower." Green, among others, spoke at this meeting also.

About April 1, Jack Richards, Chief of the Honolulu Air Traffic Control Center in Honolulu, Hawaii, noticed that controller Max Gersten had been absent since March 27 on alleged sick leave. Gersten is the person who answered the collect telephone call to Van Sant and is also the substitute for Van Sant listed on the conference telephone call made by Board Chairman Rock on March 27. Richards contacted Gersten by calling the Surf Rider Hotel and asking for the PATCO Room. Gersten stated that he had been giving other controllers information to encourage them to stay away from work.

At another meeting of controllers in Los Angeles about April 4, PATCO Official Green was introduced and gave the members "general information about how many people were absent from the facilities across the country" and what was happening in Washington to clear up the problems." When Controller Hiner told Green that he had received from the FAA a letter of intent to remove him from his position, Green told Hiner, "Do not return to work."

Glendon Richards, a controller at Hilo Tower in Hawaii, received several telephone calls after March 25 from PATCO Board Member Van Sant and from Max Gersten. In these calls, Richards was given general information as to how things were going and as to the number of controllers staying out sick throughout the country.

Activities were coordinated by employing a telephone system which involved the collection of the numbers of absentee controllers and the dissemination of those numbers and of other information to field representatives. This information was taped and recordings were played back at controllers' meetings and meeting places. The voice of PATCO Board Member and Southwestern Coordinator Carl Evans was recognized as the speaker in one of these recordings. Pertinent excerpts of Bailey's press conferences, herein described, were also recorded and played at meetings and meeting places. In addition, messages were recorded on the PATCO Central telephone at Overland Park, Kansas, the telephone number of PATCO Regional Vice President and Central Coordinator Noel Keane. Executive Director Bailey's recorded statement of March 26 on this phone has already been described. On March 31, the message recorded on this phone was for the evening of March 30. It opened with the news that "our numbers are strong and holding. The horses are standing." The concluding remark was "The name of the game is winner take all." The term "horses" was heard frequently by controllers after March 25. The term was understood by controllers to mean "people who were not on duty who were not on excused

leave . . . it covered people on sick leave or . . . leave without pay or AWOL."

(p) Bailey's press conference of March 28

About 7:30 p.m. on March 28, Executive Director Bailey held a press conference at the Goose Creek Country Club in Leesberg, Virginia, after attending a controllers' meeting there. Also present was PATCO Board Director Victor Makela. Bailey reported on the spreading absenteeism. In referring to the status at the Leesberg Center, Bailey said that "The Leesberg Center originally had very few out because it was disorganized. But the number has been increasing day to day. I do not have the current numbers at my fingertips but I'm not concerned about that." The last question asked by a reporter was, "Are you saying if the Labor Department moves into it you would immediately listen and perhaps stop the sick-in?" Bailey replied, "Well, there would be an awfully lot of listening and with disposition to be convinced . . ."

(q) Bailey's press conference of April 3

As a result of an agreement made on April 2 with the Justice Department in the litigation in the U.S. District Court for the District of Columbia, Bailey held a press conference at the Mayflower Hotel in Washington, D. C., at 4 p.m. on April 3 in which he read the "joint statement of myself, the Chairman of the Board, Michael Rock, and the President, James Hayes, as follows":

We have become increasingly aware of the adverse effects of the present conditions on the travelling public, the interest of the United States, as indeed the controllers themselves. And in recognition of our responsibility to all concerned, we have met and concluded that normal operation of the air traffic control system should be restored at once. We urge all controllers who are able and fit to report for work at their next normal tour of duty.

In answer to reporters' questions, Bailey said that he did not think his statement will be effective "because this statement doesn't give me the power to tell the men what they are going back to that's any different than it was on Tuesday, or any other day." He added that "I cannot honestly represent to you or the public that there has been a change of circumstances which will make it effective." In referring to the Baton Rouge case, Bailey stated, "the FAA stood firm, they said we stand by our original decision and I suppose that was the trigger, but it's not the bomb."

(r) Extent and effect of absenteeism

Abnormal absenteeism of controllers began on the day shift on March 25 at many of the FAA air traffic control facilities throughout the United States. For the two work shifts that day the abnormal absenteeism of air traffic controllers scheduled to work throughout the entire system was 19.8 percent. The percentage of abnormal absenteeism progressively increased, on a daily basis, through March 30 when the figure reached a high of 30.4 percent. Thereafter, the abnormal absenteeism declined until it reached the manageable rate of approximately 8 percent on April 14 and thereafter

practically terminated. During the period from March 26 through April 7, a period of 13 days, the abnormal absenteeism figure did not fall below 20 percent.

The air traffic control centers are the most important facilities in the national air traffic control system. The effect of the abnormal absenteeism at the New York, Cleveland, Chicago, Kansas City, Denver and Oakland centers halted transcontinental traffic during the period of March 25 to 27. The strategic air command and all military training conducted under the instrument flight rules were forced to be grounded. As a result, on March 28, the transcontinental traffic was rerouted South through the Memphis Center and across through the Albuquerque Center, making the Washington, D. C. Center a very critical one as of that date.

As a result of the abnormal absenteeism throughout the system, the United States began to institute legal proceedings in many U.S. District Courts in an effort to get the controllers back to work. These resulted in the issuance of preliminary injunctions and restraining orders.

2. PATCO's contentions and conclusions

With respect to the conduct of the controllers, PATCO's contentions in its brief may be broadly stated to be (a) that there is no evidence of PATCO's authorization of, participation in, or ratification of, the sickout or work stoppage of the controllers, (b) that the controllers were merely engaging in individual actions and not in a concerted activity, and (c) that after March 26 the absence of the controllers was justified because of dangerous and unsafe conditions.

As to contention (a)

In support of contention (a), PATCO makes the following principal assertions which merit some comment:

(1) The Van Sant notes prove nothing. Not only do I emphatically disagree but I affirmatively view them as a relevant and important part of the total evidence upon which PATCO's liability for the work stoppage is herein found. These notes, the substance of which I find was communicated to PATCO member controllers through actions initiated by PATCO officers and representatives, plainly lay down the ground rules for the national work stoppage. Thus, they set forth the reason for the work stoppage, the time when it was scheduled to start and the reason for the selection of that time. They then told the controllers what excuse to use for their absence (that is, that they should call in sick and the precise time to call), how long they could expect to be absent and the only conditions under which they should return. Finally, they warned that the National officers were expected to be arrested because of the work stoppage; predicted that in the face of a Restraining Order, Mike (Rock), who was known to be PATCO's Board Chairman, or Bailey, who was known to be PATCO's Executive Director and General Counsel, would go on television to advise the controllers to go back to work; and instructed them completely to ignore such advice. The reference to "your Postman" in the "Good luck" conclusion was an obvious reference to the postal strike then in progress.

The subsequent events, which unfolded substantially as set forth in these notes, verify the fact that they served as the blue print communicated to and followed by the controllers in the work stoppage.

As to contention (b)

5 (2) Bailey's statement in his March 26 televised press conference to "walk-out" is nothing more than his opinion as a lawyer and pilot. PATCO may not escape liability for Bailey's damaging instructions merely because he clothed himself in the garb of a lawyer and pilot when he spoke. Bailey cannot wear several hats and divorce himself from his official capacity as a PATCO officer and representative merely by changing hats. Regardless of how he described himself, to the controllers he was PATCO's Executive Director and General Counsel. And PATCO, I find, was clearly liable for his directive to the controllers to "walk out."

15 (3) Rock's statement at the same televised press conference were merely "the heartfelt feelings of an experienced controller . . . acting to avoid the same tragic results." Rock's feelings and motives, however commendable they may have been, are entirely irrelevant. What is relevant is that PATCO's Board Chairman bluntly told the air traffic controllers to walk out and assumed responsibility for their failure to return by announcing that "my men cannot go back to work under these conditions." PATCO was equally liable for Rock's instructions on that occasion.

25 (4) PATCO "exercised its best efforts, albeit unavailing, to return the controllers to work. The officers made one appeal after another to the controllers." However, the record shows only one such attempt. That was a two sentence statement made by Bailey in his April 3 press conference, jointly with PATCO President and Board Chairman, pursuant to an agreement with the Justice Department. During the remainder of the press conference 30 Bailey made statements and answered questions in a manner which seemed to nullify the back-to-work appeal. Indeed, Bailey emphasized in that same press conference that he did not expect his statement to be effective and that there has been no change in the circumstances which caused the walkout. Furthermore, as previously found, the controllers had already been forewarned of such a plea by Bailey under the pressure of a Restraining Order and had been instructed that such advice be "completely ignored." Under all the circumstances, this does not warrant the conclusion that PATCO "exercised its best efforts" to get the controllers back to work.

40 (5) Only a minority of the controllers were absent and only a minority of facilities were affected by their absences. However, it was not necessary for a majority of the controllers to be absent and a majority of facilities to be affected to bring about a national disruption of air traffic. As Bailey himself admitted in his February 13 press conference, 45 the "centers have a profound effect on the whole country" and "any one center could tie up the United States." William Flexner, FAA's Director of Air Traffic Service, credibly testified in detail about the integrated nature of the system and the severe dislocations caused throughout the country by the abnormal absenteeism of controllers in key centers, including the halting of transcontinental air traffic for several days, the rerouting of such traffic and the grounding of the strategic air command and all military training conducted under the instrument flight rules.

5 PATCO contends that the controllers' "sick out" was not a strike or concerted activity but was "action by individual controllers only, acting on their own volition and without any encouragement, direction, order or instructions from PATCO." In support of this contention, PATCO asserts that the individual controllers were each "legitimately" absent because of illness. These contentions are refuted by the previously detailed evidence which shows the contrary to be the fact.

10 That PATCO member controllers, working at locations scattered throughout the country and in some instances more than 3,000 miles apart, individually and spontaneously concluded several days before March 25 that beginning with the 8 a.m. shift that day they would be too sick to work and then proceeded to abstain from work on that basis, strains credulity to the breaking point, defies belief, and is just inherently incredible. This is not to say that there may not have been isolated cases where a controller had an ailment while continuing to work or where a controller's ailment became so severe during that period as to disable him from continuing to work. But as the National Labor Relations Board had occasion to point out with respect to a comparable situation, 8/ "experience teaches that it is exceedingly improbable" that such a large group of employees, "particularly where they are organized, will, without common agreement or direction, quit work virtually en masse, as a result of as many different individual decisions arrived at independently, yet fortuitously at the same time." Indeed, as the Board concluded in that case, "the very fact of such mass quitting alone supplies persuasive evidence, sufficient in the absence of a plausible and adequate contrary explanation, to support an inference that the cessation of work was the outcome of strike or concerted action aimed at a common objective." Thus, contrary to PATCO's further contention, under the circumstances disclosed by this record the burden was on PATCO to prove that all the absent controllers were absent because they, individually, were in fact too sick to continue to remain at work at that very time. PATCO adduced no persuasive evidence to meet this burden. 9/ On the other hand, the previously detailed facts constitute persuasive evidence, in addition to the simultaneous abnormal absences, that such "cessation of work was the outcome of strike or concerted action aimed at a common objective." In addition, there is direct evidence that some controllers called in sick who admittedly in fact were not sick and that others announced that their alleged sickness would continue only so long as the "sick out" continued. It seems significant that within a period of about 1 month virtually all the absent controllers sufficiently recovered from their illness to enable them to return to work. I find that the actions of the controllers in engaging in the "sick out" was a concerted activity which was "pitched from the top down" rather than, as PATCO claims, "from the ranks of the members up."

8/ Local 760, International Brotherhood of Electrical Workers (Roane-Anderson Co.), 82 NLRB 697, 704.

9/ Only one controller was called as a witness to testify concerning his illness. I cannot accept as adequate evidence sufficient to satisfy PATCO's burden of proof in this respect, the opinion of Judge Parsons of the Federal District Court for the Northern District of Illinois in the case of U.S. v. Flasch.

The Executive Order contains no definition of a strike. I agree with the opposing parties that the aforesaid concerted work stoppage constituted a strike as defined in labor relations precedents and statutes as well as in the commonly accepted usage of that term. A strike has been defined as including any "concerted stoppage of work by employees . . . or other concerted interruption of operations by employees." 10/ Such concerted action may be evidenced in forms and manners other than the normal, classical and traditional ones. Especially in the public sector has it been recognized that strikes might take special forms, including the "sick out." Thus, the report of the Twentieth Century Fund Task Force 11/ on Labor Disputes in Public Employment states: 12/

The strike, as an action undertaken to force an unwilling employer into agreement through the use of economic power, may no longer be thought of exclusively in its classical form . . .

"Sick Leave" taken by an entire department at the same time, "resignations," submitted in concert are euphemisms for the strike

Whether termed a "sick out," a "walk out," a "revolution," "operation reform" or "operation safety," as variously referred to at different times in the record, I find that the controllers engaged in a concerted work stoppage which, however designated, plainly constituted a strike.

As to contention (c)

PATCO contends that beginning with March 26 the air traffic system became unsafe and "dangerous to the traveling public from an accident" because "FAA began manning the system with nonjourneyman controllers who were still in trainee status" and that therefore the controllers' "absences could not be classified as a strike" by virtue of Section 502 of the Taft-Hartley Act, a section which should apply with equal force to the public sector. Section 502, entitled Saving Provision, states, in pertinent part, "nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."

10/ Section 501(2) of the National Labor Relations Act, as amended, commonly called Taft-Hartley Act (61 Stat. 136, 73 Stat. 519). PATCO admits in its brief that the definition of this statute "may be referred to as legal analogs for the public sector." See also New International Dictionary, 1961 Ed. p. 2262; and Words and Phrases, Volume 40, p. 464 and ff.

11/ The task force included well recognized, experienced and distinguished labor experts. The members were Archibald Cox, Charles C. Killingsworth, Joseph A. Loftus, John W. Macy, Jr., Walter E. Oberer, William Simkin, George W. Taylor, Saul Wallen and H. Edwin Young.

12/ Twentieth Century Fund, Pickets at City Hall: Reports and Recommendations of the Twentieth Century Fund Task Force on Labor Disputes in Public Employment, 35 (1970).

I find no merit in PATCO's contentions. Section 502 is not applicable to the facts in this case. In the first place, the "abnormally dangerous conditions for work" relate to the employees own personal, physical health and safety. Thus, the Board has specifically held that "the most reasonable purpose" which Congress had in mind "was to protect the right of employees to quit their labor without penalty in order to protect their health and their lives" (emphasis added). 13/ This section therefore does not protect the right of the controllers to engage in a work stoppage in order to protect the air traffic system and the travelling public from accident. In the second place, the meaning of the term "abnormally dangerous conditions" as used in Section 502 has been clarified by the Board as follows: 14/

. . . We are of the opinion that the term contemplates, and is intended to insure, an objective, as opposed to a subjective, test. What controls is not the state of mind of the employee or employees concerned, but whether the actual working conditions shown to exist by competent evidence might in the circumstances reasonably be considered "abnormally dangerous."

In the instant case, PATCO adduced no "competent evidence" to show that the actual working conditions on and after March 26 were "abnormally dangerous" to the air traffic system or to the travelling public. 15/ Indeed, the controllers represented by six other organizations did not absent themselves from work. 16/ Finally, there is no showing that the reason the controllers continued to be absent after March 26 was because of any good-faith belief that the air traffic system was unsafe and dangerous to the travelling public from an accident.

3. Concluding findings

Were I required to rely only on a single action as the basis for PATCO's liability in this case, I would select the one on March 26 when, during the nationally televised press conference, Executive Director Bailey and Board Chairman Rock bluntly called upon the controllers to "walk out." Although they may have in good faith believed that their call was permissible because of the claimed unsafe conditions to the travelling public, I have previously found them to be in error in this respect. Thus, their call for a walkout, I find, was no more than a plain directive for the controllers to engage in a strike against the FAA. Moreover, by such action they were

13/ Knight Morley Corporation, 116 NLRB 140, 146, enfd. 215 F. 2d 753 (C.A. 6), cert. denied 357 U.S. 927.

14/ Redwing Carriers, Inc., 130 NLRB 1208, 1209, enfd. 325 F. 2d 1011, enfd. 325 F. 2d 1011 (C.A.D.C.), cert. denied 377 U.S. 905.

15/ See, for example, Curtis Mathes Mfg. Co., 145 NLRB 473, 475.

16/ PATCO's reliance on cases like Washington Aluminum Co. (370 U.S. 9) are misplaced. Cases involving protected concerted activity are inapposite because under the Taft-Hartley Act, strikes (with certain exceptions not here pertinent) are protected concerted activities within the meaning of Section 7 of that Act.

openly asserting PATCO's right to strike against an agency of the United States Government.

However, PATCO's liability need not rest on any one single action. Although some parts of the evidence are obviously stronger and more relevant than others, I find, upon consideration of all the previously detailed evidence as a whole, that PATCO called the controllers' strike, assisted and participated therein during its duration, and condoned it by failing to take affirmative action to prevent or stop it. ^{17/}

B. PATCO's Status as a Labor Organization

As previously stated, the contentions are made that PATCO should be disqualified as a labor organization within the meaning of Section 2(e)(2) of the Executive Order which excludes an organization which "asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike" PATCO argues that the "assertion" clause is unconstitutional and that it refers not only to the "right to strike" but also "to assist or participate in such a strike." PATCO further contends that in any event it does not fall within the prohibitions of this subsection because its constitution provides in pertinent part that "neither the Organization nor any of its members may advocate or support any strike or boycott of air traffic control." NAGE and FAA contend that the constitutionality issue is not before me, that the language should be read in the disjunctive so that the "assertion" clause applies only to the "right to strike" portion, and that in any event PATCO's conduct and activities in engaging, assisting and participating in a strike constitute the "assertion" in this case.

I agree that the constitutionality issue is not a matter for decision by me. For an administrative agency or department of the United States Government must assume the constitutionality of the statute or Executive Order it is charged with administering, absent binding court decisions to the contrary. ^{18/} Nor do I deem it necessary to determine whether the "assertion" clause applies only to the "right to strike" portion. For I agree with NAGE and FAA that the strongest way to assert the right to perform an act is by engaging in the performance of that act.

^{17/} In arriving at these findings, I have not relied on the fact that injunctions and restraining orders were obtained in various parts of the country or on the court opinions in those cases.

^{18/} See, e.g., Truck Drivers Local 413 (Patton Warehouse), 140 NLRB 1474, 1476; Chauffeurs, Teamsters, and Helpers General Local Union No. 20 (Milwaukee Cheese Co.), 144 NLRB 826, fn. 2; Rite-Form Corset Company, Inc., 75 NLRB 174, 176.

I do not regard the decision in the Blount case, cited in PATCO's brief, as a binding contrary decision, especially in the light of my findings concerning PATCO's conduct and activities.

I have found that PATCO called the controllers' strike and assisted and participated therein during its duration. I find that by these acts, considered singly and collectively, PATCO asserted the right to strike against an agency of the United States Government, or to assist or participate in such strike within the meaning of Section 2(e)(2) of the Executive Order. I therefore find that at least during that period PATCO was disqualified as a labor organization within the meaning of that Section of the Order.

C. PATCO's Unfair Labor Practices

Section 19(b) of the Executive Order proscribes unfair labor practices by labor organizations. The unfair labor practice complaint filed against PATCO by NAGE alleges violations of Sections 19(b)(4) and 19(b)(1). Among the conduct proscribed by Section 19(b)(4) is to "call or engage in a strike, or work stoppage" As I have found that PATCO's strike conduct disqualified it as a labor organization within the meaning of Section 2(e)(2) of the Executive Order, the questions arise as to whether there is an inconsistency between the two sections and whether Section 19(b)(4) may be applied to PATCO in the circumstances of this case.

As is apparent from my previous findings, the same conduct which is proscribed as an unfair labor practice by a labor organization in Section 19(b)(4) also disqualifies that same organization from the status of a labor organization within the meaning of Section 2(e)(2). In other words, any labor organization which calls or engages in a strike, as proscribed by Section 19(b)(4), is not a labor organization as defined in Section 2(e)(2). Therefore, any interpretation that Section 19(b)(4) may not be applied to a labor organization which was disqualified under Section 2(e)(2) is based on a literal circular reasoning, creates an inconsistency between the two sections, and leads to the absurd result that a labor organization which calls or engages in a strike could never be found to have violated Section 19(b)(4) by such conduct. Such an interpretation would to that extent write Section 19(b)(4) out of the Executive Order.

Well known canons of statutory construction point to a different approach. Thus, it has been held that a construction which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the statute and will carry out the intent of the legislators. ^{19/} Moreover, all statutes must be construed in the light of their purpose, and a literal reading which would lead to absurd results is to be avoided when the statutes can be given a reasonable application consistent with their words and legislative purpose. ^{20/}

The two sections reasonably and consistently may be interpreted as serving different purposes. Thus, Section 19(b) deals with a labor organization's misconduct and Subsection (4) thereof proscribes certain types of misconduct such as calling or engaging in strikes. Section 2(e)(2) however may be interpreted as merely disqualifying a labor organization which has engaged in that type of misconduct from being recognized as an

^{19/} U.S. v. Raynor, 302 U.S. 540; U.S. v. Fowler, 302 U.S. 540.
^{20/} Haggart Co. v. Helvering, 308 U.S. 389.

2. Alleged violations of Section 19(b)(1)

Section 19(b)(1) makes it an unfair labor practice for a labor organization to "interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order." NAGE contends that PATCO violated this section in two respects; first, by its nationwide strike which "was intended to force the Government to install PATCO as the national exclusive bargaining representative of all air traffic controllers," and second, by engaging in independent acts of interference, restraint and coercion against individual controllers. I find no merit in these contentions.

As PATCO points out, in the analogous situation under the Taft-Hartley Act the Supreme Court has held that a strike of the kind involved in the instant case does not constitute restraint and coercion within the meaning of that statute. 23/ I therefore find that PATCO's conduct which I have found violated Section 19(b)(4) of the Executive Order does not derivatively constitute a violation of Section 19(b)(1) of the Order.

As for PATCO's alleged independent acts of interference, restraint and coercion violative of Section 19(b)(1), the record does not warrant a finding in this respect. NAGE had the burden of proving the allegations in its complaint by a preponderance of the evidence. Although NAGE properly adopted the evidence adduced by FAA, it nevertheless failed to meet its burden in support of this allegation.

III. The ATCA Issues

As previously noted, PATCO attacks the labor organization status of ATCA on the ground that (1) it does not meet the general requirements of the main provisions of Section 2(e) of the Executive Order and (2) that it falls within the disqualification prescribed in Section 2(e)(1) of the Order.

A. The Evidence 24/

Among the objects of ATCA listed in its constitution are "(1) to promote, maintain, and enhance the stature of the air traffic control profession" and "(2) to promote, maintain and enhance the stature and welfare of the professional air traffic controllers." ATCA's affairs are in the general charge of a Council consisting of the elective officers (president, vice president, secretary and a treasurer), all of whom must be professional members, the immediate past president and 15 other elected professional members, 10 of whom shall be persons actually controlling air traffic and the remaining five shall hold an administrative or supervisory position. ATCA has about 2,500 member, of whom about 15 percent, excluding crew chiefs, are supervisors as defined in Section 2(c) of the Executive Order. If crew

23/ N.L.R.B. v. Drivers, Chauffeurs, Helpers, Local Union No. 639, 362 U.S. 274, 290; Local 220, Int'l Union of Electrical, Radio, etc., 127 NLRB 1514, 1515.

24/ The findings in this section are based on stipulations of the parties, and uncontradicted exhibits and testimony.

employee bargaining representative. Thus, if a labor organization engages in a strike, it has violated Section 19(b)(4) and by such conduct has also under Section 2(e)(2) forfeited the right to act as a labor organization entitled to recognition as an employee representative. 21/ I therefore conclude and find that Section 19(b)(4) is applicable to PATCO.

1. Violation of Section 19(b)(4)

Section 19(b)(4) makes it an unfair labor practice for a labor organization to--

call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it.

As I have found that PATCO called the controllers' strike, assisted and participated therein, and condoned it by failing to take affirmative action to prevent or stop it, I find that PATCO committed unfair labor practices within the meaning of Section 19(b)(4) of the Executive Order. 22/

21/ That an organization may be treated as a labor organization for some purposes and at the same time be disqualified for other purposes is not an unknown phenomenon under the Taft-Hartley Act. For example, labor organizations whose officers had failed to file the noncommunist affidavits required by the former Sections 9(f), (g) and (h) of that Act, were disqualified from invoking the Board's election processes but at the same time were found to have committed unfair labor practices. Cases involving the United Mine Workers are classic examples of this situation. In another instance, an organization which qualified as a labor organization for all other purposes was nevertheless disqualified from serving as a bargaining agent because of a conflict of interest with the represented employees' employer. Bausch & Lomb Optical Co., 108 NLRB 1555. Similarly, it is well established that unlawfully assisted or dominated labor organizations may be found to have committed unfair labor practices and yet be disqualified from serving as exclusive bargaining agents.

22/ Although NAGE's complaint merely alleges that PATCO "called and engaged in a national strike of air traffic controllers employed by the Federal Aviation Administration," PATCO's other conduct, found in the text, was fully litigated. PATCO makes no showing, as indeed it could not, and no claim, that it has in any way been prejudiced by the limited language in the complaint.

chiefs are also to be considered as supervisors, then the supervisory membership would be 40 percent. 25/ The journeyman controller, GS-10, is the lowest level admitted as a professional member. Professional members are eligible to vote in the election of officers and Council members, on proposed amendments to the constitution and bylaws, on such matters as are deemed necessary by the Council, and on any question which any 200 professional members may designate.

Executive Director Kriske is in charge of affairs of ATCA's national headquarters in Washington, D. C. In his representative capacity he very frequently deals with the FAA concerning matters affecting the working conditions of controllers. He recently discussed with FAA the new organization changes for air traffic control centers and comparable proposed organization changes for terminal facilities. Whenever FAA issues new handbooks or amendments or agency orders affecting its controller work force, it submits copies to ATCA at its national headquarters and seeks its comments. Kriske frequently receives letters from individual members concerning personnel problems and working conditions in which other members similarly situated are interested. For example, he received letters complaining about the rotation pattern of work schedules from members who felt that a more desirable rotation pattern could be established for various supporting regions. When such letters and complaints are received, Kriske takes the matters up with the appropriate agency department and attempts to have them satisfactorily resolved. Kriske spends about 75 percent of his time on matters involving personnel policies and practices and working conditions of controllers. It has been the established policy of the FAA to discuss personnel policies and working conditions of controllers at joint meetings of ATCA and the other five organizations which represent controllers. Thus, as previously found, ATCA was present at the joint meeting which FAA held on February 26 with all the organizations representing controllers to discuss the Corson Committee Report.

On May 9, 1966, the FAA and ATCA entered into a dues checkoff agreement under a regulation of the Civil Service Commission which provided that an employee group may have dues checkoff privileges if the agency determines it to be eligible for recognition under Executive Order 10988, the predecessor to the current Executive Order. In a clarifying letter, dated July 15, 1968, the Civil Service Commission stated that an agency may make a dues checkoff agreement "with an employee organization which it has determined to be eligible for formal or exclusive recognition under E. O. 10988," even though recognition as such had not been granted, that "a professional association recognized or dealt with officially as an employee organization under E. O. 10988 is subject to the obligations as well as the privileges of employee organizations," and that the "fact that it might have an advantage in competing with other employee organizations because it also provides professional benefits or services for its members is immaterial since the extent of the benefits or services employee organizations

25/ In addition, ATCA has about 50 corporate members which are not eligible to vote in the election of officers and Council members, or on proposed amendments to the constitution and bylaws.

offer their members is not limited by E. O. 10988." Thereafter, by letter dated November 1, 1968 to Executive Director Kriske, the Commission reiterated the same position as it related to ATCA. Again, by letter dated March 4, 1969, to United States Senator Yarborough, the Commission pointed out that if an association has a dues withholding agreement, it "has established its status as an employee organization under Executive Order 10988."

On December 31, 1969, the U. S. Civil Service Commission issued a News Release answering a number of questions which had been received concerning the current Executive Order. The first question listed is whether supervisors may belong to labor organizations. The answer states, "Yes. All employees, regardless of position, have a right to join, or not to join, any labor organization. See section 1(a)."

B. Contentions and Conclusions

Subsection (e) and (e)(1) of Section 2 of the Executive Order are the pertinent provisions relating to the issues bearing on ATCA's status as a labor organization. They provide as follows:

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which --

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

At the instant hearing, PATCO contended that ATCA is not a labor organization as defined in the Executive Order, relying on two grounds. As to the first ground, PATCO's counsel stated, "our threshold position is that it is not a labor organization as defined in the threshold paragraph of 2(e) because" it "does not exist for the purpose of dealing with the Federal Aviation Administration concerning grievances, personnel policy and practices, or other matters affecting working conditions of employees of the agency." As to the second ground, PATCO contended that ATCA was disqualified as a labor organization by Section 2(e)(1) of the Executive Order because, in its view, this provision excludes an organization which includes supervisors among its members. In its brief, PATCO raises only the second ground.

ATCA, on the other hand, contends that it has qualified as a labor organization within the meaning of the general provisions of Section 2(e) of the Order, that it does not fall within the exclusion of Section 2(e)(1) because, in its view, this provision applies only to an organization whose membership is comprised solely of management officials or supervisors, and that this issue has already been decided in ATCA's favor by the ruling of the Civil Service Commission that ATCA was an "employee organization" eligible for recognition under Executive Order 10988.

As to subsection (e)

The language in subsection (e) is in all relevant respects virtually identical with the definition of a labor organization in Section 2(5) of the Taft-Hartley Act. The evidence previously detailed clearly warrants the findings, which I herein make, that a majority of ATCA's members are employees as defined in the Executive Order, that these employees do participate in ATCA's affairs in a substantial and meaningful manner and that at least one of its purposes is to deal with the FAA concerning grievances, personnel policies and practices and other matters affecting the working conditions of FAA's employees. While I do not agree with ATCA that the rulings of the Civil Service Commission with respect to the status of ATCA under Executive Order 10988 is dispositive of the instant issues, 26/ the Commission's rulings that ATCA was an "employee organization" within the meaning of that definition in that Executive Order was a determination that ATCA had, as that definition prescribes, "as a primary purpose the improvement of working conditions among Federal employees." Therefore, so long as ATCA's employees participate in a substantial and meaningful manner in ATCA's affairs, as I have found they do, the mere fact that supervisors are also members of ATCA does not bar ATCA from satisfying the requirements for a labor organization prescribed in subsection (e). 27/ I find that ATCA has satisfied the requirements of this subsection.

2. As to subsection (e)(1)

PATCO argues that if the draftees of the Executive Order intended to give this language the meaning or construction for which ATCA contends, it would have been a simple matter for them to have included the word "solely" or "entirely," and that therefore their failure to do so was not an oversight. I find this argument to be unpersuasive. For it may be argued with equal force that if the draftees intended to give the language the meaning or construction for which PATCO contends, it would have been a simple matter for them to have used the word "includes" instead of "consists," and that their choice of words was not an oversight. Moreover, the words "consists" and "includes" are not synonymous. The word "consists" has been defined as "composed of" or "made up of." 28/ A stronger argument is made by PATCO when it points out that an organization consisting solely of supervisors would already be excluded from the definition of a labor organization because supervisors are excluded from the definition of "employee," and that therefore

26/ My disagreement with ATCA in this respect is based on the fact that Executive Order 10988, unlike the present Order, does not contain a definition of "employee" which excludes a "supervisor" and also on the fact that the definition of an "employee organization" in that Order differs from the definition of a "labor organization" in the current Order.

27/ These are the precedents established for Section 2(5) of the Taft-Hartley Act. International Organization of Masters, Mates, and Pilots of America, Inc., 144 NLRB 1172, 1177, enf'd. 351 F. 2d 771, 777 (C.A.D.C.); Great Lakes Towing Company, 168 NLRB No. 87.

28/ Black's Law Dictionary, 4th Ed.; Webster's Third New International Dictionary.

the provision should be construed as applying to an organization which has both supervisors and employees.

After much consideration and not without some doubt, I am inclined to ATCA's interpretation of this subsection. Some supervisors were members of many "employee organizations" which represented them as well as their nonsupervisory members in its dealings with agencies under the predecessor Executive Order 10988. The fact that an organization was composed entirely of supervisors did not disqualify it from being an "employee organization" for purposes of recognition under that Executive Order. No one questions the fact that under the present Executive Order the draftees intended to, and did, disqualify as a labor organization one which is comprised entirely of supervisors and/or management officials. Yet, they did not ignore these groups entirely. Thus, the Order makes some provision for the establishment by an agency of some system of "communication and consultation" with associations of supervisors [Sec. 7(e)], and for the agency's deduction of dues of "an association of management officials or supervisors" [Sec. 21(b)]. But no provision is made anywhere for the groups of employees who belong to a mixed organization. I cannot believe that the draftees intended to deprive a large number of employees from representation by an organization of their choice merely because some supervisors may have retained or maintained their membership in the same organization even if only for such purposes as receiving certain services and benefits unrelated to recognition. What the draftees were mainly concerned with was to prevent supervisory or management control of the organization, an evil which presumably existed under the predecessor Order.

The Report and Recommendations of the Study Committee on the changes to be made in this respect in the predecessor Executive Order discloses a desire and intent to follow the scheme of the Taft-Hartley Act with respect to the definition of a labor organization and the status of supervisors with respect to it. 29/ Under that Act a supervisor is specifically not barred "from becoming or remaining a member of a labor organization" [Sec. 14(a)]. Supervisory membership does not under that Act ipso facto disqualify the organization from occupying the status of a labor organization (see fn. 27, supra). Supervisors under that Act are however excluded from the definition of "employee" [Sec. 2(3)] and from employee bargaining units or bargaining representatives [Sec. 9(a) and (b)] and as management representatives are prohibited from dominating or interfering with the formation or administration of any labor organization or contributing any support to it [Sec. 8(a)(2)]. Although not required to do so, it is not unlawful under that Act for any employer voluntarily to recognize a union composed exclusively of supervisors and to bargain with it on their behalf.

I therefore believe that the draftees intended to, and did, adopt the objectives of the Study Committee in these respects. This was accomplished by permitting a labor organization to have among its membership both employees and supervisors and providing safeguards in other provisions against the supervisors participating in the management of the organization

29/ Report and Recommendations on Labor-Management Relations in the Federal Service, August 1969.

or acting as its representative /Sec. 1(b)/ or being included in the same bargaining unit /Sec. 10(b)(1)/, safeguards which did not exist in the predecessor Executive Order. This interpretation is verified by the Civil Service Commission's December 31, 1969 News Release in which the Commission, in response to questions on the present Executive Order, declared that supervisors "have the right to join, or not join, any labor organization" but that they may not participate in the management or representation of a labor organization. I therefore construe subsection e(1) as applying to an organization comprised entirely of supervisors and/or management officials.

C. Concluding Findings

I find that ATCA is a labor organization within the meaning of Section 2(e) of the Executive Order and that it does not fall within the exclusions of Section 2(e)(1). This is not to say that ATCA may not be disqualified from being recognized as a bargaining representative because of failure to conform to or comply with other provisions of the Order. However, ATCA's eligibility for recognition is not before me in this proceeding.

IV. The Remedy Issues

Having found that PATCO engaged in the unlawful conduct previously detailed, the question arises as to the nature of the remedy to be recommended.

A. Contentions of the Parties

PATCO contends, correctly it seems to me, that the authority of the Assistant Secretary of Labor for Labor-Management Relations to require remedial action stems from Section 6(b) of the Executive Order which provides that "the Assistant Secretary may require an agency or labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of the Order" ^{30/} PATCO further contends that nothing in the Executive Order empowers the Assistant Secretary to withhold representation status rights from PATCO for any period as a remedy or penalty or otherwise to condition PATCO's right to seek the benefits and privileges under the Executive Order. Finally, PATCO contends that certain alleged mitigating circumstances should be weighed in the balance in determining the remedy. These mitigating circumstances are asserted to be (1) alleged acts of extreme provocation by FAA in failing, (a) to remedy the controllers' adverse working conditions, (b) to accord full representation status to PATCO and (c) to act in good faith in the mediation of the Baton Rouge case, and (2) alleged substantial changes in the structure and posture of PATCO since the instant events due to (a) its abolishment of the office of Executive Secretary, (b) its election of new officers and new members of its Board of Directors and (c) its recent affiliation with Marine Engineers Beneficial Association, AFL-CIO, herein referred to as MEBA, which also does not assert the right to strike in the public sector.

^{30/} This language is patterned after Section 10(c) of the Taft-Hartley Act.

The other parties contend that PATCO's current petition should be dismissed and that its unlawful conduct was so flagrant and injurious to the public interest that PATCO should be disqualified from seeking recognition as a bargaining representative under the Executive Order on a national and local basis for a period of at least 2 years. ^{31/} ATCA seeks to have the disqualification period run for 3 years from July 27, 1970, and to continue thereafter until PATCO "shall have demonstrated abandonment of its claim of right to strike by removal from elective office or paid position all officers, directors and employees who were responsible for the March 25 strike." NAGE also seeks to have PATCO and its subordinates disqualified for a 2-year period from invoking any other procedures of the Executive Order.

They further contend that there is no factual or legal basis for PATCO's claim that the strike was due to acts of extreme provocation by FAA. Thus, they correctly point out (1) that the controllers represented by the six other organizations were working for FAA under similar adverse conditions but that these organizations and their members did not strike, (2) that full representation could only be accorded to "ATCO through its invocation of the procedures set forth in the Executive Order, and (3) that in the Baton Rouge case, which PATCO admitted "was the fuse which ignited the bomb," the U.S. District Court for the Eastern District of Louisiana on March 26, 1970, issued a decision in which it found that the controllers "failed completely to show that the transfers were either arbitrary, capricious or unreasonable," that the evidence "clearly supports" the FAA position that the transfers were necessary to correct operational shortcomings at the Baton Rouge Tower and that there was "absolutely nothing" in the record to indicate that the transfers were motivated by the controllers' affiliation with PATCO. ^{32/}

Finally, they contend that there has been no true change in PATCO's image, identity and policies. In support of this contention, they correctly point out that as an affiliate of MEBA, PATCO remains an autonomous organization with its own officers and Board of Directors, that virtually half of PATCO's old Board of Directors have been reelected, including Chairman of the Board Rock, that other Board Directors were elected to higher office (for example, Director Green was elected as a National vice president and Director Evans was elected as a Regional vice president), and that Bailey is still retained as General Counsel.

B. Conclusions and Recommendations

It is not my function to determine or evaluate the merits of the disputes and grievances which existed between PATCO and the FAA. However, it is quite obvious that the effects of the remedies requested by the other parties, even assuming the authority of the Assistant Secretary to impose them, would fall most heavily on the individual controllers. Many of them have already been penalized by the FAA for having engaged in this unlawful strike by suspensions for the period of their absences and in some cases have been served with notices of discharge intent. The imposition of similar penalties on additional controllers who participated in the strike is still under consideration by the FAA. The additional sanctions proposed by the other parties would bar both member and nonmember controllers from exercising

^{31/} NAGE would have the 2-year period run from March 25, 1970, whereas FAA would like it run from July 27, 1970.

^{32/} See FAA Exhibit No. 40.

for a period of at least 2 years the rights assured to them by the Executive Order of selecting the labor organization of their choice as their bargaining representative. Under all the circumstances this remedy strikes me as effecting an unduly harsh result. Moreover, it finds no support in any of the remedies devised by the National Labor Relations Board. No matter how flagrant or repetitious were the unfair labor practices committed by a labor organization, the Board has never deemed it necessary to effectuate the policies of the Taft-Hartley Act by barring that organization from seeking to be certified as the employees' bargaining representative through the Board's election machinery. ^{33/} The only time the Board has ever revoked a labor organization's existing certificate as the employees' statutory bargaining representative was after a finding that the organization had failed to honor the obligations imposed upon it by the certificate when it discriminated against unit employees because of racial considerations. ^{34/}

As the issue of what remedy would be appropriate to effectuate the policies of the Executive Order in this case is one of first impression under the Order, it in the final analysis may involve policy considerations for resolution by the Assistant Secretary of Labor. For my part, I would require PATCO to cease and desist from the conduct herein found violative of the Order and from any like or related conduct violative of the Order, to post appropriate notices, signed by its National President and Board Chairman, in its national and local business offices and meeting places for a period of 60 consecutive days, and to furnish signed copies of such notices to the FAA for posting by it if willing. In order to insure that PATCO no longer asserts the right to strike against any agency of the United States Government, or to assist or participate in such strike, I would require PATCO, upon request, to furnish to the Assistant Secretary of Labor for Labor-Management Relations or to the appropriate Area or Regional Administrators or to their agents, at all reasonable times during a period of 1 year from the date of a final Order in this case, whatever data and information may be deemed necessary for this purpose. ^{35/} I would further require PATCO to amend its pending petition to reflect its present affiliation with MEBA and would direct that processing of the amended petition be withheld both on a National and Local basis until the expiration of the posting period, provided that at that time PATCO shall have fully complied with all other provisions

^{33/} The only time the Board has ordered the disestablishment of a labor organization was to remedy the unfair labor practices of an employer in dominating the formation or administration of the organization.

^{34/} Independent Metal Workers, Local No. 1 (Hughes Tool Company), 147 NLRB 1573.

^{35/} Cf. J. J. Hagerty, Inc., 139 NLRB 634, 638-639, where, as part of the remedy for a union's unfair labor practices, the Board directed the union, among other things, to submit quarterly reports about the employment of certain employees to whom the union had unlawfully denied employment referrals, and to make available to the Regional Director or his agents, upon request, at all reasonable times during a period of 1 year from the date of the Board's Decision any records relating to the hiring and referral system. The Board further directed its Regional Director, at his discretion, to conduct spot checks of the union's hiring and referral system during that period.

of these Recommendations; otherwise, processing shall continue to be withheld until there has been such compliance. I would further direct that, in the event PATCO violates or fails to comply with any provision of these Recommendations after certification as bargaining representative pursuant to Section 6(a)(2) of the Order, revocation of said certification be considered. ^{36/}

It is apparent from the foregoing that I would not require dismissal of PATCO's petition despite my previous finding that during the strike PATCO was not a labor organization within the meaning of Section 2(e)(2) of the Executive Order. To do so and then to entertain a new petition under its present affiliation, as I have indicated my position to be, with the attendant need for the filing of new challenges by the Intervenor, would entail a needless expenditure of time and funds and result merely in exalting form over substance.

In sum, it is my considered judgment that it would be appropriate to effectuate the policies of the Executive Order by the adoption of the following

RECOMMENDATIONS

I. Professional Air Traffic Controllers Organization, Inc., (herein called PATCO), affiliated with Marine Engineers Beneficial Association, AFL-CIO, its officers, agents, and representatives, shall:

A. Cease and desist from:

1. Asserting the right to strike against the Government of the United States or the Federal Aviation Administration or any other agency thereof, or to assist or participate in such a strike.

2. Calling or engaging in a strike, work stoppage or slowdown.

3. Condoning any such activity by failing to take affirmative action to prevent or stop it.

B. Take the following affirmative action which is appropriate to effectuate the policies of the Order:

1. Upon request, furnish to the Assistant Secretary of Labor for Labor-Management Relations or to the appropriate Area or Regional Administrators or to their agents, at all reasonable times during a period of 1 year from the date of a final Order in this case, such data and information as they may deem necessary to insure that PATCO no longer asserts the right to strike against any agency of the United States Government, or to assist or participate in such strike.

^{36/} See, e.g., 220 Television, Inc., 172 NLRB No. 142, wherein the Board held that "its certification of bargaining representatives are properly subject to its reconsideration and that, when appropriate, it may police or maintain the logical coherence and utility of its prior unit determinations by amendment, clarification, or even revocation."

2. File an amendment to its petition so as to reflect its present affiliation.

3. Post at its National and Local business offices and normal meeting places copies of the attached notice marked "Appendix B." Said notices shall, after being signed by PATCO's National President and Board Chairman, be posted for a period of 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by PATCO to insure that said notices are not altered, defaced, or covered by other material.

4. Mail sufficient copies of said notice, similarly signed, to the Assistant Secretary of Labor to be furnished by him for posting by the Federal Aviation Administration, if willing, at places where it customarily posts notices to its employee controllers.

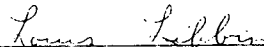
5. Notify the aforementioned Assistant Secretary of Labor or his agents, in writing, within 20 days from the date of the receipt of this Report and Recommendations what steps it has taken to comply therewith.

II. The Assistant Secretary of Labor for Labor-Management Relations and his agents, including the appropriate Regional and Area Administrators, shall:

A. Withhold the processing of PATCO's amended petition both on a national and local basis until the expiration of the 60-day posting period.

B. If at the expiration of the said posting period PATCO has not fully complied with all other provisions of these Recommendations, continue thereafter to withhold the processing of said petition until there has been such compliance.

C. In the event that PATCO violates or fails to comply with any provision of these Recommendations after certification as bargaining representative pursuant to Section 6(a)(2) of the Executive Order, consider the revocation of said certification.


 Louis Libbin
 Hearing Examiner

I hereby note and correct the following inadvertent obvious errors in the typewritten transcript of the testimony:

Page	Line	Change	To
230	23	ll	14
232	21	ll	14
464	22	call	cull
468	18	our	R
474	12	in a	and
479	21	hall	call
721	8	scout	sickout
745	16	trial	trier
836	13	B	e
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1236	21	would	wish
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Dated at Washington, D. C.

NOTICE TO

EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF LABOR

WE hereby notify you that:

WE WILL NOT assert the right to strike against the FEDERAL AVIATION ADMINISTRATION or any other agency of the United States Government, or to assist or participate in such a strike.

WE WILL NOT call or engage in a strike, work stoppage or slowdown.

WE WILL NOT condone any of the above-mentioned activities and WE WILL take affirmative action to prevent or stop it.

WE WILL, upon request, furnish to the Assistant Secretary of Labor for Labor-Management Relations or to the appropriate Area or Regional Administrators or to their agents, at all reasonable times during a period of one year, such data and information as may be deemed necessary to insure that we no longer assert the right to engage in the conduct described above in the first paragraph.

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC., AFFILIATED WITH MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO (Labor Organization)

Dated _____ By _____ President

Dated _____ By _____ Chairman of the Board of Directors

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

UNITED STATES DEPARTMENT OF LABOR ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS SUMMARY OF DECISION AND DIRECTION OF ELECTION OF THE ASSISTANT SECRETARY PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY, DEFENSE GENERAL SUPPLY CENTER, RICHMOND, VIRGINIA A/SLMR No. 11

This case, which arose as a result of a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 2047 (AFGE), presented a question as to the appropriateness of the unit sought.

AFGE requested a unit of all nonsupervisory General Schedule and Wage Board employees at the Defense General Supply Center in Richmond, Virginia. The Intervenor, the National Association of Government Employees, agreed that the unit petitioned for was appropriate. The Activity opposed the proposed unit based on the view that in order to promote effective dealings and efficiency of agency operations the proposed unit should be expanded to include nonsupervisory employees of a tenant of the Activity, the United States Army Support Command (USASC) plus all nonappropriated fund employees of the Activity.

In all the circumstances, the Assistant Secretary found that the employees sought by the AFGE constituted an appropriate unit and, accordingly, he directed that an election be held in that unit. He noted that the employees in the unit sought had common supervision, working conditions, hours of work, grievance procedures and leave policies. With respect to the Activity's contention that the unit should include USASC employees, the Assistant Secretary found these employees did not have a community of interest with the employees in the claimed unit since they did not share a common agency mission, common supervision, or common grievance procedures. In addition, he noted that the Activity's employees and USASC employees were in separate competitive areas for purposes of reductions-in-force, that there were separate channels provided for the approval of contracts, and that the Army Materiel Command, parent organization of the USASC, took the position that a combined unit would not be appropriate.

The Assistant Secretary also found that the Activity's nonappropriated fund employees did not share a community of interest with the employees in the claimed unit since their jobs were not similar to those performed by employees in the unit sought by the AFGE and they did not share common supervision, working conditions, hours of work, grievance procedures, reduction-in force actions, leave or pay policies.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

DEFENSE SUPPLY AGENCY,
DEFENSE GENERAL SUPPLY CENTER,
RICHMOND, VIRGINIA

Activity

and

Case No. 46-1812(32)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2047

Petitioner

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Eugene M. Levine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the Petitioner and the Intervenor, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. The Petitioner, herein called AFGE, seeks an election in a unit of all nonsupervisory General Schedule and nonsupervisory Wage Board employees

in the Defense General Supply Center, Richmond, Virginia. The Intervenor, herein called NAGE, agrees that the unit petitioned for is appropriate. The Activity asserts that in order to promote effective dealings and efficiency of operations the unit petitioned for also should include certain employees of a tenant of the Activity plus all nonappropriated fund employees of the Activity.

The Activity, Defense General Supply Center, is located in Richmond, Virginia. Approximately seventy percent of its 3100 employees are in the General Schedule category and the remainder are Wage Board employees. About 2500 of the employees in the claimed unit work in three buildings located within a radius of 200 feet of each other. The remaining employees work in a storage operation about one-half mile from the other employees. The basic mission of the Activity and of similar supply centers located elsewhere throughout the country is to insure that the world-wide supply requirements of the Department of Defense are met. Thus, the work of the Activity is primarily that of procurement and supply. Its large technical directorate of engineering and cataloging technicians sees to it that the 300,000 different items used by the various military services meet government specifications and are available for distribution as needed. 1/

The Activity has a tenant, the U.S. Army Support Command, herein called USASC, which employs approximately 300 persons in Richmond. The USASC's mission is supply and maintenance. It rebuilds engines of all descriptions, builds and rebuilds pallets used for dropping heavy equipment from airplanes, and restores helmets, mess gear, clothing, parachutes, tents and related items. About 80 USASC clerical employees work in the same building as clerical employees of the Activity but not in the same room. The remaining 220 USASC employees work by themselves in a separate building. The Activity furnishes most of the essential staff assistance services and support required by the USASC under an established cross-service agreement. These include civilian personnel administration, comptroller services, data processing, repairs and utilities, safety and industrial health services, communications and equipment. In the area of civilian personnel administration, the personnel policies and regulations of the Commander of the Activity apply to employees of the USASC. 2/ Further, the Activity's Office of Civilian Personnel furnishes complete staff assistance in such areas as employment,

1/ The Activity reports to the branch of the Defense Supply Agency located in Cameron Station, Alexandria, Virginia.

2/ For example, employees of both commands compete under the same merit promotion program for vacancies in both commands.

human relations, employee development, incentive awards, and labor-management relations. However, the USASC's Commanding Officer reports directly to the Army Materiel Command in the Washington, D.C. area and retains authority and responsibility for the effective management and direction of employees under his command. Moreover, the respective Commanding Officers of the Activity and the USASC have no authority over each other's employees in matters of reductions-in-force, employee misconduct and adverse actions.

With respect to bargaining history, the record reveals that in 1963, the AFGE requested recognition in a unit composed of employees of both the Activity and the USASC. 3/ At that time the officers commanding the Activity and the USASC agreed to the combined unit. However, higher authority denied the AFGE's request. In 1967, the AFGE was granted exclusive recognition in a unit composed of the civilian employees of the Activity's restaurant, a nonappropriated fund activity. Subsequently, an agreement covering these employees was consummated and continued in force until the end of its two-year term in 1969. 4/ Also in 1967, the AFGE was accorded formal recognition in a unit of employees at the USASC. The AFGE obtained exclusive recognition for this unit in 1968. Pursuant to a request by the AFGE in 1969, an election was held at the Activity in a unit substantially the same as that petitioned for in this case. The AFGE did not receive a majority of the valid ballots cast.

Based on the foregoing, I find that the employees in the unit petitioned for share a clear and identifiable community of interest in that they have common supervision, working conditions, hours of work, grievance procedures, and leave policies. They also share a common mission in carrying out the objectives of the Activity. With respect to the contention of the Activity, that the unit is inappropriate because it does not include employees of the USASC, the evidence established that although the nonsupervisory General Schedule and Wage Board employees of both the Activity and the USASC share substantially the same working conditions, hours of work, leave policies and pay plans, they do not share a common agency mission, common supervision, or common grievance procedures. In addition, these employees are in separate competitive areas for purposes of reductions-in-force and separate channels are provided for approval of negotiated contracts. Moreover, the AFGE previously was granted exclusive recognition by the USASC in a unit composed of all nonsupervisory Wage Board and General Schedule employees and the evidence established that negotiations on an agreement are in process. Finally, it was noted that the record reveals that the Army Materiel Command, parent

3/ There is no evidence that nonappropriated fund employees were sought to be included in this unit.

4/ This agreement was not renewed.

organization of the USASC, takes the position that a unit combining the employees of the Activity and USASC would not be appropriate. In these circumstances, I find that the USASC employees do not share a community of interest with the employees in the claimed unit. 5/ Also, considering the separate bargaining history as to USASC employees and the Army Materiel Command's position that a combined unit would be inappropriate, the inclusion of USASC employees in the claimed unit would not, in my view, promote effective dealings and efficiency of agency operations.

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board employees at the Defense General Supply Center, Richmond, Virginia but excluding all nonappropriated fund employees, 6/ employees employed by the United States Army Support Command, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 7/

5/ I also find that the Activity's nonappropriated fund employees do not share a community of interest with employees in the claimed unit. These nonappropriated fund employees work in the officers' open mess, the non-commissioned officers' open mess, and in the Activity's cafeteria and bowling alley. Their jobs are not similar to those performed by the employees in the unit sought by the AFGE and they do not share common supervision, working conditions, hours of work, grievance procedures, reduction-in-force actions, leave or pay policies.

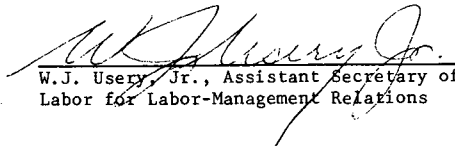
6/ My disposition with respect to nonappropriated fund employees is limited to the facts of this case.

7/ In its petition the AFGE excluded "temporary employees." Because the record does not set forth sufficient facts as to this classification of employees, I shall make no findings as to whether there are, in fact, "temporary employees" employed by the Activity who, because of their temporary status, should be excluded from the unit.

February 12, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 2047; by the National Association of Government Employees; or by neither.

Dated, Washington, D.C.
February 5, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF THE AIR FORCE,
910th TACTICAL AIR SUPPORT GROUP (AFRES)
YOUNGSTOWN MUNICIPAL AIRPORT, VIENNA, OHIO
A/SLMR No. 12

The subject case, involving a representation petition filed by the International Association of Fire Fighters, AFL-CIO, Local F-154, presented the question whether the fire fighter employees covered by the petition were "guards" within the meaning of the Executive Order based on their engaging in certain security functions at the Activity in addition to their fire fighting duties. If found to be "guards," the petition would be dismissed because under Section 10(c) of the Executive Order the Petitioner would not be qualified to represent such employees because it admits to membership employees other than guards.

In all the circumstances, the Assistant Secretary concluded that the fire fighters in the petitioned for unit were not guards. In reaching this determination, the Assistant Secretary relied on the fact that the fire fighters were not armed; did not have the authority to arrest or detain individuals; did not receive specific instructions in checking the installation for the presence of unauthorized persons nor for the loss of property; were supervised at all times by the fire department chief; and, the performance of the security duties could be characterized as temporary. Further, such duties were clearly subordinate to their duties and responsibilities as fire fighters.

In view of all these factors, the Assistant Secretary concluded that the performance of certain limited security duties by the fire fighters, did not give rise to a conflict of loyalties between that owed by the fire fighters to the Activity and that owed to their fellow employees or other union members.

Accordingly, the Assistant Secretary found that the employees in the claimed unit were not guards within the meaning of the Executive Order and he directed an election in a unit composed of all nonsupervisory fire fighters employed by the Activity.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF THE AIR FORCE,
910th TACTICAL AIR SUPPORT GROUP (AFRES)
YOUNGSTOWN MUNICIPAL AIRPORT, VIENNA, OHIO

Activity

and

Case No. 53-2973(RO)

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
AFL-CIO, LOCAL F-154

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer R. C. DeMarco. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Petitioner's brief, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. Petitioner, International Association of Fire Fighters, AFL-CIO, Local F-154, herein called IAFF, seeks an election in a unit of all fire fighters employed at the Youngstown Municipal Airport, Vienna, Ohio.

The Activity questioned whether the fire fighters, who perform

certain incidental security functions in addition to fire fighting, are "guards" within the meaning of Section 2(d) of Executive Order 11491. 1/

The 910th Tactical Air Support Group (AFRES), Youngstown Municipal Airport, Vienna, Ohio, is one of 11 different Air Force bases in the United States which comprise Headquarters Air Force Reserve, a major component of the United States Air Force. The mission of the Activity is to train Air Force ready reservists to maintain combat proficiency for recall to active military duty in the event of a national emergency or a war.

Of the approximately 198 civilian employees employed at the Youngstown Municipal Airport, there are 22 fire fighters including supervisors. The duties performed by the fire fighters include: (1) general maintenance of the fire fighting department's equipment and physical plant; (2) checking buildings for fire hazards; (3) repairing fire extinguishers; (4) performing standby duty while engines on aircraft are started and also while fuel is removed from aircraft; and (5) responding to military and civilian aircraft and structural fires at the base and municipal airport terminal.

In 1969 the Activity found it necessary to assign certain security or guard work to the fire fighters. By February 1970 the fire fighters were performing all of the security work at the base which consists primarily of gate duty and installation patrols. The fire fighters currently work scheduled shifts of 24 hours on and 24 hours off duty, 72 hours a week. A typical 24 hour shift includes 4 hours of gate duty at the main gate guard house, 4 hours of installation patrol duty, 8 hours of fire fighting duty and 8 hours of standby duty at the fire house. There are approximately 8 or 9 fire fighters on each shift. Of that number, 6 of the fire fighters perform both fire fighting and security duties during each shift.

In merging the fire fighting and security functions, the Activity designated 6 of the 22 fire fighters to perform security work. In actual practice, however, all of the fire fighters perform both functions.

Currently, the fire fighters stand watch at the main gate from 6:30 a.m. to 5:15 p.m., and 11:30 p.m. to 12:15 a.m., Monday through Friday. Their duties while on gate watch include checking visitors in and out of the airport, issuing visitor passes, controlling traffic and giving out

1/ Under Section 10(c) of Executive Order 11491, an Activity shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. There was no dispute in the record that the IAFF admits to membership employees other than guards.

information. In the event of a fire, a fire fighter on gate duty is instructed to lock the gate and respond to the fire alarm. There are 6 installation patrols made every 24 hours. In addition to checking buildings for potential fire hazards, the fire fighters check to see that the doors of the buildings are locked. The total amount of time expended by the fire fighters in performing the additional security functions represents approximately 8 percent of the total manhours worked by them during an average month.

All of the fire fighters work out of the base firehouse under the direct supervision of the Fire Chief or the Assistant Chiefs even while performing security work. None of these employees have received any training or have participated in drills to enable them to perform security work. The fire fighters wear regulation fire fighters' uniforms while performing security work, are not armed and have not received any training to gain proficiency in the use of fire arms. Nor do fire fighters have the authority to detain or arrest individuals. The record also reveals that they have never issued traffic tickets and have not had to investigate or make reports concerning incidents of pilferage. 2/

Prior to the merging of the fire fighting and security functions, the Activity employed a regular guard force. Each guard wore a distinctive guard uniform as well as a side arm carried in a gun holster. Although they did not possess arrest authority, they could detain an individual until local law enforcement authorities or Federal marshalls arrived at the base to pick up a suspect. Also, they issued visitor passes at the gate and were authorized to issue citations for traffic infractions. The guards worked out of the base security office under the direct supervision of a security chief and they worked 40 hours a week with 3 scheduled shifts each day of 8 hours duration.

Based on the foregoing facts, I find that the evidence demonstrates that the added security functions performed by the fire fighters in the subject case do not bring them within the meaning of "guards" as set forth in Section 2(d) of the Executive Order. In performing the security functions, the fire fighters wear their regular fire fighters uniforms; they are not armed or deputized; they have not received instructions or training in checking the installation for the presence of unauthorized persons, or for the loss of property, or the enforcement of rules established by the Activity; they are supervised by the fire chief and not by the chief of security; and, their performance of the security duties appears to be temporary. Moreover,

2/ As recently as fiscal year 1970, the other 9 civilian operated bases which comprise Headquarters Air Force Reserve, merged the fire fighting and security functions. At present however, the evidence reveals that these functions have been severed at all bases except one at Milwaukee, Wisconsin and the facility involved in the subject case. The Activity stated that it was hopeful that by the beginning of fiscal year 1972 the two functions will be completely severed at all of its facilities.

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their security duties are clearly subordinate to their duties and responsibilities as fire fighters. 3/

In the particular circumstances of the case, I find that the performance of certain limited security duties by the fire fighters does not in any real sense give rise to a conflict of loyalty between the Activity on the one hand, and their fellow employees on the other. Accordingly, I find that the petitioned for employees are not "guards" within the meaning of Section 2(d) of Executive Order 11491 and that the following unit is appropriate for the purpose of exclusive recognition:

All fire fighters employed by the 910th Tactical Air Support Group (AFRES), Youngstown Municipal Airport, Vienna, Ohio, excluding all employees engaged in Federal personnel work in other than purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

Election by secret ballot shall be conducted among the employees in the voting unit described above, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the voting unit who were

3/ The subordinate nature of their security duties is evidenced by, among other things, the limited amount of time spent in this regard and the fact that if a fire occurs, their primary responsibility is to answer the fire alarm notwithstanding the fact that they are engaged at that time in a security function.

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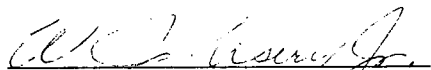
February 22, 1971

employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by International Association of Fire Fighters, AFL-CIO, Local F-154. 4/

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. SOLDIERS' HOME
WASHINGTON, D.C.
A/SLMR No. 13

Dated, Washington, D.C.
February 12, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

This case, which arose as a result of a representation petition filed by the District of Columbia Nurses' Association, American Nurses' Association, raised the question whether Supervisory Clinical Nurses were supervisors and should therefore be excluded from the petitioned for unit.

The evidence established that the employees who comprised the petitioned for unit were 27 Clinical Nurses and 5 Supervisory Clinical Nurses who performed professional nursing and patient care duties in the Activity's hospital wards, clinics and emergency room. In contending that its claimed unit, including both classifications, was appropriate, the Petitioner asserted that Supervisory Clinical Nurses and Clinical Nurses performed the same duties, that their roles were interchangeable, and, that effective supervision of all nurses in the Nursing Service emanated from the Assistant Director of Nursing. The Activity contended that Supervisory Clinical Nurses were "supervisors" as defined in the Order, and should therefore be excluded from the proposed unit.

The Assistant Secretary found the Supervisory Clinical Nurses to be "supervisors" on the basis of evidence in the record which showed that they instructed and directed the work of subordinate employees; they approved leave and vacations; and, that they made written performance evaluations of all personnel assigned to them including Clinical Nurses. The Assistant Secretary noted also that Supervisory Clinical Nurses participated in the Activity's hiring procedures by recommending the retention or discharge of probationary employees.

In these circumstances, the Assistant Secretary directed that an election be held in a unit of Clinical Nurses, excluding, among others, Supervisory Clinical Nurses.

4/ Representatives of American Federation of Government Employees, Local 1952 (AFGE), entered an appearance at the hearing and were permitted to participate, throughout, playing a "neutral role". The evidence reveals that the AFGE did not submit a showing of interest to the Area Administrator, nor did it present any other basis to support its intervention in this matter. Accordingly, the placement of its name on the ballot is not warranted.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. SOLDIERS' HOME, WASHINGTON, D.C.

Activity

and

Case No. 22-1926(RO)

DISTRICT OF COLUMBIA NURSES' ASSOCIATION,
AMERICAN NURSES' ASSOCIATION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gerald W. Welcome. The Hearing Officer's rulings made at the hearing are found to be free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. The Petitioner seeks an election in a unit of Clinical Nurses and Supervisory Clinical Nurses located in the Activity's Nursing

Service. ¹/ The Petitioner contends that Supervisory Clinical Nurses are not "supervisors" within the meaning of Executive Order 11491 because the duties of the Supervisory Clinical Nurses and Clinical Nurses are interchangeable, and that effective supervision of all registered nurses in the Nursing Service emanates from the Assistant Director of Nursing. Therefore, the Petitioner asserts that all Clinical Nurses, including Supervisory Clinical Nurses, have a clear and identifiable community of interest so as to warrant their inclusion in the same bargaining unit. The Activity contends that Supervisory Clinical Nurses supervise, effectively, both professional and nonprofessional employees in the Nursing Services and are therefore "supervisors" as defined in the Executive Order who should be excluded from the petitioned for unit.

The Nursing Service is one of the five subordinate components which comprise the Chief Surgeon's Department of the U.S. Soldiers' Home, Washington, D.C. Its mission is to provide professional and technical services required in the Activity's nursing and patient care operations. The Service operates under the direct administration of a Director of Nursing and an Assistant Director of Nursing.

In performing its function, the Nursing Service employs a staff consisting of, among others, registered nurses, practical nurses, medical technicians, nurses assistants and clerical personnel. These employees are assigned to one of three subordinate sections -- the Ward Nursing Section; the Clinical Nursing Section, or the Central Supply Section.

The function of the Ward Nursing Section is to provide professional nursing and patient care service in the Activity's various hospital wards. The professional staff in the Section consists of 15 Contract Nurses, 5 Supervisory Clinical Nurses, and 27 Clinical Nurses. The Section employs also a staff of 172 nonprofessional medical personnel, including 21 supervisory Nurses Assistants, 141 Nurses Assistants, and 10 Trainee Nurses Assistants. Five clerk-typists comprise the Section's clerical staff.

¹/ The petition describes a unit consisting of, "Head Nurses, Staff Nurses and other nonsupervisory Registered Nurses; excluding Supervisory Registered Nurses". The Activity's organization chart does not show "Head Nurses" or "Staff Nurses" as existing positions; however, the Petitioner did not challenge the Activity's assertion that the petitioned for unit consisted of 27 Clinical Nurses and 5 Supervisory Clinical Nurses located in the Ward Nursing Section. The record shows that an additional Supervisory Clinical Nurse has been designated Chief of the Clinical Nursing Section. There is further evidence in the record which shows that 16 registered nurses are employed in the Nursing Service under the designation, "Contract Nurse." These employees are Nuns who function as supervisory nurses and the Petitioner has not included these Contract Nurses in its petitioned for unit.

The personnel of the Clinical Nursing Section are responsible for providing nursing and patient care service in the Activity's clinics and emergency room. One nurse is assigned to this Section and she is classified as a Supervisory Clinical Nurse. She is designated as Chief of the Section. The nonprofessional staff of the Section consists of 3 Supervisory Nurses Assistants, 11 Nurses Assistants, 4 Medical Assistants, and 3 Inhalation Therapy Technicians.

The Central Supply Section employs one Contract Nurse, who is designated as Chief of the Section. There are 5 nonprofessional employees in the Section including one Supervisory Medical Aid and 4 Medical Aides.

The record reveals that the Assistant Director of Nursing conducts the initial interview of job applicants and makes job assignments. However, new employees are hired on a trial basis and, during their probationary period, their performance is evaluated by the Supervisory Clinical Nurse to whom they are assigned. At the end of the trial period, the Supervisory Clinical Nurse prepares and signs a written evaluation of the employee with a recommendation to the Chief Surgeon for the employee's retention or discharge. Supervisory Clinical Nurses prepare periodic written evaluations of the performance of all employees assigned to them. This evaluation, which is made on an Employee Annual Rating Sheet, rates the employees' performances in such areas as, "cooperation, dependability, interest, industry and personal appearance." Upon completion of the rating, the Supervisory Clinical Nurse and the employee meet with the Assistant Director of Nursing to discuss the evaluation. The Supervisory Clinical Nurse and the employee then sign the rating form and the Assistant Director of Nursing signs the evaluation as the Reviewing Officer. The evidence also establishes that the Supervisory Clinical Nurses instruct and direct nonprofessional employees in rendering patient care and that Supervisory Clinical Nurses approve leave and vacations for nonprofessional employees.

With respect to the relationship between the Supervisory Clinical Nurses and other Clinical Nurses, the evidence establishes that, often, they work side-by-side in rendering patient care. The Supervisory Clinical Nurses work only during the day shift, while the other Clinical Nurses rotate between day and evening shifts, and among the various wards. The record reveals that on occasion Clinical Nurses perform some of the duties required of Supervisory Clinical Nurses on a "relief" basis.

The position description for the Supervisory Clinical Nurses shows that incumbents in that position work under the direct supervision of the Director of Nursing, and that they are responsible for the, "...overall administration of a ward nursing unit and, ...direct supervision of all ward activities and personnel on the day shift." It indicates further that they organize and supervise all personnel in the wards; make work assignments; direct and review work in progress and, on completion, instruct personnel on methods and procedures of patient care; evaluate the performance of all personnel assigned to them; approve employee annual leave and vacations; recommend disciplinary action, promotions

and incentive awards and resolve informal grievances and complaints. In emergency situations, Supervisory Clinical Nurses are expected to relieve in the Nursing Service Office, assuming staff administration responsibilities.

Based upon the foregoing, I find that Supervisory Clinical Nurses are "supervisors" as defined in the Executive Order and therefore, should be excluded from the petitioned for unit. 2/ The record shows that Supervisory Clinical Nurses instruct and direct the work of subordinate employees; they approve leave and vacations; and they participate, actively and effectively, in the Activity's hiring procedures, by recommending the retention or discharge of probationary employees. The record also shows that Supervisory Clinical Nurses prepare periodic written performance evaluations of all employees assigned to them, including Clinical Nurses. With respect to the relationship between the Supervisory Clinical Nurses and the Clinical Nurses, although the record shows that they work as a professional team in rendering patient care, it is clear that Clinical Nurses are aware of the fact that, at all times, they occupy positions which are subordinate to the Supervisory Clinical Nurse, that they work only in "relief" of the Supervisory Clinical Nurse when performing some of the latter's supervisory functions, and that Supervisory Clinical Nurses are responsible for those duties assigned to them, even when they are being performed by "relief" personnel.

In these circumstances, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Clinical Nurses employed in the Nursing Service, Chief Surgeon's Department, U.S. Soldier's Home, Washington, D.C., excluding Supervisory Clinical Nurses, Contract Nurses, employees engaged in Federal Personnel work in other than a purely clerical capacity, other professional employees, management officials, and other supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall

2/ This finding includes also the Supervisory Clinical Nurse who is designated as Chief of the Clinical Nursing Section. With respect to Contract Nurses, the parties agreed that they should be excluded from the petitioned for unit.

February 22, 1971

supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the District of Columbia Nurses' Association, American Nurses' Association.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

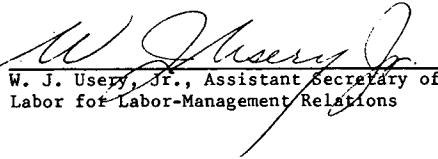
MINNESOTA ARMY NATIONAL GUARD
A/SLMR No. 14

Dated, Washington, D.C.
February 22, 1971

This case involved representation petitions filed by the Minnesota Chapter (Army) Association of Civilian Technicians, Inc. (ACT) and the American Federation of Government Employees, Minnesota Army National Guard, Local 3066 (AFGE). The ACT sought an election in a unit comprised of all Wage Board technicians in the Minnesota Army National Guard including certain General Schedule technicians in the Combined Support Maintenance Shop and the Annual Field Training Equipment Pool at Camp Ripley, Minnesota. The unit petitioned for by the AFGE included all the Wage Board and General Schedule technicians in the Minnesota Army National Guard.

The Assistant Secretary found that the unit sought by the ACT was not appropriate. In this regard, the evidence revealed that on occasion Wage Board employees performed certain duties performed ordinarily by General Schedule employees; that the Wage Board employees did not perform skills which would entitle them to separate representation on a craft or multi-craft basis; and that in many instances Wage Board and General Schedule employees had common work areas and common supervision. Moreover, it was noted that there was no justification for combining a small segment of General Schedule employees at Camp Ripley with the Wage Board technicians throughout the State inasmuch as there were other General Schedule employees performing similar duties in connection with maintenance work at other installations throughout the State who were not included in the unit sought. In these circumstances, the Assistant Secretary determined that the petition filed by the ACT should be dismissed.

The Assistant Secretary also found that the unit petitioned for by the AFGE was appropriate and, accordingly, he directed that an election be held in a unit of all Wage Board and General Schedule technicians in the Minnesota Army National Guard. In reaching this determination, the Assistant Secretary found particularly relevant the highly integrated nature of the functions performed by the Wage Board and General Schedule technicians as well as the fact that the Adjutant General administered the technicians' personnel program on a State-wide basis which resulted in uniform personnel practices throughout the State.


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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

MINNESOTA ARMY NATIONAL GUARD

Activity

and

Case No. 51-1243

MINNESOTA CHAPTER (ARMY)
ASSOCIATION OF CIVILIAN TECHNICIANS, INC.

Petitioner

MINNESOTA ARMY NATIONAL GUARD

Activity

and

Case No. 51-1276

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
MINNESOTA ARMY NATIONAL GUARD, LOCAL 3066

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491 a consolidated hearing was held before Hearing Officer John Kegley. The Hearing Officer's rulings made at the hearing are free from pre-judicial error and are hereby affirmed.

Upon the entire record in these cases, including a brief filed by the American Federation of Government Employees, Minnesota Army

National Guard, Local 3066, herein called AFGE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In Case No. 51-1243, Petitioner, Minnesota Chapter (Army) Association of Civilian Technicians, Inc., herein called ACT, seeks an election in a unit of all Wage Board technicians in the Minnesota Army National Guard including the General Schedule technicians in the Combined Support Maintenance Shop and the Annual Field Training Equipment Pool at Camp Ripley, Minnesota. In Case No. 51-1276, the AFGE seeks an election in a unit comprised of all Wage Board and General Schedule technicians in the Minnesota Army National Guard. The Activity agrees with the ACT that a unit of all Wage Board technicians including General Schedule technicians employed in the Combined Support Maintenance Shop and the Annual Field Training Equipment Pool, but excluding all other General Schedule technicians, is appropriate.

The evidence establishes that General Schedule technicians are employed in 66 armories and National Guard locations in the State of Minnesota, whereas the Wage Board technicians are employed in only 19 of these installations. Both types of technicians are employed at Camp Ripley, where the Combined Support Maintenance Shop and the Annual Field Training Equipment Pool are located. The record discloses some bargaining history on a State-wide basis under Executive Order 10988 when an Advisory Council was set up for the purpose of representing the technicians in regard to their grievances and working conditions. Representatives on this Council were chosen from among both Wage Board and General Schedule technicians, and matters relating to their problems were discussed at the level of the Adjutant General, the commanding officer of the Minnesota National Guard. This arrangement existed for about two years. 1/

Technicians are selected usually from the military ranks by the commander of a military unit such as a company, battalion, brigade or division, and they then are appointed to Federal service by order of the Adjutant General. They are exempted from Civil Service competitive status but receive all the Federal employment benefits pertaining to leave, Federal Employee Compensation, life and health insurance, severance pay, tenure and status. The Adjutant General is responsible for the administration of the technicians' program and, in that connection, he has authority to appoint, assign, promote, demote, reassign, suspend,

1/ The record does not indicate the date of the inception of the Council or the type of recognition that was accorded to it by the Activity.

discipline and separate them in regard to their employment. He also makes periodic reviews and analyses of personnel management and practices as they pertain to the technicians throughout the State; establishes the basic work week including irregular work weeks or tours of duty as required; institutes and maintains programs for career development, training, incentive awards and merit promotions; and provides information to the technicians with respect to their responsibilities and obligations as Federal employees including their right of appeal and the procedures for requesting review of grievances and complaints.

The Minnesota National Guard employs Wage Board technicians in maintenance and repair work, whereas the General Schedule technicians perform duties pertaining to administrative and supply functions. Some of the General Schedule employees do the "paper work" in the headquarters of the various military units, but most of these administrative and supply technicians are engaged in keeping records of the maintenance work performed by the Wage Board or "shop technicians" and providing the parts and supplies used by them. Normally, only one or two General Schedule technicians are employed at National Guard installations where there is no need for Wage Board technicians. However, in those installations where Wage Board employees are performing maintenance work, a number of administrative and supply technicians work in close relationship with them. Thus, where maintenance or repair work is required on any military equipment, from canvas to fuel-propelled vehicles, it is customary for a General Schedule records clerk to notify the shop foreman, and he, in turn, has his General Schedule records clerk log the request and make out a work order. The foreman, then assigns the job to a "shop technician," who proceeds to obtain the necessary supplies from a General Schedule "parts man" in order to perform the work. 2/

The record also establishes that the Wage Board technicians work on production control records and in the parts department at times when there are shortages of General Schedule technicians because of illnesses or job vacancies. Supervision of the two classifications of technicians differs at the lowest or immediate level in that the General Schedule employees performing administrative and supply work in headquarters and other areas generally are supervised by the commander of a military unit, whereas the Wage Board technicians usually answer either to a shop foreman or a staff officer, who reports directly to the Adjutant General. However, all General Schedule and Wage Board technicians are attached to a specific unit, such as a battalion or a brigade, and therefore, are subject to overall supervision by the same commander. Moreover, in maintenance areas, such as the one at Camp Ripley, both types of technicians have a common supervisor. 3/

2/ This routine is followed in the Combined Support Maintenance Shop at Camp Ripley.

3/ The record also reveals that promotion policies for both General Schedule and Wage Board technicians are the same.

Viewed in its entirety, I find that the record does not establish a basis for finding a state-wide unit of Wage Board technicians including a small group of General Schedule technicians at Camp Ripley, as sought by the ACT, to be appropriate. The evidence demonstrates that the Wage Board or "shop technicians" at times perform the record-keeping and parts department duties of the General Schedule technicians. Also, the record revealed that General Schedule technicians on occasion are engaged in supply work and that the Wage Board and General Schedule employees often have common work areas, and in a substantial number of instances, have common supervision and a relatively high degree of interchange of duties and contact in their work. In these circumstances, I find that the Wage Board technicians do not constitute a distinct and homogeneous group of skilled employees who would be entitled to separate representation on a craft or multi-craft unit basis. Moreover, there is no justification for combining a small segment of General Schedule technicians at Camp Ripley with the Wage Board technicians throughout the State inasmuch as there are other General Schedule technicians performing similar duties in connection with maintenance work at other installations throughout the State who were not included in the unit sought. Accordingly, I find that the unit sought by the ACT is not appropriate.

I also find, based on the foregoing, that a unit comprised of all Wage Board and General Schedule technicians in the Minnesota Army National Guard is appropriate. 4/ As noted above, the evidence establishes that these technicians perform highly integrated functions. Both classifications of technicians often have common work areas, have common supervision, and there is substantial interchange of duties and contact in their work. 5/ Moreover, the Adjutant General administers the technicians' personnel program on a State-wide basis which results in uniform personnel practices throughout the State. Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Wage Board and General Schedule technicians in the Minnesota Army National Guard, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

4/ See Pennsylvania National Guard, A/SLMR No. 9

5/ Although the work locations, immediate supervision and the skills of the General Schedule technicians who do the "paper work" or office clerical duties in the headquarters of the various military units differ from those of the other technicians, they are included in the appropriate unit because all of the technicians perform highly integrated functions which serve to maintain the continuity of the Minnesota National Guard and further, they have common fringe benefits, tenure and status.

March 3, 1971

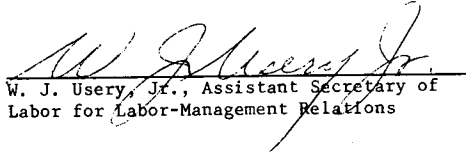
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 51-1243 be, and it hereby is, dismissed. 6/

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, Minnesota Army National Guard, Local 3066; or by the Minnesota Chapter (Army), Association of Civilian Technicians, Inc., or by neither.

Dated, Washington, D.C.
February 22, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

6/ As the ACT's showing of interest is sufficient to treat it as an intervenor in Case No. 51-1276, I shall direct that its name be placed on the ballot. However, because the unit found appropriate is larger than the unit it sought initially, I shall permit it to withdraw from the election upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision.

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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

FEDERAL AVIATION ADMINISTRATION
NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER (NAFEC)
ATLANTIC CITY, NEW JERSEY
A/SLMR No. 15

In this case, which arose as a result of a representation petition filed by the National Federation of Federal Employees, Local 1340, (NFFE), the Petitioner sought a division-wide unit consisting of all nonsupervisory Wage Board employees located in the Activity's Aircraft Facilities Division. The evidence revealed that the unit sought covered only the 65 aircraft mechanics, one painter, one cleaner, one parachute rigger, one fuel handler and one tool crib attendant, who were employed by the Division; and, that all of the employees so described were located solely in the Aircraft Maintenance Section - one of two subordinate components of the Division's Aircraft Maintenance Branch.

The facts in the case indicated that the Aircraft Maintenance Branch was the only branch of the Division performing repair and maintenance work on aircraft located at the Activity. The Wage Board employees assigned to the Aircraft Maintenance Section were responsible for work on the airframes and engines of the aircraft. A second subdivision of the Branch - the Avionic Maintenance Section, consisted of 21 General Schedule avionic technicians, who were responsible for work on the radar, radio and electronic equipment of the aircraft.

The Intervenor, American Federation of Government Employees, Local 2335, AFL-CIO, (AFGE), opposed the petitioned for unit on the basis that a division-wide unit, or a branch-wide unit, should include both Wage Board and General Schedule personnel. The Activity took the position that it could accommodate either of the units proposed by the NFFE or the AFGE without affecting adversely the efficiency of its operations.

The Assistant Secretary found that the unit sought by the Petitioner was located in the Aircraft Maintenance Section and consisted of a group of employees who constituted a unit appropriate for the purpose of exclusive recognition. Accordingly, he directed that an election be held in this unit. In so deciding, the Assistant Secretary noted that the employees in the Aircraft Maintenance Section had specialized training and experience to perform certain tasks which were not performed by any other employees in the Division; that they were licensed, specifically, to work on designated parts and sections of aircraft; and, that there was no interchange between the employees in the Aircraft Maintenance Section and other Division employees, including the General Schedule

avionic technicians. The Assistant Secretary noted also that the employees in the Aircraft Maintenance Section were the only Wage Board employees in the Division; that their organization, supervision and work shops were separate and distinct from the Activity's other components; and that the Activity currently recognizes several labor organizations on an exclusive basis covering units similar in scope to that petitioned for in the subject case.

A/SLMR No. 15

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

FEDERAL AVIATION ADMINISTRATION,
NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER (NAFEC),
ATLANTIC CITY, NEW JERSEY

Case No. 32-1507(R0)

Activity

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1340

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2335 ^{1/}

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Charles L. Smith. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. The Petitioner, the National Federation of Federal Employees, Local 3140, herein called NFFE, seeks to represent employees in a unit consisting of all nonsupervisory Wage Board employees of the Activity's Aviation

^{1/} The Intervenor's name appears as amended at the hearing.

Facilities Division, Atlantic City, New Jersey. 2/ The Intervenor, American Federation of Government Employees, AFL-CIO, Local 2335, herein called AFGE, contends that the NFFE's claimed unit is inappropriate, in that a Division-wide (or Branch-wide) unit should include both General Schedule and Wage Board employees. The Activity states that it can accommodate either of the units proposed by the NFFE and the AFGE without affecting adversely the efficiency of its operations.

The Activity's Aviation Facilities Division is composed of seven offices or branches. Each of these components is a functionally distinct and separate operation. 3/ Individual branch chiefs establish the basic operating policies for their respective branches and report directly to the Division Chief. Under the existing grievance procedures, formal employee grievances are received by the chief of the branch in which they originate and are referred to the Division Chief for decision. Grievance decisions of the Division Chief can be appealed only to the Director of the Activity. The various branches are subdivided into sections which are under the direct supervision of section chiefs; however, in some sections, employees are assigned to work shifts under the supervision of shift supervisors.

Currently, the General Schedule and Wage Board employees of the Division are not represented on an exclusive basis. Under Executive Order 10988, a predecessor of the Activity granted exclusive recognition to the International Association of Machinists and Aerospace Workers (IAM). The recognized unit was composed of General Schedule and Wage Board employees in the Division who were classified as aircraft mechanics, avionic technicians and quality control inspectors. 4/ In 1968, the Activity withdrew recognition from the IAM based on its view that the Union no longer represented a majority of the employees in the unit. In addition, the record indicates that the Activity has granted exclusive recognition to several labor organizations covering various units which are similar in scope to that petitioned for in the subject case.

2/ The record shows that all such employees are employed by the Aircraft Maintenance Branch, a subdivision of the Aviation Facilities Division. This Branch employs both General Schedule and Wage Board personnel; however, all of the Wage Board employees are assigned to a subordinate section within the Branch - the Aircraft Maintenance Section. During the hearing, the NFFE expressed a willingness to amend its petition to show the actual location of the employees it seeks. The NFFE did not indicate that it intended to include any of the Branch's General Schedule personnel in its claimed unit.

3/ These components are the Administrative Office, Central Dispatch Office, Airport Operations Branch, Light Operations Branch, Engineering Branch, Quality Control Branch and Aircraft Maintenance Branch.

4/ The record shows that two of these classifications, the aircraft mechanics and avionic technicians, are located currently in the Division's Aircraft Maintenance Branch. One contract was executed by the parties covering both the General Schedule and Wage Board employees. There were, however, certain special provisions in the contract which were made applicable solely to Wage Board employees.

The function of the Aircraft Maintenance Branch is the repair and maintenance of aircraft located at the Activity. 5/ Prior to July 1965, this work was performed under a service contract between the Federal Aviation Administration (FAA) and the Lockheed Aircraft Company. Subsequently, the contract was allowed to expire and the Activity assumed responsibility for aircraft maintenance under a reorganization program that created the Aviation Facilities Division. 6/ An Assistant Division Chief was assigned the administrative responsibilities for the aircraft maintenance function, but, another reorganization at the Activity, in 1968, resulted in the elimination of the functions of the Assistant Division Chief and created the present Aircraft Maintenance Branch. The employees in the Branch are now assigned to one of two functional sections, the Aircraft Maintenance Section or the Avionic Maintenance Section.

Aircraft Maintenance Section

This Section employs 70 Wage Board employees, including sixty-five (65) aircraft mechanics, one painter, one cleaner, one parachute rigger, one fuel handler and one tool crib attendant. 7/ Also, there are six General Schedule employees located in the Aircraft Maintenance Section, including a Section Chief, four shift supervisors and one clerk-typist. The shift supervisors direct the work of employees on their shifts and report directly to the Section Chief who, in turn, reports to the Branch Chief. Shift supervisors attempt to resolve informal grievances and complaints originating in the Section and, when settlement is not attained, they refer these matters to the Section Chief.

5/ It appears that the Aircraft Maintenance Branch is the only component of the Activity performing this function.

6/ Following the expiration of the service contract, many of the Lockheed Company employees were hired by the Activity. These employees are the non-supervisory Wage Board personnel located currently in the Aircraft Maintenance Section.

7/ Since these are the only nonsupervisory Wage Board employees working currently in the Aviation Facilities Division, it is clear that these are the employees covered by the NFFE's petition.

The personnel in the Section perform repair and maintenance work on the airframe and engines of aircraft assigned to the Activity. They have specialized training and experience to perform this function and are expected to have attained a degree of proficiency in their fields to qualify for the Federal Aviation Administration's Airframes and Power Plant Mechanics' license. The record shows that the work performed by employees in this Section is highly specialized and that they work, generally, in the same locations. Although they normally perform their tasks directly on the aircraft, there are occasions when employees in the Section will remove a particular part to a separate shop or "modification" room. The record shows also that there is no interchange between the employees in the Section and other Division employees, 8/ and that the employees in the Section have the same hours and other conditions of employment.

Avionic Maintenance Section

This Section employs twenty-one (21) General Schedule Avionic technicians. The record shows that these employees are electronic technicians who perform repair and maintenance work on aircraft radar, radio and electronic equipment. 9/ The Section employs also a General Schedule Section Chief and four General Schedule shift supervisors who direct the work of the employees. The shift supervisors report directly to the Section Chief who, in turn, reports to the Branch Chief. Shift supervisors handle all informal grievances and complaints originating in the Section.

Avionic technicians have specialized training and experience in their field which allow them to qualify for a Federal Communications Commission license. The work performed by these employees is highly specialized and is not duplicated by any other employees in the Division. Employees in the Section perform their duties in the same general locations; and on occasion they work out of a "radio shop" where they perform radar and radio repair tasks. The evidence shows that there is no interchange

8/ The record shows that on past occasions, aircraft mechanics with electronics backgrounds have been transferred into the Avionic Maintenance Section. However, all such transferred employees were promoted to avionic technicians and were severed completely from the operations and supervisory control in the Aircraft Maintenance Section. There is no evidence which shows that avionic technicians have been transferred to the Aircraft Maintenance Section.

9/ The evidence shows that the personnel in the Avionic Maintenance Section were not formerly employed by the Lockheed Company. The record indicates that they were transferred into the Activity, as an existing functional group, from another FAA installation.

between the avionic technicians and other Division employees, including the employees of the Aircraft Maintenance Section. 10/ Employees in the Avionic Maintenance Section work under the same salary scale and have the same hours and other conditions of employment.

Despite the fact that neither the NFFE's petition, nor its proposed amendment of the petition at the hearing, specified the Aircraft Maintenance Section of the Aircraft Maintenance Branch as the location of the claimed employees, the record is clear that the NFFE is seeking all Wage Board employees in the Aircraft Maintenance Branch, and that all such employees are, in fact, located in the Branch's Aircraft Maintenance Section. The evidence establishes that the employees in the Aircraft Maintenance Section have specialized training and experience to perform certain tasks; that they are the only Wage Board employees within the Aviation Facilities Division; and, that they are licensed, specifically, to work on designated parts and sections of aircraft. Also, there is no interchange between the employees of the Aircraft Maintenance Section and other Division employees, including the General Schedule avionic technicians. Although employees in this Section work at times in the same areas, and often on the same aircraft, as other employees of the Division, their organization, supervision and workshops are separate and distinct from the Activity's other components.

In these circumstances, and noting the fact that the Activity does not disagree with the unit sought and that exclusive recognition has been granted in other units of similar scope, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All Wage Board employees of the Federal Aviation Administration, National Aviation Facilities Experimental Center, Aviation Facilities Division, Atlantic City, New Jersey, who are employed in the Aircraft Maintenance Section of the Aircraft Maintenance Branch, excluding all General Schedule employees, professional employees, employees engaged in Federal Personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

10/ The record shows that the aircraft mechanics and avionic technicians often work in the same areas of the flight line and often on the same aircraft. However, on such occasions, employees of the two sections are supervised separately and there is no interchange between the two groups of employees.

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1340; or by the American Federation of Government Employees, AFL-CIO, Local 2335; or by neither.

Dated, Washington, D.C.
March 3, 1971

W. J. Usery Jr.

W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

INTERNAL REVENUE SERVICE,
NEW ORLEANS DISTRICT
A/SLMR No. 16

This case involved representation petitions filed by the National Association of Internal Revenue Employees, Chapter 6 (NAIRE) and the National Federation of Federal Employees, Local 22 (NFFE). NAIRE sought a unit of professional and nonprofessional nonsupervisory employees of the Internal Revenue Service, New Orleans, Louisiana District. The NFFE sought a unit of all nonsupervisory Internal Revenue agents located in the Activity's headquarters office in New Orleans, Louisiana.

The Assistant Secretary found that a unit composed solely of Internal Revenue agents located in the Activity's New Orleans, Louisiana headquarters, as proposed by the NFFE, was inappropriate. In this regard, he noted that the Activity had a centralized administrative and supervisory structure for all employees within the District. He also noted that headquarters agents, field agents and employees in other job classifications throughout the District had many common skill requirements, performed similar functions, had frequent contacts in the headquarters office and promotional opportunities were available on a District-wide basis. In these circumstances, the Assistant Secretary concluded that the unit sought by the NFFE limited to agents located solely at the Activity's headquarters office was not appropriate and, accordingly, he directed that its petition be dismissed.

The Assistant Secretary also found that the District-wide unit petitioned for by the NAIRE was appropriate. In reaching this conclusion, he noted particularly the uniform personnel practices and policies within the District and the fact that there was no variation in the qualifications for employment or the work to be performed in the respective job classifications throughout the District. The Assistant Secretary also noted the fact that promotional opportunities were available on a District-wide basis and that there was a substantial interrelationship between employees in many of the job classifications within the District. In these circumstances, and because, in his view, such a comprehensive unit would promote effective dealings and efficiency of agency operations, the Assistant Secretary directed that an election be conducted in the unit petitioned for by the NAIRE.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

INTERNAL REVENUE SERVICE,
NEW ORLEANS DISTRICT 1/

Activity

and

Case No. 64-1094(E)

NATIONAL ASSOCIATION OF INTERNAL
REVENUE EMPLOYEES, CHAPTER 6

Petitioner

INTERNAL REVENUE SERVICE,
NEW ORLEANS DISTRICT

Activity

and

Case No. 64-1099(E)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 22

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Donald H. Williams. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The name of the Activity appears as amended at the hearing.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In Case No. 64-1094(E), Petitioner, National Association of Internal Revenue Employees, Chapter 6, herein called NAIRE, seeks an election in a unit of all professional and nonprofessional nonsupervisory employees of the Internal Revenue Service in the New Orleans, Louisiana District. In Case No. 64-1099(E), Petitioner, National Federation of Federal Employees, Local 22, herein called NFFE, seeks an election in a unit of all nonsupervisory Internal Revenue agents whose official "post of duty" 2/ is New Orleans, Louisiana. The Activity contends that the unit sought by the NAIRE is appropriate and that it is consistent with the units which traditionally have been established in the Internal Revenue Service. On the other hand, it asserts that the employees sought by the NFFE do not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operations.

The Activity's headquarters, located in New Orleans, Louisiana, is organized under the administration of the District Director and his assistant. In addition to the headquarters office, the New Orleans District is composed of 8 duty posts scattered over the State of Louisiana. 3/ The New Orleans District consists of approximately 426 employees. The number of persons classified by the Activity as professional 4/ throughout the District totals 294 and the number of nonprofessional employees throughout the District totals 132.

2/ It is clear from the record that "post of duty" refers to those agents located in the Activity's headquarters office in New Orleans, Louisiana.

3/ These posts are located in Bogulusa, Houma, Baton Rouge, Lafayette, Lake Charles, Alexandria, Monroe and Shreveport.

4/ The Activity considers the following occupations to be professional occupations: internal revenue agents, tax auditors, revenue officers, attorneys, estate tax and engineers. Apparently, the Petitioners agreed to adopt the Activity's classification of employees as to their professional and nonprofessional status. As the record does not set forth sufficient facts in this respect, I will make no findings as to which employee classifications constitute professional employees.

General responsibility for the administration of the entire District operation rests with the District Director and his assistant. At headquarters, there are three staff units, i.e., personnel, training and facilities management - as well as three enforcement divisions, i.e., Collection, Audit and Intelligence divisions. The personnel unit handles all personnel matters for the entire New Orleans District, and the training and facilities management units provide training support and facilities and equipment respectively for the entire District. The Collection Division is charged with the responsibility for collecting delinquent tax accounts and securing delinquent returns as well as providing a taxpayers service by assisting in, among other things, the preparation of returns and the adjusting of tax accounts. The Audit Division is charged with the examination of income, estate, gift, employment and excise tax returns for the purpose of determining the correct liability of those taxpayers whose returns they examine. The Intelligence Division examines cases of suspected tax fraud.

The record discloses that although the Activity's facilities throughout the District are separated geographically from its headquarters, supervision of employees assigned to outlying duty posts as well as headquarters is maintained through a chain of supervision which begins with the District Director at headquarters. He has the authority to hire and fire, to promote and demote, and to transfer and reassign all District employees. Moreover, the District's personnel practices and policies apply equally to all employees on a District-wide basis. Thus, up to General Schedule Grade 13, automatic consideration for promotion is on a District-wide basis and employees in one job classification may compete for jobs in another classification. In this respect, there is evidence of transfers between headquarters and field personnel.

The qualifications for Internal Revenue agents are the same throughout the District. They must have knowledge of accounting, tax law and regulations and business practices as well as the ability to investigate, write reports and meet and deal with people. Agents generally examine individual, business and non-business returns. ^{5/} They are responsible for the review of the return, for planning the examination, contacting the taxpayer, examining the books and records, and writing a report.

The record reveals that other classifications of employees throughout the District are required to have similar qualifications, perform similar work, and have substantial contacts with agents. Thus, the qualifications for a tax auditor and a revenue officer are similar to those of agents and, in many instances, training sessions for agents, tax auditors and revenue officers are held on a joint basis. With respect to similarity of work, the evidence reveals that tax auditors on the District's review staff or in its excise tax group perform the same work as is performed by agents. Also, tax auditors and revenue officers classify returns and give

^{5/} Some agents also perform the specialized work of a pension trust examiner. Others review the determinations made by examining agents and still others participate as conferees on the Activity's conference staff with other employees in other job classifications.

assistance to taxpayers in much the same manner as agents perform these functions. As noted above, agents also have substantial contacts with employees in other classifications in the District particularly in headquarters. Thus, along with other classifications of employees, all headquarter's agents have access to the Audit Division library and they also share common lunchroom facilities and engage in joint social and recreational activities held within the District.

Based on the foregoing, I find that the unit sought by the NFFE covering all nonsupervisory Internal Revenue agents having an official post of duty in New Orleans, Louisiana is inappropriate. As noted above, the record reveals that the Activity has a centralized administrative and supervisory structure for all of the District's employees; that agents located in the headquarters office, other agents in the field offices within the District and other classifications of District employees have many common skill requirements and perform similar functions; that headquarters agents have frequent contacts with other classifications of employees in the headquarters office; and that promotional opportunities are available on a District-wide basis. In these circumstances and noting also the Activity's contention that a unit limited to agents located in its headquarters office would not promote effective dealings and efficiency of its operations, I find that the unit sought by the NFFE is not appropriate.

I also find, based on the foregoing, that a District-wide unit of professional and nonprofessional employees, as proposed by the NAIRE, is appropriate. As noted above, the record reveals that all classifications of employees within the District are covered by the same personnel practices and policies and that there is no variation in the qualifications for employment or the work to be performed in the respective job classifications throughout the District. In addition, promotional opportunities are made available on a District-wide basis and there is a substantial interrelationship between employees in many of the job classifications within the District. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the NAIRE. Moreover, such a comprehensive unit will, in my view and in accordance with the Activity's position, promote effective dealings and efficiency of agency operations.

I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All professional and nonprofessional employees of the Internal Revenue Service, New Orleans, Louisiana District, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. ^{6/}

^{6/} In its petition the NAIRE excluded "special agents." Because the record does not set forth sufficient facts as to this classification of employees, I shall make no findings as to whether employees in this job classification should be excluded from the unit.

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10 (b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees of the Internal Revenue Service of the New Orleans, Louisiana District excluding all non-professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees of the Internal Revenue Service of the New Orleans, Louisiana District excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the NAIRE. 7/

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the NAIRE. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether or not the NAIRE was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find that the following

7/ As the NFFE's showing of interest is insufficient to treat it as an intervenor in Case No. 64-1094(E), I shall order that its name not be placed on the ballot.

employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees of the Internal Revenue Service, New Orleans, Louisiana District, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees of the Internal Revenue Service, New Orleans, Louisiana District excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Internal Revenue Service, New Orleans, Louisiana District excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 64-1099(E) be, and it hereby is, dismissed.

DIRECTION OF ELECTION

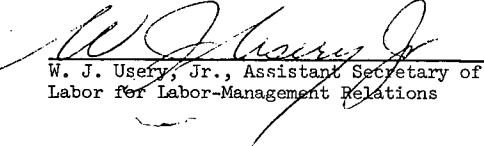
An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged

for cause, since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Internal Revenue Employees, Chapter 6.

March 18, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Dated, Washington, D.C.
March 18, 1971


W. J. Useery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

DEPARTMENT OF THE ARMY, ST. LOUIS DISTRICT,
CORPS OF ENGINEERS, ST. LOUIS, MISSOURI
A/SLMR No. 17

This case, involving a representation petition filed by Local R14-96, National Association of Government Employees (NAGE), presented the question whether the petitioned for unit, which included employees of the Activity assigned to its Service Base Section and its Lock and Dam Section, was appropriate. The Activity and the Intervenor, the National Federation of Federal Employees, Local 24 (NFFE) contended that the proposed unit was inappropriate because it was composed of two separately identifiable units of employees who did not share a community of interest with each other.

In all the circumstances, the Assistant Secretary concluded that a unit composed of employees of both the Service Base Section and the Lock and Dam Section was not appropriate. He noted in this respect that there was neither overlapping supervision nor direct or necessary operating responsibility between the two Sections; that each Section had a clearly distinguishable mission; that each had its own program for training and promotions; that for the past ten years there had been no interchange of personnel between the two Sections; and that their wage scales and hours of work were different. Also noted was the Activity's contention that a combined unit of both Sections would not promote effective dealings and efficiency of its operations.

The Assistant Secretary also found that encompassed within the petitioned for unit was an appropriate unit comprised of employees in the Activity's Service Base Section. He noted that the evidence revealed that employees in this Section were engaged in an integrated maintenance and repair operation for all floating and land plants within the District; that they generally worked in the same location under the same Plant Branch Chief; and that they did not interchange with employees outside the Section. In these circumstances, the Assistant Secretary directed that an election be held in the Service Base Section unit if the NAGE desired an election in such a unit. In addition, because the unit found appropriate was substantially different than that sought initially, the Assistant Secretary directed the Activity to post copies of a notice in the appropriate unit for the benefit of potential intervenors.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY, ST. LOUIS DISTRICT,
CORPS OF ENGINEERS, ST. LOUIS, MISSOURI^{1/}

Activity

and

LOCAL R14-96, NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

Petitioner

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 24

Intervenor

Case Nos. 62-1757 E
62-1792 E^{2/}

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Herbert P. Krehbiel. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the Activity and the NFFE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

^{1/} The name of the Activity appears as amended at the hearing.

^{2/} A case number (Case No. 62-1792 E) was inadvertently assigned to the intervention in this matter by National Federation of Federal Employees, Local 24, herein called NFFE. In these circumstances, the determination of the issues presented in the petitioned for unit in Case No. 62-1757 E will be dispositive also with respect to Case No. 62-1792 E.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. Petitioner, Local R14-96, National Association of Government Employees, herein called NAGE, seeks an election in a unit of all non-supervisory employees assigned to the shops, yards, locks, and dams, St. Louis District, excluding management officials, employees engaged in Federal personnel work except in a purely clerical capacity, guards and supervisors as defined in the Order.

The Activity contends that the proposed unit is inappropriate because it is composed of two separately identifiable groups of employees who do not share a community of interest; namely those employed in shops and yards, herein called Service Base Section, and those employed in locks and dams, herein called Lock and Dam Section with each Section having its own purpose or objective and performing different job functions. The Intervenor, NFFE, agrees with the Activity's contention.

In 1964, under Executive Order 10988, the Activity accorded District-wide formal recognition to the NFFE for all categories of employees, General Schedule and Wage Board, regardless of grade. There is no evidence that specific matters concerning the Service Base or the Lock and Dam Sections were discussed during the parties' formal recognition relationship. Subsequent to the effective date of Executive Order 11491, the NAGE was certified as the representative of employees assigned to the St. Louis District's floating plants.^{3/}

Service Base Section

The Service Base Section is located in St. Louis, Missouri, and is the only Section in the St. Louis District which is composed of employees having different trade skills. Its primary function is Activity-wide maintenance and repair of floating and land plants as required under normal operations, and it operates almost wholly within its service base of operations except when called upon for emergency on-site repairs. In addition, each facility in the St. Louis District has its own specialized personnel who are supported by the Service Base Section.

In this Section, the chain of command and supervision downward from the Chief of the Activity's Operations Division, is to the Plant Branch Chief, to the Manager, Service Base Section, and beneath him, to the assistant manager and shop superintendent.

^{3/} The floating plants unit is officially and organizationally identified as the Channel Maintenance Section, in the Navigation Branch, Operations Division. Employees are variously assigned to dredges, patrol and tow boats, and a floating repair unit.

The Plant Branch Chief has the responsibility for completion of work assignments and tours of duty, and supervisors in the Section control work schedules and annual leave. Supervisors also recommend promotions to the Plant Branch Chief, who, in turn, makes his recommendations to the Activity's personnel office which is the final authority in these matters. Employees having grievances may deal directly with the Plant Branch Chief.

The work of the Section is controlled by shop or job orders under industrial engineering guidelines and practices. Priorities change from day to day and concern many of the Activity's operating units. Work schedules and tours of duty are on a standard 8:00 a.m. to 4:45 p.m. workday, five days a week, and this schedule varies only in cases of emergency. Wage scales are generally controlled by those prevailing in the area for the respective skills and trades.

There are forty-six nonsupervisory employees in the Section who are included in categories such as mechanics, machinists, welders, iron and metal workers, carpenters, electricians, and general laborers. Each skill or trade has a foreman or leader who reports to the shop superintendent, and it is estimated that there is one functional supervisor for eight to ten employees.

Employees are trained and promoted within the Section and, generally, there are no interchangeable promotions between this Section and the Lock and Dam Section. However, a qualified employee in the Lock and Dam Section would be given consideration in the Service Base Section under the Civil Service Commission merit promotion and placement system.

The evidence reveals that, in the past, emergency requirements at lock and dam facilities accounted for less than five percent (5%) of the Service Base Section's total manhours. In this respect, the work consisted of maintenance of high grade structural repair requiring skilled welders, metal and ironworkers, which could not be assigned to or handled by a lock and dam operator. This work was performed under the supervision of Service Base Section supervisors and leaders.

Lock and Dam Section

The Lock and Dam Section consists of one lock and three lock and dam facilities, located on the Mississippi River from three to approximately seventy-five or eighty miles from St. Louis. Each facility performs a service to navigation; the dams impound water in a channel and the locks provide a means for boats and barges to pass the dams.

In this Section, the chain of command and supervision downward from the Chief of the Activity's Operations Division, is to the Chief, Navigation Branch, to the head of the Lock and Dam Section, and from the latter to each of four lockmasters. Each lockmaster has an assistant lockmaster and they are classified as supervisors.

The Chief, Navigation Branch has the responsibility for working conditions and hours of duty, and he handles employee complaints on working conditions, promotions and grievances. He also recommends promotions to the Activity's personnel office which is the final authority in these matters.

The lock and dam operation is entirely electrical. The primary work of its personnel is operating machinery and equipment to pass boats and barges through locks. The majority of the personnel occupy specialized jobs and operate under specialized rules concerning locks and dams only. Work schedules are on a rotating three shift basis, twenty-four hours a day, seven days a week, throughout the year. The Department of Defense wage fixing authority has established a separate wage rate scale for lock and dam employees of the Corps of Engineers.

There are approximately sixty-five nonsupervisory employees in this Section. They are generally skilled employees who are required to be familiar with various type relays, contractors, and micro-systems of machines. The Section does have some nonspecialized equipment repair personnel who do incidental carpentry and pipefitting, and work on machinery, at the locks and dams. However, employees in this Section do not perform work at or for the service base.

During the past ten years there has been no interchange of personnel between the Lock and Dam Section and the Service Base Section; nor have there been bids for jobs to this Section from the Service Base Section.^{4/}

The record discloses that, other than on-site emergency repairs on locks and dams by the Service Base Section, communications between employees in the two Sections has been limited to that of two or three trips a year by one Section employee to the other Section to pick up or deliver supplies, and the delivery to the Service Base Section by Lock and Dam personnel of machinery to be repaired.

Based on the foregoing, I find that a unit including employees in both the Service Base Section and the Lock and Dam Section is not appropriate for the purpose of exclusive recognition under Section 10 of the Executive Order. The evidence establishes that there is neither overlapping supervision nor direct or necessary operating responsibilities between the two Sections. Each Section has its own program for training and promotions and there has been no interchange of personnel for the past ten years. The function of the Service Base Section is to provide maintenance and repair services for all District floating and land plant operations, and its

^{4/} There is evidence, however, of an employee transferring from one lock and dam location to another outside the District.

DIRECTION OF ELECTION

employees are those trained in the trades and skills normally identified with maintenance and repair. On the other hand, the function of the Lock and Dam Section is to operate locks and dams on the Mississippi River to pass boats and barges up and down the River, and the majority of the personnel are electrician specialists who operate lock and dam equipment under specialized rules which relate solely to locks and dams. Moreover, the Service Base Section operates on a conventional eight hour work day, five days a week and wage scales are generally controlled by those prevailing in the area for the respective skills and trades; whereas the Lock and Dam Section operates on a rotating three shift basis, twenty-four hours a day every day of a year, and wages are those which have been established separately by the Department of Defense wage fixing authority for lock and dam employees of the Corps of Engineers. In these circumstances, and noting the Activity's contention that a unit combining both Sections will not promote effective dealings and efficiency of its operations, I find that the unit petitioned for by the NAGE, covering both the Service Base Section and the Lock and Dam Section, is not appropriate.

I further find, in accordance with positions of the Activity and the NFFE, that encompassed within the petitioned for unit is an appropriate unit comprised of employees in the Service Base Section.^{5/} In this respect, the evidence establishes that employees in this Section are engaged in an integrated maintenance and repair operation for all floating and land plants within the District; they have, except for rare occurrences, the same work location; they work under the same Plant Branch Chief; and they do not interchange with other employees outside the Section.

Accordingly, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All employees assigned to the Service Base Section, Operations Division, Department of the Army, St. Louis District, Corps of Engineers, excluding all other District employees, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.^{6/}

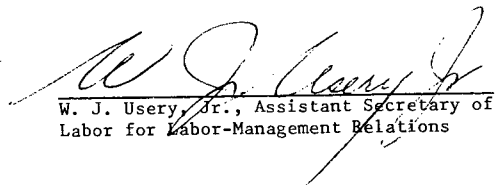
^{5/} The evidence was insufficient to establish whether the employees in the Lock and Dam Section similarly constituted an appropriate unit. Moreover, in this respect, even if such a unit was appropriate, I am advised administratively that neither that NAGE nor the NFFE submitted the required thirty percent showing of interest to the Area Administrator which would warrant the conducting of an election at this time in a unit of Lock and Dam Section employees.

^{6/} I am advised administratively that the NAGE has submitted to the Area Administrator in excess of a thirty percent showing of interest in the unit found appropriate. I am advised also of the fact that the NFFE has not submitted a ten percent showing of interest in the unit found appropriate.

In the circumstances set forth below, an election by secret ballot shall be conducted among the employees in the unit found appropriate, not later than 30 days from the date upon which the appropriate Area Administrator issues his determination with respect to any interventions in this matter. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Local R14-96, National Association of Government Employees or any other labor organization which, as discussed below, intervenes in this proceeding on a timely basis.

In the current circumstances, the NFFE's showing of interest in the unit found appropriate is insufficient to treat it as an intervenor so as to warrant the placement of its name on the ballot. Because the above Direction of Election is in a smaller unit than that sought by the NAGE, I shall permit it to withdraw its petition if it does not desire to proceed to an election in the unit found appropriate in the subject case upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision. If the NAGE desires to proceed to an election, because the unit found appropriate is substantially different than that originally petitioned for, I direct that the Activity, as soon as possible, shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit I have herein found appropriate. The copies of the posted notice shall conform in all respects to the requirements of Section 202.4(c) and (d) of the Assistant Secretary's Regulations. Further, any labor organization, including the NFFE, which seeks to intervene in this matter must do so in accordance with the requirements of Section 202.5 of the Assistant Secretary's Regulations. It should be noted in this regard, however, that any timely intervention in this matter will be for the sole purpose of appearing on the ballot.

Dated, Washington, D. C.
March 18, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

March 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

BOSTON NAVAL SHIPYARD, NAVY DEPARTMENT
A/SLMR No. 18

This case involved a consolidated representation proceeding regarding petitions filed by International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) and by American Federation of Government Employees, AFL-CIO, Local 1088, (AFGE) seeking craft severance elections among certain employees at the Boston Naval Shipyard. The IAM sought a unit consisting essentially of machinists and related classifications, while the unit sought by the AFGE involved principally pipecoverers and insulators and related categories. Both petitioned for groups have been included in an Activity-wide unit of all Wage Board employees, excluding patternmakers and planners, estimators and progressmen since 1964 when the National Association of Government Employees (NAGE) obtained exclusive recognition through election.

Both the Activity and the NAGE took the position that both units sought were inappropriate because (1) they would not promote effective dealings and efficiency of operations, (2) the history of bargaining had been on the basis of an Activity-wide unit in which the interests of the employees sought had been fully represented, (3) of the high degree of integration of work processes as well as the extensive movement of employees throughout the Shipyard. In support of its petition, the IAM stressed the craft basis of most of the classifications sought as well as the other machinist related duties in the remaining classifications sought by its petition; the history of separate representation for patternmakers and planners, estimators and progressmen, and the fact that the integrated nature of the operations did not preclude finding the craft unit sought as being appropriate. The AFGE contended that a clear and identifiable community of interest existed among the employees they sought and therefore they constituted an appropriate unit.

Upon review of the entire record in this case, the Assistant Secretary:

- (1) Dismissed both petitions on the basis of the policy announced in United States Naval Construction Battalion Center, A/SLMR No. 8, namely, that where the evidence shows an established, effective and fair collective bargaining relationship is in existence, severance from the unit will not be permitted except under unusual circumstances.

- (2) Concluded that in view of the integrated nature of the operations, and particularly the history of bargaining in which representation has been accorded to the employees for whom separate units are sought, as well as the absence of any unusual circumstances warranting a different conclusion, that the announced policy in A/SLMR No. 8 would be effectuated by the present bargaining unit remaining intact.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

BOSTON NAVAL SHIPYARD,
NAVY DEPARTMENT

Activity

and

Case No. 31-3179

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R1-1

Intervenor

BOSTON NAVAL SHIPYARD,
NAVY DEPARTMENT

Activity

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1088

Petitioner

Case No. 31-3218

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R1-1

Intervenor

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer William O'Loughlin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. For the reasons discussed below, no question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In case No. 31-3179, the Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called IAM, seeks an election in the following unit: All machinists, machinists (maintenance), machinists (marine), machinists (ship's weapons), die sinkers, toolmakers, toolroom attendants, toolroom mechanics, instrument mechanics, instrument mechanics (mechanical), instrument mechanics (optical), machine operators, applicable mechanics (limited), numerically controlled machine tool programmer, numerically controlled machine tool mechanic, helpers, apprentices, production shop planners, inspectors (ship's mechanical systems), excluding all other employees including guards, managerial and supervisory. 1/

As an alternative unit the IAM seeks the same unit as described above, excluding toolroom attendants, toolroom mechanics, production ship planners, and inspectors (ship's mechanical systems). In support of its petition, the IAM stressed the craft basis of most of the classifications sought as well as the other machinist related duties in the remaining classifications sought by its petition; the history of separate representation for pattern-makers and planners, estimators and progressmen; and the fact that the integrated nature of the operations did not preclude finding the craft unit sought as being appropriate.

In Case No. 31-3218, the Petitioner, American Federation of Government Employees, AFL-CIO, Local 1088, herein called AFGE, seeks an election in a unit of pipecoverers and insulators including pipecoverer helpers, pipecoverer limited and apprentices in Shop 56, pipecoverers and helpers in the Public Works Department and pipecoverer instructor and pipecoverer layout. 2/ In support of its petition the AFGE contended that a clear and identifiable community of interest existed among the employees sought.

1/ The unit appears as amended at the hearing.

2/ No express exclusions were set forth in the AFGE's petition and its petition was not amended during the hearing.

The Activity takes the position that the respective units sought by the IAM and the AFGE are inappropriate because (1) they lack the necessary community of interest and would not promote effective dealings and efficiency of operations; (2) the history of bargaining at the Shipyard has been on the basis of an Activity-wide unit in which the interests of the employees sought by both Petitioners have been represented at grievance and adverse action hearings by the incumbent representative, the National Association of Government Employees, Local RL-1, herein called NAGE; and (3) the high degree of integration of work processes requires the interplay of a number of occupational skills, whereas only a portion of these are performed by the classifications in each of the units sought. The NAGE contends that only an overall unit, as presently constituted, is appropriate and therefore the respective units sought are inappropriate.

Following an arbitrator's decision, dated July 13, 1963, in which a unit of all ungraded employees, excluding patternmakers, was found appropriate, an election was held in which the NAGE obtained exclusive recognition. A two-year contract between the NAGE and the Activity was entered into on December 15, 1964 following which, after a second election in which the NAGE ultimately was certified, a second two-year contract was negotiated on February 12, 1968. In addition to patternmakers having been represented in a separate unit, NAGE, Local RL-150 was granted exclusive recognition in 1968 for a unit of planners, estimators and progressmen in the Planning and Production Department, who were originally included in the first certification.

The Boston Naval Shipyard is primarily engaged in servicing the fleet of the United States Navy. The Shipyard occupies an area of approximately 84 acres containing about 161 buildings, 24 piers and several shipways. Authorized work, under the overall supervision of the Shipyard's Commander, includes repair and conversion, alteration, dry-docking and outfitting. The Shipyard also performs manufacturing, research and development work as well as providing technical electronics support to ships and shore stations.

The Production Department, under the overall supervision of a Military Production Officer, performs all shipbuilding and repair work in accordance with work instructions issued by the Planning Department. Over 3,000 employees, or about 60 percent of the 5100 ungraded employees in the overall unit, work in the Production Department. Approximately 20 shops, each engaged in a particular function, comprise the operations of this Department. These shops, in turn, make up 4 operational groups, designated as Mechanical Group, Electrical/Electronics Group, Structural Group, and Service Group. ^{3/}

Each group, with the exception of Ropewalk, is headed by a Group Superintendent. Subordinate supervisors in descending order, are known as Superintendent II, Superintendent I, General Foreman II, General Foreman I, and Foreman (leadingman).

^{3/} In addition, Shop 97, known as Ropewalk, which produces hemp and manila rope, is part of the Production Department. No employee in this operation is sought under either of the subject petitions.

Of the seven shops comprising the Mechanical Group, employing about 1,200 employees as of June 1, 1970, the IAM seeks to include all classifications in the Inside Machine Shop 31, Outside Machine Shop 38, and more than half of the 19 classifications in Central Tool Shop 06. These three shops employed approximately 740 employees or approximately 60 percent of the total number in the Mechanical Group. Inside Machine Shop 31 is a fully-equipped machine shop capable of performing machining operations on machinery and ordnance items and balancing variable sizes of turbine rotors, propellers, etc. Outside Machine Shop 38 removes, overhauls and repairs in place all machinery on board ship as well as assisting in dock trials and sea trials. Central Tool Shop 06 is the maintenance shop for the Shipyard. It is responsible for designing and maintaining dies, jigs, cutting tools and fixtures, maintaining and issuing hand tools, portable power tools and measuring instruments. The Shop Planning Staff, Shop 49, acts as a liaison between the planners, estimators, schedulers and progressmen, on the one hand, and the various shops within the Mechanical Group. It reviews job orders to verify availability of manpower, materials, tools and machinery. The IAM seeks about 4 of the 10 job classifications in this particular shop. In the remaining three shops, namely, Forge, Foundry and Pipe and Copper, none has any classifications affected by the IAM petition. However, with regard to the Pipe and Copper Shop 56, the AFGE seeks to include 6 pipecoverers and insulator classifications, including apprentices, helpers and instructors. Excluded however, are the remaining 12 classifications in this shop, among them being pipefitters, coppersmiths, refrigeration and air conditioning mechanics, apprentices and helpers.

The employees who work in the various classifications in the Mechanical Group of the Production Department divide their time in varying proportions between their respective shops and aboard ship. The inside machinist in Shop 31, whose work involves operating standard machine tools used in repairing sea valves and parts for propulsion machinery, including rebuilding internal combustion engines, spends about 90 percent of his time in the shop. Employees in the classification of machinist (marine), Shop 38 spend about 80 percent of their time aboard ship making layouts for machinery foundations and installations, overhauling main propulsion machinery and repairing and installing mechanical hydraulic equipment. Employees in the maintenance machinist classification in Shop 06, whose work involves, in part, the repair and installation of various types of industrial machinery, such as machine shop and power plant equipment, spend about half of their working time aboard ship and the remaining half in the shop. The toolroom mechanic and the machine operator work full-time in the shop whereas the mechanic limited, whose level of skill is between that of a helper and a journeyman, divides his time equally between shop and ship. The helper and apprentice categories spend approximately 80 percent of their time aboard ship and 10 percent in the shop. Finally, the production shop planner spends 100 percent of his time in the shop.

The Electrical Electronics Group consists of three shops in addition to a Shop Planning Staff, namely, Weapons Shop 36, Electrical Shop 51 and Electronics Shop 67. Slightly less than 1,000 employees are employed in the latter three shops. The IAM seeks to include principally the instrument mechanics and the machinist (ship's weapons) classifications, in addition to apprentices and helpers in Weapons Shop 36, these classifications comprising a little more than half of the total classifications in this particular shop. Neither the Electric nor the Electronics shop has any classifications which fall within the unit sought by the IAM. Thus, of the approximately 1,000 employees in the Electrical/Electronics Group, a total of 152 employees are involved within the classifications sought by the IAM. These employees constitute approximately 15 percent of the total employees in this Group within the Production Department. Weapons Shop 36 is engaged in making repairs and installations of all weapons systems and associated components such as gun mounts, turrets, etc. Electric Shop 51 is responsible for the installation, repair and testing of all electrical equipment on board ship as well as the repair and adjustment of compasses and associated equipment, whereas Electronics Shop 67 repairs and installs all electronics systems.

Between 65 percent and 70 percent of the work performed by the Electrical/Electronics Group is performed aboard ship. In so doing, the employees in this group work alongside other job classifications including shipfitters, welders, machinist (marine), pipefitters, riggers and laborers. This practice of integrating the work of the machinists with other crafts is most prevalent in the operational tests of electronics or ordnance systems. With respect to such integration, the classification which is responsible for performing most of the work is in charge of that particular job. ^{4/}

As indicated above, the Structural and Service Groups complete the make-up of the Production Department. The IAM does not seek to include any of the classifications in either of these groups inasmuch as they involve unrelated functions in which the principle classifications include shipfitters, sheet metal, welders and boilermakers as well as such service activities as woodworking, painting, rigging, etc.

^{4/} For example, the work on a fire control system with guns, including associated radar, involves electrical work being performed by the fire control mechanics and radar work by the electronics employees - neither of which classifications is involved in the unit sought by the IAM - as well as the hydraulic operations work being performed by the machinists.

The Public Works Department, the second of the three major operational departments involved herein, designs, constructs and maintains the physical plant and utilities of the Shipyard. The Shops Division is one of four principle divisions comprising this Department, and is made up of the Maintenance, Utilities and Transportation Branches. The IAM seeks to include the classification of machinist (maintenance) which is one of eleven classifications in the Utilities Branch. This position is responsible for making repairs of various types of machines and installations of power plant equipment including engine room and pumping plant equipment.

The Quality and Reliability Assurance Department, headed by a Civilian Director, is responsible for maintaining quality standards. Of the four divisions comprising this Department, only the Inspection Division has any classification affected by the IAM petition, namely, inspector (ship's mechanical systems). His function is to observe tests on main propulsion machinery, boilers, air compressors, etc. to determine conformance with specifications and good marine practice. These inspections are conducted both within the shops and on board naval vessels.

The classification of pipecoverer and insulator and related classifications sought by the AFGE in its petition are located in the Public Works Shop 07, Public Works Department and in the Pipe and Copper Shop 56, Mechanical Group, Production Department. There is one employee in Shop 07 and about 56 employees in Shop 56 in these classifications. Shop 07 is responsible, generally, for new construction of public works and public utilities and the repair and alteration of buildings, roads, waterfront facilities and distribution systems, etc. Shop 56 is responsible for the fabrication and repair of all pipe, tubing and related equipment; installation and repair of plumbing and heating fixtures and air conditioning and refrigeration systems.

The pipecoverer and insulator fabricates insulating materials and covers shipboard equipment such as pipes, tanks, boilers, pumps and air ducts, using cork, fiberboard, mineral wool blankets and unibestos. Approximately 80 percent of the work of the employees in this classification, including helpers and apprentices, is performed aboard ship, the remaining 20 percent being performed in the shop. As in the case of other crafts, pipecoverers and insulators work closely with pipefitters, refrigeration and air conditioning mechanics and machinists.

Apprenticeship programs for approximately 27 occupations are maintained actively by the Shipyard. Included among these trades are machinist (maintenance) and toolmaker, Shop 06; machinist, Shop 31; machinist (ship's weapons), Shop 36; machinist (marine), Shop 38; and pipecoverer and insulator, Shop 56.

Each of the apprenticeship programs for these trades provides a four-year course in both work experience and related instruction. The normal line of progression for an apprentice who has completed his apprenticeship as a machinist, is to progress to the job of shop planner or supervisor. There is no normal progression between the machinist (ship's weapons) to that of instrument mechanic (optical) or instrument mechanic (mechanical) inasmuch as they are different trades.

The Shipyard has a practice of "loaning" employees from one section to another where the work requires additional manpower. Employees who are loaned are not necessarily in the same classification as the other employees who need assistance. For example, in a period of heavy workload demands upon pipecoverers and insulators, pipefitters may be loaned to work with the former. Also, a machinist may be loaned to work in assisting a pipefitter. While working in this capacity, the machinist is supervised by the pipefitter but is rated by his general supervisor and continues to receive his basic pay. Generally, loans last from 30 to 60 days depending upon the amount of work involved.

Other aspects of working conditions in the Shipyard include the fact that the color of the hat worn by the employee is determined by the particular shop to which he is assigned, irrespective of his occupation or trade. Thus, in Central Tool Shop 06, the electrician and the machinist wear the same color hat. With respect to vacation schedules, approval is given by the superintendent for all the shops under his supervision, without regard to any particular occupation. In addition, the location and use of time clocks is based upon convenience for those working in a particular area. Thus, there are outside clock stations on the waterfront where the employees clock-in irrespective of the particular trade or occupational group involved.

In summary, the record reveals a marked degree of integration of work processes as well as extensive movement to and from work places throughout the Shipyard. A large percentage of work by the machinists in Shops 31 and 38, as well as by the principle classifications in the Electrical/Electronics Group is performed on board ship, each performing its assigned tasks and utilizing its particular skills in the required sequence of operations. In addition, such practices as common-colored hats assigned to a particular shop, time clocks used by different categories of employees irrespective of skill or work area and "loaning" of employees to assist other classifications, are utilized to aid in promoting efficiency of the Activity's operations.

The record also establishes that a number of the classifications sought by both Petitioners are recognized crafts and that a line of progression exists within the machinists categories, particularly in the Mechanical Group, Production Department. However, for purposes of concluding whether

the requested unit by either Petitioner may properly be severed from the existing larger unit, craft skills and training are only some of multiple factors to be considered.

During the period 1963-1969 approximately 140 cases arising under the administrative appeals procedures were processed by the Activity and the NAGE, six of which involved employees in the unit proposed by the IAM. In addition, the Activity presented evidence showing a total of approximately 90 informal meetings during this 6-year period attended by representatives of the NAGE and the Activity, involving such subjects as workload requirements, overtime problems, loans (i.e., temporary assignment of personnel), apprentice training, etc., affecting particularly Shops 06,31 and 38 in the Production Department. The record further discloses that during the period 1968-1970, the NAGE processed grievances for approximately 50 employees from Shops 06, 31 and 38 in the Mechanical Group of the Production Department, as well as Shops 36, 51 and 56 in the Electrical/Electronics Group within the Production Department. The range of subjects involved in these grievances during this latter two-year period included, among others, change of hours; requests for advance sick or annual leave; jury duty information; denials of sick leave; requests for transfer; letters of warning; holiday pay; loss of pay and compensation claims.

Based on the foregoing, it is clear that bargaining for all Wage Board employees on an Activity-wide basis has continued to the present at the Boston Naval Shipyard since the NAGE's initial certification in 1964. ^{5/} During this period of bargaining, the interests of the employees in many of the classifications sought by both Petitioners have been served continuously through resort to the negotiated grievance procedure established by the Shipyard and the NAGE.

In United States Naval Construction Battalion Center, A/SLMR No. 8, I considered comparable circumstances as are involved in the subject cases, and concluded that, absent unusual circumstances, a proposed severance from an established larger unit would not be allowed where the evidence showed that an established, effective and fair collective bargaining relationship existed. In weighing the integrated nature of the operations involved herein and particularly the history of bargaining on an Activity-wide basis, in which representation has been accorded to the employees for whom separate units are now sought, and the absence of any unusual circumstances warranting a different conclusion, I conclude that the announced policy, noted above, is best effectuated by the present bargaining unit remaining intact. Accordingly, having found that the units sought by the IAM and the AFGE, Local 1088, respectively, are inappropriate for the purpose of exclusive recognition, I shall dismiss their petitions.

^{5/} The existence of separate units for patternmakers as well as for planners, estimators and progressmen does not, in my view, lessen the historical significance of the Activity-wide unit.

ORDER

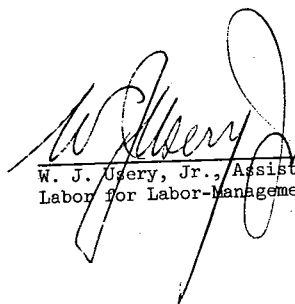
March 30, 1971

IT IS HEREBY ORDERED that the petitions in Cases Nos. 31-3179 and 31-3218 be, and they hereby are, dismissed.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF THE ARMY,
UNITED STATES ARMY CORPS OF ENGINEERS
A/SLMR No. 19

Dated, Washington, D.C.
March 30, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

The subject case involving a representation petition filed by Marine Engineers Beneficial Association, District 1-PCD, AFL-CIO (MEBA), presented the question whether a unit consisting of all licensed marine engineers employed on all self-propelled hopper and side casting dredges operated by the Activity is appropriate.

The Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this determination, the Assistant Secretary noted particularly that in many districts of the Activity, including some of the same districts covered by the petition, there were licensed marine engineers who were not included in the petitioned for unit because they worked on other types of floating plants. These marine engineers possessed similar skills and performed similar job functions as those performed by marine engineers on hopper and side casting dredges. In these circumstances, the Assistant Secretary found that a unit limited to that sought by the MEBA would result in a fragmented unit of certain licensed marine engineers and create a residual group of both represented and unrepresented licensed marine engineers who shared a community of interest with those employees covered by the petition. In the Assistant Secretary's view, such a fragmented unit would seriously hamper effective dealings, would not promote efficient agency operations and did not possess a clear and identifiable community of interest. Accordingly, he ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF THE ARMY,
UNITED STATES ARMY CORPS OF ENGINEERS

Activity

and

Case No. 46-1704 (RO)

MARINE ENGINEERS BENEFICIAL ASSOCIATION,
DISTRICT 1-PCD, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gerald W. Welcome. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs of the Activity 1/ and the Marine Engineers Beneficial Association, District 1-PCD, AFL-CIO, herein called MEBA 2/, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

1/ During the hearing the Activity filed a motion to dismiss the petition in the subject case based on its contention that the unit sought was inappropriate. The Hearing Officer referred the motion to the Assistant Secretary. In view of my disposition with respect to the petition herein, it was considered unnecessary to pass upon the Activity's motion to dismiss.

2/ MEBA also filed a motion to strike portions of the Activity's brief on grounds that such portions were unsubstantiated by record testimony. Inasmuch as the evidence adduced at the hearing adequately sets forth the facts necessary to reach a determination of the unit issue in this representation proceeding, it was considered unnecessary to decide whether the MEBA's motion should be granted.

2. For the reasons discussed below, no question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. The Petitioner, MEBA, seeks an election in a unit of all marine engineers on self-propelled hopper and side casting dredges in all districts of the United States Army Corps of Engineers. The Activity contends that in order to promote effective dealings and efficiency of operations, the appropriate unit should be found to be on a district-wide basis and asserts that it should include all marine engineers on all floating plants within each district and not be limited to employees on self-propelled hopper and side casting dredges.

Under Executive Order 10988, several of the Activity's districts accorded exclusive recognition to certain labor organizations including the MEBA, in district-wide units. Three of the district-wide units represented by the MEBA were comprised of all marine engineers working on either self-propelled hopper or side casting dredges or both. The unit descriptions in three other districts where the MEBA was accorded exclusive recognition included all marine engineers on all of the respective district's floating plants.

The Activity is entrusted with the maintainance and construction of rivers, harbors and waterways to insure that channel depths of all navigable waters are maintained at levels established by the Congress. It is divided geographically into 42 districts throughout the United States. Of the 42, there are only 8 districts which operate self-propelled hopper or side casting dredges. In addition to self-propelled hopper and side casting dredges, some of the Activity's districts including certain districts covered by the petition in the subject case, operate other types of dredges, tug boats, snag boats, survey boats and other motor vessels on which marine engineers are assigned.

Each district is supervised by a District Engineer, who is a colonel in the United States Army. Under the District Engineer is the Chief of the District Operations Division, who is responsible for all the civilian work performed within the district. The next level of supervision emanates from the Chief of the Navigation and Maintenance Branch, who makes assignments concerning the daily work activities of the dredges within a particular district. The Chief of the Navigation and Maintenance Branch directs the work of the masters aboard the dredges. They, in turn, supervise the work of the chief and assistant chief engineers, who supervise the licensed marine engineers.

The duties of the marine engineers include, among other things, the maintenance of the boiler, the propulsion units, the auxiliary units which supply water, heat, electricity and refrigeration, as well as the dredging and related hydraulic equipment aboard the dredge. Marine engineers must be licensed by the United States Coast Guard as either chief, assistant

chief, first, second or third engineers. Licenses are issued to marine engineers by the Coast Guard on the basis of vessel horse power, the vessel's type of propulsion unit, length of service as marine engineer in the next lowest license category and the successful completion of an examination.

Marine engineers serve primarily as watch engineers aboard dredges. Engineers, so employed, generally stand watches of four hours on and eight hours off duty. In addition to watch engineers, the Activity also employs day engineers who work 8 hours each day. The factors determining whether an engineer stands watch or is a day worker depends on the type and work schedule of each dredge.

The marine engineers in the petitioned for unit work on self-propelled hopper or side casting dredges. A bottom dump dredge, a type of hopper dredge, pumps materials off the bottom of the channel and deposits it in bins on the dredge. The material is then transported aboard the dredge to areas where there are deep holes and it is then dumped into the water. A direct pump out dredge, which is also a hopper dredge, deposits dredged materials in bins along the shore. A side casting dredge pumps dredged materials through pipes discharging it along the shore. Unlike the previous two mentioned dredges, however, it does not deposit the dredged material in bins. Some of the dredges operated by the Activity's districts possess all of the three above mentioned capabilities, and others possess only one or two of the different functions. An engineer assigned to a dredge which possesses all three of the above listed capabilities would have more knowledge and experience because of the increased complexity of the equipment. Nevertheless, he might possess the same rated license as that held by an engineer on a dredge which possessed only one of the above listed capabilities.

In addition to the above described self-propelled hopper and side casting dredges, many districts, including at least five of the eight districts covered in the petition in the subject case, employ licensed marine engineers on dredges and other vessels which are not included in the unit sought by the MEBA. These licensed marine engineers work on other types of dredges, tug boats, tow boats, survey boats and other motor vessels. They perform duties which are similar in nature to that performed by the licensed marine engineers in the unit sought by the MEBA.

Under the provisions of Executive Order 10988, the Activity accorded exclusive recognition to the MEBA in the former's Philadelphia, Jacksonville and Galveston Districts for units composed of, not only those marine engineers sought in the subject case, but also, licensed marine engineers working on other types of dredges and floating plants. Also, the record establishes that there are several districts which do not operate hopper or side casting dredges, but, nevertheless, employ marine engineers on other types of dredges and floating plants. None of these licensed marine engineers are sought by the MEBA in its claimed unit.

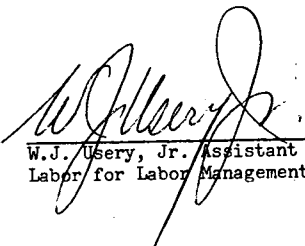
-3-

Based on the foregoing, I find in accordance with the Activity's view that the unit sought by the MEBA does not constitute an appropriate unit within the meaning of Section 10 of Executive Order 11491. As noted above, the record demonstrates that many of the Activity's districts, including some of the same districts covered by the petition, employ represented and unrepresented licensed marine engineers who possess similar skills and perform similar job functions as those performed by the licensed marine engineers working on hopper or side casting dredges. In these circumstances a reasonable basis does not exist for the establishment of a unit comprised solely of licensed marine engineers working on the Activity's self-propelled hopper or side casting dredges. Such a unit, in my view, would fragment existing exclusively represented bargaining units in certain of the Activity's districts where other licensed marine engineers, in addition to those on hopper and side casting dredges, are represented exclusively and also create residual groups of unrepresented licensed marine engineers in other of the Activity's Districts who perform jobs which are similar to those performed by employees in the petitioned for unit. I conclude, therefore, that the fragmented unit sought by the MEBA would seriously hamper effective dealings, would not contribute to the promotion of efficient agency operations and that the employees in the requested unit do not possess a clear and identifiable community of interest. Accordingly, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 46-1704 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
March 30, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor Management Relations

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April 2, 1971

A/SLMR No. 20

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

MISSISSIPPI NATIONAL GUARD,
172nd AIRLIFT GROUP (Thompson Field)

and

MISSISSIPPI NATIONAL GUARD, (Camp Shelby)

A/SLMR No. 20

The subject cases involving representation petitions filed by the International Union of Electrical, Radio and Machine Workers, AFL-CIO, and its Army-Air Technicians Association, Local 676, (IUE) and American Federation of Government Employees, AFL-CIO, Local 3151, (AFGE) raised the following questions:

1. Are the provisions of the Executive Order applicable to an Activity which employs National Guard technicians and is administered by a State Adjutant General who is a State employee?

2. Are two separate units of National Guard technicians employed by the Activity at two of its installations appropriate?

In all the circumstances, the Assistant Secretary concluded that the provisions of the Executive Order are applicable to the Activity notwithstanding the fact that it is administered by an Adjutant General who is a State employee. In reaching this determination, the Assistant Secretary relied on the fact that the National Guard technicians in the claimed units were made Federal employees by virtue of the enactment of the National Guard Technicians Act of 1968. The Assistant Secretary also viewed as particularly relevant the position of the Department of Defense that the employees in the sought units are covered by Executive Order 11491 and the fact that the Activity's Adjutant General acts as the agent for the Secretaries of the Army and the Air Force in implementing labor relations and personnel policies regarding the employment of National Guard technicians. It was noted that the labor relations and personnel policies established by the Secretaries of the Army and the Air Force clearly state that the terms and provisions of Executive Order 11491 are applicable to National Guard technicians, and that Adjutants General are to insure that the Order is complied with in their respective jurisdictions.

With respect to the petitioned for units, the Assistant Secretary concluded that the record provided less than an adequate basis for making a determination concerning the appropriateness of the units sought. Because there was less than an adequate factual basis on which to determine the appropriateness of the claimed units, the Assistant Secretary remanded the cases to the appropriate Regional Administrator to reopen the record solely for the purpose of obtaining evidence concerning the appropriateness of the petitioned for units.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

MISSISSIPPI NATIONAL GUARD,
172nd MILITARY AIRLIFT GROUP (Thompson Field)

Activity

and

Case No. 41-1723(RO)

INTERNATIONAL UNION OF ELECTRICAL, RADIO
AND MACHINE WORKERS, AFL-CIO and its
NATIONAL ARMY-AIR TECHNICIANS ASSOCIATION,
LOCAL 676

Petitioner

MISSISSIPPI NATIONAL GUARD,
(Camp Shelby)

Activity

Case No. 41-1741(RO)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 3151 1/

Petitioner

DECISION AND REMAND

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The Petitioner's name appears as amended at the hearing.

Upon the entire record in these cases, including briefs filed by all the parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. A possible question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. In Case No. 41-1723 (RO), the International Union of Electrical, Radio and Machine Workers, AFL-CIO and its National Army-Air Technicians Association, Local 676, herein called IUE, seeks an election in a unit of all nonsupervisory Wage Board employees employed by the 172nd Military Airlift Group, Mississippi National Guard at the Activity's Thompson Field installation. In Case No. 41-1741 (RO), the American Federation of Government Employees, AFL-CIO, Local 3151, herein called AFGE, seeks a unit of all employees in the Annual Training Equipment Pool, Combined Support Maintenance Shop, Organization Maintenance Shop No. 6, and the United States Property and Fiscal Office at the Activity's Camp Shelby installation. At the hearing, the Activity declined to take a position concerning the appropriateness of the units sought by the IUE and the AFGE. In this respect, the Activity contended, among other things, that the provisions of Executive Order 11491 did not apply in this matter because the employees involved are under the operational control of the Adjutant General of the State of Mississippi, who is appointed and employed pursuant to State law and that the Executive Order is neither binding upon nor applicable to employees of the State of Mississippi.

The Adjutant General of the State of Mississippi administers the Army and Air National Guard technicians program within regulations and guide lines established by the Secretaries of the Department of the Army and the Department of the Air Force and the Chief of the National Guard Bureau, which is a joint Bureau of both the above-named Departments. The Adjutant General is appointed by the Governor of the State of Mississippi. Neither the National Guard Bureau nor the Secretaries of the Departments of the Army or the Air Force have the authority to veto the selection of an individual chosen by the Governor to be the State Adjutant General. However, in order for a State National Guard program to be recognized, federally, a State Adjutant General must comply with certain prescribed standards established by outstanding Agency regulations issued by the above named Secretaries. ^{2/}

^{2/} Title 32, U.S.C.A., Section 1101.1(e) provides, in part, that: "The appointment of the Adjutant General of a State and his tenure of office are governed by the laws of the State... A State Adjutant General may be appointed and serve without Federal recognition."

Title 32 U.S.C.A., Section 108 provides, in part, that: "If, within a time to be fixed by the President, a State does not comply with or enforce a requirement of, or regulations prescribed under this title, its National Guard is barred, wholly or partly as the President may prescribe, from receiving money or any other aid, benefit or privilege authorized by law..."

In support of the Activity's position that the provisions of Executive Order 11491 were inapplicable in the matter, the following contentions were made:

1. Public Law 90-486, which allegedly granted National Guard employees Federal employee status, ^{3/} was, in fact, enacted solely for the purpose of granting retirement benefits and protection under the Federal Torts Claims Act to excepted National Guard technicians.
2. The terms and provisions of Executive Order 11491 are not binding upon nor applicable to the sovereign State of Mississippi.
3. Certain portions of National Guard Regulations No. 51 and Air National Guard Regulations, No. 40-01, which were issued on March 1, 1970, by the Secretaries of the Departments of the Army and the Air Force for the purpose of providing guidance for the organization, functions and responsibilities with respect to civilian personnel administration within the Army and Air National Guard, including the implementation of Executive Order 11491, circumvent the intent of Congress and were never contemplated by Public Law 90-486.
4. The laws of the State of Mississippi do not grant the Adjutant General any authority to negotiate or enter into contracts with labor organizations.

With respect to the first contention, the Activity asserted that close scrutiny of the legislative history of Public Law 90-486 reveals that National Guard technicians were conferred Federal employee status only for those specifically enumerated purposes set forth in the legislative history. In this regard, it is contended that these limited purposes were to grant retirement benefits and coverage under the Federal Torts Claims Act to excepted National Guard technicians.

With respect to the second contention, the Activity asserted that Executive Order 11491 is not applicable to the State of Mississippi because National Guard technicians are engaged in a State rather than a Federal function. In support of this contention, the Activity notes that Public Law 90-486 amended Section 2105(a) of Title 5 of the United States Code

^{3/} Public Law 90-486, National Guard Technicians Act of 1968 (82 Stat. 756).

which defines what constitutes a Federal employee, 4/ by providing that an individual can be appointed to the Civil Service by, among other specifically named officials, a State Adjutant General. In this regard, it is contended that for National Guard technicians to be found to be Federal employees, they must meet all three of the criteria, outlined in Section 2105(a) including the requirement that they be engaged in the performance of a Federal function. Because Mississippi National Guard technicians are allegedly performing a State function in that they are appointed and supervised by a State Adjutant General, it is argued that they are not Federal employees. 5/

4/ Section 2105(a) Title 5, United States Code provides: (a) for the purpose of this title, "employee" except as otherwise provided by this section when specifically modified, means an officer and an individual who is--

(1) appointed in the civil service by one of the following acting in an official capacity--

- (A) the President;
- (B) a Member of Members of Congress, or the Congress;
- (C) a member of a uniformed service;
- (D) an individual who is an employee under this section;
- (E) the head of a Government controlled corporation; or
- (F) the adjutants general designated by the Secretary concerned under section 709(c) of title 32, United States Code;

(2) engaged in the performance of a Federal function under authority of law or an executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

5/ In further support of its contentions, the Activity cited several Federal Court decisions decided prior to the enactment of Public Law 90-486, which, among other things, found National Guard technicians to be State employees.

In regard to the Activity's third contention, it appears that the Activity objects to Section 7 of National Guard Regulations No. 51 and Air National Guard Regulations No. 40-01 which were issued on March 1, 1970, by the Secretaries of the Departments of the Army and the Air Force. 6/ The purpose of the regulations was to provide guidance with respect to personnel administration including the implementation of Executive Order 11491 by State adjutants general in their respective jurisdictions. It is asserted by the Activity that personnel administration is exclusively a State function, and therefore, Executive Order 11491 cannot be imposed upon the State through regulations.

In support of its fourth contention, it is asserted that the Activity's Adjutant General can exercise only those powers which are specifically granted him by the laws of the State of Mississippi. Because the laws of the State of Mississippi do not specifically and expressly grant the State Adjutant General the authority to negotiate or enter into a contract with a labor organization, it is contended that the State Adjutant General is powerless in implementing the provisions of Executive Order 11491. 7/

In contrast to the position of the Activity in this case, it should be noted that the Department of Defense's interpretation of Public Law 90-486 finds National Guard technicians to be Federal employees and accordingly, in that Department's view, Executive Order 11491 is applicable to National Guard technicians. Thus, the record reveals that Assistant Secretary of Defense Kelly, in a memorandum dated March 26, 1970, to Major General Wilson, the Chief of the National Guard Bureau, stated, in part, that:

6/ Section 7-1 of the regulations states, in part, that: "The program of labor-management relations is established by Executive Order 11491, October 29, 1969, and is fully applicable to all National Guard technicians (when in a civilian employee status), the National Guard Bureau and State Adjutants General. National Guard technicians, as employees of the United States, shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join, and assist any labor organization or to refrain from any such activity..."

7/ In support of this contention, the Activity cited several decisions of the Supreme Court of the State of Mississippi in which it was held that State agencies and municipal corporations which are created by the State legislature have only those powers which are specifically and expressly granted to them by statute.

I have learned...that the Governor and Adjutant General of Mississippi contend that National Guard technicians are not Federal employees for the purposes of Executive Order 11491, Labor-Management Relations in the Federal Service.

...National Guard technicians in the 50 states became Federal employees as a result of Public Law 90-486 (32USC709)...

...Please inform the Adjutant General of the State of Mississippi that National Guard technicians under his jurisdiction are Federal employees for the purposes of Executive Order 11491, and instruct him as to the necessity for observing and implementing the policy of this Department, as described above, with respect to those technicians...

Based on the foregoing, I find that National Guard technicians are employees within the meaning of Section 2(b) of the Order. As noted above, the record reveals that the Department of Defense has interpreted Public Law 90-486 to mean that the National Guard technicians, as defined therein, are employees of the Federal government. Consistent with its interpretation of the law, regulations have been issued, specifically National Guard Regulations No. 51 and Air National Guard Regulations No. 40-01, to implement the terms and provisions of Executive Order 11491. Moreover, under Executive Order 11491, I have issued two representation decisions involving National Guard technicians units 8/ and the Activities in those cases made no contention that Executive Order 11491 was inapplicable to their adjutants general because of their capacity as a state official or because National Guard technicians are State employees. 9/

8/ See Pennsylvania National Guard, A/SLMR No. 9, and Minnesota Army National Guard, A/SLMR No. 14.

9/ Moreover, the Activity's contentions that the National Guard technicians are State employees based upon court decisions issued prior to the enactment of Public Law 90-486, lacks merit. Section 715 of Public Law 90-486 states in effect, that it supersedes "any law, rule, regulations, or decision," which would provide that National Guard technicians are not employees of the United States. Therefore, the court decisions issued prior to January 1, 1969, in which National Guard technicians were found to be State employees, in my view, are clearly inapplicable because of the subsequent enactment of Public Law 90-486 by Congress.

With respect to the contention that Public Law 90-486 constitutes National Guard technicians to be Federal employees for certain enumerated, limited purposes, the legislative history of Public Law 90-486 reveals that its proposed scope was broader than merely granting retirement benefits and protection under the Federal Torts Claims Act to excepted National Guard technicians. In this regard, the Senate Armed Services Committee's Report, issued in 1968, 10/ concerning Public Law 90-486 states, in part, that:

This bill implements the purpose by converting the technicians to Federal employee status with certain controls on administration and supervision which would as a matter of law remain at the State level. In effect, the technicians will be come Federal employees receiving the salaries, fringe and retirement benefits, but with certain administrative control regarding employment supervision remaining with the adjutant general of the jurisdiction concerned under regulations prescribed by the secretary concerned... (emphasis added)

Thus, contrary to the view of the Activity, I find that there is no indication in Public Law 90-486 or in the legislative history which preceded it that Federal employee status was granted to National Guard technicians solely for the purpose of granting these employees Federal retirement benefits or coverage under the Federal Torts Claims Act.

I also have considered the contention that the laws of Mississippi do not permit the Adjutant General to negotiate with a labor organization. The applicable regulations issued by the Secretaries of the Army and Air Force and certain sections of Title 32 of the U.S. Code indicate that the adjutant general of a State, in effect, has been designated as an agent of the Secretaries of the Army and the Air Force as well as of the Chief of the National Guard Bureau, to insure that personnel and labor relations policies are administered in conformity with accepted Federal standards. Acting as an agent of the Secretaries of the Army and the Air Force and the Chief of the National Guard Bureau, it appears that sufficient enabling authority is found in outstanding regulations issued by the Secretaries of the Army and the Air Force to insure that state adjutants general will comply with the terms and provisions of Executive Order 11491. Consequently, I find that the provisions of the Executive Order are applicable to the Activity and that the National Guard technicians in the sought unit are employees within the meaning of Section 2(b) of Executive Order 11491.

10/ U.S. Congress, Committee on Armed Services, National Guard Technicians Act of 1968, p.2, 90th Congress, 2nd session, Report 1446.

April 2, 1971

With respect to the appropriateness of the units sought, the record shows that both the IUE and the AFGE seek units composed of National Guard technicians employed at two separate installations of the Activity in the State of Mississippi. Neither the representative of the Department of Defense nor the representative of the Activity presented any evidence at the hearing with respect to the claimed units. Indeed, the Activity's Adjutant General left the hearing room shortly after reading his formal statement of position concerning jurisdiction into the record. There were no other representatives of the Activity remaining in the hearing room who sought to present evidence concerning the appropriateness of the claimed units.

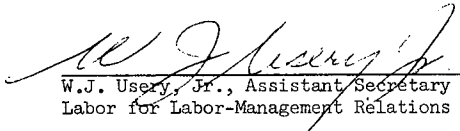
The record discloses that there are no other labor organizations which seek to represent the employees in either of the claimed units, and that neither the IUE nor the AFGE has an interest in representing employees in the unit being sought by the other. I find, however, that the record provides less than an adequate basis for making a determination concerning the appropriateness of the units by the IUE and the AFGE. There is no information concerning the Activity's organizational structure, supervisory hierarchy, or personnel and labor relations policies. Moreover, there are no facts concerning the employees in the claimed units, their job functions, the degree of employee interchange or their working conditions.

Since, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the claimed units, I shall remand the subject cases to the appropriate Regional Administrator to reopen the record solely for the purpose of receiving evidence concerning the appropriateness of the units sought.

ORDER

IT IS HEREBY ORDERED that the subject cases be, and they hereby are, remanded to the appropriate Regional Administrator.

Dated, Washington, D.C.
April 2, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF E.O. 11491

VETERANS ADMINISTRATION HOSPITAL
BROCKTON, MASSACHUSETTS
A/SLMR No. 21

This case involved a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 2592 (AFGE). The AFGE sought an Activity-wide unit excluding, among others, professional employees and guards, which the Intervenor, the National Association of Government Employees, Local RI-25 (NAGE), and the Activity agreed was appropriate. One issue presented in this case was whether the AFGE was disqualified from petitioning for the claimed unit because its president was employed at the Activity as a guard. In this respect, the NAGE and the Activity asserted that a potential conflict of interest existed if the AFGE was certified as the representative of the nonguard employees in the petitioned for unit since its president, who was employed as a guard by the Activity, would be involved in such activities as negotiations and campaigning. The AFGE, on the other hand, asserted that the Activity and the NAGE were improperly involving themselves in the AFGE's internal affairs in this case and, that an election should be held because all the parties agreed that the unit sought was appropriate.

The Assistant Secretary noted that the AFGE refused to permit its president, who was present at the hearing, to testify upon the request of the Hearing Officer. The Assistant Secretary found that such a lack of cooperation by the petitioning labor organization warranted the dismissal of the petition. He stated that cooperation in the investigation of a petition by the parties involved and particularly the petitioner is of the utmost importance in the administration of the Executive Order since, as pointed out by the AFGE in this case, the Assistant Secretary has no subpoena powers under the Order.

The Assistant Secretary pointed out that Section 1(b) of the Executive Order did not authorize employee participation in the management of a labor organization when that participation resulted in a conflict of interest with the employee's official duties. Moreover, he noted that Sections 10(b)(3) and 10(c) of the Order precluded guards from being included in units with nonguard employees and precluded guards from being represented by labor organizations which admit to membership employees other than guards. By reading the foregoing provisions in conjunction with each other and noting the Study Committee's Report and Recommendations in this regard, the Assistant Secretary concluded that to effectuate the purposes and policies of the Order, guards should not be permitted to participate in the management of nonguard labor organizations.

Based on all of the foregoing circumstances, the Assistant Secretary concluded that the AFGE's petition should be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION HOSPITAL
BROCKTON, MASSACHUSETTS

Activity

and

Case No. 31-3319 E.O.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2592

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL RI-25

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Anthony D. Wollaston. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Petitioner's brief, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. For the reasons discussed below, no question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.
3. The American Federation of Government Employees, AFL-CIO, Local 2592, herein called AFGE, seeks an election in a unit of all employees of the Veterans Administration Hospital, Brockton, Massachusetts, excluding among others, all professional employees and guards. The Activity, the AFGE, and the Intervenor, the National Association of Government Employees, Local RI-25, herein called NAGE, agree that the unit sought is appropriate. However, the Activity and the NAGE contend that the AFGE's petition should be dismissed because the current president of AFGE, Local 2592 is employed by the Activity as a guard. The Activity and the NAGE assert that it would

not be consistent with the purposes and policies of the Order to certify a labor organization whose president is a guard because this would create necessarily a conflict of interest since, in his capacity as union president, he would be involved in such activities as negotiations and campaigning. The AFGE contends that the Activity and the NAGE are improperly involving themselves in the AFGE's internal affairs by their position in this case. The AFGE takes the position that an election should be held because all the parties agree that the unit sought is appropriate.

The Veterans Administration Hospital in Brockton, Massachusetts employs approximately 770 employees in classifications covered by the petitioned for unit. Under Executive Order 10988, the NAGE was granted exclusive recognition by the Activity for an installation-wide unit excluding professionals. Several agreements between the parties were executed during the period of exclusive recognition. 1/

Mr. Fortunato Graca, who has been president of the AFGE's local involved in this proceeding for several years, was employed initially by the Activity in nursing services. On June 18, 1967, Graca was reassigned to a guard classification, which position he holds currently. The evidence establishes that, as a guard, Graca is responsible for maintaining law and order at the facility and for enforcing its rules and regulations.

The parties do not dispute the fact that Graca is a guard within the meaning of Section 2(d) of the Order. At the hearing, the NAGE attempted to call Graca as a witness. Although he was present in the hearing room, the AFGE's representative instructed Graca not to appear as a witness based on the view that his testimony "would have no particular relevance." Despite the Hearing Officer's assurance that he would determine the relevance of the questions posed to Graca and his request that Graca appear as a witness in this matter, the AFGE continued to refuse to permit him to testify. 2/ In this respect, the AFGE contended that under the Assistant Secretary's regulations, a Hearing Officer did not have the authority to insist that a witness appear since under the Order he did not have the authority to subpoena a witness.

Where, as here, a petitioning labor organization refuses, upon the request of a Hearing Officer, to supply a witness who is present at the

1/ In 1966 and 1967, the AFGE unsuccessfully challenged the NAGE's exclusive representative status.

2/ The NAGE subsequently made an offer of proof with respect to Graca's testimony. Its representative contended that through his testimony he sought to develop proof of conflict of interest as it pertained to his duties as a guard and his duties as president of the AFGE local involved in this proceeding. After the offer of proof was made, the Hearing Officer asked Graca directly if he would appear as a witness and he refused.

hearing, I find that such a lack of cooperation warrants the dismissal of the petitioner's petition. Cooperation in the investigation of a petition by the parties involved, and particularly the petitioner, is of utmost importance in the administration of the Executive Order since, as pointed out by the AFGE in this case, the Assistant Secretary has no subpoena powers under the Order. Accordingly, I have determined that it would best effectuate the policies of the Order and would promote the prompt handling of cases, to dismiss a petition in circumstances where a petitioner refuses to cooperate in the processing of his petition.

As stated above, the issue raised by the Activity and the NACE in this matter was the question whether the AFGE was disqualified under the Order from petitioning for the claimed unit because its president was employed currently by the Activity as a guard.

Section 1(b) of Executive Order 11491 provides, in part, that Section 1(a) of the Order does not authorize participation in the management of a labor organization by an employee "when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee." Further, Section 2(d) of the Order defines a guard as "an employee assigned to enforce against employees and other persons rules to protect agency property or the safety of persons on agency premises or to maintain law and order in areas or facilities under Government control."

The Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, which preceded the issuance of Executive Order 11491, recommended that the private sector policy - that guards should not be included in units with nonguard employees and that guards should not be represented by labor organizations which admit to membership employees other than guards - should be made applicable to the Federal service. 3/ It is clear that the private sector policy was based on the view that a mixture of guards and nonguards in employee bargaining units and guard representation by labor organizations which admit to membership employees other than guards would result in a conflict or apparent conflict of interest in situations which an employer required the enforcement of its rules to protect its property and the safety of persons thereon. Sections 10(b)(3) and 10(c) of the Executive Order clearly reflect the adoption of the foregoing views.

As noted above, in the subject case, AFGE Local 2592, a nonguard labor organization, has a guard as its president. Moreover, the evidence reveals that in his capacity as president of this labor organization, the guard, in fact, was co-signer of the petition. These factors are, in my view, inconsistent with the intent of the Executive Order as expressed in the Study Committee's Report and Recommendations and Sections 1(b), 10(b)(3) and 10(c). Thus, despite the fact that Sections 10(b)(3) and 10(c) of the Order speak in terms of units, when these provisions are read in

3/ See Section B(6) of the Report and Recommendations.

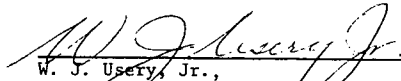
conjunction with Section 1(b) of the Order, I find that to effectuate the purposes and policies of the Order, guards should not be permitted to participate in the management of nonguard labor organizations. Such participation, in my view, "result(s) in a conflict or apparent conflict of interest..." and is also "incompatible with...the official duties of the employee." 4/

Accordingly, in all the circumstances of this case including the AFGE's lack of cooperation in complying with a request of the Hearing Officer to make available a witness who was present in the hearing room and the fact that the president of the nonguard AFGE local involved in this proceeding is a guard, who, in his capacity as president, was a co-signer of the representation petition in this case, I find the petition herein should be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 31-3319 E.O. be, and it hereby is, dismissed.

Dated, Washington, D.C.
April 2, 1971


W. J. Usery, Jr.,
Assistant Secretary of Labor
for Labor-Management Relations

4/ See Section 1(b) of the Order.

April 5, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTIONS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

THE VETERANS ADMINISTRATION HOSPITAL,
LEXINGTON, KENTUCKY
A/SLMR No. 22

The American Federation of Government Employees, Local 302, AFL-CIO (AFGE) sought to represent an "all professional and nonprofessional employee" unit at the Activity, with the matter of the inclusion of professional classifications with nonprofessionals to be resolved by a self-determination election. Kentucky Nurses' Association affiliated with the American Nurses' Association (KNA) sought a separate unit of "all registered nurses." The Activity did not contest the appropriateness of any unit sought, but in opposition to the KNA's claim, sought the exclusion of nurse coordinators (head nurses) as supervisors within the meaning of the Order.

With respect to the appropriateness of the unit sought by the AFGE, the Assistant Secretary found that an Activity-wide unit was appropriate for exclusive recognition and that professional employees would be accorded a self-determination election before being included in a unit with nonprofessionals.

As to the appropriateness of a separate unit of all registered nurses, the Assistant Secretary noted that all staff nurses perform essentially the same functions, have a supervisory structure apart from other professionals, have specific educational and training requirements, do not interchange with other classifications and work under separate Civil Service Regulations and salary schedule from professionals other than doctors and dentists. It was concluded that the nurses constitute a functionally distinct group with a clear identifiable community of interest and, therefore, would be a unit appropriate for exclusive recognition. Accordingly, the nurses were given the choice of whether they wished to be represented by the KNA in a separate unit or by the AFGE in a unit with other professionals, or by the AFGE in an Activity-wide unit.

With respect to the nurse coordinators (head nurses), the Assistant Secretary found that they were "supervisors" within the meaning of Executive Order 11491 and as such should be excluded from all units. They responsibly direct the work of staff nurses, licensed practical nurses and nursing assistants working under them, assign personnel to tours of duty and specific work assignments, evaluate the performance of personnel working under their direction and independently approve leave requests. The Assistant Secretary

noted that in the exercise of these functions the nurse coordinators exercise independent judgment, particularly in the areas of employee evaluation and work assignments. Nurse clinicians in the operating room and outpatient facility who perform essentially the same duties as do nurse coordinators in the hospital units were likewise excluded as supervisors, although other nurse clinicians were included in the unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION, VETERANS
ADMINISTRATION HOSPITAL, LEXINGTON,
KENTUCKY

Activity

and

Case No. 41-1721

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 302, AFL-CIO^{1/}

Petitioner

VETERANS ADMINISTRATION, VETERANS
ADMINISTRATION HOSPITAL, LEXINGTON,
KENTUCKY

Activity

and

Case Nos 41-1731 and 1732

KENTUCKY NURSES' ASSOCIATION, A/W
AMERICAN NURSES' ASSOCIATION

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by all the parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

^{1/} The name of the Petitioner appears as amended at the hearing.

2. A question concerning the representation of certain employees of the Activity exists within the meaning of Section 10 of Executive Order 11491.

3. In Case No. 41-1721, Petitioner, American Federation of Government Employees, Local 302, AFL-CIO, herein called AFGE, seeks an election in a unit of:

All nonsupervisory, nonmanagerial employees of the Veterans Administration Hospital, Lexington, Kentucky, EXCLUDING all guards, supervisors, and managerial employees and personnel employees who are employed in other than a purely clerical capacity, of the Veterans Administration Hospital, Lexington, Kentucky.

The record reveals that the AFGE seeks to represent both professional and nonprofessional employees, with the question of whether the professional employees are to be included in a unit with nonprofessionals to be resolved by a self-determination election as required by Section 10(b)(4) of the Executive Order.

In Case Nos. 41-1731 and 1732^{2/} Petitioner, Kentucky Nurses' Association, affiliated with the American Nurses' Association, herein called KNA, seeks an election in either a unit of:

All registered nurses employed at the Veterans Administration Hospital, Lexington, Kentucky, EXCLUDING chief nurse, associate chief nurse, assistant chief nurse, head nurses, and supervisors within the meaning of the Order, management officials, guards, employees engaged in Federal personnel work in other than a purely clerical capacity, all other professional employees and all nonprofessional employees.

or alternatively:

All registered nurses employed at the Veterans Administration Hospital, Lexington, Kentucky, EXCLUDING chief nurse, associate chief nurse, assistant chief nurse, and supervisors within the meaning of the Order, management officials, guards, employees engaged in Federal personnel work in other than a purely clerical capacity, all other professional employees and all nonprofessional employees.^{3/}

^{2/} The Petitioner's claimed units appear as amended at the hearing.

^{3/} The petitions in Case Nos. 41-1731(RO) and 41-1732(RO) differ only with respect to the eligibility status of the classification "head nurses," and were filed in such manner so as to reflect the KNA's desire to have an election in the above-described unit whether or not head nurses were included in the unit found appropriate.

AFGE contends that severance of the registered nurses from a unit of other professional employees would be inappropriate because of a close community of interest between registered nurses and other employees in the unit sought by the AFGE.

The Activity does not contest the appropriateness of any of the above-described unit positions taken by the Petitioners except that it contends that nurse coordinators (head nurses) and nurse clinicians in the operating room and outpatient facility are supervisors within the definition contained in the Executive Order and should be excluded from any unit determined to be appropriate.

Apart from the KNA's contention that registered nurses should be permitted separate representation from other employees, no party contests the appropriateness of the unit petitioned for by the AFGE, and there is no evidence that it is contrary to the provisions of the Executive Order. Thus, the unit sought by the AFGE may be an appropriate unit for the purpose of exclusive recognition.

As noted above, the Activity's employee complement includes both professional and nonprofessional employees. The Activity and the AFGE contend that within the entire facility there are 20 job classifications, including nurses, that have professional status.^{4/} Although I am making no findings of fact as to the possible professional status of all of the classifications at the facility,^{5/} under the Order persons having professional status must be accorded a self-determination election before being included in a unit with nonprofessionals.

The Veterans Administration Hospital facility consists of approximately 42 buildings, only a small number of which are used to house patients. The total employee complement is approximately 725. Overall direction of the facility is vested in the Hospital Director, who has under him the Assistant Hospital Director, with primary responsibility for administrative functions, and the Chief of Staff, who exercises overall direction of all employees engaged in functions specifically related to patient care.

^{4/} The AFGE agreed on the record to adopt the Activity's classification of employees as to their professional or nonprofessional status. The KNA declined to join in the stipulation concerning the professional status of certain classifications, although it did not tender any evidence in support of its position. However, the KNA seeks only to represent employees classified as nurses and all parties agree that nurses have professional status.

^{5/} Since the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc., to provide a basis for a finding of fact that persons in particular classifications are professional, I will make no findings as to which employee classifications constitute professional employees.

In considering the unit of nurses sought by the KNA, the record reveals that the Hospital is divided into "nursing units," each of which covers a section of the Hospital usually consisting of between 25 and 90 beds. Nursing care is provided to each "nursing unit" by a "team" consisting of registered nurses, licensed practical nurses (LPN's) and nursing assistants. The team is divided up within three shifts so that the nursing unit is covered 24 hours a day. Team personnel rotate among the three shifts. Supervision and direction of all staff nurses, including the classifications nurse coordinator and nurse clinician, are vested in the Chief, Nursing Service, who reports directly to the Chief of Staff. The Chief, Nursing Service, has under her an Assistant Chief, Nursing Service and an Associate Chief, Nursing Service. Supervision and direction of all staff nurses flow from the Chief and Assistant Chief of the Nursing Service through the nurse coordinators.

All staff nurses have the same conditions of employment and are governed by the same salary schedule. There is no interchange between nurses and other professional classifications in the Hospital, although the nature of the operation of a hospital requires that nurses have substantial contact with other employees involved with patient care. There are specific educational and training requirements for a registered nurse. All staff nurses perform essentially the same type of duties which are distinguishable from those of other professionals. Nurses are under a separate supervisory structure from other professionals. There is no interchange between nurses and other professional classifications. Nurses work under separate Civil Service regulations and salary schedules from professionals other than doctors and dentists. Based on the foregoing, the evidence establishes that staff nurses have a sufficiently separate community of interest apart from other professional employees so that a unit of all staff nurses may be appropriate for the purpose of exclusive recognition.^{6/} In this connection I reject the AFGE's contention that nurses cannot be severed from a unit of other professional employees at the facility. The grouping of employees in bargaining units is based, in part, on factors of community of interest. There is no requirement that all professional employees must be grouped in one unit.^{7/}

In these circumstances and noting the fact that Section 10(b) of the Order provides specifically, in part, that a unit may be established on a functional basis, a self-determination election in the unit sought by the KNA is warranted since the employees constitute a functionally distinct group with a clear and identifiable community of interest.

^{6/} Included in the unit of staff nurses are those registered nurses who have the title, nurse clinician in "medical and surgical," "psychiatric," and "geriatrics." Nursing clinicians in the "operation room" and "outpatient facility," as discussed below, are found to be supervisors within the meaning of the Order.

^{7/} There are numerous examples in the Federal sector of hospitals which contain units limited to nurses. See e.g. The Veterans Administration Hospital, Augusta, A/SLMR No. 3 and U.S. Soldiers' Home, Washington, D. C., A/SLMR No. 13.

Insufficient evidence was offered to establish that the unit sought by the KNA would not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491. Particularly noted in this regard is the Activity's statement on the record that there are separate units of staff nurses at various Veterans Administration hospitals in the United States and, on the basis of that experience, the Activity felt that the efficiency of its operation would not be impaired by the finding of a separate unit limited to nurses.^{8/}

As noted above, the Activity and the AFGE contend that nurse coordinators, or head nurses, are supervisors within the meaning of the Order while the KNA seeks their inclusion in the unit.^{9/} Persons classified as nurse coordinators work directly under the Chief and Assistant Chief of the nursing service. It is the function of the nurse coordinator to direct the efforts of a nursing team made up of other registered nurses, licensed practical nurses (LPN's) and nursing assistants over a three shift operation. While the nurse coordinator works only one shift each 24 hours, usually the day shift, her responsibility is for the entire 24 hour period and, when she is off-shift, the nurse coordinator appoints another registered nurse to act in her behalf.

The record also reflects that the nurse coordinator is fully responsible for her unit. She assigns personnel within the unit to a work schedule and makes patient care assignments, although it is estimated that nurse coordinators themselves may spend as much as 25 percent of their time directly engaged in patient care. While a nurse coordinator normally works the day shift, at her discretion she may visit the Hospital at any time for such purposes as checking on the operation of her unit or filling in for an absent registered nurse. All other registered nurses rotate through the three daily shifts. The nurse coordinators grant time off and approve vacation scheduling. They have the authority to initiate such personnel actions as discharge, reward, discipline and promotion because they are the rating officials for LPN's, nursing assistants and registered nurses.^{10/} Further, nurse coordinators are members of the Professional Standards Board, which judges the professional qualification of nurses, whereas other registered nurses do not serve as members of the Board.

Nurse coordinators meet twice a month with the Chief of the nursing service at which time various administrative matters are discussed. The annual evaluation for nurse coordinators contains a rating in the areas of supervisory ability, administrative judgment and decision making ability.

^{8/} As stated above, I have found that the unit sought by the AFGE may be an appropriate unit. I also find that the "all employee" or "all professional employee" units sought by the AFGE but excluding those classifications sought by the KNA may be appropriate units.

^{9/} The record contains the undisputed evidence that the nurse clinicians assigned to the operating room and the outpatient facility perform the same functions and have the same responsibilities as do the nurse coordinators in the hospital units.

^{10/} With respect to registered nurses, the Assistant Chief is the approving official for all evaluations.

Based on the foregoing, I find that nurse coordinators are "supervisors" within the meaning of the Order inasmuch as they make both shift assignments and, more importantly, work assignments to persons in their unit; approve leave requests; and are the sole evaluators of LPN's and nursing assistants; and perform first level evaluation on all registered nurses working under their direction. Accordingly, I find that nurse coordinators should be excluded from any unit found appropriate for exclusive recognition.^{11/} As it is undisputed that the nurse clinicians assigned to the "operating room" and "outpatient facility" perform the same functions and have the same responsibilities in their areas as do the nurse coordinators, I find that they also should be excluded from any below described unit found appropriate for exclusive recognition.

Having found that the nonsupervisory employees petitioned for by the KNA, if they so desire, may constitute a separate appropriate unit, I shall not make any final unit determination at this time, but shall first ascertain the desires of the employees by directing an election in the following group:

Voting Group (a): All registered nurses employed at the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

I find further that the Activity-wide unit of nonsupervisory employees sought by the AFGE may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491. This unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct that separate elections be conducted in the following groups:

Voting Group (b): All professional employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding all employees voting in Group (a), all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (c): All employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

^{11/} See The Veterans Administration Hospital, Augusta, cited above.

The employees in professional voting group (a) will be asked two questions on their ballot: (1) whether they wish to be represented for the purpose of exclusive recognition by the KNA, the AFGE or neither and (2) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition. If in response to question (1) a majority of the employees in voting group (a) select the union (KNA) seeking to represent them separately, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Area Administrator supervising the election is instructed to issue a certification of representative to the labor organization (KNA) seeking to represent them separately. However, if a majority of the employees voting in group (a) do not vote for the union (KNA) which is seeking to represent them separately, an appropriate certification of results of the first vote shall be issued to the KNA and the ballots of the employees in voting group (a) will be pooled with those of the employees in voting group (b).

The employees in the professional voting group (b) will be asked two questions on their ballot: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the AFGE.^{12/}

In the event that a majority of the valid votes of voting group (b), including any votes pooled from voting group (a), are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether or not the AFGE was selected as the exclusive representative for the professional employee unit.^{13/} The ballots of voting group (c) will then be counted and an appropriate certification will be issued indicating whether or not the AFGE has been selected as the exclusive representative for the nonprofessional unit. In the event that a majority of the valid votes of voting group (b) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (b) shall be combined with those of voting group (c) and counted and the results certified.^{14/}

^{12/} Petitioner KNA does not seek to represent any professional classifications other than those in voting group (a).

^{13/} As the KNA does not seek to represent employees in voting groups (b) and (c) it shall not have standing to raise a challenge as to eligibility with respect to classifications in those groups.

^{14/} The ballots of professional voting group (a) will be included with those of professional voting group (b) if a majority of the employees in voting group (a) did not vote for the union (KNA) which is seeking to represent them separately. If the votes of voting group (a) and (b) are pooled with the votes of voting group (c), they are to be tallied in the following manner: the votes for the KNA, the labor organization seeking a separate unit in group (a), shall be counted as part of the total number of valid votes cast but neither for nor against the AFGE, the labor organization seeking to represent the Activity-wide unit. All other votes are to be accorded their face value.

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The unit determinations in the subject consolidated cases are based, in part, then, upon the results of elections among registered nurses and among the other professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the registered nurses vote for representation by the union (KNA) seeking to represent them separately, I find the following unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All registered nurses employed at the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.^{15/}

2. If a majority of the registered nurses vote for representation by the union (KNA) seeking to represent them separately and if a majority of the other professional employees do not vote for inclusion in the same unit as the nonprofessional employees, I find the following units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All professional employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, all registered nurses, all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

(b) All employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

^{15/} As the registered nurse unit found appropriate is that claimed by the KNA in Case No. 41-1731, I shall dismiss KNA's companion petition in Case No. 41-1732.

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3. If a majority of the registered nurses vote for representation by the union (KNA) seeking to represent them separately, and if a majority of the professional employees, excluding nurses, votes for inclusion in the same unit as the nonprofessional employees, I find the following unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, all registered nurses, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

4. If a majority of the registered nurses vote against representation by the union (KNA) seeking to represent them separately and if a majority of the professional employees, including nurses, do not vote for inclusion in the same unit as the nonprofessional employees, I find the following units appropriate for the purpose of exclusive recognition with the meaning of Section 10 of the Order:

- (a) All professional employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.
- (b) All employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating rooms and outpatient facility, all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

5. If a majority of the registered nurses vote against representation by the union (KNA) seeking to represent them separately and if a majority of the professional employees, including nurses, vote for inclusion in the same unit as the nonprofessional employees, I find the following unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

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All professional and nonprofessional employees of the Veterans Administration Hospital, Lexington, Kentucky, excluding chief nurse, associate chief nurse, assistant chief nurse, nurse coordinators (head nurses), nurse clinicians in operating room and outpatient facility, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and other supervisors and guards as defined in the Order.

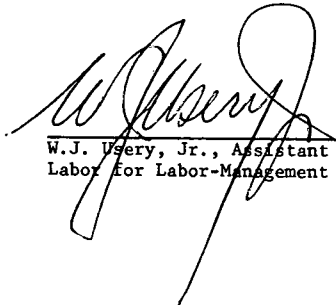
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 41-1732 be, and it hereby is, dismissed.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted among the employees in the voting groups described above, as early as possible, but not later than 30 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the voting groups who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible in voting group (a) shall vote whether they desire to be represented for the purpose of exclusive recognition by the Kentucky Nurses' Association affiliated with the American Nurses' Association; or by the American Federation of Government Employees, Local 302, AFL-CIO; or by neither. Those eligible in voting groups (b) and (c) shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, Local 302, AFL-CIO.

Dated, Washington, D. C.
April 5, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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April 7, 1971

A/SLMR No. 23

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

DEFENSE SUPPLY AGENCY, DEFENSE
CONTRACT ADMINISTRATION SERVICES
REGION, ATLANTA, DEFENSE CONTRACT
ADMINISTRATION SERVICES DISTRICT,
BIRMINGHAM
A/SLMR No. 23

DEFENSE SUPPLY AGENCY, DEFENSE
CONTRACT ADMINISTRATION SERVICES
REGION, ATLANTA, DEFENSE CONTRACT
ADMINISTRATION SERVICES DISTRICT,
BIRMINGHAM 1/

Activity

and

Case No. 40-1956 (RO)

The subject case involving a representation petition filed by National Federation of Federal Employees, Local No. 561 presented the question whether a group of the Activity's employees working in Mobile, Alabama constituted an appropriate unit for the purpose of exclusive recognition.

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL No. 561 2/

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, Local 3024

Intervenor

In all the circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this determination, the Assistant Secretary relied on the fact that the proposed unit is not an organizational entity, but, rather, consists of segments of three divisions headquartered elsewhere. He noted that the employees' first line of supervision, in most cases, was located elsewhere and that non-Mobile employees reported directly to that same supervisor. In pointing up the routine interchange of Mobile employees with employees elsewhere in the Activity's District, the Assistant Secretary emphasized that the personnel management of all District employees, including Mobile employees, was effectuated at a level no lower than the District headquarters, that most vacancies and promotions were filled by district-wide or region-wide competition and that all District employees share identical fringe benefits. Also, he viewed as particularly relevant the fact that the Mobile employees performed functions identical to those performed by similarly situated employees throughout the Activity's District.

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, 3/ a hearing was held before Hearing Officer Seymour X. Alsher.

In these circumstances, the Assistant Secretary concluded that the employees in the unit sought by the petition did not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings or efficiency of agency operations. Accordingly, he ordered that the petition be dismissed.

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

3/ Following requests for exclusive recognition, pursuant to now-superseded Executive Order 10988, by the Petitioner for the same unit petitioned for in the subject case, and by the Intervenor for a more comprehensive district-wide unit, the Activity on December 29, 1969, granted exclusive recognition to the Intervenor and denied the Petitioner's request. Simultaneously, the Activity withdrew its October 29, 1969, grant of formal recognition to the Petitioner. In view of the absence of appellate rights to the Secretary of Labor which were no longer available under superseded Executive Order 10988, the Petitioner's timely appeal was perfected as an initial petition under Executive Order 11491 and was processed accordingly. In these circumstances, the grant of exclusive recognition to the Intervenor is considered to be no bar to this proceeding.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. ^{4/}

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. For the reasons discussed below, no question concerning the representation of certain employees of the Activity exists with the meaning of Section 10 of Executive Order 11491.

3. Petitioner, National Federation of Federal Employees, Local No. 561, herein called NFFE, seeks an election in a unit of all non-supervisory, nonprofessional employees of the Defense Contract Administration Services District (DSASD), Birmingham located at Mobile, Alabama, excluding professionals, management officials, supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity and guards as defined in the Executive Order. The Activity and the Intervenor, American Federation of Government Employees, AFL-CIO, Local 3024, herein called AFGE, contend that the Mobile unit is inappropriate, and that the District-wide unit, in which AFGE was accorded exclusive recognition, is the only appropriate unit.

The Defense Contract Administration Services Region (DCASR), Atlanta, with approximately 1600 employees, administers the procurement and distribution of goods for the Department of Defense and other Federal agencies throughout the seven southeastern states and the Caribbean. The DCASD, Birmingham is a subdivision thereof, exercising responsibilities in Alabama, Mississippi, a portion of Florida, and the western half of Tennessee.

Within the geographical area administered by DCASD, Birmingham is a Defense Contract Administration Services Office located in Huntsville, Alabama (herein referred to as DCASO, Huntsville). With administration responsibilities limited to several area plants contracting with the National Aeronautics and Space Administration, DCASO, Huntsville's chief reports to the commander of DCASD, Birmingham. The Activity considers DCASO, Huntsville to be the only real subdivision of DCASD, Birmingham

^{4/} The Hearing Officer referred the Intervenor's Motion to Dismiss, based upon procedural grounds, to the Assistant Secretary. In view of my Decision and Order herein, I consider it unnecessary to pass upon such motion.

With respect to the question raised by the Intervenor relating to Section 20 of the Executive Order and its application to the appearance of witnesses at the hearing, a representation proceeding was not considered to be the appropriate forum for the disposition of such an issue.

However, located in the City of Birmingham is a Defense Contract Administration Services Procurement Office (herein referred to as DCASPRO). Dependent upon DCASD, Birmingham only for "house cleaning" services, DCASPRO, whose operations are confined to the plant of Hayes International Corporation, reports directly to DCASR, Atlanta.

Paralleling the DCASR, Atlanta structure, DCASD, Birmingham is comprised primarily of three divisions: Production, with approximately 50 employees; Quality Assurance, with 200 employees; and Contract Administration, with 50 employees. The remaining 100 personnel in DCASD, Birmingham are located in DCASO, Huntsville. Each division stations personnel throughout the District, near the performance area of the particular contract involved.

There are two additional segments concerned with the administration of the contract: (1) The Office of Contracts Compliance, with personnel stationed at DCASR, Atlanta headquarters and at DCASD, Birmingham headquarters, services contractors or potential contractors to ensure that they are equipped and are complying with various statutes' equal employment opportunity provisions; and (2) the Industrial Security Office, again with personnel at the regional and district headquarters levels, is concerned only with ensuring security where classified contracts are involved.

NFFE's petition requests an election among certain employees located at Mobile, Alabama, who have been assigned to that area to administer local contracts. Generally, the approximate 28 employees in Mobile work in either the Continental Motors Corporation plant or the Lear-Siegler, Incorporated plant, both of which are located on the Brookley Air Force Base installation. The record reveals that several employees who would be included in the Mobile unit make calls at plants outside Mobile. The Mobile employees, ranging in grade from GS-3 through GS-13, are assigned exclusively to either the Quality Assurance Division (QAD), which ensures compliance with contract specifications; or the Production Division (PD), which monitors schedules; or the Contract Administration Division (CAD), which generally coordinates matters relating to the contract.

There is no chief resident or administrative head over the Mobile employees. Except for a first level supervisor who possesses responsibilities limited to a few QAD employees at Continental, the record reveals no other local supervisor. The remaining QAD employees report directly to a branch chief in Jackson, Mississippi, who has QAD employees, stationed elsewhere, reporting to him. The PD and CA employees report directly to their respective chiefs in the Birmingham headquarters.

The Mobile employees, within their respective divisions, perform similar duties as all other District employees. Moreover, they share identical fringe benefits with all District employees.

Hiring, firing and equivalent personnel actions are effected by the Regional Commander through his Civilian Personnel Office (CPO) at DCASR, Atlanta. Personnel policies for the entire region are established at that level. Disciplinary action limited to suspension has been delegated to the District Commander. Reprimand authority is delegated to the immediate supervisor. As a matter of operating convenience, the regional CPO has a small detachment of personnel located in Birmingham at the District headquarters. These employees, the only personnel employees located in the District, report directly to the Chief of CPO in Atlanta. Personnel records of all District employees are maintained at the Birmingham headquarters.

Pursuant to region-wide policy, vacancies and promotions in grades GS-1 through GS-6 are filled by competition within the commuting area of the vacant job. Vacancies and promotions in grades GS-7 through GS-11 are filled by competition on a district-wide basis, and those in grades above GS-11 are filled by region-wide competition. A similar policy applies in situations of reduction in force. The record reveals that temporary assignment of Mobile employees to other areas within the District is routine. As for permanent reassignment, such must necessarily depend entirely upon the particular plant's contract. If, for any reason, the contract terminates, there is no need for employees to remain at that particular plant and they are moved elsewhere. With the inception of the Continental and Lear-Riegler contracts, the present Mobile employees were moved in from other parts of the District where workloads had decreased.

The evidence reflects that employee-management relations begins at the District level and progresses to the Region in the event of a lack of resolution. The Activity's labor relations specialist, who would handle any negotiation within the entire region, is located at the Atlanta Regional headquarters. At the time of NFFE's grant of formal recognition and AFGE's grant of exclusive recognition, the Chief of CPO in Atlanta was designated as the "focal point of contact," but the parties were advised they could "contact" management personnel in the Birmingham District headquarters.

In view of the above factors, it is apparent that the Mobile unit does not constitute a distinct and homogenous grouping of the Activity's employees. The proposed unit is not an organizational entity, but, rather, consists of segments of three divisions headquartered elsewhere. Thus, most employees report directly to a supervisor, located elsewhere, who has non-Mobile employees also reporting to him. The record also contains evidence of temporary and permanent reassignments of employees in the claimed unit to other points within the District. Most vacancies and promotions are filled by competition throughout the District or region, which further contributes to the lack of stability of the Mobile work force. Further, Mobile employees share identical fringe benefits with employees throughout the District.

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It is clear that the Mobile employees, some of whom even work outside Mobile and all of whom work segregated from at least part of the other employees, share no clear and identifiable community of interest. The record establishes that the duties of Mobile employees, as a group, are not unique from those of other groups throughout the District. Similarly, the individual employees perform the same duties as do those in similar classifications throughout the District. Moreover, since the Mobile employees work in three different divisions, they must possess different skills. These skills apparently run the gamut of those in the entire District, since the Mobile grades range from GS-3 to GS-13.

The record reveals that there is no distinctiveness of function in the Mobile unit since those employees are but a small part of the total related functions of each overall division. Moreover, the unit sought represents but a small portion of the total integrated work process of all functions (CA, QAD, and PD) associated with contract administration in the DCASD, Birmingham.

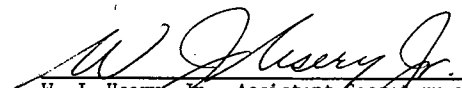
I also find that the unit proposed by the NFFE, which artificially divides and fragments the District, cannot reasonably be expected to promote effective dealings 5/ or efficiency of agency operations.

Based on the foregoing, I find that the unit sought by the NFFE does not constitute an appropriate unit for the purpose of exclusive recognition under Executive Order 11491.

ORDER

IT IS HEREBY ORDERED that this petition in Case No. 40-1956 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
April 7, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

5/ It is apparent that the short period during which the NFFE held formal recognition in the Mobile unit does not constitute a truly meaningful bargaining history. Also immaterial is the exclusive recognition held by the AFGE at DCASO, Huntsville since 1966. In this latter regard, the only evidence relating to that unit reveals that the Huntsville-based employees constitute a separate office, headed by an administrative chief.

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April 21, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE NAVY,
NAVY EXCHANGE,
MAYPORT, FLORIDA
A/SLMR No. 24

This case, which arose as a result of a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 2010, (AFGE), presented the questions whether probationary employees and off-duty military employees should be included in the petitioned for unit.

The AFGE requested a unit composed solely of employees of the Activity who were in permanent full-time and permanent part-time classifications. Probationary employees were excluded on the basis that their high rate of turnover would result in unstable labor relations if they were included within the unit. The AFGE also sought to exclude off-duty military employees on the basis that they were on military duty 24 hours a day, they had a high rate of turnover in their jobs because of the short duration of their military duty at the Naval Station and they did not have a genuine interest in the working conditions within the unit. The Activity sought the inclusion of these two groups of employees on the basis that they had a clear and identifiable community of interest with the petitioned for employees and to exclude them would not promote effective dealings and efficiency of operations.

The Assistant Secretary found that the probationary employees in this case had a community of interest with employees in the claimed unit despite evidence of turnover. He noted that they performed the same work performed by employees in the petitioned for unit; that there was no evidence that probationary employees did not receive and hold their employment with a contemplation of permanent tenure; and that the permanent employees in the claimed unit were at the commencement of their employment probationary employees. In these circumstances, the Assistant Secretary found that the exclusion of probationary employees from the claimed unit was unwarranted.

With respect to off-duty military personnel working for the Activity, the Assistant Secretary found that, when hired, they were subject to the same procedures and practices and were hired on the same basis as their civilian counterparts. Further, the work performed by off-duty military personnel was not distinguishable from other work performed by various employees in the claimed unit. The record also demonstrated that off-duty military personnel were not required to obtain the approval of their Commanding Officers with respect to their employment at the Activity and the Activity was not required to notify their Commanding Officers of

their employment. Additionally, the record revealed that off-duty military personnel were not prohibited by the Navy from joining, forming or assisting labor organizations.

In these circumstances, the Assistant Secretary found that the exclusion of off-duty military personnel, as a class, from the petitioned for unit, is unwarranted. He noted particularly that off-duty military personnel work in the same occupational categories and are subject to the same general working conditions, including the same wage scale, as civilian employees. With respect to the contentions that military personnel are considered to be in a military duty status 24 hours a day and are subject to the will of their Commanding Officers, the Assistant Secretary found that the test of whether an employee shares a community of interest with his fellow employees sufficient to be included in a unit with them depends on his immediate status while in the employment relationship and not on what ultimate control he may be subjected to at other times. The Assistant Secretary also found that the general exclusion of off-duty military employees who share a community of interest with exclusively represented employees from the unit would not promote effective dealings and efficiency of operations because the Activity, in effect, would be confronted with a fragmented grouping of employees whose general working conditions were closely related to the exclusively represented employees and yet, those employees would not be part of the represented unit.

In view of the inclusion in the petitioned for unit of the disputed categories of employees, the Assistant Secretary ordered that the AFGE's petition be dismissed on the basis that the inclusion of these additional employees rendered inadequate the AFGE's showing of interest.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE NAVY,
NAVY EXCHANGE,
MAYPORT, FLORIDA

Activity

and

Case No. 42-1202(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2010^{1/}

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief,^{2/} the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 2010, herein called AFGE, seeks an election in a unit of all nonsupervisory permanent full-time and permanent part-time civilian employees employed at the Naval Exchange in Mayport, Florida, excluding, among others, temporary full-time employees, temporary part-time employees, off-duty military personnel and probationary employees.^{3/} The AFGE contends that the proposed exclusion of probationary employees is warranted

^{1/} The Petitioner's name appears as amended at the hearing.

^{2/} The Petitioner filed an untimely brief which has not been considered.

^{3/} The AFGE's claimed unit was amended at the hearing.

based on the view that because of their high rate of turnover their inclusion in the unit would result in unstable labor relations. With respect to the exclusion of off-duty military employees, the AFGE asserts they are on military duty 24 hours a day, have a high rate of turnover due to the short duration of their military duty at the Naval Station and they do not have a genuine interest in the working conditions within the unit.

The Activity, on the other hand, contends that both probationary and off-duty military employees should be included in the petitioned for unit. It is the Activity's position that these two classifications of employees have a clear and identifiable community of interest with the employees in the claimed unit and to exclude them would not promote effective dealings and efficiency of its operations.

The Activity is composed of a great variety of retail sales services including a department store, restaurants, cafeterias, snack bars, enlisted men's clubs, engraving and embossing services, laundry and dry cleaning services, a barber shop and beauty salon, a service station and auto repair shop, a tailor shop, a portrait studio, a watch repair shop, hotel and motel services, vending services and amusement machines. These operations are conducted in 19 or 20 different buildings within the Mayport Naval Station. In carrying out its functions, the Activity employs approximately 216 employees including 99 permanent employees, 74 probationary employees, 30 off-duty military employees and 13 temporary employees.

With regard to the bargaining history prior to the filing of the petition in the subject case, the Activity accorded formal recognition to the AFGE in July 1968 for all Exchange employees at the Mayport Naval Station, excluding management personnel.

Probationary Employees

Probationary employees are hired to fill permanent positions within the Activity. They perform the same work as other employees covered by the petition;^{4/} use the same equipment; have the same wage system; accrue

^{4/} As noted above, the petitioned for unit covers all permanent full-time and permanent part-time employees at the Activity. The record establishes that, as defined by the Activity, a permanent employee is one who is employed in a permanent position and either has a regular work week of thirty two hours or more and has completed a six month probationary period of continuous satisfactory employment or has a work week of less than thirty two hours and has completed twelve months of continuous satisfactory employment as a part-time probationary employee. There was no disagreement between the parties that both classifications of permanent employees belonged within the unit sought.

the same vacation and sick leave benefits;^{5/} have the same insurance and retirement benefits; receive the same pay increases; use the same reporting procedures; work for the same supervisors; have the same work shifts and hours; receive the same training; have the same opportunity to progress to all jobs in the Activity; and have, as do permanent employees, a grievance procedure which they may utilize.^{6/}

With respect to the evidence of turnover among probationary employees, the record reveals that 3 Departments, namely, the Service Station and Automotive Supply, Food Service, and Club activities were responsible for approximately 66 percent of probationary employee separations at the Activity. The high rate of turnover in these Departments was attributed by the Activity to the nature of their operations which involved either service station or food service operations which were opened seven days a week, ten or fifteen hours a day, with fluctuating work hours and work loads. The record also established that the jobs in these Departments were usually routine in nature, requiring a minimum of training, and that the high turnover rate was not limited to probationary employees but the rate also was high among the permanent employees in the Activity.

In all the circumstances, I find that the probationary employees of the Activity have a clear and identifiable community of interest with the employees in the petitioned for unit. The evidence establishes that the general conditions of work of probationary employees are like those of the employees in the claimed unit. In addition, despite a high rate of turnover, there is no evidence that, as a group, the probationary employees of the Activity do not receive and hold their employment with a contemplation of permanent tenure.^{7/} Accordingly, and noting the Activity's contention that the exclusion of probationary employees would not promote effective dealings and efficiency of operations, I find that the Activity's probationary employees have a community of interest with the employees in the petitioned for unit and, as such, should, if an election were directed, have the right to vote on the question of whether or not they desire to be represented on an exclusive basis.

^{5/} Probationary employees are not permitted to use their leave benefits until attaining permanent status.

^{6/} Permanent employees have five days to appeal a removal action, plus appeal rights to the Commander of the Base and to the Naval Retail System Office. Probationary employees have one day to appeal a removal action to the Exchange Officer plus an appeal to the Base Commander.

^{7/} In this respect, it was noted that the employees who are included in the petitioned for unit were, at the commencement of their employment, probationary employees.

Off-Duty Military Personnel^{8/}

The record establishes that off-duty military personnel are hired by the Activity, subject to the same procedures and practices and physical examination requirements as their civilian counterparts, to fill full-time or part-time positions within the Activity. They are hired on the basis of merit and fitness, are not limited to any particular locations within the Activity and are retained as regular employees upon the expiration of a trial period depending upon their qualifications, suitability and continued availability for such employment. Further, the work performed by off-duty military personnel is not distinguishable from the work performed by various employees in the petitioned for unit.

With respect to the contention that military personnel are on duty 24 hours a day, the evidence establishes that military personnel working for the Activity are not required to obtain the approval of their Commanding Officers with respect to whether they may be so employed, nor is the Activity required to notify their Commanding Officers of their employment while off-duty. Moreover, the record reveals that the Commanding Officers exercise no control over the outside activities of military personnel and that military personnel, while in off-duty status, are not prohibited by the Navy from forming, joining or assisting labor organizations.

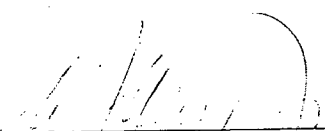
With respect to the contention that while on the job off-duty military personnel are at all times subject to the will of their Commanding Officers, I find that the test as to whether an employee shares a community of interest with his fellow employees so as to be included in a unit with them depends on his immediate status while in the employment relationship and not on what ultimate control he may be subjected to at other times. Thus, where there exists substantial evidence of community of interest, I will not exclude off-duty military personnel based on certain latent control exercised by the military over the employees involved.

^{8/} Several representation petitions involving the status of off-duty military personnel were filed with Area Offices and these matters were subsequently heard before various Hearing Officers. As part of my consideration of this issue, I have considered the contentions set forth in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, Case No. 63-2053(E); Southern California Exchange Region, Army and Air Force Exchange Service, Norton Air Force Base, San Bernardino, California, Case No. 72-1528; Nonappropriated Fund, Fiscal Control Office, ACX-N, Elmendorf Air Force Base, Alaska, Case No. 71-1401(RO); and U. S. Army Training Center and Fort Leonard Wood, Missouri, etc., Case No. 62-1751(E) to the extent that they relate to this issue.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 42-1202(RO) be, and it hereby is, dismissed.

Dated, Washington, D. C.
April 21, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

Based upon the record in the subject case, I find that the off-duty military personnel employed by the Activity share a clear and identifiable community of interest with the civilian employees and that their general exclusion from the petitioned for unit is unwarranted. The record shows that while employed by the Activity, the off-duty military personnel perform substantially the same work and are paid substantially the same wage rate as civilian employees. Further, they work in the same occupational categories, and are subject to the same supervision, the same labor relations policies and the same general working conditions as the civilian employees. In view of these circumstances, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do all other Activity employees.^{9/}

I find, further, that the exclusion of a group of off-duty military personnel who share a community of interest with other exclusively represented employees would not promote effective dealings and efficiency of agency operations. In my view, if such a category of employees were excluded, the Activity would be confronted with a fragmented grouping of employees, whose general working conditions are related closely to those of the exclusively represented employees, and yet, who are not a part of the represented unit. Accordingly, I find that the general exclusion from the petitioned for unit of off-duty military personnel who work for the Activity is unwarranted.

I am advised administratively that the inclusion in the petitioned for unit of approximately 74 probationary employees and certain off-duty military personnel employed by the Activity^{10/} renders inadequate the AFGE's showing of interest.

Accordingly, I shall dismiss the petition in the subject case.

^{9/} The fact that off-duty military personnel do not share in some of the fringe benefits enjoyed by civilian personnel of the Activity--i.e., insurance and retirement benefits--because these benefits are already provided for them by virtue of their military status, does not, in my opinion, minimize their community of interest with civilian employees where both categories share the same employment relationship with the Activity while on the job.

^{10/} Of the 30 off-duty military personnel employed by the Activity, the record reveals that 22 are classified "Part-time" and 8 are classified as "Full-time."

April 21, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ARMY AND AIR FORCE EXCHANGE SERVICE,
WHITE SANDS MISSILE RANGE EXCHANGE,
WHITE SANDS MISSILE RANGE, NEW MEXICO
A/SLMR No. 25

This case, which arose as a result of a representation petition filed by National Federation of Federal Employees, Local 158 (NFFE), presented the questions whether regular part-time employees and off-duty military employees should be included in the petitioned for unit and whether the Assistant Secretary is required to acquiesce in the parties' position as to off-duty military personnel because there was no dispute between them on this question.

The NFFE requested a unit of all regular full-time employees of the White Sands Missile Range Exchange, White Sands Missile Range, New Mexico excluding, among others, regular part-time employees and all off-duty military personnel. The Activity asserted that to promote effective dealings and efficiency of operations the unit should include all regular part-time employees. Both NFFE and the Activity agreed that off-duty military personnel employed should be excluded from the unit.

The Assistant Secretary concluded that neither the Order nor the regulations which implemented the Order required that the Assistant Secretary must accept unit inclusions or exclusions because the parties agree on such matters or that an election must be held in every case where the parties agree as to the appropriateness of the unit sought. He noted that if, in the processing of representation cases, it appears that substantial questions of policy are presented, there is no basis in the Order or the Assistant Secretary's regulations which would require that because the parties are in agreement on the unit an election must be held automatically without resort to a hearing on the issues involved.

Under all circumstances, the Assistant Secretary found that the appropriate unit should include both the regular full-time and regular part-time civilian employees and those off-duty military personnel, who came within the categories regular full-time or regular part-time.

With respect to the regular part-time employees, the Assistant Secretary found that they shared a clear and identifiable community of interest with the regular full-time employees based on the regularity of their employment and the fact that both categories shared common supervision, pay, job assignments, working conditions, hours of work and are covered by uniform labor relations policies.

As to off-duty military personnel, the Assistant Secretary concluded, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24, that once hired, off-duty military personnel stand in substantially the same employment relationship as do other employees of the Activity and that their exclusion from the unit based solely on their military status was unwarranted. In this respect he noted that agency regulations prohibiting off-duty military personnel from being included in employee bargaining units would not be determinative since such regulations, in the Assistant Secretary's view, contravened the purposes of the Order.

In view of the inclusion in the petitioned for unit of regular part-time employees and off-duty military personnel, the Assistant Secretary ordered that the NFFE's petition be dismissed on the basis that the inclusion of these additional employees rendered inadequate the NFFE's showing of interest.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ARMY AND AIR FORCE EXCHANGE SERVICE,
WHITE SANDS MISSILE RANGE EXCHANGE,
WHITE SANDS MISSILE RANGE, NEW MEXICO 1/

Activity

and

Case No. 63-2053 E

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 158

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Merle Rider. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including a brief filed by the Activity, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, National Federation of Federal Employees, Local 158, herein called NFFE, seeks an election in a unit of all of the Activity's non-supervisory regular full-time employees excluding, among others, all off-duty military personnel and employees classified as regular part-time. The Activity asserts that in order to promote effective dealings and efficiency of operations, the unit petitioned for should include all regular part-time employees, but agrees with the NFFE that off-duty military personnel should be excluded from the claimed unit.

The Activity is located at the White Sands Missile Range, New Mexico. Its employees perform their duties at seven locations: a main store, an automobile service station, a beauty shop, a cafeteria, a restaurant, and two snack bars. Employees classified as regular full-time and regular part-time are assigned to all of these locations.

1/ The name of the Activity appears as amended at the hearing.

The Activity employs approximately 40 employees classified as regular full-time and 21 employees classified as regular part-time. 2/ The evidence establishes that there is no differentiation or distinction made between regular full-time and regular part-time employees as to job assignments and that both groups of employees are assigned interchangeably to work in the same jobs under the same supervision. There is also no distinction in rates of pay between the two groups, under comparable conditions, and the members of each group possess essentially the same basic skills. In addition, the record reveals that often, the regular full-time employees are recruited from the ranks of the regular part-time group, and, on occasion, members of one group will substitute for members of the other. The members of both groups share the same facilities, such as rest rooms, lockers and lunchroom. Also, the labor relations policies with regard to both groups are controlled by the general manager of the Activity.

Based upon the foregoing, I find that the regular part-time employees should be included in the petitioned for unit. Thus, based on the Activity's definition of a regular part-time employee, these employees work on a regular basis for substantial periods of time during each work-week. 3/ Also, they share a clear and identifiable community of interest with regular full-time employees in that both categories have common supervision, working conditions, rates of pay and labor relations policies. Accordingly, and noting the Activity's contention that the exclusion of regular part-time employees would not promote effective dealings and efficiency of operations, I find that the Activity's regular part-time employees have a community of interest with the employees in the petitioned for unit and, as such, if an election were directed, should have the right to vote on the question of whether or not they desire to be represented on an exclusive basis.

At the hearing, the Activity moved that the exclusion of off-duty military personnel from the petitioned for unit not be considered by the Assistant Secretary. The Hearing Officer overruled the motion, and the Activity reasserted this contention in its brief. The position of the Activity is based on the view that where, as here, there is no dispute between the parties as to the exclusion of off-duty military personnel, there is no question presented to the Assistant Secretary; and, in the absence of a question presented for resolution, the Assistant Secretary is bound to accept the agreement of the parties as to this matter.

Neither the Executive Order nor the Assistant Secretary's regulations implementing the Order require that the Assistant Secretary must accept unit

2/ The Activity's regulations define a regular part-time employee as an employee hired for an expected period of more than 90 days with a regularly scheduled work-week of at least 16 but less than 35 hours.
3/ The fact that in this case the Activity classifies regular part-time employees as those who work a regularly scheduled work-week of at least 16 but less than 35 hours would not necessarily be dispositive in all cases involving issues relating to part-time employees. Thus, even where a lesser number of hours is worked, if employees work on a regular basis for a sufficient period of time during each week, or other appropriate calendar period, they would be included in the unit found appropriate.

inclusions or exclusions because the parties agree on such matters or that an election must be held in every case where the parties agree as to the appropriateness of the unit sought. Section 6 (a) (1) of the Executive Order grants to the Assistant Secretary the power to decide questions as to the appropriate unit for the purpose of exclusive recognition. In the processing of representation petitions under the Executive Order, Area Administrators and Hearing Officers act as agents of the Assistant Secretary. When at any stage in the course of processing a representation petition it appears that a substantial question of policy is presented, there is no basis in the Order or the Assistant Secretary's regulations which would require the Assistant Secretary to defer to the agreement of the parties in resolving the policy question. Nor is there any basis in the Order or the Assistant Secretary's regulations which would require that because the parties are in agreement on the unit an election must be held without resort to a hearing on the issues involved. In my opinion, to adopt a contrary view would not be consistent with the role which the Assistant Secretary was intended to play in the processing of representation cases under the Order. 4/ Accordingly, based on the foregoing, the Hearing Officer's ruling is hereby affirmed, and the Activity's contentions made in its brief are hereby rejected. 5/

4/ In this regard, see the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, which preceded the issuance of the Executive Order. Section D (2) of that Report and Recommendations states, in relevant part, "Representation and election issues which the Assistant Secretary determines warrant hearings should be heard by persons appointed by him to make recommendations to him." (Emphasis added)

5/ As noted above, the Assistant Secretary's regulations do not require a contrary result. Section 202.4 (h) of the regulations provides that with respect to the processing of representation petitions, "The Area Administrator shall report the essential facts and positions of the parties to the Regional Administrator." Section 202.4 (i) of the regulations provides that, "The Regional Administrator shall take appropriate measures which may consist of the approval of a withdrawal request or dismissal of the petition, or the supervision of an election in an approved agreed-upon appropriate unit or the conduct of a hearing." (Emphasis added) There is no indication in the above regulations that the decision to conduct a hearing is in any way contingent on there being a dispute between the parties.

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Off-Duty Military Personnel 6/

The record establishes that military personnel are hired by the Activity to work as part-time employees during their off-duty hours, which occur primarily during evening hours and on weekends. 7/ The record further discloses that they are hired to perform duties of the same type as the regular full-time and regular part-time civilian employees, under common supervision, receiving comparable pay under comparable conditions, and working at the same locations as the civilian employees. The record also reveals that there are instances where off-duty military employees and civilian employees work at the same jobs, at the same time, and that off-duty military personnel use the same facilities utilized by the civilian employees.

In these circumstances, and for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted. With respect to the contention by the Activity that the regulations and policies of the Department of the Army, the Department of the Air Force and the Army and Air Force Exchange Service prohibit the inclusion of off-duty military personnel in bargaining units, there is nothing in the Study Committee's Report and Recommendations which preceded Executive Order 11491, or the Order itself, which requires that in processing representation cases, the Assistant Secretary is bound to accept as determinative regulations or policies of Government agencies which contravene the purposes of the Order. 8/

6/ Several representation petitions involving the status of off-duty military personnel were filed with Area Offices and these matters were subsequently heard before various Hearing Officers. As part of my consideration of this issue, I have considered the contentions set forth in Department of the Navy, Navy Exchange, Mayport, Florida, Case No. 42-1202 (RO); Southern California Exchange Region, Army and Air Force Exchange Service, Norton Air Force Base, San Bernardino, California, Case No. 72-1528; Nonappropriated Fund, Fiscal Control Office, ACX-N, Elmendorf Air Force Base, Alaska, Case No. 71-1401 (RO); and U.S. Army Training Center, Fort Leonard Wood, Missouri, etc., Case No. 62-1751 (E) to the extent that they relate to this issue.

7/ There are approximately 35 off-duty military personnel currently employed by the Activity. The record establishes that approximately 8 of these employees have been employed on a continuing basis for a period of about 2 years. An additional 15 to 20 have been employed for 6 months, which is twice as long as necessary to qualify as a regular part-time employee under the Activity's regulations.

8/ See Charleston Naval Shipyard, A/SLMR No. 1. Thus, off-duty military personnel who work a sufficient number of hours to be classified as either regular full-time or regular part-time may not be excluded from a bargaining unit on the basis of Agency regulations which characterize such personnel as "temporary" employees or which otherwise automatically excludes them from units sought.

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April 21, 1971

Moreover, I reject also the contention that I am bound to accept as determinative in this case the fact that certain Area Administrators have issued certifications in units which expressly exclude off-duty military personnel.

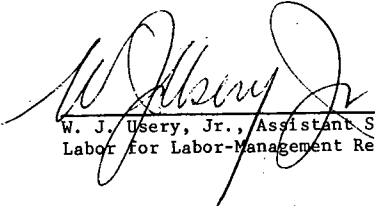
In view of the foregoing, I find that the exclusion of regular part-time civilian employees and off-duty military personnel from the unit sought herein is unwarranted. I am advised administratively that the inclusion of both these groups in the petitioned for unit renders inadequate the NFFE's showing of interest.

Accordingly, I shall dismiss the petition in the subject case.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 63-2053 E be, and it hereby is dismissed.

Dated, Washington, D.C.
April 21, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

SOUTHERN CALIFORNIA EXCHANGE REGION,
ARMY AND AIR FORCE EXCHANGE SERVICE,
NORTON AIR FORCE BASE,
SAN BERNARDINO, CALIFORNIA
A/SLMR No. 26

This case, involving a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 1485 (AFGE) seeking an election among regular full-time and regular part-time hourly and universal salary plan employees employed by the Southern California Exchange Region of the Army and Air Force Exchange Service at Norton Air Force Base, San Bernardino, California, presented the following questions:

- (1) whether a hearing may be ordered when there is no dispute between the parties concerning the appropriateness of the unit sought?
- (2) whether off-duty military personnel working as employees of the Activity may be excluded, as a class, from the proposed unit agreed upon by the parties?

With respect to the first issue, the Assistant Secretary concluded, based on the reasoning enunciated in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, that neither the Order nor the Regulations which implemented the Order required that an election be held automatically in every case where the parties agree as to the appropriateness of the unit sought.

In regard to the second issue, the Assistant Secretary concluded for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

In these circumstances, the Assistant Secretary directed that an election be held in the petitioned for unit which he found to be appropriate and that the unit include those off-duty military employees who come within the included categories.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

SOUTHERN CALIFORNIA EXCHANGE REGION,
ARMY AND AIR FORCE EXCHANGE SERVICE,
NORTON AIR FORCE BASE,
SAN BERNARDINO, CALIFORNIA 1/

Activity

and

Case No. 72-1528

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO,
LOCAL 1485 2/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Ronald Wanke. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.

Upon the entire record in this case, including the Activity's brief, 3/ the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 1485, herein called AFGE, seeks an election in a unit of all regular full-time and regular part-time hourly pay plan and universal salary plan employees employed by the Southern California Exchange Region at Norton Air Force Base, San Bernardino, California. Both the AFGE and the Activity agree that the unit sought is appropriate. They also agree that the following classifications of employees should be excluded from the claimed unit:

Temporary full-time and temporary part-time employees; supervisory employees; managerial trainees; personnel employees employed in other than a purely clerical capacity; professional employees; military personnel employed during off-duty hours; guards; and watchmen.

Both parties contend that the proposed exclusion of off-duty military personnel is warranted based, among other things, on the labor relations history of the Army and Air Force Exchange Service, herein called AAFES, where off-duty military employees have traditionally been excluded from bargaining units; the absence of a community of interest between the military and civilian employees of the Activity; the adverse effect inclusion of military personnel in the proposed unit would have on the efficiency of the operations of the Activity; and various directives and regulations issued by the Department of Defense, Department of the Army, the Department of the Air Force, and the AAFES with respect to the employment of military and civilian personnel.

The Activity is an administrative subdivision of the AAFES whose mission is to provide services to members of the Armed Forces and to generate reasonable earnings in order to build recreational and welfare facilities for its members. It is operated under personnel policies established by the Chief, AAFES, who is governed by regulations of the Army, the Air Force, and the Department of Defense. All employees of the Activity work in one of two buildings occupied by the Activity at the Norton Air Force Base. One of the buildings is used by full-time employees who perform clerical and administrative functions exclusively. The other building is a warehouse where merchandise is received, stored and shipped. Employees in several different classifications, including off-duty military personnel 4/, work in the warehouse.

At the outset of the hearing in this case, the Activity and the AFGE took the position that where, as here, there is no dispute between the parties as to the appropriateness of the unit sought, an election in that unit must be supervised by the Assistant Secretary. This position was based on the view that there is no provision in the Executive Order or the Assistant Secretary's regulations which would permit the Assistant Secretary to order a representation hearing in such circumstances and thereby defer the holding of an election. Based on the foregoing contention, the Activity moved to dismiss the Notice of Hearing in this case. 5/

For the reasons enunciated in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I reject the parties' contentions in this respect.

1/ The name of the Activity appears as amended at the hearing.
2/ The name of the Petitioner appears as amended at the hearing.
3/ The Petitioner filed an untimely brief which has not been considered.

4/ The record reveals that the only type of work assigned off-duty military personnel is "marking," which apparently involves marking merchandise for sale or shipment.
5/ The Hearing Officer denied the Activity's motion and the latter now requests that the Assistant Secretary consider the motion.

Accordingly, the ruling of the Hearing Officer is hereby affirmed, and the motion of the Activity is hereby denied.

The record establishes that off-duty military personnel are hired by the Activity to work in its warehouse facility when there is a need for extra help. These employees generally work on less than a thirty-hour a week basis, are compensated at the same hourly rate for their services as civilian personnel (including double-time for holiday work) and work under the same general terms and conditions of employment as civilian personnel. Further, the work performed by off-duty military personnel is performed by civilian employees when off-duty military personnel are not available.

Traditionally, under Executive Order 10988, military personnel employed during off-duty hours have been excluded from units covered by formal or exclusive recognition throughout the AAFES system. This requirement appeared in joint regulations issued pursuant to Executive Order 10988 by the Departments of the Army and Air Force and was continued in the regulations implementing Executive Order 11491. Under these regulations and the personnel policies of the AAFES, no off-duty military personnel are hired on a regular basis; they may be appointed only to temporary part-time classifications irrespective of the length of time they work, while temporary full-time or temporary part-time civilian personnel are required to be converted to regular full-time or regular part-time categories after 90 days on the job. Further, off-duty military personnel do not receive merit promotions or share in certain fringe benefits. 6/

The Activity and the AFGE contend that off-duty military personnel do not share a sufficient community of interest with the civilian employees of the Activity to warrant their inclusion in the unit because their presence on the job is subject to the will of their Commanding Officer; they are considered to be in a military duty status 24 hours a day; they are subject to relocation at any time by the military; and their inclusion in the proposed unit would have an adverse effect on the efficiency of the Activity's operations.

For the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

6/ Off-duty military personnel do not share in such fringe benefits as hospitalization, insurance, or retirement benefits because they receive such benefits by virtue of their military status.

Based on the foregoing and noting that the petitioned for unit covers all of the Activity's regular full-time and regular part-time employees, 7/ I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491: 8/

All regular full-time and regular part-time hourly and universal salary plan employees, including off-duty military personnel in either of these foregoing categories employed by the Southern California Exchange Region, Army and Air Force Exchange Service, Norton Air Force Base, excluding all casual employees, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 9/

7/ Under the Activity's definition, regular full-time employees work on a 40-hour a week basis and regular part-time employees are hired for an expected period of more than 90 days with a regularly scheduled workweek of at least 16 but less than 35 hours. See, in this respect, footnote 3 in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above.

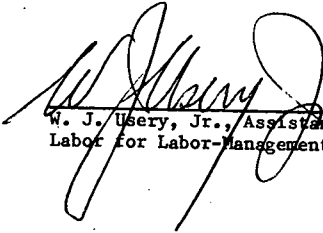
8/ I am advised administratively that the AFGE's thirty percent showing of interest in this case remains intact despite the inclusion of off-duty military personnel in the petitioned for unit.

9/ Although the petition, as amended at the hearing, contained references to several other excluded classifications, the record is not clear as to whether there are any "managerial trainees" who, because of their alleged mandatory excludable status as management officials, should be excluded from the unit. The record also is not clear as to the classifications "temporary full-time", "temporary part-time", or "watchmen" who, because of the peculiar nature of their employment, may not share a substantial community of interest with the unit employees and should therefore be excluded from the unit. In these circumstances, I make no finding with respect to such possible classifications. With respect to "casual employees", the record establishes that they are employed on an emergency basis when someone does not appear for work and apparently they have no reasonable expectancy of regular employment. It therefore appears that the exclusion of such employees from the unit is warranted.

April 21, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 1485.

Dated, Washington, D. C.
April 21, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES ARMY TRAINING CENTER
AND FORT LEONARD WOOD AT FORT LEONARD WOOD,
MISSOURI, NON-APPROPRIATED FUND BRANCH
DIRECTORATE OF PERSONNEL AND COMMUNITY
ACTIVITIES, BUILDING 344
FORT LEONARD WOOD, MISSOURI
A/SLMR No. 27

This case arose as a result of a petition filed by the National Association of Government Employees, Local R14-32 (NAGE), seeking a unit of all of the Activity's "indefinite" and "indefinite part-time" employees and excluding, among others, off-duty military personnel and "temporary" and "temporary part-time" employees.

With respect to the exclusion of off-duty military personnel, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24, and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, the Assistant Secretary concluded that, once hired, off-duty military personnel stood in substantially the same employment relationship with the Activity as did other Activity employees and that their exclusion from the unit based solely on their military status was unwarranted.

With respect the NAGE's exclusion of employees classified as "temporary" and "temporary part-time," the Assistant Secretary noted that under the Activity's definition, a "temporary" employee was one hired on a 40-hour-a-week basis for a period not to exceed one year and a "temporary part-time" employee was one hired on a less-than-40-hour-a-week basis for a period not to exceed one year. In these circumstances, the Assistant Secretary stated that, despite their "temporary" classification, if employees are employed to work on a regular basis, for a substantial period of time within one year, so as to demonstrate that they have a substantial and continuing interest in the terms and conditions of employment along with the other employees in the unit, such employees should be included in the unit.

In all the circumstances, the Assistant Secretary found that the unit sought was appropriate and, accordingly, he directed that an election be held if, in the appropriate Area Administrator's view, the NAGE's showing of interest was adequate with the addition of certain off-duty military personnel and certain employees classified as "temporary" and "temporary part-time."

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES ARMY TRAINING CENTER AND
FORT LEONARD WOOD AT FORT LEONARD WOOD,
MISSOURI, NON-APPROPRIATED FUND BRANCH,
DIRECTORATE OF PERSONNEL AND COMMUNITY
ACTIVITIES, BUILDING 344, 1/
FORT LEONARD WOOD, MISSOURI

Activity

and

Case No. 62-1751(E)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R14-32

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Herbert P. Krehbiel. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, the National Association of Government Employees, Local R14-32, herein called NAGE, seeks an election in a unit of all of the Activity's employees "performing Category A or Category B civilian occupations under indefinite or indefinite part-time appointment(s)," 2/ excluding,

1/ The name of the Activity appears as amended at the hearing.

2/ The above sought categories represent permanent positions at the Activity. The record reveals that Category A employees are those engaged in administrative, fiscal or clerical work and Category B employees are those who are engaged in a trade or craft function.

among others, off-duty military personnel 3/ and Post Exchange and Post Exchange Kansas Support Area employees. 4/

The majority of off-duty military personnel employed by the Activity generally perform duties included in Category B. For the most part, these employees work in three facilities of the Activity -- the central post fund, the Officers' open mess and the non-commissioned Officers' open mess. They receive the same rate of pay as civilian employees working in comparable positions and it appears that they may, as the need arises, be used in those positions filled by employees throughout the Activity classified as "indefinite" or "indefinite part-time."

For the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

NAGE sought also to exclude "temporary" and "temporary part-time" employees. Under the Activity's definition, a "temporary" employee is one hired on a 40-hour a week basis for a period not to exceed one year and a "temporary part-time" employee is one hired on a less-than-40-hour a week basis for a period not to exceed one year. In my view, if employees are employed to work on a regular basis, for a substantial period of time within one year, so as to demonstrate that they have a substantial and continuing interest in the terms and conditions of employment along with the other employees in the unit, such employees should be included in the unit. Thus, where as in the subject case, an employee, although designated by the Activity as "temporary" or "temporary part-time," has

3/ Although not expressly excluded in the petition, it is clear that the NAGE initially sought to exclude off-duty military personnel from its proposed unit. It is clear also that the Activity agreed that such personnel should be excluded.

4/ These employees apparently were excluded because they are employees of the Army and Air Force Exchange Service and, as such, are not subject to the same personnel policies and procedures as the Activity's employees and apparently have different terms and conditions of employment.

a reasonable expectancy of regular and continuous employment for a substantial period of time up to one year, he should be included in the unit and would be eligible to vote. 5/

Based on the foregoing, and noting the Activity-wide scope of the petitioned for unit, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All indefinite and indefinite part-time employees, including "temporary" and "temporary part-time" 6/ and off-duty military personnel in any of the foregoing categories, employed by the United States Army Training Center and Fort Leonard Wood at Fort Leonard Wood, Missouri, Non-appropriated Fund Branch Directorate of Personnel and Community Activities, excluding Post Exchange and Post Exchange Kansas Support Area employees, all intermittent employees, 7/ employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

5/ The record in the subject case indicates that employees classified as "temporary" or "temporary part-time" share, along with the other employees in the unit, common supervision, duties, rates of pay, and general working terms and conditions of employment. With respect to what constitutes employment for a substantial period of time, the record herein is not sufficiently clear to permit a finding in this case as to whether all employees classified as "temporary" or "temporary part-time" should be included in the unit. However, in my view, "temporary" and "temporary part-time" employees hired on a regular basis for a period of one year should be eligible to vote. Where eligibility questions exist as to certain employees in these categories they may, of course, vote in the election subject to the challenge procedure contained in Sections 202.18 and 202.20 of the Assistant Secretary's Regulations.

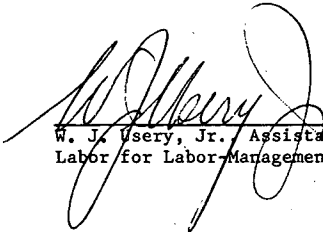
6/ The inclusion of "temporary" and "temporary part-time" employees in this unit is not to be construed as abandonment of the general principle that temporary employees normally are excluded from bargaining units. Rather, as noted above, the usual connotation of the term "temporary" has not been utilized with regard to the employees so designated by the Activity. Accordingly, the inclusion in the unit of employees identified as "temporary" and "temporary part-time" is for the purposes of this case only.

7/ The exclusion of "intermittent" employees was considered warranted because under the Activity's definition such an employee has no preestablished working hours and has no reasonable expectancy of continued regular employment.

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An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees, Local R14-32.

Dated, Washington, D.C.
April 21, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations.

8/ The record in the subject case is unclear as to whether the inclusion in the petitioned for unit of certain off-duty military personnel and certain "temporary" and "temporary part-time" employees renders inadequate the NAGE's showing of interest. Accordingly, before proceeding to an election in this case, the appropriate Area Administrator is directed to reevaluate the showing of interest. If he determines that, based on the inclusion of certain employees in the above-named categories, the NAGE's showing of interest is inadequate, the petition in this case should be dismissed.

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April 21, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

NONAPPROPRIATED FUND (NAF), FISCAL CONTROL OFFICE, ACX-N
ELMENDORF AIR FORCE BASE, ALASKA
A/SLMR No. 28

The issues in this case arose out of an attempt by the Petitioner, American Federation of Government Employees, Local 1668, AFL-CIO (AFGE), to expressly exclude off-duty military employees, as a class, from the petitioned for unit. At the hearing, the parties joined in an attempt to stipulate that the AFGE's amended unit was appropriate and that they were prepared to proceed to an election in this unit. Accordingly, they moved to adjourn the hearing and proceed to an election. The Hearing Officer ruled that the general exclusion of off-duty military employees from the amended unit presented substantial policy questions. Consequently, he denied the parties' motion to adjourn the hearing on the ground that the hearing was necessary to develop a full and complete record on which the Assistant Secretary could make a decision.

With respect to the parties's objections to the Hearing Officer's rulings concerning their motion to adjourn the hearing and proceed to an election in a unit which they agreed was appropriate, the Assistant Secretary reaffirmed his decision in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, in which he stated that neither the Executive Order nor its implementing regulations required that an election must be held where there was no dispute between the parties as to the appropriateness of the petitioned for unit. In these circumstances, since, in the Assistant Secretary's view, the express exclusion of off-duty military personnel raised substantial policy questions, he affirmed the Hearing Officer's ruling denying the parties motion to adjourn the hearing and to proceed to an election in the agreed upon unit.

The Assistant Secretary also found that the claimed unit was appropriate since the employees covered by the petition worked under the direction of the same supervisor, had the same salary schedule, worked the same hours and performed their tasks in the same office location. Moreover, he noted that these employees received the same benefits and had the same working conditions. In these circumstances, and noting the Activity's position that the petitioned for unit would promote effective dealings and efficiency of its operations, the Assistant Secretary directed that an election be held in the unit sought by the AFGE.

With respect to off-duty military personnel, the Assistant Secretary concluded, in accordance with his decisions in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, that their exclusion from the unit based solely on their military status was unwarranted. He noted, however, that inasmuch as the record established that there were no off-duty military personnel presently employed by the Activity, he would make no findings of fact with respect to whether they would come within the included category of employees based on their respective job status at the Activity.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NONAPPROPRIATED FUND (NAF),
FISCAL CONTROL OFFICE, ACX-N,
ELMENDORF AIR FORCE BASE, ALASKA 1/

Activity

Case No. 71-1401(RO)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1668 2/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer William J. Jones. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including a brief filed by the Petitioner, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The American Federation of Government Employees, AFL-CIO, Local 1668, herein called AFGE, seeks an election in a unit of all nonappropriated fund employees of the Fiscal Control Office, Elmendorf Air Force Base, Alaska, excluding among others, all off-duty military employees. The Activity agrees that the unit sought by the AFGE is appropriate.

At the hearing in this case, the AFGE moved to amend its petition to clarify the scope of the unit sought by listing the inclusions and exclusions. The Hearing Officer referred this motion to the Assistant Secretary for decision. The AFGE's motion to amend its petition is hereby granted.

1/ The Activity's name appears as amended at the hearing.
2/ The Petitioner's name appears as amended at the hearing.

Also, during the hearing, the parties moved to stipulate that the unit sought was appropriate and they asserted that they were prepared to enter into a consent agreement for an election in that unit. In this respect, they moved to adjourn the hearing so that they could proceed to a consent election or, in the alternative, until the Assistant Secretary ruled on the motion to amend the AFGE's petition. The Hearing Officer denied the parties' motion to stipulate that the unit sought was appropriate and also denied their motion to adjourn the hearing.

For the reasons enunciated in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, neither the Executive Order nor its implementing regulations require that an election must be held where there is no dispute between the parties as to the appropriateness of the petitioned for unit. In the circumstances of this case, since, in my view, the express exclusion of off-duty military employees from the claimed unit raised substantial questions of policy, the issuance of a Notice of Hearing and the development of the facts concerning this issue at a representation hearing were clearly consistent with the purposes and policies of the Executive Order. Accordingly, the Hearing Officer's denial of the parties' motions to stipulate as to the appropriateness of the unit and to adjourn the hearing was proper and his rulings in this regard are hereby affirmed.

The record reveals that the AFGE is seeking a unit composed of 14 nonsupervisory, nonappropriated fund employees of the Activity who perform accounting and bookkeeping and related clerical work. 3/ Although there are Civil Service Employees at the Activity, it is clear that the AFGE does not intend to include such employees in the petitioned for unit. 4/ It is clear also that the AFGE intends to exclude, among others, off-duty military employees of the Activity and employees hired on a casual, intermittent or on-call basis, notwithstanding the fact that the evidence demonstrates that no such personnel are employed currently at the Activity.

The Fiscal Control Office is a functionally distinct and separate component of the Office of the Chief of Plans and Programs, Base Comptroller, Elmendorf Air Force Base, Alaska. It provides accounting and bookkeeping services to the various Air Force Welfare Board nonappropriated fund

3/ These employees include 11 Accounting Technicians, 1 Document Control Clerk and 2 Statistical Typists.

4/ Presumably, Civil Service employees at the Activity would be covered by the exclusive bargaining rights which have been accorded to the AFGE in a unit composed of all General Schedule and Wage Board employees at Elmendorf Air Force Base.

activities at the Base. 5/ The Activity employs a staff of accountants, accounting technicians and clerical personnel and is responsible for hiring its own personnel and for its own personnel administration. 6/ Supervision of employees of the Activity emanates from a civilian Supervisory Operating Accountant of the Activity, who is a Civil Service employee and who has been designated as Fiscal Control Officer. He interviews all applicants for jobs at the Activity, makes the final decision on hirings and directs the work of subordinate employees. In turn, he reports directly to the Assistant Comptroller for Plans and Programs at Elmendorf. The record shows that there are two other Civil Service employees located at the Activity, a Supervisory Accountant and a clerk-typist. Also, there is a military noncommissioned officer assigned to the Activity as Chief, On-Base Activities. All other employees of the Activity are classified as nonappropriated fund employees, and are employed under employment regulations, salary schedules and benefits established by the Activity. 7/

In the past, the Activity has hired military personnel assigned to Elmendorf to work during their off-duty hours. However, as noted above, the record shows that no such personnel are employed currently by the Activity. 8/ The record shows also that the Activity does not employ,

5/ The evidence shows that similar functions are being performed in the Base exchanges and theaters at Elmendorf, which are operated under the policies and regulations of the Army and Air Force Exchange and Motion Picture Service. The record established that these activities are separate and distinct from Air Force Welfare Board activities.

6/ A Base Civilian Personnel Office renders only advisory service to the Fiscal Control Office.

7/ The salary schedules, employees' benefits and other conditions of employment of nonappropriated fund employees are established by a council or board. The record shows that such conditions and benefits are set to approximate those that exist for Civil Service employees.

8/ The evidence shows that off-duty military personnel were hired by the Activity in approximately April 1964. At that time, the Activity was engaged in a "clean-up" operation following an earthquake. The record shows that the off-duty military employees were hired to perform specific tasks during the emergency period and that these employees worked at the Activity for less than one year. There is no evidence that any other off-duty military employees have been hired by the Activity.

currently, intermittent, casual or on-call employees. Thus, at the present time, only permanent full-time civilian personnel are employed in the Fiscal Control Office. 9/

The evidence shows that the employees of the Activity perform related tasks which constitute a highly integrated function. Accounting technicians make postings to the journals and ledgers of the various accounts and funds, and prepare financial reports and statements for fund custodians and officials; and, the clerks and typists accumulate and sort financial data, type financial reports and perform related clerical duties. The evidence shows that there is a continuous flow of work between the various employees in the unit sought and that the Activity's accountants supervise the entire operation.

In the circumstances, I find that the nonsupervisory, non-appropriated fund employees of the Activity constitute an appropriate unit. Thus, all employees in the claimed unit work under direction of the same supervisor, have the same salary schedule, work the same hours and perform their tasks in the same office location. Moreover, they receive the same employee benefits, and the working conditions at the Activity are the same for all nonappropriated fund employees.

With respect to off-duty military employees, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

Based on the foregoing and noting the Activity's position that the petitioned for unit will promote effective dealings and efficiency of its operations, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

9/ The record shows that the Civil Service clerk-typist has been assigned to the Activity, by the Base Comptroller, for a temporary period of time, and is not considered to be an employee of the Activity. Further, the evidence established that the military noncommissioned officer located at the Activity is assigned as a military duty assignment.

April 21, 1971

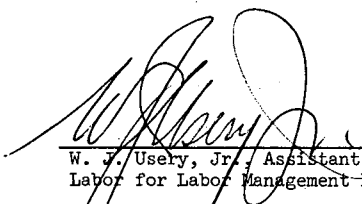
All nonappropriated fund employees of the Nonappropriated Fund (NAF) Fiscal Control Office, ACX-N, Elmendorf Air Force Base, Alaska, excluding all General Schedule and Wage Board employees, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 10/

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 1668.

Dated, Washington, D.C.
April 21, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor Management Relations

10/ Inasmuch as the record establishes that there are no off-duty military personnel presently employed by the Activity, I shall not at this time make any findings of fact with respect to whether they would come within the included category of employees based on their respective job status at the Activity. Further, the AFGE sought to exclude from its claimed unit employees classified as intermittent, casual and on-call. Since the record establishes that there are no employees presently employed in these categories at this time and there is no indication as to the terms and conditions of employment of such employees, I shall make no findings in this regard at this time.

ARMY AND AIR FORCE EXCHANGE SERVICE,
MacDILL AIR FORCE BASE CONSOLIDATED
EXCHANGE
A/SLMR No. 29

The subject case, involving a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 2624 (AFGE), presented the question whether a unit limited to certain nonappropriated fund employees working at a military installation was appropriate in view of the Activity's contention that a certain degree of management integration existed relating to employees in a grouping of three military installations.

In all the circumstances, the Assistant Secretary concluded that the single installation unit was appropriate. While acknowledging the existence of a certain degree of management integration, he noted that the employees in the unit petitioned for share a clear and identifiable community of interest in that they have common supervision, working conditions, grievance procedures, fringe benefits, disciplinary policies and promotion policies. He emphasized the lack of employee interchange, and the great distance between the installations. Additionally, he found that notwithstanding the fact that the requested bargaining unit did not comport to the Activity's administrative organization, in the circumstances, the establishment of a unit as petitioned for would not fail to promote effective dealings and efficiency of agency operations, particularly in view of the bargaining history with respect to the MacDill employees on a single installation basis.

Accordingly, the Assistant Secretary directed an election in the single location unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ARMY AND AIR FORCE EXCHANGE SERVICE,
MacDILL AIR FORCE BASE CONSOLIDATED
EXCHANGE^{1/}

Activity

and

Case No. 42-1169

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2624^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case,^{3/} including the Activity's

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- ^{1/} The name of the Activity appears as amended at the hearing.
 - ^{2/} The name of the Petitioner appears as amended at the hearing.
 - ^{3/} Subsequent to the close of hearing and the due date for briefs, the Activity, pursuant to Section 202.10(a) of the Regulations of the Assistant Secretary, filed a motion to reopen the record for the limited purpose of the offer and receipt into evidence of a newly published regulation entitled, "Management and Operation of CONUS Exchanges Under the Integrated Management Concept of Exchange Operation," which prescribed certain new internal operating procedures. Although the Activity's motion was accompanied by the required certification of service upon the Petitioner, the Petitioner filed no response. Because of the peculiar nature of the document, its relevance and materiality to this case, and, particularly, in view of a lack of opposition to the motion, the Activity's motion is granted and I hereby reopen the record for the limited purpose of receiving the subject document into evidence. As the document is such that it actually requires no clarification in order to afford a clear understanding of its application, and, again, in view of the significant lack of opposition to its receipt into evidence, I shall not allow time for the parties' filing of supplemental briefs.

brief,^{4/} the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. American Federation of Government Employees, AFL-CIO, Local 2624, herein called AFGE, seeks an election in a unit of all regular full-time and regular part-time civilian employees employed by the MacDill Air Force Base, Florida, excluding temporary full-time, temporary part-time and casual employees; employees engaged in personnel work other than in a purely clerical capacity; military personnel; managerial executives; supervisors; managerial trainee employees; on-call employees; professional employees; guards and watchmen; employees of MacDill Air Force Base Consolidated Exchange at McCoy Air Force Base, Florida; and employees of MacDill Air Force Base Consolidated Exchange at Avon Park Bombing Range, Florida.^{5/}

The Activity contends that the unit sought is inappropriate and that any appropriate unit must include its employees located at McCoy Air Force Base, herein called McCoy, and Avon Park Bombing Range, herein called Avon Park. It submits that the employees at MacDill Air Force Base, herein called MacDill, do not enjoy a community of interest clear and identifiable from that of employees at McCoy and Avon Park; that recognition of the unit sought would not promote effective dealings between the Activity and the AFGE; and that it would not promote efficiency of agency operations. Moreover, the Activity urges that the petition is based solely upon the AFGE's extent of employee organization, which controlling factor is proscribed by Section 10 of the Executive Order.

The Activity is a component of the Army and Air Force Exchange Service with an assigned function of providing authorized patrons with certain merchandise and services of necessity and convenience. To carry out this mission, the Activity operates retail and service facilities at MacDill, McCoy and Avon Park. This particular grouping of installations was first documented in a "Consolidation Agreement," dated January 25, 1968, signed by the respective military commanders. The "integrated concept" was later formalized in the above-mentioned "Management and Operation of CONUS Exchanges Under the Integrated Management Concept of Exchange Operation," dated August 23, 1970. The latter document prescribed responsibilities for the military commanders and the Activity general managers throughout the continental United States.

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- ^{4/} The brief filed by the Petitioner was not filed simultaneously upon the Activity as required by Section 202.14 of the Regulations of the Assistant Secretary. Subsequent to the brief's due date, the Activity filed a motion with the Assistant Secretary requesting that the Petitioner's brief be "stricken." In view of the noncompliance with the Regulations, the Activity's motion is granted and I shall not consider the Petitioner's brief.
 - ^{5/} The unit appears as amended at the hearing.

At MacDill, the Activity employs 286 persons, of whom approximately 177-182 are agreed by the parties to be in the unit sought. The operations consist of one main retail store under the direct supervision of one manager, two assistant managers, five department managers, one stockroom manager, and an unknown number of "supervisory sales clerks;" one service station with a manager, assistant manager and two department managers; one cafeteria with a manager, an assistant manager and two shift supervisors; one "convenience store" with a manager, an assistant manager, a department manager and a "supervisory sales clerk;" an unknown number of snack bars with each supervised by a single manager; and a garden shop with an unknown supervisory structure.

At McCoy, which is located 90 miles from MacDill and 95 miles from Avon Park, the Activity employs approximately 98 persons in a main retail store, a cafeteria, a convenience store, a service station, three snack bars and a garden shop. The immediate supervisory structure parallels that at MacDill.

The Activity employs three persons at its Avon Park operations consisting of a small main store with a gasoline pump and supervised by a single manager. Avon Park is located 105 miles from MacDill.

A single general manager is the top echelon of supervision of the Activity's operations at MacDill, McCoy and Avon Park. Immediately subordinate to him is a manager, each, for the retail operations, food operations and service operations. There is a single personnel manager. Officed at MacDill, these individuals extend their supervisory functions to McCoy and Avon Park, as well as MacDill. McCoy's facilities are supervised immediately by a single resident manager. At Avon Park, where there is no resident manager, the supervision flows from the Activity's retail operations manager directly to the local branch manager. By comparison, the Activity's retail operations manager exercises supervision at MacDill and McCoy only in a functional aspect as it applies to retail operations. As MacDill has no resident manager, apparently the general manager performs that function at that installation.

One of the Activity's three operations managers visits McCoy almost daily, and each visits Avon Park approximately once monthly. They apparently have daily telephonic communications with McCoy, and the record reveals that at least one particular manager has weekly telephonic contact with Avon Park. The personnel office averages four telephone conversations daily with McCoy and "on an as needed basis" with Avon Park. Its representative visits McCoy four times monthly and Avon Park two or three times yearly.

Although the January 1968 "Consolidation Agreement" charged the respective military commanders with certain basic operational responsibilities, including some relating to personnel matters, the new August 1970 regulations, cited above, appear to reassign a portion of these functions to civilian personnel of the Activity. Specifically, the

military commander is relieved of all responsibilities related to civilian personnel administration, such as grievances and labor relations, and these responsibilities are vested in the general manager.^{6/} However, the military commander "...retains vital support responsibilities and essential prerogatives in relation to the base or post exchange operation. He determines the service needed...and he evaluates the service rendered." Additionally, the local installation, in coordination with the Activity's chief, determines the hours of operation.

The Activity's hiring process is initiated by a request from the branch manager. Upon approval by the general manager of the legitimacy of the need, the branch manager selects an individual from a list of qualified applicants supplied by the personnel office. The Activity conceded that a branch manager's selection decision has never been overruled. Final decisions regarding discharges for cause are made by the general manager, based upon recommendations of the branch managers. Employee reprimands are effected by the immediate supervisor, but with prior clearance from the general manager in cases of written reprimand. Employee promotion requires processing through the branch manager, the appropriate operations manager and, ultimately, to the general manager. The personnel files of all employees are retained at the MacDill personnel office. Although employee time cards are mailed directly from the respective installation to the Activity's headquarters in Dallas, Texas, all checks are mailed to MacDill for recordation and ultimate distribution.

All nonsupervisory employees of the different facilities described above are hourly paid in accordance with a wage scale plan flowing from an annual regional wage survey. All are governed by published job descriptions which are standard throughout the world. The record reveals that employees at each of the three military installations perform generally the same duties as their counterparts elsewhere. However, as there is no maintenance crew permanently assigned to McCoy, the MacDill crew services that facility on an approximate weekly basis. Other than a single cited instance of a maintenance crew's temporary duty assignment to McCoy, and several isolated overnight trips to McCoy by MacDill-based accounting clerks, the record discloses no employee interchange between McCoy, MacDill and Avon Park.

^{6/} The record discloses no prior exercise by the military commander of any authority in the grievance area. In this regard, however, it is significant that Activity's Exhibit No. 1, its regulation relating to personnel policies, expressly provides that alternative grievance procedures may be negotiated with labor organizations holding exclusive recognition.

Although overtime work must be approved by the appropriate operations manager and the general manager, emergency situations may occur where overtime is performed prior to approval of the general manager. Although the Activity contends that vacation leave must be requested through the branch manager to the appropriate operations manager, it is conceded that a branch manager's approval has never been overruled. Emergency leave may be authorized by a branch manager without prior approval of the operations manager.

All regular full-time employees of the Activity, throughout the world, enjoy identical fringe benefits, such as group insurance plans, retirement programs, overtime pay computation, paid holidays, military leave, maternity leave, vacation leave, sick leave, step advancements and training programs.

The history of bargaining involving the Activity's employees is limited. On February 21, 1968, pursuant to Executive Order 10988, the Activity accorded the AFGE formal recognition in substantially the same unit as petitioned herein, which recognition has been in effect since that time. Significantly, this grant was made subsequent to the January 28, 1968 effective date of the "Consolidation Agreement" previously noted herein. Subsequent to the grant of formal recognition, the Activity and the AFTE executed an "Agreement for Voluntary allotment of Employee Organization Dues," which document relates exclusively to the subject of dues allotment. The parties agree that there has never been a collective bargaining agreement between them; indeed, other than the allotment agreement, the record contains no reference to the substance of any history of bargaining between the Activity and any labor organization.

Based upon the foregoing, I find that the employees in the unit petitioned for share a clear and identifiable community of interest in that they have common supervision, working conditions, grievance procedures, fringe benefits, disciplinary policies and promotion policies. Strong considerations, based not only on the factors discussed with respect to the unit petitioned for but also on the following factors with respect to the more comprehensive unit contended for by the Activity militate against a finding that the petitioned for unit is inappropriate because it does not include employees at McCoy and Avon Park. Thus, although the employees at the three military installations may enjoy similar fringe benefits, common top echelon supervision and comparable working conditions, such fact is not peculiar to this particular regional grouping of installations. Indeed, the Activity concedes that such a statement is generally applicable to its employees throughout the entire world. As for the alleged close central control of labor relations, the record discloses, and I find, that much of the control is of a purely perfunctory nature and that daily decisions of local branch managers routinely are allowed to stand. Particularly significant is the geographical separation of the three installations, in that MacDill is located 90 miles from McCoy and 105 miles from Avon

Park and the fact that there is a complete lack of employee interchange between the three installations. Moreover, notwithstanding the fact that the requested bargaining unit does not comport to the Activity's administrative organization, I find that the establishment of a unit as petitioned herein would promote effective dealings and efficiency of agency operations.^{7/}

Upon consideration of the above and noting that no labor organization seeks to represent employees on a more comprehensive basis than that described in the petition, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All regular full-time and regular part-time civilian employees employed by the MacDill Air Force Base Consolidated Exchange at MacDill Air Force Base, Florida, excluding military personnel,^{8/} management officials,^{9/}

^{7/} The past grant of formal recognition to MacDill employees indicates that the Activity may deal effectively with MacDill employees alone. It is noted that such grant was accorded following the execution of the administrative "Consolidation Agreement," and there is no indication that such bargaining relationship in any way precluded effective dealings between the parties or hampered the efficiency of agency operations.

^{8/} Although the parties are in agreement that "military personnel" should be excluded, the record is not clear as to details relating to such personnel. Obviously, if they are merely working at the Activity's facilities during their normal military duty hours and are being paid by the military and not by the Activity, they would not be "employees" within the meaning of the Executive Order, and I so find. However, if they are being paid by the Activity for work being performed in their military non-duty hours, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

^{9/} As the petition continued use of the Executive Order 10988 rubric "managerial executive," I have changed the exclusion to "management officials," a classification mandatorily excluded by Executive Order 11491.

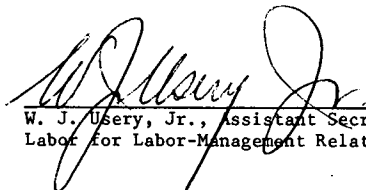
employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, and supervisors^{10/} and guards as defined in the Order.^{11/}

April 22, 1971

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by American Federation of Government Employees, AFL-CIO, Local 2624.

Dated, Washington, D. C.
April 21, 1971.


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

- 10/ The parties stipulated that the employment classifications of manager, assistant manager, department manager, stockroom manager and shift supervisor are supervisory in nature. Because the record is insufficient to establish whether employees in the classification of "supervisory sales clerk" are supervisors, I shall make no findings as to whether employees in this job classification should be excluded from the unit.
- 11/ Although the amended petition contained reference to several other classifications, the record is not clear as to whether there are any "managerial trainee employees" who, because of their alleged status as management officials, should be excluded from the unit; or whether there are any "on-call employees," or "temporary full-time employees," or temporary part-time employees, or "casual employees," who, because of the peculiar nature of their employment, share no substantial community of interest with the unit employees and should, therefore, be excluded from the unit. Accordingly, I make no findings with respect to such possible classifications.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES NAVY DEPARTMENT,
UNITED STATES NAVAL WEAPONS STATION,
YORKTOWN, VIRGINIA
A/SLMR No. 30

The petitioner, International Association of Fire Fighters, AFL-CIO (IAFF) and the incumbent Intervenor, National Association of Government Employees (NAGE) sought to represent a unit of "firefighters" including, among others, Station Captains at the Activity. The Activity did not contest the appropriateness of the unit sought, but, in opposition to the IAFF and the NAGE, sought to exclude Captains as supervisors.

The Assistant Secretary found that the Captains were not "supervisors" within the meaning of Executive Order 11491 and therefore should be included in the firefighter unit. In this respect, it was noted that while the Captains have functions and responsibilities that set them apart from other firefighters, any authority vested in them is of a routine or clerical nature not requiring the use of independent judgment. Captains spend a substantial portion of their work day performing duties identical to other firefighters. In addition, Captains have no authority to hire, transfer, suspend, lay off, recall, promote or discharge employees and work assignments made by Captains are either governed completely by rotation rosters or are of a highly routine nature not requiring follow-up supervision. While the Captains have evaluation and recommendation functions they do not make "effective" recommendations in that there are always higher levels of review and the recommendations of Captains often are rejected. Moreover, the evidence revealed that Captains have no latitude in the performance of their training function as it is governed completely by published schedules and that Captains spend a high proportion of their time doing "unit work." The Assistant Secretary noted that while Captains may be the highest ranking full-time personnel in a fire station, acknowledged supervisors are always close at hand and in fact spend a substantial number of hours at the stations and that a finding of supervisory status for Captains would result in an extremely high ratio of supervisors to unit personnel.

In these circumstances, the Assistant Secretary directed that an election be held in the petitioned unit including employees classified as Captains.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF THE NAVY,
UNITED STATES NAVAL WEAPONS STATION,
YORKTOWN, VIRGINIA

Activity

and

Case No. 46-1754 (RO)

INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, AFL-CIO

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Dow E. Walker. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed as modified below. 1/

Upon the entire record of this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

1/ The Hearing Officer rejected the Activity's tender of a copy of an agreement between the National Association of Government Employees, herein called NAGE, and the Activity. The Activity took exception to this ruling of the Hearing Officer. In the circumstances, I conclude that the agreement in question is relevant to the issues before me. Accordingly, I reverse the Hearing Officer's ruling and receive the agreement into the record. Since, in reaching the decision in this case, I have considered the entire record, including the agreement in question, the Hearing Officer's rejection of the agreement at the hearing was not found to constitute a prejudicial error.

2. International Association of Firefighters, AFL-CIO, herein called IAFF, seeks an election in a unit of all firefighters, including Station Captains and Fire Inspectors at the U.S. Naval Weapons Station, Yorktown, Virginia. 2/ The NAGE is in agreement with the IAFF as to the appropriateness of the claimed unit.

While not contesting the appropriateness of a unit of firefighters at the U.S. Naval Weapons Station, Yorktown, Virginia, the Activity contends, in opposition to the IAFF and the NAGE, that employees classified as Supervisory Firefighters, (Structural), commonly and herein referred to as Captains, are supervisors within the meaning of Section 2(c) of the Executive Order and should therefore be excluded from the unit.

The IAFF urges as an alternative position that in the event the Assistant Secretary finds that Captains are supervisors, employees in that classification should still be given the opportunity to select the IAFF as their bargaining representative pursuant to the provisions of Section 24 (a)(2), one of the "Savings clauses" of the Executive Order. The Activity contends that Section 24 (a)(2) is inapplicable to the facts of the case.

The Fire Protection Division has a total complement of 36 persons.3/ The Division is headed by the Fire Chief (GS-11). Working under the Chief are 2 Assistant Fire Chiefs (GS-9), 1 Chief Fire Inspector (GS-8), 4/ 6 Fire Captains (GS-6), 24 Driver Operators and Fire Fighters (GS-5 and 4 respectively), and 2 Fire Inspectors (GS-7). The Fire Inspectors report directly to the Chief Fire Inspector. 5/

The NAGE and Activity have for at least two years had an exclusive bargaining relationship and collective bargaining agreement covering a unit of "all nonsupervisory civilian Firefighters and Fire Inspectors of the Naval Weapons Station, Yorktown, Virginia." Specifically excluded from the unit were "all supervisory Firefighter personnel including Fire Chief, Assistant Chiefs, and Fire Captains." By its terms, the most recent agreement between the parties expired January 15, 1970.

2/ The unit appears as amended at the hearing.
3/ There is no contention that the military personnel who make up the "fire brigade" and "auxiliary firemen," whose function is to supplement the civilian firefighters in case of emergency, should be included in the petitioned unit. These military personnel are "on call" to report to fires, and the record reveals that firefighting is not their regularly assigned duty.
4/ The parties stipulated that the Chief Fire Inspector is a supervisor as defined by Section 2(c) of the Executive Order and should therefore be excluded from the unit.
5/ No one contests the inclusion of the Fire Inspectors in the unit.

There are 2 fire stations at the Activity which are currently operational and a third station, which was recently closed, is now used for the storage of equipment. The 2 operational stations are located approximately 4 miles apart. Each of the operational stations has a total of 14 persons assigned, 11 firefighters (both driver operators and fire fighters) and 3 Captains. This group is divided into 3 shift crews consisting of 1 Captain and 3 or 4 firefighters, 4 being the desired complement. Each crew works a 24-hour shift before being replaced by another crew. All fire protection division personnel, from the Chief down, work the same number of hours pursuant to Government regulations and all receive the same percentage pay increment for working Sundays.

There is always a Captain on duty at each of the 2 stations. In the event one of the 6 permanent Captains is not available, generally because of leave, one of the firefighters is designated to act as Captain. The acting Captain is normally a GS-5 driver operator but on occasion it has been a GS-4 fire fighter. Because of the operation of the shift rotation, there is one driver operator who is assigned regularly as acting Captain one day a week in addition to filling in when the Captain is on leave. 6/

The Chief and Assistant Chief have offices at some location other than the fire stations, but the Chief's home is located within the Activity and he visits each station at least once each day. The 2 Assistant Chiefs rotate 24-hour shifts and the Assistant Chief on duty spends the night in Station 1. During the day, the Assistant Chief on duty makes several trips to each of the 2 stations and spends a substantial number of hours at the stations. When an Assistant Chief is on leave, one of the Captains functions as acting Assistant Chief, but in such a capacity the Captain remains at his same grade and does not possess the Assistant Chief's authority to issue directives and make permanent transfers.

The evidence discloses that the day-to-day activity of a crew in the fire station follows a fairly routine pattern. The crew change takes place at 7:30 am. The morning hours of the crew are devoted primarily to conducting building and equipment inspections and maintaining firefighting equipment. The afternoon of each day is devoted to 1 to 2 hours of training for the firefighting crew. A few days each week a crew might leave the station to perform a "standby," such as being at a hazardous fueling operation. The scheduled work day concludes at 4:30 pm and from then until 7:30 am the next morning the crew remains in the station, standing by in case of a fire alarm. On Saturday mornings the crew engages in a fire-fighting drill.

6/ There is no contention by any party that the designated acting Captain may be a supervisor. The testimony indicates that an acting Captain does not possess the authority granted a Captain in that an acting Captain cannot approve leave requests or initiate evaluations.

With respect to the conducting of inspections, the instruction as to what buildings will be inspected on each day comes from the Chief Fire Inspector who is also responsible for maintaining inspection records. In the carrying out of these instructions, the record reveals that the Captains perform duties identical to the other firefighters in that they also go to the designated buildings and perform an inspection pursuant to established procedure. 7/

The type of daily maintenance performed by the crews is described on the record as being of highly routine nature and not requiring any follow-up supervision. While the Captains may designate a crew member to perform a specified maintenance task, the record reflects that the crews are well aware of what is to be done and the way to do it and that they receive no subsequent direction from the Captain. There is also testimony that the Captains on occasion perform such menial tasks as sweeping the floors. The record reveals that the Captains have no latitude in the selection of employees for substantive assignments. There are rotation rosters for each crew and various assignments, such as night watch, follow these predetermined rosters. Captains cannot make permanent transfers and the temporary assignment of employees to another station is governed by an established roster. Also, the Captains cannot schedule or assign overtime.

The Captains have no control over the scheduling or content of the daily training programs, as they are governed by a training schedule established by the Chief. While these daily training programs are generally conducted by the Captain on duty, the record indicates that this responsibility flows more from his experience level rather than from any position of authority over the other firefighters. At the Saturday morning fire-fighting drills, the Assistant Chief on duty always attends to observe and critique the training.

The Chief and Assistant Chief on duty respond to all fire alarms and arrive at the scene within 5 minutes of the crew. The highest ranking officer on the scene is "in charge" and this means that it is the Chief who directs the crew in the fighting of the fire. While it may be theoretically the responsibility of the Captain to get the crew to the site of the alarm, as noted above the Chief and Assistant Chief take over the responsibility of directing the fire fighting efforts. During the course of fighting the fire, the Captain assists in any way he can, including such manual duties as "laying the hose."

Captains have no role in the hiring of employees. While some evidence suggests that the Captains are involved in performance evaluations, both

7/ The evidence reveals that Captains spend approximately 40 percent of their work time engaged in these inspections away from the fire station.

quarterly and annually, and promotion recommendations, the record reflects that the Captains exercise little if any independent judgment in the performance of these tasks and that their recommendations are not independently effective. An estimated 75 percent of all ratings are "satisfactory," with the remainder being "outstanding." The record reveals that a Captain does not attempt to give anything but the routine "satisfactory" rating without first discussing the matter with an Assistant Chief and obtaining, at a minimum, his tacit approval. Part of the evaluation process is an employee interview at which an Assistant Chief is always present. Any recommendations for a merit award are exposed to several review levels and there are numerous examples of such recommendations by a Captain being rejected. 8/ While Captains are the lowest grade which sit on rating panels for GS-5 evaluations, such panels always consist of an Assistant Chief.

The record reveals that Captains do not possess effective authority to discipline. As to an occasion in 1969 when a "letter of caution" was issued over the signature of a Captain, the record reflects that the Captain's initial recommendation on disciplinary action was rejected by the Chief and that the Captain thereafter did not participate in any of the management discussions leading up to the decision as to what action should be taken. The performance of the ministerial act of signing the letter of caution, which had been prepared by the security office, does not mean that the Captain can discipline. Furthermore, the action taken, that is the issuance of a letter of caution, is not a specified form of discipline under Navy regulations.

The record reflects that there has never been an occasion when a Captain has ever participated in the processing of a "formal" grievance. While under the expired agreement between the Activity and the NAGE, the Captains were designated as the first step of the grievance procedure, they never actually functioned in that capacity, only handling minor "complaints" that might arise on the job which could be resolved without the exercise of any independent authority.

Annual leave is granted pursuant to a system which leaves no discretion available to the Captains. Regulations provide that there must, at all times, be a specified number of men on duty status and leave requests are approved on a first-come-first-served basis up to the limit of the predetermined complement.

The 6 incumbent Captains have taken a home-study training program on general supervisory technique, but the record indicates that the same course is available to persons below the grade of Captain and the taking of such a course was not a condition precedent to becoming a Captain.

8/ The record reveals that in 1969 a group of Captains submitted 8 recommendations for outstanding performance ratings, all of which were overruled by the Chief.

While the evidence set forth above indicates that Captains have functions and responsibilities that set them apart from other firefighters, I view the authority vested in the Captains to be of a routine or clerical nature not requiring the use of independent judgment. The Captains clearly have no authority to hire, transfer, suspend, lay off, recall, promote or discharge employees. The extent of their capacity to make assignments is related to tasks which are either so routine as to not require supervision or are pursuant to rosters that, in effect, eliminate any judgmental factor. The contention that Captains have the authority "effectively to recommend" personnel action is, in my view, rebutted by the evidence which establishes that all of their recommendations are subject to at least two layers of review, the "out of the ordinary" recommendations are cleared before being made and that recommendations by Captains are often rejected without explanation to the Captain. As to the Captains' training function, they clearly have no authority to make any decisions as to scheduling and content and their teaching role is apparently derived more from the level of their experience than from their position. Further, with respect to the Captains' role in conducting inspections, it appears that this function is also performed by the firefighters in the claimed unit.

With respect to the fact that a finding that the Captains are supervisors would result in a supervisor-employee ratio of 9 supervisors for 24 unit personnel, excluding these persons engaged solely in fire inspection work, the Activity contends that this ratio is not unreasonable when consideration is given to the fact that the Captain is the highest ranking full-time employee in a fire station. However, the evidence establishes that the Activity is kept aware of what is occurring in the stations by virtue of the close proximity and repeated visits of the Chief and Assistant Chief on duty. Thus, even during the night hours the Captains are not without close supervision in the form of the Assistant Chief who is sleeping in one of the stations. In addition, while a Captain may be theoretically in charge of getting the crew to a fire alarm, the duration of this authority is extremely limited as the record reveals that the Chief and Assistant Chief arrive at the scene within minutes of the crew. Moreover, if the Captains were found to be supervisors it would mean that when a crew was fighting a fire there would be 3 supervisors for 4 unit employees.

Based on the foregoing, and noting particularly that the Captains' authority is generally of a routine or clerical nature not requiring the use of independent judgment; that they spend a substantial portion of their work time performing duties identical to other firefighters; that they have no authority to hire, transfer, suspend, lay off, recall, promote or discharge employees; that their work assignment authority is governed completely by rotation rosters or is of a highly routine nature; that their grade is lower than the included fire inspectors; and that the evidence established that they do not make effective recommendations with respect to personnel actions, I find that the employees classified as

Captains do not possess the indicia of supervisory status as provided in Section 2(c) of the Executive Order and, therefore, they should be included in any unit found appropriate for the purpose of exclusive recognition. ^{9/}

Accordingly, I find that the following employees sought by the IAFF constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All Fire Fighters including Fire Captains and Fire Inspectors at the U.S. Naval Weapons Station, Yorktown, Virginia excluding Fire Chief, Assistant Fire Chiefs, Chief Fire Inspector, employees engaged in Federal personnel work other than in a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

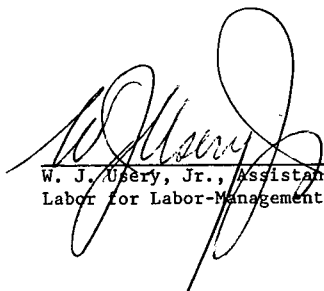
An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible

^{9/} Inasmuch as I have concluded that the Captains are not supervisors within the meaning of Section 2(c) of the Executive Order, it was considered unnecessary to decide the IAFF's alternative theory concerning the application of Section 24(a)(2) of the Executive Order. However, it should be noted that Section 24(a)(2) by its terms refers to units of supervisors rather than to the mixing of supervisors in units appropriate pursuant to Section 10 of the Order. Moreover, the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, the "legislative history" of the Executive Order, also indicates that Section 24(a)(2) refers to supervisors being represented in separate units by labor organizations which traditionally represent such supervisors in the private sector.

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shall vote whether they desire to be represented for the purpose of exclusive recognition by the International Association of Fire Fighters, AFL-CIO; or by National Association of Government Employees; or by neither.

Dated, Washington, D.C.
April 22, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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April 26, 1971

A/SLMR No. 31

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON OBJECTIONS AND
DIRECTION OF SECOND ELECTION OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

NORFOLK NAVAL SHIPYARD
A/SLMR No. 31

Activity

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, INC.

Petitioner

and

Case No. 46-1617 (RO)

FIFTH NAVAL DISTRICT
METAL TRADES COUNCIL, AFL-CIO 1/

Intervenor

DECISION ON OBJECTIONS
AND
DIRECTION OF SECOND ELECTION

This case arose as a result of Fifth Naval District Metal Trades Council, AFL-CIO (MTC) filing objections alleging that certain conduct by the National Association of Government Employees, Inc. (NAGE) affected the results of the election held at the Norfolk Naval Shipyard, Portsmouth, Virginia.

A hearing, involving certain of the objections originally filed, was held before a Hearing Examiner, alleging that (1) the Activity adopted and maintained rules restricting MTC's right to communicate with the employees and assisted NAGE by disparate application of such rules; (2) NAGE made promises of tangible economic benefits involving (a) payment for solicitation of new members, (b) 6-months free membership, (c) free legal services, and (d) free insurance, and; (3) NAGE falsely represented that employees were eligible for insurance with the Travelers Insurance Company immediately upon becoming a member.

Upon review of the Hearing Examiner's Report and Recommendations and the entire record, including the exceptions, briefs and post-hearing motions, the Assistant Secretary found that the promise of a free \$10,000 accidental death and dismemberment insurance policy constituted the granting of an immediate tangible economic gift based, in part, on the payment to the beneficiary of a deceased Shipyard employee of \$10,000 which was provided through NAGE's general fund coverage. It was also found that, under all the circumstances, the offer of free Travelers insurance coverage was a promise of benefit made contingent upon the outcome of the election.

With respect to the remaining allegations, the Assistant Secretary held that the MTC not only had the opportunity to, but did, respond to NAGE's misrepresentations with respect to free insurance, thus enabling the employees to make a proper evaluation. The Assistant Secretary also concluded that the Activity's electioneering rules were valid inasmuch as they were promulgated under authority of E.O.10988 and were in conformance with the guidelines established by the Civil Service Commission. The remaining allegations, noted above, were found to be without merit.

Based on the foregoing, the Assistant Secretary set aside the December 4, 1969 election and directed that a second election be conducted.

On December 7, 1970, Hearing Examiner Sidney J. Barban issued his Report and Recommendations in the above-entitled proceeding, finding, in part, that the offer of free insurance by the NAGE was a tangible economic gift. The Examiner found also that the NAGE had engaged in misrepresentation with regard to members being covered by a policy with Travelers Insurance Company. The Hearing Examiner concluded that the employees' freedom of choice had been impaired, and accordingly, recommended that the election held on December 4, 1969 be set aside and a new election be directed under the terms of Executive Order 11491.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record including the exceptions,

1/ The objections were filed by Metal Trades Department, AFL-CIO for and on behalf of the Intervenor.

briefs and certain post-hearing motions 2/ by NAGE 3/ and MTC 4/ I adopt the findings and recommendations of the Hearing Examiner except as modified herein:

Assertion of Jurisdiction

Executive Order 10988 provided the right to third-party review of disputes involving majority representation. This right was continued without interruption in Executive Order 11491. Under Section 6 of the Order the Assistant Secretary is directed to decide questions regarding majority representation. I conclude that Executive Order 11491 establishes the requisite authority for me to assert jurisdiction in this matter. Accordingly, I deny the NAGE motion to dismiss this proceeding on the grounds that the election was initiated and conducted under Executive Order 10988 and that there is no legal authority for the Assistant Secretary to apply Executive Order 11491.

THE OBJECTIONS

Objection No. 1(b) 5/

The MTC alleges that the Activity adopted and maintained unlawful rules which restricted its right to communicate with the employees in the

2/ Following the granting of the NAGE's request for extension of time, the last of such documents was timely filed by the NAGE on February 12, 1971.

3/ Accompanying its brief in support of exceptions, NAGE filed a motion requesting that I disqualify myself from retaining this case for review and decision. I am mindful of my oath of office under which I assumed the obligation to carry out my assigned duties and responsibilities with full regard for the public interest. Since effectuation of such duties includes the requirement to administer and implement certain provisions of Executive Order 11491, I shall retain jurisdiction over this proceeding. Accordingly, the motion for disqualification is hereby denied.

NAGE also made a request for oral argument. Inasmuch as briefs fully set forth the positions of the parties, oral argument at this time does not appear warranted.

4/ The MTC filed a motion seeking reconsideration of its earlier challenge to the validity of the NAGE's showing of interest on the basis that it was obtained by impermissible devices which rendered it invalid. Having passed upon this matter in the determination of November 21, 1969, re-examination of this issue at this time is foreclosed. The present proceeding while involving essentially the same allegations, relates only to conduct affecting the results of the election and therefore requires a determination limited solely to this issue. Accordingly, the motion is denied.

5/ Objection 1(b) contains allegations relating to the Charleston and Boston Naval Shipyards. Since such allegations are necessarily beyond the scope of this proceeding, they are not considered herein.

unit. 6/ It further alleges that the Activity supported and assisted the NAGE by permitting NAGE to distribute campaign literature, obtain authorizations, etc., during working hours contrary to Federal Personnel Manual Letter 711-6 (issued by the Civil Service Commission). The Hearing Examiner found that "the rules when adopted and applied were in accordance with the requirements of the various agencies which were authorized by Executive Order to set the rules." He found also that such rules were applied in as "even-handed and objective a manner as was possible under the circumstances," and therefore the application of these rules to the election process under Executive Order 10988 "should not now be grounds for invalidation of the election involved here." Accordingly, the Hearing Examiner recommended that this objection be overruled.

NAGE's campaign to mount its challenge to MTC's majority status began in January 1969 and culminated in its filing a timely request for recognition on April 25, 1969. The validity of this challenge was determined by the Activity in July 1969. During this period both unions were prohibited from distributing literature on the Activity's premises without prior approval as well as from engaging in "campaigns for membership election" on its premises at any time. In addition, the NAGE was prohibited from engaging in conduct on the Activity's premises during nonworking hours involving soliciting membership, collecting dues or assessments, conducting membership meetings and in the use of stewards. MTC, on the other hand, by virtue of its incumbent status, was allowed to engage in the latter activities. However, both unions were permitted to meet with the Activity under certain conditions and to post notices of membership meetings on unofficial bulletin boards subject to approval by the Activity.

On August 8 restrictions on the distribution and posting of campaign material in the Shipyard were imposed upon MTC, pending an election agreement being entered into by the parties. Subsequently, such agreements setting forth electioneering rules were executed on October 7 and November 25. 7/

Executive Order 10988 directed the Civil Service Commission to "develop a program for the guidance of agencies in employee-management relations in the Federal service; provide technical advice to the agencies on employee-management programs..." The Order directed the head of each agency to "issue appropriate policy, rules and regulations for the implementation of this Order..." Based upon this authority the Civil Service Commission in 1966 issued Federal Personnel Manual Letter 711-6, entitled "Guidance For Agencies In Dealing With Employee Organizations Competing For Exclusive Recognition." Among the guidelines suggested were certain limitations on organizational activities on the agency's premises by unions competing for exclusive recognition.

6/ The Decision and Direction of Hearing noted, "Objection 10(e) focuses on an allegedly unlawful no-electioneering rule in effect at the Shipyard between August 8, 1969 and October 7, 1969. The validity of the challenged rule and its enforcement will be considered in the course of the hearing..."

7/ The absence of MTC as a signatory to either of the election agreements, i.e., October 7 and November 25, is not significant to a determination of the objections involved herein.

Upon review of the record, I adopt the conclusions and recommendations of the Hearing Examiner to the extent that the rules must be deemed to be valid since they were promulgated under authority of Executive Order 10988 and were in conformance with guidelines established by the Civil Service Commission. 8/ I adopt also the Hearing Examiner's conclusion that the evidence does not support a finding of disparate application of the rules by the Activity in support of, or assistance to, the NAGE.

Accordingly, this Objection is hereby overruled.

Objection No. 4

The MTC alleges that the NAGE made promises of tangible economic benefits involving (a) payment for solicitation of new members; (b) 6-months free membership; (c) free legal services; (d) free insurance.

(a) Payment for solicitation of new members.

The parties stipulated that the sum of \$1800 was paid by the NAGE in accordance with its offer to pay \$20 for each group of five membership applications obtained. The Hearing Examiner concluded that such an offer and the resulting activity had the "necessary tendency to corrupt the election process" by encouraging fee-splitting.

The Hearing Examiner concluded, however, that inasmuch as this offer did not continue beyond the filing of the challenge by the NAGE in April, its impact upon the election was too remote. I adopt the findings and conclusion of the Hearing Examiner and, accordingly, this objection is overruled.

(b) 6-Months Free Membership

The Hearing Examiner found that the offer of free membership was a "...key to the NAGE campaign..." and that this was "...overwhelmingly supported by testimony in the record." He indicated that since the offer of free dues was made "...in a context of other benefits deliberately designed to induce acceptance of that offer" he would only consider it in that context. However, upon review of the record I conclude that the offer of free membership can be treated as a distinct issue, as alleged.

With respect to this issue, I conclude that irrespective of whether such an offer is conditioned upon the outcome of the election, it would not impair the employees' freedom of choice in the election, since a waiver or deferral of dues has value to the employee only if the union wins the election. Accordingly, I find that this objection has no merit and it is hereby overruled.

8/ Cf. Charleston Naval Shipyard, A/SLMR No. 1, in which similar restrictive rules which were put into effect after January 1, 1970 were found to be in violation of Executive Order 11491.

(c) Free Legal Services

NAGE offered the services of a local attorney to handle job-related grievances for the employees in the unit involved. The Hearing Examiner concluded that this offer of free legal representation was consistent with the provisions of Executive Order 10988 which permitted an employee to be represented by anyone of his choosing regarding the processing of a grievance. I adopt the findings and recommendations of the Hearing Examiner and, accordingly, this objection is hereby overruled.

Objections Nos. 4(d) and 5: Free Insurance and Misrepresentation 9/

The MTC alleges that the offer of free death and dismemberment insurance was a tangible economic inducement. Objection No. 5 alleges, in substance, that the NAGE falsely represented that employees were eligible for insurance with the Travelers Insurance Company immediately upon becoming a member.

With respect to the allegation of misrepresentation, it is undisputed that eligibility for participation under the Travelers policy was limited to those who were on dues check-off. The Hearing Examiner points out that at no time did the NAGE issue any statement in its literature indicating that it was a self-insurer only for dues-paying members not on check-off. He found that the NAGE misrepresented with respect to immediate coverage by the Travelers Insurance Company and that efforts by MTC to counter such misrepresentations were unsuccessful. The Hearing Examiner also found that the grant of free insurance was a tangible economic benefit which interfered with the election.

The NAGE argues in its exceptions, among other things, that it is not unusual for such offers of insurance to be made in Federal sector election campaigns and that its offer of free insurance was an accurate statement of benefits of NAGE membership. With respect to the alleged misrepresentation, NAGE further contends in its exceptions that "...the true facts were not only obtained by MTC...they were publicized by MTC on many occasions..." The MTC contends that there is no historical practice in Federal sector of offering free insurance as is here involved, and further, that while it had time to reply, it "had no opportunity to reply because its efforts to make known the truth were unavailing."

9/ NAGE's offer of free insurance, which was included among its organizational appeals, appeared in various publications, dated variously from 2/24/69 (Virginian-Pilot) to 11/30/69 (The Fednews). The Hearing Examiner noted that free insurance continued to be a live issue up to the time of the election.

Inasmuch as the complained-of conduct thus continued to within a few days of the election, I deem it unnecessary to establish a specific cut-off date in my consideration of these remaining objections.

The record leaves no doubt that the offer of free insurance by the NAGE identified Travelers Insurance Company as the carrier. The campaign publicity concerning the offer of free insurance, reasonably construed, leads one to conclude that, upon becoming a member, the insurance benefits took effect immediately. Moreover, the payment of \$10,000 to the widow of a Shipyard employee and the extensive publication of this event by the NAGE, under the circumstances, tended to imply that payment was made by Travelers.

On the other hand, as early as February 1969, MTC placed the insurance offer in issue. Again, in June or July, MTC publications pointed out that the "policy is worthless" unless the dues were paid and gave the telephone number of the Branch Manager of Travelers Insurance Company for use by the employees in the event that they wished to verify MTC's assertions. In addition, on July 30, Travelers expressly advised MTC that dues check-off was required for participation under the policy. This requirement was set forth in the Certificate of Insurance which had been distributed previously to over 1,000 employees.

In view of the foregoing, I conclude that MTC not only had the opportunity, but in fact, did respond, thereby providing the employees with a basis for making an independent evaluation of NAGE's misrepresentations regarding its offer of insurance. I find such a situation is handled best through the election campaign process and, accordingly, the objection is overruled.

With respect to the propriety of the offer itself, the Hearing Examiner concluded that it constituted a tangible economic benefit. He relied upon the Board's decision in the matter of Wagner Electric Corporation, 10/ in which the Board ruled:

"...we perceive a substantive distinction between this gift of life insurance coverage and a waiver of initiation fees, with which the Regional Director equates it. Where there is a waiver of initiation fees, there is no economic enhancement of the employees' economic position, but merely an avoidance of a possible future liability. Moreover, such waiver is a customary practice in organizing campaigns. In contrast, the gift of immediate life insurance coverage is a tangible economic benefit and is most unusual.

It is our view that the gift of life insurance coverage to the prospective voters is more akin to an employer's grant of a wage increase in anticipation of a representation election than it is to a waiver of union initiation fees and that it subjects the donees to a constraint

to vote for the donor union. We conclude that by such a gift the Petitioner destroyed the atmosphere which the Board seeks to preserve for its elections in order that employees may exercise freedom of choice on representation questions..."

In my view, the Wagner Electric rule is not applicable insofar as the Travelers policy is concerned. The circumstances underlying the Wagner case involved an immediate gift of life insurance, whereas the offer of "free insurance" with Travelers in this case was, in fact, contingent upon NAGE winning the election. The clearest indication of this, is to be found in the Certificate of Insurance requirement for eligibility to participate. There is no contention, nor any evidence, that NAGE at any time expressly made its offer of free Travelers insurance contingent upon the outcome of the election. Nevertheless, the fact that such contingency necessarily existed was made known throughout the period of approximately 10 months preceding the election by MTC in countering NAGE's representations of free insurance.

On the basis of these counter-assertions by MTC, as well as the express qualifications for eligibility set forth in the Certificate of Insurance, plus the fact that the matter of the Travelers policy was widely discussed throughout the Shipyard, it is reasonable to assume that a substantial number of employees were aware that the Travelers policy was contingent upon the outcome of the election. Thus, if a Shipyard employee wanted Travelers coverage, he would have been led to vote for NAGE since a NAGE victory was essential to entering into a dues deduction agreement with the Activity. Under all the circumstances, it is concluded that the offer necessarily had to be construed by the employees as being contingent upon the outcome of the election.

There is another aspect to the NAGE gift of free insurance coverage which must be considered. NAGE gave wide and continuing publicity that employees' beneficiaries would receive a free \$10,000 accidental death benefit, including the publicity given to the payment of \$10,000. No effort was made to divulge to Shipyard employees the source of such payment.

The record indicates that a 1968 NAGE Convention resolution provided that anyone signing an 1187 form would be considered a member of the NAGE and that until the 1187's could be activated by the employer, the NAGE general fund would absorb any insurance claim. This resolution apparently enabled it to make the \$10,000 insurance payment thus establishing the fact that employees had immediate insurance coverage. However, regardless of whether the employees believed that such payment derived from the Travelers policy, or from NAGE's general fund or private sources, the impact upon the employees was, simply, that by signing an 1187 form, their beneficiaries qualified for the insurance benefits.

It is well-established in the private sector that any promise or offer of benefit, except waiver of dues and initiation fee, which is made contingent upon the outcome of the election, necessarily constitutes interference

with the freedom of choice by the employees. Similarly, it is established that a gift of immediate life insurance in an election campaign constitutes a tangible economic benefit which impairs the employees' freedom of choice.

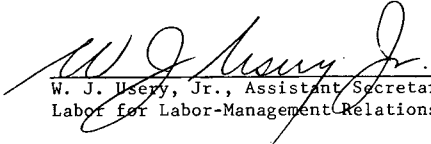
I conclude, in agreement with the Hearing Examiner, that no less rigorous standards should obtain in representation elections among Federal employees than those which prevail in the private sector. In view of the foregoing, I find this objection to have merit based upon the gift of immediate life insurance coverage provided through the NAGE general fund coverage, as well as upon the contingent nature of the "free insurance" associated with the Travelers policy. Accordingly, the election conducted on December 4, 1969 is hereby set aside and a second election will be conducted as directed below.

DIRECTION OF SECOND ELECTION

It is hereby directed that a second election be conducted as early as possible, but not later than 45 days from the date below, under the supervision of the appropriate Area Administrator in the unit set forth in the Election Agreement, dated November 25, 1969. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. In conformance with the requirements of Executive Order 11491, in addition to those not eligible to vote as set forth under paragraph 2 of the Election Agreement, are any employees employed as management officials and guards and supervisors as defined in the Order.

The Area Administrator is hereby authorized to issue the appropriate Certification of Representative or Certification of Results.

Dated, Washington, D. C.
April 26, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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

NORFOLK NAVAL SHIPYARD

Employer

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, INC.

Petitioner

and

METAL TRADES DEPARTMENT, AFL-CIO 1/

Intervenor

L. Neal Ellis, Esq., Navy Department,
Office of Civilian Manpower Management,
Washington, D. C., for the Employer.
Gordon P. Ramsey, Esq. (Gadsby and Hannah),
Washington, D. C., for the Petitioner.
Patrick C. O'Donoghue, Esq., and Donald
Capuano, Esq. (Douglas L. Leslie, Esq.,
on the brief), Washington, D. C., for the
Intervenor.

Before: Sidney J. Barban, Hearing Examiner

REPORT AND RECOMMENDATIONS
ON OBJECTIONS TO ELECTION

Statement of the Case

This proceeding was heard at Norfolk, Virginia, on August 17, 18, 19, 20, 21, 25 and 26, 1970, upon a Notice of Hearing issued on July 28, 1970, by the Regional Administrator for the Philadelphia Region, pursuant to a Decision and Direction of Hearing by the Assistant Secretary of Labor for Labor-Management Relations (herein referred to as the Assistant Secretary), dated July 16, 1970, under the authority of Executive Order 11491, and in accordance with Section 202.20(d) of the Rules and Regulations of the Assistant Secretary.

1/ The record indicates that the intervenor may be more properly designated as "Fifth Naval District Metal Trades Council, AFL-CIO," which will herein be referred to as "MTC".

The issues heard concern certain objections filed by MTC to an election held among a unit of employees of the above-named employer, (herein referred to as the Employer), on December 4, 1969 (all dates herein are in 1969 unless otherwise noted), in which the above-named petitioner (herein referred to as NAGE) received the majority of the votes cast. All parties were represented at the hearing by counsel, who were given full opportunity to adduce evidence, examine and cross-examine witnesses, submit arguments and file briefs.

Upon the entire record in this matter 2/, from observation of the witnesses, and after due consideration of the briefs filed by the Employer, NAGE, and MTC, the Hearing Examiner makes the following:

Findings and Conclusions

I. Applicability of Executive Order 11491

As set forth in more detail hereinafter, an election was conducted among certain employees of the Employer on December 4, under the provisions of Executive Order 10988 then in effect. MTC filed timely objections to the election with the Employer, which, on December 19, overruled the objections. Time for appeal of this decision was extended to January 5, 1970.

Effective January 1, 1970, Executive Order 10988 was revoked by Executive Order 11491, which set forth the policies governing "officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing those employees" from that date.

After January 1, 1970, MTC perfected its appeal to the Department of Navy (herein referred to as the Navy), and initiated proceedings to have the Assistant Secretary determine which of the two Executive Orders were applicable and to have the merits of the objections to the election determined pursuant to Executive Order 11491. As a result of these actions, the Assistant Secretary, on February 25, 1970, determined that "1/inasmuch as this matter is being filed with the Department of Labor after the effective date of Executive Order 11491, it will be processed in accordance with Executive Order 11491 and the regulations of the Assistant Secretary which appeared in the February 4 issue of the Federal Register."

2/ With agreement of the parties, I have had reference to certain documents, specifically noted herein, filed with the appropriate government agency by one or another of the parties, or issued by a government agency to one of the parties. In accordance with prior arrangements, after the close of the hearing, counsel for MTC submitted two exhibits for receipt into evidence together with a stipulation from counsel for NAGE that they might be received and evidence of service on the Employer. No objection having been received from the Employer, the document entitled "Resolution #68" is received as MTC exhibit 50, the document entitled "Claim Statement" is received as MTC exhibit 51, and the stipulation of Counsel is received as MTC exhibit 52.

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After investigation of the MTC objections, the Regional Administrator having jurisdiction of the matter issued a report, dated May 23, 1970, overruling certain objections, but finding that a hearing was required on other objections which "raise relevant questions of fact which may have affected the election." The Assistant Secretary, on July 16, 1970, sustained the Regional Administrator and directed that a notice of hearing be issued designating a Hearing Examiner "to take evidence and make factual findings and recommendations" with respect to the MTC objections as specifically set forth hereinafter.

NAGE filed a petition for review of the Assistant Secretary's Decision and Direction of Hearing with The Federal Labor Relations Council, contending that "The Assistant Secretary is Without Jurisdiction under Executive Order 11491 to Determine Questions Involving the Conduct of a Representation Election held Pursuant to Executive Order 10988." (MTC also appealed to the Council from the Assistant Secretary's Decision, but this need not be considered here.) According to the brief filed by NAGE in this matter, the Council has declined to rule at this time on the Assistant Secretary's jurisdiction in this matter, without prejudice to the right to appeal on this issue from the Assistant Secretary's final decision in this matter. (NAGE brief, p. 32)

In its brief (p. 31), NAGE renews its motion made at the hearing that the Hearing Examiner find that "the election in this case was initiated and conducted under the provisions of E.O. 10988 . . . that there is no legal authority for the Assistant Secretary to apply E. O. 11491 retroactively to this election . . . that this proceeding should therefore be dismissed." NAGE argues that the action of the Council in deferring decision with respect to the Assistant Secretary's Jurisdiction in this matter requires the Hearing Examiner to pass upon "NAGE's Challenge to the Assistant Secretary's subject matter jurisdiction in this case." (Brief, p. 34)

There is no question but that the Assistant Secretary has considered the issue here presented and has determined that jurisdiction should be asserted under Executive Order 11491. This issue was not delegated to the Hearing Examiner. Inasmuch as the Hearing Examiner, in a proceeding such as this, acts as an agent of the Assistant Secretary, Cf. Rochester Metal Products, 94 NLRB 1779, at 1780, to hear and consider the matters set forth in the papers directing the hearing in this matter, I consider myself bound by the prior determination of the Assistant Secretary with respect to the assertion of jurisdiction.

Further, it appears to me that the decision of the Assistant Secretary in asserting jurisdiction under Executive Order 11491 is manifestly correct. Since NAGE seeks present recognition as the exclusive representative of a unit of Federal employees, this would seem possible only under the authority of E.O. 11491, for that is the only authority presently in effect. Though NAGE argues that only the procedures of the prior Executive Order should be utilized, with the suggestion that the present dispute must be left to the Employer finally for resolution, no basis appears for the present initiation of

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procedures under the expired Executive Order in preference to the procedures of the current Order, and Rules and Regulations issued thereunder, designed for the resolution of such disputes. ^{3/} Further, contrary to the suggestion of NAGE, the thrust of the present Executive Order is to remove the resolution of disputes such as the present from the employing agency and transfer such resolution (with an exception not here pertinent) to the Assistant Secretary, subject to possible review by the Federal Labor Relations Council. The procedures which NAGE seems to suggest would serve to frustrate that policy.

NAGE also suggests that the action taken by the Assistant Secretary here is not consistent with actions taken in respect to other matters. It is further argued that another Hearing Examiner in analagous circumstances has taken a different position. These are matters more appropriate for the consideration of the Assistant Secretary. I shall therefore proceed to the consideration of the merits of the issues raised by the objections which I have been directed to hear.

II. MTC Objections to the Election

A. The Election

Pursuant to an election agreement (not signed by MTC), dated November 25, a secret ballot election was conducted on December 4, in accordance with the provisions of Executive Order 10988, in the following unit of the Employer's employees:

All non-supervisory graded employees in Inventory Branch of the Planning Division, Supply Department; all non-supervisory graded employees in the Fire Division, Administrative Department; all ungraded employees below the level of foreman (leading man) in rating authorized for use at and listed on the Norfolk Naval Shipyard's schedule of wages in the Planning, Production, Public Works, Supply and Administrative Departments, except those employees in the following ungraded ratings: inspector (all options), ship progressmen (all options), ship schedule (all options), ship surveyor (all options), pattern-maker, shop planner pattern-maker, apprentice pattern-maker.

^{3/} The general savings clause provided in the case of the "repeal of any statute," 1 USC § 29, relied upon by NAGE, is not only of doubtful application here, but would seem particularly inapplicable in this instance since at the time of the expiration of the prior Executive Order no obligation upon the Employer to accord NAGE recognition as exclusive representative of the employees involved had been perfected.

The results of the election were as follows:

Number of eligible voters	7233
Void ballots	36
Votes cast for Petitioner (NAGE)	3370
Votes cast for Intervenor (MTC)	2690
Votes cast against participating labor organizations	143
Valid votes counted	6203
Challenged ballots	58
Valid votes plus Challenged ballots	6261

Challenges were not sufficient in number to affect the results of the election.

B. The Objections Noted for Hearing

On December 16, MTC filed timely objections to the election with the Employer, numbering some 25 paragraphs and subdivisions. The Employer issued its decision overruling these objections on December 19. As previously noted, MTC was granted until January 5, 1970, to perfect its appeal. Thereafter, MTC timely filed an appeal with the Navy, and on the same day, made a request to the Assistant Secretary for a ruling as to whether Executive Order 10988 or Executive Order 11491 was applicable in the circumstances, with a request that the Navy withhold action pending the decision of the Assistant Secretary.

On January 30, 1970, the Navy issued a decision affirming the prior decision of the Employer overruling the MTC objections, and advising that a request for review might be filed with the Department of Labor within 15 days. In this connection, it was stated in the letter addressed to a representative of MTC on that date:

The Department of the Navy recognizes that the Assistant Secretary of Labor may ultimately take jurisdiction in this case and can do so whether under Executive Order 10988 or 11491. However, it is the considered judgment of the Department of the Navy that its decision with respect to this appeal would be of material assistance to the Assistant Secretary of Labor in deciding this matter, if appealed to him. Navy also wishes to have its position on the instant objections part of the record upon which potential resolution will be based.

Thereafter, as noted above, upon the appeal of MTC, the Assistant Secretary asserted jurisdiction over this matter under Executive Order 11491. The MTC objections to the election were investigated by the Regional Administrator who issued a report finding that certain of the objections raised relevant questions of fact requiring a hearing on those objections. On appeal, the Assistant Secretary affirmed the findings and conclusions of the Regional Administrator and directed that a hearing be held on the following MTC objections:

1. For at least the last year, the Department of Navy has engaged in a course of conduct of favoritism, assistance and support of NAGE. The improper conduct of the Department of Navy includes but is not limited to the following actions:

(b) Its discriminatory application of Federal Personnel Manual System Letter No. 711-6 captioned "Guidance for Agencies in Dealing with Employee Organizations Competing for Exclusive Recognition." Paragraph 1 of this letter establishes rules for campaigning during the period following the grant of exclusive recognition until a valid, timely challenge has been presented. In general, this paragraph limits a union that does not have exclusive recognition to post notice of meetings and the solicitation of authorization cards during non-working hours. Distribution of campaign literature is strictly prohibited within a shipyard. At the Norfolk Naval Shipyard where the MTC held exclusive recognition, the Department of Navy permitted NAGE, in the months preceding NAGE's filing of a challenge, to distribute campaign literature, obtain authorizations, etc. during working hours. Although protests were filed by the MTC to NAGE violations of FPM letter 711-6, no effective action was taken by the Department of Navy. Similarly, the Charleston Navy Shipyard where another MTC has exclusive recognition, no effective action has been taken on MTC protests to extensive and continuing violations by NAGE of FPM Letter No. 711-6. During the last three months, NAGE campaign literature has been distributed weekly by the bushel basket in the Charleston Yard. No challenge can be filed in Charleston until December 19. On the other hand, at the Boston Shipyard where NAGE has exclusive recognition and the MTC is embarked on a campaign, FPM Letter No. 711-6 is not only being enforced but it is being arbitrarily interpreted by the Department of Navy to prohibit MTC adherents from even having authorization cards signed within the Shipyard during non-working hours. In Boston, the term "literature" in FPM Letter No. 711-6 is being interpreted as including a MTC "authorization card." Such disparate and discriminatory

conduct evidences a clear pattern by the Department of Navy of support and assistance of NAGE. 4/

4. NAGE's promises to all Norfolk Naval Shipyard wage board employees of tangible economic benefits that were material inducements. Specifically, these tangible economic inducements were (a) a gift of six months' free dues to be paid for by fellow shipyard NAGE members; (b) a gift of a free Twenty-four Hour Death and Dismemberment Insurance Policy held by Travelers Insurance Company; (c) monetary reward of \$4.00 to all wage board employees for each new NAGE member solicited; and (4) free legal services without cost to NAGE members. NAGE first made these promises of tangible economic benefits in its campaign for filing a challenge. These promises were repeated again and again in NAGE campaign literature distributed in the Shipyard to all employees during the election campaign.
5. NAGE's repeated false representation regarding the promise of free insurance, namely that, immediately upon joining NAGE, any wage board employee was eligible for the free Travelers insurance. None of the Norfolk employees met the third requirement for eligibility under the Travelers insurance policy and, although presented with documentary evidence from the Travelers Insurance Company as to the falsity of its representations, NAGE continued to reiterate and repeat its false representations regarding the Travelers insurance right up to the day of the election. Pointing up the magnitude of NAGE's flagrant falsehoods regarding the Travelers insurance is the piece of campaign literature entitled "NAGE Bulletin" containing a photograph of Wayne Hampton presenting a check of \$10,000 to the widow of Norman Phelps. This literature contained a false representation that Mrs. Phelps was paid \$10,000 insurance. Mrs. Phelps was not paid pursuant to the Travelers policy but the \$10,000 was a payment from the general funds of NAGE. This "NAGE Bulletin" was distributed in the Shipyard right up to election day."

C. The Background Facts

MTC has been recognized as the exclusive representative of employees at the Employer's operations in the unit described above for a number of years and has held collective bargaining contracts covering their working conditions negotiated with the Employer. The

4/ In connection with this objection, the Assistant Secretary also stated in his decision that "The validity of the challenged allegedly unlawful no-electioneering rule in effect at the Employer's operations and its enforcement will be considered in the course of the hearing to be scheduled on objection 1(b)."

last of these contracts, which expired by its terms on June 26, 1969, was extended (with some exceptions) by agreement between MTC and the Employer pending the resolution of the pending question concerning the representation of the employees involved.

NAGE began its campaign to unseat MTC as the exclusive representative of the unit employees in January 1969, by seeking to acquire from the employees evidence of membership in and support of NAGE required by Executive Order 10988 to challenge the status of MTC. NAGE filed a timely challenge on April 25, together with the evidence of employee membership and support which it had secured. MTC attacked the validity of the NAGE claim of membership and support (asserting some of the arguments it advances here in support of its objections), and the two unions agreed upon an impartial arbitrator to resolve this issue. On June 30, the arbitrator advised the Employer that his investigations satisfied him that NAGE had submitted sufficient evidence of a valid challenge to the representative status of MTC, and the Employer thereafter advised the parties that it accepted this report. MTC appealed this decision to the Navy, which, after due consideration, affirmed the Employer. MTC then requested the Assistant Secretary to institute further proceedings to review this issue. This was denied in a decision dated November 21, which also held that the showing of interest made by NAGE was adequate to support its challenge.

On October 7, at a meeting of the Employer, NAGE and MTC, an election agreement was formalized (which MTC did not sign) scheduling an election upon the NAGE challenge, to be held on November 6, and setting forth the details of the election and the rules to be followed in campaigning up to the date of the election. This agreement was cancelled by the Employer in consequence of the pendency of MTC's request of the Assistant Secretary for further proceedings to review the validity of the NAGE challenge. Following the Assistant Secretary's rejection of the MTC request on November 21, another election agreement was drawn, dated November 25, similar to the previous document, setting the election for December 4. At this election, as noted, a majority of the votes cast was for NAGE.

D. Objection 1(b)

Essentially, this objection contends that the Employer improperly affected the election by adopting and maintaining allegedly unlawful or improper restrictive rules which interfered with the right of MTC (and NAGE also) to communicate with the employees in the unit concerning the question of their representation, and that the Employer by a pattern of disparate and discriminatory conduct supported and assisted NAGE.

At the outset, the contention that the Employer favored or assisted NAGE in relation to its challenge of the representative status of MTC is simply disposed of. The evidence submitted clearly does not justify such a finding. Indeed, it would serve no purpose, and would unduly lengthen this decision, to set forth the evidence in this respect or discuss it. So far as I can ascertain, this point is not even mentioned in the MTC brief and appears to have been abandoned.

The second issue to be considered under Objection 1(b), that the Employer improperly restricted union communication with the employees during the period when a question concerning representation existed, must be considered in more detail. The basis for the various restrictive rules applied by the Employer from January 1 through December 4, the date of the election, was a communication to "Heads of Departments and Independent Establishments," issued by the Civil Service Commission in 1966, entitled "Guidance for Agencies in Dealing With Employee Organizations Competing for Exclusive Recognition" (herein referred to FPM 711-6). It suggests, in the interest of establishing uniform relationships between agencies and competing unions, that the guidelines provided be followed in situations where one employee organization attempts to displace another which had the status of exclusive representative under Executive Order 10988. Inter alia, the letter provides for certain restrictions upon the right of the competing unions to distribute literature to employees, solicit membership, and the like on the premises of the Employer.

During the period from January 1 through December 4 ^{5/}, the Employer, in apparent reliance upon FPM 711-6, prohibited the distribution of any literature to employees by either of the competing unions on the Employer's premises unless approved by the Employer. Pursuant to its interpretation of FPM 711-6, the Employer advised the two unions in writing that during the period from January 1 until about July 3 (when the Employer accepted the validity of the NAGE challenge), both MTC and NAGE were prohibited from engaging in "Campaigns for membership elections" on Employer premises at any time; further that NAGE was prohibited (but MTC was permitted, because of its exclusive status) from engaging in the following conduct on the Employer's premises: 1) Solicitation of membership outside of working hours, 2) Collection of dues or assessments outside working hours, 3) Membership meetings outside working hours, 4) Use of Stewards; that both unions were permitted meetings with the Employer under certain conditions; and both were permitted to post membership meeting notices on unofficial bulletin boards upon approval of the Employer.

By letter dated July 3, the Employer notified both competing unions that a valid challenge to the status of MTC had been filed and an election would be necessary. The letter further cautioned both MTC and NAGE "to refrain from any kind of electioneering within the Shipyard until such time as the rules for electioneering can be established" as part of an election agreement as contemplated by FPM 711-6.

^{5/} NAGE at the hearing objected to the taking of any evidence prior to the date of its challenge, April 25. This was overruled on the basis that the objections upon which a hearing was directed covered the year before the election. This point is more significant in respect to other objections and is discussed hereinafter.

Because of delays in formulating an election agreement, the Employer on August 8, wrote J. M. Porter, the president of the MTC and a Plumbers local affiliated with the Council, advising, in pertinent part, as follows:

. . . Until the rules governing campaigning privileges can be agreed upon and incorporated into an election agreement, your organization may not distribute or post literature concerning membership, benefits, election campaigns or material which could be construed as electioneering within the shipyard. You may, however, accept this as authority to post notices of meetings of your local on unofficial bulletin boards. Such meeting notices shall be limited to announcing that date time and place

Provided specific approval has been given by the Director of Industrial Relations or appropriate members of his staff, informational literature other than that type excluded above may be distributed or posted on unofficial bulletin boards outside working hours. In this regard, the shipyard reserves the right to refuse posting or distribution of any literature which in its judgment is literature in connection with membership or election purposes.

On October 7, an election agreement was formulated setting the election for November 6. This agreement made the following pertinent provisions for electioneering 6/ during the period prior to the election:

Campaigning onboard the activity will be conducted during nonworking hours Material for posting and/or distribution on station must be screened, in advance by the Industrial Relations Office, Code 160. Generally pre-election campaign propaganda of the parties will not be censored or policed for content. However, it is agreed that . . . the literature shall not contain false propaganda, scurrilous and libelous statements. It is agreed that material for posting shall be no larger than 15" X 20" and will be placed only on unofficial bulletin boards. . . . Literature distributed on shipyard premises will not be dispersed at any time aboard ships and barges and will not be distributed on government time. . . .

6/ Though the agreement was not signed by MTC, there is no contention that it was not binding. It is noted that FPM 711-6 provides, in the paragraph numbered 4, that in instances in which agreement to an election agreement cannot be reached, the Employer, giving due consideration to the views of the parties, shall establish the rules governing campaigning.

On November 3, when the election agreement was cancelled because of the pendency of the MTC appeal attacking the validity of the NAGE challenge, the rules for electioneering reverted to those set forth in the Employer's letter of August 8 to Porter. On November 25, another election agreement was put into effect, setting the election for December 4, and providing electioneering rules identical with those in the prior agreement.

The record shows that a substantial amount of literature was distributed within the shipyard and other election activity occurred on the premises of the employer, even during periods when such electioneering was prohibited on government property. It is indicated that supporters of NAGE engaged in more in-plant distribution of literature than was the case with MTC adherents, although both unions complained frequently to the Employer with respect to alleged disregard of the rules by the other. The Employer refused to approve several pieces of MTC literature for distribution in the shipyard, which, in part, apparently impelled MTC to do a considerable part of its distribution of literature outside the gates of the shipyard, even during the period covered by the election agreements. The evidence shows, however, that distribution outside the gates was limited by the fact that many employees entered the shipyard in cars and in private and public buses. There was some distribution of literature on the private buses. Some of the buses entering the shipyard carried electioneering materials on their exterior.

Discussion

In a prior matter, Charleston Naval Shipyard, Cases nos. 40-1940(CA) and 40-1950(CA), the Assistant Secretary was requested to pass upon the validity of certain rules promulgated by the employer in that case in early 1970, prohibiting electioneering by the recognized bargaining agent and the union challenging, including distribution or posting of literature, meetings for electioneering and solicitation of authorizations. The decision of the Assistant Secretary on this matter was issued on November 3, 1970. The Assistant Secretary held that in the absence of any evidence of special circumstances which would have warranted the limiting or banning of distribution of literature on the employer's premises on non-work time and in non-work areas and employee solicitation during nonwork time, the employer violated the rights of employees under Executive Order 11491 by promulgating and maintaining such rules.

The rules of the Employer in this matter were similar and, as in the Charleston case, no special circumstances were advanced, other than reliance upon FPM 711-6, to justify their imposition upon the employees and the competing unions. It is therefore clear that under Executive Order 11491, such conduct constitutes grounds for

setting an election aside. 7/ Nevertheless, I do not recommend that the election in this matter be set aside on the basis of the restrictive rules adopted by the Employer in this case. The Charleston case has to do with the application of restrictive rules to situations that may arise under Executive Order 11491. In the present case, however, the rules under attack when adopted and applied were in accord with the requirements of the very agencies which were authorized by Executive Order 10988 to set the rules. 8/ They were further applied by the Employer, so far as this record shows, in as even-handed and objective manner as was possible under the circumstances. Their application to the election process under Executive Order 10988 should not now be grounds for invalidation of the election involved here.

For the reasons stated it is therefore recommended that MTC Objection 1(b) to the election be overruled.

E. Objections 4 and 5

Objection 4 is concerned with alleged NAGE promises of (1) six months free membership dues, (2) a free death and dismemberment insurance policy, (3) a monetary reward for new members obtained, and (4) free legal services to employees in the unit which NAGE sought to represent. Objection 5 asserts that NAGE misrepresented to the employees that the insurance promised was covered by a policy held with the Travelers Insurance Company, herein called Travelers.

The Facts

Beginning in January, national and local leaders of NAGE held meetings, as stated by William E. Twomey (then one of its local leaders), to discuss "different things we could do to inspire membership or get the total signatures that we needed." 9/ It was decided to mount a campaign in which the eligible employees would be offered

7/ Although not involved in the Charleston case, the Employer's requirement that all literature distributed on its premises be submitted for prior approval likewise constituted an impermissible prior restraint upon reasonable communication with the employees and the employees' right to information. See, e.g., N.L.R.B. v. Orleans Mfg. Co., Inc. 412 F. 2d 94, 96.

8/ Executive Order 10988 provides, in relevant part, as follows:
Sec. 12. The Civil Service Commission shall establish and maintain a program to assist in carrying out the objectives of this order. . . .

9/ Under the provisions of Executive Order 10988 and the guidelines of FPM 711-6, in order to mount a challenge, NAGE was required to present a showing that it represented at least 30 percent of the employees in the unit, including evidence that it had "a stable membership" of no less than 10 percent of the unit, by a time no later than the 60th day prior to the termination date of the existing contract (in this instance, by April 25).

"free insurance and free membership and free rights." Among the free rights offered with such membership was an asserted right to free legal representation in processing job-connected grievances. In Twomey's terms, once a form 1187, (as the membership authorizations were familiarly called) had been signed, "you were a member -- didn't cost you anything until they were validated."

(a) Monetary reward for new members

After the meetings mentioned above, and about a month or more before April 25, copies of the following letter, enclosing five form 1187's, were mailed to about 800 eligible employees from the Boston offices of NAGE, on the union's letterhead:

Dear NAGE Member:

I believe you agree with me that we have to put an end to Metal Trades which is a "conflict of interest" organization that presently has Exclusive Recognition here at the Norfolk Naval Shipyard in behalf of blue collar workers.

The National Association of Government Employees (NAGE), the nation's largest independent government employee organization in the country, is a federal employees organization that has been successful in stopping AFL-CIO unions (including the Metal Trades) from taking over government work; thus preventing naval shipyards from closing.

You can help NAGE and, meanwhile, help yourself to a "money reward" by obtaining for us five (5) new members in NAGE. If you obtain 5 new members here at the Norfolk Naval Shipyard, I will send you \$20.

In an effort to challenge the Metal Trades at the Norfolk Naval Shipyard, you must sign up 5 new members within the next three weeks and forward the applications to our office in the self-addressed, postage paid envelope. Any person you "sign up" will have free NAGE dues and insurance for six months. If NAGE wins Exclusive Recognition, you will come under the dues allotment program.

REMEMBER --- have 5 blue collar workers sign the dues allotment forms and return them to me . . . I will send you \$20. The employees must be blue collar workers at the Norfolk Naval Shipyard.

Let's work for NAGE as the Exclusive Bargaining Unit !!!

Very truly yours,

/s/ Kenneth T. Lyons
Kenneth T. Lyons
National President, NAGE

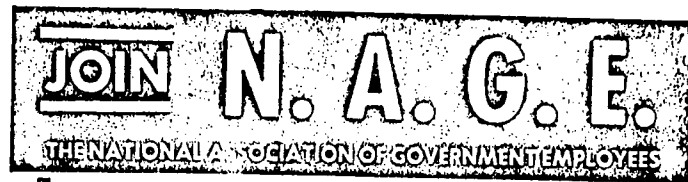
There is evidence that this offer was discussed among a number of the employees who worked in the shipyard. It was stipulated that NAGE paid out \$1,800 pursuant to this offer, 40 employees receiving \$20 each directly and \$800 being paid to NAGE locals at the request of employees entitled to the money. There is no indication as to when this money was paid or any evidence that this offer was continued beyond April 25.

There is also some conflict as to whether MTC officials offered a sum of money to one or two employees, but it is considered not necessary to resolve this. Assuming that this occurred, the indications are that the employee involved was being solicited to work for MTC rather than for NAGE, and the alleged offer was not contingent on the success of the employee's effort. It also appears that NAGE paid some of its adherents for their work in its behalf prior to the election.

(b) Free membership

There is no question but that a key to the NAGE campaign to secure the adherence of unit employees was an offer of free membership. This is overwhelmingly supported by the testimony in the record. It is graphically presented by the following advertisement placed by NAGE in "The Virginian Pilot," a local paper of general circulation in Norfolk, beginning about February 20, 1969: 10/

10/ The ad, indeed, introduces many of the major areas of argument used by NAGE to secure adherents in the election campaign.



FREE Free six months membership for Norfolk Naval Shipyard wage board employees will be paid by our Shipyard locals in other parts of the country. Clip and complete attached application or see a shop steward for form 1187. Do it now. Mail it now. **FREE**

HERE IS WHY Government Employees are Joining NAGE:

1. Members are covered by a free 24-hour death and dismemberment insurance policy held by The Travelers Insurance Company, \$10,000 maximum coverage. No age limit.
2. Federal employees want an organization that has staff of legal experts to protect their rights and NAGE has the finest.
3. No "Conflict of Interest" to a Federal employee who joins the NAGE, as NAGE is not affiliated with any international union nor private interest group. NAGE is an independent organization for Federal employees only.
4. NAGE fought for the Classified employee pay raise and opposed the Administration's meager 4.5% hike, unlike other groups, it did not give in to the Administration.
5. NAGE successfully opposed psychological testing to FAA Controllers. Other groups approved this obvious violation of employees' rights.
6. NAGE successfully adjudicated the breaking of the 'freeze' on grade escalation.
7. NAGE handled more court cases in behalf of Federal employees than all other government organizations combined.
8. NAGE vigorously opposed Base closures and opposed Secretary of Defense McNamara relative thereto.
9. NAGE is a fighting organization in behalf of the Federal employee and won respect from Congress and Federal employees because of their aggressive leadership.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEE'S

I hereby apply for Membership in the NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES.

Name Check #

Mailing Address

City State Zip

Employed with

.....

Signature of Applicant Date signed

Send to N.A.G.E. 1341 "G" St., N.W. Washington, D.C. 20005
Or contact representative at 1102 4th St. Portsmouth, Va.



It is also obvious from the record as a whole that those soliciting support for NAGE utilized the offer of free membership to emphasize the value of free insurance and other benefits available to NAGE members, as illustrated by the credited testimony of David R. Morgan, then soliciting support for NAGE, which is set forth below. Morgan, in addition to other arguments states:

. . . I explained /To the employees solicited/ you had no obligation because the dues were free and so was the insurance policy, which was the \$10,000 accidental death policy, and that when I got them to fill in an 1187 I explained to them this form virtually meant nothing unless we became the recognized union, unless we got to be recognized in to the controller. So there was no obligation on their part unless they won the challenge or won the election as far as money, that no dues would be collected. 11/

After April 25, the effort to seek membership applications for NAGE was much diminished, but did not cease as the testimony of Morgan and others establishes. Thus, employee Donald L. Beale credibly testified that in the summer of 1969 (which he places as May, June or July), he was approached by another employee, Whitmore, who solicited him to join NAGE, and for whom he signed a "cash receipt" form in favor of that union. 12/ At Whitmore's urging, Beale solicited other employees thereafter to sign similar forms. Using the arguments of free dues, insurance and legal aid, suggested by Whitmore, Beale obtained the signatures of about 30 employees to these forms. L. O. Anderson, an early leader in the NAGE movement and a president of one of its locals, testified that he secured 10 form 1187's in June, July and August. Hampton, president of NAGE Shipyard Council, stated that he had 95 form 1187's in his possession signed after April 25.

It should also be noted that there is a substantial question as to the duration of the free memberships granted by NAGE. So far as appears, all NAGE literature making the offer limited it to six months. This was clearly repeated in some of the oral solicitation as well, as the testimony of Beale shows. However, other evidence indicates a substantial basis for the conclusion that these free memberships are considered to be still in effect. Thus, one NAGE

11/ Twomey and some others who joined in 1968 before the decision was made to offer free dues, had paid dues or fees into a local NAGE treasury. These were later returned to the employees who paid them.

12/ The so called "cash receipt" form which was used by NAGE during its campaign was identified as MTC exh. 38. It is a form of application for membership. It is clear that no money was submitted in connection with this document. Though Wynn Hampton, president of the local NAGE Council, testified that he could find no cash receipts or authorizations in his files dated after April 25, I do not consider this a sufficient basis to discredit Beale.

membership card offered in evidence as illustrative of those issued (MTC exh. 18) is clearly valid on its face for the year 1970, without qualification. Another such card in evidence (MTC exh. 22C) was for the year 1969 without qualification. The form 1187 used, considered an application for membership, carried no limitation or explanation. NAGE witnesses Stiles (a local officer of NAGE) and Calhoun, who signed applications for that Union in early 1969, testified that although they have paid no dues to NAGE they consider themselves still members of the organization and entitled to benefits such as insurance and legal aid which are an incident of membership in NAGE. MTC witness Morgan stated that he still considered himself a member of NAGE at the time of the hearing (though he had not paid any dues), and was still receiving copies of the NAGE monthly paper, "The Fednews", which is considered an incident of membership. (See MTC exh. 5)

(c) Free insurance

It is not contested that during the period prior to April 25, the date that NAGE filed its challenge, a substantial part of the NAGE campaign emphasized the theme of "free membership, free insurance and free legal representation." There was wide publicity of the fact, as noted in the "Virginian-Pilot" ad reproduced above, that the coverage of the death and dismemberment policy for members was up to \$10,000.13/ No less than 10 pieces of literature or communications to employees from NAGE both before and after April 25, exclusive of "The Fednews", made reference to this insurance benefit. One piece of printed material issued by NAGE (MTC exh. 6) was devoted almost entirely to this issue, carrying two pages of text and pictures about this item of insurance and listing this item in bold type on the back page at the head of a column of reasons government employees were asserted to be joining NAGE. Indeed, in almost every listing of NAGE benefits in the written material appearing in the record, as in the advertisement shown above, the insurance item is mentioned first.

In addition to the material mentioned above, the record shows that the regular monthly issues of "The Fednews" were widely distributed among, or made available to unit employees through the time of the election. Each issue of "The Fednews" carried an advertisement very similar to the advertisement in the "Virginian Pilot" noted above, with an identical logotype at the head and foot (with white lettering on a black background) and with an identical listing and description of benefits (except that the item concerning insurance in "The Fednews" appears in slightly larger type). However, the ads in "The Fednews" do not offer six months free membership and request an initial dues payment or executed dues allotment form with the application.

13/ In some of its literature, NAGE stated that the insurance offered would cost the individuals covered \$40 a year on the open market. In one piece of literature, MTC countered by claiming that the insurance cost NAGE only 6¢ per month for each member.

Other than the "Virginian-Pilot" ad, the "money reward letter," and reference to an advertisement carried on some buses offering six months free membership and insurance (which was removed shortly after April 25), the written material issued by NAGE contained no clear limitation on the offer of insurance other than membership in the organization. 14/ In various pieces of literature it is stated, "you will receive free \$10,000 Accident insurance coverage" (MTC exh. 3), "Insurance at no charge to you -" (MTC exhs. 4,7), "NAGE gives each member a Free \$10,000 Insurance Policy (Accident and Dismemberment) underwritten by one of the nation's largest Insurance companies," (MTC exh. 9), "Every NAGE member will automatically be enrolled in the insurance program" (MTC exh. 5).

This insurance offer was attacked and disparaged by the MTC. Among other things, MTC claimed that NAGE would not issue membership cards or insurance policies to back up its offer unless that union secured recognition, (NAGE exhs. 11, 10) Twomey, then an NAGE leader, became concerned and sought reassurances that the insurance offer was valid. He was informed by officers of the union that the insurance offer was good. 15/ It was stipulated that "approximately 1,080 Travelers Insurance certificates were mailed or delivered by NAGE during the period of April to July 1969, to Norfolk Naval Shipyard wage employees who executed Form 1187's in favor of NAGE but who never paid any membership dues to NAGE. In addition, NAGE contends that 400 certificates were mailed or delivered by NAGE during this period to employees who were cash-paying members." 16/ It would appear from the record as a whole, and

14/ As previously noted at least some of the employees discussed this offer in terms of the six months limitation. According to employee Beale, when (apparently after April 25) he solicited employees for NAGE on the basis of "free insurance and free dues and that Metal Trades was a conflict-of-interest union," a number of the men replied, "I will go along with it for six months because of the insurance."

15/ In a release on behalf of NAGE issued after May 2, it was stated that "The M.T.C. is trying to put doubts in the minds of N.A.G.E. members about insurance. Let us sincerely hope that none of our co-workers or their families find it necessary to apply for this insurance. Should tragedy strike, it would be comforting to know that your childrens education and the basic requirements for life would be provided."

16/ There is no evidence in the record of dues paying members of NAGE in the unit involved after January 1969, however.

the testimony of Wynn E. Hampton, one of the local leaders of NAGE, that a substantial number of these certificates, if not most of them, were distributed after May 17, when one employee who had executed a form 1187 in favor of NAGE, Norman Phelps, was accidentally killed. 17/

With the advent of the Travelers Certificates of Insurance, which were issued on their face to specifically named employees, MTC noted that one of the requirements for participation in this insurance was that the employee currently have his dues to NAGE deducted from his pay. Thereafter, MTC used this point to attack the validity of the NAGE insurance offer. In one undated piece of MTC literature, the following appears (NAGE exh. 4B):

DO ALL INSURANCE POLICIES PAY OFF ? ? ?

As of this date, we have been informed that the widow of Norman J. Phelps, the 56 Shop employee who was killed by a tractor, has not received one red cent from his so-called n.a.g.e. insurance policy. We of the Metal Trades feel that Mrs. Phelps deserves the money called for in the so-called policy and we will secure legal counsel if necessary if she is not paid promptly. It has been months now - how long must one wait? We don't care whether the money is paid by n.a.g.e or the insurance company, but it should be paid promptly. When you put out an insurance policy, you should be willing to pay off.

17/ A mimeographed release on behalf of NAGE took note of these developments as follows:

N.A.G.E. is a serious threat to M.T.C.'s gravy train in the shipyard M.T.C. has openly accused individuals and N.A.G.E. of lying. They said no membership cards or insurance policies would be issued. They further said that the insurance would not be any good. Ask them about these statements now and see what they say.

Norman Phelps Shop 56, a N.A.G.E. member, was recently killed in a home accident. Our sincere sympathy to the widow and all members of his family. Money can never replace the loss of a loved one, but we hope that the money his widow receives from his N.A.G.E. insurance policy will help to ease the financial burden and hardship during this trying time.

On July 19, Hampton and Crouch, on behalf of NAGE presented Mrs. Phelps with a check for \$10,000. A picture of the occasion was taken and was later reproduced on a single sheet headed "NAGE BULLETIN" with a small headline reading, "\$10,000.00 INSURANCE PAID NORFOLK NAVAL SHIPYARD WORKERS WIFE BY NAGE." It is noted that there is no specific indication in this bulletin that this money had been paid by the Travelers Insurance Company. NAGE arranged for the distribution of the bulletin outside the plant gates to unit employees, apparently in August, by means of "miniskirted" cheerleaders from a local high school. The same picture and a story of the event were carried in an issue of "The Fednews" dated August 31, also, in the same manner as payments to other members for death and dismemberment appear in that paper from time to time.

According to employee David Morgan prior to the issuance of this bulletin, "there was an argument back and forth about if and if not this woman would be paid and if or if not the insurance was valid." Morgan states that after its issuance, "we said, see, we told you so * * * I said here is positive, conclusive proof that she was paid through the insurance." Morgan assumed that the payment had been made by Travelers Insurance Company. Later when MTC secured a letter from Travelers stating that only employees who had their dues deducted by their employer were eligible under the policy held by NAGE, Morgan questioned his local NAGE officers about this. When they told him that this was just propoganda, that the insurance was good and that Travelers had paid Mrs. Phelps, Morgan concluded that the MTC letter from Travelers was a fake. According to Morgan, the validity of the payment to Mrs. Phelps "seemed to be a fairly hot contested issue in the election," with each side attempting to show that the other was "dishonest." Other witnesses confirm that there was must questioning as to whether the insurance company had paid the claim to Mrs. Phelps. Employee Jesse Earl Byrum testified that he was told by two employees wearing NAGE representative badges that Travelers had paid the insurance. Hampton, the chief local officer of NAGE, testified that he told questioners that Mrs. Phelps would be paid by NAGE. Mrs. Phelps was, in fact paid out of the NAGE general funds pursuant to a resolution adopted at the 1968 National Convention of NAGE authorizing the president of that organization at his discretion, to pay death benefits to employees signatory to form 1187 who were not otherwise entitled to the benefit.

There was some evidence that national officers of NAGE urged free insurance as an inducement to employees just prior to the election. While I have some reservations concerning the reliability of employee Turner's account of NAGE president Lyon's asserted comments in that regard, I credit employee Byrum's testimony that just before the election he attended a meeting at which NAGE vice-president Donabedian told him that Donabedian "thought that the NAGE was a better organization than the MTC and that they could do more for me and that if I would become a member of NAGE I would have free dues, free \$10,000 insurance, and free lawyer representation."

The testimony of witnesses for NAGE, in particular Larue O. Anderson, Donald O. Crouch, Roy R. Everette, Wynn E. Hampton, on this issue, was, in effect, that the matter of insurance was not of much interest to NAGE after April 25 since there was no longer a drive to secure membership applications; that other issues relating to representation of the employees was stressed; and that it was NAGE, that stressed the matter of insurance; that it was known that the insurance certificate was "no good" (according to Anderson and Everette); and that national NAGE officers had said that the insurance would be paid by NAGE; and finally that NAGE officers had made it plain at early meetings, and possibly in personal conversations, that the offer of free insurance would terminate after April 25.

(d) Free legal aid

As indicated above, NAGE placed considerable stress during the entire campaign to oust MTC upon the fact that NAGE made available to its members free legal representation in the processing of their grievances and complaints. This was a matter of significance, as the testimony of employee Morgan shows, inasmuch as the employees under the prior Executive Order had the right to be represented in the processing of grievances and complaints by persons of their own choosing, as they continue to have under the present Order. A number of pieces of NAGE literature emphasized the fact that NAGE employs lawyers, and had a specifically named lawyer for local employees, and that NAGE frequently went to court to protect the rights of employees. The evidence is that the local lawyer employed by NAGE represented employees in the unit who had signed for NAGE during the period before the election.

Discussion

1. The Cut-off Date Generally

NAGE asserts that all of the conduct encompassed within Objections 4 and 5 occurred prior to April 25, the date upon which the challenge was filed, and, relying upon the rule of the National Labor Relations Board set forth in Ideal Electric and Manufacturing Company, 134 NLRB 1275, (see also Goodyear Tire & Rubber Co., 138 NLRB 453), argues that evidence of activity before that date should be disregarded as too remote to have a substantial effect upon the election. NAGE also argues that, by analogy to unfair labor practice provisions of the NLRA, the objections be limited to a period of 6 months prior to the election. MTC, on the other hand, contends that the Hearing Examiner is bound by the terms of the Notice of Hearing in this matter which clearly includes within the objections the entire period within which NAGE mounted its challenge. It was for this reason, essentially, that the Examiner determined at the hearing that he was required to accept evidence for the entire period covered by the objections (approximately one year prior to December 4, the date of the election).

Experience in this field demonstrates, I believe, that it is of importance to the efficient resolution of representation problems such as that presented here that a cut-off date be established beyond which conduct objected to will normally be considered too remote to substantially affect the election. Under the NLRA, since 1961, this date has been established as the time when the petition seeking a representation election is filed. See Ideal Electric, supra. Thus conduct occurring entirely before the date of the petition would ordinarily be considered too remote to justify upsetting the election. But where conduct occurring before the petition spills over into the post-petition period, or is related to conduct occurring in the critical period, it must be considered in that context. What is at issue is the probable impact of conduct upon employees. More recent conduct occurring in the critical period may well achieve impact by what has gone on before. In interpreting its Ideal Electric rule, the Board itself has held that while the rule "forbids specific reliance upon pre-petition conduct as grounds for objecting to an election, such conduct may properly be considered insofar as it lands meaning and dimension to related post-petition conduct." See Stevenson Equipment Company, 174 NLRB No. 128 (fn.1); see also Ortronix, Inc., 173 NLRB No. 57 (fn.3).

These rules are adapted to the problems presented here. Certainly a union filing a challenge, or a petition for an election, should, at least, be held responsible for its conduct affecting the results of the election which follow its request for the election. Nor may the union reasonably object, where such conduct has its genesis in other previous activity of the union, or forms a continuum with what has gone on before, that reference be had to the prior activity in order to assess the impact of the entire course of conduct upon the employees' choice in the election. The objections discussed hereinafter, will be examined in light of these considerations, as well as the time limits appearing in the Notice of Hearing.

I have considered and rejected the suggestion that the 6 months statute of limitations applicable to unfair labor practices be applied. The problems involved in the two kinds of proceedings are different and traditionally different procedures have been applied. No

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special reason is asserted for the use of the unfair labor practice rule in this case. In any event, even if it were applied, the cut-off date would be about May 4, which would not change the recommendations made hereinafter. ^{18/}

2. The Money Reward for Members

In order to secure membership applications, NAGE offered \$20 for each 5 applications submitted by an employee. Many employees received letters containing this offer with five application forms enclosed. Pursuant to this offer, NAGE paid out a very substantial sum of money.

The Examiner believes that such activity clearly has a necessary tendency to corrupt the election process. In contradistinction to those situations in which workers are paid to campaign for one of the contenders without regard to the success of the worker's efforts, here the offer was conditioned only upon success. The inevitable tendency of such a practice is to encourage fee splitting, in which the membership application signer shares the money reward with the solicitor. This tendency would be enhanced in the present matter by the fact that the employee signing the paper was not obligated to make any payment himself, and was promised other tangible rewards in addition for executing the application.

It is argued in justification that this sort of activity is not unusual in elections among public employees, as illustrated by certain exhibits attached to NAGE exhibit 1. Assuming that there have been some such practices in the public sector, no reasons appear that they should be permitted. An anonymous notation at the bottom of one

^{18/} I have also considered the fact that in the rules promulgated by the Secretary of Labor for nomination of arbitrators under section 11 of Executive Order 10988 (CFR title 29, part 25.1) it is stated that a request for appointment of an arbitrator would be considered, inter alia, "on a question relating to matters affecting the results of an election which took place after the agreement to conduct the election had been entered into. . . ." It is not clear to me whether, in addition to establishing a condition for the appointment of an arbitrator (a matter not involved here), this was intended to establish a general cut-off date, or even whether it would be applicable to a situation like the present where there was not an all-party agreement to the election. In any event, it would be unrealistic upon the facts of this case to hold that conduct occurring more than 9 days before the election could not affect the election. NAGE has not so contended. It is further obvious that the terms of the Notice of Hearing in this matter preclude any such cut-off date.

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of the exhibits raises the question: "Buying memberships? Is this legal?" This poses the issue well. The answer would also seem obvious. Direct monetary payments to secure adherents in a campaign leading to an election should be held necessarily inimical to the purposes and conduct of a free and fair election.

However, this conduct occurred only before the filing of the challenge. If it had occurred after April 25, I would have no hesitancy in recommending that it be considered grounds for setting the election aside, on the basis of its potentiality for corrupting the conditions of the election. In the circumstances, however, I would consider it too remote, standing alone, to justify setting aside the results of the election and therefore recommend that this objection, as such, be overruled as an independent ground for setting the election aside. It will be considered, however, as part of a context of offers and payments of financial benefit to NAGE adherents to be considered hereinafter. 19/

3. Free Membership, Insurance and Legal Representation.

At the outset of its campaign, in an effort to secure the membership among unit employees required by Executive Order 10988 to support its challenge, NAGE decided to offer the employees involved free membership (no dues), free insurance and other benefits to secure membership applications. It may well be that a mere offer to defer the financial burden of membership until such time as the petitioning union has achieved representative status, standing alone, should not be considered to adversely affect the ensuing election. Cf. Dit-MCO, Inc., 163 NLRB 1019. This is particularly so because, in the usual case, the normal incident of membership involved is representation. However, in this case, the NAGE offer of free membership was made in a context of other benefits deliberately designed to induce acceptance of that offer. It will therefore be considered in that context.

a. Free Legal Representation

In the campaign, both before and after April 25, NAGE placed great emphasis upon its practice of providing legal representation for its members in connection with their job-connected problems. In particular it contrasted the fact that NAGE was active in taking its cases to court while alleging that MTC did not. From the testimony of witness Morgan, particularly it would appear that this was of importance to him and other employees. The unit employees also were made aware of the specific local attorney with whom NAGE had a contract, and that attorney represented an unspecified number of NAGE members in job-connected grievances during the period in question.

19/ Some evidence was adduced at the hearing, though not much stressed in the NAGE brief, that MTC offered to pay employees to work for MTC rather than NAGE. There is no evidence that this was contingent upon success in securing memberships or votes. The situations are different. Moreover, the NAGE conduct can hardly be justified by MTC subsequent countermoves.

I do not believe that this conduct forms a proper basis for upsetting the election and recommend that this objection be overruled. Under Executive Order 10988, Sec. 3(c)(1), the unit employees had the right to be represented in their grievances by persons of their own choosing, rather than by MTC. NAGE had the right to offer such assistance to its members, although, of course, it could not represent the employees in the name of NAGE while MTC was the exclusive representative. See Executive Order 10988, Sec. 4. No reason appears under the Executive Order, or any applicable regulations of which I am aware, why NAGE should not offer such services by means of an attorney as well as by a paid organizer or official. Though this was an offer of a valuable consideration, it was an offer of representation recognized by the terms of the law. I would therefore not find it improper.

b. Free Insurance

This matter is the most troublesome of the issues presented here. At the outset it is important to note that the difficulties involved are compounded by the fact that NAGE throughout has used certain terminology which it now asserts meant different things in different contexts. Thus it is now argued that when NAGE offered "free" insurance to "each member" underwritten by an insurance company (see e.g. MTC exh. 9), this was literally true only in the case of members on dues check-off, less true in the case of employees paying their dues by cash (where it was asserted that NAGE is a self-insurer), and meant something completely different in the case of the unit employees of this Employer, who received membership status without paying any dues (in which case it is asserted that NAGE was not only a self-insurer but limited its obligation to a period of six months). (NAGE brief pp. 21-22, 53-54) 20/ However, the issue to be determined is not what NAGE may have had in its mind, but what impact upon the employees might reasonably be expected from its conduct.

20/ It is also argued that since the unit employees who executed form 1187 thereby became members of NAGE, the organization would have engaged "in illegal discrimination against its own members" if it had not extended the insurance to them. (NAGE brief pp. 46-7). However, it is clear from Resolution 68 adopted at the NAGE 1968 convention that extension of such benefits to mere signers of form 1187 is a matter of discretion on the part of the president of NAGE. An obvious distinction between the members lies in their financial contribution. In fact, basic to the NAGE argument is the claim that the unit employees held a different membership status during this period than other members who paid dues. Obviously, no matter how phrased by NAGE, the insurance for paying members was not "free" in the normal sense of that word.

(1) The alleged misrepresentation

An issue is raised by the objections as to whether, in spite of the fact that NAGE was a self-insurer as to the unit employees who signed applications, those employees were led to believe that they were covered by the NAGE policy with the Travelers Insurance Company mentioned in its literature. This is denied by NAGE. However, a close and careful study of the record is convincing that the reasonable, if not inevitable, tendency of NAGE's actions would lead the employees to conclude that the insurance offered was underwritten by Travelers. While it was testified that some NAGE officials during the campaign advised a number of employees that, except as to employees on checkoff, NAGE was a self-insurer, I have been unable to find this anywhere set forth in NAGE literature addressed to the employees generally. The fact that NAGE insurance was provided by Travelers, however, was made plain in a number of NAGE publications distributed to the employees. Most importantly, moreover, in the original "Virginian Pilot" ad, issued at the beginning of the campaign, urging unit employees to become free members of NAGE, it is plainly stated that "Members are covered by a free 24-hour death and dismemberment policy held by The Travelers Insurance Company, \$10,000 maximum coverage. No age limits." (Emphasis added.) 21/

After the challenge was filed, however, unit employee members of NAGE were issued a Travelers certificate of insurance, which, on its second page, limited participation to employees on dues checkoff. However, as the facts previously set forth show, this appears rather to have generated controversy over this issue than to have settled it. In the first place, it is to be noted that those certificates were sent to these members in response to pressure upon NAGE produce evidence of the insurance which it had promised. Though it was asserted in testimony at the hearing that the certificates were sent only to show the coverage afforded by the insurance promised and not the identity of the carrier, there is no evidence that the employees were so informed. On the other hand, the original promise in the newspaper ad addressed to these employees was for insurance provided by Travelers, and every issue of "Fednews" and some other literature distributed to the employees thereafter referred to Travelers as the insurance carrier. When NAGE distributed

21/ There are certain indications in the NAGE literature to which I have been referred (NAGE brief, pp. 22-28), such as the "Fednews" and MTC Exh. 6, urging the execution of a dues allotment form in conjunction with the offer of free insurance, but I am certain that on this record (and without the connection being specifically pointed out) an employee would have been hard put to understand that one was contingent upon the other.

the Travelers insurance certificates to the employees thereafter, in conjunction with NAGE membership cards, it knew or should have known that the employees would reasonably conclude that this complied with the Union's previous offer and was, in fact, the insurance promised. 22/

Nor was this point cleared up in July, when NAGE paid a \$10,000 claim out of the NAGE general treasury to the widow of Norman Phelps, who had signed a form 1187 for NAGE. In the ensuing widespread publicity, NAGE referred to this as an "insurance" payment merely. The testimony of employee Morgan reveals that the NAGE supporters seized upon this as proof that Travelers had paid the claim. When MTC claimed the contrary, showing documents obtained from Travelers, Morgan decided these were a fake when his local NAGE officers assured him that Travelers, in fact, had paid the claim.

(2) The timing of the conduct

NAGE asserts, as has been noted, that in any event its activities in respect to insurance were confined to the period prior to April 25, and that the insurance coverage was for only 6 months. There is no question but that NAGE's primary drive to secure membership applications occurred before April 25. However, as the testimony of employee Morgan and others shows, NAGE supporters continued to secure membership applications after that date and to discuss the advantages of the insurance offered by NAGE in connection with membership. At least 95 applications held by local NAGE officer Hampton were signed after April 25. 23/

Further, the distribution of insurance certificates and membership cards mentioned above were admittedly made in May and June (NAGE brief p. 17), and the insurance payment to the widow of Phelps was made in July and well publicized thereafter. Issues of the "Fednews", as well as other pieces of literature emphasizing the insurance issue were distributed after April 25 up to the election. It is difficult to determine the times of distribution of such literature, particularly since material previously used probably continued current in the plant. However, it is clear that in the latter stages of the campaign, indeed after the effective date of the last election "agreement" (November 25), the following items relating to the insurance issue were found in the shipyard after distribution by NAGE: MTC exhibit 22X (advising that "NAGE gives each member a free \$10,000. Insurance Policy (Accident and Dismemberment)

22/ I would consider it reasonable that a lay person if he read the qualification on participation contained on the inside of the certificate (and some witnesses testified that they did not read it) would consider it inapplicable to him in the circumstances. Otherwise why should NAGE send him the certificate.

23/ I have noted the testimony of D. O. Crouch that at a meeting about April 1, it was stated that no more applications for membership would be taken, although NAGE then was considerably short of the number of authorizations needed to mount a challenge. Assuming this was the intent, the evidence shows that it was not followed.

underwritten by one of the nation's largest Insurance companies" found in the shipyard on November 26); MTC exhibit 22F (The Fednews dated November 30, found in the shipyard November 28, carrying the usual ad for members including an offer of free insurance as well as a news story concerning an insurance payment); and MTC exhibit 22Z (a large four page printed piece obviously made up for this election, carrying a large box on the last page headlined, "OTHERS MAKE PROMISES ONLY NAGE PAYS OFF," with a picture of an insurance payment to a widow of an NAGE member, and a short story line concerning "\$45,000 INSURANCE CLAIMS PAID OUT by NAGE over sixty day period. . .," found in the shipyard on December 1)^{24/} In addition, on one occasion just before the election, the evidence shows that a national officer of NAGE was urging the value of NAGE insurance as an argument to secure support of that organization.

Indeed, on the basis of the original offer of 6 months free insurance, it is obvious that NAGE understood that the application of the free insurance offer would extend beyond the challenge date of April 25. This, or course, was dramatically illustrated in the case of Phelps who died on May 17, and whose widow was paid on July 19. Moreover, there is substantial evidence that, notwithstanding the original 6-month limitation, that the employees were led to believe that their membership continued beyond that period, together with incidents of such membership. Thus one membership card in evidence -- offered as typical -- bears the year 1970, without qualification. One other card, taken from the Employer's files, shows the year 1969, without limitation. The NAGE locals which were originally chartered on the basis of membership obtained in this way apparently continue to function. Two NAGE witnesses, one a local officer, testified that they continue to consider themselves members of NAGE and covered by the insurance, though they have paid no dues. There can be no question but that the issue of free insurance to unit employees of the Employer who joined NAGE, without obligation to those employees, continued to be a live issue after April 25, and up to the time of the election. The matter was clearly debated among the employees during this period.

^{24/} In addition, NAGE secured approval from the employer in early October to distribute two other pieces relating to this issue (MTC exhs. 8 and 22k). NAGE witness Anderson testified that they were not used. While some doubt is raised by Anderson's testimony in another place that if the literature was submitted for approval, it must have been used, it is not considered necessary to resolve this matter.

(3) The importance of the insurance issue

NAGE argues that, nevertheless, this was a minor issue, blown up by MTC and not relied upon by NAGE. NAGE asserts that MTC was a discredited organization and the thrust of the NAGE campaign was directed at MTC deficiencies. It is noted however, that the insurance matter became an issue because NAGE originally decided it was to its advantage to make the offer of free insurance. MTC's campaign was in response. In effect, NAGE contends that it won the allegiance of the employees without the insurance issue. I have carefully read the NAGE literature. It appears to me vigorous and relevant to the issues of representation, in large part. The problem is that NAGE did intrude the insurance issue into the campaign. It is impossible to determine whether NAGE could have won without the issue. It obviously had substantial impact upon the employees. Whether this affords grounds for setting the election aside must be considered.

(4) Conclusion

All of the parties agree that the one decided case which has considered an issue similar that presented here, is Wagner Electric Corporation, 167 NLRB 532. In that case, the union there concerned engaged in certain conduct in a preelection campaign, including "mailing to eligible employees a certificate of group insurance supplying \$500 life, up to \$1000 accidental death, and \$100 funeral expense coverage, and a number of leaflets describing the policy and its application to employees who joined the union," which was alleged to constitute grounds for setting aside the election won by the union. The Regional Director of the National Labor Relations Board recommended that the objections to the union's conduct be overruled on the ground that the offer of insurance was an incident of membership which the union was obligated to extend to unit employees who signed applications for membership in that case (although the union waived their membership dues for a limited time), just as it was enjoyed by other members of the Union, ^{25/} and since it was an established policy of the Board that mere waiver of membership fees and dues in an election campaign does not

^{25/} It appears that the Union's insurance policy in the Wagner case applied only to regular members who were having their dues deducted, but the Union had secured a waiver of this provision from its insurance carrier for the employees of Wagner Electric Corporation whose applications it was seeking.

afford grounds for setting an election aside (Dit-MCO, Inc., supra.), and since no misrepresentation had occurred, the Union's conduct should not be considered to raise a substantial and material issue affecting the results of the election. The Board disagreed and set the election aside, stating (167 NLRB at 533):

We do not agree with the Regional Director's analysis of the problem presented by the objections here, for we perceive a substantive distinction between this gift of life insurance coverage and a waiver of initiation fees, with which the Regional Director equates it. Where there is a waiver of initiation fees, there is no enhancement of the employees' economic position, but merely an avoidance of a possible future liability. Moreover such waiver is a customary practice in organizing campaigns. In contrast, the gift of immediate life insurance coverage is a tangible economic benefit and is most unusual.

It is our view that the gift of life insurance coverage to the prospective voters is more akin to an employer's grant of a wage increase in anticipation of a representation election than it is to a waiver of union initiation fees and that it subjects the donees to a constraint to vote for the donor union. In this connection it is noted that coverage was automatic and required no physical examination or medical report. We conclude that by such a gift the Petitioner destroyed the atmosphere which the Board seeks to preserve for its elections in order that employees may exercise freedom of choice on representation questions. Accordingly, we shall set aside the election and direct that a second election be held. 26/

NAGE argues that the Board's decision is not binding upon the Assistant Secretary (and that the Board lacks expertise in elections in the public sector); that unions in the public sector are accustomed to making offers such as involved here to attract employees; that it was obligated to extend the insurance benefits to their unit employees (although they paid no fees) as it extended this benefit to other members; that this matter is governed by an established policy of the Navy (see NAGE Exh. 1, enclosure to attachment D, pp. 9-10), not to invalidate an election based on an offer of free membership which is not conditioned on how employees vote; and further that the present situation is otherwise distinguishable from the Wagner case.

26/ It is noted that the Board's distinction between a gift of insurance and waiver of membership fees appears to have received the approval of the Court of Appeals for the Fifth Circuit. See N.L.R.B. v. Martin Bldg. Material Co., Inc., F. 2d , 75 LRRM 2161 (Sept. 1, 1970), citing the Wagner Electric case at fn. 5.

The Board's decisions are not binding here. However, its 35 years of experience in dealing with questions of representation of employees is not lightly to be disregarded. Indeed, it is noted that the Navy, in overruling the objections herein, gave extensive consideration to the precedents developed by the Board. No reason is suggested that would indicate that employees engaged in a shipyard run by the Government would be differently affected by the offer of gifts to obtain their favor than would employees in a private shipyard. Rather NAGE argues that because of the "limited range of issues to put before Federal employees" afforded unions representing Federal employees (Brief p. 44), a different standard should obtain. This, however, misses the point: If the conduct involved prevents a free and fair election, or tends to corrupt the election process--whether in the private or public sector--it should be held impermissible.

It is further clear that there has been no past Navy practice, as such, to approve the offer or grant of gift to obtain support in an election campaign. In Navy's decision of January 30, 1970, which is stated to be advisory to the Assistant Secretary, the Navy found the rationale underlying the Board's decision in Dit-MCO, Inc., to be applicable, but refused to make the distinction the Board made in Wagner Electric in this case.

NAGE asserts, in addition, that this matter, as well as others discussed above, were determined by the Assistant Secretary in his decision of November 21, overruling MTC's challenge of the validity of NAGE's showing of interest, and that this decision is res adjudicata in this case, and that the Assistant Secretary is estopped from changing his position. It has long been settled, however, that principles such as res adjudicata and estoppel are not necessarily binding in the field of administrative law. See N.L.R.B. v. The Baltimore Transit Company, 140 F. 2d 51, 54-55. Moreover, it is clear, in any event, that the Assistant Secretary has not made a prior decision upon the issues in this matter. In his decision of November 21, the Assistant Secretary merely passed upon the NAGE's conduct occurring prior to April 25 as it affected NAGE's showing of interest in support of its challenge to MTC's representative status. The Assistant Secretary did not pass upon the effect of NAGE's conduct after April 25, so far as appears, or the effect of NAGE's conduct as a whole upon the election which had not then been held. The fact that these objections were ordered to hearing before the Examiner is an indication that the Assistant Secretary did not consider that they had been previously determined.

In the last analysis, it should be obvious beyond argument that any practice of vote buying should be held impermissible. 27/ Not all administrators exercising responsibility in this area, may agree as to where the line should be drawn. See, e.g., Buzza Cardoza, 177 NLRB No. 38 (dissenting opinion of member Zagoria). 28/ However, if the conduct detailed in this matter should not be held impermissible in an election to determine representation, it would be difficult, if not impossible, to determine what kind of gift, or if any, would tend to corrupt the election process. From the start of its attempt to unseat MTC as exclusive bargaining agent, NAGE made a deliberate decision to emphasize that its supporters would be compensated, by direct monetary payments or other tangible considerations of value. NAGE not only put itself in a position where it was compelled to make very substantial gift to the family of one of its supporters during the critical period before the election, but by its delay in making the payment (from May 17 to July 19), otherwise unexplained, brought the gift close to the election, and NAGE thereafter capitalized upon the gift as election propaganda. 29/

I have a great deal of sympathy for the argument of NAGE that its written campaign at the end largely emphasized "bread and butter" issues, not insurance. But as previously noted the threads are impossible to disentangle. A Government election among Government employees to determine their representation in matters affecting their daily working lives is a serious matter. In analagous elections among employees of private employees, the Board has held the practices of the market place do not comport with the high standard required in representation elections, for they tend to "destroy the atmosphere" in which "employees may exercise freedom of choice" See Wagner Electric, *supra*. No less rigorous standard should obtain for such elections among Government employees.

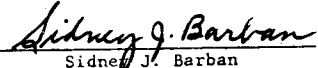
27/ Compare 18 USCA § 597, titled "Expenditures to influence voting," which makes it a crime to make or offer to make "an expenditure" to any person to influence that person's participation in an election, which, it has been held, has a clear purpose to prevent corruption in public elections. See U.S. v. Foote, 42 F. Supp. 717, 720 (D.C. Del.)

28/ Among other cases which the Examiner has considered in this regard, are the following (and the cases therein cited): Hollywood Plastics, Inc., 177 NLRB No. 40; Jacqueline Cochran, Inc., 177 NLRB No. 39; Central Cable Corp., 170 NLRB No. 172.

29/ It is also obvious that NAGE's failure to clarify the issue of the identity of the insurer to the employees generally, a matter which it obviously knew was of concern, had the effect of enhancing NAGE's position. In the absence of clear action by NAGE, its local supporters were led to discount MTC information on the issue as fakery.

For the reasons stated, it is recommended that objections four and five insofar as they relate to the NAGE offer and grant of free insurance to the unit employees be sustained and the election held December 4, 1969, be set aside and a new election be directed under the terms of Executive Order 11491, and in accordance with the applicable Rules and Regulations of the Assistant Secretary. 30/

Dated at Washington, D. C.
December 7, 1970


Sidney J. Barban
Hearing Examiner

30/ Attached hereto as Appendix A are a few items in the transcript which appear to require correction in order to avert confusion.

APPENDIX A

CORRECTIONS IN THE TRANSCRIPT

Page	Lines	Correction
		Correction
		Omit whole page. Reporter inadvertently recorded off the record comment.
1	1-25	
2	1-22	(through the word "gentlemen") omit this material. Reporter recorded off the record comment.
795	15	Insert the notation "A" before "Well, about the only thing we," and paragraph, to show that this is the answer to the question.
846	25	Change "S" to "X"
1000	24	Change "rules" to "results."
1115	14	Change "P" to "3"
1168	3	Insert the notation "Q" before "prior," and paragraph to show that this is the beginning of a new question.

April 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ALASKAN EXCHANGE SYSTEM,
SOUTHERN DISTRICT AND HEADQUARTERS,
ELMENDORF AIR FORCE BASE AND
FORT RICHARDSON, ANCHORAGE, ALASKA
A/SLMR No. 32

This case, involving a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 1668, (AFGE) presented the question whether off-duty military employees may be excluded from the petitioned for unit based solely on their military status. The AFGE requested a unit of all regular full-time and regular part-time hourly pay plan employees employed by the Alaskan Exchange System, Southern District and Headquarters at Elmendorf Air Force Base and Fort Richardson, Anchorage, Alaska. Both the Petitioner and the Activity agreed that off-duty military personnel employed by the latter should be excluded from the unit.

The Assistant Secretary concluded, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24, and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, that once hired, off-duty military personnel stood in substantially the same employment relationship with the Activity as did other Activity employees and that their exclusion from the unit based solely on their military status was unwarranted.

In view of the inclusion in the petitioned for unit of certain off-duty military personnel, the Assistant Secretary ordered that the AFGE's petition be dismissed on the basis that the inclusion of these additional employees rendered inadequate the AFGE's showing of interest.

A/SLMR No. 32

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

ALASKAN EXCHANGE SYSTEM,
SOUTHERN DISTRICT AND HEADQUARTERS,
ELMENDORF AIR FORCE BASE AND
FORT RICHARDSON, ANCHORAGE, ALASKA

Activity

and

Case No. 71-1377(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1668^{1/}

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Henry C. Lee, Jr. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief,^{2/} the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 1668, herein called AFGE, seeks an election in a unit

^{1/} The name of the Petitioner appears as amended at the hearing.

^{2/} The Petitioner filed an untimely brief which has not been considered.

of all regular full-time and regular part-time hourly pay plan employees employed by the Alaskan Exchange System, Southern District and Headquarters at Elmendorf Air Force Base and Fort Richardson, Anchorage, Alaska. Both the AFGE and the Activity agree that the unit sought is appropriate.^{3/}

Both parties contend that the proposed exclusion of off-duty military personnel is warranted, based, among other things, on the labor relations history of the Army and Air Force Exchange Service, herein called AAFES, where off-duty military employees have traditionally been excluded from bargaining units; the absence of a community of interest between the military and civilian employees of the Activity; the adverse effect that inclusion of military personnel in the proposed unit would have on the efficiency of the operations of the Activity; and various directives and regulations issued by the Department of Defense, the Department of the Army, the Department of the Air Force, and the AAFES with respect to the employment of military and civilian personnel.

The Activity is an administrative subdivision of the AAFES whose mission is to administer the operation of retail and service facilities for the convenience of military personnel and their dependents. It is operated under personnel policies established by the Chief, AAFES, who is governed by regulations of the Army, the Air Force and the Department of Defense. The employees of the Activity, including off-duty military personnel, work in several facilities at Elmendorf Air Force Base and Fort Richardson, Anchorage, Alaska, including grocery, general merchandise and sporting goods stores, service stations, cafeterias and snack bars.^{4/}

At the outset of the hearing in this case, the Activity and the AFGE took the position that where, as here, there is no dispute between the parties as to the appropriateness of the unit sought, an election in that unit must be held. This position was based on the view that there is no provision in the Executive Order or the Assistant Secretary's regulations which would permit the Assistant Secretary to order a

^{3/} The parties agreed that the following classifications of employees should be excluded from the claimed unit: Temporary full-time, temporary part-time, casual, on-call, military personnel employed during off-duty hours, management, executive, supervisory employees, management trainees, employees engaged in personnel work in other than a purely clerical capacity, professional employees, guards and watchmen.

^{4/} The record reveals that the type of work assigned off-duty military personnel is not restricted to any particular job classification.

representation hearing in such circumstances and thereby defer the holding of an election. Based on the foregoing contention, the Activity moved to dismiss the Notice of Hearing in this case.^{5/} For the reasons enunciated in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find that a Regional Administrator is not precluded by either the Order or the regulations from issuing a Notice of Hearing in circumstances where the parties are in agreement as to the appropriateness of the unit sought. Accordingly, the Activity's motion to dismiss the Notice of Hearing in this case, based on the parties' agreement as to the appropriateness of the unit, is denied.

The record establishes that off-duty military personnel are hired by the Activity to supplement its civilian work force. Many of these employees work a substantial number of hours a week,^{6/} are compensated at the same hourly rate for their services as civilian personnel and work under the same general terms and conditions of employment as civilian personnel. Further, off-duty military personnel work in the same occupational categories as civilian employees.

As noted above, the Activity and the AFGE contend, among other things, that off-duty military personnel do not share a sufficient community of interest with the civilian employees of the Activity to warrant their inclusion in the unit because their presence on the job is subject to the will of their Commanding Officer; they are considered to be in a military duty status 24 hours a day; and their inclusion in the proposed unit would have an adverse effect on the efficiency of the Activity's operations.

For the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

^{5/} The Hearing Officer denied the Activity's motion and the latter now requests that the Assistant Secretary consider the motion.

^{6/} The record reveals that there are a substantial number of off-duty military employees who have been employed by the Activity for more than 90 days and have worked at least 16 hours a week. Under the Activity's definition, as apparently agreed to by the AFGE, a regular part-time employee is one who is "hired for an expected period of more than 90 days with a regularly scheduled workweek of at least 16 but less than 35 hours." See, in this respect, footnote 3 in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above.

In view of the foregoing, I find that the exclusion of all off-duty military personnel without regard to their job status or tenure is unwarranted. I am advised administratively that the addition of certain off-duty military personnel in the included categories of employees, renders inadequate the AFGE's showing of interest.

May 4, 1971

Accordingly, I shall dismiss the petition in the subject case.

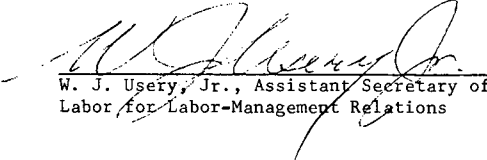
UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 71-1377(R0) be, and is hereby dismissed.

ALASKAN EXCHANGE SYSTEM, BASE EXCHANGE,
FORT GREELY, ALASKA
A/SLMR No. 33

Dated, Washington, D. C.
April 30, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

This case, involving a representation petition filed by American Federation of Government Employees, AFL-CIO, Local 1949, (AFGE), presented the issues whether the parties' agreement as to the appropriateness of the unit sought required the Assistant Secretary to proceed to an election and whether off-duty military employees may be excluded, as a class, from the petitioned for unit based solely on their military status.

With respect to the contention that where the parties were in agreement as to the appropriateness of the unit it was incumbent upon the Assistant Secretary to proceed with an election in that unit, the Assistant Secretary reaffirmed his decision in the Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, in which he stated that neither the Executive Order nor its implementing regulations required that an election must be held in circumstances where there was no dispute between the parties as to the appropriateness of the petitioned for unit.

With regard to off-duty military personnel, the Assistant Secretary concluded, for the reasons enunciated in his decisions in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, that their exclusion from the unit based solely on their military status was unwarranted.

The Assistant Secretary also found that the claimed unit was appropriate. He noted that the employees covered by the petition engaged in similar duties on an Activity-wide basis and were subject to the same general working conditions, salary schedules and benefits. In these circumstances, he directed that an election be held with off-duty military personnel eligible to vote if they worked the requisite number of hours so as to be included in the categories, regular full-time or regular part-time.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ALASKAN EXCHANGE SYSTEM, BASE
EXCHANGE, FORT GREELY, ALASKA

Activity

and

Case No. 71-1402

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1949

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gordon M. Byrholdt. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief, ^{1/} the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 1949, herein called AFGE, seeks an election in a unit of all regular full-time and regular part-time hourly-paid plan employees employed by the Alaskan Exchange System at Base Exchange, Fort Greely, Alaska, excluding "temporary full-time, temporary part-time, casual, on-call, military personnel employed during off-duty hours, management, executive, supervisory employees, management trainees, employees engaged in personnel work in other than a purely clerical capacity, professional employees, guards and watchmen." ^{2/} The Activity agrees that the unit

sought by the AFGE is appropriate. Both parties are in agreement that the exclusion of off-duty military personnel is warranted.

At the outset of the hearing in this case, the Activity and the AFGE took the position that where, as here, there is no dispute between the parties as to the appropriateness of the unit sought, an election must be directed by the Assistant Secretary. The AFGE moved for a continuance of the hearing on this basis and the Hearing Officer denied the motion. In its brief, the Activity renewed the argument and requested the Assistant Secretary to enter an order vacating the Notice of Hearing issued by the Regional Administrator. For reasons enunciated in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find no merit in the parties' contentions. Accordingly, the Hearing Officer's ruling is hereby affirmed, and the Activity's motion made in its brief is hereby denied.

The Activity is a function of the Alaskan Exchange System which is one of three overseas Exchanges. It is an administrative subdivision of the Army and Air Force Exchange Service, and is governed by regulations of the Army, the Air Force, and the Department of Defense. It is operated under personnel policies established by a chief, who receives his direction from a board of 15 Army and Air Force Officers delegated by the Secretaries of the Army and Air Force to provide operational and policy guidance. The Activity provides to authorized persons on the base merchandise and services of necessity and convenience. In order to carry out its mission, the Activity operates facilities which include a "main store", a grocerteria and sporting goods store, a warehouse, a snack bar, and a beauty parlor. Among the employees in these facilities are general clerks, sales clerks, a grill attendant, foodservice helpers, a beautician, and a stock clerk, who are classified either as regular full-time or regular part-time employees.

With respect to the duties of the employees in the unit sought, the evidence reveals that stock clerks handle boxes containing merchandise and they stock merchandise on the floor of the store involved; snack bar employees cook, make change for, and restock, vending machines, sell beer and clean up the premises; sales clerks sell the merchandise in the stores; grill attendants and food service helpers work in the snack bar; and the beautician engages in duties normally performed at a beauty parlor. These employees all are subject to the same general working conditions, salary schedules, and benefits. In these circumstances, and noting the Activity-wide nature of the unit sought, I find that the employees covered by the AFGE's petition share a clear identifiable community of interest and that such a unit will promote effective dealings and efficiency of operations.

^{1/} The Petitioner filed an untimely brief which has not been considered.

^{2/} The AFGE's claimed unit appears as amended at the hearing.

With regard to the off-duty military employees employed by the Activity, the record indicates that these employees perform substantially the same work, are paid under the same wage scale, work in the same occupational categories and are subject to the same general working conditions as civilian employees. As stated above, both the Activity and the AFGE contend that the exclusion of these off-duty military employees from the bargaining unit is warranted. They base this contention on, among other things, the labor relations history of the Army and Air Force Exchange Service, where such employees have traditionally been excluded from such bargaining units; the lack of community of interest between off-duty military and civilian employees of the Activity; and the adverse effect inclusion of military personnel in the proposed unit would have on the efficiency of the Activity's operations. For the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All regular full-time and regular part-time 3/ hourly-paid plan employees, including off-duty military personnel in either of these foregoing categories 4/ employed at the Alaskan Exchange System, Base Exchange, Fort Greely, Alaska, excluding temporary part-time, casual and on-call

3/ Under the Activity's definition, as apparently agreed to by the AFGE, regular full-time employees work on a 40-hour a week basis. Regular part-time employees are hired for an expected period of more than 90 days with a regularly scheduled work week of at least 16 but less than 35 hours.

4/ Off-duty military personnel who work a sufficient number of hours to be classified as either regular full-time or regular part-time may not be excluded from the unit on the basis of agency regulations which categorize such personnel as "temporary part-time" or otherwise automatically exclude them from bargaining units.

employees 5/, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 6/

DIRECTION OF ELECTION

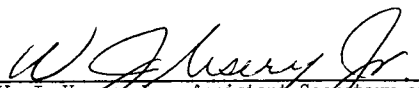
An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed

5/ The record indicates that "casual employees" work on an emergency basis and have no reasonable expectancy of regular employment. Their exclusion from the unit is therefore warranted. With respect to "on-call employees", the record establishes that these are employees whose work record is of a sporadic nature. It therefore appears that the exclusion of such employees from the unit is similarly warranted. Inasmuch as the record establishes that there are no temporary full-time employees presently employed at the Activity, I shall not at this time make any findings with respect to whether they would come within the excluded category of employees based on their job status at the Activity. With regard to temporary part-time employees, the record is clear that employees in the category are employed for periods that do not exceed 90 days. Accordingly, I find that they do not have a substantial and continuing interest in their terms and conditions of employment along with other employees in the unit and should be excluded from the unit.

6/ Although the petition, as amended at the hearing, contained references to several other excluded classifications, the record is not clear as to whether there are any "managerial trainees" who, because of their alleged mandatory excludable status as management officials, should be excluded from the unit. The record also is not clear as to the classification of "watchmen" who, because of the peculiar nature of their employment, may come within the category of guards and would therefore be prohibited by the Executive Order from inclusion in a unit with employees other than guards. In these circumstances, I make no findings with respect to such possible classifications.

during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 1949.

Dated, Washington, D.C.
May 4, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

May 7, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY,
DCASR BOSTON-QUALITY ASSURANCE,
BOSTON, MASSACHUSETTS

A/SLMR No. 34

The subject case, involving a representation petition filed by the National Association of Government Employees, Local R1-202 (NAGE), raised the question whether a Regional Administrator's prior determination with respect to showing of interest is subject to attack at a representation hearing.

The Assistant Secretary stated that the attempt by the Intervenor, the American Federation of Government Employees, AFL-CIO, Local 1906 (AFGE), to challenge the NAGE's showing of interest was improper as this matter had been decided previously by the Regional Administrator and such decision was not subject to collateral attack at the hearing.

With respect to the appropriateness of the unit sought, the Assistant Secretary found that no evidence had been adduced at the hearing as to whether the employees in the unit sought had a clear and identifiable community of interest and whether such a unit will promote effective dealings and the efficiency of agency operations. As a result, the Assistant Secretary decided that the record provided less than an adequate basis for making a determination with regard to the appropriateness of the unit sought. In view of the foregoing, the Assistant Secretary determined that the case be remanded to the appropriate Regional Administrator for further hearing solely for the purpose of receiving evidence concerning the appropriateness of the petitioned for unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEFENSE SUPPLY AGENCY,
DCASR BOSTON-QUALITY ASSURANCE

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R1-202

Case No. 31-4300 (EO)

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1906

Intervenor

DECISION AND REMAND

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Anthony D. Wollaston. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The Petitioner, National Association of Government Employees, Local R1-202, herein called NAGE, seeks an election in a unit of all employees of the Quality Assurance Directorate, Operations Division of the Defense Supply Agency, excluding those employees located at the

Boston Army Base, 666 Summer Street, Boston, Massachusetts, management officials, employees engaged in Federal personnel work except in a purely clerical capacity, professional employees, and guards and supervisors as defined in Executive Order 11491. ^{1/} The Activity and the Intervenor, American Federation of Government Employees, AFL-CIO, Local 1906, herein called AFGE, do not dispute the appropriateness of the NAGE's petitioned for unit.

Prior to the hearing in this matter, the AFGE challenged the adequacy and validity of the NAGE's showing of interest. The Regional Administrator determined that the NAGE's showing of interest was adequate and valid.

At the hearing, the AFGE sought to challenge the adequacy and validity of the NAGE's showing of interest and moved to present evidence with regard to its allegation that the authorizations submitted by the NAGE to the Area Administrator did not contain valid signatures. The Hearing Officer denied the motion.

Section 202.2(f) of the Assistant Secretary's regulations states that "The Area Administrator shall determine the adequacy of the showing of interest administratively and such decision shall not be subject to collateral attack at a unit or representation hearing." It states also that "Any party challenging the validity of the showing of interest must file his challenge with the Area Administrator within ten (10) days after the initial date of posting of the notice of petition as provided in Section 202.4(b) and support his challenge with evidence. The Area Administrator shall investigate the challenge and report his findings to the Regional Administrator who shall take such action as he deems appropriate."

Based on the foregoing, I find that the AFGE's attempt at the hearing to challenge the NAGE's showing of interest was improper as this matter had been decided previously by the Regional Administrator and such decision was not subject to collateral attack at the hearing. Accordingly, the Hearing Officer's denial of the AFGE's motion to present evidence in this respect hereby is affirmed.

With respect to the appropriateness of the unit sought, no evidence was adduced at the hearing as to whether the employees in the unit sought had a clear and identifiable community of interest

^{1/} The claimed unit appears as amended at the hearing.

and whether such a unit will promote effective dealings and the efficiency of agency operations.

May 10, 1971

Since, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the claimed unit, I shall remand the subject case to the appropriate Regional Administrator for the purpose of reopening the record solely for receiving evidence concerning the appropriateness of the unit sought. 2/

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

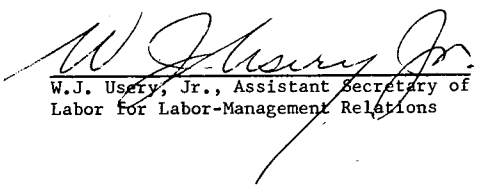
ORDER

IT IS HEREBY ORDERED that the subject case be, and it hereby is, remanded to the appropriate Regional Administrator.

FIRST U.S. ARMY, 83RD ARMY RESERVE
COMMAND (ARCOM), U.S. ARMY SUPPORT
FACILITY (FORT HAYES), COLUMBUS, OHIO

A/SLMR No. 35

Dated, Washington, D.C.
May 7, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

This case involved four representation petitions. Local 142, National Federation of Federal Employees (NFFE) sought a unit of U.S. Army Reserve technicians employed in 10 Ohio counties; Local 3158, American Federation of Government Employees (AFGE Local 3158) sought a unit of U.S. Army Reserve technicians employed by the Activity in 35 counties in central Ohio; a Council made up of three American Federation of Government Employees locals (AFGE Council) sought an Activity-wide unit of all employees; and Local 3175, American Federation of Government Employees (AFGE Local 3175) sought a unit covering employees in the Area Organizational Maintenance Shop and the Army Reserve technicians in the Colonel Thomas Henry Morrow Center in Cincinnati, Ohio.

The Assistant Secretary found that the units sought by the NFFE, AFGE Local 3158 and AFGE Local 3175 were not appropriate and that the unit sought by the AFGE Council was appropriate. He noted that in each case where the unit was found to be inappropriate the evidence established that it did not contain technicians who shared a clear and identifiable community of interest separate and apart from other technicians of the Activity. In this respect, he noted that there is frequent transfer of technicians between the various installations within the Activity; that above the lowest entrance grade job vacancies are available on an Activity-wide basis; that there is centralized control of policy making which results in uniform personnel practices throughout the Activity including promotion programs and grievance procedures; and that employees throughout the Activity are engaged in similar job functions in their respective classifications and have similar terms and conditions of employment.

In these circumstances, the Assistant Secretary concluded that the units sought on a less than Activity-wide basis did not contain technicians who shared a clear and identifiable community of interest and that such units would not promote effective dealings and efficiency of agency operations. He therefore directed that those petitions be dismissed. On the other hand, based on the above circumstances, he found the Activity-wide unit sought by the AFGE Council constituted an appropriate unit and, accordingly, the Assistant Secretary directed that an election be held in that unit.

2/ As noted above, none of the parties in this case disputed the appropriateness of the unit sought. However, the agreement of the parties, standing alone, does not, in my view, afford a sufficient basis to determine the appropriateness of a unit where the above-mentioned factors are not present in the record.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

FIRST U.S. ARMY, 83RD ARMY RESERVE
COMMAND (ARCOM), U.S. ARMY SUPPORT
FACILITY (FORT HAYES), COLUMBUS, OHIO

Activity

and

Case No. 53-2972

LOCAL 142, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES

Petitioner

FIRST U.S. ARMY, 83RD ARMY RESERVE
COMMAND (ARCOM), U.S. ARMY SUPPORT
FACILITY (FORT HAYES), COLUMBUS, OHIO

Activity

and

Case No. 53-2975

ARMY RESERVE TECHNICIANS (GS) LOCAL 3158,
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES

Petitioner

FIRST U.S. ARMY 83RD ARMY RESERVE
COMMAND (ARCOM), U.S. ARMY SUPPORT
FACILITY (FORT HAYES), COLUMBUS, OHIO

Activity

and

Case No. 53-2983

COUNCIL OF LOCALS FOR 83RD ARCOM,
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCALS 2106, 2932
AND 2984

Petitioner

FIRST U.S. ARMY 83RD ARMY RESERVE
COMMAND (ARCOM), U.S. ARMY SUPPORT
FACILITY (FORT HAYES), COLUMBUS, OHIO

Activity

and

Case No. 53-3094

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3175

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer R. C. DeMarco. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the Activity and Local 142, National Federation of Federal Employees, herein called NFFE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 53-2972, the Petitioner, NFFE, seeks to represent a unit of all U. S. Army Reserve technicians employed in the counties of Williams, Defiance, Fulton, Henry, Lucas, Wood, Ottawa, Sandusky, Erie and Seneca in the State of Ohio. In Case No. 53-2975, Army Reserve Technicians (GS) Local 3158, American Federation of Government Employees, herein called AFGE Local 3158, petitioned for an election in a unit of all nonsupervisory Army Reserve technicians (GS) and organizational maintenance shop employees (WB) employed by the 83rd Army Reserve Command in 35 counties in Central Ohio. The petition in Case No. 53-2983 filed by the Council of Locals for 83rd ARCOM, American Federation of Government Employees, AFL-CIO, Locals 2106, 2932 and 2984, herein called the AFGE Council, seeks an election in a unit comprised of all General Schedule and Wage Board employees in the First U. S. Army, 83rd ARCOM in the States of Ohio and Kentucky. In Case No. 53-3094, the Petitioner, American Federation of Government Employees, AFL-CIO, Local 3175, herein called AFGE Local 3175 1/, seeks

1/ Although the petition in this case does not specify Local 3175, it is clear that AFGE, Local 3175 is the Petitioner in Case No. 53-3094.

a unit covering all employees in the Area Organizational Maintenance Shop and the Army Reserve technicians in the Colonel Thomas Henry Morrow Center in Cincinnati, Ohio.

The Activity contends that the only appropriate unit is the one that covers the entire 83rd ARCOM because it meets the criteria of community of interest among the employees involved and will promote effective dealings and efficiency of agency operations. It further contends that the units proposed by the NFFE and AFGE Locals 3158 and 3175 are inappropriate because they do not meet the above-mentioned tests and, in addition, are defined by arbitrary boundaries which are controlled by the extent to which employees in these proposed units have been organized. The AFGE Council concurs in the Activity's position. 2/ The NFFE contends that its proposed unit covering 10 Ohio counties is appropriate.

The 83rd Army Reserve Command (ARCOM) is one of 16 major U.S. Army Reserve command units in the First United States Army, which has its headquarters in Fort George G. Meade, Maryland. The geographical area covered by the 83rd ARCOM includes all of Ohio, with the exception of a few counties on the State's northeastern border, and a part of Kentucky. Its headquarters, from which the commanding officer exercises administrative control of all the units attached to his command and supervises all its activities, is located in Columbus, Ohio.

In regard to the Activity's history of bargaining, the record discloses that in 1964, XX U.S. Army Corps, the predecessor of the 83rd ARCOM, granted exclusive recognition to the American Federation of Government Employees, AFL-CIO, Local 2106 as the bargaining representative in a unit of Army Reserve technicians employed in the counties of Columbiana, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Tuscarawas in the northeastern part of Ohio. 3/ The current agreement covering this unit was negotiated between the Senior Army Advisors of the U.S. Army Advisor Groups at Fort Hayes, Columbus, Ohio and Oakdale, Pennsylvania, and AFGE Local 2106. This contract was approved by the Activity on July 11, 1969, and was made effective from that date to July 10, 1971.

2/ The record discloses that AFGE Local 3158 now concurs in the position of the Activity and the AFGE Council although it petitioned for a unit which covers approximately 35 counties in Ohio.

3/ It appears that the 83rd ARCOM encompasses Medina and Summit Counties. The other counties are part of the 99th ARCOM.

Also, on February 24, 1969, the Activity accorded formal recognition to the NFFE as the bargaining representative for all Army Reserve technicians employed in the counties of Lucas and Williams in the northwestern part of Ohio. 4/ In addition, on March 17, 1969, AFGE Local 2932 5/ was granted exclusive recognition as the bargaining representative of all Army Reserve technicians serving the 83rd ARCOM and 100th Division (Training) in eastern Kentucky. No contract ever was consummated in that unit.

There is no dispute among the parties as to the types of employees covered by the various petitions inasmuch as all would include, in their respective units, both the General Schedule and Wage Board technicians. The General Schedule technicians' classifications are: Staff Administrative Assistant; Staff Administrative Specialist; Staff Training Assistant; Maintenance Administrative Technician; Administrative Supply Technician; and Supply Clerk. These employees are engaged in a variety of functions including, among others, the performance of administrative, training, clerical and supply duties; the maintenance of records; the preparation of special tables, graphs and charts; the posting of information on office records; the control, editing and dispatch of status reports pertaining to materials and equipment; and the instruction of Reserve personnel on maintenance and supply procedures.

The Wage Board technicians' classifications are: Electronic Equipment Installer and Repairer; Electronic Equipment Mechanic; Mobile Equipment Mechanic; and Small Arms Repairer. All perform the kind of maintenance and repair work as implied by their respective titles, and where the situation justifies it, they are supervised by a shop foreman.

All General Schedule and Wage Board technicians are required to be members of the active Army Reserve and are employed for the purpose of carrying out the administrative, supply and equipment maintenance functions and the mission of the various military unit commanders.

All authority over the technicians has been delegated to the commander of the 83rd ARCOM, who is empowered to determine and effectuate policy in regard to such matters as hire, discharge, promotion, grade, job discipline and separation of the technicians. This authority, in turn, has been delegated to a Civilian Personnel Officer for the 83rd ARCOM, whose headquarters is in Fort Hayes, Columbus, Ohio.

4/ There is some evidence that in the latter part of 1969, the parties started discussing the possibility of exclusive recognition in a unit comprised of the ten counties in northwestern Ohio as set forth in NFFE's petition. However, despite some testimony to the contrary, it does not appear that such recognition actually was granted.

5/ One of the three local unions which comprise the AFGE Council.

The local military commanders are the first line or immediate supervisors of the technicians and, in that regard, they direct their day-to-day activities, approve leave, make performance appraisals and recommend personnel actions such as discipline and training to the Civilian Personnel Officer. However, they cannot change the job classifications or the duties of the various positions nor promulgate policy with respect to the civilian personnel or technicians.

All recommendations by the local commanders are investigated by the Civil Personnel Office to determine whether action is warranted. If, for example, a vacancy occurs in a technician's position, the unit commander makes a formal request for a replacement, and the Civilian Personnel Officer's staff initiates the process of filling it. If the vacancy is in a position above the lowest entrance grade, the job is posted throughout the entire 83rd ARCOM, and all technicians are given the first opportunity to apply. Because of this policy, technicians transfer frequently from one installation to another throughout the 83rd ARCOM.

The record also discloses that there is uniformity in the grievance procedure for the entire command, in recruiting and replacement functions, and in promotion policy since candidates for positions are solicited throughout the ARCOM. With respect to promotion, the local unit commander is given an opportunity to select the technician for the position from among the eligibles designated by the Civilian Personnel Officer. As to grievances, local unit commanders act as the first step of the grievance procedure.

The basic hours and work days are established by the ARCOM commander, but the local unit commander can vary the schedules as the situation warrants. However, the commander cannot grant overtime without express authorization from the ARCOM commander. The General Schedule technicians are paid an annual salary, which is set by law and therefore cannot be varied, but the Wage Board technicians' wages are determined by local surveys.

Reduction in force procedures are established by the Civil Service Commission, but the Activity determines the areas of consideration. Local unit commanders have no role in reduction in force actions.

Although the parties agree on the composition of the appropriate unit, they are not in accord as to its scope. As noted previously, the Activity, the AFGE Council and AFGE Local 3158 contend that all the General Schedule and Wage Board technicians of the entire 83rd ARCOM comprise an appropriate unit, whereas the NFFE contends that its petitioned unit covering Army technicians in ten Ohio counties is appropriate. 6/

6/ No representative of AFGE Local 3175 appeared at the representation hearing in the subject cases.

With respect to the unit sought by the NFFE, the evidence established that its proposed unit is limited to General Schedule and Wage Board technicians located in 10 counties in Ohio who perform essentially the same duties as are performed by other employees with identical job classifications in the remainder of the 83rd ARCOM. The evidence also established that job vacancies above the lowest entrance grade are posted throughout the entire 83rd ARCOM and, because of this policy, technicians transfer frequently from one installation to another. Additionally, because all authority over the technicians has been delegated to the commander of the 83rd ARCOM, there is centralized control of policy making which results in uniform personnel practices throughout the Activity including promotion programs and grievance procedures. Moreover, although the local commanders have a degree of autonomy, the final decisions in regard to hire, discharge, promotion, job discipline and separation are made by the Civilian Personnel Officer to whom the ARCOM commander's authority in such matters has been delegated. In these circumstances and noting the Activity's position that the fragmented unit sought by the NFFE would not promote effective dealings and efficiency of its operations, I find that the NFFE's petitioned for unit is not appropriate.

As to the units sought by AFGE Local 3158 and AFGE Local 3175, the evidence established that, as in the case of the NFFE's petition, the units petitioned for by the above-mentioned AFGE locals were inappropriate because neither unit contained technicians who shared a clear and identifiable community of interest separate and apart from the other technicians of the 83rd ARCOM. Moreover, as noted above, AFGE Local 3158 now concurs in the position of the Activity and the AFGE Council with respect to the appropriateness of the unit sought by the latter. Accordingly, for the reasons discussed above with respect to the NFFE's petition, I find that the units petitioned for by AFGE Local 3158 and AFGE Local 3175 are not appropriate.

I also find, based on the foregoing, that a unit comprised of all General Schedule and Wage Board employees in the 83rd ARCOM is appropriate. 7/ As noted above, the evidence establishes, among other things, that there is frequent transfer of technicians between the various installations within the 83rd ARCOM; that above the lowest entrance grade job vacancies are made available on an Activity-wide basis; and that there is centralized control of policy making, which results in uniform personnel practices throughout the Activity, including promotion programs and grievance procedures. In addition, employees throughout the Activity are engaged in similar job functions in their respective classifications and have similar terms and conditions of employment.

7/ See Pennsylvania National Guard, A/SLMR No. 9 and Minnesota Army National Guard, A/SLMR No. 14.

Accordingly, I find that there is a clear and identifiable community of interest among the employees petitioned for by the AFGE Council. ^{8/} Moreover, such a comprehensive unit will, in my view and in accordance with the Activity's position, promote effective dealings and efficiency of operations.

Based on the foregoing, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board technicians in the First U.S. Army, 83rd Army Reserve Command (ARCOM) excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Executive Order.

ORDER

IT IS HEREBY ORDERED that the petitions filed in Case Nos. 53-2972, 53-2975 and 53-3094 be, and they hereby are, dismissed. ^{9/}

DIRECTION OF ELECTION

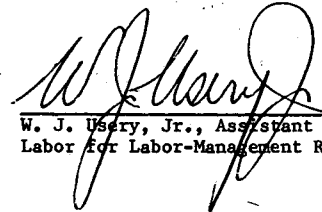
An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees

^{8/} As noted above in footnote 3, the unit petitioned for by the AFGE Council includes technicians in two Ohio counties who apparently are covered by a current agreement between AFGE Local 2106 and the U.S. Army Advisor Group, Fort Hayes, Columbus, Ohio, and Oakdale, Pennsylvania. However, neither party to the agreement urged that it be considered as a bar and the AFGE Council, on behalf of Local 2106, expressly took the position that it was not a bar. Moreover, although the Activity did not take a position in this regard, its contention that the entire 83rd ARCOM constitutes an appropriate unit appears to indicate that it does not consider the agreement to constitute a bar in this matter.

^{9/} Because the showing of interest submitted by the NFFE, AFGE Local 3158 and AFGE Local 3175 are insufficient to treat them as intervenors in Case No. 53-2983, I shall order that their names not be placed on the ballot.

who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Council of Locals for 83rd ARCOM, American Federation of Government Employees, AFL-CIO, Locals 2106, 2932 and 2984.

Dated, Washington, D.C.
May 10, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

May 10, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES ARMY SPECIAL SERVICES,
CENTRAL POST FUND,
FORT BENNING, GEORGIA

and

UNITED STATES ARMY,
BOQ BILLETING FUND,
FORT BENNING, GEORGIA

A/SLMR No. 36

The subject case involved representation petitions filed by Local 731, Cafeteria, Snack Bar and Post Exchange Employees Union, AFL-CIO, affiliated with Hotel and Restaurant Employees and Bartenders International, (Local 731) and Local 67, Warehouse, Launderers, Janitors, Meat Packers, Food and Factory Motel Union, affiliated with National Council Distributive Workers of America, ALA. (Local 67). Local 731 sought a unit of nonsupervisory employees employed in the bowling alleys, snack bars, and the boat shop of the Central Post Fund at Fort Benning. Local 67 petitioned for a unit comprised of all nonsupervisory custodial employees employed throughout the Activities.

The Assistant Secretary found that the claimed units were not appropriate. In reaching this determination, the Assistant Secretary noted that the unit sought by Local 731 did not cover all employees of the Central Post Fund performing similar job functions and, at the same time, included employees performing unrelated job functions. The Assistant Secretary found that such a unit was not appropriate as the employees sought did not share a clear and identifiable community of interest and its establishment would not promote effective dealings or efficiency of agency operations.

With respect to the unit sought by Local 67, the Assistant Secretary noted that the evidence revealed that the employees covered by the petition did not share a clear and identifiable community of interest in that they competed with other employees of the Activities in the same overall job category for merit promotions; their terms and conditions of employment were similar to other employees who were not covered by the petition; and, many of the petitioned for employees performed their job functions in the same areas as these other employees.

Accordingly, the Assistant Secretary ordered that the petitions filed by Local 731 and Local 67 be dismissed.

A/SLMR No. 36

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

UNITED STATES ARMY SPECIAL SERVICES,
CENTRAL POST FUND, FORT BENNING, GEORGIA

Activity

and

Case No. 40-1971

LOCAL 731, CAFETERIA, SNACK BAR AND POST
EXCHANGE EMPLOYEES UNION, AFL-CIO,
AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES
AND BARTENDERS INTERNATIONAL 1/

Petitioner

UNITED STATES ARMY, BOQ BILLETING
FUND, FORT BENNING, GEORGIA

Activity

and

Case No. 40-2004

LOCAL 67, WAREHOUSE, LAUNDERERS, JANITORS,
MEAT PACKERS, FOOD AND FACTORY MOTEL UNION,
AFFILIATED WITH NATIONAL COUNCIL DISTRIBUTIVE
WORKERS OF AMERICA, ALA. 2/

Petitioner

and

LOCAL 1051, LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

Intervenor

and

LOCAL 54, AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO 3/

Intervenor

-
- 1/ The name of this Petitioner appears as amended at the hearing.
2/ The name of this Petitioner appears as amended at the hearing.
3/ The names of both Intervenors appear as amended at the hearing.

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activities.

2. In Case No. 40-1971, Petitioner, Local 731, Cafeteria, Snack Bar and Post Exchange Employees Union, AFL-CIO, affiliated with Hotel and Restaurant Employees and Bartenders International, herein called Local 731, seeks an election in a unit of all regular full-time and regular part-time employees of the Central Post Fund's bowling alleys, snack bars, and boat shop, excluding casual or intermittent employees, 4/ managers, assistant managers, and all other supervisory employees, office clerical employees, professional employees, and guards as defined in the Executive Order. 5/

In Case No. 40-2004, Petitioner, Local 67, Warehouse, Launderers, Janitors, Meat Packers, Food and Factory Motel Union, affiliated with

4/ With respect to the casual or intermittent categories, the record establishes that such employees are employed on an emergency basis and have no reasonable expectancy of regular employment. All the parties agree that these employees should be excluded from the units sought. The record further indicates that off-duty military personnel are employed solely as intermittent or casual employees and the parties, on that basis, desire their exclusion from the proposed units. In these circumstances, it appears that the exclusion of employees classified as either intermittent or casual from the petitioned for unit is warranted.

5/ The unit appears as amended at the hearing. Employees included in this unit are, among others, a recreational aide, bowling and equipment mechanics, lane maintenance employees, cooks, bartenders, waiters and waitresses, cashiers, food service helpers and bowling alley porters.

National Council Distributive Workers of America, ALA., herein called Local 67, seeks an election in a unit of all of the BOQ Billeting Fund's maids and janitorial employees. 6/

The Activities' position is that the appropriate unit is one consisting of all nonsupervisory and nonmanagerial employees employed in the nonappropriated funds' projects at Fort Benning, excluding intermittent and casual employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and guards and supervisors within the meaning of the Executive Order. 7/ Intervenor, Local 1051, Laborers International Union of North America, AFL-CIO, herein called Laborers, asserts that the appropriate unit should consist of all "blue collar" employees at Fort Benning. Intervenor, Local 54, American Federation of Government Employees, AFL-CIO, herein called AFGE, is of the view that the appropriate unit should consist of all of Fort Benning's nonappropriated fund employees.

The mission of the Activities is to provide facilities which contribute to the morale, welfare and recreation of the military personnel of the United States Army. 8/ Nonappropriated funds and

6/ The unit appears as amended at the hearing. At the outset of the hearing Local 731 and Local 67 expressed no interest in the employees included in each other's unit and excluded them from their own petitioned for units. However, during the hearing, Local 67 requested the inclusion of all custodial employees employed at the Activity including those employed in the bowling alleys and snack bars.

7/ In the alternative, the Activities took the position that the following units would also be appropriate:

- (1) A unit consisting of either all nonsupervisory employees engaged in "white collar" duties, i.e., fiscal, clerical or administrative, or one composed of "blue collar" employees, i.e., those engaged in a recognized trade or craft; or,
- (2) A unit consisting of employees engaged in similar functional skills.

8/ In this regard, there are, among others, such facilities as the Fort Benning Flying Club, the Parachute Club, and the Rod and Gun Club.

related activities and personnel policies and procedures with regard thereto are governed by Regulations issued by the United States Army. All personnel matters for all of the funds at Fort Benning are handled by the Civilian Personnel Office, which has the authority and duty to implement the Regulations referred to above. Employees covered by both petitions are classified as nonappropriated fund employees employed at the Central Post Fund and the BOQ Billeting Fund and they come within two classifications described in the above-mentioned Regulations as "Category A" and "Category B." Those employees within the classification of "Category A" are engaged in the performance of professional, administrative, fiscal or clerical work including stenography and typing. Those employees who are engaged in the performance of manual labor, including those in a recognized trade or craft, come within the classification of "Category B." 9/

The employees of the various nonappropriated funds at Fort Benning are employed under uniform pay scales; compete for vacancies and promotional opportunities under the same merit promotion plan; may be promoted across organizational lines; all are retained on the same retention registers for the purpose of reduction in force; and are governed by the same regulations.

The record indicates that each nonappropriated fund program is headed by a supervisor who has the day-to-day supervision over employees within that program. He evaluates the performance of the employees and grants step increases. Further, all applicants referred to him for jobs are interviewed by the supervisor. He also grants leave requests, and any grievance is first presented to him for possible solution. The recommendations of such supervisors, however, with regard to hiring and firing of employees are submitted to the Civilian Personnel Office which has the responsibility for final approval.

The evidence demonstrates that the employees sought to be represented by the Local 731 perform varied duties. These include the sale and maintenance of equipment used by bowlers; the maintenance of the lanes in the bowling alleys and other functions connected with the sport of bowling. Other employees in the claimed unit work in the snack bars of the Central Post Fund's bowling alleys and its Golf Club, as cooks, counter-attendants, bartenders, waiters, waitresses, food service helpers and porters. 10/

9/ Such positions include, but are not limited to, waiters, waitresses, bartenders, janitors, porters, warehouse and mechanical and maintenance employees.

10/ The record is silent with regard to the types of employees employed at the boat shop.

The record discloses that although other types of employees engaged in food services such as cooks, waitresses, and bartenders are employed in the Noncommissioned Officers' Open Mess and other facilities of the Central Post Fund, these employees have not been included in Local 731's requested unit. It also appears from the record that among the employees covered by Local 731's petition are those employed as cashiers at the bowling alleys. Although the record reveals that Local 731 seeks to exclude other types of administrative personnel, such as office clericals, the record indicates that some of the cashiers employed at the bowling alleys covered by Local 731's petition work at desks, receive monies, and account for funds. 11/

Based on the foregoing, I find that the unit sought by Local 731 is not appropriate. The evidence reveals that Local 731's petition does not cover all employees of the Central Post Fund performing similar job functions. Thus, as noted above, although the petition includes cooks, counter-attendants, bartenders, and other food service employees in the snack bar of the Central Post Fund's bowling alleys and its Golf Club, it does not include cooks, waitresses and bartenders employed in the Noncommissioned Officers' Open Mess and other facilities of the Central Post Fund. In these circumstances, I find the unit sought by Local 731 is inappropriate because it does not include all employees performing similar job functions at the Activity. Thus, in my view, the petitioned for employees do not share a clear and identifiable community of interest; nor would such a unit promote effective dealings and efficiency of agency operations. Accordingly, I shall order that Local 731's petition be dismissed.

With respect to the unit sought by Local 67 which includes custodial employees in all of the nonappropriated funds at Fort Benning, comprising approximately 170 employees, the record indicates that the classifications covered are janitors, maids, porters and employees who tend the lawns. The record reveals that these employees are among those within the classification defined by the Activities as "Category B." 12/ The evidence also establishes that all "Category B" employees,

11/ It is not clear from the record whether cashiers are included within "Category A" or "Category B" under the Activities' classification system. It appears, however, that based on their administrative duties, some of these employees would be considered to be "Category A" employees.

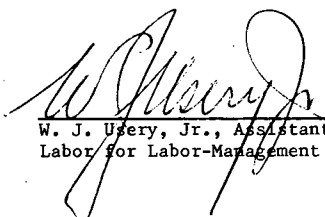
12/ Also within this Category are employees engaged in mechanical and maintenance, warehousing, food and drink services and miscellaneous related functions.

including those sought by Local 67's petition, compete together for merit promotions; their working conditions, in most cases, are the same; their jobs are rated according to the same standards; and, although they may be attached to separate facilities, many work in the same areas. In these circumstances, I find that separating custodial employees from other "Category B" employees who have similar terms and conditions of employment and who perform their job functions in the same work areas, would effectuate an artificial division among employees who share a clear and identifiable community of interest and would result in a fragmented unit which would not promote effective dealings or efficiency of agency operations. Accordingly, I shall order that Local 67's petition also be dismissed.

ORDER

IT IS HEREBY ORDERED that the petitions in Case Nos. 40-1971 and 40-2004 be, and they hereby are, dismissed.

Dated, Washington, D. C.
May 10, 1971



W. J. Ugery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

May 11, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTIONS OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF DEFENSE, NATIONAL GUARD BUREAU,
FLORIDA ARMY NATIONAL GUARD AND FLORIDA AIR NATIONAL GUARD,
125th FIGHTER GROUP
A/SLMR No. 37

These cases involved petitions by two different locals of the National Association of Government Employees (NAGE) for elections among Florida National Guard technicians. One petition sought a unit of all Air National Guard technicians in the State; the other sought all Army National Guard technicians in the State, except those attached to an Army-Aviation unit, which was already represented on an exclusive basis by a third local of the NAGE. The American Federation of Government Employees, Local 3167 (AFGE) intervened in the Florida Army National Guard proceeding and, along with the Activity, contended that the only appropriate unit must include all National Guard technicians in the State.

The Assistant Secretary determined that the Florida Air National Guard technicians constituted an appropriate unit in view of the record, which indicated that, with the exception of four employees, all Air National Guard technicians were based at the same location, that they received specialized training and that they maintained equipment which generally was more sophisticated than that maintained by other Army or Army-Aviation technicians. In these circumstances, the Assistant Secretary directed that an election be held in a unit of all Florida Air National Guard technicians.

The Assistant Secretary also found that a separate unit of Florida Army National Guard technicians constituted an appropriate unit in view of these employees' many common terms and conditions of employment. Moreover, he noted that in two prior decisions similar units of Army National Guard technicians were found to be appropriate. Accordingly, the Assistant Secretary directed an election among all Florida Army National Guard technicians in the State excluding, among others, Army-Aviation technicians assigned to an Army-Aviation installation who were already represented on an exclusive basis.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF DEFENSE, NATIONAL GUARD BUREAU,
FLORIDA ARMY NATIONAL GUARD 1/

Activity

and

Case No. 42-1244

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, LOCAL R5-120

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3167

Intervenor

DEPARTMENT OF DEFENSE, NATIONAL GUARD BUREAU,
FLORIDA AIR NATIONAL GUARD, 125th FIGHTER GROUP

Activity

and

Case No. 42-1273

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,
LOCAL R5-91

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the

1/ The name of the Activity appears as amended at the hearing.

hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the Petitioners and the Intervenor, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 42-1244, Petitioner National Association of Government Employees, Local R5-120, herein called NAGE Local R5-120, seeks an election in a unit of Wage Board and General Schedule technicians of the Florida Army National Guard, excluding, among others, the Army Aviation Facility at Jacksonville, Florida. American Federation of Government Employees, AFL-CIO, Local 3167, herein called AFGE, intervened in this case. In Case No. 42-1273, Petitioner National Association of Government Employees, Local R5-91, herein called NAGE Local R5-91, seeks a unit of all Wage Board and General Schedule technicians of the Florida Air National Guard. The Activity and the AFGE contend that neither petitioned for unit is appropriate but rather that the only appropriate unit is one including all National Guard technicians in the State of Florida.

The Florida National Guard acts as a military force where needed for national defense, and at other times is available to serve under the State's Governor to quell civil disorders and to act in times of natural disaster. Except in time of call-up for one of these emergencies, regular National Guardsmen serve only on the weekend or in the evening. Technicians, as regular full-time civilian employees, maintain the National Guard facilities and keep them in readiness on a day-to-day basis.

Both the Florida Air and Army National Guards have technicians programs. There are 85 to 90 National Guard units in the State in some 50 locations. At least 85 of the units have one technician or more, depending on the unit's size, mission and function. Generally, there is one technician for every 50 military personnel.

All National Guard units in the State are under the unified command of the Adjutant General. He has ultimate control over and responsibility for the technicians program and reports on the program to the Secretaries of the Army, the Air Force, and the Defense Department. The Adjutant General is responsible for compliance with statutes and regulations concerning administration of the program. He has final authority for assignment, promotion, discipline, or separation of technicians. Also, he establishes the basic work week, prescribes

hours of duty, is responsible for maintaining a career development program, and has ultimate responsibility for grievances.

Although the Adjutant General sets the basic work week for all technicians, both Air and Army technicians occasionally work odd shifts. In the case of the Air National Guard technicians, changes sometimes arise with little notice as a result of Air Defense Command alerts. Furloughs and leave requests for all technicians are approved by immediate supervisors. Similarly, although the Adjutant General can hear appeals of grievances, and the same grievance policies apply to all technicians, for the most part they are handled at the local level. Health benefits and insurance are the same for all technicians and pay scales within a given geographical area are the same for those Air and Army technicians who are Wage Board employees.

The entire Air National Guard is organized under the 125th Fighter Group. Four of its approximately 186 technicians are assigned to the Adjutant General's Headquarters, St. Augustine, Florida. All other Air National Guard technicians in the State are based at International Airport, Jacksonville, Florida. It appears that the approximately 344 Florida Army National Guard technicians are located throughout the State at various installations. 2/

Although the record is not clear as to whether Army and Air technicians work under the same immediate supervision, 3/ it does appear that where only one technician is assigned to a military unit, he works under the military commander of that unit. Where several technicians comprise a shop, they are supervised by a shop foreman and shop supervisor, who, in turn, are under the direction of the State Maintenance Officer. Performance evaluations are made by immediate supervisors. A personnel evaluation board reviews these reports. The board has representatives from both the Army and Air National Guard. The record reveals that promotion based on these reports could result in an Army technician obtaining a job in an Air technician unit or vice versa, however, it appears that this is very infrequent.

2/ There are also approximately 23 technicians who are assigned to an Army-Aviation group at Craig Field, Jacksonville, Florida. Neither Petitioner seeks these employees. The evidence revealed that since December 29, 1969, these Army-Aviation technicians have been represented by NAGE Local R5-107 on an exclusive basis.

3/ There was testimony that Air and Army National Guardsmen might work together in civil defense emergencies. However, the record does not indicate the role of technicians in such an event.

Based on all of the circumstances and noting the fact that no labor organization is seeking exclusive recognition in an overall unit of Army and Air National Guard technicians, I find that the petitioned for units are appropriate for the purpose of exclusive recognition.

With respect to Florida Air National Guard technicians, the record reveals that all such employees, with the exception of 4 assigned to the Adjutant General's Headquarters in St. Augustine, Florida, are based at one location. Further, there is generally no interchange between Air technicians and Army technicians, Air technicians receive specialized training, and the equipment maintained by Air technicians is generally more sophisticated than that maintained by other technicians throughout the State. In these circumstances, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Wage Board and General Schedule Florida Air National Guard technicians 4/ excluding Army-Aviation technicians at Craig Field, Jacksonville, Florida, Florida Army National Guard technicians, employees engaged in Federal personnel work other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

With respect to Florida Army National Guard technicians, the evidence reveals that they share common terms and conditions of employment and do not normally interchange with Air National Guard technicians. In these circumstances and noting that in two previous decisions 5/ I have determined that similar units involving Army National Guard technicians were appropriate, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

4/ As noted above, there are 4 Air National Guard technicians assigned to the Adjutant General's Headquarters in St. Augustine, Florida. NAGE Local R5-91 indicated that it did not consider these employees to be included in its petitioned for unit. In view of the State-wide scope of the petitioned for unit, such employees were considered to have a community of interest with other Florida Air National Guard technicians and therefore shall be afforded the opportunity to vote whether or not they desire union representation.

5/ See Pennsylvania Army National Guard, A/SLMR No. 9 and Minnesota Army National Guard, A/SLMR No. 14.

May 11, 1971

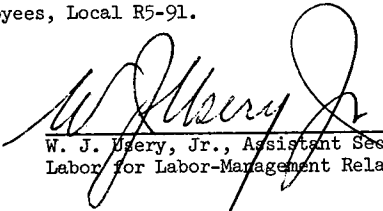
UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON CHALLENGED BALLOTS
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

All Wage Board and General Schedule Florida Army National Guard technicians excluding Army-Aviation technicians at Craig Field, Jacksonville, Florida, Florida Air National Guard technicians, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted among the employees in the units found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible Florida Army National Guard technicians shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees, Local R5-120, or by the American Federation of Government Employees, AFL-CIO, Local 3167, 6/ or by neither. Those eligible Florida Air National Guard technicians shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees, Local R5-91.

Date, Washington, D.C.
May 11, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

6/ As the AFGE's showing of interest is sufficient to treat it as an intervenor in Case No. 42-1244, I have directed that its name be placed on the ballot.

VETERANS ADMINISTRATION,
REGIONAL OFFICE,
NEWARK, NEW JERSEY

A/SLMR No. 38

The subject case involved, among other things, four challenged ballots which were sufficient in number to affect the result of a runoff election. The American Federation of Government Employees, AFL-CIO, Local Union 2442 (AFGE) challenged two ballots on the grounds that the voters were "management officials" and thus were ineligible to participate in the election. Also disputed was the fact that the observer-in-charge placed one mail ballot in a challenge envelope because the voter failed to observe the instructions for voting by mail. Further, the National Federation of Federal Employees, Local Union 967 (NFFE) challenged the ballot of an unidentified voter on grounds that it was improperly marked and therefore should be invalidated.

Upon review of the Hearing Examiner's Report and Recommendations and the entire record in the case, including the AFGE's request for review of the Hearing Examiner's Report and Recommendations, the Assistant Secretary found that management analysts Lucking and Pertain were "management officials" within the meaning of the Executive Order. Since the functions assigned to these management analysts place the interests of an employee in this classification more closely with persons who formulate, determine and oversee policies than with personnel who carry out the resultant policies, it was found that these employees were not eligible to participate in the election. It was found also that under all the circumstances, the mail ballot of employee O'Connor and the alleged improperly marked ballot were valid votes and should be counted.

The Assistant Secretary did not rule upon two other issues raised at the hearing, since, as to one issue involving objections to the election, the Assistant Secretary found he had previously issued a decision pursuant to a request for review. On the other issue, -- an alleged deprivation of an employee's right to vote, he found such matter was improperly before the Hearing Examiner in this proceeding.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION,
REGIONAL OFFICE,
NEWARK, NEW JERSEY

Activity

and

Case No. 32-1498 E.O.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL UNION 2442

Petitioner

and

Case No. 32-1499 E.O.

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL UNION 967

Petitioner

DECISION ON CHALLENGED BALLOTS

On December 23, 1970, Hearing Examiner David London issued his Report and Recommendations in the above-entitled proceeding, finding, in part, that employees Lucking and Pertain were employees within the meaning of the Order eligible to vote in the runoff election in the subject cases, and accordingly, he recommended that their ballots be opened and counted in determining the final results of the election. The Hearing Examiner found also that while the mail ballot of employee O'Connor was not cast in strict compliance with the election agreement and applicable regulations, the failure of O'Connor to enclose his ballot in the separate sealed envelope was not sufficient reason for finding the ballot invalid. He therefore recommended that O'Connor's ballot be counted. With respect to the challenged ballot in the subject cases, alleged to be improperly marked, the Hearing Examiner stated that he was convinced "unhesitatingly that the voter cast his ballot in favor of AFGE," and he concluded that the NFFE challenge in this respect was without merit and should be overruled.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of

the Hearing Examiner's Report and Recommendations and the entire record including the AFGE's request for review of the Hearing Examiner's Report and Recommendations, I adopt the findings and recommendations of the Hearing Examiner except as modified herein.

CHALLENGED BALLOTS

Robert C. Lucking and Robert E. Pertain

The ballots of Lucking and Pertain, employed by the Activity as management analysts, GS-11, were challenged by the AFGE on grounds that they are "management officials" and, in accordance with Section 10(b)(1) of Executive Order 11491, are barred from inclusion in a unit deemed appropriate for exclusive recognition. The Hearing Examiner concluded that AFGE failed to establish that these employees were management officials within the meaning of the Order. Therefore, he found, in accordance with the view of the Activity and the NFFE, they were employees entitled to participate in an election, and recommended that their ballots be opened and counted.

Neither Lucking nor Pertain were called upon to testify at the hearing. The job description for these employees reflects that management analysts GS-11, among other duties, provide guidance and assistance in the planning, execution and implementation of work measurement programs in all divisions, conduct studies and analyses relating to organizational structure and personnel requirements and recommend action to institute changes to obtain greater utilization of manpower and personnel ceiling, providing the manager with evaluations and recommendations to improve operations, maintain close liaison with division personnel engaged in budgetary work and conduct budget meetings to assure uniformity of interpretation of instructions. The description also indicates that these employees implement plans to conduct a work simplification program and an employee award program. They conduct training of higher levels of supervision to explain the basic principles of work simplification to enable them, in turn, to instruct first line supervisors and others. Testimony in the record reveals that these management analyst employees are in frequent contact with top management personnel and division heads in reference to the policies, practices and procedures of the Director of the Activity. The Activity's Personnel Officer testified that one of the management analysts herein reviews budgetary figures that are being submitted by operating elements prior to their submission to the Director for forwarding to agency headquarters. The Personnel Officer also testified that both of its management analyst GS-11's basically, have a responsibility "to assure

that the practices and procedures that have been established by the Director are carried out" and in so doing they act in a staff capacity. He also agreed that the term "staff personnel" is synonymous with the term "supportive personnel." 1/

In the circumstances outlined above, I conclude that the functions assigned to a management analyst, GS-11 in the Veterans Administration Regional Office, Newark, New Jersey place the interests of an employee in this classification more closely with persons who formulate, determine and oversee Veterans Administration Regional Office policies than with personnel in the unit who carry out the resultant policies. 2/ Accordingly, I find that management analysts Lucking and Pertain are management officials within the meaning of Section 10(b)(1) of the Order and therefore are not eligible to participate in the election. Accordingly, the challenges to their ballots are hereby affirmed. 3/

Paul O'Connor

The mail ballot of Paul O'Connor was placed in a challenge envelope by the "observer-in-charge," who was an election observer of the Activity, because O'Connor failed to follow instructions for voting by mail. The Hearing Examiner concluded that while O'Connor's ballot was not cast in strict compliance with the election agreement and applicable regulations, his failure to enclose the ballot in the separate sealed envelope was not sufficient to warrant invalidating the ballot. The Hearing Examiner noted also that while the observer-in-charge, an impartial observer, acknowledged seeing the ballot, there is no contention that anyone else present saw it and he recommended that O'Connor's ballot be counted.

The AFGE argues in its request for review that while the observer-in-charge was "impartial in the sense that he was not a member

1/ The record discloses that Agency regulations exclude "employees serving in support activities whose principal duties involve advising or assisting management on program administration or manpower utilization" from participating in the management of, or representing a labor organization, in instances involving exclusive recognition.

2/ Cf. Veterans Administration Hospital, Augusta, Georgia, A/SLMR No. 3.

3/ In reaching the above conclusion, no reliance was placed upon Section 202.20(d) of the Regulations of the Assistant Secretary since there is no requirement in this Section that a challenging party must meet an evidentiary burden of proof in establishing the validity of his challenge.

of either petitioning union, he was acting as a management representative in the election and cannot be considered as truly impartial in the sense that the term is used in labor-relations." The AFGE argues further that while other observers admitted not seeing O'Connor's ballot, "it is possible that one of them did see the ballot but due to fear of embarrassment or to avoid the necessity of an additional election did not wish to admit that fact."

Testimony indicates clearly that none of the representatives of the parties to the election saw the markings on the ballot. Furthermore, the record reveals that at the time of the incident neither one of the participating unions mentioned challenging the disputed ballot. In these circumstances, I agree with the Hearing Examiner's finding that failure to enclose the ballot in a sealed envelope is not sufficient grounds to warrant invalidating O'Connor's ballot, and I adopt his recommendation that said ballot be counted.

Alleged Improperly Marked Ballot

During the counting of ballots, the NFFE challenged a ballot on grounds that it did not contain a cross or check mark as required by the directions contained in the election agreement.

The Hearing Examiner concluded that the evidence indicated that the voter intended to vote for the AFGE reasoning that if the voter had intended to correct an inadvertent mark of an X in the wrong box, he would have put some kind of mark in the NFFE block, or would have destroyed the ballot, or would have obtained another ballot. Instead, he dropped the ballot as marked into the ballot box indicating he wanted his ballot counted.

In all the circumstances and upon careful examination of the disputed ballot, I adopt the Hearing Examiner's finding. Accordingly, I find that the NFFE's challenge in this respect should be overruled and the ballot counted.

During the hearing, the AFGE attempted to raise the matter of alleged objectionable conduct by a representative of the Activity with respect to a pre-election speech. The Hearing Examiner refused to hear any evidence on this issue because in his view the scope of the hearing was limited to obtaining evidence with respect to challenged ballots.

I agree with the Hearing Examiner's finding in this regard. Moreover, it should be noted that on November 25, 1970, I ruled on the AFGE's objections pursuant to its request for review of the Regional Administrator's Report on Objections.

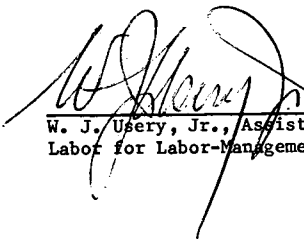
The NFFE asserted during the hearing that an eligible employee, Louis Simon, was deprived of the opportunity to vote since his name did not appear on the certified list of voters and, therefore, he made no effort to vote.

Inasmuch as the Notice of Hearing in this matter was limited solely to issues relating to challenged ballots, I consider this issue was not properly before the Hearing Examiner and accordingly, I find it unnecessary to rule upon this matter.

DIRECTION TO OPEN AND COUNT BALLOTS

IT IS HEREBY DIRECTED that the ballot of Paul O'Connor be opened and counted and that the ballot of the unidentified voter which was cast for the AFGE be counted at a time and place to be determined by the appropriate Regional Administrator. The Regional Administrator shall have a Revised Tally of Ballots served on the parties, and take such additional action as required by the regulations of the Assistant Secretary.

Dated, Washington, D.C.
May 11, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION
REGIONAL OFFICE,
NEWARK, NEW JERSEY,

Activity

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL UNION 2442,
Petitioner,

Case No. 32-1498 E.O.

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES LOCAL UNION 967,
Petitioner.

Case No. 32-1499 E.O.

Bruce I. Waxman, Esq., of
Washington, D.C., for Petitioner
in Case No. 32-1498 E.O.

Irving I. Geller, Esq., of
Washington, D.C., for Petitioner
in Case No. 32-1499.

Before: David London, Hearing Examiner.

REPORT AND RECOMMENDATIONS

Statement of the Case

On June 9, 1970, a run-off election to select a bargaining representative was conducted among all classified nonprofessional employees employed at the Veterans Administration Regional Office, Newark, New Jersey (herein called the Facility), but excluding professional employees, managerial executives, supervisors, guards, and employees engaged in personnel work not of a clerical nature. The two labor organizations participating in that election were American Federation of Government Employees, AFL-CIO, Local Union 2442 (herein called AFGE), and National Federation of Federal Employees, Local Union 967 (herein called NFFE). The duly attested Tally of Ballots issued on the same day, declared and certified that 115 votes were cast for NFFE, 115 votes for AFGE, and that there were four challenged ballots, sufficient in number to affect the results of the election.

Two of the challenged ballots, those of Robert C. Lucking and Robert E. Pertain were challenged by AFGE on the ground that these two employees were Management officials and, therefore, ineligible to participate in the election. The mailed ballot of Paul O'Connor was also challenged by AFGE on the ground that "its secrecy [was] not assured." The fourth challenge was interposed by NFFE to the ballot of an unidentified but otherwise eligible voter on the ground that the ballot was not marked in a manner to indicate "an acceptable expression of intent of [that] employee's vote."

After receiving and considering the Report of the Facility Area Administrator's Report "with respect to the essential facts and positions of the parties," and concluding that a hearing was necessary to resolve relevant questions of fact, the Department's Regional Administrator, on October 9, 1970, consolidated the above designated cases. He further ordered that a hearing be conducted before a designated Hearing Examiner "to take evidence, make factual findings and recommendations with respect to the challenges to the Assistant Secretary." That hearing was held at Newark, New Jersey, on November 11, 1970, before the undersigned duly designated Hearing Examiner. At that hearing, both AFGE and NFFE were represented by counsel and were afforded full opportunity to adduce evidence, and to examine and cross-examine witnesses. In an off-the-record discussion, oral argument was waived by both labor organizations. Since the close of the hearing, briefs were submitted by both organizations and have been duly considered.

Upon the entire record in this consolidated proceeding I make the following findings and recommendations.

Objections to conduct affecting
the results of the election

At the opening of the hearing, counsel for AFGE sought to interject into the proceedings an issue other than those described above--"whether a last-minute speech by management of the Veteran Administration Regional Office in Newark, which was delivered to all the employees on company time on the day before the election, had such an unwholesome and unsettling effect as to tend to interfere with the sober and thoughtful choice which a free election is designed to reflect." I rejected this attempt to interject that issue into the proceeding for the following reasons.

As previously indicated the Regional Administrator's order of October 9, 1970, a copy of which was timely served on AFGE, unequivocally stated that the instant hearing would be held to enable the Hearing Examiner to "make factual findings and recommendations with respect to the [four] challenges" described above, and nothing else. Accordingly, I announced at the hearing that I deemed myself to be without authority to consider any other issue.

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In any event, the proposed issue cannot be litigated because of the failure by AFGE to comply with the Regulations of the Assistant Secretary dealing with such objections. Sec. 202.20 of those Regulations provides that objections to conduct affecting the results of the election must be filed with the Area Administrator within five days after the Tally of Ballots is furnished, with simultaneous service on the other parties. It specifically further provides that "[s]uch filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election." (Emphasis supplied.) Here, the Tally of Ballots was furnished all parties on June 9, 1970. AFGE, in its brief, concedes that its "position" with respect to the proposed objection to conduct affecting the results of the election were not filed with the Area Administrator until June 24, 1970, and NFFE Exhibit 4 establishes that the copy served on NFFE was mailed by AFGE on June 25, 1970. I adhere to the ruling made at the hearing.

The challenged ballots of
Lucking and Pertain

As previously indicated, the ballots of Robert C. Lucking and Robert E. Pertain were challenged by AFGE on the ground that they are "Management officials" and, therefore, barred from inclusion in a unit of federal employees. (Executive Order 11491, Sec. 2(b)).

Both men are employed by the Facility as "management analysts (GS-303-11." According to their job description (AFGE Ex. 2), both men conduct studies and make analyses relating to organizational structure and utilization of manpower and personnel requirements. As the representative of the management staff, the management analyst "confers with the heads of all operating divisions on the improvement of management practices generally." Their job description, in discussing the supervisory controls over the position, states: "The incumbent works under the general direction of the Management Analysis Officer and performs duties at the direction of the Assistant Manager as a member of the management staff."

Unfortunately, neither of the two men whose ballots were challenged were called upon to testify concerning the duties they actually performed. In behalf of the challenges, Charles Brown, president of AFGE, testified that he has "seen" Lucking and Pertain "giving instructions to--division heads or management personnel." On cross-examination, when questioned about these incidents, he testified that on two occasions he overheard Pertain sharply request these individuals to "hurry up with [their] report" which Pertain apparently expected to receive.

Walter Syracuse, first vice-president of AFGE, testified that he has "quite frequently" seen Lucking and Pertain "talk to [a] supervisor or division chiefs," and that "when certain situations exist in the office, either Mr. Lucking or Mr. Pertain--will be sent or will come to this division to inspect and to find some method of adjusting the situation."

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Brown testified that "within the past year," by reason of his position as president of AFGE, he attended a bi-weekly management-staff meeting and saw Lucking and Pertain at that meeting. The occasion for the meeting, he testified, was because the Facility had achieved "100 per cent in the Bond" campaign. Syracuse testified that in March or April 1970 he attended such a meeting and received his "25 year pin." Among those present was Pertain.

Robert F. Pelka, the Facility's Personnel Officer, who submitted the job description under which Lucking and Pertain are serving, testified that neither man is a "Management executive" nor "a supervisor." Both of them report to the Management Analyst Officer. With respect to the bi-weekly staff conferences, Pelka testified that they are primarily "informational," for briefing on "documents coming into this office. Management policies and practices are frequently discussed at these meetings." Seated at the head of the long conference table during these meetings are all division chiefs, representatives from the out-patient clinic, the VA hospital, the assistant supply officer. Assistant division chiefs and the two management analysts sit "back of the table."

James G. Lombardo, chief attorney for the Facility, testified that the "major duties and responsibilities" of the two men under consideration was to serve "as liason representative to the operating division, validation of quality review and assisting operating officials with budget submissions and workloads." He emphasized "that neither of these employees has any supervisory responsibilities."

Contrary to the contention advanced by AFGE to the Acting Area Administrator, Labor Management Services Administration, the two management analysts are not part of "Agency Management" as that term is defined in Executive Order 11491. Sec. 2(f) of that Order reads as follows: "'Agency management' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order." There is no contention that the analysts had such authority. Nor is it contended that they had authority to hire, discharge, or discipline employees, a factor generally recognized as one to be considered, among others, in determining whether employees are supervisors or part of management.

Finally, it is undisputed that both of these employees were included on the official list of eligible voters approved by officials of both labor organizations prior to both the run-off election under consideration, and the preceding election of May 12, 1970. Though this did not preclude a subsequent challenge, there is no contention that there was any change in the status of these two men since the eligible voters lists were approved.

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On the entire record I am convinced that AFGE has failed to sustain the burden resting upon it 1/ to establish that on June 9, 1970, Lucking and Pertain were management officials as that term is used in Sec. 10(b)(1) of Executive Order 11491 barring management officials from inclusion in a unit of federal employees. Instead, I find that they were employees entitled to participate in an election to determine which labor organization they desire as exclusive representative. Accordingly, it will be recommended that their ballots be opened and counted in determining the final results of the election.

The mailed ballot of Paul O'Connor

The Agreement for Consent Election under which the election in question was conducted made provision for voting by mail by employees absent from the facility on the day of the election. Each such absent voter was provided with a blank ballot, a white secret ballot envelope, a larger outer mailing envelope, and instructions for preparing the mailed ballot. Among those instructions was a direction that the marked ballot be sealed in the secret ballot envelope and enclosed in the larger manila envelope.

The opening of mailed-in ballots occurred at approximately 8:15 A.M. on June 9. Present were two neutral observers in behalf of the Facility--John F. Forrester, "the observer in charge," and Luzera Bryant. Also present were Charles Brown, Walter Syracuse, and Fredetha Spann as observers in behalf of AFGE, and Stephen Colucci, Vincent Ferraro, and a third representative in behalf of NFFE. Thomas Ryan of the Labor Department was also present.

When the mailed ballot of O'Connor was reached, Miss Bryant opened the outer manila envelope, "reached her hand in,--automatically pulled out the ballot and automatically gave it to Mr. Forrester." Forrester took the ballot and stated: "Something is wrong--there is no sealed envelope, I must admit I saw it." Both Brown and Syracuse testified that Forrester "asked around the table 'did anyone else see it' and everyone else replied they had not seen the marking on the ballot." Neither AFGE, nor NFFE, challenged the ballot, but Forrester, "in his official capacity as the official observer, automatically put it in the challenge envelope."

AFGE now contends in its brief that because "O'Connor's ballot is subject to serious question" it should be declared "void because its secrecy cannot be assured." Though the ballot was not cast in strict compliance with the election agreement and applicable regulations, the failure to enclose the ballot in a separate sealed envelope is not one of the seven grounds which the agreement itemizes as sufficient to declare

1/ Sec. 202.20(d) of the Rules and Regulations of the Assistant Secretary for Labor Relations.

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the ballot invalid. Though Forrester, the Facility's impartial observer, apparently saw the ballot, there is no contention that O'Connor's vote was ever exposed to anyone else. In view of the presently existing tie vote at what has already been a run-off election, it would be extremely unfortunate if the Facility's employees were denied the designation of a representative because of this incident. 2/ On the entire record, it will be recommended that O'Connor's ballot be counted.

The alleged improperly marked ballot

NFFE challenged the ballot personally cast by an unidentified voter at the June 9 election (Assistant Secretary's Ex. 6) on the ground that "it did'nt follow the directions of the agreement." The directions referred to were contained in Sec. 1(b) of the Attachment to the Consent Election Agreement (AFGE Ex. 1) and provides that ballots will be declared invalid if "[t]here is no cross or check mark on the ballot."

The ballot contained two boxes, each of which was about one inch square. One box was designated NFFE, the other AFGE. The ballot contained an instruction to "Mark an 'X' in the box of your choice." The ballot in question clearly shows an X in the AFGE box, but there were also a number of scribbled lines in the same box. The NFFE box was left completely bare. The ballot also contained the admonition that if the voter should "mark the wrong box, make erasures or deface in any manner, return it to the observer in charge for a new one."

Careful examination of the ballot convinces me unhesitatingly that the voter had cast his vote in favor of AFGE. If, as contended, the scribbling was intended to void the effect of the X for AFGE, the voter would either have placed some mark in the NFFE box, or destroyed or returned the marked ballot to the observer in charge and obtained another ballot. He did neither. Instead, he dropped the ballot in the ballot box, thereby indicating that he wanted his vote to be counted. The NFFE challenge to that ballot has no merit and should be overruled.

The failure of Louis Simon to vote

Five minutes before the polls were closed on June 9, the observer for NFFE requested the observer in charge, and the representative of the Labor Department, to summon employee Louis Simon to come to the polls and cast his vote. Though Simon may have been an eligible voter, his name did not appear on the certified list of voters. The request was denied. Simon subsequently told the NFFE representative that he, Simon, "felt he was ineligible to vote and he was not going to go [to the polls] and make a fool of himself and get challenged."


2/ See Triple J. Variety Drug Co., 168 NLRB No. 140.

Sec. 19(a)(1) of Executive Order 11491 makes it an unfair labor practice for an agency to interfere with, restrain or coerce an employee in the exercise of his rights under the order. To require an employee to come to the polling place to vote would be to coerce that employee in his right under the Order to refrain from any activity connected with exclusive representation of federal employees by a labor organization. If Simon desired to vote, the proper procedure was to present himself at the polling place, to be challenged and to have his vote placed in the challenge envelope. The guidelines from the Department of Labor specifically provide for such a contingency. 3/ The request to summon Simon was properly denied.

RECOMMENDATIONS

On the entire record I recommend:

1. That the challenge to the ballots of Robert G. Lucking and Robert E. Pertain be overruled and that their ballots be counted.
2. That the challenge to the mailed ballot of Paul O'Connor (Assistant Secretary's Exhibit 5) be overruled and that his ballot be counted.
3. That the challenge to the ballot of the unidentified voter (Assistant Secretary's Exhibit 6) be overruled and that the ballot be counted.
4. That no further action be taken to secure the vote of Louis Simon.


David London
Hearing Examiner

Dated at Washington, D. C.
December 23, 1970.

3/ Assistant Secretary of Labor-Management Relations, U.S. Department of Labor, Procedural Guide for Conduct of Elections under supervision of the Assistant Secretary Pursuant to Executive Order 11491, pages 7-8.

May 11, 1971

A/SLMR No. 39

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDING SERVICES,
SAN FRANCISCO, CALIFORNIA

A/SLMR No. 39

The subject case involving representation petitions filed by two labor organizations, American Federation of Government Employees, AFL-CIO, Local 2275 (AFGE), and National Association of Government Employees, Local R12-76 (NAGE), presented the question as to whether a unit of maintenance employees (general mechanics, electricians, painters, carpenters) and custodial employees is appropriate, or whether a separate unit of custodial employees is appropriate.

Under all the circumstances, the Assistant Secretary found that the maintenance and custodial unit petitioned for by AFGE was appropriate, and, accordingly, he directed that an election be held in this unit. In reaching this determination he noted that the employees had the same general working conditions, shared the same supervision at the decision-making level and that they occasionally worked together. He noted also that the Activity was of the view that such a unit would promote effective dealings and efficiency of agency operations.

The Assistant Secretary also found that a separate unit of custodial employees sought by NAGE was not appropriate, and therefore he ordered that the petition filed by the NAGE be dismissed. In this regard, he noted that in many instances custodial employees had the same terms and conditions of employment as maintenance employees, that both groups of employees shared the same supervision at the decision-making level and that their job functions were closely related. He noted further that the custodial employees will have an opportunity to vote in a more comprehensive unit on whether or not they desire union representation.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDING SERVICES,
SAN FRANCISCO, CALIFORNIA

Activity

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2275

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R12-76

Petitioner

Case No. 70-1514^{1/}

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer John L. Jordan. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. ^{2/}

^{1/} Two separate petitions were filed in the subject case. However, apparently in view of their related nature, the Area Administrator assigned the same case number to both petitions.

^{2/} At the hearing Petitioner American Federation of Government Employees, AFL-CIO, Local 2275, herein called AFGE, made a motion to dismiss the petition filed by Petitioner National Association of Government Employees, Local R12-76, herein called NAGE, on the ground that the NAGE's petition covered an "inappropriate unit". The Hearing Officer referred this motion to the Assistant Secretary. In view of the disposition herein, I consider it unnecessary to pass on the AFGE's motion.

Upon the entire record in these cases, including parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The record reveals that the AFGE seeks an election in a unit of all custodial and maintenance Wage Board employees of the Public Building Services Field Offices in the San Francisco Bay Area, California, excluding management officials, supervisors, Federal employees engaged in personnel work, guards and professional employees. The NAGE seeks an election in a unit of all nonsupervisory Wage Board custodial laborer employees of the Public Building Services Field Offices in the San Francisco Bay Area, excluding maintenance Wage Board employees, management officials, supervisors and employees engaged in Federal personnel work. The Activity contends that the appropriate unit should consist of all Wage Board custodial and maintenance employees, as petitioned for by the AFGE, as such employees share a community of interest and their inclusion in a single unit would promote effective dealings and efficiency of operations.

The function of the Activity is to assure that Federally-owned or Federally-leased buildings are kept clean and properly maintained. There are 16 field offices in the 9th Region of the General Services Administration (GSA), Public Building Services. Four of the 16 field offices are located in the San Francisco Bay Area and are administered by the Chief of Building Management Division. The Building Management Division has responsibility for the operation and maintenance of Government-owned or Government-leased offices and general purpose space. A Building Manager is in charge of each field office and reports to the Chief of Building Management Division for administration and program direction. A field office may be responsible for overseeing one or more buildings. Personnel assigned to operate and maintain buildings of a particular office come under the direction of the Building Manager. All instructions pertaining to the 4 field offices covered by the subject petitions emanate from the Chief, Building Management Division. With respect to individual field offices, directions concerning that office or its building group come from the Building Manager. In a specific building group, directions come through the Assistant Building Manager, which is the lowest level in the organization where supervision is common to both maintenance and custodial employees and at which level policy decisions affecting the overall missions of the Activity are disseminated.

The record indicates that maintenance employees are supervised by a Maintenance and Operations Foreman who is under the supervision

of the Maintenance and Operations General Foreman who, in turn, reports to the Assistant Building Manager. The evidence reveals that on occasion the Maintenance and Operations Foreman supervises both maintenance and custodial employees. In the custodial group, employees are under the immediate supervision of a Squad Supervisor who is under a Shift Supervisor. The Shift Supervisor reports to a Force Foreman who is under the supervision of the Assistant Building Manager.

Maintenance Employees

Maintenance employees include general mechanics, electricians, painters and carpenters. General mechanics perform duties which include preventive maintenance of power equipment used by custodial employees in their cleaning functions, servicing power equipment, repairing electrical equipment (e.g. lights, motors and fans), emergency plumbing, and repairing steam leaks. Electricians repair a variety of electrical equipment, perform complete electrical or rewiring jobs, install and maintain switch and outlet boxes, test operation of switches and equipment, maintain substations, metering equipment and fuse disconnects. Painters paint or refinish building interiors and exteriors and equipment including furniture and fixtures. They prepare surfaces for painting, set up and remove ladders and scaffolding and mix and blend painting materials. They may also perform paperhanging and window glazing in conjunction with their other duties. Carpenters erect, alter, repair, or remove partitions, replace window framing, doors, molding, transoms, panels, install and repair door locks, and install window glass in window frames. They may also replace damaged flooring and stairways, and they lay floor covering.

Custodial Laborers

This position involves a variety of cleaning and miscellaneous manual laboring tasks associated with the operation and maintenance of Government-owned or leased buildings and offices. Typically, custodial laborers perform surface cleaning by operating powered cleaning equipment; they also load and unload trucks, move furniture and supplies, remove snow and cut grass.

The record reveals that while there is no requirement to complete a formal apprentice program, or pass a written examination prior to qualifying for employment as a maintenance employee, it would be necessary that such an employee have some prior specialized experience in the position involved. There are no apparent skill requirements for the position of custodial laborer.

Maintenance and custodial employees are paid according to the Coordinated Federal Wage System, the former at Wage Grade 9 and 10

levels, the latter at Wage Grade 1 to 5 levels. The large majority of custodial laborers are in Wage Grades 1 and 2.

The record reveals that while instances of advancement from custodial to maintenance positions have been infrequent, the Activity has recently initiated a plan which provides for the "upward mobility" of its employees to allow for advancement. Under the Activity's plan, training is to be provided through the local school system, basic and secondary education, as well as on-the-job training, to upgrade skills and qualify the employees who have the potential for moving up.

The operation and maintenance of public buildings requires 24-hour coverage, seven days a week. Employees work one of 3 shifts - 8:00 a.m. - 4:30 p.m.; 4:00 p.m. - midnight; and midnight to 8:30 a.m. The record reveals that both custodial and maintenance workers are on duty on every shift with the greater number of custodial employees working at night when buildings and offices are unoccupied. The record reveals that the job functions of maintenance employees and custodial employees are closely related. Custodians, for example, ready the site for maintenance employees or clean up after maintenance employees have completed painting, carpentering, plumbing and general repair jobs. Maintenance employees, on the other hand, are responsible for providing preventive maintenance, servicing and repair of cleaning machines utilized by custodial employees. In the day-to-day operations, the record reveals that custodial and maintenance workers alert each other if they notice something out of order or in need of cleanup. If a custodial or maintenance employee is not immediately available, a "Notice of Work" is filled out noting the work required and its location and this notice is placed in a slot outside the custodial or maintenance office as appropriate. The record discloses that custodial and maintenance employees are in frequent communication during an 8-hour shift.

Although custodial and maintenance employees have separate supervision at the lower levels, the evidence establishes that the final decision with respect to both classifications as to annual leave schedules, sick leave and disciplinary actions takes place at or above the Building Manager or Assistant Building Manager level. In addition, decisions with respect to personnel policy, practices or matters affecting the working conditions of custodial and maintenance employees emanate from the Building Manager or a higher level.

The record reveals that custodial and maintenance employees wear the same type of uniform and both punch a time clock.

Based on the foregoing, I find that the maintenance and custodial employees in the unit petitioned for by the AFGE, have a clear and identifiable community of interest in that they share the same general

working conditions; the same supervision at the decision-making level; work at the same locations, in some instances, at the same time; and occasionally work together. In these circumstances and noting also the Activity's "upward mobility" plan and its assertion that a combined unit of maintenance and custodial employees would promote effective dealings and efficiency of operations, I find that the following unit petitioned for by the AFGE is appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Wage Board custodial and maintenance employees of the General Services Administration, Public Building Service Field Offices, San Francisco Bay Area, San Francisco, California, excluding all employees engaged in Federal personnel work in other than a clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

I find also, in the circumstances involved herein, that a separate unit of custodial employees as petitioned for by the NAGE, is not appropriate. Thus, as noted above, custodial employees have, in many instances, the same terms and conditions of employment as maintenance employees. Moreover, both groups of employees share the same supervision at the decision-making level and their job functions are closely related. Accordingly, and considering also the fact that the custodial employees will have an opportunity to be represented in a more comprehensive unit, I find that the unit sought by the NAGE is not appropriate for the purpose of exclusive recognition. I shall therefore order that its petition be dismissed. 3/

ORDER

IT IS HEREBY ORDERED that the petition filed by the NAGE be, and it hereby is, dismissed.

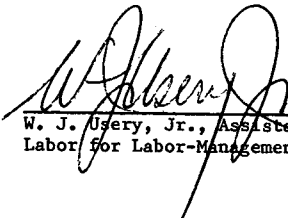
3/ As the NAGE's showing of interest is sufficient to treat it as an intervenor, I shall order that its name be placed on the ballot. However, because the unit found appropriate is larger than the unit it sought initially, I shall permit it to withdraw from the election upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision.

DIRECTION OF ELECTION

May 14, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 2275; or by the National Association of Government Employees, Local RI2-76; or by neither.

Dated, Washington, D.C.
May 11, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL,
DOVER, NEW JERSEY

A/SLMR No. 40

The subject case involving a representation petition filed by Local 1437, National Federation of Federal Employees, presented the question whether a unit consisting of all nonsupervisory General Schedule employees working in the Activity's Materials Engineering Laboratory is appropriate.

In all the circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this determination, the Assistant Secretary relied on the fact that the employees in the claimed unit performed functions which are similar to those performed by similarly situated employees throughout the Activity; the Activity had established an area of consideration for promotional opportunities for most of the employees in the petitioned for unit on an Activity-wide basis; and that there have been transfers between employees in the claimed unit and other directorates and offices of the Activity. Also, he viewed as particularly relevant the fact that the Activity has established highly centralized personnel policies and practices.

In these circumstances, the Assistant Secretary concluded that the employees in the requested unit did not possess a clear and identifiable community of interest. Moreover, he found that such a fragmented unit would not promote effective dealings or efficiency of agency operations. Accordingly, the Assistant Secretary ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL,
DOVER, NEW JERSEY

Activity

and

LOCAL 1437, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES

Case No. 32-1504 (RO)

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 225

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer William O'Loughlin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. Petitioner, Local 1437, National Federation of Federal Employees, herein called NFFE, seeks an election in the following unit: 1/

1/ NFFE's claimed unit appears as amended at the hearing.

All Classified Act employees employed by the Materials Engineering Laboratory, Picatinny Arsenal, excluding Wage Board employees, all management officials, employees in personnel work in other than a purely clerical capacity, supervisors and guards as defined in the Order.

Intervenor, American Federation of Government Employees, AFL-CIO, Local 225, herein called AFGE, questioned whether the NFFE's claimed unit was appropriate; however, it did not state what it considered the appropriate unit to be. The Activity, prior to the hearing, contended that the claimed unit was inappropriate because it was established, primarily, on the basis of the extent to which employees had been organized. During the course of the hearing, however, the Activity stated it had no objection to the unit claimed by the NFFE.

The Activity is engaged in the research and development of munitions, and is subdivided, functionally, into 17 different offices and directorates. One of these directorates, the Feltman Research Laboratory, is divided into several divisions and laboratories. The Materials Engineering Laboratory, which contains all of the petitioned for employees, is one of the major divisions of the Feltman Research Laboratory and is divided into the following six branches: (1) the Polymer Research Branch; (2) the Adhesives and Coating Branch; (3) the Material Application Branch; (4) the Metal Engineering Branch; (5) the Plastics and Elastics Branch; and (6) the Department of Defense Plastics Technical Evaluation Center. All of these branches operate laboratories with the exception of the Department of Defense Plastics Evaluation Center, which is engaged in a publication of information function.

There are 34 professionals and 25 nonprofessional employees in the claimed unit. 2/ Approximately 48 of the employees work in the five operating branch laboratories and are engaged in the research and development of structural materials and the testing of metals, polymer fibers, plastics and rubber in laboratory experiments to ascertain their feasibility as materials in the manufacture of munitions. The remaining 11 employees in the claimed unit work in the Department of Defense Plastics Technical Evaluation Center. These latter employees gather, evaluate and disseminate information concerning developments in plastic technology for the use of the Armed Forces and contractors performing work for the Department of Defense. The majority of the

2/ Apparently, the NFFE and the AFGE agreed to adopt the Activity's classification of employees as to their professional or nonprofessional status. Since the record does not set forth sufficient facts in this respect, I will make no findings as to which employee classifications constitute professional employees.

employees in the claimed unit are material engineers, and are classified by the Activity as professional employees. Other professional job classifications, as defined by the Activity, include mechanical engineers, chemists, physicists and packing technologists. Nonprofessional job classifications in the claimed unit include general administrative employees, secretaries, publication technicians, editorial clerks, laboratory technicians, physical scientists, clerk stenos and engineering technicians.

The majority of the employees in the Materials Engineering Laboratory work in a building of which they are the exclusive occupants. Such building is located in the main laboratory complex. There are, however, 16 employees who work in a building where employees from three of the Activity's other laboratories work. In addition, employees in the Department of Defense Plastics Technical Evaluation Center work in a building, of which they are exclusive occupants, some two miles from the main laboratory complex.

The record reveals that other laboratories situated not only within the Feltman Research Laboratory, but also throughout the Activity, utilize employees with skills possessed by many of the professional and nonprofessional employees in the claimed unit. For example, the Munitions Packaging Laboratory, one of the other laboratories within the Feltman Research Laboratory, recently was separated as a branch of the Materials Engineering Laboratory and was granted full laboratory status as a major laboratory within the Feltman Research Laboratory. The evidence reveals that many of the skills possessed by the employees working in the Munitions Packaging Laboratory are similar to those possessed by employees in the Materials Engineering Laboratory.

Each of the six branches of the Materials Engineering Laboratory is supervised by a branch chief who possesses the authority to grant leave requests as well as requests for temporary changes in employee work schedules. Branch chiefs report directly to the Chief of the Materials Engineering Laboratory, who is subordinate to the Director of the Feltman Research Laboratory. The Director of the Feltman Research Laboratory reports directly to the Activity's Commanding Officer.

There is one central personnel office located within the Activity. Such matters as reduction in forces, reassignment of employees, hiring, promotions and the ultimate resolution of grievances are handled by this office. The Activity has established a central payroll office which is administered by the Activity's Comptroller and Programs Office.

Also, the Activity has established an area of consideration for promotional opportunities for grades GS-13 and above on an agency-wide basis. The area of consideration for grades GS-5 through GS-12 is on an Activity-wide basis. For grades GS-4 and below, the area of consideration appears to be confined to a directorate-wide basis.

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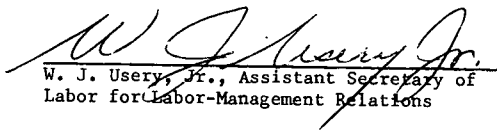
The record reveals that for the fiscal year 1970 five employees transferred into the Materials Engineering Laboratory from other directorates and offices of the Activity. Additionally, two employees transferred from the Materials Engineering Laboratory to other directorates and offices of the Activity. The record also establishes that employees in the claimed unit occasionally work together on particular projects with employees of other laboratories and directorates of the Activity for periods of time which generally do not exceed one day. 3/

Based on the foregoing, I find that the unit sought by the NFFE does not constitute an appropriate unit for the purpose of exclusive recognition under Executive Order 11491. The record reveals that there are similarly situated employees performing similar job functions in other laboratories not only within the directorate where the employees in the claimed unit work, but also in other directorates and laboratories of the Activity which are not included in the claimed unit. Also, the area of consideration for promotional opportunities for a majority of the employees in the claimed unit is on an Activity-wide basis and is not confined solely to the Materials Engineering Laboratory. Moreover, the evidence demonstrates that there have been transfers between employees in the claimed unit and other directorates and offices of the Activity. In these circumstances and noting the fact that the Activity has established centralized personnel policies and practices, I conclude that the employees in the requested unit do not possess a clear and identifiable community of interest. Moreover, in my view, such a fragmented unit would not promote effective dealings or efficiency of agency operations. Accordingly, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 32-1504 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
May 14, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

3/ For example, employees in the Department of Defense Plastics Technical Evaluation Center occasionally collaborate with employees from other laboratories within the Feltman Research Laboratory in the preparation of technical reports.

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May 14, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL, DOVER, NEW JERSEY
A/SLMR No. 41

This case arose as a result of the filing of five representation petitions by American Federation of Government Employees, AFL-CIO, Local 225 (AFGE) seeking elections in five separate units of employees of the Activity. Local 1437, National Federation of Federal Employees, (NFFE) intervened in the AFGE petition involving certain employees of the Activity's Feltman Research laboratory. The AFGE sought the following units:

1. All nonprofessional nonsupervisory, General Schedule employees of the Activity's Feltman Research Laboratory excluding, among others, professional employees, supervisors, guards, and employees working in the Materials Engineering Laboratory, a major operational division of the Feltman Research laboratory.
2. All professional and nonprofessional nonsupervisory, General Schedule employees of the Activity's Comptroller and Programs Office excluding, among others, supervisors and guards.
3. All nonprofessional, nonsupervisory General Schedule employees of the Activity's Industrial Services Directorate, excluding, among others supervisors, professional employees and guards.
4. All nonprofessional, nonsupervisory, General Schedule employees of the Activity's Installation Support Office, excluding, among others, professionals, supervisors and guards.
5. All nonprofessional, nonsupervisory General Schedule employees of the Activity's Quality Assurance Directorate, excluding, among others, professionals, Wage Board employees, supervisors and guards.

The Activity took the position that the units sought by the AFGE were inappropriate because (1) they were based, primarily, on the extent to which employees had been organized, (2) they would not promote effective dealings, and (3) the employees in the units sought did not share a community of interest. In the case involving the Feltman Research Laboratory, the NFFE, took the position that the unit claimed by the AFGE was appropriate.

The Assistant Secretary concluded that the petitioned for units were not appropriate. In reaching this determination, the Assistant Secretary noted that many of the Activity's directorates not covered by the subject petitions contained employees who possess similar skills and perform similar job functions as those performed by the employees in the units sought. He also noted the Activity's centralized personnel policies and practices and that there was evidence of transfers between employees in the claimed units and other directorates and offices of the Activity. In all the circumstances, the Assistant Secretary concluded that a basis did not exist for the establishment of units as sought by AFGE, on a directorate-wide basis. In the Assistant Secretary's view, the employees in such units did not possess a clear and identifiable community of interest. Moreover, he noted that the establishment of the petitioned for units would neither promote effective dealings, nor contribute to the efficiency of agency operations. Accordingly, the Assistant Secretary ordered that the petitions be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL
DOVER, NEW JERSEY

Activity

Case No. 32-1829(RO)

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 225

Petitioner

and

LOCAL 1437, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES

Intervenor

DEPARTMENT OF THE ARMY,
PICATINNY ARSENAL
DOVER, NEW JERSEY

Activity

Case Nos. 32-1702(RO)
32-1794(RO)
32-1734(RO)
32-1798(RO)

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 225

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 6 Executive Order 11491, a consolidated hearing was held before Hearing Officer Thomas B. Daly. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. In Case No. 32-1829, Petitioner, American Federation of Government Employees, AFL-CIO Local 225, herein called AFGE, seeks an election in a unit of:

All Classified Act employees of the Feltman Research Laboratory Picatinny Arsenal, Dover, New Jersey, excluding all employees in the Materials Engineering Laboratory, firefighters, guards, supervisors, professionals, illustrators, illustrators (technical equipment), mechanical engineering technicians, (drafting) engineering draftsmen, (mechanical) engineering draftsmen, Wage Grade employees or other than those of a purely clerical nature and guards.

Intervenor, Local 1437, National Federation of Federal Employees, herein called NFFE, contends that the unit sought by the AFGE is appropriate. The Activity, on the other hand, contends that the AFGE's claimed unit is not appropriate because it is based, primarily, on the extent to which employees have been organized and, in addition, such a unit would not promote effective dealings. In the Activity's view, the only appropriate unit is one which would be comprised of similar job classifications established on an Activity-wide basis.

In Case No. 32-1702, the AFGE seeks an election in a unit of:

All Classified Act employees of the Comptroller and Programs Office at the Picatinny Arsenal, Dover, New Jersey, including professionals, excluding all supervisory and managerial employees, all employees engaged in Federal personnel work in other than a purely clerical capacity and guards.

In Case No. 32-1794, the AFGE seeks an election in a unit of:

All Classification Act employees of the Industrial Services Directorate, excluding, firefighters, guards, supervisors, professionals, illustrators (technical equipment), illustrators, mechanical engineering technicians (drafting), engineering draftsmen (mechanical), engineering draftsmen, Wage Grade employees, personnel employees other than those of a purely clerical nature.

In Case No. 32-1734, the AFGE seeks an election in a unit of:

All Classification Act employees of the Installation Support Office, Picatinny Arsenal, Dover, New Jersey. Excluding firefighters, guards, supervisors, professionals, illustrators (technical equipment), illustrators, engineering draftsmen (mechanical), engineering draftsmen, Wage Grade employees, personnel employees other than those of a purely clerical nature.

In Case No. 32-1798, the AFGE seeks an election in a unit of:

All Classification Act employees of the Quality Assurance Directorate, Picatinny Arsenal, Dover, New Jersey. Excluding firefighters, guards, supervisors, professionals, illustrators, (tech. equipment) illustrators, mechanical eng. tech., (drafting) engineering draftsmen, (mechanical eng.) draftsmen, Wage Grade employees, personnel employees other than those of a purely clerical nature.

The Activity contends that the latter four claimed units sought by the AFGE are inappropriate because they would not promote effective dealings, are based on the extent to which employees have been organized and that, moreover, the employees in each of the above claimed units do not share a clear and identifiable community of interest.

The Activity is engaged in the research, development and manufacture of munitions. It is divided into 17 major offices and directorates. One of these directorates, the Feltman Research Laboratory, which contains the employees sought in Case No. 32-1829, is engaged in the research and exploratory development of explosives and propellants for the use in the manufacture of munitions. The Feltman Research Laboratory is subdivided into the following major divisions: (1) the Plans and Programs Office; (2) the Explosives Laboratory; (3) the Propellants Laboratory; (4) the Pyrotechnics Laboratory; (5) the Materials Engineering Laboratory ^{1/}; (6) the Engineering Sciences Laboratory; and (7) the Munitions Packaging Laboratory. Employees in this claimed unit work in 25 different locations situated throughout the Activity. In at least two instances, some of the employees work in buildings which house employees from other of the Activity's directorates who are not covered by the subject petitions.

There are 125 employees in the claimed unit in Case No. 32-1829 working in approximately 20 different job classifications. Of the 125 employees, there are approximately 48 employees performing clerical and stenographic job functions, 26 employees performing administrative job functions and 51

^{1/} As noted above, in Case No. 32-1829 the AFGE seeks a unit of all nonprofessional General Schedule employees working in the Feltman Research Laboratory with the exception, among others, of those working in the Materials Engineering Laboratory. It should be noted that the NFFE filed a petition for the employees in the Material Engineering Laboratory in Case No. 32-1504(RO). In A/SLMR No. 40 I directed that the petition in that case be dismissed.

employees who provide technical assistance to professional employees. ^{2/} Employees providing such technical assistance include mechanical engineering technicians, physical science technicians and electronic technicians. The record reveals that the Activity employs individuals who possess similar skills and perform similar or related job functions throughout the Activity as those possessed and performed by employees in the claimed unit working in the Feltman Research Laboratory. Thus, for example, the Activity employs physical science technicians, electronic technicians and clerical employees in several of its other directorates not covered by the petitions in the subject case.

The Comptroller and Programs Office, which contains all of the non-supervisory professional and nonprofessional employees in the unit sought by the AFGE in Case No. 32-1702, is divided into 5 major divisions. Several of these divisions are divided into branches which, in several instances, are subdivided into sections. The mission of the Comptroller and Programs Office encompasses the normal functions of comptrollership including finance and accounting, budgeting, programing, review and analysis of programs undertaken by the Activity. Currently there are approximately 143 employees in the claimed unit. Of that number, there are 132 nonprofessional employees performing work in approximately 15 different job classifications such as accounting technicians, payroll clerks, program analysts, management analysts, data control clerks, voucher examiners, statistical analysts, system specialists, secretaries, clerk typists and stenographers. There are also approximately 11 professional employees in this petitioned for unit, the majority of whom are accountants.

The record reveals that many of the job functions performed by employees in this proposed unit are performed by employees in other directorates and offices throughout the Activity. For example, there are more program analysts employed outside the claimed unit, working in other directorates and offices, than there are employed by the Comptroller and Programs Office. The Activity also employs voucher examiners, accounts maintenance clerks, management analysts, clerk typists, secretaries, stenographers and statistical assistants

^{2/} Apparently all parties agreed to adopt the Activity's classification of employees in the subject cases as to their professional or nonprofessional status. Since the record does not set forth sufficient facts in this respect, I will make no findings as to which employee classification constitute professional employees.

in other of its directorates not covered by the petition. The only job functions which are unique to the Comptroller and Programs Office are that of accounting technicians and payroll clerks. Further, the record reveals, that there are some 241 employees throughout the Activity who have registered in the career program which has been established on an Agency-wide basis for comptroller and related job functions. Of that number, there are only 57 employees who work in the Comptroller and Programs Office. The remaining 184 registered employees of the Activity are employed in other directorates or offices throughout the Activity.

The Industrial Services Directorate, which contains all the employees in the unit claimed by the AFGE in Case No. 32-1794, is divided into 5 major operational divisions. These 5 divisions are subdivided into 31 different sections. The primary mission of the Industrial Services Directorate is to determine the feasibility of manufacturing ordnance products developed by the research and development directorates within the Activity such as the Nuclear Engineering Directorate, the Ammunition Engineering Directorate and the Feltman Research Laboratory.

In performing its mission, the Industrial Services Directorate receives drawings and specifications of items which have been developed by the above-mentioned research and development directorates. The Industrial Services Directorate then makes limited production runs in an attempt to manufacture the particular item in the manner in which it was designed as well as attempting to meet the specifications established for the item as set forth by the designing directorate. Once the feasibility of manufacturing an ordnance item has been established by the Industrial Services Directorate, the item is then sent to organizations outside the Activity for quantity production. In order to keep its work force busy, the Industrial Services Directorate performs limited manufacturing of ordnance items.

The record discloses that there are approximately 1500 employees employed by the Industrial Services Directorate. Of that number, there are approximately 286 nonprofessional General Schedule employees covered by the petition working in 4 major job classification categories. These include 88 technicians working in various specialities, 34 clerk typists, 104 production comptrollers and 60 general administrative employees. The average grade assigned employees in the claimed unit is grade GS-9.

-5-

The evidence reveals that there are no job functions performed by the employees in the claimed unit which are unique solely to the Industrial Services Directorate at the Activity. For example, the production comptrollers employed by the Industrial Services Directorate plan the manufacturing work received from the research and development directorates including the scheduling of the job, requisitioning materials for the manufacturing process, and the establishment of a budget for the project. In this regard, the record reveals that there are other directorates within the Activity which employ individuals who possess similar skills and perform similar job functions as those performed by the production comptrollers working in the unit sought by the AFGE. 3/

The record revealed that for the calendar year of 1970, 33 employees transferred from the Industrial Services Directorate to other directorates and offices within the Activity. Additionally, 5 employees transferred into the Industrial Services Directorate from other directorates and offices of the Activity.

The employees in this proposed unit work in three different buildings and they are the exclusive occupants in one of these buildings. In a second building, the employees in the claimed unit work on the first floor and approximately 125 employees of the Activity's Nuclear Engineering Directorate work on the second floor; and in the third building there are approximately 10 employees in the claimed unit working with several hundred employees of the Ammunition Engineering Directorate. 4/

The Installation Support Office, which contains all of the non-supervisory nonprofessional General Schedule employees in the unit claimed by the AFGE in Case No. 32-1734, is divided into 5 major divisions. Each of these 5 divisions performs a distinct mission.

The mission of the Plant Engineering Division is to assist other directorates and offices within the Activity in the building of the Activity's physical plant, renovation of existing facilities, installation and repairing of equipment, operation of the Activity's power house, which generates steam and electricity, and the operation of the Activity's fire department. Additionally, this Division inspects the construction of new facilities within the Activity to determine the adequacy and completeness of the work performed.

3/ Although the number of production comptrollers employed by other directorates throughout the Activity was not specified in the record, the Director of the Industrial Services Directorate testified that "much of the planning force in other directorates contains people who have originally been in the Industrial Services Directorate."

4/ The employees in the claimed unit who work in the two buildings with employees of other directorates of the Activity are, however, supervised separately.

-6-

The Arsenal Facilities Equipment Division is entrusted with the preparation of the master plan for the development of the Activity. The master plan encompasses such details as what equipment and new facilities will be required to maintain the present state of the Activity, and what will be needed for the future growth of the Activity.

The Transportation Division is entrusted with the delivery of goods and equipment throughout the Activity. Also, this Division provides transportation for official visitors and employees, who are on official business, to and from the local airport.

The mission of the Supply Division is to stock all types of supplies, equipment and materials for use throughout the Activity and the Property Disposal Division is entrusted with the responsibility of disposing of excess materials and property of the Activity in accordance with Army regulations.

In addition to the missions performed by the above 5 divisions, the record reveals that the Installation Support Office performs other functions including the providing of housing for military personnel; the assisting of civilian employees in obtaining housing in the locality of the Activity; and the advising of the chief of the Installation Support Office on all matters pertaining to the Activity's equipment program.

Of the approximately 1005 WageBoard and General Schedule employees employed by the Installation Support Office, there are 198 nonprofessional General Schedule employees in the unit claimed by the AFGE, working in 29 different job classifications. These include 71 employees working in the job series which encompasses office clerical and administrative job functions; 29 employees in the job series performing engineering related functions such as engineering technicians, survey technicians and construction engineering technicians; 73 employees in the job series engaged in supply and allied job functions; and 14 employees in the job series engaged in the performance of transportation and allied job functions such as freight rating clerks, travel clerks and vehicle dispatchers. Additionally, there are 9 employees working in the job series performing jobs such as equipment specialist and construction maintenance technicians. The grade structure for the employees in the claimed unit ranges from GS-2 through GS-12.

The record reveals that certain employees within the claimed unit perform similar job functions as those performed by employees in other directorates in such jobs as clerical stenographic, budgeting analysis and work measurement data. The record also reveals that the construction engineering technicians in the petitioned for unit who are engaged in the estimating of the costs of repairing or construction of facilities throughout the Activity perform work similar to that performed by estimators in other directorates of the Activity.

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With respect to the transferring of employees, the record reveals that for calendar year 1970, 11 employees transferred into the Installation Support Office from other directorates and offices of the Activity. Additionally, 12 employees transferred out of the Installation Support Office to other directorates and offices of the Activity.

There are approximately 280 nonprofessional General Schedule employees working in the Quality Assurance Directorate in the unit claimed by the AFGE in Case No. 32-1798. Of the 280, there are 87 employees in the job series which encompasses office clerical administrative job functions; 38 employees who are classified engineering technicians; 107 employees working as ammunition inspectors; 29 employees working as calibration inspectors; 6 employees working as quality control specialists; and 14 employees working as industrial specialists. 5/

The ammunition and calibration inspectors employed by the Quality Assurance Directorate are qualified in the use of mechanical and electronic instruments which are utilized in the inspecting and testing of ordnance products. Ammunition inspectors monitor the quality assurance operations on behalf of the Defense Contract Administration Service to insure that ordnance products are being produced in conformity with the standards outlined in the procurement contract. Another group of ammunition inspectors travel to contractors' plants to test articles which are produced at the start of a production run and still another group handles quality assurance problems raised by either the Defense Contract Administration Service or the outside contractors in relation to the production of items. Approximately 30 percent of the ammunition inspector's time is spent in travel status.

The record reveals that there are other directorates and office throughout the Activity which employ individuals who possess similar skills and perform similar job functions as those possessed and performed by employees working in the Quality Assurance Directorate. 6/

The record reveals that for the first 11 months of calendar year 1970, 14 employees transferred from the Quality Assurance Directorate to other offices and directorates of the Activity. Additionally, 4 employees transferred from other directorates and offices of the Activity into Quality Assurance Directorate. The employees in the unit claimed by the AFGE in the Quality Assurance Directorate work in 11 different locations throughout the Activity. In 7 of the locations employees in the claimed unit are housed with employees from other directorates such as the Ammunition Engineering Directorate, the Nuclear Engineering Directorate and the Industrial Services Directorate.

5/ The record also reveals that approximately 60 employees working in the Quality Assurance Directorate are engaged in specification and design work. The record does not reveal the full extent of their duties.

6/ Thus, for example, each of the directorates involved in the subject cases employs individuals in the job series classification which encompasses clerical and administrative job skills. Further, the Feltman Research Laboratory and Industrial Services Directorate and Installation Support Office employ individuals in the job series which encompasses individuals possessing technician skills.

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Overall supervision of each of the directorates and offices involved in the subject cases is entrusted to a director or chief, who reports directly to the Activity's Commanding Officer. The record reveals that a director or chief possesses the authority to implement and modify policies established by the Activity's Civilian Personnel Office relative to the particular needs of his directorate or office. Implementation and modification of policy guidelines is accomplished by the directors and chiefs through documents known as "Standard Operating Procedures." The record reveals that "Standard Operating Procedures" cover a wide range of subjects such as holiday leave, employee conduct at closing time, overtime and compensatory time requests, use of hot plates, use of radios during working hours, sick leave usage, etc.

There is one central personnel office located within the Activity. Such matters as reductions in force, reassignment of employees, hiring, promotions and the ultimate resolution of grievances are handled by the Civilian Personnel Office. The Activity has also established a central payroll office which is administered by the Activity's Comptroller and Programs Office.

The Activity has established an area of consideration for promotional opportunities for grades GS-13 and above on an agency-wide basis. The area of consideration for grades GS-5 through GS-12 is on an Activity-wide basis. For grades GS-4 and below, the area of consideration appears to be confined to a directorate-wide basis.

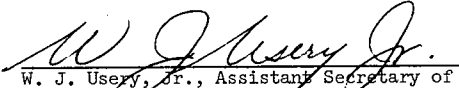
Based on the foregoing, I find that the units claimed by the AFGE do not constitute appropriate units within the meaning of Section 10 of Executive Order 11491. As noted above, the record demonstrates that many of the Activity's directorates, not covered by the subject petitions, employ individuals who possess similar skills and perform similar or closely related job functions as those performed by the employees in the units claimed by the AFGE. Also, the record reveals that the area of consideration for promotion for a majority of the employees in the petitioned for units is on an Activity-wide basis and is not confined solely to a directorate-wide basis. Further, the evidence demonstrates that during calendar year 1970 there were several instances of transfers between employees in the claimed units and other directorates and offices of the Activity. In these circumstances, and noting that the Activity has established centralized personnel policies and practices, I find that a basis does not exist for the establishment of units as sought by the AFGE, on

a directorate-wide basis. Such units, in my view, would create residual groups of unrepresented employees in other of the Activity's directorates who perform jobs which are similar to those performed by many of the employees in the petitioned for units. I conclude, therefore, that the units sought by the AFGE do not contain employees who have a clear and identifiable community of interest. Additionally, the establishment of such fragmented units would seriously hamper effective dealings and would not contribute to the promotion of efficient agency operations. Accordingly, I shall dismiss the petitions herein.

ORDER

IT IS HEREBY ORDERED that the petitions in Case Nos. 32-1829(RO), 32-1702(RO), 32-1794(RO), 32-1734(RO) and 32-1798(RO) be, and they hereby are dismissed.

Dated, Washington, D.C.
May 14, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

May 14, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES ARMY SCHOOL/TRAINING
CENTER, FORT McCLELLAN, ALABAMA
A/SLMR No. 42

This case involves a complaint filed by American Federation of Government Employees, AFL-CIO, Local 1941 (AFGE) against United States Army School/Training Center, Fort McClellan, Alabama (USASTC) alleging violations of Sections 19(a)(1), (5) and (6). The case was before the Assistant Secretary pursuant to Section 205.5(a) of the Regulations and the entire record consisted of the parties' bilateral stipulation of facts and accompanying exhibits.

The facts giving rise to the filing of the complaint involved letters written by a USASTC official to an employee and to the AFGE President. The AFGE had been processing a grievance in behalf of the employee over a reprimand letter. During a grievance meeting over the grievance a dispute had developed when the AFGE President made certain broad allegations about employee treatment. There was no resolution of the employee's grievance at this meeting.

A few weeks after this meeting the USASTC Commander wrote the employee a letter wherein he informed her that the reprimand letter that had been issued to her was being withdrawn, but that his decision "was in no way based on the information presented by your representative, ... in the (grievance meeting) ..." The letter thereafter described the AFGE President's remarks at the grievance meeting as relating mostly to "unsupported allegations of unsatisfactory working conditions." The letter to the employee concluded, "I believe that had you approached [management] soon after the incident and receipt of the reprimand with an attitude of contriteness, that all of the efforts and time involved in your grievance could have been avoided."

A copy of the Commanding Officer's letter to the employee was forwarded to the AFGE President. Accompanying that letter was a separate letter addressed directly to the AFGE President wherein the USASTC Commanding Officer informed the AFGE President that the removal of the reprimand was "not as a result of the (grievance) meeting, as I consider that your presentation in that meeting did more to jeopardize (the employee's) position than help it." The Commanding Officer's letter went on to criticize the conduct of the union representative at the grievance meeting and

demand that he either present a formal grievance with respect to the allegations concerning employee treatment or submit a written retraction. A copy of this letter was not sent to any employees or publicized in any manner by the USASTC.

All allegations of unfair labor practices were based on the contents of the two letters.

The complaint alleged that the contents of the letter to the employee violated the Order in that it hinted that she would be better advised to present future grievances directly to management without the participation of the exclusive representative. The Assistant Secretary noted that after a majority of employees in an appropriate unit have selected an exclusive representative that thereafter employees have a right, and agencies and activities the obligation, of processing grievances through the exclusive representative as provided for in a negotiated agreement. In this case the employee had elected to process her grievance in accordance with the provisions of the agreement, but the USASTC when notifying her that the reprimand was being withdrawn, also informed her that the same result could have been obtained had she dealt with management. The Assistant Secretary found that the USASTC had clearly urged the bypassing of the exclusive representative in the adjustment of any future grievances and at the same time implicitly suggested to the employee that there would be easier adjustment of grievances if she dealt with management. Such conduct was found to be a failure to consult, confer or negotiate in violation of Section 19(a)(6) of the Order and an implied promise of easier adjustment of grievances through direct bargaining with management which restrains or coerces employees in the exercise of their protected right to use the negotiated grievance procedure and their exclusive bargaining representative in violation of Section 19(a)(1) of the Order.

With respect to the letter from the USASTC Commander to the AFGE President, the complaint alleges that the USASTC had disparaged the ability and integrity of the AFGE President. The Assistant Secretary found no basis for concluding that these expressions of opinion made to an officer of a union in and of themselves constitute interference with employees' Section 1(a) rights. It was noted that the content of the letter contained no threats of penalty or reprisal which might have tended to impede his future activity as a union representative or any statement which might interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Order.

The letter to the AFGE President was also alleged in the complaint to be a violation of Section 19(a)(6) of the Order. With respect to the portion of this letter wherein the USASTC had informed the AFGE President that the action taken in the removing of the letter of reprimand was not a result of the grievance meeting, the Assistant Secretary found that it constituted a refusal and failure to confer, consult or negotiate in good faith in the processing of grievances and was therefore in violation of Section 19(a)(6) of the Order.

The Assistant Secretary dismissed the 19(a)(5) allegation based on the view that the events complained about related to the conduct of the bargaining relationship rather than to the according of appropriate recognition.

A/SLMR No. 42

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES ARMY SCHOOL/TRAINING CENTER
FORT McCLELLAN, ALABAMA

Respondent

and

Case No. 40-2190(CA)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1941

Complainant

DECISION AND ORDER

This matter is before the Assistant Secretary pursuant to Regional Administrator J. Y. Chennault's December 7, 1970 Order Transferring Case to the Assistant Secretary of Labor pursuant to Section 205.5(a) of the Regulations. Upon consideration of the entire record in the subject case, which includes the parties' bilateral stipulation of facts and accompanying exhibits,^{1/} I find as follows:

The parties' stipulation of facts reflects the following:

In a letter dated April 24,^{2/} the Complainant filed an unfair labor practice charge pursuant to Section 203.2 of the Rules and Regulations wherein it was contended that the Respondent had violated Executive Order 11491 by letters of March 23 to the Complainant's President and to one of Respondent's employees, Mrs. Annie H. Boatman. As an informal satisfactory resolution of the charge, the Complainant sought letters of apology. The Commanding Officer of the Respondent rejected the charge and stated his agreement to submitting the allegations to the Assistant Secretary of Labor for review by way of stipulation.

^{1/} The parties did not file briefs.

^{2/} Unless otherwise indicated, all dates occurred in 1970.

On June 25, a complaint was filed against the Respondent alleging violations of Sections 19(a)(1), (5) and (6) of Executive Order 11491 in that by the March 23 letters to the Complainant's President and to Mrs. Boatman the Respondent had, (1) disparaged the ability and integrity of a Complainant official; (2) hinted to a grieving employee that she would have been better advised to present her grievance directly to management without the participation of the Complainant; (3) refused to accord appropriate recognition to the Complainant; and (4) failed to have a meaningful meeting to resolve a grievance. The complaint was properly served on the Respondent.

In the parties' stipulation of facts it is requested that the Assistant Secretary of Labor render a decision with regard to the Respondent's above-mentioned letters to the Complainant's President and to employee Mrs. Annie Boatman.

The Complainant has exclusive recognition for a unit of the Respondent's employees. The parties executed a collective bargaining agreement on March 17, 1969 which had an expiration date of March 17, 1971.

On January 12, the Complainant's President filed a grievance with the Respondent, pursuant to the negotiated grievance procedure, on behalf of employee Mrs. Annie Boatman objecting to a written reprimand that had been given Mrs. Boatman on October 31, 1969. On March 2 a meeting was held in accordance with the negotiated grievance procedure. In attendance were Mrs. Boatman, the Complainant's President, acting as Mrs. Boatman's representative, and the Respondent's Deputy Commander.

During the course of the grievance meeting a dispute developed between the Complainant's President and the Deputy Commander when the former made certain allegations concerning employee treatment at the Activity. The Deputy Commander repeatedly asked the Complainant's President to either support the contention with details or withdraw the criticism. The grievance meeting ended without a resolution of either the grievance or the "side dispute" that had developed between the Complainant's President and the Deputy Commander.

By letter sent to Mrs. Boatman on March 23, the Respondent's Commanding Officer informed her that the written reprimand which had given rise to the above-described grievance was being withdrawn inasmuch as, "I feel that the reprimand has served its intended purpose and because of your otherwise good work record..." The letter concludes:

"My decision to remove the reprimand is in no way based on the information presented by your representative, ... in the meeting on 2 March 1970. As you will recall, the comments offered... /by him/ related mostly to the unsupported allegations of unsatisfactory working conditions at the Noble

Army Hospital. I believe that had you approached either /Chief, Nursing Service/...or me reasonably soon after the incident and receipt of the reprimand with an attitude of contriteness, that all of the efforts and time involved in your grievance could have been avoided."

Also on March 23, the Commanding Officer forwarded a copy of the above-mentioned letter to the Complainant's President and the Commanding Officer of the Noble Army Hospital. Accompanying the letter to Mrs. Boatman the Respondent, on March 23, sent a separate letter addressed directly to the Complainant's President which stated in part:

"The action that I am taking is not as a result of the (grievance) meeting, as I consider that your presentation in that meeting did more to jeopardize Mrs. Boatman's position than help it. My action is based upon an independent evaluation of her conduct on the date in question and her long time record of good service. It is my desire that there be open communication between supervisors and employees. I am personally interested in the welfare of all of my civilian employees and will listen to their complaints after they have made honest efforts to resolve any differences with their supervisors. I am also interested in and aware of your rights to represent employees either informally or formally."

This letter stated with respect to the Complainant President's conduct at the grievance meeting:

"...you /made/ broad allegations concerning the treatment of civilians assigned to Nursing Service in the hospital with particular emphasis on reluctance of civilians to work on the Surgical Ward, /you were/ requested either /to/ present a formal grievance signed by disgruntled civilians or submit a written retraction of your broad allegations. You have not, as yet, responded to /the/ request. As president of Lodge 1941, you have considerable responsibility to your members and to the office to which you have been elected. Included in your leadership role is your responsibility to confine your testimony in a formal grievance to the issue at hand rather than to rely upon vague, generalized statements. In short, you have to act responsibly. In the aforementioned grievance meeting you were more inclined to make open condemnation of management of the hospital than to confine your testimony to the simple issue in Mrs. Boatman's grievance.

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In the interest of performing my command responsibility relative to the morale and welfare of civilians at Noble Army Hospital, I must again ask that you comply with...the Deputy Commander's request. I shall expect your reply not later than 15 April 1970."

A copy of the above-quoted letter was not sent to Mrs. Boatman.

The grievance procedure set forth in the negotiated agreement between the parties provides that "The dispute or grievance shall first be taken up by the aggrieved employee, the steward if requested, and the appropriate supervisor..." If a grievance is not settled at the first step the employee must elect whether he wishes to process the grievance through the negotiated grievance procedure or the "Army Grievance Procedure." Mrs. Boatman's grievance was processed through the negotiated grievance procedure. Steps 2 and 3 of the negotiated grievance procedure provides for union participation in all phases of the processing.

All of the facts set forth above are derived from the parties' stipulation and accompanying exhibits.

The first allegation in the complaint alleges that the Respondent's disparaging of the ability and integrity of the Complainant's President violates Section 19(a)(1) of the Order. Section 19(a)(1) prohibits an agency or activity from engaging in conduct which would "interfere with, restrain or coerce" an employee in the exercise of the rights assured by the Executive Order, such rights being enunciated in Section 1(a) of the Order. The stipulation reveals that the complained of letter was sent directly by the Respondent to the Complainant's representative in the latter's capacity as President of the Local without any evidence of an intention to make the contents public. While the Respondent's observations on "leadership responsibility" may have been personally offensive to the Complainant's President, I find no basis for concluding that such expressions of opinion made to an officer of the Complainant in and of themselves constitute interference with employees' Section 1(a) rights or that the sending of the letter interfered with the Section 1(a) rights of employees. In the circumstances, I find that the content of the Respondent's letter to the Complainant's President, also an employee of the Activity, contains no explicit or implicit threats of penalty or reprisal which might have tended to impede his future activity as a union representative or any statement which might interfere with, restrain or coerce an employee in the exercise of rights assured by Section 1(a) of the Order. Accordingly, I find that the complaint, insofar as it alleges a violation of Section 19(a)(1) based on alleged disparagement of the ability and integrity of the Complainant's President, should be dismissed.

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It is also alleged in the complaint that the Respondent violated Sections 19(a)(1)(5) and (6) by hinting to an employee that she would be better advised to present her future grievances directly to management without the participation of the Complainant. The stipulation reveals that in its letter to Mrs. Boatman in addition to notifying her that the reprimand was being withdrawn, thereby removing the essential cause of the grievance, the Respondent's Commanding Officer stated that his decision was in no way based on the information presented by the Complainant's representative and informed her that the same result would have been obtained without the accompanying effort and time involved with the grievance had she dealt directly with management.

It is the stated policy of the Executive Order to maintain constructive and cooperative relationships between labor organizations and management officials. In furtherance of that goal the Order provides for the selection of a labor organization as the exclusive representative of a group of employees in an appropriate unit and Section 19(a)(6) makes it violative to "refuse to consult, confer, or negotiate with a labor organization" that has been so selected by the employees. The scope of this mandate is indicated by Section 10(e), which provides, in pertinent part,

The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.^{3/}

Once a bargaining representative has been designated by a majority of the employees in an appropriate unit, the obligation of the agency or activity to deal with such representative concerning grievances, personnel policies and practices and other matters affecting working conditions of all employees within the unit becomes exclusive and carries with it a correlative duty not to treat with others. To disregard the exclusive representative selected by a majority of employees and attempt to negotiate or deal with certain employees individually concerning grievances, personnel

^{3/} This requirement of the right of participation by a labor organization which is the exclusive representative is granted notwithstanding Section 7(d)(1) of the Order which states, "Recognition, in whatever form accorded, does not -- preclude an employee, regardless of whether he is a member of a labor organization, from bringing matters of personal concern to the attention of appropriate officials...or from choosing his own representative in a grievance or appellate action;"

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policies and practices, or other matters affecting general working conditions of employees in the unit violates the essential principles of exclusive recognition and undermines the exclusive representative's status under the Order. Employees have a right, and agencies and activities the obligation, to process grievances through an exclusive representative as provided for in a negotiated agreement.

In the subject case, Mrs. Boatman had elected to pursue her grievance through her exclusive representative in accordance with the provisions of the parties' agreement. Despite this selection, when the Respondent notified Mrs. Boatman that the reprimand was being withdrawn, it informed her that the same result could have been obtained had she dealt with management. The reference to avoiding the efforts and time involved in the grievance implies that it would be less burdensome to resolve grievances by dealing directly with management rather than through the exclusive representative. The Respondent therefore clearly urged the bypassing of the exclusive representative in the adjustment of any future grievance and at the same time implicitly suggested to the employee that there would be an easier adjustment of grievances if she dealt directly with management. Such a suggestion is inconsistent with the exclusive representation relationship described above and runs counter to the very practice and philosophy of exclusive recognition. Thus, the existence of an exclusive relationship requires, as a minimum, that an agency or activity refrain from inviting employees to deal directly with management as to grievances.

Accordingly, I find that the above-described conduct constitutes an attempt to bypass and undermine the status of the exclusive representative selected by the employees and therefore constitutes a failure to consult, confer or negotiate in violation of Section 19(a)(6) of the Order. I find further that by implicitly promising Mrs. Boatman more favorable and expeditious resolution of her grievances when the grievance procedure under the parties' agreement is bypassed in favor of direct discussions with management, the Respondent also interfered with the Section 1(a) rights of employees in violation of Section 19(a)(1) of the Order.

As noted above, the Respondent's March 23 letter to the Complainant's President stated, in part, that,

The action that I am taking is not as a result of the (grievance) meeting, as I consider that your presentation in that meeting did more to jeopardize Mrs. Boatman's position than help it.

I have concluded that in all the circumstances the contents of the letter to the Complainant's President does not constitute improper interference with employee rights in violation of Section 19(a)(1). However, I find that in conveying to the Complainant's representative, who was

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processing the grievance, the clear message that the adjustment of Mrs. Boatman's grievance was made strictly on the basis of unilateral considerations, and was not the result of good faith efforts by both the Complainant and the Respondent, the Respondent violated Section 19(a)(6) of the Order. In the negotiating of an agreement an agency or activity would not be viewed to be bargaining in good faith with the exclusive representative if it took the position that it would decide terms unilaterally rather than as a result of the bargaining process. Likewise, in the processing of grievances pursuant to a negotiated grievance procedure, good faith is not demonstrated where, as here, an activity informs the exclusive representative that a grievance has been decided not on the basis of the undertakings of the grievance procedure but on the activity's own personal judgments. This, in my view, constitutes a refusal to consult, confer or negotiate as required by the Executive Order.

With respect to the Section 19(a)(5) allegation contained in the complaint, that provision by its terms refers to matters related to the according of appropriate recognition rather than to the conduct of the bargaining relationship, as is involved herein. Accordingly, the Section 19(a)(5) allegation contained in the complaint should be dismissed.

CONCLUSION

By urging the bypassing of the exclusive representative and suggesting that grievances be processed directly with management and that the adjustment of the grievances might be achieved more easily if the exclusive representative is bypassed in favor of direct discussions with management, the Activity has violated Sections 19(a)(1) and (6) of Executive Order 11491.

The Activity further failed to consult, confer or negotiate with the exclusive representative in violation of Section 19(a)(6) by stating to the Complainant that a grievance has been adjusted on the basis of unilateral considerations apart from the undertakings of the negotiated grievance procedure.

THE REMEDY

Having found that the Respondent has engaged in certain conduct prohibited by Sections 19(a)(1) and (6) of Executive Order 11491, I shall order the Respondent to cease and desist therefrom and take specific affirmative action, as set forth below, designed to effectuate the policies of the Order.

ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25 (a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the United States Army School/Training

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Center, Fort McClellan, Alabama, shall:

1. Cease and desist from:

- (a) Soliciting employees represented by the American Federation of Government Employees, AFL-CIO, Local 1941 to deal directly with management with respect to the resolution of their grievances.
- (b) Promising employees benefits in order to restrain them from utilizing the negotiated grievance procedure and their exclusive representative.
- (c) Refusing to negotiate in good faith in the processing of grievances pursuant to the provisions of an agreement with the exclusive representative of the employees.
- (d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

- (a) Upon request, consult, confer or negotiate in good faith with American Federation of Government Employees, AFL-CIO, Local 1941, in the processing of grievances.
- (b) Post at its facility copies of the attached notice marked "Appendix." Copies of said notice on forms to be furnished by the Assistant Secretary of Labor for Labor-Management Relations shall be signed by the Commanding Officer of the Activity and shall be posted upon receipt thereof and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. The Activity Commanding Officer shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.
- (c) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within 10 days from the date of this Order as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint insofar as it alleges violations of Section 19(a)(5) and other violations of Section 19(a)(1) and (6) be, and it hereby is, dismissed.

Dated, Washington, D. C.
May 14, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

May 20, 1971

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491

LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

We hereby notify our employees that:

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ARMY AND AIR FORCE EXCHANGE SERVICE,
ABERDEEN-EDGEWOOD EXCHANGE
A/SLMR No. 43

The subject case, involving separate petitions filed by American Federation of Government Employees, AFL-CIO, Local 1799 and National Federation of Federal Employees, Local 178, presented the questions whether off-duty military personnel should be excluded as a class and whether the parties may be denied the opportunity to proceed to an election where they are in agreement as to the appropriateness of the unit.

The Assistant Secretary, in rejecting the contention of the parties seeking exclusion of off-duty military personnel, relied upon the policy stated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25 that exclusion of off-duty military personnel as a class was not warranted where they show a community of interest with their civilian counterparts. Such a community of interest was found to exist here, based upon common supervision, labor relations policies, general working conditions and the fact that both civilian and off-duty military employees are employed in similar occupational categories.

The Assistant Secretary also relied upon his decision in A/SLMR No. 25, with respect to the second question, noted above, that neither the Executive Order nor its implementing regulations require that an election must be held where there is no dispute between the parties as to the appropriateness of the unit sought.

Inasmuch as the inclusion of off-duty military employees rendered the showing of interest inadequate as to both petitions, the Assistant Secretary ordered that they be dismissed.

(Agency or Activity)

Dated _____ By _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor, whose address is: Room 300, 1371 Peachtree Street, N.E., Atlanta, Georgia 30390.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ARMY AND AIR FORCE EXCHANGE SERVICE,
ABERDEEN-EDGEWOOD EXCHANGE 1/

Activity

and

Case No. 46-1804 (RO)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 178

Petitioner

ARMY AND AIR FORCE EXCHANGE SERVICE,
ABERDEEN-EDGEWOOD EXCHANGE

Activity

and

Case No. 22-1870 (RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1799

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Eugene M. Levine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

1/ The name of the Activity appears as amended at the hearing.

2. In Case No. 22-1870, the American Federation of Government Employees, AFL-CIO, Local 1799, herein called AFGE, seeks an election in the following unit: All regular full-time and regular part-time hourly pay plan and commission pay plan civilian employees of the Aberdeen-Edgewood Exchange, but excluding all temporary full-time, temporary part-time, on-call, casual, military personnel employed during off-duty hours, managers, managerial employee trainees, personnel workers employed in other than a purely clerical capacity, supervisors, guards and watchmen. 2/

In Case No. 46-1804, the National Federation of Federal Employees, Local 178, herein called NFFE, seeks a unit of all nonsupervisory full-time employees, Post Exchange Service, Edgewood Arsenal. 3/

Each of the three parties agrees that off-duty military personnel should be excluded from the unit. The Activity and the AFGE contend that inasmuch as both of the participating parties at the hearing stipulated to an appropriate unit, the Hearing Officer should have permitted them to proceed to a consent election rather than continue with the hearing with respect to the off-duty military personnel. For the reasons cited in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, the Hearing Officer's ruling denying the parties' motion to adjourn the hearing is hereby affirmed and the contentions made by the parties are rejected.

The Army and Air Force Exchange Service (AAFES), a worldwide operation, provides merchandise and services to authorized patrons. It operates facilities at both the Aberdeen Proving Ground and at the Edgewood Arsenal which are situated approximately 11 miles apart. Both exchanges are under the control of a general manager who is assisted by a staff of managers, one for each of the retail, food, and services operations, as well as accounting, personnel, safety and security specialists. At Aberdeen there are 117 full-time civilian employees and 30 part-time off-duty military employees. At the Edgewood Arsenal there are 25 full-time employees, 10 part-time civilian employees and 6 part-time military personnel.

2/ The unit appears as amended at the hearing. Although not named as a specific inclusion, the AFGE seeks to include barbers whom it has represented under a separate exclusive recognition since 1965. There is no other labor relations history among the employees of the Aberdeen-Edgewood Exchange.

3/ The Activity and the AFGE moved that the petition by the NFFE be dismissed for its failure to appear and participate at the hearing as well as on grounds that the unit sought is inappropriate. NFFE, in its brief, states that it did not appear at the hearing because it does not object to the unit sought by the AFGE. In view of the disposition made herein with respect to the subject petitions, I find it unnecessary to rule on the motions to dismiss the NFFE's petition.

Off-Duty Military Personnel

Off-duty military personnel are employed in food and service station operations. They work under the direct supervision of the manager of the facility to which they are assigned and are required to wear the same uniforms as are required to be worn by civilians in service stations and food and retail operations.

Work schedules are established for both civilian employees and off-duty military personnel. The latter are expected to adhere to such schedules, although it is understood that their work may be interrupted by military obligations. The hours worked by off-duty military personnel range from at least 16 hours per week to not more than 35 hours per week. The 30 off-duty military personnel at Aberdeen work an average of 25 hours per week while the 17 part-time civilian employees at Aberdeen work approximately 30 hours per week.

Comparable recruitment programs are maintained for both civilians and off-duty military personnel and the same type of personnel files are maintained for both groups of employees.

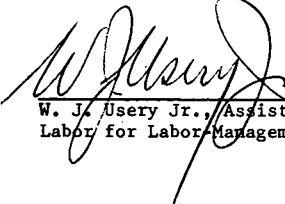
In Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, cited above, I found that the general exclusion of off-duty military employees as a class from employee bargaining units was not warranted where they share a community of interest with their civilian counterparts and where such exclusion would not promote effective dealings and efficiency of operations. The record in the subject cases shows a clear and identifiable community of interest exists between off-duty military personnel and civilian employees based upon their working in similar occupational categories and their being subject to the same supervision, labor relations policies and general working conditions.

Accordingly, I find that the general exclusion of off-duty military personnel from the unit agreed upon is unwarranted. In this respect, inasmuch as the evidence reveals that the inclusion of this group in the units sought by the AFGE and the NFFE renders their showings of interest inadequate, I shall dismiss both petitions in the subject cases.

ORDER

IT IS HEREBY ORDERED that the petitions in Cases Nos. 46-1804 (RO) and 22-1870 (RO) be, and they hereby are, dismissed.

Dated, Washington, D.C.
May 20, 1971



W. J. Usery Jr., Assistant Secretary of
Labor for Labor Management Relations

May 20, 1971

A/SLMR No. 44

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

ADJUTANT GENERAL DEPARTMENT, STATE
OF OHIO, AIR NATIONAL GUARD, et al
A/SLMR No. 44

ADJUTANT GENERAL DEPARTMENT, STATE OF
OHIO, AIR NATIONAL GUARD 1/

This case involved representation petitions filed by two labor organizations, American Federation of Government Employees, AFL-CIO, Ohio Council of Air National Guard Locals (AFGE) and National Association of Government Employees, Local R7-57 (NAGE). The AFGE sought a unit of all nonsupervisory General Schedule and Wage Board technicians in the Ohio Air National Guard in the State of Ohio. The NAGE sought a unit of all nonsupervisory technicians of the 179th Tactical Fighter Group, Ohio Air National Guard, Lahm Airport, Mansfield, Ohio. The questions presented were whether a single installation unit of technicians petitioned for by the NAGE or a state-wide unit as sought by the AFGE was appropriate for the purpose of exclusive recognition under Executive Order 11491.

Under all the circumstances, the Assistant Secretary found that the state-wide unit petitioned for by the AFGE was appropriate. In reaching this determination, the Assistant Secretary noted that all General Schedule and Wage Board nonsupervisory technicians within their respective classifications have the same basis for compensation; that their conditions of employment and fringe benefits are uniform throughout the State; that they have the same basic training; and that the State Adjutant General has centralized control and supervision over their personnel policies and programs.

The Assistant Secretary also found that the unit sought by the NAGE was not appropriate, and therefore ordered that the petition filed by the NAGE be dismissed. In this regard, he noted the uniform terms and conditions of employment among the technicians throughout the State as well as the other factors concerning the technicians' clear and identifiable community of interest on a State-wide basis. He also noted that the technicians in the unit sought by the NAGE will have an opportunity to vote in a more comprehensive unit on whether or not they desire union representation.

Activity

and

Case No. 53-2974

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, OHIO COUNCIL OF AIR NATIONAL GUARD
LOCALS

Petitioner

NATIONAL GUARD BUREAU, ADJUTANT
GENERAL DEPARTMENT, STATE OF OHIO,
179th TACTICAL FIGHTER GROUP

Activity

and

Case No. 53-2976

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,
LOCAL R7-57

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Kenneth M. Bazar. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

1/ The name of the Activity appears as amended at the hearing.

2. In Case No. 53-2974, Petitioner, American Federation of Government Employees, AFL-CIO, Ohio Council of Air National Guard Locals, herein called AFGE, seeks an election in a unit of all nonsupervisory General Schedule and Wage Board technicians in the Ohio Air National Guard in the State of Ohio. The Activity agrees with the AFGE that a state-wide unit is appropriate based on its view that employees in such a unit share a clear and identifiable community of interest and that its establishment would promote effective dealings and efficiency of operations. In Case No. 53-2976, Petitioner, National Association of Government Employees, Local R7-57, herein called NAGE, seeks an election in a unit of all non-supervisory technicians of the 179th Tactical Fighter Group, Ohio Air National Guard, Lahm Airport, Mansfield, Ohio.

The Adjutant General of the State of Ohio administers the technicians personnel program of the Activity on a state-wide basis within the regulations and guidelines established by the U.S. Air Force through the National Guard Bureau. The role of the approximately 850 technicians employed by the Activity is to carry on the day-to-day administration, supply and maintenance functions of the Activity in order that it be in the highest state of readiness in case of mobilization. These employees are employed within Tactical Fighter Groups which maintain a world-wide development capability, through the delivery of all types of tactical weapons compatible with the aircraft involved; and Air Refueling Group which provides in-flight refueling support to tactical forces; Mobile Communications Groups which install, operate and maintain mobile communications and control facilities; and a Tactical Control Flight which maintains the capability of controlling tactical air operations, including air defense and centralized air space control over a combat zone.

The employees involved in the subject cases are General Schedule and Wage Board technicians. Although General Schedule technicians engage in duties pertaining to administrative and supply functions and Wage Board technicians engage in duties pertaining to maintenance and repair work required on aircraft, both groups work together as a team with regard to the aircraft involved; they will occasionally interchange jobs on a temporary basis; on occasion Wage Board technicians assist General Schedule technicians; and all technicians assist each other at bases other than their own when emergencies arise. In their respective classifications, the technicians' jobs throughout the State are similar, their terms and conditions of employment are substantially the same, 2/ and the same fringe benefits apply to all.

2/ The immediate supervisors of the technicians handle their work schedules; attempt to solve grievances; approve annual and sick leave; and have day-to-day supervision over the work performance of the technicians.

With respect to the bargaining history prior to the filing of the subject petitions, the Activity accorded exclusive recognition to an AFGE local or locals under Executive Order 10988 at two installations of the Ohio Air National Guard. 3/ The record also indicates that the Activity granted recognition 4/ to the NAGE apparently covering employees employed in the maintenance-supply facility at the 179th Tactical Fighter Group, Mansfield, Ohio.

In all the circumstances, including the fact that within their respective Wage Board and General Schedule classifications, all the technicians throughout the State have the same basis for compensation; that there exists throughout the State uniform conditions of employment and fringe benefits; that the technicians receive the same basic training; that there is some degree of interchange among these employees, and that the Adjutant General exercises centralized control and supervision over their personnel policies and programs, I find that the technicians in the state-wide unit petitioned for by the AFGE have a clear and identifiable community of interest and that such a comprehensive unit will promote effective dealings and efficiency of agency operations. 5/ Accordingly, I find that the following unit is appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board technicians in the Ohio Air National Guard in the State of Ohio, excluding management officials, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors and guards as defined in the Order.

In view of the uniform terms and conditions of employment among the technicians throughout the State, and the other factors noted above with respect to these technicians' clear and identifiable community of interest in the State-wide unit, I find that the unit petitioned for by the NAGE covering a single installation within the State is not appropriate since the technicians in such a unit do not share a clear and identifiable community of interest apart from similarly situated technicians throughout the State and such a fragmented unit would not promote effective dealings and efficiency of agency operation. Moreover, the technicians in the

3/ At the hearing, all parties stipulated that the petitions raised a valid question concerning representation so as to warrant an election. There was no contention that the units represented on an exclusive basis should be excluded from the unit sought by the AFGE.

4/ The record does not reveal the type of recognition granted.

5/ See in this regard Pennsylvania National Guard, A/SLMR No. 9; Minnesota Army National Guard, A/SLMR No. 14; and Florida Air National Guard, A/SLMR No. 37.

unit sought by the NAGE will have an opportunity to vote in a more comprehensive unit on whether or not they desire union representation. Accordingly, since the unit sought by the NAGE is not appropriate, I shall order that its petition be dismissed.

May 20, 1971

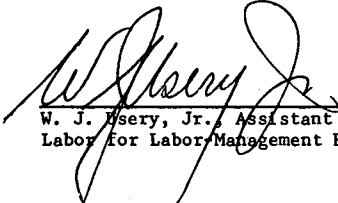
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 53-2976, be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by American Federation of Government Employees, AFL-CIO, Ohio Council of Air National Guard Locals. 6/

Dated, Washington, D.C.
May 20, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor Management Relations

6/ The evidence establishes that the NAGE's showing of interest is insufficient to treat it as an intervenor in Case No. 53-2974. Accordingly, the placement of its name on the ballot is not warranted.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

TREASURY DEPARTMENT, UNITED STATES MINT,
PHILADELPHIA, PENNSYLVANIA
A/SLMR No. 45

The subject case involving a representation petition filed by Philadelphia Naval Base Lodge No. 81, Fraternal Order of Police (FOP) raised the following questions:

1. Whether the agreement between the Activity and the American Federation of Government Employees, AFL-CIO Local 1023, (AFGE) would act as a bar to the processing of the petition in this matter?
2. Whether in the particular circumstances a separate unit of guards could be carved out of the existing unit?
3. Whether the unit sought by the FOP covering only U.S. Special Police is appropriate?
4. Whether the AFGE's name should be placed on the ballot in the event an election is directed in the unit of guards?

With respect to the first issue, the Assistant Secretary stated that in order for an agreement to constitute a bar to the processing of a petition it should contain a clearly enunciated fixed term or duration from which employees and labor organizations can ascertain, without the necessity of relying on other factors, the appropriate time for the filing of representation petitions. In the circumstances, the Assistant Secretary concluded that the agreement in the subject case did not contain a clearly enunciated fixed term or duration and therefore did not constitute a bar to the processing of the petition.

As to the second issue, the Assistant Secretary determined the subject case presented such unusual circumstances as to constitute an exception to the policy set forth in U.S. Naval Construction Battalion Center, A/SLMR No. 8. In that decision, the Assistant Secretary found that where an established, effective and fair collective bargaining relationship was in existence, a separate unit carved out of an existing unit will not be found to be appropriate except in unusual circumstances. However, noting Sections 10(b)(3) and 10(c) of the Order, the Assistant Secretary found that the severance of guards from a combined guard-nonguard unit would be consistent with the purposes and policies of the Executive Order.

With respect to the third issue, the Assistant Secretary found that in addition to the guards sought by the petition there are other employees of the Activity who are guards within the meaning of Section 2(d) of the Executive Order and who should be included in the claimed unit. He noted that although these other guards do not carry firearms and do not carry out regular patrols, they have certain security responsibilities including the operation of a metal detector through which all visitors and employees pass. Accordingly, the Assistant Secretary directed that an election be conducted in a unit of all of the Activity's guards. In directing the election, the Assistant Secretary determined that the AFGE, a labor organization which admits to membership employees other than guards, is precluded by the Order from being certified as the representative of guard employees and therefore, the placement of its name on the ballot is not warranted.

A/SLMR No. 45

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

TREASURY DEPARTMENT, UNITED STATES
MINT, PHILADELPHIA, PENNSYLVANIA 1/

Activity

and

Case No. 20-1872(RO)

PHILADELPHIA NAVAL BASE LODGE
No. 81, FRATERNAL ORDER OF POLICE 2/

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1023

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Terrence J. Martin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein,

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- 1/ The name of the Activity appears as amended at the hearing.
2/ The name of the Petitioner appears as amended at the hearing.

the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity. 3/

2. The Petitioner, a labor organization which the record establishes limits its membership to police officers, seeks an election in a unit of all uniformed U.S. Special Police employed by the United States Mint, Philadelphia, Pennsylvania, excluding any management official or supervisor, any employee engaged in Federal personnel work in other than a purely clerical capacity, and professional employees. 4/

The Activity and the Intervenor contend that the employees being sought are covered by a signed agreement which constitutes a bar to the processing of the petition in the subject case. The Activity and the Intervenor contend further that the unit sought is inappropriate because, in their view, the appropriate unit should consist of all nonsupervisory employees employed at the Activity. In addition, they assert that if a unit of guards is found to be appropriate, this unit should include all GS-3, GS-4 and GS-5 guards. 5/

3/ At the hearing, the American Federation of Government Employees, AFL-CIO, Local 1023, herein called the Intervenor, attempted to challenge the labor organization status of the Philadelphia Naval Base Lodge No. 81, Fraternal Order of Police, herein called the Petitioner, on the ground that the Petitioner discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age or national origin and, therefore, does not qualify as a labor organization under Section 2(e)(4) of Executive Order 11491. Under Section 202.2(g) of the Regulations of the Assistant Secretary, a challenge as to status of a labor organization must be filed with the appropriate Area Administrator within ten days after the initial date of posting of the notice of petition and such challenge should be supported with evidence. Further, no provision is made in the Regulations for filing a request for review of a Regional Administrator's action dismissing a challenge to status of a labor organization. See Report on a Ruling of the Assistant Secretary, No. 28. In these circumstances, I find the Intervenor's attempt at the hearing to challenge the Petitioner's status to be improper.

4/ The unit appears as amended at the hearing.

5/ The classification "uniformed U.S. Special Police," as specified in the petition in the subject case, is apparently not broad enough to include GS-3 and GS-4 guards. It should be noted that the evidence reveals that currently there are no GS-4 guards employed by the Activity.

The Bureau of the Mint consists of the Office of the Director and six field offices. There are two mints, one at Denver and one at Philadelphia. Also, there are the San Francisco and the New York Assay Offices, 6/ and bullion depositories at Fort Knox and West Point.

The Philadelphia Mint is composed of twelve divisions 7/ which are under the jurisdiction of the Office of the Superintendent. The functions of the Activity are: the manufacture of coins of the United States and of foreign governments; the manufacture of medals; the assaying of gold and silver; and the manufacture of coinage dies, collars and special equipment and supplies for its own use and for that of other Mint facilities.

The employees in the claimed unit are employed in the Security Division. This Division is responsible for the protection of the Activity's staff and property from unwarranted intrusion, trespass, theft, and other crimes and infractions of the peace on the premises, and from fire.

With respect to bargaining history prior to the filing of the petition in this case, in 1964, the Activity accorded exclusive recognition to the Intervenor for all nonsupervisory employees employed at the Activity. Negotiated agreements covering these employees were executed between the Activity and the Intervenor on September 15, 1965, March 23, 1967, and March 25, 1970.

As stated above, the Activity and the Intervenor contend that their current agreement executed on March 25, 1970 constitutes a bar to further proceedings in the subject case. In this regard, the evidence reveals that the parties' current agreement states as to its duration that, "The Agreement will be subject to review annually and any proposed changes must be announced in writing not less than sixty days prior to the anniversary date. Such notice must be acknowledged by the other party within ten days of receipt." 8/

In my view, in order for an agreement to constitute a bar to the processing of a petition it should contain a clearly enunciated fixed term or duration from which employees and labor organizations can ascertain, without the necessity of relying on other factors, the appropriate time for the filing of representation petitions. To permit agreements of unclear duration to be considered a bar to an election would, in effect, be granting protection to parties who have entered into ambiguous commitments and could result in the abridgement of the rights of employees under the Executive

6/ The San Francisco Assay Office also operates a Mint.

7/ The twelve divisions are: (1) Engraving; (2) Melting; (3) Coinage; (4) Building and Mechanical; (5) Security; (6) Assay; (7) Management Analysis; (8) Accounting Division; (9) Personnel; (10) Purchasing; (11) Numismatic Service; and (12) Cash and Deposits.

8/ This provision is found in Article VII of the parties' agreement. The evidence reveals that both prior agreements contained this identical language.

Order. The above quoted language contained in the parties' agreement does not, in my view, clearly enunciate a fixed term or duration. Thus, the agreement states that it will be subject to review annually but there is no clear indication as to whether such review would terminate the agreement or whether, in the absence of review, the agreement would remain in existence indefinitely. In these circumstances, I find that the agreement between the Activity and the Intervenor does not contain a clearly enunciated fixed term or duration and therefore does not constitute a bar to the processing of the petition in the subject case.

With respect to the question whether the claimed unit is appropriate for the purpose of exclusive recognition under Executive Order 11491, in United States Naval Construction Battalion Center, A/SLMR No. 8, I determined that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate, except in unusual circumstances. I find that the subject case presents such unusual circumstances. Thus, Sections 10(b)(3) and 10(c) of Executive Order 11491 clearly reflect the view that appropriate units should not be composed of mixtures of guards and nonguards and that nonguard labor organizations should not represent guards. ^{9/} In view of this clear mandate, I find that despite a history of representation in a combined unit, severance of the guard employees ^{10/} from the unit represented currently by the Intervenor is not precluded by my previously announced policy in U.S. Naval Construction Battalion Center, cited above.

As stated above, the record established that all guards are assigned to the Security Division. They wear guard uniforms; have numbered badges; greet visitors and require them to sign the visitors' register; answer the telephones; inspect packages to insure that no article enters or is removed without a detailed inspection; and prepare reports as required. They are under common supervision, and apparently the regular 8 hour shift applies to all. ^{11/}

The record further indicates that the Activity's GS-5 guards, who include all the employees covered by the petition and who are designated

^{9/} See also in this respect, the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service.

^{10/} Although, as discussed herein, there is a dispute as to whether certain employees in addition to those in the claimed unit are guards within the meaning of Section 2(d) of the Order, the parties agree and the record is clear that the uniformed U.S. Special Police covered by the petition are, in fact, guards.

^{11/} The Activity's position description as to guards indicates that there are similar duties and responsibilities as to all guards with varying degrees of such responsibilities and duties according to grade.

U.S. Special Police, carry firearms; have regular patrols; inspect incoming and out-going vehicles; patrol inside the coining area; guard the heat treatment area; and check and patrol fire exits. Also, they may detain any individual suspected of theft until Secret Service representatives arrive.

Although the record reveals that the Activity's GS-3 guards, who are not included in the claimed unit, do not carry firearms and apparently do not have regular patrols, the evidence establishes that these employees have certain security responsibilities with respect to the fire exit doors at the end of the Activity's visitors' gallery and the heat treatment area, and that they operate a metal detector through which all visitors and employees must pass. In the latter regard, the GS-3 guards have the authority to detain, until their immediate supervisor arrives, any person detected to be carrying unauthorized metal.

In all the circumstances and noting that all guards, irrespective of grade, work under common supervision and the fact that two of the Activity's GS-3 guards have completed a training course heretofore utilized only by the Activity's GS-5 U.S. Special Police, ^{12/} I find that the Activity's GS-3 guards are "guards" within the meaning of the Executive Order and that these employees and the Activity's U.S. Special Police share a clear and identifiable community of interest. I find also that such a unit will promote effective dealings and efficiency of agency operations.

Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

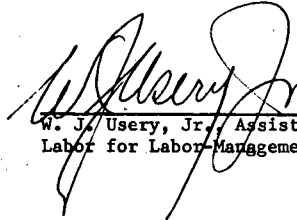
All U.S. Special Police and other nonsupervisory guards employed by the Treasury Department, United States Mint, Philadelphia, Pennsylvania, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors as defined in the Order.

^{12/} In this respect, the record indicates that it is contemplated by the Activity that all GS-3 guards will eventually be required to complete the required training course for U.S. Special Police.

May 27, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the Philadelphia Naval Base Lodge No. 81, Fraternal Order of Police. 13/

Dated, Washington, D.C.
May 20, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

13/ Section 10(c) of the Executive Order provides that, "an agency shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." It is undisputed that the American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization which "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." In these circumstances, since the AFGE is precluded by the Order from being certified as the representative of guard employees, the placement of its name on the ballot is not warranted.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION
A/SLMR No. 46

The Petitioner, Local 2842, American Federation of Government Employees, AFL-CIO (AFGE), sought to represent a unit of all nonsupervisory employees, including professional employees, in the Procurement Office of the Headquarters of the National Aeronautics and Space Administration (NASA), Washington, D.C. Alternatively, the AFGE requested a unit limited to the professional employees in the Procurement Office. NASA contested the appropriateness of the unit sought by the AFGE, contending that Procurement Office personnel did not possess a clear and identifiable community of interest apart from other Headquarters employees.

The AFGE contended that the Procurement Office personnel were functionally distinct from other Headquarters employees in that no one else in Headquarters is engaged in the specific functions of writing procurement regulations and giving "procurement" approval to contracts. The Assistant Secretary found that while it is correct that no one else in Headquarters does "exactly" what Procurement personnel do, the procurement function is part of a continuous, interrelated process wherein the Procurement Office employees and employees of several other Headquarters Offices interact with each other to accomplish the acquisition of materials and services for the NASA.

With respect to the question of whether Procurement Office personnel have a distinct community of interest from other Headquarters personnel, the Assistant Secretary noted that all Headquarters personnel have identical working conditions; there is interchange of personnel between Procurement and other Headquarters offices; Procurement personnel work in close proximity with other employees and have substantial on-job contact; there are no skills and training unique to Procurement personnel; and job classifications located in the Procurement Office are also to be found in other Headquarters offices.

In these circumstances, the Assistant Secretary concluded that the employees in the unit sought by the petition, or by the AFGE's alternative position, did not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operation. Accordingly, he ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Activity

Case No. 46-1847(RO)

and

LOCAL 2842, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO 1/

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officers Earl T. Hart and Dow E. Walker. The Hearing Officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by all the parties, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, Local 2842, American Federation of Government Employees, AFL-CIO, herein called AFGE, seeks an election in a unit of:

1/ The name of the Petitioner appears as amended at the hearing.

All nonsupervisory GS employees, including professional employees, 2/ in the Procurement Office 3/ (Code KD) of the National Aeronautics and Space Administration, Washington, D.C., EXCLUDING all supervisors, management executives, temporaries, guards, personnel engaged in Federal personnel work in other than a purely clerical capacity, and excluding employees in the Procurement Office who now or in the future would be represented by the American Federation of Technical Engineers, AFL-CIO, Local 9, in the unit for which that union has been certified as exclusive representative by the Department of Labor on May 26, 1970. 4/

The Activity contends that the unit petitioned for by the AFGE is not appropriate for the purpose of exclusive recognition pursuant to the requirements of Section 10(b) of the Executive Order.

The employees in the unit sought by the AFGE are employed in the Activity's Procurement Office, which is a portion of its Headquarters facility. The Headquarters of the Activity is involved in the administration and management of the Nation's space program. Organizationally the Headquarters is divided between "functional" and "programmatic" offices. Three of the functional offices, i.e., Administration, Industry Affairs 5/

2/ The Hearing Officer permitted the petition to be amended to reflect an "alternate position" of the AFGE so that, in the event the above-described unit is found to be inappropriate, it may seek an election among only professional employees in the Procurement Office. Generally, such statements of alternative positions should not take the form of amendments to petitions. However, in the circumstances, I have considered herein, and ruled on the appropriateness of the "alternative unit."

3/ The parties stipulated at the hearing that "Procurement Office" is the proper designation of that portion of the Activity in which the AFGE seeks an election.

4/ The AFGE's claimed unit appears as amended at the hearing.

5/ According to the Activity's brief, subsequent to the close of the hearing a Headquarters reorganization resulted in the Office of Industry Affairs becoming the Office of Industry Affairs and Technology Utilization. This reorganization had no apparent affect on the unit sought by the AFGE in the subject case.

and University Affairs, are grouped together to constitute the Office of Organization and Management. The Office of Industry Affairs is divided into four functional offices which are the Invention and Contribution Board, Procurement, Reliability and Quality Assurance, and Labor Relations.

The employee complement of the Procurement Office consists of 76 nonsupervisory employees, 56 of which are alleged to be professional. 6/ The Procurement Office has its own supervisory structure headed by the Director of Procurement who reports to the head of the Office of Industry Affairs. Procurement Office personnel are located in each of three adjacent buildings wherein the Headquarters is housed. While Procurement Office personnel do not share office space with other Headquarters personnel, the offices which house them are scattered throughout the three buildings and are interspersed with all of the other Headquarters offices. Offices containing Procurement personnel are not so designated by door signs or on the building directories, but the telephone directory has the Procurement code "KD" next to the name of all Procurement Office personnel. All of the approximately 1800 Headquarter's employees, including those in Procurement, are under a centralized Activity personnel office. Further, all Headquarter's personnel have the same hours and working conditions, including centralized hiring, payroll, travel, medical center privileges, credit union, and merit promotion system. Training is centralized throughout the Headquarters and when procurement related courses are offered they are open to and taken by persons other than those assigned to the Procurement Office.

The record reflects that the Procurement Office has a two-fold function. One is designated by the Activity as a "staff" function and concerns the establishing of the policies and procedures which govern the placement of contracts, and the subsequent continuous review of the procurement operations to determine that proper procedures are being followed. The second function, which the Activity designated as "operational," flows from the fact that the Director of the Procurement Office must approve contracts which are above a certain dollar amount. The Procurement Office is not directly involved in the letting of contracts for the acquisition of commodities or services. Rather, the procurement need is generated by the needs of one of the "program" offices. At the Headquarters, a contract to accomplish an acquisition for one of the "program" offices is

6/ Since the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc., to provide a basis for a finding of fact that persons in particular classifications are professional, I will make no findings as to which employee classifications constitute professional employees.

written, negotiated, and awarded and administered by the Headquarters Contracts Division, which is not part of the Procurement Office. The role of the Procurement Office throughout this process is to establish the regulations and procedures that govern the program office and Headquarters Contract Division. Thus, after negotiations are completed, the approval of the Director of the Procurement Office is required if the contract exceeds specified dollar guidelines. Finally, the Procurement Office continuously reviews the contract to make sure that procurement regulations are being followed.

The evidence discloses that in the performance of their duties Procurement Office personnel have both direct contact and functional contact with employees from other Headquarter's offices. Upon request, Procurement personnel actually participate in the negotiating of contracts. Attorneys assigned to the Office of the General Counsel give legal advice to the Procurement Office and some 90 to 95 percent of all regulations issued by the Procurement Office must be cleared through the General Counsel. Disputes on the application of Procurement-written regulations are heard by a Contract Adjustment Board. The Office of the Patent Counsel drafts regulations on patent matters that must be implemented by the Procurement Office. Reviews and audits similar to those performed by the Procurement Office are similarly performed by the Audit Division and the Audit Division issues regulations which are similar to those issued by Procurement. Moreover, it is not uncommon for Procurement personnel to be "co-located," i.e., temporarily assigned, to a program office for the purpose of giving procurement guidance. In such a situation, the Procurement employee being co-located is physically situated in the program office but remains under the supervision of the Procurement Office supervisory structure.

The nonclerical complement of the Procurement Office is made up of 5 job classifications, i.e., Procurement Analyst, Contract Specialist, Industry Property Specialist, Attorney and Statistician. Procurement Analyst is by far the largest classification in Procurement and there are no other persons with that specific classification in other Headquarter offices. However, there are Contract Specialists, Industry Property Specialists and Attorneys located in Headquarters offices other than Procurement. The 1 Statistician in Procurement is the only person so classified in Headquarters. In addition, there are 7 clerical classifications in Procurement and all 7 can be found throughout the Headquarters.

The evidence reveals that there is a considerable amount of transfer and interchange among Procurement employees and other Activity employees. Reductions in force during 1970 resulted in

5 persons from other Headquarters' offices moving into Procurement, 4 of whom were professionals. Apart from such situations, during 1969-70 a total of 21 Procurement vacancies were posted on a Headquarters-wide basis. Sixty-four applications were filed for those vacancies, 31 of which came from persons outside of Procurement. Those postings resulted in 9 persons, 8 clericals and 1 professional, moving into Procurement from other Activity offices. During the same period, 1 clerical and 3 professionals moved from Procurement into other Headquarters offices. In addition to these permanent transfers, the record reflects that it is common for Procurement clericals to be "loaned" to other offices.

The AFGE contends that the unit sought in its petition is "functionally distinct" from other Headquarters employees. It argues that the acquisition or procurement of commodities is a primary task of the Headquarters and that no one else in Headquarters performs the identical functions of Procurement Office personnel.

Section 10(b) of the Executive Order provides for the establishing of units on a "functional" basis when such units will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. While the AFGE's contention that no Activity employee does exactly what Procurement Office personnel do may be technically accurate, such fact, standing alone, does not necessarily render a unit appropriate. The acquisition of materials is a process requiring the interaction of a considerable number of departments. This interaction is not found merely on an organizational chart, but, rather, the record reveals that there is physical interaction between employees in the claimed unit and other Activity employees. Thus, the Procurement Office writes regulations used by other Headquarters offices in developing and letting procurement contracts and it thereafter reviews the contracts of other Headquarters offices for procedure conformance. I do not view this situation as constituting the type of clear demarcation of functions envisioned by Section 10(b) of the Order. ^{7/}

Functional distinctness cannot be viewed totally apart from other considerations of community of interest. In the instant case, the record clearly reflects that there is interchange between employees in Procurement and employees in other Headquarters offices. Procurement

^{7/} Compare The Veterans Administration Hospital, Lexington, Kentucky, A/SLMR No. 22 wherein I found appropriate a separate unit of registered nurses.

personnel work in close geographic proximity to other Headquarters personnel and have substantial job contact with others. All Headquarters personnel have common working conditions. Further, there are no skills and training that are limited solely to Procurement Office personnel and there is substantial overlapping of job classifications.

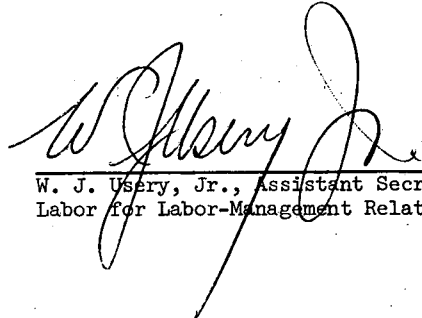
On the basis of the above, I find that the unit sought by the AFGE would constitute an artificial fragmentation of employees who lack a clear and identifiable community of interest apart from other Headquarters employees. Such a grouping could not be expected reasonably to promote effective dealings of efficiency of agency operation. ^{8/}

Based on the foregoing, I find that the unit sought by the AFGE does not constitute an appropriate unit for the purpose of exclusive recognition under Executive Order 11491.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 46-1847(RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
May 27, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{8/} The above stated facts and conclusions would be equally applicable to the AFGE's alternate unit of all professional employees in the Procurement Office.

June 1, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

CALIFORNIA ARMY NATIONAL GUARD
1ST BATTALION, 250TH ARTILLERY
AIR DEFENSE
A/SLMR No. 47

This case involves a complaint filed by National Association of Government Employees, Local R12-35 (IND) (NAGE) against California Army National Guard, 1st Battalion, 250th Artillery, Air Defense (National Guard) alleging violations of Sections 19(a)(1) and (2).

The events giving rise to the complaint occurred during NAGE's organizational efforts among the National Guard's full-time civilian technicians. During this period a unit employee distributed three pieces of anti-union campaign propaganda. The NAGE sought to prove that the National Guard was responsible for this employee's activity either by way of attributing to him supervisory status or by proving that his conduct had in some manner been authorized, encouraged or ratified by the National Guard.

The Assistant Secretary adopted the conclusions and recommendations of the Hearing Examiner that the unit employee did not possess any supervisory authority in his capacity as a civilian employee in the unit and that the National Guard had in no way assisted or encouraged the employee in the dissemination of the anti-union campaign propaganda.

All civilian technicians in the bargaining unit are required also to be members of the National Guard unit and when the unit has its "drills," these persons are in a "military status." The employee who distributed the anti-union campaign material holds a noncommissioned rank in the National Guard and during the hearing the parties had stipulated that in that military capacity the employee possessed "supervisory authority." The NAGE contended that the National Guard must be held responsible for the conduct of this employee because as a noncommissioned officer in the National Guard he could influence and coerce unit employees by exercising authority while functioning in his military status. The Assistant Secretary adopted the recommendation of the Hearing Examiner that the employee's military "supervisory" status, in this case, was not sufficient to make him part of agency management or a supervisor within the unit or to render the National Guard responsible for the employee's anti-union activities.

With respect to the 19(a)(2) allegation contained in the complaint the Assistant Secretary found that no evidence had been presented at the hearing which could constitute improper discrimination within the meaning of that Section of the Executive Order.

Accordingly, the Assistant Secretary dismissed the complaint in its entirety.

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UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

CALIFORNIA ARMY NATIONAL GUARD
1ST BATTALION, 250TH ARTILLERY
AIR DEFENSE

Respondent

and

Case No. 70-1532

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R12-35 (IND)

Complainant

DECISION AND ORDER

On March 23, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations in the above-entitled proceeding, finding that the Complainant had not met the burden of proof with respect to the 19(a)(1) and (2) allegations contained in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter, the Complainant filed exceptions with respect to certain specific recommendations contained in the Hearing Examiner's Report and Recommendations.^{1/}

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in the subject case, including the exceptions and statement of position filed by

^{1/} Respondent filed no exceptions to the Hearing Examiner's Report and Recommendations.

the Complainant, I hereby adopt the findings, conclusions^{2/} and recommendations of the Hearing Examiner.^{3/}

The Complainant did not except to the Hearing Examiner's conclusions and recommendations that unit employee William E. Dilena did not possess any supervisory authority in his capacity as a civilian employee in the unit and that the Respondent had in no way assisted or encouraged Dilena in the dissemination of anti-union campaign propaganda. After careful review of the evidence in this respect, I adopt these recommendations of the Hearing Examiner.

The exceptions filed by the Complainant relate solely to the conclusion and recommendation of the Hearing Examiner that the Respondent is not responsible for Dilena's conduct by virtue of the fact that in Dilena's "military capacity" as a noncommissioned officer in the National Guard he possesses certain "supervisory authority." In its exceptions, the Complainant contends that the Respondent must be held responsible for Dilena's conduct because as a noncommissioned officer in the National Guard he could effectively influence and coerce unit employees by exercising "supervisory" authority while functioning in his military status. After careful review of the evidence and the contentions made in the Complainant's exceptions, I adopt the recommendation of the Hearing Examiner that Dilena's military "supervisory" status, in this case, is not sufficient to make him part of agency management or a supervisor within the unit or render the Respondent responsible for his anti-union activities. Accordingly, there was no basis for finding that the Respondent violated Section 19(a)(1) of the Order.

^{2/} My findings with respect to the Hearing Examiner's conclusions on the lack of Respondent responsibility for Dilena's actions should not be construed as an adoption of the National Labor Relations Board precedent discussed in Footnote 11 of the Hearing Examiner's Report and Recommendations. Under all the circumstances, it was not considered necessary to reach the issue whether direct assistance by an agency or activity in the dissemination of campaign propaganda would violate the provisions of the Executive Order.

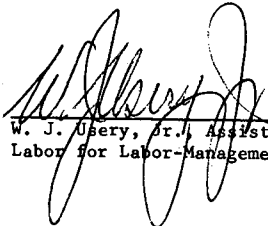
^{3/} The Hearing Examiner concluded that the reference in the complaint to the Respondent's investigation of the charge being a "whitewash" was apparently meant to be an additional unfair labor practice allegation. The Hearing Examiner concluded that in view of the findings of no violation, the investigation was reasonable. I do not view the caliber of the investigation of an unfair labor practice charge to be a matter covered by the scope of the Section 19(a) prohibitions and, in the instant case, such a contention is not material to the issues before me. Accordingly, I make no findings as to whether the Respondent's investigation was reasonable.

The Complainant did not except to the recommendation of the Hearing Examiner that no evidence was presented which could conceivably constitute discrimination in regard to hiring, tenure, promotion, or other conditions of employment. After careful review of the evidence, I adopt the finding of the Hearing Examiner that in the circumstances, there is no basis for finding a violation of Section 19(a)(2) of the Executive Order.

ORDER

Pursuant to Section 6(a)(4) of Executive Order 11491 and Section 203.25(b) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the complaint be, and it hereby is, dismissed.

Dated, Washington, D. C.
June 1, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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

CALIFORNIA ARMY NATIONAL GUARD
1ST BATTALION, 250TH ARTILLERY
AIR DEFENSE

Respondent

CASE NO. 70-1532

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R12-35 (IND)

Complainant

Willard A. Shank, Assistant Attorney
General, State of California,
Sacramento, California, for the Respondent.
Richard H. Castle, Jr., Esq., North Hollywood,
California, for the Complainant.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding was heard at San Francisco, California, on January 26 and 27, 1971. It arises pursuant to a Notice of Hearing issued on January 15, 1971, by the Regional Administrator for the San Francisco Region under the authority of Executive Order 11491 (herein called the Order) and in accordance with Section 203.8 of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations (herein referred to as the Assistant Secretary). The proceeding was initiated by a complaint filed by the complainant on April 1, 1970, pursuant to Section 203.3 of the Rules and Regulations of the Assistant Secretary alleging violations of Section 19 of the

Order. Basically, the complaint involves the activity of Master Sergeant William E. Dilena in disseminating three pieces of anti-union campaign literature during an organizational campaign which is alleged to be violative of Section 19, subsections (a)(1) and (a)(2) of the Order.

At the hearing both parties were represented by counsel, who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, submit oral argument and file briefs. 1/ Upon the entire record in this matter, from observation of the witnesses, the Hearing Examiner makes the following:

Findings and Conclusions

1. The Issues

Section 19(a)(1) of the Order makes it an unfair labor practice for Agency Management to interfere with, restrain or coerce an employee in the exercise of the rights assured by the Order. In making a

1/ With respect to the filing of briefs with the Hearing Examiner, the date for receipt of such briefs was set at the hearing for February 26, 1971. A timely request for extension of time to file was received from Complainant, which request was concurred in by Respondent, and the time for receipt of briefs was extended to March 10, 1971. On March 10, 1971, the date the briefs were due, the Hearing Examiner received a phone call from Complainant's counsel seeking a further short extension and in which he offered to obtain approval from Respondent. The Hearing Examiner denied the request as being untimely under Section 203.21 of the Rules and Regulations of the Assistant Secretary. Respondent's brief was received by the Hearing Examiner on March 12, 1971, two days late. The postmark on the envelope containing Respondent's brief, as well as Respondent's service sheet, shows that the brief was mailed by regular mail on March 9, 1971, in Sacramento, California, which would constitute too late a mailing to provide for the receipt of the brief in Washington, D. C., by close of business March 10, 1971. Accordingly, the Hearing Examiner is not considering Respondent's brief. See Secs. 203.21 and 205.1 of the Rules and Regulations.

determination whether Agency Management 2/ has violated Section 19(a)(1) the issue as to whether Dilena was acting as an agent of Agency Management when he engaged in the activity complained of must be resolved. In resolving that issue, it must be ascertained whether Dilena is a supervisor within the meaning of the Order, 3/ and if Dilena is not a supervisor whether there is evidence of any actions by Agency Management which otherwise makes the Respondent responsible for Dilena's activity. If it were found that the Respondent is responsible for Dilena's activity, another issue would arise as to whether such activity by Agency Management is permissible under the Order. However, for reasons appearing herein, the Hearing Examiner finds it unnecessary to resolve this last issue. 4/

2/ Sec. 2(f) of the Order defines "Agency management" as meaning "the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order."

3/ Section 2(c) of the Order defines a supervisor as follows: "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

4/ Although the complaint also alleges a violation of Section 19 (a)(2), no evidence was presented which could conceivably constitute discrimination in regard to hiring, tenure, promotion, or other conditions of employment, and in due course the Hearing Examiner will make an appropriate recommendation with respect to that allegation.

2. Background

(a) The Respondent's Mission and Mode of Operation

The 1st Battalion, 250th Artillery, of the California National Guard is made up of a Headquarters Battery, and Batteries "A" and "B." Each of the Batteries are located at different geographic locations. The Battalion is one of several units that make up the Army Air Defense Command (RADCOM). There are a total of 12 States with National Guard Units that constitute this task organization. The 1st Battalion's mission is to furnish air defense support to the North American Air Defense (NORAD) Nike Hercules system. The total Battalion, in the event of an emergency, can be instantly "federalized."

All of the personnel of the 1st Battalion are members of the California National Guard. Forty percent are "part-time warriors" who function on military drill nights and other military training sessions, but 60 percent are employed as full-time technicians (since the mission of the Respondent requires full-time duty), thus having dual functions as national guardsmen and as civilian employees. As far as possible an attempt is made by the Respondent to make the civilian function of an employee coincide with his military function, but this is not always possible. Also, it is significant that approximately 80 percent of the employees in the appropriate unit discussed below have noncommissioned officer ranks in the National Guard.

(b) Certification of the Complainant

A Certification of Representative was issued to the Complainant on June 25, 1970, by the Area Administrator, San Francisco Area after the Complainant had won an election conducted under the Direction of the Assistant Secretary pursuant to the Order on June 20, 1970. The appropriate unit is described as "All non-supervisory employees of the 1st Battalion, 250th Artillery, California National Guard. Excluded from the unit, in accord with Section 10(b) of E. O. 11491, are management officials, supervisors, guards, employees engaged in Federal personnel work in other than a purely clerical capacity, and professional employees." The unit consists of approximately 85 employees each in Batteries "A" and "B" and 15 employees in Headquarters Battery. As noted above, all of the employees in the unit

also have military status as members of the National Guard. (Prior to the election and certification and the inception of the Order, the Complainant was granted formal recognition under the previous Executive Order 10988.)

No agreement has yet been negotiated, and there is no contention that there is an "established grievance or appeals procedure" within the meaning of Section 19(d) of the Order. 5/

3. Issue as to Supervisory Status of Master Sergeant William E. Dilena

The determination as to whether Dilena is a supervisor is of basic importance, since if he is a supervisor within the meaning of Section 2(c) of the Order, the Respondent would be responsible for Dilena's acts. This follows in that the Order specifically provides in Section 10(b)(2) that a unit shall not be established if it includes any supervisor, and the reasons for the policy of so excluding supervisors is well stated in the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service dated August, 1969, at paragraph C. titled, "Status of Supervisors":

We view supervisors as part of management, responsible for participating in and contributing to the formulation of agency policies and procedures and contributing to the negotiation of agreements with employees. Supervisors should be responsible for representing management in the administration of agency policy and labor-management agreements, including negotiated grievance systems, and for expression of management viewpoints in daily communication with employees. In short, they should be and are part of agency management and should be integrated fully in that management.

5/ cf. Report on a Decision of the Assistant Secretary pursuant to Section 6 of Executive Order 11491, Report Number 25, March 1, 1971.

Thus, if supervisors are considered part of Agency Management and are responsible for expression of management viewpoints in daily communication with employees, Agency Management would generally be responsible for expressions by supervisors to employees, written or oral, especially expressions relating to union matters.

In discussing Dilena's status, it must be remembered that he wears two hats, one "military" and the other "civilian." In the military he is a Master Sergeant assigned to Headquarters Battery. ^{6/} The Respondent admits that all noncommissioned officers are supervisors in the military, and that Dilena as a noncommissioned officer is a supervisor in the military. The same would be true of approximately 80 percent of the employees in the unit who are non-commissioned officers in the military. Dilena is currently the First Sergeant of Headquarters Battery. At the times material herein when the distribution of literature in the first two or three months of 1970 occurred, Dilena was "Operations Sergeant" at Headquarters. Army Regulation 611-201 (Complainant's Exhibit "9") describes the duties of a Senior Sergeant such as Dilena as follows:

Serves as principal noncommissioned officer of an air defense artillery battery, battalion, or higher unit. Assists commander and staff officers in continuous appraisal of air defense artillery operations, training, and intelligence situations. Supervises activities in AADCP to include tests of communications facilities and preparation and maintenance of status board and situation map. Assists in establishment and operation of fire direction center to facilitate use of air defense artillery in surface role. Supervises subordinate noncommissioned officers in matters of administration and implementation of command policies. Advises and assists commanding officer and staff on matters relative to troop discipline, training, and welfare. As first sergeant, assists commander in accomplishing and coordinating operation of battery mess and supply, and supervises completion of battery administrative functions. As sergeant major, conducts first sergeant's or sergeant major's call to disseminate orders and items of information.

^{6/} Dilena was in the regular army for 8 years prior to 1960 and in 1969 he joined the National Guard.

The same regulation describes an "Operations Sergeant," enlisted Grade 8, "As principal NCO in air defense artillery battalion, command post headquarters section (missile Monitor/Missile mentor) or comparable unit."

In his civilian capacity, Dilena is employed as a Fire Control Mechanic, WG-12, at Headquarters and has been so employed since his employment approximately four years ago. Although there is some evidence that he was classified for a period of time as a Chief Fire Control Mechanic, he never performed that function. Dilena was included in the appropriate unit, and voted in the election without challenge. As noted above, approximately 80 percent of the unit employees are in the same position with respect to being a noncommissioned officer in military status, and a rank and file employee in civilian status.

The record indicates that as a civilian Dilena has no employees reporting to him. With respect to his job description, Complainant's Exhibit "8," Dilena testified that only paragraph 6 of that description is applicable to him. Paragraph 6 reads, "At group/battalion level, incumbent assists the Guided Missile Fire Control assistant in his duties. Performs a secondary function by assisting the security officer in all phases of security activities. Maintains a central classified file. Responsible to the security control officer for the handling and safeguarding of classified documents, including receipt, dispatch, logging, destruction, and accounting. Makes frequent inspections of the headquarters and batteries to insure compliance with security control. Coordinates scheduling of visiting individuals or groups with batteries, and makes reports on foreign national's visits."

Dilena describes his day to day duties as keeping the stock of publications, such as training manuals, up to date, filing office records, and to act as disinterested agent under the supervision of the Security Officer in the destruction (a pulverizing process) of classified materiel. He also on a periodic basis assists the Operations Officer in training of personnel, which assistance consists principally of furnishing the proper training aids and seeing that schedules are followed. Other employees in the appropriate unit, such as Sergeant Thomas Gentile (who also acts as union steward) assists in training.

The Complainant places great stress on Dilena's additional civilian function as a member of the ORE (Operation Readiness Evaluation Team) in urging that he is a supervisor. This team, approximately

once a month, evaluates a firing crew. The team may consist of any of the personnel in the operations section at Headquarters, and the personnel may be rotated. The team, which is headed by the missile supervisor, Major Jones, also includes the fire control assistant, Warrant Officer Orloff, assembly technician, Master Sgt. William Dilena, operations sergeant, Sgt. Thomas Gentile, radar operator, Specialist 5 or Sgt. Madison. Most of the members of the team were included in the appropriate unit, and as noted above Sgt. Gentile is a union steward. Dilena, using manuals and a check list, checks an operator for errors. He tells the operator of his errors and reports the errors to the chief evaluator, Major Jones. It is then the function of the Battalion Commander to make the necessary corrections and adjustments. Other than noting errors and reporting them, Dilena has no authority over the operator and has no function with respect to preparing career appraisals or efficiency ratings.

Based on the above, it is clear that as a civilian Dilena has no authority over any of the other civilian employees and meets none of the supervisory criteria outlined in Section 2(c) of the Order. With respect to Dilena's position on the ORE team which appears to be the closest to a supervisory position, no independent judgment is involved and Dilena follows routine check lists and manuals. Moreover this function occurs only approximately once a month. The Hearing Examiner therefore concludes that he is not a supervisor within the meaning of the Order. Further, if he were considered a supervisor for civilian purposes because of his military functions, approximately 80 percent of the unit would also be supervisors.

4. Dilena's Activities Against the Complainant

As noted above, basically the Complainant alleges that the dissemination of three pieces of anti-union literature by Dilena was violative of the Order. Complainant's counsel stated on the record that the Complainant does not question the content of the literature nor is it concerned with the degree of inflammatory remarks. 7/

7/ In fact, it is noted that subsequent to the dissemination of the literature in question the Complainant was successful in winning the election referred to above.

(a) Dilena's Meeting with Lt. Col. Liberato

Lt. Col. Angelo C. Liberato is Battalion Commander of the 1st Missile Battalion, 250th Artillery. As such he directs and supervises the activities of over 300 National Guardsmen of which approximately 200 are also full-time technicians.

According to Col. Liberato, one night after duty hours, Dilena visited him at his office and showed him a draft of a letter addressed to the employees. Dilena wanted to know if there was anything wrong with sending the letter to other technicians eligible for membership in the union. Liberato told Dilena that he had the right of free speech so long as it did not slur the National Guard, and that under Executive Order 10988 he could not give him any opinion as to contents, or as to what to do. As for mode of distribution, Dilena indicated to Liberato that he might distribute the letter at a union meeting.

Col. Liberato was unclear as to the date of this meeting and indicated that the meeting was held while the previous Executive Order, 10988, was in effect. However, based on Dilena's testimony, and that of Col. Keltner, who was assigned by the California Army National Guard to investigate the Complainant's charge of unfair labor practices, this meeting probably occurred in January, 1970.

According to Dilena, he visited Col. Liberato in January, 1970, in order to ascertain from his supervisor what his rights were to state his feelings under the Executive Order, and he showed Liberato a draft of his first piece of literature. In substance Liberato advised Dilena that under the Executive Order Dilena had the right to join or not join; as a free American Dilena had a right to say what he wanted, and as an eligible employee Dilena had the right to either go along or not go along with the labor organization. Dilena further testified that Liberato gave no advice as to distribution of the letter.

(b) Preparation of First Piece of Literature

Dilena drafted all of his literature with no assistance from anybody. The first piece of literature, a 2-page document, as distributed, follows:

N A G E

IN THE PAST, NOT MUCH HAS BEEN SAID ABOUT UNION ACTIVITIES ON OUR SITES. I FEEL IT IS NOW TIME TO JUMP OFF THE FENCE AND LAND ON ONE SIDE OR THE OTHER. I'VE WAITED A LONG TIME TO GIVE MY VIEWS AND I'VE CONSIDERED THE PROS AND

CONS OF ANY UNION. SO FAR I HAVE NOT BEEN CONVINCED THAT THE UNION HAS DONE ANYTHING FOR THE TECHNICIAN NOR DO I FEEL THEY WILL BE ABLE TO DO ANYTHING OF IMPORT IN THE FUTURE. RECENTLY, I WAS INVITED TO ATTEND A MEETING OF YOUR LOCAL. THERE WERE A FEW GOOD IDEAS BUT I THINK THE WHOLE IDEA OF WHY THE MEMBERS WERE THERE WAS MISSED. THE ONLY REASON FOR THE UNION EXISTANCE[sic] THAT I CAN SEE OR THAT I HEAR IS THAT THE TECHNICIAN WANTS A VOICE. I THINK THE MEMBERSHIP KNOWS AS WELL AS I, THAT YOU DO HAVE A VOICE, WITH OR WITHOUT A NAMED UNION. THERE HAS BEEN VERY LITTLE ATTEMPT BY THE TECHNICIAN TO VOICE HIS DISSATISFACTION AND BECAUSE HE IS DISAPPOINTED AT THE FIRST STEP, HE FAILS TO CARRY THE GRIEVANCE TO SATISFACTION. THE TECHNICIAN WHO IS DISSATISFIED IS QUICK TO BLAME MANAGEMENT FOR NOT LISTENING TO WORDS THAT ARE NEVER SPOKEN. WITH A LITTLE INTESTINAL FORTITUDE, OR GUTS IN PLAIN LANGUAGE, THERE WOULD BE NO NEED FOR SOMEONE TO DO YOUR TALKING. YOU HAVE A RESPONSIBILITY TO YOURSELVES SO WHY NOT DO THE WORK YOURSELVES. YOU, AS TECHNICIANS, HAVE ALWAYS BEEN A UNION. I FEEL YOU HAVE REALLY LET YOURSELVES DOWN.

I CAN'T HELP FEELING THAT YOU ARE GOING TO BE RECEIVING LESS THAN YOU DESERVE. WITH AN OVERWHELMING MAJORITY OF VOTES IN THE LOS ANGELES AREA, I DON'T SEE WHERE YOU ARE GETTING FAIR REPRESENTATION. YOUR PROBLEMS ARE YOURS AND THEIRS ARE THEIRS. YOUR PROBLEMS STEM FROM POLICIES OF YOUR MANAGEMENT AND I DON'T SEE WHY YOUR [sic] SHOULD ACCEPT THEIR SOLUTIONS. I HAVE ASKED FOR A CLEARER PICTURE OF THE POWER STRUCTURE OF N-A-G-E BUT SO FAR, I HAVEN'T BEEN TOLD WHAT I WANT TO HEAR. THAT IS, A FAIR AND EQUAL VOICE FOR OUR UNITS. THIS IS ONE OF THE REASONS I DECLINE MEMBERSHIP AND BEING ABLE TO SPEAK TO YOU PROVES I CAN BE HEARD WHEN I WANT TO BE AND IF I WANT TO BE. I DON'T NEED ANYONE CONFUSING MY WORDS OR THOUGHTS. I HAVE MANY FRIENDS AMONG YOU WHO ARE MEMBERS OF N-A-G-E AND THAT IS YOUR PRIVILEGE. I ONLY WANT TO PRESENT MY VIEWS IN THE HOPES THAT I CAN PUT THINGS IN ANOTHER PERSPECTIVE AND GIVE ALL TECHNICIANS SOMETHING TO THINK ABOUT [sic]

ALL I HEAR FROM N-A-G-E IS "UNFAIR" - "DIRTY POOL" - WE'RE NOT ACCUSING, WE'RE ONLY INVESTIGATING". THESE ARE ALL GENERAL TERMS THAT WOULD NOT BE USED IF EVERY BODY [sic] IN THE SUPERVISORY POSITIONS WOULD COME OUT IN SUPPORT OF THAT UNION. OF COURSE, THEY WANT THE SUPERVISORS TO REMAIN IN A NEUTRAL POSITION, DON'T THEY???? I HAVE A HOT FLASH FOR YOUR PAYING MEMBERSHIP. YOU'RE NOT GOING TO GET A DAMN BIT MORE THAN A NON MEMBER SO WHO IS PAYING FOR WHAT?? IF ANY ONE IN N-A-G-E, EITHER LOCALLY OR NATIONALLY, CAN SHOW ME WHERE THE UNION MEMBER HAS ANY MORE THAN THE NON MEMBER, I'D BE MORE THAN HAPPY TO PRINT IT AS A REBUTTAL TO THIS ARTICLE. AS FAR AS I CAN SEE, UNION MEMBERS ARE PAYING SOMEONE TO FIGHT FOR PAY RAISES WE'VE NEVER HAD TO ASK FOR, PER DIEM RATES THAT HAVE ALREADY BEEN APPROVED AND OF WHICH ONLY ABOUT 1 IN 40 WILL BE ABLE TO USE AND CLOTHES YOU GET TO PAY FOR YOURSELVES. THERE MUST BE SOMETHING ABOUT THE UNIFORM THE UNION IS ASHAMED OF.

I'M QUITE SURE N-A-G-E CANNOT GUARANTEE THE MEMBERSHIP FULL TIME EMPLOYMENT. IF D O D SAYS CLOSE, WE CLOSE. I WONDER IF THEY MAY BE INTIMIDATED BY UNION ACTIVITIES ON OUR SITES. TO BE MORE TO THE POINT, I THINK OUR POSSIBILITIES OF EXPANSION IN THE AIR DEFENSE PROGRAM HAS BEEN NULLIFIED BY THE PROBLEMS CREATED BY UNIONS. WHO NEEDS ANY MORE PROBLEMS. ARADCOM IS NOT IN THE COLLECTIVE BARGAINING SYSTEM. IF WE GET TO BE TOO MUCH OF A PROBLEM IT'S GOING TO BE SO LONG CHARLIE BROWN. N-A-G-E COULDN'T STOP IT IN OXFORD, THEY COULDN'T STOP IT IN FELICITY, THEY COULDN'T STOP IT IN KANSAS CITY, OR IN HAWAII, THEY COULDN'T STOP IT IN BUFFALO OR CINCINNATI AND FURTHERMORE, I'M NOT CONVINCED THEY EVEN TRIED. IT HAS ALWAYS BEEN OUR POLICY TO ABSORB AS MANY OF THE DISPLACED TECHNICIANS AS POSSIBLE. IT IS NOT AN ORIGINAL IDEA OF N-A-G-E.

THERE IS A UNION AMONG US SO I HOPE YOU WILL USE IT WITH DISCRETION AND I HOPE YOU WILL USE A LITTLE FORSIGHT [sic] IN WHAT

YOU WANT. FOR STARTERS, I'D LIKE TO SEE US EXPAND IN THIS PROGRAM. I'D LIKE TO SEE MORE JOB SECURITY, I'D LIKE TO SEE MORE FUNDS FOR SCHOOLS IN A TECHNICIAN STATUS. I'LL BE WORRYING ABOUT MY COFFEE BREAKS WHEN THEY TAKE THEM AWAY. I'LL BE ASKING FOR ALL THE PRIVILEGES [sic] I NOW HAVE, WHEN THEY NO LONGER EXIST. THE POINT IS, I'LL BE ASKING FOR ME. IT REALLY DOESN'T COST YOU A DIME TO PRESENT YOUR GRIEVANCES ABOUT POLICIES OR WORKING CONDITIONS. YOU HAVE THAT RIGHT AS GOVERNMENT EMPLOYEES. FAMILIARIZE YOURSELVES TO THE TECHNICIANS MANUAL NGR 51. YOU WOULD BE SURPRISED TO FIND OUT HOW MUCH YOU ARE PAYING - FOR WHAT YOU ALREADY HAVE.

MSG WILLIAM E. DILENA

Within one week after his conversation with Lt. Col. Liberato, in January, 1970, Dilena purchased stencils at a stationery store, and typed the stencils for his first distribution at his mother's home on a typewriter belonging to his mother. He first went to the Y.M.C.A. in Hayward, California, in order to get the stencil reproduced but was advised that there was no equipment available. He then prevailed upon a female friend, Linda Pelligrini, to reproduce the literature. Miss Pelligrini did so and delivered copies to Dilena. According to Miss Pelligrini, a girl working in the library at the Chabot Convalescent Home located near San Francisco, at which Miss Pelligrini was also employed, did the work for her. Miss Pelligrini's testimony conflicted with Dilena's to the extent that she stated this work was done in the summer of 1970, and she was not clear whether Dilena furnished the material other than the typed stencil. (Dilena states that the paper came from Miss Pelligrini.) Further, she testified only with respect to the one occasion of reproduction for Dilena when, as will appear below, Dilena states that she handled the reproduction for him with respect to all three pieces of literature. Miss Pelligrini was a very confused and frightened witness whom the Complainant contacted for the first time the night before she testified. However, her testimony was sufficient to convince the Hearing Examiner

that Dilena was wholly credible with respect to the means of preparing the literature, and there was no evidence presented to rebut Dilena's version of the preparation of the literature. 8/

(c) Distribution to Employees of First Piece of Literature

Dilena received from Miss Pelligrini approximately 75 copies of his first piece of literature.

According to Dilena, on a Wednesday drill night in late January, 1970 (established by other witnesses as being January 28, 1970), a group of men from Battery "B" reported to Headquarters at the Presidio in San Francisco for medical examinations. Dilena, who was on military status at the time, handed a copy of the literature to a technician, Robert Stacy, who was also on military duty from Battery "B." Dilena described Stacy as being a bus driver. Stacy scanned the letter in Dilena's presence. Stacy indicated that he thought the literature should be distributed and agreed to take it back to his unit (Battery "B"). Dilena handed Stacy the remaining copies. Dilena noted that Specialist 4 Fred Webb of Battery "B" read the letter over Stacy's shoulder.

Specialist 4 Robert Stacy substantially confirms Dilena's version. Stacy's civilian classification is "Tracking Operator," but he principally performs the function of maintenance man at Battery "B." Stacy was included in the appropriate unit. He occasionally drives a bus, and that night he drove a group of men from Battery "B" to Headquarters for physicals. Stacy was standing in line for his physical when Dilena passed. Stacy asked Dilena for a copy of the letter he prepared, having heard through hearsay that there was such a letter. As Stacy was reading the letter, Specialist 4 Fred Webb of Battery "B" asked to read the letter. Dilena told Stacy that he had more copies and asked if Stacy would take them back to the Battery. Since Stacy was picking up the distribution for the Battery that night, he agreed to take them back. Stacy had a large bundle of material to take back for distribution, so Webb offered to carry the material on the bus.

8/ Colonel Keltner, who investigated the Complainant's unfair labor practice charge, in his report of investigation confirms that Dilena was solely responsible for the preparation of the literature but differs in minor respects in that he reports the literature was reproduced at the Hayward YMCA.

Spec. 4 Fred Webb, who is also a civilian technician included in the unit, testified that after he finished his physical that night he walked into Sergeant Major Bostic's office to confer with him. Dilena wandered into Bostic's office and requested that Webb take the distribution back to the battery. Webb took the distribution out of the Battery "B" distribution box in Bostic's office which included Dilena's literature. Webb carried the distribution back on the bus and gave it to Sergeant Brown, the Battery clerk.

There is considerable testimony that employees of Battery "B" subsequently received the literature in their respective "pigeon holes" from which they receive distribution at the Battery, or were handed copies by others.

While there is some conflict between Stacy's version and Webb's version, it is unnecessary to resolve the conflict. The important fact borne out by all the testimony is that Master Sergeant Dilena while in military status sent his literature to Battery "B" presumably for distribution to the technicians at that Battery.

The Complainant places great stress in urging that Agency Management is liable for Dilena's material on the fact that Dilena's first piece of literature was distributed at Battery "B" through the distribution system. The record indicates that Sgt. Brown, who is Battery clerk of Battery "B," is also employed as a civilian fire control technician, and was included in the appropriate unit. According to the record there are no firm regulations governing the use of the distribution system, and Sgt. Brown has considerable discretion. Items, such as Christmas greetings, have been distributed through the system, and in fact at a time in the past, not specified, literature of the Complainant was distributed through the system.

(d) Preparation and Distribution of Dilena's Second Piece of Literature

Dilena prepared his second piece of literature, a 2-page document, in the same manner as his first piece. The text of his second piece follows:

A FREE CHOICE???

RECENTLY, I WROTE AN ARTICLE ON UNION ACTIVITIES WITHIN OUR UNITS. IN IT, I TRIED TO PRESENT MY VIEWS AND WHY I THINK THE UNIONS HAVE NO PLACE IN OUR PROGRAM. I HAD HOPES THE ARTICLE

WOULD WAKE SOME PEOPLE UP AND STOP THE "ME-TOO"-ISM.. [sic] I ALSO HAD HOPES IT WOULD AFFECT THE TECHNICIANS WHO DID NOT AGREE WITH ME, IN SUCH A MANNER AS TO STAND UP AND SAY TO ME "I DON'T AGREE WITH YOU AND THIS IS WHY _____". APPARANTLY, [sic] NONE OF THIS HAPPENED. I RECEIVED MANY CALLS FROM BOTH, MEMBERS AND NON-MEMBERS WHO AGREED WITH THE ARTICLE. WHAT HAPPENED TO THE PEOPLE WHO DIN [sic] NOT AGREE??

I KNOW FOR A FACT, THE UNION WAS A BIT UPSET AT THE ARTICLE. I MUST HAVE HIT A FEW SENSITIVE POINTS. I KNOW FOR A FACT, THE UNION FILED A COMPLAINT AGAINST THE ARTICLE FOR WHICH I MUST ANSWER THROUGH OFFICIAL CHANNELS. B-I-G D-E-A-L. MY CONCERN IS NOT THAT THEY FILED THE CHARGE OR THAT I HAVE TO EXPLAIN MY ACTIONS. THE FACT THAT THE UNION WAS UNFAIR TO ME IS OF MORE CONCERN. SO, WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE GANDER. I HAVE A FEW RIGHTS OF MY OWN AND I INTEND TO USE THEM. BE PREPARED FOR MOST ANYTHING. THE FACT REMAINS, I WAS NOT TREATED FAIRLY BY THE UNION AND SOME OF IT'S MEMBERS.

THE LOCAL IT'S-SELF [sic] WAS RECENTLY PRESENTED A COMPLAINT BY ONE OF IT'S MEMBERS BECAUSE THE UNION ALLEGEDLY ILLUSTRATED HIS PEOPLE AS BEING LAZY. HOORAY FOR YOU. YOU THOUGHT THEY WERE WRONG AND YOU SAID SO. I THOUGHT THEY WERE WRONG IN THEIR EXPLANATION. THE LOCAL UNION APPOINTED AN "INVESTIGATING COMMITTEE" TO LOOK INTO THE MATTER. THE "INVESTIGATING COMMITTEE" REPORTED BACK AT THE NEXT MEETING AND SAID IT HAD CONTACTED ONE OF THE REPRESENTATIVES OF THE UNION ABOUT THE MATTER. THE EXPLANATION THEY RECEIVED WAS A HEDGING ONE AND DID NOT ANSWER THE ORIGINAL QUESTION. EVERYBODY, AND I MEAN EVERYBODY PRESENT AT THE MEETING VOTED A "YES" OR, AS FAR AS I'M CONCERNED, "ME-TOO" TO ACCEPT THE EXPLANATION AS TO THE INTENT OF THE ILLUSTRATION. INCIDENTALLY, THE MEMBER WHO PRESENTED THE COMPLAINT WAS NOT ABLE TO ATTEND THE MEETING AND DID NOT HEAR OR VOTE ON THE EXPLANATION. THE LOCAL UNION, BECAUSE THE ORIGINATOR OF THE ARTICLE WAS A MEMBER OF THE UNION AND AN OFFICIAL, CLOSED THE MATTER WITHOUT USING THE SAME CHANNELS THEY USED AGAINST MY ARTICLE. AN ANIMAL OF ANY SORT, BE IT A SLEEPING CAT, DOG, COW OR HORSE COULD HAVE BEEN USED TO ILLUSTRATE THE SO CALLED POINT OF MEANING. THE

UNION, APPARENTLY BECAUSE I AM NOT A MEMBER, DID NOT AFFORD ME THE SAME COURTESY. THEY IMMEDIATELY COUNTERED WITH "UNFAIR", AGAIN. NO "INVESTIGATING COMMITTEE" TO ASK "WHAT DID YOU MEAN" AND NO INDIVIDUAL OF THE MEMBERSHIP CONTACTED ME ON THE ARTICLE TO ASK ME MY MEANING. A COMPLAINT WAS FILED AGAINST THE ARTICLE BECAUSE I DID NOT AGREE WITH THEIR PURPOSE AND BECAUSE I SAID IT. GOD HELP US IF THIS IS AN EXAMPLE OF THE KIND OF FREEDOM AND RIGHTS THE UNION WANTS FOR YOU.

TO JOIN A UNION, NOT KNOWING WHY BUT BECAUSE SOMEONE ELSE DID IS RATHER PATHETIC. TO JOIN A UNION AND NOT UNDERSTAND ALL THAT'S INVOLVED COULD BE DISASTROUS. THERE WERE SOME WHO DID NOT BELIEVE I WAS INTELLIGENT ENOUGH TO CONJUR [sic] UP AN ARTICLE OF THAT APTITUDE. I'M SORRY I DIDN'T GET DOWN TO YOUR LEVEL, BUT DON'T JUDGE EVERYBODY BY YOUR OWN INTELLIGENCE, ESPECIALLY SOMEONE YOU HAVEN'T EVEN BOTHERED TO TRY TO UNDERSTAND. I'M SURE THE MEMBERS OR NON-MEMBERS WHO DO KNOW ME, ALTHOUGH DO NOT NECESSARILY [sic] AGREE WITH ME, UNDERSTAND I AM TRYING TO HELP IN MY OWN WAY.

IF THERE WAS EVER A CALL TO ME FOR HELP - BY ANY INDIVIDUAL - IN EITHER UNIT - THAT I DIDN'T DO EVERYTHING I COULD TO SOLVE THEIR PROBLEM, I'D LIKE TO KNOW ABOUT IT. IT HASN'T MATTERED WHETHER YOU ARE CATHOLIC, JEWISH OR PROTESTANT. IT HASN'T MATTERED WHETHER YOU ARE WHITE, RED, BLACK OR OTHERWISE. IT HASN'T MATTERED WHETHER YOU ARE A UNION MEMBER OR NOT AND I WILL CONTINUE TO DO SO. THIS WAS THE PRIME REASON FOR ACCEPTING THE JOB I HAVE. THOSE WHO HAVE TRIED TO UNDERSTAND ME AND THOSE WHO DO UNDERSTAND ME, KNOW MY PRIME CONCERN IS "YOU" REGARDLESS OF POSITION OR UNIT. I HAVE MADE MYSELF CONCERNED ENOUGH TO LOOK INTO MATTERS CONCERNING THE UNION AND THE TECHNICIAN, TO INSURE IN MY OWN MIND, YOU ARE GETTING THE BETTER END OF THE DEAL. IF I THOUGHT YOU WERE, I'D JOIN THE UNION MYSELF AND I'D WORK AS HARD FOR IT AS I DO AGAINST IT. I WILL CONTINUE TO SAY "NOT-ME" UNTIL I THINK THE UNION CAN DO

SOMETHING OF VALUE FOR ALL OF US. I WILL CONTINUE TO EXERCISE MY RIGHT OF DISSENT. MY NEXT ARTICLE IS FORTHCOMING. IF THE UNION WANTS TO FILE ANOTHER PETTY COMPLAINT, THEN SO BE IT. THE UNION MUST BE PRETTY WEAK IN IT'S PRINCIPLES IF ONE PERSON CAN GET THEM SO UPSET BECAUSE HE DOESN'T AGREE WITH THEM. PERHAPS IT'S BECAUSE THEY HAVEN'T GOT A STRONG ENOUGH FOUNDATION WITHIN THEMSELVES THAT MAKES THEM FEEL SO INSECURE. WHO KNOWS?????

I HAVE A FEW QUESTION [sic] FOR ALL OF YOU AND A CLOSING STATEMENT AND THEN YOU CAN CONSIDER:

- A. WHEN WAS THE LAST TIME YOU PRESENTED A LIST OF GRIEVANCES TO YOUR SUPERVISOR ?
- B. WHEN WAS THE LAST TIME YOU TALKED TO YOUR SUPERVISOR ABOUT POLICIES ?
- C. WHAT HAVE YOU DONE, PERSONALLY, TO IMPROVE WORKING CONDITIONS ?
- D. HOW MANY OF YOU THINK THE SUPERVISOR CAN PLEASE EVERYBODY ?

TRY AND CONSIDER THE POSITION AND RESPONSIBILITY OF YOUR SUPERVISORS. IT DOESN'T STAND TO REASON THEY WOULD PURPOSELY CREATE HARDSHIPS ON YOU WHEN THEY DEPEND ON YOU TO GET THE JOB DONE. IF A HARDSHIP IS CREATED UNKNOWINGLY, IT DOESN'T TAKE TOO MUCH TO GET THE PROBLEM RESOLVED. TAKE IT TO HIM. TALK TO HIM. THIS IS YOUR RIGHT. IF YOUR [sic] NOT SATISFIED, THEN USE A MEDIATOR OF YOUR CHOICE. ABOVE ALL, BE SURE THE PROBLEM IS PRESENTED IN IT'S ORIGINAL CONTEXT AND NOT BLOWN ALL OUT OF PERSPECTIVE.

MSG WILLIAM E. DILENA

This literature was distributed by Dilena through the United States Mail, approximately two or three weeks after distribution of his first piece. He mailed it to technicians employed at Battery "B" who he believed were members of the Complainant. (The record reveals that approximately 84 percent of the Complainant's members are from Battery "B.") Approximately 35 or 40 copies were thus distributed. Dilena obtained addresses from a personal list of technicians which he had compiled over the years, from telephone directories, or from a list which all technicians have which Dilena designated as a "Recall Roster." Dilena stated that this list was available for use in sending Christmas cards and other such material. The President of the Local, Enrico Prioetti, who is a member of the national guard and employed as a civilian technician, confirmed that the technicians have personnel rosters which are to be used for emergencies, and for official matters as it is tied in with the "Alert and Mobilization Plan."

There is no evidence on the record of restrictions by the Respondent on the use of personnel lists such as the use made by Dilena. However, instructions concerning employee organizations issued by the California National Guard on March 20, 1969 (Complainant's Exhibit 16), which was posted at the Respondent's facilities, provide that it is not necessary (for technicians) to comply with requests from employee organizations for lists of home addresses or telephone numbers of technicians, as this would be an unwarranted intrusion into the personal privacy of technicians. Further, it provides that lists giving names, position titles, grades, salaries and duty stations of technicians will be provided to employee organizations by headquarters upon request. The exhibit reveals that such lists were provided to the Complainant and the American Federation of Government Employees. It is clear that these instructions applied only to the furnishing of lists to outsiders, and placed no limitations on personal use of lists.

(e) Preparation and Distribution of Dilena's Third Piece of Literature

Dilena prepared his third piece of literature in the same manner as his first piece. The text of Dilena's third piece of literature follows:

IN TRYING TO KEEP ALL PERSONNEL INFORMED OF WHAT'S HAPPENING, I THOUGHT IT NECESSARY TO WRITE WHAT POSSIBLY WILL BE MY LAST ARTICLE. I THINK IT'S NECESSARY TO LET ALL EMPLOYEES KNOW WHAT WAS RESOLVED BY THE COMPLAINT THAT WAS FILED BY THE UNION, WHY THE COMPLAINT WAS FILED AND WHY I RETALIATED WITH "UNFAIR".

FIRST OF ALL, THE INVESTIGATION ONLY SERVED TO CONFIRM THE FACT THAT I AM ABLE TO EXPRESS MYSELF AND MY BELIEFS. IF I HAD BEEN TOLD THAT WHAT I DID WAS WRONG, I SURELY WOULDN'T KEEP PUTTING ARTICLES OUT. WHAT WAS CONFUSING TO ME WAS THE FACT THAT THE ONLY COMPLAINT THAT WAS REGISTERED WAS AGAINST THE MANNER IN WHICH I DISTRIBUTED THE ARTICLE. TO BE SPECIFIC, SOMEWHERE ALONG THE LINE SOMEONE ASSUMED IT WAS DONE THROUGH "NORMAL GOVERNMENT DISTRIBUTION". IF WHOEVER WROTE THE COMPLAINT UNDERSTOOD WHAT CONSTITUTES NORMAL GOVERNMENT DISTRIBUTION, THEY WOULD HAVE NEVER DONE SO TO BEGIN WITH. SECONDLY, I COULDN'T UNDERSTAND WHY THE OBJECTION IN THE FIRST PLACE. THE UNION HAS, IN THE PAST, SENT ITEMS ADVERTISING AND ENLISTING MEMBERSHIP TO THIS ORGANIZATION AND REQUESTED IT BE DISTRIBUTED THROUGH THIS HEADQUARTERS TO BOTH UNITS. I PERSONALLY PUT EQUAL AND ADEQUATE AMOUNTS TO BOTH UNITS IN DISTRIBUTION AND IT WASN'T QUESTIONED BY EITHER HEADQUARTERS OR THE UNION. BECAUSE THE UNION OBJECTED TO MY METHOD OF GETTING THE WORD TO YOU, I MAILED THE NEXT ARTICLE TO MOST OF YOU. BY MAILING THE ARTICLE, I USED THE EXACT SAME METHOD AS THE UNION HAS USED ON MORE THAN ONE OCCASION. I COULD HAVE REPEATED MY FIRST METHOD BUT TO HAVE ANOTHER COMPLAINT FILED FOR THE SAME THING WOULD ONLY BE WASTING THE TIME AND MAN HOURS OF MANY PEOPLE.

I HAVE BEEN MADE TO REALIZE THAT YOU MAY FEEL I HAVE INFRINGED ON YOUR PRIVACY. IF YOU FEEL THAT I HAVE, I WILL APOLOGIZE FOR THAT BUT ONLY FOR THAT.

IT SEEMS TO ME, THAT TO BETTER UNDERSTAND WHAT THE SITUATION IS AROUND YOU, YOU MUST FIRST CONSIDER THE SITUATION FROM ALL ANGLES.

YOU MUST AT LEAST CONSIDER ALL POINTS AND WEIGH THE GOOD AGAINST THE BAD. THE SCALES WILL EITHER GO TOWARDS SECURITY, PROSPERITY AND JOB SATISFACTION OR IT WILL GO TOWARDS INSECURITY, RESENTMENT AND EVENTUALLY A LACK OF CONCERN TO RESPONSIBILITY. IT'S NOT ENOUGH TO ONLY THINK ABOUT WHAT YOU WANT TODAY. THE IMPORTANT THING IS TO THINK ABOUT WHAT YOU WANT IN 2, 5 OR EVEN 15 YEARS FROM NOW AND WORK IN THE DIRECTION WHICH WILL BEST OBTAIN THESE GOALS. I STRONGLY BELIEVE THE PATH THAT LEADS TO THE SEPARATION BETWEEN TECHNICIANS AND SUPERVISORS IS NOT THE WAY TO A VERY PROMISING FUTURE. CO-OPERATION [sic] FROM ALL EMPLOYEES, BE THEY SUPERVISORS OR NOT, IS NECESSARY TO MAINTAIN GOOD WORKING CONDITIONS. THE UNION HAS PRESENTED WHAT THEY CONSIDER TO BE GOOD POINTS OF THEIR LABOR ORGANIZATION. I HAVE PRESENTED WHAT I THINK ARE BAD POINTS OR POINTS THAT SHOULD BE CAREFULLY CONSIDERED. RIGHT NOW, I FEEL THERE ARE NOT ENOUGH GOOD POINTS IN FAVOR OF THE UNION.

I THINK IT IS NECESSARY FOR ALL EMPLOYEES WHO ARE ELIGIBLE TO BE UNION MEMBERS TO BE FULLY AWARE OF THEIR RIGHTS. I THINK ALL EMPLOYEES SHOULD BE FAMILIAR WITH THE EXECUTIVE ORDER #11491 TO BETTER UNDERSTAND YOUR POSITION WHETHER YOU ARE A UNION MEMBER OR NOT. SOME OF THE MORE INTERESTING INFORMATION CONTAINED IN THIS ORDER PERTAINS TO SUCH ITEMS AS:

- A. WHAT THE UNION CAN AND CANNOT DO
- B. WHAT THE MANAGEMENT CAN AND CANNOT DO
- C. WHAT RIGHTS THE EMPLOYEES HAVE IN GRIEVANCE MATTERS, UNION MEMBER OR NOT
- D. WHAT MUST BE DONE BEFORE EXCLUSIVE REPRESENTATION IS ACCORDED A UNION
- E. THE STATUS OF OTHER TYPES OF RECOGNITION ACCORDED A UNION
- F. WHAT INTEREST THE UNION MUST REPRESENT
- G. WHAT INTEREST THE UNION MUST NOT REPRESENT

SOMETHING ELSE THAT I THINK IS OF ABSOLUTE NECESSITY IS TO KNOW WHAT IS THE AGREEMENT THE UNION HAS PRESENTED FOR NEGOTIATION. IF YOU KNOW THE ANSWERS TO ITEMS A. THRU G. AND YOU ARE SURE THAT YOU ARE BEING REPRESENTED IN THE AGREEMENT, THEN AND ONLY THEN ARE YOU READY TO MAKE YOUR OWN DECISION TO ACCEPT OR REJECT MEMBERSHIP. WHAT YOU DECIDE IS YOUR RIGHT BUT DON'T MAKE THE MISTAKE OF SEPARATING YOURSELF FROM YOUR FELLOW EMPLOYEE BECAUSE HE DOESN'T AGREE WITH YOU. THIS IS THE QUICKEST WAY TO ELIMINATE YOUR FUTURE IN THE AIR DEFENSE PROGRAM. IF YOU ARE A MEMBER, DON'T VOTE ON ANY ISSUE YOU HAVEN'T HAD TIME TO FULLY CONSIDER. DEBATE IS THE BEST THING THERE IS FOR DECIDING ANY ISSUE. THIS IS WHAT I HAVE TRIED TO LEAD ALL EMPLOYEES INTO DOING. NOTHING MORE - NOTHING LESS.

IF THERE IS INTEREST ENOUGH FOR SOMEONE TO LISTEN TO ME, VERBALLY, I WILL GLADLY TALK TO THEM AT ANY TIME THAT IS AGREEABLE TO THEM. I WOULD PREFER TO DO THIS BY SPEAKING TO YOU IN A GROUP OR GROUPS.

I HAVE NO HARD FEELINGS TOWARDS THE UNION MEMBERS, AT LEAST NOT TO THE PEOPLE WHO ARE WISE ENOUGH TO CONSIDER BOTH SIDES. IF YOU ARE NOT WILLING TO CONSIDER BOTH SIDES, YOU ARE MISSING THE WHOLE POINT OF WHAT HAS BEEN GOING ON. YOU MUST BE ABLE TO ACCEPT THE FACT THAT FOR EVERY ACTION THERE WILL BE A REACTION. IT MAY BE TO YOUR LIKING OR NOT.

MSG WILLIAM E. DILENA 10/

10/ Apparently the complaint and investigation discussed by Dilena referred to the unfair labor practice filed with the Respondent which was investigated by Colonel Keltner per orders of the California National Guard. The Complainant alleges in the body of the Complaint that the investigation resulted in a "white wash." However the evidence indicates, and in view of the findings infra, the investigation was reasonable.

This piece of literature was distributed by Dilena prior to March 1, 1970. On a Saturday afternoon when Dilena was not on duty, he traveled to "B" Battery and placed 40 or 50 copies on Sergeant Brown's desk. Later that evening he traveled to Battery "A" and placed 20 or 30 copies on a table located under a bulletin board used by the Complainant for its literature.

The record reveals that there is no prohibition against national guardsmen visiting facilities during their off-duty hours, or talking to personnel on duty so long as there is no interference with their work.

Local President Pricetti testified that union material is distributed on the Battery sites by members or placed on bulletin boards. His "feeling" is that it can't be done during working hours which would hamper a person's work. There is no evidence of any prohibition by the Respondent against dissemination of literature on its property either during or off of working hours, although with respect to the solicitation of membership or dues, and other internal business of a labor organization, Section 20 of the Order provides that it shall be conducted during the non-duty hours of the employees concerned. This restriction, however, does not appear to apply to activities of individual employees in the exercise of their rights to engage in activity either for or against the union.

Conclusions

Section 1. of the Order guarantees that "Each employee of the Executive Branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right." Clearly, it follows that these rights include the right of an employee to state his views on behalf of a labor organization, or, if he chooses, to state his views against a labor organization. The Assistant Secretary recognized these rights in a recent decision where he held that it was volative of Section 19(a)(1) of the Order for an Activity to promulgate rules which would prevent employees from engaging in solicitation on behalf of a labor organization on the Activity's premises in nonworking time, and from distributing union literature in nonworking areas of the Activity. Charleston Naval Shipyard, A/SIMR No. 1. As an employee included in the unit,

Dilena was exercising his rights guaranteed by the Order by his expression of views against the Complainant. His literature bore his name and there was nothing in the literature itself which would imply that Dilena was expressing views of the Respondent, and the employees could themselves evaluate the contents.

As the Hearing Examiner has previously found that Dilena is not a supervisor in his civilian capacity and as he was included in the appropriate unit, the views expressed were his own and cannot be imputed to Agency Management on supervisory grounds. Nor, under the novel circumstances of this case, can the fact that he is also a noncommissioned officer, make the Respondent responsible for his activity. Inasmuch as 80 percent of the appropriate unit were noncommissioned officers to say that the Respondent is liable for Dilena's acts on that ground would mean that 80 percent of the unit would not be able to exercise their rights to engage in activity on behalf of the Complainant or against the Complainant.

The Hearing Examiner also cannot conclude that the Respondent is liable under the Order because some of Dilena's activity in distributing his literature was engaged in while he was on military status. The total appropriate unit is in the military and to hold that the Respondent has engaged in unfair labor practices where employees in the unit fail to restrict their activity to times when they were not on military status would be unrealistic. It would be unreasonable to require that the noncommissioned officers in the unit, in view of their dual capacity, discipline themselves to restrict the exercise of their rights under the Order either for or against the labor organization during the hours that they were not on duty as a member of the national guard.

The Hearing Examiner also concludes that the Respondent did not participate in activities with respect to Dilena's literature which would impute responsibility to the Respondent. In the early conversation between Dilena and Lt. Col. Liberato which was initiated by Dilena, Liberato merely expressed his version of Dilena's rights under the Order. He made no suggestions or comments as to the text of Dilena's first message, or as to the methods of distribution. There is no evidence of any assistance

whatsoever by Agency Management in the preparation of Dilena's literature. 11/

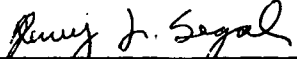
As for the various methods used for the distribution of the literature, there is no showing that the methods used were contrary to any of the Complainant's regulations. Moreover, even if they were, there is no showing in the record that acknowledged supervisors or other members of Agency Management were aware of the methods used for distribution prior to the actual distributions. The use of the distribution system for the first distribution was Dilena's idea and those that participated were personnel included in the unit who were eligible to vote in the election, such as Dilena, Brown, Stacy, and Webb. The use of the roster issued to personnel by the Respondent in obtaining addresses of employees for mailing the second distribution was Dilena's own choice with no consultation with or knowledge of Agency Management. Likewise on the third distribution, the placing of the material on the Respondent's premises was Dilena's own idea, and there is no showing of participation by supervisors or other Agency Management personnel in this distribution.

11/ Though decisions of the National Labor Relations Board are not controlling, the Assistant Secretary has recognized that it is appropriate to take into account the experience gained from the private sector under the Labor-Management Relations Act, as amended. Charleston Naval Shipyard, A/SLMR No. 1. The National Labor Relations Board has recognized that employees have the right to engage in anti-union activity. In a case where employees distributed anti-union literature the Board found that the employee did not violate the Act where the literature clearly identified the authors and the employees could evaluate the contents, even where the employer paid for the reproduction of the literature. Ranco, Inc., 109 NLRB 998.

In view of the above, it is concluded that the Complainant has not met the burden required by Section 203.14 of the Rules and Regulations of the Assistant Secretary of proving by a preponderance of the evidence that the Respondent has violated Section 19(a)(1) of the Order. As no evidence was presented which could conceivably be construed as being violative of Section 19(a)(2) of the Order, the Complainant has also not met its burden of proof with respect to that allegation of the Complaint.

Recommendation

Upon the basis of the foregoing findings and conclusions it is recommended that the Complaint against Respondent, California Army National Guard, 1st Battalion, 250th Artillery Air Defense, be dismissed in its entirety.


Henry L. Segal
Hearing Examiner

Dated at Washington, D. C.,
March 23, 1971.

June 1, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF
AGRICULTURE, SOIL CONSERVATION
SERVICE
A/SLMR No. 48

The Petitioner, Local 2862, American Federation of Government Employees, AFL-CIO (AFGE) sought to represent a unit of employees classified as "District Conservationists" working for the United States Department of Agriculture, Soil Conservation Service within the State of Minnesota. The Activity sought the dismissal of the petition on the basis of a contention that District Conservationists were supervisors within the meaning of Section 2(c) of the Executive Order.

Under all the circumstances, the Assistant Secretary concluded that the employees in the claimed unit were supervisors. In this regard, he noted that the District Conservationists work in locations scattered throughout the State of Minnesota. Each location, which is called a "work unit," is made up of a District Conservationist and anywhere from zero to four full-time Federal employees, plus some temporary Federal employees and State employees. Within the work units, the District Conservationist has the authority to assign work, schedule and approve leave and initiate recommendations for such personnel actions as promotion, merit awards and retention of probationary employees. District Conservationists also interview and hire temporary employees. Such functions are performed without any higher day-to-day supervision. In this regard, it was noted that Area Conservationists, who are the next level of supervision, are located anywhere from 20 to 80 miles away from the work units and only visit the work units approximately once per month.

Based on the foregoing, the Assistant Secretary found that District Conservationists were supervisors within the meaning of Section 2(c) of the Order. Accordingly, on the basis of the Section 10(b)(1) prohibition against the establishment of a unit which includes management officials or supervisors, he ordered that the petition be dismissed.

A/SLMR NO. 48

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

UNITED STATES DEPARTMENT OF AGRICULTURE,
SOIL CONSERVATION SERVICE 1/

Activity

and

Case No. 51-1236

LOCAL 2862, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO 2/

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John W. Beaty. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, Local 2862, American Federation of Government Employees, AFL-CIO, herein called the AFGE, seeks an election in a unit of all District Conservationists working throughout the State of

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

Minnesota. 3/ The Activity contends that District Conservationists are supervisors within the meaning of Section 2(c) of the Executive Order. The alleged supervisory status of the District Conservationists was the sole issue raised at the hearing.

The mission of the Activity, as it relates to the employees involved in this case, is to plan, execute and manage soil and water conservation programs with land owners and operators. The highest organizational level concerned herein is the Office of the State Conservationist, whose jurisdiction in the instant case covers the State of Minnesota. The State is divided into seven "areas," each under the direction of an Area Conservationist, GS-12. Each "area" consists of a number of districts, which are commonly referred to as "work units." Organizationally, each district is supposed to have a District Conservationist assigned to it. At the date of the hearing in this case, there were 68 District Conservationists sought by the petition herein.

District Conservationists may be grades GS-9 or GS-11, with the 68 so-classified employees in Minnesota being divided approximately equally between these two grades. Employees other than District Conservationists may be and are generally assigned to the work units, although there is great variation in the employee complement in a work unit. An apparently "fully staffed" work unit consists of two conservation technicians, whose grade range was GS-5 through GS-7, one district aide, one part-time district clerk and two part-time "WAE's" (when actually employed). 4/ It appears that conservation trainees are also periodically assigned to a work unit. The district aide and district clerk are part of the work unit, but they are not considered Federal employees by the parties in that they are paid primarily with state funds.

3/ The title of the classification sought appears as corrected at the hearing.

4/ The record discloses that the AFGE was certified under Executive Order 11491 as the exclusive representative for a unit of nonsupervisory professional and clerical employees in the district work units and in the State and Area Offices. It appears that the status of the District Conservationists was left unresolved during the processing of the prior case with the parties having an informal agreement to put this issue before the Assistant Secretary by way of a separate RO petition. The record in this case indicates that the AFGE seeks a separate unit of District Conservationists rather than attempting to use the instant petition to bring these employees into the existing exclusive unit. In view of the conclusions contained herein, it is unnecessary to reach the issue of the appropriateness of a unit of District Conservationists separate from other work unit personnel.

Of the 68 District Conservationists, 13 of them currently have no other full-time Federal employees in their work units. As of the date of the hearing, 28 of the District Conservationists worked with 1 full-time employee assigned to the unit, 19 with 2 assigned, 5 with 3 assigned and 3 with 4 assigned. Of the 13 District Conservationists who had no full-time employees assigned to their units, 8 had a WAE at some time during the year and all 68 District Conservationists had some use of district employees. According to the Activity, the fact that some District Conservationists currently work with no other full-time employees in their units is a result of budgetary limitations. However, it is stated that this limitation may continue for the indefinite future.

The evidence reveals that the Area Conservationists are each responsible for as many as 12 district units. The locations of the work units are geographically clustered around the location of the Area Office. Judging from an unscaled map submitted as an exhibit by the AFGE, it appears that the distances of the district offices from the area offices range from 20 to 80 miles, with a majority being at least 50 miles away. The undisputed evidence reveals that the Area Conservationist visits a given district work unit no more often than once a month.

At the district level in implementing the Activity's mission, the District Conservationist performs a number of duties. He is primarily responsible for the development of the "Annual Plan of Operation," which is a projection of the goals of the work unit during the upcoming year. Assistance in the preparation of the Annual Plan may come from technicians in the work unit and the "district board." 5/ The Annual Plans are received and approved by Area Conservationists but the evidence reveals that these plans are seldom revised. The District Conservationist is responsible for the day-to-day activities of the work unit. While the record contains numerous references to the work of the unit being a "team" effort, it was generally conceded that ultimate authority on the establishment of priorities and making of work assignments is vested in the District Conservationist.

The Activity makes no claim that District Conservationists have direct authority to hire permanent employees, transfer, suspend, lay off, recall, promote, discharge, reward or discipline unit employees, but contends that they possess the authority to make effective recommendations

5/ The district board is made up of non-Federal employee citizens who assert "program control" over the district work units in that it must approve projects requested by the public.

in these areas through the evaluation of employee performance and personnel recommendations. In this regard, it is the responsibility of the District Conservationist to review annually with each employee the employee's "standards of performance" to ascertain job performance against job description. While this is in certain respects a consultive effort between the District Conservationist and the employee, the former must sign the form as "supervisor." District Conservationists make annual appraisals on employees working in their unit and these evaluations are the "first level" basis for determining if an employee will receive a promotion. 6/ New hires serve a one year probationary period during which time the District Conservationist to whose unit the trainee is assigned must submit progress reports at intervals of 3, 5 and 10 months. Included in these reports are recommendations on whether the employee should be retained at the conclusion of the probationary period. Further, the record reflects that District Conservationists have submitted recommendations for merit and/or incentive awards and these recommendations have been affirmatively acted upon. District Conservationists also are the approving authority for "acceptable level of competency" ratings.

As noted above, District Conservationists have no authority to hire permanent employees, but when the hiring of WAE's or "temporary limited appointment" employees is authorized, such employment being contingent on the availability of funds, the District Conservationists do the interviewing and hiring, with the paper work being performed in the Area Office. With respect to district aides, while these people are actually the employees of the district board, the District Conservationists will often interview applicants and then pass their recommendations on to the board.

District Conservationists are responsible for approving leave requests, although it appears that such requests are generally "self-approving." In this respect, a technician in a work unit is generally assigned the task of maintaining time and attendance records, but the District Conservationist must initial all such records other than his own. The District Conservationist also sets vacation schedules for work unit personnel and is responsible for certain administrative record keeping. However, the record

6/ The record reveals that various types of performance evaluations were made on work unit employees by soil scientists and engineers who are detailed to work units by the State Office for specific assignments. The Activity contended that while these evaluations were of the same form as those done by the District Conservationists, the focus was more on the technical aspects of performance and was not the type of "continuous review" for which the District Conservationist is responsible.

does not reflect any percentage breakdown of the time spent by District Conservationists on "supervisory or administrative" work as opposed to functions being performed by other work unit personnel. 7/

In support of its contention that District Conservationists are not supervisors within the meaning of Section 2(c) of the Executive Order, the AFGE stressed that incumbents in that classification have never hired a full-time employee, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded or disciplined other employees. The AFGE also sought to demonstrate that rather than having the authority to responsibly direct other employees, the work unit was a "team" wherein each individual, regardless of rank, participated in the making of decisions.

Under all the circumstances, I find that the evidence does not support the AFGE's position.

Of crucial concern to a resolution of the disputed issue in this case is the physical setting within which the District Conservationists work. They are physically separated from higher level supervision by substantial distances and are visited by that higher supervision on an infrequent basis. 8/ In such circumstances, it is clear that the District Conservationist is the only one on the scene who can responsibly direct the work unit's day-to-day efforts. Moreover, the evidence demonstrates that underlying the team atmosphere is the fact that vested in the District Conservationist is the responsibility to carry out the mission of the work unit. In this respect, the evidence revealed that if a dispute developed between the District Conservationist and a technician, the orders of the former would prevail.

7/ The AFGE submitted as an exhibit an Activity document showing a year's breakdown of hours worked of a given District Conservationist. According to that document, the District Conservationist spent 12 hours during the year on "management and administration." However, the record does not contain any explanation of the other functional breakdowns, some of which may be supervisory in nature, and the explanation of what is considered "management and administration" specifically states, "Does not include direction of specific program activities..."

8/ Compare United States Navy Department, United States Naval Weapons Station, Yorktown, Virginia A/SLMR No. 30, wherein the fact that Station Captains were the highest ranking employees who were with unit personnel on a full-time basis was not found controlling in view of the close proximity of supervisors and the fact that such supervisors made numerous daily visits to the stations.

June 2, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

The geographic separateness gives greater emphasis to the evaluation and recommendation functions of the District Conservationists. The distance and the infrequency of the visits of higher supervision requires that the recommendations on personnel matters made by a District Conservationist to the Area Conservationist carry considerable weight. The daily work efforts of work unit personnel are seen only by the District Conservationist. The AFGE argues that someone higher than a District Conservationist always has the final word on personnel matters, but this does not detract from the effective nature of the recommendation of the first level of supervision. There was no evidence in the record to indicate that evaluations and recommendations of District Conservationists are subjected to any kind of "on location" review. On the contrary, there is considerable evidence of the effectiveness of recommendations made by the District Conservationists. For example, recommendations for quality within-grade awards have been affirmatively acted upon.

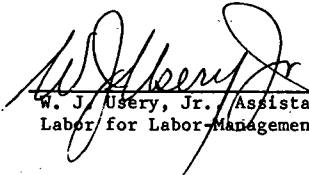
Based on the foregoing, and noting particularly the geographic separateness between the locations of the work units and the Area Offices, the infrequency of visits to the work units by supervision higher than the District Conservationists, the exercised authority of the District Conservationists to make assignments to work unit personnel, to approve leave, and to effectively recommend such personnel actions as promotion, retention of probationary employees, and granting of merit awards, I find that a unit of employees classified as District Conservationists would include supervisors as defined by Section 2(c) of the Executive Order.

Section 10(b)(1) of Executive Order 11491 prohibits the establishment of a unit if it includes any management official or supervisor. Accordingly, I find the petition herein should be dismissed. 9/

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 51-1236 be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 1, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

9/ Inasmuch as I have concluded that the petition should be dismissed because the unit sought includes persons who are supervisors within the meaning of Section 2(c) of the Order, I do not reach the question as to whether a District Conservationist who has no employees in his work unit is an "employee" within the meaning of Section 2(b) of the Order.

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
ALAMEDA, CALIFORNIA
A/SLMR No. 49

The subject case, involving a petition filed by the International Brotherhood of Electrical Workers, AFL-CIO, Local 2297 (IBEW), presented the question whether a unit of employees comprising all the employees holding electrical ratings in the Activity's Production Department was appropriate.

Under all the circumstances, the Assistant Secretary concluded that the unit sought was not appropriate. In this regard he noted that the work performed by the employees in the unit sought was part of an overall integrated production process requiring the cooperation and coordinated efforts of employees in various job classifications working in a number of functionally interdependent shops. He also noted that many of the employees in the claimed unit worked in shops containing employees in nonelectrical job classifications; that often they were not supervised by electrician foremen; that on occasion they performed nonelectrical work; and that they were engaged respectively in repetitive work involving various specialized aircraft components. In these circumstances and noting that the employees in the claimed unit shared the same general terms and conditions of employment with other employees within the Production Department and that the claimed unit would not promote effective dealings and efficiency of agency operations, the Assistant Secretary ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
ALAMEDA, CALIFORNIA

Activity

Case No. 70-1508

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL 2297 1/

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Henry C. Lee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, Local 2297, herein referred to as IBEW, seeks to represent employees in the unit of all ungraded employees in the Naval Air Rework Facility holding ratings of Aircraft Electrician, Aircraft Electrician Helper, Apprentice Aircraft Electrician, Aircraft Electrical Worker, Electrician, Electrician Helper and Electrician Worker, but excluding all supervisory and managerial personnel, temporary limited

1/ Petitioner stated at the hearing that, subsequent to the filing of the petition, the number of Local 1245 had been changed to 2297.

employees, and employees already covered by an exclusive recognition. 2/

The Activity takes the position that the unit sought by the IBEW is not appropriate. It contends, among other things, that the employees in the petitioned unit do not constitute a "traditional" or "recognized" craft in the aircraft industry, 3/ but that they are instead, "production employees" engaged in the manufacture, repair and modification of the Activity's finished product. The Activity further asserts that the unit in question is not appropriate inasmuch as it would not promote effective dealings or efficiency of agency operations.

There is no history of bargaining with respect to the employees petitioned for by the IBEW. However, the Activity accorded exclusive recognition under Executive Order 10988 to six labor organizations, 4/ including the IBEW, in 7 separate units among which was a unit comprising electrical maintenance employees in the Activity's Plant Services Division, Production Engineering Department.

The Naval Air Rework Facility at Alameda, California is an industrial facility engaged in the performance of depot level maintenance functions including the manufacture of certain aircraft parts and equipment. The Activity has a work force of about 7,000 employees occupying numerous buildings within the Alameda Naval Air Station. Organizationally, the Activity comprises 3 directorates which are subdivided into 8 departments, 30 divisions and 76 branches, which are further subdivided into sections, shops and work centers. Functionally, the Activity has two basic operations; one dealing with "service" activities, which include management and engineering services and the other dealing with "production" activities.

At the top of the administrative hierarchy are the Commanding Officer and the Executive Officer. Below these officials is the

- 2/ The unit appears as amended at hearing. Although the IBEW added the classification of "Electrician Worker" to its inclusions, there were no employees listed with such classification.
- 3/ In this connection, the Activity urges the Assistant Secretary to give "paramount consideration" to the decisions of the National Mediation Board as precedent in the instant case. As an alternative argument, it contends that even if the employees in the proposed unit are found to be "craftsmen" they still would not be entitled to separate representation since the circumstances under which they perform their respective duties disclose that many other factors which are necessary to justify separate representation are not present.
- 4/ Association of Aeronautical Examiners (AAE); International Association of Machinists (IAM); International Brotherhood of Electrical Workers (IBEW); National Association of Government Inspectors (NAGI); National Association of Planners, Estimators and Progressmen (NAPEP); and Patternmakers Association of San Francisco and Vicinity.

Production Officer who is responsible for the operation of three departments 5/, all of which are involved directly or indirectly with the Activity's production process.

The employees in the proposed unit comprise all the employees holding electrical ratings in the Production Department. 6/ They represent about 8 percent of approximately 4, 800 employees of diversified skills and trades 7/ working in a sequential operation involving some 190 different shops. The record reveals that the employees in the petitioned unit work in about 40 of these shops. Such shops are in buildings located throughout the Naval Air Station but are concentrated mainly in a complex of 4 large multi-level buildings, including a building and hangar used for assembly-line operations involving overhaul and rework on major aircraft components.

In order to permit the steady flow of work, the shops in the Production Department are, as a rule, physically located according to function in large unpartitioned work areas. The employees in each of the shops are under the supervision of a foreman who may be an aircraft electrician, an airframes mechanic, a electronics mechanic, or an ordnance mechanic, according to the nature of the overall function of the particular shop involved.

5/ These are the Production, Planning and Control Department, the Production Engineering Department and the Production Department.

6/ Except for the unit of electricians in the Production Engineering Department who are already exclusively represented by the IBEW, the Activity has no other employees holding either Aircraft Electrician or Electrician ratings.

7/ Reportedly about 130 different trades and crafts.

Of the approximately 40 shops utilizing electrical skills, less than half have a foreman who is an electrician and only about 11 are manned exclusively or almost exclusively by electricians. 8/ The electricians in these shops, for the most part, perform electrical duties which are repetitive and involve a particular aircraft component. For example, the electricians assigned to the generator shop are involved primarily in a specific job function, i.e., the disassembly of generators. Also, those assigned to the processing shop are only required to examine cable assemblies and secure the necessary replacement parts, which they subsequently place in a container along with other materials for employees with other skills to use in completing the job. This same situation occurs in the cable shop and in numerous other shops. Because of these foregoing factors, the electricians assigned to the various specialized shops are not readily interchangeable. This is particularly true with respect to the Aircraft Electricians, who work specifically on aircraft components, and the Electricians who perform electrical duties of a general nature.

While the bulk of the work assigned to them involves the performance of electrical tasks, electricians often assist employees of other classifications in the performance of work which does not involve the use of electrical skills. Such nonelectrical work is generally performed by electricians when they run out of electrical work and generally involves such routine chores as assisting an aircraft mechanic in the installation or removal of some mechanical component. Whether performing electrical or nonelectrical duties, electricians generally work side by side with employees of other classifications.

Based on the foregoing facts, I find that the employees in the petitioned unit do not have a clear and identifiable community of interest which is distinct from other employees in the Activity's Production Department. As noted above, the work performed by the employees in the proposed unit is part of an overall integrated production process requiring the cooperation and coordinated efforts of employees in various job classifications working in a number of functionally interdependent shops. Further, the evidence establishes that many of the employees in the claimed unit work in shops containing employees in nonelectrical job classifications; that often are not

8/ These shops are located mainly in the Electrical Missiles Branch of the Aviation Division and the Aircraft Rework Branch of the Airframes Division.

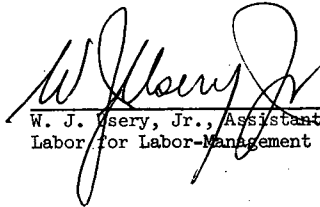
supervised by electrician foremen; that on occasion they perform nonelectrical work; and that they are engaged respectively in repetitive work which involves specialized aircraft components. 9/

In these circumstances and noting the fact that the employees in the claimed unit share the same general terms and conditions of employment with other employees within the Production Department 10/ and that such a unit will not promote effective dealings and efficiency of agency operations, I find that the unit sought by the IBEW is not appropriate. 11/ Accordingly, I shall order that the petition in the subject case be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 70-1508 be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 2, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

9/ Compare Department of the Navy, Naval Air Station, Alameda, California, A/SLMR No. 6. In that decision, the plumbing employees were found to constitute an appropriate unit in circumstances where they worked under the direction of plumbing foremen in two closely related work centers within the same building where they were engaged in a wide range of plumbing maintenance functions.

10/ The evidence shows that employees in the petitioned unit have the same work schedules, are subject to the same personnel policies and procedures and share the same eating places and other facilities as other employees in the Production Department.

11/ The fact that the Activity has apprenticeship programs for Aircraft Electricians and Electricians was not considered to require a contrary result where, as here, the evidence establishes that the employees who have served apprenticeship are later interspersed among employees of other skills in an integrated production process.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DISTRICT OF NEW JERSEY,
DELAWARE AND MARYLAND,
FARMERS HOME ADMINISTRATION,
DEPARTMENT OF AGRICULTURE

A/SLMR No. 50

The Petitioner, American Federation of Government Employees, AFL-CIO, Local 2831, (AFGE) sought to represent a unit of all employees of the Activity, including 26 Agricultural Management Specialists, also designated "County Supervisors." The Activity agreed to the appropriateness of the unit sought, but urged that County Supervisors be excluded as being supervisors within the meaning of the Order.

The Assistant Secretary concluded that the classification of County Supervisor should be excluded from the unit based upon his being responsible for directing the work in his particular office; approving time and attendance reports, leave and vacation schedules; and preparing written appraisals of probationary employees with recommendations as to retention. It was also noted that the County Supervisor is responsible for performance evaluations and certifying as to the acceptable level of competence of employees for within-grade increases and that there is a wide dispersion of the county offices throughout the three-state area. In addition, County Supervisors were found to be subject to minimal immediate supervision in view of the infrequent visits to the county offices by the State Director and their District Supervisor.

In these circumstances, the Assistant Secretary directed that an election be held in the petitioned unit excluding the employees classified as County Supervisors.

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

DISTRICT OF NEW JERSEY,
DELAWARE AND MARYLAND,
FARMERS HOME ADMINISTRATION,
DEPARTMENT OF AGRICULTURE

Activity

and

Case No. 32-1571(E0)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2831

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Clarence Ransome. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 2831, herein called AFGE, seeks an election in a unit of all employees of the District of New Jersey, Delaware and Maryland, Farmers Home Administration, excluding State Director, Administrative Assistant, Real Estate Officers, Community Service Officer, Chief Engineer, District Supervisors, Loan Chief, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, professional employees, supervisors and guards. The parties are in agreement that the unit as defined is appropriate, except that the Activity would exclude agricultural management specialists on the basis that they are supervisors within the meaning of the Order. 1/

The Activity involved herein, the District of New Jersey, Delaware and Maryland, Farmers Home Administration, is under the direction of a State Director located in Trenton, New Jersey. There are three district offices and twenty-six county offices located throughout the three-state area. The Activity has a complement of approximately 133 employees of which all but three are paid by the Farmers Home Administration (FHA). 2/ Working under the State Director are three District Supervisors and twenty-six County Supervisors. At a minimum, a county office is staffed with a County Supervisor and a County Clerk. 3/

County Supervisors are responsible for carrying out diversified agricultural and rural assistance activities, which include the granting and servicing of loans to both individuals and groups. During Fiscal Year 1970 the County Supervisors were responsible for approving loans of over 35 million dollars 4/ and for servicing loans of approximately 114 million dollars.

The record indicates that the County Supervisor is responsible for directing the work in his particular office and its general management, including exercising discretion in delegating prescribed loan approval authority to the Assistant County Supervisor. 5/ One County Supervisor testified that he approved all loans within his delegated authority but no longer made housing appraisals, having delegated this responsibility to the Assistant County Supervisor. In addition, most of the County Supervisors conduct monthly meetings for the purpose of planning the work schedule for the following month. While it appears that the staff members cooperate in case handling to minimize duplication of effort, any conflict is resolved by the County Supervisor. He also is responsible for time and

2/ The record is unclear as to the status and position of the three employees.

3/ Only three of the county offices have the minimum staffing pattern. In addition, the majority of the county offices are staffed with an Assistant County Supervisor and/or Assistant County Clerk, as well as a Construction Inspector and Home Economist. The size of the county offices staffing patterns varies from 2 to 7 employees with an average of about 3 employees per office.

4/ Approval of a loan by a County Supervisor is contingent upon acceptance of a loan application by a County Advisory Board consisting of 3 members. The County Supervisor interviews nominees for the County Advisory Board and makes recommendations to the State Director, who has authority to appoint Advisory Board members.

5/ The State Director has the authority to approve loans up to \$60,000; District Supervisors up to \$35,000; County Supervisors up to \$25,000; and Assistant County Supervisors, GS-9 up to \$15,000 and \$10,000 if GS-7.

1/ This latter classification also is designated as County Supervisor.

attendance reports, approving leave and vacation schedules and preparing written appraisals of probationary employees with recommendations as to retention.

The record reveals that the County Supervisor has the responsibility and authority to evaluate the performance of the employees under his supervision. He prepares the evaluation, without first consulting with the District Supervisor or State Director. In discussing the evaluation with the particular employee, any disagreements are resolved between the employee and the County Supervisor, with the latter's determination controlling. The evaluation form requires no written endorsement by a higher Activity official and contains only the signatures of the County Supervisor and the employee concerned. In addition, County Supervisors must certify as to the acceptable level of competence of employees for purposes of within-grade increases (which is also a form of performance appraisal). Without this certification, an employee would not receive his scheduled salary increase.

The record demonstrates that County Supervisors, who are present in the office at least half of their time, are subject to minimal immediate supervision. Thus, the District Supervisor visits the county offices an average of once per month and visits by the State Director average three times a year. The AFGE contends that to find the County Supervisor to be a supervisor within the meaning of Section 2(c) of the Executive Order, would create a disproportionate number of supervisors to rank and file employees, particularly in county offices with two or three employees, including the County Supervisor. On the other hand, the evidence reveals that a contrary finding would result in a ratio of approximately 30 employees to one District Supervisor, covering an area of about 8 counties.

On the basis of the foregoing, noting particularly, the County Supervisor's responsibilities for performance evaluations and certification of acceptable level of competence for within-grade pay increases, 6/ his discretion in delegating prescribed loan approval authority, his exercise of independent judgment in planning work schedules, the infrequency of visits to the county offices by the District Supervisor and the State Director and the wide dispersion of the county offices throughout the tri-state area, I find that the agricultural management specialists, i.e., County Supervisors, are supervisors within the meaning of Section 2(c) of the Executive Order. Accordingly, I shall exclude this classification from the unit found appropriate.

6/ With respect to the AFGE's contention that the evaluation procedure is routine and clerical in nature requiring a minimum amount of time, the evidence establishes that performance evaluation is a day-to-day process throughout the year requiring independent judgment and culminating in the completion of an annual rating form.

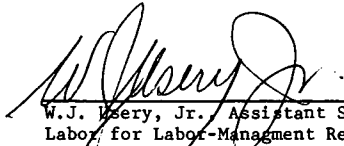
In all the circumstances, including the Activity-wide scope of the unit sought, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All employees of the District of New Jersey, Delaware and Maryland, Farmers Home Administration, Department of Agriculture, excluding the State Director, District Supervisors, County Supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 7/

DIRECTION OF ELECTION 8/

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 2831.

Dated, Washington, D.C.
June 4, 1971


W.J. Casey, Jr. Assistant Secretary of
Labor for Labor-Management Relations

7/ In its petition, the AFGE also excluded Administrative Assistant, Real Estate Officers, Community Service Officer, Chief Engineer and Loan Chief. Because the record does not set forth sufficient facts as to these classifications of employees, I shall make no findings as to whether these employees should be excluded from the unit.

8/ In view of the finding herein, before proceeding to an election, the appropriate Area Administrator is directed to make a redetermination of the showing of interest using the same payroll list as was used in making the original determination. In the event that the showing of interest by the AFGE is found to be insufficient, the petition in this case should be dismissed by the Regional Administrator.

June 4, 1971

A/SLMR No. 51

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF SUPPLEMENTAL DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
PROFESSIONAL AIR TRAFFIC CONTROLLERS
ORGANIZATION, INC. 1/

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC., AFFILIATED
WITH THE NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO
A/SLMR No. 51

On January 29, 1971, the Assistant Secretary issued a Decision and Order in A/SLMR No. 10 finding, among other things, that PATCO-MEBA had called a controllers' strike, assisted or participated therein, and condoned the strike by failing to take effective affirmative action to prevent or stop it. As a result of these acts, the Assistant Secretary determined that PATCO-MEBA lost its status as a labor organization within the meaning of Section 2(e)(2) of Executive Order 11491. In this connection, PATCO-MEBA was ordered, among other things, to cease and desist from certain specified violative conduct and to take certain affirmative actions to effectuate the purposes and the provisions of the Executive Order. The Assistant Secretary provided that at such time as PATCO-MEBA believed it could meet the requirements as a labor organization under Section 2(e) of the Executive Order, but in no event sooner than the expiration of the required 60-day posting period, it could furnish to him a specific account of the steps it had taken to comply with the Decision and Order in A/SLMR No. 10.

In a letter to the Assistant Secretary dated April 14, 1971, the President of PATCO-MEBA outlined, in detail, the steps which had been taken by PATCO-MEBA to comply with the Decision and Order in A/SLMR No. 10. Thereafter, the National Association of Government Employees (NAGE) filed comments on PATCO-MEBA's submission to the Assistant Secretary opposing PATCO-MEBA's contention that it was in compliance with the prior Decision and Order.

After a careful review of PATCO-MEBA's submission, the response submitted by the NAGE, and based upon an independent investigation, the Assistant Secretary found that PATCO-MEBA had complied with the Decision and Order in A/SLMR No. 10. Accordingly, he ordered that, as of the date of his Supplemental Decision and Order, PATCO-MEBA be permitted to utilize the procedures available to a labor organization within the meaning of Section 2(e) of the Executive Order.

Respondent

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, INC.

Complainant

Case No. 46-1698 (CO)

and

FEDERAL AVIATION ADMINISTRATION

Activity

PROFESSIONAL AIR TRAFFIC CONTROLLERS
ORGANIZATION, INC.

Petitioner

Case No. 46-1593 (RO)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, INC.;
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES; AIR TRAFFIC CONTROL
ASSOCIATION, INC.; NATIONAL FEDERATION
OF FEDERAL EMPLOYEES; AND
INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS

Intervenor

SUPPLEMENTAL DECISION AND ORDER

On January 29, 1971, I issued a Decision and Order in A/SLMR No. 10, involving the above parties and finding, among other things,

1/ Now affiliated with National Marine Engineers' Beneficial Association, AFL-CIO, (MEBA).

June 7, 1971

that the Professional Air Traffic Controllers Organization, Inc. (PATCO-MEBA), had called a controllers' strike, assisted or participated therein, and condoned the strike by failing to take effective affirmative action to prevent or stop it. In these circumstances, I determined that PATCO-MEBA lost its status as a labor organization within the meaning of Section 2(e)(2) of the Executive Order and also found that PATCO-MEBA engaged in conduct which was violative of Section 19(b)(4) of the Order.

Pursuant to Section 6(b) of the Executive Order and Section 203.25(a) of the Regulations, PATCO-MEBA was ordered, among other things, to cease and desist from certain specified violative conduct and to take affirmative actions to effectuate the purposes and the provisions of the Executive Order. It was provided also that at such time as PATCO-MEBA believed it could meet the requirements as a labor organization under Section 2(e) of the Executive Order, but in no event sooner than the expiration of the 60-day posting period, it could furnish to the Assistant Secretary a specific account, in writing, of the steps it had taken to comply with the Decision and Order in A/SLMR No. 10 as well as steps it had taken to insure future compliance with Executive Order 11491 and the regulations pertaining thereto. In this connection, PATCO-MEBA was required to serve copies of such account simultaneously upon all other parties to the proceeding and it was provided that these other parties would have five days from service of PATCO-MEBA's account within which to file comments with the Assistant Secretary.

In a letter to the Assistant Secretary dated April 14, 1971, the President of PATCO-MEBA outlined, in detail, the steps which had been taken by PATCO-MEBA to comply with the Decision and Order in A/SLMR No. 10. Thereafter, in a letter dated April 23, 1971, the National Association of Government Employees (NAGE) filed comments on PATCO-MEBA's account opposing the latter's view that it had complied with the prior Decision and Order. 2/

After a careful review of PATCO-MEBA's submission pursuant to the Decision and Order in A/SLMR No. 10, the response submitted by the NAGE, and based upon an independent investigation, I find that PATCO-MEBA has complied with the Decision and Order in A/SLMR No. 10 and also has taken steps to insure future compliance with Executive Order 11491 and the regulations pertaining thereto.

Accordingly, PATCO-MEBA, as of the date of this Supplemental Decision and Order, shall be permitted to utilize the procedures available to a labor organization within the meaning of Section 2(e) of Executive Order 11491.

Dated, Washington, D. C.
June 4, 1971


W. J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

INTERNAL REVENUE SERVICE,
INDIANAPOLIS DISTRICT
A/SLMR No. 52

This case involved representation petitions by the National Association of Internal Revenue Employees, Chapter 49 (NAIRE) and the American Federation of Government Employees, Local 1008 AFD-CIO (AFGE). NAIRE sought a unit of professional and nonprofessional nonsupervisory employees of the Internal Revenue Service, Indianapolis District. The AFGE sought a unit of all employees in the Activity's Gary, Hammond and Michigan City, Indiana Offices.

The Assistant Secretary found that a unit composed solely of employees located in the Activity's Gary, Hammond and Michigan City, Indiana offices, as proposed by the AFGE, was not appropriate for the purpose or exclusive recognition. In this regard, he noted while these three offices have some geographic proximity to each other, they are also quite close to other offices encompassed by the Indianapolis District. Further, employees in these offices share common supervision, working conditions and job qualifications, duties and responsibilities with other District employees and there was evidence of on-the-job contact and transfer within the District. Accordingly he directed that the AFGE's petition be dismissed.

The Assistant Secretary also found that the District-wide unit petitioned for by the NAIRE was appropriate. In reaching this conclusion, he noted particularly the uniform personnel practices and policies within the District and the fact that there was no variation in the qualifications for employment or the work to be performed in the respective job classifications throughout the District. The Assistant Secretary also noted that fact that promotional opportunities were available on a District-wide basis and that there was a substantial interrelationship between employees in many of the job classifications within the District. In these circumstances, and because, in his view, such a comprehensive unit would promote effective dealings and efficiency of agency operations, the Assistant Secretary directed that an election be conducted in the unit petitioned for by the NAIRE with professional employees being accorded a self-determination election before being included in a unit with nonprofessionals.

2/ No other party in this matter filed comments.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

INTERNAL REVENUE SERVICE,
INDIANAPOLIS DISTRICT

Activity

and

Case No. 50-4550

NATIONAL ASSOCIATION OF INTERNAL
REVENUE EMPLOYEES, CHAPTER 49,
AFFILIATED WITH THE NATIONAL
ASSOCIATION OF INTERNAL REVENUE
EMPLOYEES 1/

Petitioner

INTERNAL REVENUE SERVICE,
INDIANAPOLIS DISTRICT

Activity

and

Case No. 50-4570

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1008, AFL-CIO

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer John R. Lund. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The name of the Petitioner appears as amended at the hearing.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 50-4550, Petitioner, National Association of Internal Revenue Employees, Chapter 49, affiliated with the National Association of Internal Revenue Employees, herein called NAIRE, seeks an election in a unit of all professional and nonprofessional nonsupervisory employees of the Internal Revenue Service of the District of Indianapolis. In Case No. 50-4570, Petitioner, American Federation of Government Employees, Local 1008, AFL-CIO, herein called AFGE, seeks an election in a unit of all employees, including professional employees, in the Gary, Michigan City and Hammond, Indiana offices of the Activity. 2/ The Activity contends that the "District-wide" unit sought by NAIRE is appropriate. On the other hand, it asserts that the employees sought by the AFGE do not possess a clear and identifiable community of interest separate from other District employees and that such a unit would not promote effective dealings and efficiency of agency operations.

The Activity is organized under the administration of the District Director and his assistant. It is composed of a headquarters, located in Indianapolis, Indiana, six zone offices and twelve local offices throughout the State of Indiana. 3/ The Indianapolis District consists of approximately 610 employees. 4/ The record does not disclose how many professional or nonprofessional employees are employed in the District and, as noted above, the parties did not take any position regarding which employees should be classified as professional or nonprofessional.

2/ While the record contains references to Activity contentions that certain employees in the units sought by the NAIRE and the AFGE are professionals who must be accorded a self-determination election before being included in a unit with nonprofessionals, the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc., to provide a basis for a finding of fact that employees in particular classifications are professionals. Accordingly, I will make no findings as to which employee classifications constitute professional employees.

3/ The zone offices are located in Gary, South Bend, Fort Wayne, Terre Haute, Evansville and New Albany. The local offices are located in Elkhart, Marion, Muncie, Lafayette, Hammond, Michigan City, Richmond, Vincennes, Bloomington, Columbus, Anderson, and Kokomo.

4/ The record shows that the zone office consists of the following group of employees: revenue agents, revenue officers, members of the Intelligence Division, taxpayer service representatives, and clerks. The local office is comprised of revenue agents, revenue officers, taxpayer representatives, an office auditor, and a clerk.

General responsibility for the administration of the entire District operation rests with the District Director and his assistant. At headquarters, there are four divisions, i.e., Collection, Audit, Intelligence, and Administrative. The Administrative Division contains the personnel unit, which handles all personnel matters for the entire Indianapolis District, and the Training and Facilities Branches, which provide training support and facilities and equipment respectively for the entire District. The Collection Division is charged with the responsibility for collecting delinquent tax accounts and securing delinquent returns as well as providing such taxpayer services as the preparation of returns and the adjusting of tax accounts. The Audit Division is involved with the examination of income, estate, gift, employment and excise tax returns for the purpose of determining the correct liability of those taxpayers whose returns they examine. The Intelligence Division examines cases of suspected fraud. The six zone offices located throughout the State of Indiana each perform collection, audit and intelligence functions. The local offices in many instances perform the same functions as the zone offices but they maintain smaller staffs.

The record discloses that although the Activity's facilities throughout the District are separated geographically from its headquarters, supervision of employees assigned to outlying duty posts as well as headquarters is maintained through a chain of supervision which begins with the District Director at headquarters. He has the authority to hire and fire, to promote and demote, to approve overtime compensation and to transfer and reassign all District employees. He also is authorized to deal with representatives of labor organizations. The District's personnel practices and policies apply equally to all employees on a District-wide basis. Thus, up to the Journeyman GS-13 level, automatic consideration for promotion is on a District-wide basis and employees in one job classification may compete for jobs in another classification. In this respect, there is evidence of transfers between headquarters and field personnel.

The qualifications, duties and responsibilities of District employees in the same classification and grade level are similar throughout the District. In this regard, the record shows that certain key occupational groups such as Internal Revenue agents, revenue officers and tax auditors are covered by standard position descriptions. The evidence reveals that the revenue agents conduct examinations of tax returns and write reports; the revenue officers act as collection officers preparing tax liens and collecting delinquent taxes; and the auditors are responsible for office audit functions.

The evidence establishes that other classifications of employees throughout the District are required to have similar qualifications based on the classification involved, that they perform similar work and have substantial contacts with other employees. In this regard, the record shows that the same technical rules, practices and procedures apply to all employees throughout the District. With respect to the similarity of work,

the evidence reveals that there is a close working relationship between most classifications within the District. Thus in many instances, revenue agents, collection officers, and special agents work together on the same case. Also, revenue engineers assist revenue agents if any engineering features are involved in an audit examination and revenue agents have direct contact with employees in the special procedures section in connection with delinquent accounts. Further, because their work is similar, revenue agents and tax auditors have training on a joint basis, and are frequently detailed from one post of duty to another within the District.

As noted above, the AFGE seeks a unit limited to the employees in the Activity's Gary, Indiana Zone Office and Michigan City and Hammond, Indiana Local Offices. While not disputing the above-discussed factors of community of interest as they relate to all Indianapolis District employees, the AFGE contends that the employees in the three offices covered by their petition have a separate and identifiable community of interest arising from their geographic proximity to each other and to the metropolitan Chicago, Illinois area. The AFGE argues that each organizational office is self-contained in that there is a separate office supervisory structure and employees within the office perform related functions. Further, it is asserted that the employees located in Gary, Michigan City and Hammond deal with common problems and could achieve effective representation by being grouped in a unit rather than being grouped with such employees as those stationed at the headquarters some 180 miles away.

With respect to the contentions related to geographic proximity, the record reflects that Gary and Hammond are adjacent communities, while Michigan City is some distance away. ^{5/} As to the contention that community of interest arises from a proximity to the Chicago, Illinois metropolitan area, the record does not disclose that this results in any substantive distinction between the type of work performed by those employees in the unit sought by the AFGE as opposed to employees in other Zone and Local Offices in the Indianapolis District.

In regard to supervisory structure, as noted above the record reveals that the Activity has a centralized administrative and supervisory structure for all of the District's employees. Contrary to the contention of the AFGE, the record does not reflect that there is supervisory hierarchy limited to the specific offices covered by the AFGE's petition. Rather, it appears that certain employees in those three offices get "first line" supervision from the Indianapolis headquarters and that some of the employees stationed in Michigan City are supervised by persons located in the South Bend Zone Office.

^{5/} It should be noted that Michigan City is only slightly closer to Gary than to South Bend, Indiana, where a Zone Office is located.

There is no contention that employees in the Gary, Hammond and Michigan City offices have conditions of employment which vary from those of all other employees in the Indianapolis District. Employees in these three offices have the same qualifications, duties and responsibilities of all District employees in the same classification and grade level. Moreover, employees covered by the AFGE's petition have frequent contact with other District employees and are subject to being detailed to other District offices. In addition, promotional opportunities are available on a District-wide basis.

Based on the foregoing, I find that the unit sought by the AFGE covering all employees in the Gary, Hammond and Michigan City, Indiana offices is not appropriate for the purpose of exclusive recognition, noting particularly the commonality of working conditions, job functions and skills, and supervision throughout the District. Moreover, I find that the record does not establish that a unit made up of the three offices covered by the AFGE's petition, which are only a small segment of the Activity's administrative grouping, would promote effective dealings and efficiency of its operations.

I also find, based on the foregoing, that a District-wide unit of professional and nonprofessional employees, as proposed by the NAIRE, is appropriate for the purpose of exclusive recognition. As noted above, the record reveals that all classifications within the District are covered by centralized personnel practices and policies and there are no variations in the qualifications for employment or the work to be performed in the respective job classifications throughout the District. Promotional opportunities are on District-wide basis and the evidence reveals that there is substantial on-the-job contact between employees within the District as well as intra-District transfers. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the NAIRE. Moreover, such a comprehensive unit will, in my view, promote effective dealings and efficiency of agency operations. 6/

I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All professional and nonprofessional employees of the Internal Revenue Service of the Indianapolis, Indiana District, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 7/

6/ See Internal Revenue Service, New Orleans District, A/SLMR No. 16.
7/ In its petition the NAIRE excluded "special agents." Because the record does not set forth sufficient facts as to this classification of employees, I shall make no findings as to whether employees in this job classification should be excluded from the unit.

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees of the Internal Revenue Service of the Indianapolis, Indiana District, excluding all nonprofessional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees of the Internal Revenue Service of the Indianapolis, Indiana District, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the NAIRE. 8/

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the NAIRE. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether or not the NAIRE was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

8/ As the AFGE's showing of interest is insufficient to treat it as an intervenor in Case No. 50-4550, I shall order that its name not be placed on the ballot.

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees of the Internal Revenue Service, Indianapolis, Indiana District, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees of the Internal Revenue Service, Indianapolis, Indiana District excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Internal Revenue Service, Indianapolis, Indiana District excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

ORDER

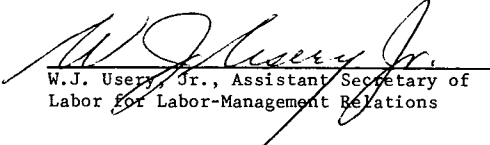
IT IS HEREBY ORDERED that the petition filed in Case No. 50-4570 be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause, since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote

whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Internal Revenue Employees, Chapter 49, affiliated with the National Association of Internal Revenue Employees.

Dated, Washington, D.C.
June 7, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 8, 1971

A/SLMR No. 53

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

DEPARTMENT OF DEFENSE,
ARKANSAS NATIONAL GUARD
A/SLMR No. 53

DEPARTMENT OF DEFENSE,
ARKANSAS NATIONAL GUARD

This case involves a complaint filed by National Federation of Federal Employees, Local 1671 (NFFE). The sole issue presented is whether a document posted on an employee bulletin board, disparaging an employee who had filed a grievance, constitutes a violation of Section 19(a)(1) of the Order.

Respondent

Case No. 64-1136(CA)

and

In early 1970 a grievance was initiated by the NFFE on behalf of an employee who allegedly was passed over for a promotion given to another employee. In explaining his position to the Adjutant General with respect to his failure to promote the employee, the supervisor, whose actions are alleged to be violative, prepared a memorandum which, among other things, discussed the employee's moral calibre, including his arrest record and improper use of sick leave and also criticized the local union's leadership for processing the grievance. The supervisor caused this memorandum to be posted on an employee bulletin board where it was seen by many employees.

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1671

Complainant

DECISION AND ORDER

In agreement with the Hearing Examiner's Report and Recommendations, the Assistant Secretary found that the memorandum posted on the employee bulletin board, disparaging an employee who had filed a grievance, constituted a violation of Section 19(a)(1) of the Order. In this regard, the Assistant Secretary reasoned that the logical impact of the text of the memorandum was to instill in the employees a fear of the adverse effects of filing grievances, and to undermine the union. Such an effect would tend to discourage exercise of the freedom of employees to form, join, or assist labor organizations, rights which are guaranteed by Section 1(a) of the Order and the abridgement of which are proscribed by Section 19(a)(1) of the Order. In reaching his decision in this matter, the Assistant Secretary did not adopt or comment upon the Hearing Examiner's findings relating to either anti-union animus or a lack of credibility on the part of the supervisor involved since the finding of violation was not dependent upon a finding of either.

On April 28, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations in the above-entitled proceeding, finding that the Respondent had engaged in certain conduct prohibited by Section 19(a)(1) of Executive Order 11491. Accordingly, the Hearing Examiner recommended that Respondent be required to take certain affirmative action as set forth in the attached Report and Recommendations.

No exceptions to the Hearing Examiner's Report and Recommendations were filed.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in the subject case, I adopt the findings and recommendations of the Hearing Examiner to the extent consistent herewith.

The record clearly supports the Hearing Examiner's finding that the memorandum posted on the employee bulletin board, disparaging an employee who had filed a grievance, constituted a violation of

Section 19(a)(1) of the Order. I do not adopt or comment upon the Hearing Examiner's findings relating to either anti-union animus or a lack of credibility on the part of Colonel Copeland, Respondent's agent to whom the unfair labor practice was attributed, since the violation is not dependent upon a finding of either. I find that the publication of the memorandum, in and of itself, irrespective of the subjective motivation prompting such, necessarily and effectively constituted an inherent interference, restraint and coercion of employees in the exercise of the rights assured by the Order. As noted by the Hearing Examiner, the substance of the memorandum emphasized the grievant's leave records, arrest record, and the Colonel's view of the grievant's moral calibre. Additionally, it criticized the local union leadership for filing the grievance. In all the circumstances, the logical impact of the text was to instill in the employees a fear of the adverse effects of filing grievances, and to undermine the union. Such an effect would tend to discourage exercise of the freedom of employees to form, join, or assist labor organizations, rights which are guaranteed by Section 1(a) of the Order, rights the abridgments of which are proscribed by Section 19(a)(1) of the Order.

Having found that the Respondent has engaged in certain conduct prohibited by Section 19(a)(1) of the Order, I shall order the Respondent to cease and desist therefrom and to take specific affirmative action, as set forth in the Hearing Examiner's Recommended Order.

ORDER

Pursuant to Section 6(b) of the Executive Order and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the Arkansas National Guard, Camp Robinson, North Little Rock, Arkansas, shall:

1. Cease and desist from:

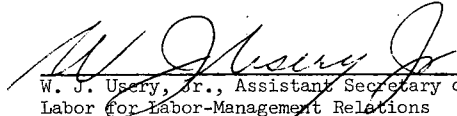
- (a) Communicating to any of its employees not directly involved in the processing of a specific grievance, either orally or in writing, derogatory information concerning a fellow employee who initiates a grievance proceeding;
- (b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

-2-

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

- (a) Post at its facilities at Camp Robinson, North Little Rock, Arkansas, copies of the attached notice marked "Appendix" on forms to be furnished by the Assistant Secretary for Labor-Management Relations. Upon receipt of such forms, they shall be signed by the Adjutant General and shall be posted and maintained by him for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. The Adjutant General shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;
- (b) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D.C.
June 8, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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APPENDIX
NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT communicate to any of our employees not directly involved in the processing of a specific grievance, either orally or in writing, derogatory information concerning a fellow employee who initiates a grievance proceeding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

(Agency or Activity)

Dated _____ By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor whose address is 2511 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

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

DEPARTMENT OF DEFENSE
ARKANSAS NATIONAL GUARD

Respondent

and

CASE NO. 64-1136 (CA)

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 1671

Complainant

Lt. Col. K. L. Matthews, Staff Judge Advocate,
Camp Robinson, North Little Rock,
Arkansas, for the Respondent.
Howard Feldman, Esq., of the Legal Staff of
National Federation of Federal Employees,
Washington, D. C., for the Complainant.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding, heard at North Little Rock, Arkansas, on March 30, 1971, arises under Executive Order 11491 (herein called the Order) pursuant to a Notice of Hearing issued by the Regional Administrator of the Labor-Management Services Administration, United

States Department of Labor, Kansas City Region, on January 8, 1971. It was initiated by a Complaint filed by the Complainant on June 5, 1970. 1/

At the hearing both parties were represented by counsel who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, submit oral argument and file briefs. 2/ Upon the entire record in this matter and from observation of the witnesses, I make the following:

Findings and Conclusions

I. The Issues

The sole issue presented in this proceeding is whether a document posted on a bulletin board by a supervisor was violative of Section 19(a)(1) of the Order.

II. The Unfair Labor Practices

1. Background.

Exclusive recognition was granted to the Complainant by the Respondent on December 10, 1969, pursuant to the provisions of the previous Executive Order, No. 10988, for a unit of "non-supervisory

1/ The Complaint alleges violations of Section 19, subsections (a)(1) and (4) of the Order. This Complaint, as well as subsequent amended Complaints, was dismissed by the Regional Administrator. Upon a request for review filed with the Assistant Secretary for Labor-Management Relations (herein called the Assistant Secretary) pursuant to Sec. 203.7(c) of the Rules and Regulations, the Assistant Secretary remanded the case to the Regional Administrator for disposition of an allegation of a violation of Section 19(a)(1) of the Order by Respondent's posting of a document on a bulletin board, which is the subject of this proceeding.

2/ No briefs were filed by either party.

and non-managerial Army National Guard Technicians employed in the State of Arkansas." The Complainant and Respondent have not yet executed a negotiated agreement, but are in the process of negotiating one. However, the Respondent is entertaining grievances. 3/

The specific facility of the Respondent involved in the alleged unfair labor practice is the "Combined State Maintenance Shop" (herein called the CSMS), located at Camp Robinson, North Little Rock, Arkansas. The supervisor, whose actions are alleged to be violative, is Colonel Hobart W. Copeland. Colonel Copeland is in charge of Respondent's building facilities throughout the State of Arkansas, and the CSMS is under his general supervision.

In early 1970, a grievance was initiated by Complainant on behalf of Ralph E. Heflin, then an employee in the CSMS, who allegedly was "passed over" for a promotion given to another employee.

The first step of the grievance procedure was taken to Lt. Col. William C. Page, who was then officer in charge of the CSMS (Page has since retired), and a subordinate supervisor to Colonel Copeland. The second step consisted of a meeting on March 7 or 8, 1970, of Harrison Long, Shop Steward for Local 1671 and Mr. Howell, Chief Steward of Complainant for the State of Arkansas, with Colonel Copeland. There ensued a general discussion of the grievance during which, according to Long, Colonel Copeland indicated his dislike of the union. 4/

2. Colonel Copeland's Memorandum of March 24, 1970, and its posting on March 25, 1970.

According to Colonel Copeland, he was required many times to explain to the Adjutant General of the State of Arkansas his position

3/ No contention was made that the alleged violation of Section 19 (a)(1) of the Order is subject to an established grievance or appeals procedure which would make such procedure the exclusive procedure for resolving the complaint under Section 19(d) of the Order. cf. Report on a Decision of the Assistant Secretary Pursuant to Section 6 of Executive Order 11498, Report No. 25, March 1, 1971.

4/ As further evidence of Colonel Copeland's anti-union bias, Complainant witnesses testified that he made an anti-union speech to the employees in December, 1969. Colonel Copeland did not deny that he made the speech, but denied that he made certain alleged statements.

with respect to his failure to promote Heflin because of letters sent by the Complainant to the Adjutant General concerning Heflin's grievance. 5/

On March 24, 1970, Colonel Copeland prepared and sent a memorandum to the Adjutant General as a second endorsement to a letter from the Complainant to the Adjutant General concerning the grievance. The first endorsement was a request to Colonel Copeland by the Adjutant General for an explanation.

According to Colonel Copeland he had heard that Heflin had an arrest record, and on March 24, prior to preparing his memorandum, Colonel Copeland sent his secretary to the Little Rock police headquarters and to the Arkansas State Police headquarters where for nominal fees she obtained copies of Heflin's arrest record.

A copy of Colonel Copeland's memorandum of March 24, 1970 to the Adjutant General is attached hereto as "Appendix 1." In the memorandum, inter alia, Colonel Copeland explained the capabilities of Corker (the employee who received the promotion over Heflin), devoted considerable space to a discussion of Heflin's moral calibre including his arrest record (7 arrests between February 6, 1965, and March 14, 1970, four for drunkenness, two for driving while intoxicated, and one for reckless driving), a discussion of Heflin's leave record including an allegation that Heflin was caught "bird hunting" while on sick leave, and a criticism of the local union's leadership for processing the grievance.

Colonel Copeland admitted that he sent a copy of the memorandum to Lt. Col. Page at the CSMS with orders to post it on the Employee's Bulletin Board in the shop on March 25, 1970.

According to Maurice Brown, President of Local 1671, he saw Page post the memorandum sometime before noon on March 25, 1970, and asked Page to remove it. Page replied that he could not do so since it was posted by order of Colonel Copeland. Brown testified that he observed a note attached to the memorandum indicating that it was

5/ The Adjutant General of the State of Arkansas at the time of the alleged unfair labor practice was Major General Charles Wilson. General Wilson was replaced by General Thomas M. Phillips in early 1971.

posted by order of Colonel Copeland. The next morning, March 26, 1970, Brown visited General Wilson, the Adjutant General, and requested that Copeland's memorandum be removed from the bulletin board at CSMS. By the time Brown returned to the CSMS from the General's office, he saw Page removing the memorandum from the bulletin board.

The record indicates that many employees in the CSMS read the memorandum while it was posted. One of the witnesses testified that 40 or 45 employees read it. Various witnesses stated that they thought it was posted to "scare people out of the union." Comments were made by employees as they read the memorandum that they would not file grievances if this was how the Guard was going to do it. One employee witness testified that he commented to other employees who were reading the memorandum that it was an attempt to intimidate anyone who tried to file a grievance.

Colonel Copeland testified that he posted the memorandum because someone started a rumor that he fired Heflin because Heflin filed a grievance, and he wanted the employees to understand Heflin's wrongdoings. Actually, according to Colonel Copeland, Heflin was fired because of his drunken driving record which Colonel Copeland discovered when he obtained Heflin's record from the police. Colonel Copeland stated the discharge was necessary because Heflin lost his driving license and his job required some driving. Of course, this alleged reason for posting fails, especially in view of Colonel Copeland's anti-union bias, on various grounds. The most obvious ground is that the timing of events makes improbable Colonel Copeland's alleged reason for posting. According to his own testimony, he did not discover Heflin's record until March 24, and did not make a decision to fire Heflin until then. Colonel Copeland immediately on March 24 put Heflin's arrest record in his memorandum and sent a copy on the same day to the CSMS for posting. There was hardly time for a rumor to start before March 25 that Heflin was fired for filing a grievance, since Colonel Copeland did not make a decision to discharge Heflin until March 24 when he obtained Heflin's arrest record. (Heflin was not actually discharged until a later date.)

CONCLUSIONS

Inasmuch as Colonel Copeland is a supervisor for the Respondent, Respondent is responsible for his acts. The Study Committee in its Report and Recommendations on Labor-Management Relations in the Federal Service dated August, 1969, at paragraph C, titled, "Status of Supervisors," characterized supervisors as follows:

We view supervisors as part of management, responsible for participating in and contributing to the formulation of agency policies and procedures and contributing to the negotiation of agreements with employees. Supervisors should be responsible for representing management in the administration of agency policy and labor-management agreements, including negotiated grievance systems, and for expression of management viewpoints in daily communication with employees. In short, they should be and are part of agency management and should be integrated fully in that management.

Thus, if supervisors are considered part of Agency Management and are responsible for expression of management viewpoints in daily communication with employees, Agency Management would generally be responsible for expressions by supervisors to employees concerning union matters, written or oral.

I turn now to the issue of whether Colonel Copeland's posted memorandum constituted a violation of Section 19(a)(1) of the Order. It is clear that Colonel Copeland was free to report whatever he wished to his superior, the Adjutant General. However, by posting the memorandum on the bulletin board for the perusal of the employees it became a written communication from management to the employees.

Section 19(a)(1) of the Order makes it an unfair labor practice for Agency Management to interfere with, restrain or coerce an employee in the exercise of the rights assured by the Order. Section 1(a) of the Order sets forth the rights of employees. Thus, "each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right." Section 1(a) also provides, "The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization."

Certainly, protected activity flowing out of exclusive representation by a labor organization includes the processing of grievances by an employee with the assistance of his exclusive representative.

Agency interference with the processing of grievances would tend to discourage membership in the union. The memorandum posted in this case laid bare to his fellow employees Heflin's leave records, arrest record, and Colonel Copeland's view of Heflin's morale calibre. Moreover, it criticized the local union leadership for filing the grievance. The whole of the message to the employees was to instill in them a fear of the adverse effects of filing grievances, and to undermine the union. It constituted a threat to air before fellow employees not directly involved in the specific grievance being processed such matters as an employee's capabilities, shortcomings, and personal frailities if he and/or his union persisted in processing a grievance. Such threat would tend to chill the freedom of employees to form, join, or assist labor organizations.

In view of the above, I conclude that the memorandum as posted on the employee bulletin board constituted a violation of Section 19(a)(1) of the Order by the Respondent.

Turning now to the appropriate remedy. While the memorandum was only posted for a short time, on the afternoon of March 25, 1970, and part of the morning on March 26, 1970, a large number of employees at CSMS read the memorandum. There have been no assurances made by the Respondent to the employees that such action will not recur, and that they need fear no adverse publicity by the Respondent if they process grievances. Accordingly, I shall recommend to the Assistant Secretary that he provide an appropriate remedy.

RECOMMENDATIONS

Having found that the Respondent has engaged in certain conduct prohibited by Section 19(a)(1) of Executive Order 11491, it is my considered judgment that it would be appropriate for the Assistant Secretary to adopt the following order which is designed to effectuate the policies of Executive Order 11491.

RECOMMENDED ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the Arkansas National Guard, Camp Robinson, North Little Rock, Arkansas, shall:

1. Cease and desist from:

- (a) Communicating to any of its employees not directly involved in the processing of a specific grievance, either orally or in writing, derogatory information concerning a fellow employee who initiates a grievance proceeding;
- (b) In any like, or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

- (a) Post at its facilities at Camp Robinson, North Little Rock, Arkansas, copies of the attached notice marked "Appendix 2." Copies of said notice shall be signed by the Adjutant General and shall be posted and maintained by him for sixty (60) days thereafter, in conspicuous places where notices to employees are customarily posted. The Adjutant General shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.
- (b) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Henry J. Segal

Henry L. Segal
Hearing Examiner

Dated, Washington, D. C.,
APRIL 28, 1971

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ARKAG (10 Mar 70) 2nd Ind
SUBJECT: Union Grievances Pertaining to Employee of Local 1671

State Maintenance Officer, State of Arkansas, P O Box 678,
North Little Rock, Arkansas, 72115, 24 March 1970

TO: The Adjutant General, State of Arkansas, P O Box 678,
North Little Rock, Arkansas 72115

1. I selected Corker for this promotion after consultation with LTC Page because:

- a. Abilities. I consider Corker just as able a mechanic as Heflin and, in addition, is an excellent metal body and paint man.
- b. Productivity[sic] - Corker is a steady, reliable, productive worker and Heflin sometimes works and sometimes loaf.
- c. Moral Caliber.

2. The entertainment of this complaint causes me to question the motives of the leadership of the Local. Just what constitutes Seniority? Because of Heflin's malingering, Corker has actually worked more than Heflin. Both Brown and Long knew when Heflin was caught bird hunting while on sick leave. What, if any, standard of personal conduct does the Local leadership approve? Brown, himself, refused to take Heflin on the CMMI Team because of Heflin's personal conduct. Long knew of this and both knew that Davis asked that Heflin not again be sent out on the CMMI Team because of his misconduct while on the road. Doesn't the Local have any moral responsibility to investigate the validity of a complaint before making an appeal? A most casual investigation would have revealed that Heflin was arrested by the Civil Authorities at least six times in the five years preceeding [sic] this action for Driving While Drunk and/or public drunkenness. Does not the necessity for limiting a man's work to an area where he has constant supervision limit his value to the operation? The next logical question is why I haven't fired Heflin before now. Both Brown and Long know it has always been my policy to make every effort to find somewhere in the operation

a man already on board can be utilized, rather than fire him, whether his problem is personal or physical. Over the years I have made many changes for the convenience or good of the individual. I suggest that Brown poll his membership to see whether they feel I should change this policy.

3. Answering specific paragraphs of this complaint:

ARKAG (10 Mar 70) 2nd Ind 24 March 1970
SUBJECT: Union Grievances Pertaining to Employee of Local 1671

a. Paragraph 5 & 6. Howell, Brown and Long all know that Stubblefield cannot take shorthand, and with seven people talking the resulting long hand notes were without coherence and valueless, consequently were simply discarded by LTC Page. They knew there was no intent to destroy vital records.

b. Paragraph 9. This paragraph ignores the fact that Corker served two years on active duty in the 209 AAA Bn as a mechanic and Shop Foreman. Also that Corker worked as a mechanic at the Ford Motor Co at Warren where he resigned to further his education. Howell, Long and Brown are all aware that there have been frequent changes of personnel because of Bureau Job Authorizations. Payrolls reveal that Corker's pay first equaled Heflin's on 7/1/54. and [sic] that he was first classified as a mechanic on 11/1/51.

c. Paragraph 12. This statement is a deliberate mis-statement [sic] of the facts. An analysis of leave records reveal that Heflin has more paid sick leave than any man who has ever worked in the Shop. His annual average is 96 hours per year, the nearest to him is Long with an average of 82 hours per year. The average sick leave taken by shop personnel is about 45 hours per year.

d. Paragraph 13. As indicated previously, it was not necessary to waive any qualifications for Corker. He possesses several important qualifications Heflin does not have.

4. For your consideration, listed is Heflin's police record for the last five years, as reflected by the records of the North Little Rock Police Department and the Arkansas State Police Department.

2/6/65	Driving While Intoxicated
10/16/65	Drunk
11/11/65	Drunk
5/27/68	Reckless Driving
2/15/69	Drunk
10/4/69	Driving While Intoxicated
3/14/70	Drunk

/s/HOBART W. COPELAND
Colonel, Inf. ARKARNG
State Maint Officer

(Notice recommended for adoption by the Assistant Secretary)

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS in the FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT communicate to any of our employees not directly involved in the processing of a specific grievance, either orally or in writing, derogatory information concerning a fellow employee who initiates a grievance proceeding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

DEPARTMENT OF DEFENSE
ARKANSAS NATIONAL GUARD
 (Agency or Activity)

Dated _____ By _____
 (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor whose address is 2511 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

UNITED STATES DEPARTMENT OF LABOR
 ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
 SUMMARY OF DECISION AND DIRECTION OF ELECTION
 OF THE ASSISTANT SECRETARY
 PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ARMY AND AIR FORCE EXCHANGE SERVICE,
 NEW ENGLAND EXCHANGE REGION,
 WESTOVER AIR FORCE BASE,
 CHICOPEE, MASSACHUSETTS
 A/SLMR No. 54

This case, involving a representation petition filed by the National Association of Government Employees (NAGE), presented questions as to whether a unit of warehouse employees is appropriate and whether off-duty military personnel should be excluded from the proposed unit.

In all the circumstances, the Assistant Secretary determined that a unit of warehouse employees was appropriate. He noted in this respect that the employees in the claimed unit were separated physically from the rest of the Activity's employees and their job functions, which for the most part involved manual labor, were dissimilar from those of other Activity employees. He also noted that warehouse employees worked under separate supervision, had different work shifts from other Activity employees and their interchange with other employees was negligible.

In these circumstances and noting that off-duty military personnel could not be excluded from the claimed unit based solely on their military status, the Assistant Secretary directed an election in the petitioned for unit, including off-duty military personnel.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ARMY AND AIR FORCE EXCHANGE SERVICE,
NEW ENGLAND EXCHANGE REGION,
WESTOVER AIR FORCE BASE,
CHICOPEE, MASSACHUSETTS 1/

Activity

and

Case No. 31-3210 E.O.

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Anthony D. Wollaston. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, National Association of Government Employees, herein called NAGE, seeks an election in a unit of all nonsupervisory hourly paid (blue collar) warehouse employees excluding supervisory and professional employees at the Activity's Westover Air Force Base installation. 2/

The Activity agrees with the NAGE that military part-time employees should be excluded from the claimed unit, but it asserts that the only appropriate unit would be one that includes its nonsupervisory Central Office employees.

1/ The name of the Activity appears as amended at the hearing.
2/ The NAGE subsequently amended its petition to exclude also military part-time employees, guards, management employees, and to show exclusion of Central Office employees.

The employees in the claimed unit at Westover Air Force Base work in the administrative headquarters for the New England Exchange Region, which is one of 12 geographical administrative divisions of the Army and Air Force Exchange Service. This headquarters operation consists of five separate branches performing, respectively, accounting, data processing, inventory management, storage and distribution, and personnel administration. All employees of the data processing, inventory management, and personnel branches work in one administration building. The accounting branch is in a separate adjacent building, and storage and distribution employees work at two warehouses at the Base. It was estimated that there are 46 nonsupervisory employees in the two warehouses and 66 nonsupervisory employees in the other branches of the Activity's Westover operation.

Of the approximately 46 nonsupervisory employees employed at the storage and distribution warehouses, 12 are described as "office type" workers. There are also motor vehicle operators, materials handling and equipment operators, and merchandise markers, in addition to the various types of clerks. All of these employees are hourly paid. Additionally, seven off-duty military employees work in the warehouse operation. Central Office nonsupervisory employees who, as noted above, are excluded by the NAGE, are secretaries, clerk typists, general office clerks, procurement clerks, commodity group buyers, couriers, accountants, and forms management and personnel employees. The Central Office clerks, like their counterparts at the warehouses, are hourly paid whereas budget analysts (accountants), data processors, and inventory management employees are salaried.

Immediate supervision is the responsibility of supervisors at the job location involved. There are 26 to 28 supervisors for the entire Westover operation and seven to ten of these direct warehouse employees. Above these immediate supervisors are branch chiefs for each of the five branches. There is a Chief and a Deputy of the New England Exchange Region, either of whom visits the warehouses at least on a weekly basis. Also, the inventory management chief visits the warehouses at least daily, and there is evidence that the personnel chief visits the warehouses on occasion. Individual supervisors recommend hiring, discharge, and promotion, and the record reveals that the Chief of the Exchange Region processes these recommendations regardless of the location of the employees involved. Supervisory staff meetings are held weekly. Although all branch chiefs attend these meetings, the warehouse manager and the traffic manager apparently do not attend the meetings regularly and when they do it is only by invitation.

The warehouses operate on two shifts - 8:00 a.m. to 5:00 p.m. and 3:00 p.m. to 11:00 p.m. On the other hand, employees at the Central

Office building work 8:00 a.m. to 5:00 p.m. 3/ Fringe benefits are identical for all regular full-time employees regardless of location. Wage rates for all hourly paid employees, which include nonsupervisory warehouse employees and some of the employees in the other branches, are also the same regardless of location. 4/

The evidence establishes that there is little or no interchange of employees between the warehouses and the Activity's other operations. In this respect, the only recorded instances of interchange have occurred when a clerical employee from one location has filled in for a clerical employee at another location, where sickness has left a branch short-handed; when bulky items have had to be moved requiring the use of manual labor, warehouse employees have been utilized on occasion; and, once a year, when Central Office and warehouse employees have worked together taking inventory.

In all the circumstances, I find the unit petitioned for by the NAGE to be appropriate and that such a unit will promote effective dealings and efficiency of operations. Thus, the evidence establishes that the warehouse employees are separated physically from the remaining employees of the Activity and that the job functions of the warehouse employees involve, for the most part, manual labor, and are dissimilar from those of other Activity employees. 5/ Moreover, the warehouse employees have separate supervision, 6/ work different shifts than other Activity employees, and their interchange with other employees is negligible.

With respect to the NAGE's exclusion of off-duty military personnel, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find that off-duty military personnel working in the Activity's warehouses are eligible to vote on the same basis as other employees in the petitioned for unit.

- 3/ The data processing branch, which is at a location separate from the other administration offices, has shifts of 6:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m.
- 4/ The evidence reveals that if a reduction in force were necessary, warehouse employees would be put on the same list with Central Office employees if the jobs to be vacated were similar.
- 5/ The Activity contends that the unit sought is inappropriate because warehouse clericals in the claimed unit have similar duties to Central Office clericals who are excluded. In all circumstances, including the lack of interchange between these employees, the different hours worked and the physical separation of the facilities, I find that the fact that there are clerical employees who are not covered by the petition in the subject case does not render the unit inappropriate.
- 6/ As noted above, supervisory staff meetings at the Activity apparently do not regularly include the warehouse manager or the traffic manager.

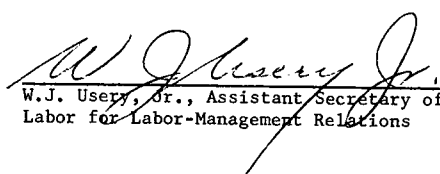
Based on the foregoing, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All hourly paid warehouse employees, including off-duty military personnel within the foregoing category, employed by the Army and Air Force Exchange Service, New England Exchange Region, Westover Air Force Base, Chicopee, Massachusetts, excluding all Central Office employees, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including the employees who did not work during that period because they were out ill, on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees.

Dated, Washington, D. C.
June 8, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 10, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

NATIONAL CENTER FOR MENTAL HEALTH SERVICES,
TRAINING AND RESEARCH
A/SLMR No. 55

The subject case, involving a representation petition filed by the National Association of Government Employees (Ind.), Local R3-99 (NAGE), raised a question as to whether the agreement between the Activity and Washington Area Metal Trades Council, AFL-CIO (WAMTC), constituted a bar to the processing of the petition in this matter.

The evidence established that the provision in the agreement relating to its effective date and duration provided that the agreement (with a fixed termination date of one year) continued from year to year unless either party, in writing, sought its modification or termination.

In September 1969, the WAMTC advised the Activity of its wish to renegotiate their agreement. Thereafter, in November 1969, the parties agreed in writing to extend the agreement to January 1, 1970, or "until renegotiations were completed." However, no negotiations took place and no new agreement was consummated thereafter prior to the filing of the subject petition.

In these circumstances, the Assistant Secretary found that, by its express provisions, the parties' agreement terminated when the incumbent union gave written notice of its desire to renegotiate the agreement. Therefore, the Assistant Secretary found that the agreement did not bar the processing of the petition in the subject case. He found further, that even assuming that the agreement continued in effect after the WAMTC's request to renegotiate, the parties' mutual agreement, in November 1969, to extend the agreement to January 1, 1970 or until renegotiations were completed, rendered the agreement not to be a bar after January 1, 1970 since after such date it was indefinite as to its term.

In these circumstances, the Assistant Secretary directed an election in the subject case.

A/SLMR No. 55

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

NATIONAL CENTER FOR MENTAL HEALTH SERVICES,
TRAINING AND RESEARCH 1/

Activity

and

Case No. 22-2149

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES (IND.), LOCAL R3-99

Petitioner

and

WASHINGTON AREA METAL TRADES COUNCIL,
AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Hilary M. Sheply. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record of this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Petitioner, National Association of Government Employees (Ind.), Local R3-99, herein called NAGE, seeks an election in a unit

1/ The name of the Activity appears as amended at the hearing. The unit involved is located at the St. Elizabeth's Hospital, in Washington, D. C.

of all nonsupervisory employees of the construction, electrical, mechanical and garage sections of the maintenance branch of St. Elizabeth's Hospital, Washington, D. C., excluding supervisory and managerial employees, guards, professionals and employees engaged in Federal personnel work in other than a purely clerical nature within the meaning of Executive Order 11491. 2/

The Activity and the Intervenor, Washington Area Metal Trades Council, AFL-CIO, herein called WAMTC, contend that the employees in the above-described unit are covered by a signed agreement which constitutes a bar to the processing of the petition in the subject case. This contract, approved by the Department of Health, Education, and Welfare on November 14, 1967, provides in Article XXIX entitled, "Effective Date And Duration Of Agreement:"

1. This Agreement shall be binding upon the EMPLOYER and the COUNCIL for a period of one year from the date of approval by the Department of Health, Education, and Welfare and from year to year thereafter unless either party shall notify the other party in writing at least 60 days, but not more than 90 days prior to such date or to any subsequent anniversary date, of its desire to modify or terminate this Agreement, or a timely and valid request for redetermination of exclusive status has been received between the 90th and 60th day prior to the anniversary date of this Agreement.

2. If either party gives notice to the other party as in Section 1 above, then between the 60th and 45th day prior to the terminal date of this Agreement, representatives of the EMPLOYER and the COUNCIL shall meet and commence negotiations, provided a valid and timely request for redetermination of exclusive recognition has not been filed by another employee organization between the 90th and 60th day prior to the terminal date of this Agreement.

In accordance with the above provisions, the WAMTC, by letter dated August 14, 1968, requested the Activity to renegotiate the existing agreement, and the Activity, by letter dated September 6, 1968, agreed to meet and suggested a meeting date of September 26, 1968, in its Administration Building. The record reveals that

2/ The parties stipulated to the appropriateness of the unit.

representatives of the Activity appeared at the appointed time and place; however, no one representing the WAMTC appeared for the meeting, and therefore, no negotiations took place.

One year later, the WAMTC, by letter dated September 5, 1969, again advised the Activity of its wish to renegotiate the agreement. Subsequently, on November 3, 1969, the WAMTC, in writing, requested that the agreement be extended until January 1, 1970, or until renegotiations were completed. The Activity, by letter dated November 17, 1969, agreed to the proposed extension. However, no negotiations took place thereafter.

The record reveals that on occasions in 1968, 1969 and 1970, the Activity and the WAMTC have processed grievances and have held meetings of Safety Committees apparently under what then was believed to be an existing agreement.

Based on the foregoing, the Activity and the WAMTC take the position that the petition in the subject case was filed at a time when a negotiated agreement was in existence and that therefore, the NAGE's petition in the subject case should not be processed.

As stated above, Section 1 of Article XXIX, the parties' 1967 agreement provides, with respect to duration, that the agreement automatically renews itself from year to year "unless either party shall notify the other party in writing at least 60 days, but not more than 90 days prior to such date or to any subsequent anniversary date, of its desire to modify or terminate this Agreement..." (Emphasis added.) The evidence establishes that on September 5, 1969, the WAMTC did notify the Activity of its desire to renegotiate the agreement. Therefore, by its terms, the agreement approved in 1967 terminated upon one of the parties' thereto stating that it desired to renegotiate. Accordingly, after November 1969, the agreement must be viewed as an oral agreement which would not serve as a bar to the filing of a representation petition.

Moreover, even assuming that the agreement continued in effect after the parties' above-mentioned communications in 1969, the exchange of letters between the parties in November 1969 in effect resulted in the parties extending their agreement and setting a fixed termination date of January 1, 1970, "or until renegotiations were completed." Consequently, after January 1, 1970, the agreement would be viewed as not having a fixed term or duration and could, therefore, not constitute a bar to an election. 3/ Further, since no new

3/ Cf. United States Treasury Department, United States Mint, Philadelphia, Pennsylvania, A/SLMR No. 45.

agreement was negotiated thereafter, it is clear that there was no agreement of fixed term in effect at the time the petition in the subject case was filed on October 16, 1970, by the NAGE. 4/

Based on all of the foregoing circumstances, I find that there was no bar to the processing of the petition in the subject case. Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All employees of the construction, electrical, mechanical and garage sections of the maintenance branch of St. Elizabeth's Hospital, Washington, D. C., excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

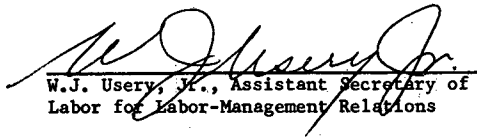
An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are all those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall

4/ In view of the fact that an earlier petition covering the same unit was withdrawn by the NAGE prior to the filing of the instant petition, the WAMTC contended that Section 202.3(d) of the Assistant Secretary's regulations precluded further processing of the instant petition. Section 202.3(d) provides, in part, that where a petition has been filed not more than 90 days and not less than 60 days prior to the terminal date of an agreement and is subsequently withdrawn, the activity and the incumbent exclusive representative shall be afforded a 90-day period free from rival claim. As noted above, the evidence establishes that after January 1, 1970, there was no agreement of fixed term in effect which could constitute a bar to an election. In these circumstances, since the NAGE's withdrawn petition was filed subsequent to January 1, 1970, at a time when no agreement which could constitute a bar existed, I view Section 202.3(d) as being inapplicable to the facts of this case.

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vote whether they desire to be represented for the purpose of exclusive recognition by National Association of Government Employees (Ind.), Local R3-99; or, by Washington Area Metal Trades Council, AFL-CIO; or, by neither.

Dated, Washington, D. C.
June 10, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

- 5 -

June 15, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON OBJECTIONS AND
DIRECTION OF SECOND ELECTION OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Based on the foregoing, the Assistant Secretary set aside the election of July 22, 1970 and directed that a second election be conducted.

ARMY MATERIEL COMMAND,
ARMY TANK AUTOMATIVE COMMAND,
WARREN, MICHIGAN
A/SLMR No. 56

This case arose as a result of the National Association of Government Employees, Local R8-21 filing objections alleging that certain conduct by the Activity, the representatives of the Department of Labor and the American Federation of Government Employees, AFL-CIO, Local 1658, affected the results of the election held at the Army Materiel Command, Army Tank Automotive Command, Warren, Michigan.

A hearing was held before a Hearing Examiner involving (1) objections to the conduct of the election because of alleged irregularities committed by the Activity and representatives of the Department of Labor, and (2) objections concerning campaign literature prepared and distributed by the AFGE containing misrepresentations which allegedly affected the results of the election.

Upon a review of the Hearing Examiner's Report and Recommendations and the entire record, including the AFGE's request for review of the Hearing Examiner's Report and Recommendations, the Assistant Secretary found, in agreement with the Hearing Examiner, that the AFGE's leaflet containing the false representation that the NAGE purchased a Lear Jet for \$1,250,000 was the type of leaflet that could be recognized by employees as campaign propaganda and, properly evaluated, could not reasonably be expected to affect the results of the election.

The Assistant Secretary found also in agreement with the Hearing Examiner that the AFGE's erroneous and deceptive characterization of a NAGE Local President as a NAGE National Vice President requesting support of the AFGE constituted campaign trickery involving a substantial misrepresentation of fact which impaired the employees' ability to vote intelligently on the issue. He found also that by distributing the leaflet on the day before the election the NAGE was prevented from making an effective reply thereto.

With respect to the remaining allegations, the Assistant Secretary found, in agreement with the Hearing Examiner, that they were without merit.

- 2 -

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ARMY MATERIEL COMMAND,
ARMY TANK AUTOMOTIVE COMMAND,
WARREN, MICHIGAN

Activity

and

Case No. 52-2103

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1658

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R8-21

Intervenor

DECISION ON OBJECTIONS

AND

DIRECTION OF SECOND ELECTION

On February 26, 1971, Hearing Examiner David London issued his Report and Recommendations in the above-entitled proceeding, finding that the American Federation of Government Employees, AFL-CIO, Local 1658, herein called AFGE, had engaged in a misrepresentation with regard to a leaflet which contained the statement that "NAGE NATIONAL VICE-PRESIDENT URGES SUPPORT OF AFGE." The Hearing Examiner concluded that the voters' ability to evaluate the choices on the ballot was so impaired by the complained of leaflet that they were unable to vote intelligently, and accordingly, he recommended that the election held on July 22, 1970, be set aside and a new election be directed under the terms of Executive Order 11491.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. 1/ Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record including the AFGE's request for review of the Hearing Examiner's Report and Recommendations and the parties' briefs, I adopt the findings and recommendations of the Hearing Examiner.

The NAGE filed numerous objections to the election in this case which can be separated into two categories: (1) objections to the conduct of the election because of alleged irregularities committed by the Activity and representatives of the Department of Labor, and (2) objections concerning campaign literature prepared and distributed by the AFGE containing misrepresentations which allegedly affected the results of the election.

The alleged irregularities attributed to the Activity and representatives of the Department of Labor include improper mailing of ballots, dual voting, improper management observers, unattended polling places, ineligible voters, incomplete eligibility lists, improper distribution of eligibility cards, and loss of a voting list from one of the polling places.

The Hearing Examiner noted that the NAGE's post-hearing brief contained no contentions or mention concerning any of these objections and restricted its contentions to two pieces of literature circulated on behalf of the AFGE as constituting a basis for setting aside the election.

In these circumstances, the Hearing Examiner concluded that the NAGE had apparently abandoned or withdrawn its objections in Category 1 noted above. Nevertheless, the Hearing Examiner considered the entire record to determine whether these procedural objections had merit and he concluded that the NAGE had failed to establish that there was merit to any of these objections. He therefore recommended that they be overruled. The NAGE did not request review of the Hearing Examiner's Report and Recommendations in this respect. In all the circumstances and upon review of the record, I agree with the Hearing Examiner's recommendation overruling these objections.

1/ The Hearing Examiner properly refused to hear testimony with respect to an allegation by the National Association of Government Employees, Local R8-21, herein called NAGE, that supervisory employees told employees at the Activity that if they voted for a union it would mean a closed shop, inasmuch as such allegation was not included as part of the NAGE's timely filed objections to the election.

The first campaign flyer prepared and distributed by the AFGE, in addition to containing propaganda derisive of the benefits received by the NAGE membership for dues paid to the NAGE national headquarters, includes a drawing of an airplane with the accompanying legend in broad type, "NAGE Raids Treasury! NAGE president junkets high in the sky -- in newly bought \$1,250,000 Lear Jet -- Local unions demand "money" and "representation!"

The record reveals that this leaflet was distributed to employees at the installation on the morning of July 17, 1970, five days prior to the election. The record reveals also that the NAGE had never owned a Lear Jet and never purchased a Lear Jet for \$1,250,000.

The Hearing Examiner found that while the representation that NAGE owned and operated an expensive jet for its top officials was undoubtedly circulated to prejudice the voters against NAGE, the NAGE was partially to blame for causing this misrepresentation. 2/ Moreover, the Hearing Examiner concluded that the NAGE had sufficient time in which to make an effective reply but failed to do so. Accordingly, he recommended that the NAGE objection based on the distribution of this circular be overruled.

In all the circumstances, I find that, taken in its entire context, the above-described leaflet distributed by the AFGE could be recognized by employees as campaign propaganda, and, properly evaluated, could not reasonably be expected to have a significant impact on the election.

Accordingly, the objection based upon this leaflet is hereby overruled.

The second leaflet complained of, distributed the day before the election, contained the statement, in bold type, "NAGE NATIONAL VICE PRESIDENT URGES SUPPORT OF AFGE," and attributed this statement to Andre La Croix "National Vice President, Region 7, and President, NAGE Local R7-35." The reverse side of the leaflet was a verbatim copy of a letter from Andre E. La Croix. At the top of the reverse side of the leaflet was the following statement: "(The following letter was mailed Sunday, July 19, 1970, to the more than 400 members of NAGE Rock Island Arsenal, Local R7-35 by its President, Andre La Croix who is National Vice President for NAGE Region Seven)." The body of the letter began as follows:

2/ The Hearing Examiner noted that the NAGE's newsletter "The Fednews" on March 31, 1970, carried a picture showing NAGE officials standing in front of a plane. The caption beneath the picture reads "NAGE officials deplane from their Lear Jet 808." A similar picture appeared in the "Fednews" of June 10, 1970 with the caption reading "Shipyard Local officials greet NAGE national officers as they airplane from the Association's Lear Jet 808."

"Dear NAGE Members: The undersigned officers of the Headquarters USAWECOM Local of NAGE at an executive board meeting have voted to support the American Federation of Government Employees in the August 4 election to select the bargaining agent for GS employees of this Headquarters" ... The letter was signed by A.E. La Croix, President, and three other officers of the local.

The record reveals the leaflet was distributed at the installation on July 21, 1970, the day before the election. The record also reveals that while La Croix is in fact the President of NAGE Local R7-35 in Rock Island, Illinois, he never was and is not now a National Vice President of the NAGE. Moreover, NAGE does not have now, or has it ever had, a National Vice President for NAGE Region Seven.

The Hearing Examiner concluded with respect to the above misrepresentation that the voters' ability to evaluate the choices was so impaired by this "campaign trickery" that they were unable to vote intelligently. He also found that by distributing the leaflet on the day before the election the NAGE was prevented from making an effective reply thereto.

The AFGE, in its request for review of the Hearing Examiner's Report and Recommendations, reiterates its contention that the above-mentioned leaflet was self-serving campaign literature and was the type that a voter would expect to see in an election campaign. It also argues that even if the leaflet contained a material misrepresentation, the NAGE could have prepared, published and distributed an effective reply if it so desired. Finally, the AFGE argues that the Hearing Examiner's findings and recommendations on this objection were based on "subjective evidence."

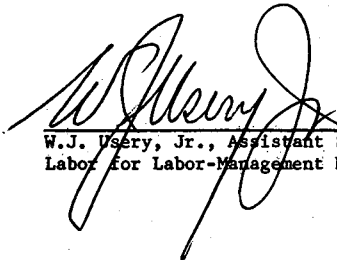
In my view, the issue herein is not whether La Croix wrote the letter supporting the AFGE or whether he was President of the NAGE Local R7-35. Rather, it is the erroneous and deceptive characterization of La Croix as a National Vice President of the NAGE. I agree with the Hearing Examiner's conclusion that it is difficult to perceive a false representation more likely to create doubt, frustration and dissention concerning the integrity of the NAGE's leadership than a plea by its own National Vice President to disavow its leadership and, instead, support the AFGE. It is clear that the employees here had no independent knowledge as to persons holding national office in the NAGE and consequently, were unable to recognize the leaflet as a misrepresentation of fact. In these circumstances, I find that the deception constituted campaign trickery involving a substantial misrepresentation of fact which impaired the employees' ability to vote intelligently on the issue. I find also that by distributing the leaflet on the day before the election the NAGE was prevented from making an effective reply thereto.

Accordingly, the election conducted on July 22, 1970 is hereby set aside and a second election will be conducted as directed below.

DIRECTION OF SECOND ELECTION

It is hereby directed that a second election be conducted as early as possible, but not later than 45 days from the date below, in the unit set forth in the Election Agreement dated June 23, 1970. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because they were ill, on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Dated, Washington, D. C.
June 15, 1971



W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY OF LABOR FOR LABOR MANAGEMENT RELATIONS

ARMY MATERIEL COMMAND, ARMY TANK)
AUTOMOTIVE COMMAND, WARREN, MICHIGAN)
Agency and Activity,)
and)
LOCAL 1658, AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)
Petitioner,)
and)
LOCAL R8-21, NATIONAL ASSOCIATION)
OF GOVERNMENT EMPLOYEES)
Intervenor.)

Case No. 52-2103

Mr. John Simmon, Assistant Personnel
Officer for the Activity.
James L. Neustadt, Esq., Washington, D. C.,
for the Petitioner.
Roger P. Kaplan, Esq., Washington, D. C.,
for the Intervenor.

Before: David London, Hearing Examiner.

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding had its genesis in a petition filed April 29, 1970 by Local 1658, American Federation of Government Employees, AFL-CIO (hereinafter referred to as AFGE), seeking certification as exclusive representative of all non-supervisory and non-professional employees engaged at Army Materiel Command, Army Tank Automotive Command, Warren, Michigan (hereinafter referred to as the Activity). Thereafter, Local R8-21, National Association of Government Employees (hereinafter referred to as NAGE), timely sought and was granted intervention in the proceeding. On June 23, 1970, the two labor organizations entered into an "Agreement for Consent or Directed Election" which agreement was approved by the Area Administrator, Labor Management Services Administration.

The election contemplated by that agreement was held on July 22, 1970. The duly certified revised tally of ballots issued on July 24 disclosed that 947 votes had been cast for AFGE, 931 votes for NAGE, and 998 votes against exclusive recognition by either union.

On or about July 27, 1970, NAGE filed its objections with the Area Administrator above mentioned charging "many irregularities of the Activity and representatives of the Labor Department as well as misrepresentations in the literature circulated by AFGE" which conduct was alleged to have affected the results of the election. NAGE requested that the election be set aside and a new election be conducted. On August 31, 1970, the Department Regional Administrator found that the objections raised relevant questions of fact that could best be resolved on the basis of record testimony. Accordingly, he ordered that a hearing on said objections be conducted before a Hearing Examiner pursuant to Section 202.20 of the Regulations of the Assistant Secretary.

That hearing was held before the undersigned duly designated Hearing Examiner at Warren, Michigan, on November 19-20, 1970. At that hearing, NAGE and AFGE were represented by counsel; the Activity was represented by its Assistant Personnel Officer. Full opportunity was given to adduce evidence, submit oral argument and to file briefs. On or about January 9, 1971, a memorandum was submitted on behalf of the Activity. On January 22, 1971, briefs in behalf of NAGE and AFGE were received by me.

Upon the entire record in the proceeding, my observation of the witnesses as they testified, and after due consideration of the briefs aforementioned, I make the following:

Findings and Conclusions

Most of the approximately 15 objections filed by NAGE complain of the manner in which the Activity and representatives of AFGE conducted the election--alleged improper mailing of ballots, dual voting, improper Management Observers, unattended polling places, ineligible voters, incomplete eligibility lists, etc. NAGE's exhaustive 24 page post-hearing brief, however, contains no contention or mention concerning any of these objections. Instead, it is restricted to the contention that the election should be set aside because AFGE, prior to the election, circulated two flyers which allegedly "contained misrepresentations that were a substantial departure from the truth--were false and unequivocally misled the voters in the election." In that posture of the case, I can only conclude that NAGE has abandoned or withdrawn its objection charging that the Activity and AFGE were guilty of wrongful action in the conduct of the election. Notwithstanding the foregoing circumstance, I have, nevertheless, considered the entire record to determine whether there is any merit to any of these procedural objections in the conduct of the election. That review has confirmed a conclusion I entertained at the close of the hearing that NAGE has failed to establish that there is any merit to any of these objections. It is therefore, recommended that they be overruled and dismissed.

- 2 -

The only objections presently relied upon by NAGE deal with two circulars or flyers admittedly prepared and circulated by a representative of AFGE among the employees of the Activity and which, it is charged, were false, misleading, and affected the results of the election. The first circular complained of, NAGE Ex. 3, was distributed 3-4 days before the election. In addition to the usual propaganda derivative of the benefits which dues paid to NAGE national headquarters in Boston "trickle down" to the membership in its locals, the circular has a drawing of an airplane and carried the accompanying legend, in type almost an inch high: "NAGE RAIDS TREASURY! NAGE president junkets high in the sky--in newly bought \$1,250,000 'Lear Jet'--Local unions demand 'money' and 'representation.'" NAGE contends that the representation that it owns a Lear Jet is totally false and was made only to improperly influence voters at the Activity.

The second flyer complained of, NAGE Ex. 2, was distributed the day before the election. In addition to the usual propaganda material, the circular contained the statement, in bold type approximately one-half inch high, that "NAGE NATIONAL VICE-PRESIDENT URGES SUPPORT OF AFGE" and attributed the statement to Andre E. LaCroix, National Vice President, Region 7, and President, NAGE Local R7-35. The testimony establishes, however, that LaCroix never was a vice president of NAGE, and that the national organization never had any Regional vice president for its Region 7.

In determining whether an election should be set aside because, in its campaign propaganda, one of the parties has misrepresented facts, a balance must be struck between the right of employees to a free and informed choice of bargaining representative and the rights of the parties to wage a free and vigorous campaign with all the normal tools of legitimate electioneering. As neither Executive Order 11491, nor the Regulations of the Assistant Secretary for Labor-Management Relations, under which the instant election was conducted, contain the standards which must be maintained to insure the free and untrammelled election contemplated by that Order and Regulations, search must be made elsewhere for applicable standards by which to appraise and measure the conduct of the parties.

In their post-hearing briefs, AFGE and NAGE are in agreement that the standards established by the National Labor Relations Board in the private sector of labor-management relations are appropriate guides by which their election conduct may be measured herein. Though the decisions of that Board are not controlling herein, its expertise in the filed under consideration has been repeatedly recognized by the Supreme Court, and the Assistant Secretary for Labor-Management Relations has recognized that it is appropriate to "take into account the experience gained from the private sector under the Labor Management Relations Act, as amended--." Charleston Naval Shipyard, A/SIMR, No. 1, November 3, 1970.

Notwithstanding the sharp differences in the ultimate conclusions reached by NAGE and AFGE in their post-hearing briefs, they are in complete agreement with me that the standards by which their conduct must be appraised and measured have been summarized in Hollywood Ceramics Co. Inc., 140 NLRB 221, 1/

1/ AFGE, in its brief, has inadvertently cited this case as "Hollywood Plastics."

- 3 -

as follows: "[A]n election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."

Turning to an application of these standards to the flyer concerning the Lear Jet, the evidence establishes that NAGE does not, and never did, own a Lear Jet. While the representation that NAGE owned and operated the expensive Jet for its top officials was undoubtedly circulated in order to prejudice voters against NAGE, that organization is not altogether free from blame for causing that misrepresentation.

NAGE's newspaper, "The Fednews," on March 31, 1970 (AFGE Ex. 2), carried a picture showing NAGE officials standing in front of a plane. The caption beneath the picture reads: "NAGE officials deplane from their Lear Jet 808." (Emphasis supplied.) A similar picture appeared in "The Fednews" of June 10, 1970 (AFGE Ex. 3), with the caption there reading "Shipyard local officials greet NAGE national officers as they enplane from the Association's Lear Jet." (Emphasis supplied.)

More important, however, is the fact that the circular complained of was distributed 4 days before the election, allowing sufficient time for NAGE to make an effective reply thereto. No credible, probative reason having been offered for its failure to do so, NAGE cannot now demand that the election be set aside because of the aforementioned misrepresentation. Accordingly, it is recommended that the objection based on the distribution of this circular be overruled and dismissed.

A different result must be reached with respect to the flyer circulated the day before the election which fraudulently informed the employees that a National vice-president of NAGE was urging members of that organization to vote for AFGE. With respect to the impact this circular had on prospective voters, Yvonne Shaughnessy testified that on the day of the election, "many" of the approximately 300 people employed in the building in which she was engaged came to her "questioning the veracity" of this circular. They told her "they didn't know what to believe; all they could go by is what they saw; if NAGE was going to support AFGE, what kind of union were we running;--they were confused, they didn't know what to do."

Avne VanHusen, employed in a building housing approximately 1,000 employees, testified that on the day of the election, a number of employees made remarks to him about this circular which, he testified, "weren't exactly favorable."

Donald Purgatori, employed at the Activity for more than 23 years, first saw the circular under consideration the morning before the election. Though not a member of either AFGE or NAGE, he testified that prior to seeing the circular, he "wasn't too sure--who [he] was going to vote for in the election,--[he] kind of leaned toward NAGE." When he saw the circular, however, "things got pretty confused to [him], so [he] voted for no union."

Though labor organizations have great latitude in the intensity and scope of the propaganda by which they seek to influence voters in their choice between competing unions, the use of fraud or trickery cannot be condoned. Here, I find it difficult to perceive a representation more likely to falsely create doubt, frustration, and dissension concerning the integrity of NAGE's leadership than a plea by its own National vice president to disavow that leadership and, instead, to cast their votes for AFGE. Indeed, no doubt exists as to the deliberateness of the deception perpetrated by this circular. And, though it is not for me to speculate the actual effect this deception had on the electorate, note must nevertheless be taken of the closeness of the vote on the following day - 947 for AFGE, 931 for NAGE, and 998 for no union.

The Labor Board had occasion to consider a similar situation in United Aircraft Corporation, 103 NLRB 102. In that proceeding, the Board found that 2 days before a run-off election in which the UAW and IAM participated, IAM circulated a copy of a Western Union telegram among the employees involved in that proceeding purporting to be signed by Al Hayes as president of IAM. The telegram was extremely laudatory of UAW and its "great president, Walter Reuther." The Board found "that the distribution of the foregoing telegram was a hoax; that the IAM never sent such a telegram; and that the UAW had conceived and perpetrated its scheme as a vote-getting device." At the election that followed, UAW received 935 votes, IAM received 873. Upon objections filed by IAM that the distribution of the telegram affected the results of the election the Board concluded "that the UAW by its deliberate deception as to the source of the 'telegram' so blinded the employees to the significance of its contents that they could neither recognize it as a fake nor evaluate it as propaganda." See also Timken-Detroit Axle Co., 98 NLRB No. 120.

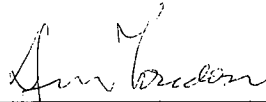
By reason of all the foregoing I reject AFGE's contention that the circular under consideration was merely "self-serving campaign literature and was the type a voter could expect to see in an election campaign, thus, not precluding the free and independent judgment of the voters." Instead, I conclude that the voters' "ability to evaluate the choices was so impaired by--campaign trickery that they were unable to intelligently vote on the issue." Report No. 20 of the Assistant Secretary of Labor issued under E.O. 10988. 2/ I further find that by distributing this flyer on the day before the election NAGE was prevented from making an effective reply thereto. With approximately 3,000 voters scattered through 5-6 building in the Activity, it could not reasonably be expected that NAGE could, within a matter of hours prepare, publish, and distribute such an effective reply.

2/ In Charleston Naval Shipyard, A/SLMR No. 1, issued under E. O. 11491, the Assistant Secretary of Labor noted that he would "take into account the experience gained--under the prior Executive Order," E.O. 10988.

June 15, 1971

For the reasons stated above, it is recommended that NAGE's Objections insofar as they relate to the distribution by AFGE of NAGE Ex. 2 be sustained. It is further recommended that the election held July 22, 1970 be set aside and a new run-off election be directed under the terms of E. O. 11491, and in accordance with applicable Rules and Regulations of the Assistant Secretary.

Dated at Washington, D. C.,
February 26, 1971



David London
Hearing Examiner

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

INTERNAL REVENUE SERVICE,
OFFICE OF THE REGIONAL COMMISSIONER,
WESTERN REGION
A/SLMR No. 57

This case involved representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 2202 (AFGE) and the National Association of Internal Revenue Employees, Chapter 81 (NAIRE). The AFGE sought a unit of professional and nonprofessional employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region Appellate Branch Office located in Los Angeles, California. The NAIRE sought a unit of all professional and nonprofessional employees located throughout the Western Region, which encompassed the unit sought by the AFGE.

The Assistant Secretary found that a unit composed solely of the Appellate Branch employees located in the Los Angeles office, as proposed by the AFGE, did not encompass a group of employees with a clear and identifiable community of interest. In this regard the Assistant Secretary noted that those employees were part of a broader centralized administration and supervisory structure and had the same general working conditions, job functions and skill requirements as all other Appellate employees working in the 5 other branch offices in the Western Region. The Assistant Secretary further noted that there was evidence of job contacts between Los Angeles Appellate Branch employees and those stationed in the other 5 cities having branch offices by way of permanent transfer, temporary detail and communication and coordination on case handling. In these circumstances, the Assistant Secretary concluded that the unit sought by the AFGE limited to employees in the Los Angeles Appellate Branch office was not appropriate for the purpose of exclusive recognition and, accordingly, he directed that its petition be dismissed.

The Assistant Secretary also found that the Region-wide unit sought by the NAIRE was appropriate for the purpose of exclusive recognition. In reaching this conclusion he noted particularly the centralized administration and supervision of the Western Region, the uniform practices and policies with respect to personnel matters, the commonality of job functions between employees in the various functional branches making up the Western Region and the evidence of employee interrelationship by way of permanent transfer, temporary detail of personnel and case handling coordination and communication. In these circumstances, and because, in his view, such a comprehensive unit would promote effective dealings and

efficiency of agency operations, the Assistant Secretary directed that an election be conducted in the unit petitioned for by the NAIRE with professional employees being accorded a self-determination election before being included in a unit with nonprofessionals.

A/SLMR No. 57

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

INTERNAL REVENUE SERVICE,
OFFICE OF THE REGIONAL COMMISSIONER,
WESTERN REGION 1/

Activity

and

Case No. 70-1499 (RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2202 2/

Petitioner

INTERNAL REVENUE SERVICE,
OFFICE OF THE REGIONAL COMMISSIONER,
WESTERN REGION

Activity

and

Case No. 72-1482 (RO)

NATIONAL ASSOCIATION OF INTERNAL
REVENUE EMPLOYEES, CHAPTER 81 3/

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Henry C. Lee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

-
- 1/ The name of the Activity appears as amended at the hearing.
2/ The name of this Petitioner appears as amended at the hearing.
3/ The name of this Petitioner appears as amended at the hearing.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 70-1499 (RO), Petitioner, American Federation of Government Employees, AFL-CIO, Local 2202, herein called AFGE, seeks an election in a unit of all professional and nonprofessional nonsupervisory employees of the Internal Revenue Service's Los Angeles Regional Appellate Branch Office. 4/ In Case No. 72-1482 (RO), the National Association of Internal Revenue Employees, Chapter 81, herein called NAIRE, seeks an election in a unit of all professional and nonprofessional nonsupervisory employees of the Office of the Regional Commissioner, Western Region, Internal Revenue Service. 5/ The Activity contends that the unit sought by NAIRE is appropriate. On the other hand, it asserts that the employees sought by the AFGE do not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operations.

The Western Region of the Internal Revenue Service consists of a headquarters, which is located in San Francisco, California, and approximately 30 "posts of duty" located throughout the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Oregon, Utah and Washington. This Activity is under the Regional Commissioner, Western Region, who is assisted by several Assistant Regional Commissioners for separate functions. The employee complement of the Activity consists of approximately 469 employees, 265 of whom are classified as "professionals" by the Activity. 6/

General responsibility for the administration of the entire Region rests with the Regional Commissioner and his assistants. At the headquarters there are seven "functional" divisions: Collection; Intelligence; Audit; Data Processing; Appellate; Alcohol, Tobacco, and Firearms; and Administrative, each directed by an Assistant Regional Commissioner. The Collection, Intelligence, and Audit Divisions provide functional supervision to their counterparts in the various District Internal Revenue Service Offices and the Data Processing Division provides functional guidance to the Region's Service Center. 7/ The Administrative Division provides both operational services to the local offices in the Office of the Regional Commissioner

4/ The AFGE's claimed unit appears as amended at the hearing.

5/ The NAIRE's claimed unit appears as amended at the hearing.

6/ Apparently, the AFGE and the NAIRE agreed to adopt the Activity's classification of employees as to their professional and nonprofessional status. As the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc. to provide as basis for finding of fact that persons in particular classification are professional, I will make no findings as to which employee classifications constitute professional employees.

7/ Neither the District Offices nor the Region's Service Center are involved in this proceeding.

and functional supervision over its counterpart divisions in the field offices throughout the Region. The Appellate Division's function is to hold hearings on protested non-docketed excise cases, income and docketed income gift cases for the purpose of attempting to dispose of these matters by mutual agreement with the taxpayer.

Personnel services are performed in the Office of the Regional Commissioner, by the Chief of the Regional Office Section of the Personnel Branch. Personnel practices and procedures apply equally to all employees in the Region. All personnel records, with the exception of those of a few centralized positions of top executives, are kept in San Francisco. The record disclosed that management staff meetings relating to fiscal and manpower needs in the various branches are held at the Regional level twice a year, and are attended by the Assistant Chiefs or Chief of the branch offices. Duties and responsibilities of employees at the same grade level and occupation are similar throughout the Activity. Also, the qualifications, requirements and method of work assignment for employees in the same grade of classification are the same throughout the Activity. The record further reveals that the evaluation of employee work performance is the same throughout the Region.

The record shows that day-to-day dealings with labor organizations are the responsibility of the Chief, Labor Relations Section and Chief, Regional Office Section of the Personnel Branch. In this regard, the final determination with respect to grievances at the Regional level is made by the Regional Commissioner and the record reflects that the lowest ranking Activity official with authority to approve negotiated agreements is the Regional Commissioner.

The Appellate Division is divided into six branch offices, located in Los Angeles, San Francisco, Seattle, Portland, Salt Lake City and Phoenix and all are under the direct control of the Appellate Regional Commissioner's Office. The employee complement of the Division is approximately 200, 122 of whom are classified as "professional" by the Activity. The Appellate Regional Commissioner has the authority to hire and fire, promote and demote, and transfer and reassign Appellate Division employees. Likewise, he has authority for all personnel actions, placement actions, adverse personnel actions, and approval of outstanding and superior performance awards initiated in branch offices. Although the Branch Chief has the overall responsibility for managing his respective branch office, his authority to take personnel actions is limited to "oral management," i.e., approval of travel requests, overtime and authority to make shifts in working hours for employees attending school. However, he is required to advise the Appellate Regional Commissioner with respect to his manpower, space, supply and equipment needs, for a determination of allocation.

The record disclosed that hiring announcements for the Appellate Division are posted region-wide and are also posted in Internal Revenue

Service District offices. Thus, employees in other classifications throughout the Region may compete for jobs in the Appellate Division. In this regard, the record reveals that employees have been reassigned or transferred both between the Appellate branches and between "functional" divisions on a permanent basis. Furthermore, employees are frequently "detailed" on a temporary basis between the various Appellate branch offices.

Although the branch offices of the Appellate Division are separated geographically, the record shows that employees in the same job classifications have the same qualifications, perform similar work and have some job contacts. Thus, the qualifications for Appellate Conferees are the same throughout the Region. ^{8/} They must develop similar skills, attend the same training courses and apply the same technical practices, procedures and rules with respect to their work performance as do other conferees throughout the Region. With respect to the relationship between the various branch offices, the record revealed that conferees may communicate with a conferee from another branch office when a case has been transferred from one office to another, when two or more offices have related cases, or concerning cases with either unique issues or which have broad geographic or policy application. Similarly, records clerks from the different Appellate branch offices communicate with each other by telephone in the performance of their clerical duties with respect to the handling of case files.

The evidence establishes further that, in addition to Appellate conferees, other classifications of employees in the Appellate Branch Offices are required to have similar qualifications, perform similar work, and have some degree of contact with each other in the performance of their work. Thus, Appellate Auditors assist Appellate Conferees by preparing audit statements, making tax computations, and performing various accounting analysis functions and Appellate Aides, Record Clerks or Secretaries all perform identical tasks regardless of which of the 6 branch offices that they are assigned to.

With respect to the Los Angeles Branch Office, which is sought as a separate unit by the AFGE, the evidence reveals that it contains approximately 74 employees, 48 of whom are classified by the Activity as "professionals." The general working conditions in the Los Angeles office are the same as in all other Appellate Branch Offices and the evidence establishes that there are no unique personnel policies, practices or procedures which relate solely to the Los Angeles Appellate Branch Office.

^{8/} Appellate Conferees, regardless of which Branch Office they are assigned to, are responsible for holding hearings, making preliminary examinations of records, researching issues, negotiating settlements in disputed cases, and preparing reports recommending a course of action in a particular case.

While the record reflects that as a result of the size and composition of the Los Angeles area, persons working in that office may process a larger number of certain types of tax cases and cases which are generally of a greater degree of complexity than those of some of the other branch offices, the evidence established that the other branch offices process the same types of cases although on a less frequent basis.

The duties and responsibilities of employees at the same grade level in Los Angeles and throughout the Activity's Appellate Division, are similar. Thus, Los Angeles employees develop similar skills, attend the same specialized training courses, are controlled by the same personnel practices and procedures, are subject to interchange, and apply the same technical practices, procedures and rules with respect to their work performance as do other employees throughout the Region. As to the AFGE's contention that problems with respect to mileage reimbursement and details of conferees arose at the Los Angeles Branch Office, the record reveals that these issues apparently involved matters which affected Appellate Conferees throughout the Region.

Based on the foregoing, I find that the unit sought by the AFGE covering all Appellate Branch employees having an official post of duty in Los Angeles, California is not appropriate for the purpose of exclusive recognition. As noted above, the record reveals that the Activity has a centralized administrative and supervisory structure for all of the Region's employees; that Appellate employees located in the headquarters office, other Appellate employees in the branch offices within the Region and other classifications of Region employees have many common skill requirements and perform similar functions; that employees throughout the Region have some job contacts; and that promotional opportunities are available on a Region or District-wide basis. With respect to the contention that the Los Angeles Branch Office constitutes an appropriate unit because of its size and geographical separation from headquarters and other Branch Offices, while the record revealed that the Los Angeles office is the largest branch office in the Region, there was no evidence of "unique" personnel practices or working conditions applying solely to the Los Angeles Branch. Nor is there any record evidence showing that the geographical location of the Los Angeles Office would impair effective dealings on a Region-wide basis. In these circumstances and considering the fact that the Los Angeles Appellate Branch employees will have an opportunity to vote in a more comprehensive unit, I find that the unit sought by the AFGE is not appropriate.

I also find, based on the foregoing, that a Region-wide unit of professional and nonprofessional employees, as proposed by the NAIRE, is appropriate for the purpose of exclusive recognition. The record reveals that all classifications of employees within the Region are covered by the same personnel practices and policies and that there is no variation in the qualifications for employment or the work to be performed in the respective job classifications throughout the Region. In addition, promotional opportunities are made available on a Region or District-wide basis and

there is a substantial interrelationship between employees in many of the job classifications within the Region. Further, the record disclosed that employees are frequently detailed temporarily between the branch offices to handle imbalances of case loads and are frequently transferred permanently between Divisions and, less frequently, between branches. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the NAIRE. Moreover, such a comprehensive unit will, in my view and in accordance with the Activity's position, promote effective dealings and efficiency of agency operations.

I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All professional and nonprofessional employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 9/

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10 (b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials and supervisors and guards as defined in the Order.

Voting Group (b): All employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

9/ In its petition the NAIRE excluded "all employees of the Intelligence Division," and "all employees of the Enforcement Branch of the Alcohol, Tobacco and Firearms Division." Because the record does not set forth sufficient facts as to these employees, I shall make no findings as to whether employees in these job classifications should be excluded from the unit.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the NAIRE. 10/

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the NAIRE. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether, or not the NAIRE was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

10/ As the AFGE's showing of interest is insufficient to treat it as an intervenor in Case No. 72-1482 (RO), I shall order that its name not be placed on the ballot.

June 16, 1971

(a) All employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Internal Revenue Service, Office of the Regional Commissioner, Western Region excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTIONS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF AGRICULTURE,
BLACK HILLS NATIONAL FOREST
A/SLMR No. 58

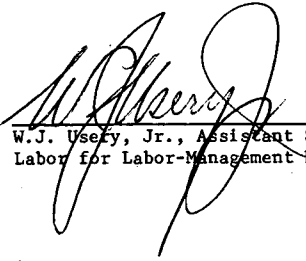
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 70-1499 (RO) be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause, since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Internal Revenue Employees, Chapter 81.

Dated, Washington, D.C.
June 15, 1971


W.J. Usey, Jr., Assistant Secretary of
Labor for Labor-Management Relations

The subject case involving representation petitions filed by National Federation of Federal Employees, Local 927 (NFFE) and American Federation of Government Employees, AFL-CIO, Local 2342 (AFGE) presented the questions whether an Activity-wide unit of all employees of the Black Hills National Forest is appropriate or whether a separate unit of professional and nonprofessional employees of the Box Elder Civilian Conservation Center (Nemo Job Corps) is appropriate.

In all the circumstances, the Assistant Secretary concluded that a unit composed of employees of both the Box Elder Center and the other 7 subdivisions of the Black Hills National Forest is not appropriate for the purpose of exclusive recognition under Section 10 of the Order. He noted, in this respect, that the formulation of policy and program direction for the Box Elder Center originates with the Job Corps, Department of Labor and is channeled through the Forest Service for administrative efficiency only. Found equally significant were the differences in the missions of the Center and the Forest, i.e., concern for human versus natural resources, involving different skills, education and experience requirements; little, if any, interchange of employees; and the geographic separation of the Center from the other units of the Forest. Accordingly the Assistant Secretary found that an Activity-wide unit of employees excluding the Box Elder Civilian Conservation Center, as well as a separate unit of all employees of the Box Elder Center were appropriate for the purpose of exclusive recognition under the Order.

In these circumstances, the Assistant Secretary directed that separate elections be held in the two units found appropriate with professional employees being accorded a self-determination election in the unit petitioned for by the AFGE, before being included in a unit with nonprofessionals.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF AGRICULTURE,
BLACK HILLS NATIONAL FOREST

Activity

and

Case No. 60-1910(E)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 927

Petitioner

UNITED STATES DEPARTMENT OF AGRICULTURE,
BLACK HILLS NATIONAL FOREST,
BOX ELDER CIVILIAN CONSERVATION CENTER

Activity

and

Case No. 60-1947(E)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2342

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Lloyd F. Dinsmore. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including a brief filed by each of the Petitioners, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity. 1/

2. In Case No. 60-1910(E), the NFFE seeks an election in a unit of all General Schedule and Wage Grade employees at the Black Hills National Forest, Custer, South Dakota, excluding managerial officials, employees engaged in Federal personnel work other than in a purely clerical capacity, professional employees, supervisors and guards as defined by the Order. 2/

In Case No. 60-1947(E), the AFGE seeks an election in a unit of all General Schedule and Wage Grade employees including professional employees located at the Box Elder Civilian Conservation Center, Black Hills National Forest, Nemo, South Dakota, excluding management officials, employees engaged in Federal personnel work other than a purely clerical capacity, supervisors and guards within the meaning of the Order. 3/

The primary mission of the Forest Service, U.S. Department of Agriculture, is to promote the wise use of natural resources and to administer policies and regulations relating to national forest lands. In addition, the Forest Service operates Job Corps Centers, which are concerned with the development of human resources through various programs in working with, and training of youth. The Black Hills National Forest, Custer, South Dakota, employs approximately 340 employees, including foresters, engineers, business managers, teachers, training instructors, and counselors. It is composed of 8 separate subdivisions, each under the supervision of a Director who reports to the Forest Supervisor. 4/ The Box Elder Civilian Conservation Center is one of these subdivisions. 5/

1/ During the hearing the American Federation of Government Employees, AFL-CIO, Local 2342, herein called AFGE, filed a motion to dismiss the petition filed by the National Federation of Federal Employees, Local 927, herein called NFFE, based on the latter's failure to present any evidence at the hearing. The Hearing Officer referred the motion to the Assistant Secretary. Since no party is required to meet a burden of proof in a representation proceeding involving a unit determination question, the motion to dismiss is hereby denied.

2/ The unit appears as amended at the hearing.

3/ The location of the unit appears as amended at the hearing.

4/ The record does not reflect any other line(s) of supervision.

5/ The record is unclear as to the identity, composition and location of the other 7 subdivisions.

The Activity contends that the appropriate unit should be all employees of the Black Hills National Forest, which is consistent with NFFE's petition. AFGE contends that a unit consisting of employees of the Nemo Job Corps Center, i.e., Box Elder Civilian Conservation Center, Nemo, South Dakota, is a functionally distinct unit of employees who have a separate community of interest.

The Job Corps was established originally under the Office of Economic Opportunity and currently is a part of, and funded by, the Department of Labor. For purposes of administrative efficiency, through agreements with the Department of Labor, Job Corps Centers are assigned to various agencies, such as the Department of Agriculture. In this instance, the Job Corps Center is under the administrative control of the Forest Service and thus is subject to the same personnel policies which are in effect for the remaining 7 subdivisions of the Black Hills National Forest.

The Job Corps Center occupies approximately 15 acres of Forest Service land, situated about 25 miles northwest of Rapid City, South Dakota. The nearest office to the Center is the Nemo District Work Center of the Forest Service, located about 4 miles distant. The Center employs basic education teachers, vocational training instructors, group leaders, guidance counselors, foresters, ^{6/} business management personnel, cooks and supply personnel. Corpsmen are taught reading and mathematics skills, as well as vocational and employment skills. They are trained according to Job Corps Training Standards established by the Department of Labor in various vocations, including heavy equipment, printing, painting, auto service repair, cement masonry, custodial maintenance, welding and cooking. The training period for a Corp sman varies, lasting in some instances for a relatively short time, to a maximum of 2 years. In addition, each Corp sman receives individual tutoring and counseling, both formal and informal, on a 24-hour a day basis.

Except for an occasional fire and safety training session, the training of the Corpsmen is conducted only by the employees of the Center. There is no interchange between Forest Service personnel, such as forest rangers, engineers and firefighters, and instructors from the Center in performing their respective tasks. Occasionally, the Corpsmen assist the Forest Service in the construction and maintenance of roads, recreational facilities and buildings. When performing such work, they are accompanied by an instructor from the Center.

^{6/} In administrative positions only.

The record also indicates that separate promotion rosters are maintained for the Forest personnel and Job Corps Center. This is attributed to differences in skills, education, and experience requirements. In addition, notices of vacancies at the Center are distributed to other Job Corps Centers in the area or in other parts of the County.

Under all the circumstances, I find that a unit composed of employees of both the Box Elder Civilian Conservation Center and the other 7 subdivisions of the Black Hills National Forest is not appropriate for the purpose of exclusive recognition under Section 10 of the Order. Thus, the record establishes that the formulation of policy and program direction for the Box Elder Center originates with the Job Corps, Department of Labor, and is channeled through the Forest Service for administrative efficiency only. Equally significant are the differences in the missions of the Center and the Forest, i.e., training programs directed to the enhancing of human resources versus the effectuation of policies and regulations concerned with the conservation and protection of natural resources involving different skills, education and experience requirements, little, if any, interchange among the employees and the geographic separation of the Center from the other subdivisions in the Forest.

Based on the foregoing, I find that the employees of the Box Elder Civilian Conservation Center (Nemo Job Corps) share a clear and identifiable community of interest which is separate and distinct from the remaining employees in the Black Hills National Forest. Accordingly, I find that the following employees may constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All employees including professional employees of the Box Elder Civilian Conservation Center, Black Hills National Forest, Nemo, South Dakota, excluding management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors and guards as defined in the Order.

As stated above, the unit found appropriate includes professional employees. ^{7/} However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit

^{7/} Since the record does not set forth sufficient facts as to who are professional employees, I make no findings with respect to this category of employees.

with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees of the Box Elder Civilian Conservation Center excluding all nonprofessional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees of the Box Elder Civilian Conservation Center excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the AFGE. 8/

The employees in the professional voting group (a) will be asked two questions on their ballot: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the AFGE. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether or not the AFGE was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

8/ As the NFFE's showing of interest is insufficient to treat it as an intervenor in Case No. 60-1947(E), I shall order that its name not be placed on the ballot.

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All employees including professional employees of the Box Elder Civilian Conservation Center, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees of the Box Elder Civilian Conservation Center, excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Box Elder Civilian Conservation Center, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

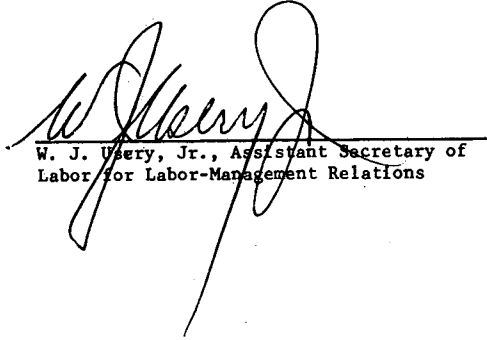
In addition to finding appropriate a unit of all professional and nonprofessional employees of the Box Elder Civilian Conservation Center, I also find that the Activity-wide unit petitioned for by the NFFE, excluding the Box Elder Civilian Conservation Center, is appropriate for the purpose of exclusive recognition under Executive Order 11491. I shall, therefore, direct a separate election in the following unit:

All employees of the Black Hills National Forest, excluding employees of the Box Elder Civilian Conservation Center, professional employees, employees engaged in personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

June 18, 1971

Elections by secret ballot shall be conducted among the employees in the units found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause, since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote in Case No. 60-1947(E) shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 2342. Those eligible to vote in Case No. 60-1910(E) shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 927. ^{9/}

Dated, Washington, D.C.
June 16, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
JACKSONVILLE, FLORIDA
A/SLMR No. 59

This case involved a petition filed by the National Operations Analysis Association for a unit of approximately 48 Production Controllers and Electronic Technicians in the Operations Analysis Division, one of several divisions of the Activity's Production Engineering Department.

In determining that the proposed unit did not constitute an appropriate unit, the Assistant Secretary noted that these classifications involved different functions and skills and that the unit excluded a substantial number of employees in the same classifications working in other components of the Activity.

The Assistant Secretary also noted the functional integration of the Activity's work processes and the centralized control exercised over the Production Engineering Department and the two departments involved in the Activity's production operations.

Based upon these circumstances, the Assistant Secretary concluded that the employees in the claimed unit did not constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491. Accordingly, he ordered that the petition be dismissed.

^{9/} AFGE took the position on the record that it desired to appear on the ballot in the unit sought by the NFFE only in the event that the Assistant Secretary found the Box Elder unit to be inappropriate.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. NAVY DEPARTMENT,
NAVAL AIR REWORK FACILITY,
JACKSONVILLE, FLORIDA

Activity

and

Case No. 42-1279

NATIONAL OPERATIONS ANALYSIS
ASSOCIATION, LOCAL 311

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer B. R. Withers, Jr. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, National Operations Analysis Association, Local 311, seeks to represent employees in a unit consisting of all Production Controllers and Electronic Technicians working in the Activity's Operations Analysis Division, but excluding all management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees and guards and supervisors as defined in the Order.

The Activity contends that the proposed unit is inappropriate in that the qualifications for Production Controller and Electronic Technician are different and that other employees in these same classifications are found elsewhere within the Activity.

The Activity also asserts that the proposed unit would result in excessive fragmentation and consequently would have an adverse effect on its labor relations and the efficiency of its operations. 1/

The Naval Air Rework Facility at Jacksonville, Florida is an industrial activity of the Naval Shore Establishment under the direction of the Naval Air Systems Command. It is engaged in providing depot-level maintenance of aircraft engines and associated components for the U.S. Navy Air Force under the direction of a Commanding Officer. The Facility is subdivided into eight major departments, 31 divisions and 77 branches, employing more than 2,800 employees. The Shops Department in which production operations are performed, is made up of 14 sections and 120 shop groups. The Production Planning and Control Department provides production planning and control for the work which is performed by the Shops Department while the Production Engineering Department provides the planning required to produce items utilized by the Shops Department. The latter three departments, whose planning processes and work flow are highly integrated, are under the direct supervision of a Production Officer.

The proposed unit consists of approximately 48 Production Controllers and Electronic Technicians working in the three branches of the Operations Analysis Division which is part of the Production Engineering Department. 2/ The record reveals also that about 100 employees classified as Production Controllers, who are not included in the claimed unit, work in the Production Planning and Control Department and in the Shops Department. In addition, two Electronic Technicians, also not included in the proposed unit, work in the Shops Department.

The function of Production Controller is that of a program analyst. He performs advance planning for the rework of new models of aircraft and associated materials (excluding electronic equipment) and other related tasks, including the development of preliminary master control documents required to direct the rework operations. The Production Controllers work under the supervision of a Section Head who is also a Production Controller. Their duties require a general background of mechanics, production operations and production methods and procedures. 3/ Production Controllers are promoted generally upon assignment to the Operations Analysis Division.

1/ Currently, there are four labor organizations which hold exclusive recognition at the Activity.

2/ The evidence establishes that the Aircraft and Engines Branch and the Accessories Branch employ 33 nonsupervisory Production Controllers and that the Circuit Analysis and Programming Branch employs 15 nonsupervisory Electronic Technicians.

3/ Record testimony indicates that a journeyman mechanic in the Shops Department could qualify for the position of Production Controller. The classification of "mechanic" in the latter Department includes aircraft mechanics, instrument mechanics and radio mechanics.

June 18, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

The function of the Electronics Technician is to provide technical support data and instructions for automated, tape and semi-automatically controlled circuit analyzing equipment used to test multiple circuit electric wiring systems in aircraft and accessories. He is required to have a knowledge of the operation of circuit analyzing equipment in use in the entire Naval Air Rework Facility. The qualifications for this position also include a knowledge and skill in the theory, principles and techniques of electronics applications, such as may be gained in a four-year apprenticeship and subsequent experience or equivalent technical school training. The Electronic Technicians involved herein work in the Circuit Analysis and Programming Branch ^{4/} under the immediate supervision of a branch supervisor who is an Electronics Technician.

The record discloses that in performing their respective duties both the Production Controllers and the Electronics Technicians have frequent contacts with employees of other divisions.

On the basis of the above facts, I find that the proposed unit is not appropriate for the purpose of exclusive recognition under Executive Order 11491. Thus, such unit would include less than one-third of the employees classified as Production Controllers within the Activity and also would exclude at least two employees classified as Electronic Technicians who are employed elsewhere within the Activity. It is noted that the employees in these two classifications work in separate branches, are housed in different buildings, and are under separate immediate supervision.

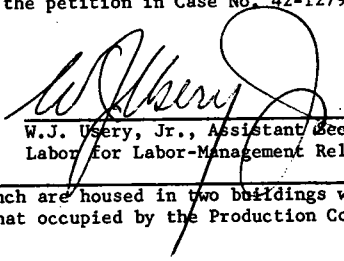
Moreover, in view of the centralized supervision exercised by the Production Officer and the integration of the planning and production functions, I am persuaded that the unit petitioned for which, in effect, would constitute a fragmentation of these functions, would not promote effective dealings and efficiency of agency operations.

Accordingly, I shall dismiss the petition in the instant case.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 42-1279 be, and it hereby is, dismissed.

Dated, Washington, D. C.
June 18, 1971



W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{4/} The employees of this Branch are housed in two buildings which are located separately from that occupied by the Production Controllers.

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
BUFFALO, NEW YORK
A/SLMR No. 60

This case, involving a representation petition filed by the Western New York Pharmacists' Guild, presented the question whether a unit composed solely of pharmacists of a Veterans Hospital is an appropriate unit.

In all the circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this decision, the Assistant Secretary considered the conditions of employment of the pharmacists in relation to other professional groups that make up the paramedical service of the Activity and found that the pharmacists were not a distinct and homogeneous group, but instead, shared a community of interest with other professional groups of the paramedical service. He also found that such a fragmented unit would not promote effective dealings or efficiency of operations.

With respect to the contention that for the same reason that a unit of nurses is appropriate, a unit of pharmacists is appropriate, the Assistant Secretary noted that although the nurses may be considered to be a part of this paramedical service team, their appointment procedures under Title 38 of the U.S.C. Chapter 73 are different from those which apply to other paramedical service groups and, as in the instant case, they generally have different working hours and other conditions of employment.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
BUFFALO, NEW YORK

Activity

and

Case No. 35-1435 (EO)

THE WESTERN NEW YORK PHARMACISTS' GUILD

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Joseph E. Simiele. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, the Western New York Pharmacists' Guild, herein-after referred to as the Guild, seeks an election in a unit of all pharmacists employed at the Veterans Hospital, Buffalo, New York, excluding all management personnel, supervisors, guards and persons performing Federal personnel work in other than clerical capacity and all nonprofessionals. The Activity asserts that the only appropriate unit would be one composed of the pharmacists and other professionals in the paramedical service of the Activity, all of whom share a community of interest. The Activity also takes the position that any unit consisting of only one group in the paramedical service would not promote effective dealings and efficiency of operations as required in Section 10(b) of the Order.

There is no prior bargaining history with respect to the Activity's professional employees except that exclusive recognition was accorded to the New York Nursing Association in 1969, in a unit composed of staff nurses and instructors. 1/ The Service Employees International Union,

1/ The evidence reveals that a negotiated agreement covering this unit is awaiting approval.

herein called SEIU, has represented all nonprofessional employees on an Activity-wide basis since 1964.

The unit requested by the Guild is composed of 6 pharmacists who work in either the in-patient or out-patient divisions of the pharmacy section, under the direction of a supervisory pharmacist. 2/ A Chief of Pharmacy directs the operation of the pharmacy and he, in turn, is responsible to the Chief of Staff of the Activity, as are all other section chiefs of the paramedical service section of the hospital.

The other classifications included in the Activity's paramedical service are: Dietician, Physical Therapist, Corrective Therapist, Manual Art Therapist, Educational Therapist, Medical Technologist, Podiatrist, Medical Records Librarian, Psychologist, Social Worker, Microbiologist, Chemist, and Chaplain. 3/ All of these classifications are under the overall supervision of the Chief of Staff, with the exception of the Medical Records Librarian. 4/

The Guild takes the position that for the same reason that a unit of nurses is appropriate, a unit of pharmacists is appropriate. 5/ In this regard, it contends that the nurse is a part of the paramedical service just as is the pharmacist and the other professionals mentioned above, all of whom are dedicated to the treatment and cure of the patient.

The record reflects that the pharmacists at the Activity are required to have a Baccalaureate Degree and be registered in one state of the United States. Testimony indicates that they have regular contact with out-patients and indirect contact with in-patients, inasmuch as certain of their duties require them to consult with nurses in the wards as to the resupplying or stocking of drugs stored in those areas. According to the record, in performing their various duties, pharmacists have frequent contact with other members of the paramedical service, identify with them as professionals, and have social contacts with them at lunch and breaks.

The record further reflects that the pharmacists and professionals, other than nurses of the Activity's paramedical service, are governed by

- 2/ There are also two Pharmacy Assistants who perform duties in the pharmacy, who, according to the Activity, are nonprofessional employees, and apparently are covered by an SEIU agreement and not involved in these proceedings.
- 3/ There is no evidence in the record to indicate that either party considers any of these classifications to be other than professional.
- 4/ Medical Records Librarians are located in the Medical Administration Division and are supervised by the Assistant Hospital Director.
- 5/ See e.g., Veterans Administration, Veterans Administration Hospital, Lexington, Kentucky, A/SLMR No. 22.

identical personnel policies, rules and regulations and enjoy other similar conditions of employment, such as a standard five-day, 40-hour week with no shift work or overtime involved. 6/

As distinguished from the pharmacists, the record reveals that nurses are appointed under the separate and unique rules and regulations contained in Title 38 of the U.S.C. Chapter 73. 7/ In this regard, the policies, rules and regulations of Title 38 are not applicable to other members of the paramedical service team. Additionally, in the instant case, the evidence reveals that unlike the other professionals in the paramedical service, nurses regularly work shifts in order to insure the availability of adequate nursing service 24 hours a day.

In view of the above, I find that the evidence fails to establish that the pharmacists are a distinct and homogenous unit, but rather, it appears that they share a community of interest with the other professional groups of the paramedical service. Moreover, in my view, a unit limited to pharmacists, would not promote effective dealings and efficiency of agency operations as required by Section 10(b) of the Order. Thus, a contrary finding could result ultimately in a myriad of separate units at the Activity, each involving a different professional group in the paramedical service. Clearly, such a fragmentation would not promote effective dealings and efficiency of agency operations as required under the Executive Order.

Therefore, in all the circumstances, I conclude that the employees in the requested unit do not possess a clear and identifiable community of interest separate and distinct from other employees in the paramedical service and that such a fragmented unit would not promote effective dealings and efficiency of agency operations.

Accordingly, I shall dismiss the petition herein.

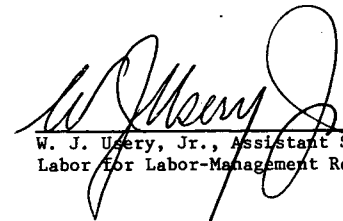
6/ Two of the pharmacists work a regular part-time 20-hour week.

7/ Notwithstanding the fact that doctors and dentists also are appointed under this Title, clearly there is a distinct difference in responsibilities, and job functions between nurses and doctors and dentists, in that the latter two professions are directly responsible for the diagnosis and the treatment of the patient, while nurses administer prescriptions and other professionals carry out instructions and prescriptions of the doctors and dentists.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 35-1435 (EO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 18, 1971



W. J. Usery, Jr., Assistant Secretary for
Labor for Labor-Management Relations

June 23, 1971

A/SLMR No. 61

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
NAVAL AIR STATION,
ALAMEDA, CALIFORNIA
A/SLMR No. 61

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
NAVAL AIR STATION,
ALAMEDA, CALIFORNIA

Activity

and

Case No. 70-1527

This case involved a petition by the Calibration Laboratory Association for a unit consisting of approximately 200 employees working in the Navy Calibration and the Industrial Calibration Laboratories located in the Activity's Production and Production Engineering Departments, respectively.

CALIBRATION LABORATORY ASSOCIATION

Petitioner

The Petitioner contended that the employees in the proposed unit were all engaged in the calibration of measuring instruments and that they constituted an appropriate unit under Executive Order 11491.

DECISION AND ORDER

The Assistant Secretary found that the unit sought by the Association was not appropriate. In this regard, the evidence revealed that the proposed unit did not include a number of employees working elsewhere in the Activity in the same classifications sought. In addition, the evidence indicated that employees in the proposed unit worked in different departments had separate supervision, were located in different buildings and performed distinct specialized functions on different types of test equipment. Also found relevant was the integrated nature of the Activity's production and maintenance operation.

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Henry C. Lee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

In these circumstances, the Assistant Secretary found that the unit petitioned for was not appropriate for the purpose of exclusive recognition since employees did not possess a clear and identifiable community of interest apart from production and maintenance employees, and such a unit would not promote effective dealings and efficiency of agency operations.

1. The labor organization involved claims to represent certain employees of the Activity.

2. Petitioner, Calibration Laboratory Association, herein called the Association seeks to represent employees in a unit of "all employees of the Navy Calibration Laboratory, Section 943.30 and all employees of the Industrial Calibration Laboratory, Section 662.40." ^{1/}

The Activity contends that the unit sought is inappropriate on grounds that (1) the employees concerned do not constitute a craft or a group with a clear and identifiable community of interest; (2) any community of interest which the employees concerned enjoy by reason of their skills and training has been submerged in the broader community of interest which they share with other production and maintenance employees; and (3) separate representation for the employees in the claimed unit would not promote effective

^{1/} The claimed unit appears as amended at the hearing. Numerical code designations of 943.30 and 662.40 indicate department and organizational subdivisions.

dealings or efficiency of agency operations.

On the other hand, the Association contends that the employees in the proposed unit are all engaged in the calibration of measuring instruments, which is a distinct craft, and that such employees comprise a unit which meets the "community of interest" criteria of Executive Order 11491. ^{2/} The Association further asserts that the establishment of the unit petitioned for would promote effective dealings and efficiency of agency operations. ^{3/}

The Naval Air Rework Facility at Alameda, California is an industrial activity of the Naval Shore Establishment under the direction of the Commander, Naval Air System Command. It comprises a large industrial complex which includes approximately 50 buildings and is one of the major maintenance repair modification plants on the West Coast. The Activity performs a full range of depot level maintenance functions including complete in-service maintenance on freight aircraft and the testing and calibration of designated weapon systems, such as aircraft missiles, their component aeronautical systems and associated accessories.

Organizationally, the Activity is sub-divided into three directorates, eight departments, three divisions and seventy-six branches. Three of the larger departments are further sub-divided into 101 sections and 260 functional shop groups and work centers.

^{2/} At the outset of the hearing, the Association's representative moved to have the Assistant Secretary find the Activity in default because of its failure to meet with the Association and respond to the petition as prescribed by Section 202.4 (f) and (g) of the Assistant Secretary's Regulations. Matters which may be the subject of an unfair labor practice complaint may not be appropriately raised in representation case proceedings. Accordingly, the Association's motion is denied.

^{3/} Subsequent to the hearing in this case, I permitted the parties to enter into a stipulation to the effect that the Activity had recently filled 19 of 20 vacancies in the Navy Calibration Laboratory with employees already assigned to that laboratory and 1 of 3 vacancies in the Industrial Calibration Laboratory with an employee (Instrument Mechanic (Electrical)) already assigned there. These vacancies were all for the position of Instrument Mechanic with specialization in electronics. The stipulation also indicates that before and after such promotions there were 30 Electronic Mechanics in the Navy Calibration Laboratory and that there were currently a total of 132 Electronic Mechanics at the Activity. Such stipulated facts have been considered along with the evidence adduced at the hearing.

In carrying out its mission, the Activity operates with approximately 7,000 military and civilian employees. Civilian employees are included in both General Schedule and Wage Board Classifications. The work force is located in some 50 buildings and hangars dispersed throughout the Alameda Naval Air Station and various locations throughout the greater Pacific area. The direction of the Facility is vested in the Commanding Officer who is assisted by the Executive Officer. Below these officials is the Production Officer who is responsible for the operation of three of the Activity's departments. ^{4/}

The employees in the unit petitioned for are employed in both the Navy Calibration Laboratory and in the Industrial Calibration Laboratory which are located in the Production Department and in the Production Engineering Department, respectively. Most of the employees sought work in the Navy Calibration Laboratory, which is a section of the Avionics Division within the Production Department.

The Navy Calibration Laboratory section is divided into 7 shops, ^{5/} employing more than 100 nonsupervisory instrument mechanics, all but a few of whom have specialized training in electronic test equipment. These shops also employ approximately 40 other employees, a large proportion of whom are electronic mechanics, but also including employees classified as electronic mechanic (A/C systems), and electronic equipment assembler. The employees in 5 of the 7 shops rework, calibrate and certify various types of test equipment. The remaining employees in the Navy Calibration Laboratory work in either the Signal Generator Shop ^{6/} or the Swing Shift Shop which services all the other shops. The nature of the work of these employees involves, for the most part, precision calibration and testing of certain small instruments and equipment. Each shop in the Calibration Laboratory is under the supervision of a Foreman Instrument Mechanic who has had specialized training in electronic test equipment, and the employees of the Navy Calibration Laboratory are housed in a laboratory located in a single building.

The remainder of the employees in the proposed unit work in the Industrial Calibration Laboratory which, as noted above, is part of the Production Engineering Department. The employees in this Laboratory include 22 nonsupervisory Instrument Mechanics, 9 of whom have specialized training

^{4/} These are the Production Department, the Production, Planning and Control Department and the Production Engineering Department.

^{5/} The shops are designated: Special Support Equipment; Voltmeter; Missile Test Equipment; Electronic Test Equipment; Signal Generator; Semi-Automatic Checkout Equipment (SACE); and Swing Shop.

^{6/} This shop reworks, calibrates and certifies generators used on signal sources and special support equipment designed for electronic warfare systems.

in electronic test equipment. Of the remaining 13 Instrument Mechanics working in this Laboratory, 9 have specialized training in electrical or mechanical test equipment and 4 have general training in instrument test equipment. All employees of this Laboratory are supervised by a Foreman Instrument Mechanic (Electrical). For the most part, the employees in this Laboratory are located in a building, which is directly across the street from the building which houses the Navy Calibration Laboratory. The other Industrial Calibration Laboratory employees work in a building which is some distance away. The majority of Industrial Calibration Laboratory employees in this latter building work on fixed installation type or immobile equipment located outside the Laboratory in areas where production employees are performing their tasks either adjacent to them or in a nearby area.

The record disclosed that employees of the Industrial Calibration Laboratory work primarily on the large, stationary, installation type test equipment. Basically, the employees of this Laboratory perform tasks in areas of physical measurement on test equipment and provide calibration service for industrial measuring equipment at the Alameda Naval Air Rework Facility as well as onsite service to other designated activities.

As noted above, because of the nature of the equipment, a substantial amount of the work performed by the employees of the Industrial Calibration Laboratory is performed outside the Laboratory at the worksites rather than at the work benches in the Laboratory, as is generally the case in the Navy Calibration Laboratory. The record also reveals that both Laboratories have field teams. However, while such teams may be working at the same site the evidence establishes that they work independently of each other, on different job assignments, and different equipment and there is no interchange between the employees of the two Laboratories. Moreover, while employees of the Navy Calibration Laboratory have, on rare occasions, been transferred to the Industrial Calibration Laboratory, the reverse has never occurred. The record reveals also that the foreman who constitutes the first level of supervision in each of the Laboratories supervises only the employees in the laboratory to which they are assigned.

Of the 9 classifications involved in both Laboratories only 3 classifications are common to both. In addition, the duties of the employees vary substantially according to their respective classifications and while the record indicates that presently there is a one-year apprenticeship program for Instrument Mechanic (Electronic), the only classification which requires a formal 4-year apprenticeship requirement is that of Electronic Mechanic, which classification exists only in the Navy Calibration Laboratory. The record reveals that employees in both laboratories working as Instrument Mechanics have generally progressed to their present position from various ratings outside the laboratories.

The evidence establishes that a number of the classifications in the proposed unit, including that of Electronic Mechanic, 1/ exist in other

1/ The second most prevalent classification in the Navy Calibration Laboratory.

organizational components within the Activity but are not included in the unit sought. Also the employees petitioned for work the same schedule, use the same timeclocks and share the same lunch periods, cafeterias, canteens, restrooms, and parking lot facilities as the Activity's other production and maintenance employees. Similarly the employees sought come under the same hiring policies and practices, merit promotion system, premium pay, vacation and sick leave systems as the other production and maintenance employees.

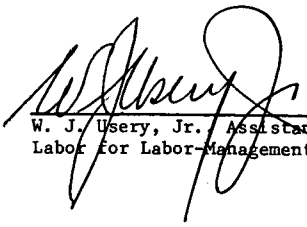
Although the employees in the proposed unit are, in the general sense, all engaged in the calibration of measuring devices, they work in two different departments in separate buildings and perform distinct specialized functions which vary according to the nature of the job assignment and the individual's particular specialty in the field of metrology. Additionally, the record indicates that the work performed by the employees in the proposed unit is part of an overall integrated production process.

Based on the foregoing, and noting particularly the fact that the proposed unit excludes a number of employees working elsewhere at the Activity in the same job classifications, and the integrated nature of the Activity's production and maintenance operation, I find that the unit petitioned for by the Association is not appropriate for the purpose of exclusive recognition under Executive Order 11491 since the employees in such a unit do not possess a clear and identifiable community of interest apart from production and maintenance employees. Moreover, in my view, such a unit would not promote effective dealings and efficiency of agency operations. Accordingly, I shall order that the petition herein be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 70-1527 be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 23, 1971


W. J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

-5-

June 24, 1971

A/SLMR No. 62

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

HUNTERS POINT NAVAL SHIPYARD,
DEPARTMENT OF NAVY,
SAN FRANCISCO, CALIFORNIA
A/SLMR No. 62

HUNTERS POINT NAVAL SHIPYARD,
DEPARTMENT OF NAVY,
SAN FRANCISCO, CALIFORNIA

Activity

Case No. 70-1821

The Petitioner, National Association of Government Inspectors, Unit 20 (NAGI), sought an election among certain inspectors at the Hunters Point Naval Shipyard, San Francisco, California. The Activity and the Hunters Point Metal Trades Council, AFL-CIO(MTC), which has been the exclusive representative of an Activity-wide unit of Wage Board Production and Maintenance employees, including the inspectors sought by the NAGI, since 1963, contested the appropriateness of the unit sought by the NAGI, contending that the inspectors did not possess a clear and identifiable community of interest apart from other Activity employees in the Production and Maintenance unit currently in existence.

and

NATIONAL ASSOCIATION OF GOVERNMENT
INSPECTORS, UNIT 20

Petitioner

and

HUNTERS POINT METAL
TRADES COUNCIL, AFL-CIO

Intervenor

DECISION AND ORDER

The Assistant Secretary found that the unit sought by the NAGI was not appropriate for the purpose of exclusive recognition. In reaching this determination the Assistant Secretary noted the fact that the claimed unit did not encompass all of the Activity's inspectors; the employees in the claimed unit were subject to the same conditions of employment as all other Activity employees; the work performed by the inspectors was an integral part of the continuous production process performed by the Activity which required constant interaction between inspectors and other production employees; inspectors had almost constant functional and "direct" contact with production employees; inspectors were often called upon to perform "production work" and production employees did some inspection work; inspectors generally came from the ranks of the production employees and retained their seniority in their respective trades and could "bump back" in case of a reduction-in-force; in some instances inspectors and production employees had common supervision; and inspectors and production employees shared such facilities as parking lots, restrooms and cafeterias. In reaching his decision, the Assistant Secretary also noted that there was no evidence that employees in the claimed unit had not been effectively and fairly represented by the MTC.

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John J. Jordan. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Petitioner, National Association of Government Inspectors, Unit 20, herein called NAGI, seeks an election in the following unit:

In these circumstances, the Assistant Secretary concluded that the employees in the requested unit did not possess a clear and identifiable community of interest apart from other production and maintenance employees, and that such a unit would not promote effective dealings or efficiency of agency operations. Accordingly, the Assistant Secretary ordered that the petition be dismissed.

Structural inspectors, P.W.; mechanical inspectors P.W.; electrical inspectors P.W.; contract service inspector, P.W.; ships hull inspector; ships electrical inspector; ships mechanical inspector; ships piping inspector; tests specialist (ships mechanical systems) (ships electrical systems); inspectors metal A, B, and C; machinery inspector (06) and general equipment A inspector (50); excluding management officials, supervisors, guards and employees engaged in Federal personnel work in other than a purely clerical capacity.

The Activity takes the position that the proposed unit is not appropriate for the purpose of exclusive recognition because (1) it excludes a group of inspectors who perform essentially the same duties and have the same responsibilities as the inspectors petitioned for; (2) the employees sought do not have separate and unique interests distinguishable from those of the production and maintenance workers; (3) the proposed unit would not promote effective dealings and efficiency of agency operations; (4) the pattern of bargaining in the industry has been Activity-wide and (5) the duties of the inspectors are intricately interrelated with an integrated work flow involving many crafts and skills excluded from the proposed unit.

The Hunters Point Metal Trades Council, AFL-CIO, herein called MTC, contends that the existing Activity-wide unit, which includes the petitioned for employees, is appropriate because (1) it has represented the employees herein involved for the past six years, under three separate two year agreements, in a fair and equitable manner; (2) the job of inspector is primarily a progression step within the overall trade structure; and (3) in the event of a reduction-in-force inspectors have the right to bump back into their former respective trades.

The record reveals that since 1963 the MTC has been the exclusive bargaining representative for an Activity-wide unit of all Wage Board employees, which includes the inspectors sought by the NAGI and, as noted above, during this period there have been three, two year agreements covering such employees.

The overall goals and functions of the Activity are to overhaul, convert, repair and build ships for the United States Navy. The Activity is headed by Shipyard Commander who is in charge of its fourteen Departments, which, in turn, are subdivided into branches or sections. There are a total of five departments that contain the Wage Board inspectors--Production, Supply, Public Works, Quality and Reliability Assurance (Q & RA) and Medical. ^{1/}

^{1/} The record reveals that the NAGI seeks to exclude some of the Activity's inspectors in the Public Works Department and the one inspector in the Medical Department.

The mission of the Production Department is to assure that all of the equipment in the Shipyard and in the production area is maintained for production purposes, and to install, maintain and remove all equipment that comes into or goes out of the Shipyard. In the Production Department there are four inspectors, classified as machinery inspectors, who report to a production foreman (mechanical or electrical) who is supervised by the general maintenance foreman. In addition to the inspectors, the production foreman also supervises machinists, maintenance machinists, machine operators, electricians, and apprentices in the various trades.

Inspectors in the Production Department visit the various shops in each of the 35 to 40 buildings in the Shipyard that have production type equipment and within a periodic cycle, inspect such equipment and report any malfunctions or broken parts on the machines. As a normal part of his assigned duties, if the machinery inspector finds something out of order which can be adjusted or repaired within one hour, he performs the work himself. However, if the adjustment or repair requires more than one hour's work, the inspector makes a report to his supervisor indicating what has to be repaired. In such an event, the work will then be performed by a Production Department employee. When performing minor adjustments and repairs, the machinery inspectors perform the same type of maintenance work as the production employees. Once the inspection cycle is completed, machinery inspectors are assigned regular maintenance work, and they carry the same tools as do machinists or electricians in performing their work.

The mission of the Public Works Department is to inspect and report the physical condition of all facilities and utilities at the Activity. In the proposed unit the NAGI seeks five inspectors in the Public Works Department, namely: three structural inspectors, one mechanical inspector and one electrical inspector. The record reveals that there are approximately seven inspectors in the Public Works Department, classified as automotive repair inspectors, electrical repair inspector, and heavy duty equipment repair inspector, who the NAGI seeks to exclude from the proposed unit. Inspectors in this Department are supervised by an inspector supervisor of Public Works.

In carrying out their duties Public Works Department inspectors have scheduled routes which take them to every point in the Shipyard, inspecting buildings, structures and utility lines. After going through the Shipyard and noting deficiencies, the inspector reports his findings to the inspector supervisor. The work is thereafter performed by employees from the various production and maintenance shops.

The mission of the Supply Department is to requisition, receive, segregate and deliver necessary materials required by the Shipyard to perform their functions. This Department is broken down into six sections. In the Supply Department there are three general equipment "inspectors A". They are utilized primarily to inspect materials purchased from contractors and vendors. Their primary duty involves

the assessment of materials through visual and dimensional inspection with respect to contractor requirements. There is a central receiving area where all incoming material assigned to the Shipyard is received and inspected. The evidence reveals that all the inspectors in the Supply Department work in a single building and, although not physically segregated from the other employees, they have a particular work area which consists of some work benches and desks.

Purchases in excess of \$2,500 are brought directly to Supply Department inspectors for inspection. However, normally, for purchases under \$2,500, the inspection of materials is left to the ultimate user. If there is a discrepancy in this regard the material is then taken to the Supply Department where the inspector makes a detailed inspection. There is also a "C.O.D. program" whereby the Activity goes directly to various vendors in the area, picks up the material and pays for it in cash, or has the vendor deliver the material to the Shipyard. In such circumstances, warehousemen may inspect the material received, whether or not it is under \$2,500, by reconciling the packing slip with the purchase order and checking stock and model numbers. If they agree, this is considered acceptance of the material. However, if the warehouseman is not able to "marry" the documents, an inspector on the same receiving floor is called for assistance.

The mission of the Quality and Reliability Assurance Department (Q & RA), under the overall supervision of the supervisory quality control specialist, is to inspect which work is being performed by the production shops to assure that the work is being performed to specifications. Reporting to the supervisory quality control specialist are the senior supervisor, supervisor inspector and associate supervisor.

More than 70 of the 83 to 91 inspectors in the proposed unit work in Q & RA. There are three types of inspectors in Q & RA: test specialists, shipbuilder inspectors, and metal inspectors. They are situated in four different buildings at the Activity. The test specialist is one promotional step higher than the shipbuilder inspector and the metal inspector. He, in turn, is supervised by a supervisory inspector, (shipbuilding) who assigns tests, insures adherence to requirements, and reviews all test reports. The test specialist typically directs "test groups" of from 4 to 8 mechanics, inspectors and ships force personnel. He is responsible for safety of assigned systems and personnel involved.

The record indicates that all Q & RA inspectors conduct what are termed "in process inspections" where at a given point in the production process an inspection is accomplished. After the "in process inspection", the inspector will approve documents or indicate that inspections

at that point are satisfactory and the production work will continue. Normally, the next stage of production cannot be completed until the inspection is accomplished. The inspectors also look at material determined to be critical to the construction of the ship, performing various tests to determine whether the material meets specification requirements. In carrying out their duties they will work throughout the Shipyard, working closely with the various trades and with production supervision.

The duties of the radiation monitor in the Medical Department include maintenance and inspection of all Shipyard areas where radioisotopes, X-Ray machines, or other sources of ionizing radiation are used or stored. The radiation monitor is supervised by a health physicist. 2/

With respect to overall working conditions, the record reveals that to qualify for employment as an inspector, it is not required that a formal apprenticeship program be completed. The evidence establishes that most of the inspectors have come from the various "trades" in the Shipyard. In this connection, the record reveals that the job of inspector is primarily a progression step within the trade structure. Thus, in the event of a reduction-in-force, inspectors retain the right to bump back into their respective trades.

The record discloses that the functions performed by inspectors are part of an integrated process whereby the interactions of inspectors and production and maintenance employees are necessary for the completion of the Activity's mission. The tasks of the inspectors constantly take them into the production areas where they have both functional and direct contact with production employees. Further, most inspectors have been promoted from the ranks of the trades working throughout the Activity. In this regard, the record indicates they are occasionally called upon to perform tasks identical to those assigned production employees. Testimony reveals also that production workers at times perform certain inspection work. Moreover, in at least one department, inspectors and production employees are under the same supervision. The evidence also establishes that the same conditions of employment, such as parking, restrooms and cafeterias are shared by both inspectors and production employees.

2/ As noted above, the NAGI seeks to exclude this inspector.

June 24, 1971

Based on the foregoing and noting the fact that the petitioned for unit does not include all of the Activity's inspectors, the integrated nature of the Activity's operations, and the absence of any evidence that employees in the claimed unit have not been effectively and fairly represented by the MTC, 3/ I find that the unit sought by the NAGI is not appropriate for the purpose of exclusive recognition since the employees in such unit do not possess a clear and identifiable community of interest apart from other production and maintenance employees and such a unit would not promote effective dealings and efficiency of operation. 4/

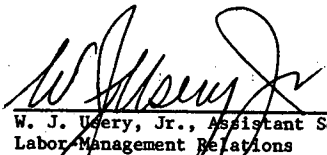
UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. DEPARTMENT OF THE ARMY,
ROCK ISLAND ARSENAL,
ROCK ISLAND, ILLINOIS
A/SLMR No. 63

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 70-1821 be, and it hereby is, dismissed.

DATED, Washington, D.C.
June 24, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor-Management Relations

3/ Cf. United States Naval Construction Battalion, A/SLMR No. 8 and Boston Naval Shipyard, A/SLMR No. 18.

4/ The NAGI in its brief suggests as an alternative unit, a unit consisting entirely of inspectors within the Q & RA. For the reasons stated above, I find that such a unit would similarly be inappropriate for the purpose of exclusive recognition.

This case, which arose as a result of a representation petition filed by Local No. 1, International Association of Tool Craftsmen (NFIU), presented the question whether a unit composed of Tool and Gauge Checkers should be severed from an existing production and maintenance unit represented by Lodge No. 81, International Association of Machinists, District 102, AFL-CIO.

The Assistant Secretary found that the employees in the claimed unit were in frequent contact with other Activity employees who were engaged in the Activity's production process. He noted that there were other employees at the Activity performing similar duties who were not included in the petitioned for unit.

In these circumstances, the Assistant Secretary concluded, citing United States Naval Construction Battalion Center, A/SLMR No. 8, that severance of the Tool and Gauge Checkers from the existing production and maintenance unit was unwarranted, particularly where the evidence revealed that there existed an established, effective and fair collective bargaining relationship with respect to such employees. Accordingly, the Assistant Secretary ordered the petition dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF THE ARMY,
ROCK ISLAND ARSENAL,
ROCK ISLAND, ILLINOIS

Activity

and

Case No. 50-4655

LOCAL NO. 1, INTERNATIONAL
ASSOCIATION OF TOOL CRAFTSMEN (NFIU)

Petitioner

and

LODGE NO. 81, INTERNATIONAL ASSOCIATION
OF MACHINISTS, DISTRICT 102, AFL-CIO

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer William J. Thyer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the Activity, the Petitioner, Local No. 1, International Association of Tool Craftsmen, NFIU, herein called IATC, and the Intervenor, Lodge No. 81, International Association of Machinists, District 102, AFL-CIO, herein called IAM, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The IATC seeks an election in the following unit:

Including all Tool and Gauge Checkers of Quality Assurance Section of the U.S. Army Rock Island Arsenal in the Production and Maintenance unit;

excluding all management officials, supervisors, guards, Federal personnel workers in other than a purely clerical capacity, and professional employees. 1/

It claims that the employees in the proposed unit constitute an appropriate craft unit which is separable from the production and maintenance unit in which it presently is included, and which has been represented by the IAM since 1964. 2/

The Activity and the IAM contend that the petitioned for unit does not constitute an appropriate unit in that the employees sought do not share a clear and identifiable community of interest. The Activity further contends that establishment of the unit proposed by the IATC would not provide for efficiency of operations.

The petitioned for unit comprises the Tool and Gauge Inspection Section of the Inspection Control Branch of the Activity's Quality Assurance Division. The Division is directly responsible to the Activity's Commanding Officer. The duties of the 12 employees in the claimed unit are to perform in-process and final inspection of a variety of inspection equipment, gauges, tools, jigs and fixtures which are either manufactured by the Activity, or by private companies under contract with the Government. In addition, their duties include regular periodic inspections of inspection equipment, gauges, etc., which are in use and stored in tool cribs located at various sites throughout the Activity's manufacturing complex. The employees in the unit sought are assigned to one of three locations within the Activity.

The record discloses that in the performance of their duties employees in the petitioned for unit are in frequent contact with other Activity employees who are concerned in the Activity' production process, including engineers, designers, toolmakers, tool grinders and, on occasion, are required to consult with machine parts inspectors who are involved in the manufacturing process and are not included in the claimed unit.

-
- 1/ The unit description appears as amended at the hearing.
 - 2/ As a consequence of an arbitrator's opinion, the Activity, in addition to extending recognition to the IAM, also extended recognition to the IATC for a unit composed of nonsupervisory tool room employees; and, to the International Brotherhood of Firemen and Oilers, Local No. 1200, for a unit of nonsupervisory employees in plant utilities. In addition to the above-described units, the following employees at the Activity are represented separately: guards; firefighters; Nonappropriated Fund Employees in the Post Restaurant; and, three additional employee units located at the headquarters, U.S. Army Weapons Command, and the Iowa Army Ammunition Plant.

The record further reveals that employees who progress into the positions within the petitioned for unit usually come from classifications, such as Machine Parts Inspector, Machining Inspector, Small Arms Inspector, or Artillery and Combat Vehicle Inspector, all of which are included in the Activity's production and maintenance unit and are outside the claimed unit. 3/ The evidence also demonstrates that all of the Activity's inspectors, whether included or excluded from the proposed unit, perform basically similar duties. For example, they all work with special technical equipment, including measuring and calibrating devices; they all inspect either measuring devices and/or production pieces, rejecting faulty pieces and setting forth the reasons for rejection; and, they confer with engineering and design employees, as well as supervision and production employees, regarding problems encountered in their duties. 4/

As noted above, the record discloses that in 1964 the Activity accorded the IAM exclusive recognition for a production and maintenance unit. The evidence establishes that since exclusive recognition was granted to the IAM, it has processed an average of 40-50 grievances per year, and has participated in four advisory arbitration proceedings. Further, there is no evidence that the IAM has ever failed or refused to represent any employees in its production and maintenance unit, including the employees in the petitioned unit.

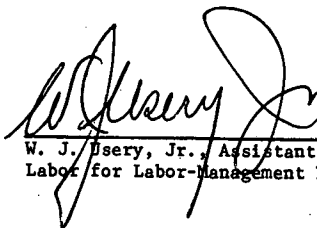
Based on the foregoing, I find no basis for severing the unit sought by the IATC in this case from the production and maintenance unit represented currently by the IAM. As I stated in United States Naval Construction Battalion Center, A/SLMR No. 8, where, the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances. The evidence in the subject case reveals that during the period in which the IAM has been the exclusive representative of the employees in the production and maintenance unit, the employees included therein have been represented effectively. Indeed, there was no contention that the IAM has failed to represent the employees in the petitioned for unit in a fair and effective manner. In these circumstances, I shall dismiss the petition in the subject case. 5/

- 3/ The record discloses that eight of the present 12 Tool and Gauge Checkers served in one of these classifications immediately prior to their present assignment.
- 4/ The only distinction which appears is that Tool and Gauge Inspectors work with more sophisticated equipment, and work to closer tolerances than do the other inspectors.
- 5/ Cf. also Boston Naval Shipyard, A/SLMR No. 18.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 50-4655, be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 24, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 25, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY (DSA),
DEFENSE ELECTRONICS SUPPLY CENTER (DESC),
DAYTON, OHIO
A/SLMR No. 64

The Petitioner, International Association of Machinists and Aerospace Workers, Local 2284, AFL-CIO, (IAM), sought an election in a unit consisting of nonprofessional administrative, clerical and technical personnel who were located, solely, in the Activity's Directorate of Engineering Standardization. The facts revealed that the employees in the claimed unit prepared written product specifications applicable to electronic components and parts used by the military services, and by certain Federal agencies. Also, the employees performed on-site supervision of product qualification tests performed on electronic products to determine whether or not such products met military specifications.

The Activity, and the Intervenor, American Federation of Government Employees, Local 1138, AFL-CIO, (AFGE), opposed the unit on the basis that the petitioned unit would not promote effective dealings and efficiency of operations.

The Assistant Secretary concluded that the claimed unit was not appropriate. He noted that the employees covered by the petition prepared product specification and qualification documents that were used by other employees of the Activity to purchase electronic products for military use and that, once purchased, such products were received, stored, accounted for and distributed by other functional groups of DESC employees. He noted, also, that in performing their duties, employees of the various DESC directorates were required to meet and confer on a daily work basis, and exchange information and documents that they used in their respective jobs. Also found relevant was the fact that the employees of the various DESC components had similar skills and occupations, and that these similarities had promoted the routine transferring, detailing and promoting of DESC employees across directorates lines. In these circumstances, the Assistant Secretary concluded that the evidence demonstrated that the Activity had attained a substantial degree of functional integration among its employees, in accomplishing its mission, i.e., the procurement, storage, and distribution

of military electronic supplies, and that the various functions performed by the Activity's employees involve a continuous process, extending from the initial determination of a product's qualification for military use to the final distribution of the product to a military activity. He noted, also, that all DESC employees, including the claimed employees, had the same terms and conditions of employment, and that they used the same cafeterias, snack bars, recreation and parking facilities, and rest rooms.

Based on the foregoing, the Assistant Secretary decided that the claimed employees did not possess a clear and identifiable community of interest separate and distinct from the interest of other DESC employees. He also stated such a fragmented unit would not promote effective dealings and efficiency of agency operations. Accordingly, he ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEFENSE SUPPLY AGENCY (DSA),
DEFENSE ELECTRONICS SUPPLY CENTER (DESC),
DAYTON, OHIO

Activity

and

Case No. 53-3095 (RO)

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
LOCAL 2284, AFL-CIO

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1138, AFL-CIO

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer R. C. DeMarco. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The Petitioner, International Association of Machinists and Aerospace Workers, Local 2284, AFL-CIO, herein called IAM, seeks an election in a unit consisting of, "All non-temporary eligible employees of the Directorate of Engineering

Standardization, DESC, including administrative, clerical and technical personnel in the Wage Grade or General Schedule occupational categories." The facts show, also, that, among others, the IAM intends to exclude from its claimed unit professional employees, secretaries to branch chiefs and higher level managers, and certain management "specialists."

The Activity contends that the proposed unit is not appropriate, in that the claimed employees share common interests and working conditions with other DESC employees. In this regard, the Activity claims that other DESC personnel have similar skills and occupations as those found among the claimed employees, and that all DESC employees are subject to the same personnel policies and procedures and use the same physical facilities at the Activity. In these circumstances, the Activity asserts that establishing the petitioned for unit would not promote effective dealings and the efficiency of operations.

The Intervenor, American Federation of Government Employees, Local 1138, AFL-CIO, herein called AFGE, supports the Activity's position that the proposed unit is inappropriate.

The facts show that the DESC is one of six supply centers of the Defense Supply Agency that have the primary mission of procuring and distributing a variety of products used by three military services, and by various Federal agencies. The evidence reveals that the DESC performs this function, solely, with respect to military electronic components and parts. ^{1/} It operates under the command of a military General Officer, who reports directly to the Defense Supply Agency Headquarters in Alexandria, Virginia, and employs a staff consisting of 49 military personnel and 3,534 civilian General Schedule and Wage Board employees. The facts show that all DESC personnel are located at the Dayton, Ohio installation.

The organizational structure of the DESC is composed of 7 staff functions and 6 functional directorates. Directorates are under the command of military officers, and are, in turn, divided into divisions. The divisions are divided into functional branches, with effective supervision of the directorates' employees emanating from immediate supervisors within each branch. The record shows that these supervisors direct the work of their subordinates, grant

^{1/} Other supply centers perform similar functions with respect to other types of products; however, the DESC is the only center having responsibility for military electronic components and parts.

employee leave and vacations, and participate, effectively, in the employee grievance and disciplinary procedures. It also shows that both military and civilian personnel occupy supervisory positions in DESC components below the level of the directorates.

The IAM seeks an election among 84 nonprofessional and nonsupervisory technical, administrative and clerical employees, who are all located in the Activity's Directorate of Engineering Standardization. Employees in the claimed unit prepare written product specifications for electronic components and parts used by the military services. 2/ Also, they supervise tests performed on electronic products offered for military use to determine whether or not such products meet the specified requirements. Private manufacturers of electronic components and parts, who wish to have their products considered for military use, must submit all pertinent information regarding the product to the DESC. The manufacturers are then instructed to test the product under pre-determined testing procedures, and on-site supervision of the tests is performed by professional engineering personnel of the Directorate, and by technical employees who are included in the proposed unit. The test results are monitored by Defense Supply Agency quality assurance representatives, and are sent to the Directorate where they are reviewed by employees in the claimed unit to determine whether or not the product meets military specifications. Products that are found to be qualified for military use are included on a Qualified Products List, which, along with other specification documents that are prepared and

2/ Specifically, the unit would include 50 Electronic Technicians, 8 Specification Editors, 1 Specification Writer, 5 Industrial Specialists (Electronics), 3 Engineering Technicians, 2 Engineering Draftsmen, 1 Editorial Assistant, and 14 clerical and supply personnel. There is no dispute among the parties with respect to the fact that all of the claimed employees are regular, nonprofessional and nonsupervisory employees. Also, 73 employees of the Directorate have been excluded from the unit, including 14 Stenographers and typists who are alleged to be "confidential" employees.

maintained by the claimed employees, is used, primarily, by employees in the Activity's Directorate of Procurement and Production to purchase military electronic supplies. 3/ Products that are purchased by the DESC are received, stored, accounted for, and distributed by employees located in two other DESC directorates -- the Directorate of Storage and Transportation, and the Directorate of Supply Operations. In addition, the Directorate of Technical Operations provides technical assistance and advice; and, the Directorate of Installation Services performs janitorial and maintenance functions for all DESC activities and facilities.

The record shows that the technical employees in the claimed unit, including technical writers and editors, are located, primarily, in four functional divisions of the Directorate of Engineering Standardization, and, that they are dispersed among various subordinate branches within these respective divisions. The majority of the administrative and clerical employees in the unit are located in a Management Support Office, which performs a staff function within the Directorate and provides management and clerical support for the Directorate's operations. All Directorate employees are located at one end of a building at the DESC installation, in separate rooms that are contiguous to one another. In this regard, divisions are located in separate offices, and within each division, subordinate branches are located in separate rooms.

There is evidence to show that employees of the various DESC directorates use information and documents pertaining to the

3/ The record shows that 80 percent of the documents produced in the Directorate of Engineering Standardization are used in the DESC's procurement activities, and that 20 percent are prepared pursuant to special assignments received from military activities. At the hearing, the IAM presented evidence to show that the Directorate was unique in the Defense Supply Agency, in that it acted as an agent for the military departments, and no other Supply Center had a similar activity within its structure. However, the evidence shows that the Directorate is a subordinate component of the DESC, and that it stands in the same relationship to the functional and administrative structure of the Activity as other subordinate components of the Activity.

operations in other directorates. 4/ Because of this interdependent relationship, employees of the different directorates are required to meet and confer, regularly and routinely, to exchange information and documents, and to explain information that relates to their particular functions. The record reveals that such meetings and exchanges are conducted informally, and without prior approval of supervisory personnel. In addition, the facts show that similar skills and occupations can be found among the employees of the various DESC directorates, including those employees in the claimed unit. 5/ These similarities have promoted extensive mobility among the DESC work force, in that employees of the Activity have been promoted, transferred or detailed across directorate lines, including in and out of the Directorate of Engineering Standardization. Also, the record shows that, currently, employees of the Directorate of Engineering Standardization are exercising "bump" and "retreat" rights, under an installation-wide reduction-in-force procedure, and are thereby returning to their former jobs in the Directorate of Technical Operations. Thus, it appears that affected employees have made the transition from one DESC directorate to another without additional skills, occupations or training required to perform their new duties.

4/ For example, the record shows that employees of the Directorate of Engineering Standardization, including the claimed employees, obtain and use procurement, supply and technical information and documents pertaining to the operations in other DESC directorates. This material is obtained from the employees of the directorate concerned or through the Directorate of Technical Operations, where assigned employees have the primary duty of accumulating and storing such data. Also, employees of the Directorate of Technical Operations review product specification and qualification documents which are prepared by the claimed employees. As noted above, employees of the Directorate of Procurement and Production use documents prepared by the claimed employees, primarily to determine those products that are qualified for military use.

5/ The evidence indicates that clerical, administrative and technical occupations can be found among DESC employees both in and out of the petitioned for unit.

A single Civilian Personnel Office administers the personnel program at the DESC, including labor relations. Moreover, the evidence reveals that all civilian employees of the Activity, including the claimed employees, have the same hours of employment, tours of duty, leave and vacations, overtime, grievance and appeal procedures, merit promotion program, reduction-in-force rights, and employee benefits. Also, all DESC employees share the same cafeterias, snack bars, recreation and parking facilities and rest rooms.

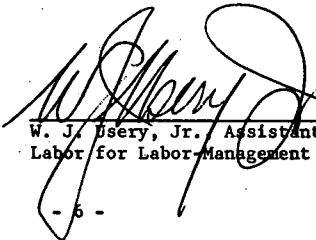
The record evidence in the subject case demonstrates that there is a substantial degree of functional integration among DESC employees utilized in accomplishing its mission, i.e., the procurement, storage and distribution of military electronic supplies. Thus, the various functions performed by DESC employees, including those by the claimed employees, involve a continuous process, extending from the initial determination of a product's qualifications for military use, to the ultimate distribution of the product to a military activity. The facts show that in performing their various functions, DESC employees are required to meet and confer, on a daily basis, and to exchange information and documents that they use on their respective jobs. Also, the evidence establishes that as a result of the similarities in skills and occupations among DESC employees, the personnel of the various directorates have been promoted, transferred or detailed, routinely, across directorate lines. In addition, all DESC employees have the same terms and conditions of employment, and they share the same cafeterias, snack bars, recreation and parking facilities and rest rooms.

In these circumstances, I find that the employees in the claimed unit case do not possess a clear and identifiable community of interest that is distinct and separate from other DESC employees. Nor, in my view, would such a fragmented unit promote effective dealings and efficiency of agency operations. Accordingly, I find that the unit petitioned for is not appropriate for the purpose of exclusive recognition under Executive Order 11491 and therefore, I shall order that the IAM's petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 53-3095 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 25, 1971


W. J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

June 29, 1971

A/SLMR No. 65

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES TREASURY DEPARTMENT,
BUREAU OF CUSTOMS, REGION V,
NEW ORLEANS, LOUISIANA
A/SLMR No. 65

This case involved representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 2891 (AFGE) and National Customs Service Association (NCSA). AFGE sought a unit of all nonsupervisory customs inspectors in Region V, New Orleans, Louisiana. The NCSA sought a unit of all nonsupervisory employees in Customs Region V, New Orleans, Louisiana.

The Assistant Secretary found that a unit composed solely of customs inspectors of the Region, as proposed by the AFGE, was inappropriate. He noted that the Region's personnel and labor relations policies were centralized and applied to all employees of the Region and that there were no rules or policies that applied only to customs inspectors. He noted also that all employees performed similar functions, had frequent daily contact with each other, were supervised by Supervisory Custom Inspectors, and performed functions and duties in classifications other than their own. Additionally, while there were certain conditions of employment common only to the customs inspectors, all customs inspectors were not uniformly subject to such conditions. In all of these circumstances, the Assistant Secretary concluded that the unit sought by the AFGE limited to customs inspectors of Region V was not appropriate, and accordingly, he directed that its petition be dismissed.

The Assistant Secretary also directed that NCSA's petition be dismissed. In reaching such a decision, he noted that since 1968 the NCSA had represented on an exclusive basis the same employees covered by its petition and there was no challenge to its majority status in that unit. In such circumstances, the Assistant Secretary concluded that where labor organization already represents exclusively the employees it has petitioned for, it would not effectuate the purposes of the Order to direct an election in the same unit since no question concerning representation existed as to such employees.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES TREASURY DEPARTMENT,
BUREAU OF CUSTOMS, REGION V,
NEW ORLEANS, LOUISIANA 1/

Activity

and

Case No. 64-1098E

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO
LOCAL 2891 2/

Petitioner

UNITED STATES TREASURY DEPARTMENT,
BUREAU OF CUSTOMS, REGION V,
NEW ORLEANS, LOUISIANA

Activity

and

Case No. 64-1132E

NATIONAL CUSTOMS SERVICE ASSOCIATION

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Donald Williams. The

1/ The name of the Activity appears as amended at the hearing.
2/ The name of this Petitioner appears as amended at the hearing.

Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 3/

Upon the entire record in this case, including the briefs filed by all parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 64-1098E 4/, the AFGE, seeks an election in the following unit: All nonsupervisory Customs Inspectors in Region V, excluding all supervisors, management officials, clericals, professional employees and guards.

In Case No. 64-1132E, the NCSA, seeks an election in the following unit: All nonsupervisory employees in Customs Region V, excluding all supervisory and managerial employees, all employees of the Customs Agency Service, 5/ all personnel employees who are performing other than clerical functions, all professional employees and guards. 6/

The Activity takes the position that the unit petitioned for by the AFGE is inappropriate in view of the fact that it does not include all other nonsupervisory employees of the Region. In this regard, the Activity notes that all employees of the Region are governed by centralized personnel and labor relations policies and that the unit sought by the AFGE would not promote effective dealings and efficiency of operations as required by Section 10(b) of the Order.

As indicated above, the NCSA has represented all nonsupervisory employees of Region V, in a unit which includes Customs Inspectors, since June 1968, under an agreement which expired on July 17, 1970. 7/

- 3/ During the hearing, the Hearing Officer advised the parties that it was the policy of the Assistant Secretary that employees appearing at hearings shall not be charged annual leave by their agency. In this regard, the American Federation of Government Employees, AFL-CIO, Local 2891, herein called AFGE, in its brief, requests that the Assistant Secretary formulate guidelines which would require agencies to permit employees participating in hearings to do so on administrative leave. Contrary to the Hearing Officer, I have established no policy in this respect. Moreover, I do not consider such a question to be appropriately raised in the context of a representation case.
- 4/ The record reveals that the petition in this case was timely filed during the open period of an existing agreement between the Activity and the National Customs Service Association, herein called NCSA.
- 5/ The parties stipulated that employees of the Customs Agency Service are under a different activity, and therefore, should be excluded from the claimed unit.
- 6/ The unit appears as amended. The NCSA has represented the employees in its claimed unit under exclusive recognition since June 25, 1968.
- 7/ The record reveals that of the nine regions which comprise the Bureau, seven are represented by either the NCSA or the AFGE in units composed of all nonsupervisory employees of the region.

All Bureau customs regions, including Region V, are empowered to enforce customs and related laws, and have the mission of collecting and protecting the revenue of the United States. Region V is divided into the New Orleans and Mobile districts, each of which is headed by a District Director who reports to the Regional Commissioner of Customs located in New Orleans. Each district has several ports under its control, located in several different areas, such as Baton Rouge, Little Rock, Memphis, Birmingham, and Pensacola. There are 202 nonsupervisory employees in the region of whom 83 are customs inspectors. The remaining employees are distributed among several other nonsupervisory classifications 8/, the majority of which are located in the New Orleans District.

In New Orleans, inspectors are located at the wharfs, (stations) at the airport, custom-house and Foreign Trade Zone. In Mobile, all inspectors are located in the custom-house. Inspectors also are located at several of the outlying ports, under each of the districts. At each of the several locations above, except for a few of the smaller ports, other nonsupervisory employees are regularly assigned and perform their daily duties. The supervisory customs inspectors stationed at each of these locations supervise and direct employees in all classifications.

While all of the employees in each classification have specific duties to perform, it is clear from record testimony that all employees work in conjunction with each other in the processing of import and export products, regularly coming into contact and working with employees of other classifications. Further, the record indicates that it is not uncommon for employees in one classification to perform functions of another classification in emergency situations, or during periods of sickness, leaves, and during heavy work hours. 9/

The evidence establishes that customs inspectors regularly go to warehouses and perform duties as acting warehouse officers 10/, as well as performing "sample work," clearing export declarations and acting as cashier when the miscellaneous document examiner is absent. Additionally, all employees, including inspectors, in smaller ports, regularly perform duties in classifications other than their own. Moreover, the evidence

- 8/ These classifications include: import specialists, marine officers, miscellaneous document examiners, warehouse officers, customs aides, liquidators, samplers, opener-verifier-packers, opener-packers, laborers and clerks.
- 9/ For example, the miscellaneous document examiner, in addition to his own duties, also collects monies and has acted as a customs inspector. Warehouse officers and miscellaneous document examiners have assisted customs inspectors in examining baggage and cargo, and the customs aide also has performed as an acting inspector.
- 10/ Customs inspectors performed as acting warehouse officers for 1,120 hours in Fiscal Year 1970.

indicates that although there are certain conditions of employment that are unique to customs inspectors, such as rotating from station to station annually and boarding vessels, such conditions do not apply uniformly to all such inspectors. 11/ While weekend work and overtime are common to the customs inspectors, other employees are subjected to the same conditions, as the marine division employees regularly work on weekends and the miscellaneous document examiner works on Saturday. Also, all employees in every classification are subject to overtime. 12/ The record further discloses that there have been occasions where customs inspectors have been permanently transferred to other classifications within the unit.

Personnel policies, rules and practices of Region V apply equally to all employees of the Region including customs inspectors. The record reveals that the Activity has a centralized administrative structure for all of the Region's employees, that all of the nonsupervisory employees in the Region perform similar functions, work at the same locations, with employees in each of the various classifications; have frequent contact with employees in each of the classifications; perform duties in classifications other than their own; and transfer to other classifications within the Region.

Based on the foregoing, I find that the employees in the unit sought by the AFGE do not share a clear and identifiable community of interest apart from other Region employees and that a unit limited to custom inspectors would not promote effective dealings and efficiency of agency operations. Accordingly, I shall order that the AFGE's petition be dismissed.

Under the particular circumstances of this case, I find also that the petition filed by the NCSA should be dismissed. The evidence reveals that the NCSA has since 1968 represented on an exclusive basis the same employees covered by its petition herein and there is no challenge to its majority status in that unit. Where, as here, a labor organization already represents exclusively the employees it has petitioned for, I conclude that it would not effectuate the purposes of the Order to direct an election in the same unit since in such circumstances I find that no question concerning representation exists as to these employees. Accordingly, I shall order that the NCSA's petition be dismissed.

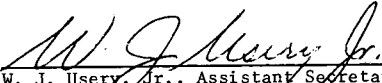
11/ For example, inspectors at the Foreign Trade Zone and small one man ports may never rotate, while others at the airport may remain for 2 years if they so desire. Also, some inspectors never board vessels.

12/ A total of 2042 overtime hours were worked by employees in classifications other than customs inspectors in Fiscal Year 1970.

ORDER

IT IS HEREBY ORDERED that the petitions filed in Case Nos. 64-1098E and 64-1132E, be, and they hereby are dismissed.

Dated, Washington, D.C.
June 29, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 29, 1971

A/SLMR No. 66

UNITED STATES DEPARTMENT OF LABOR

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION,
FEDERAL SUPPLY SERVICES, RARITAN
DEPOT, EDISON, NEW JERSEY
A/SLMR No. 66

GENERAL SERVICES ADMINISTRATION,
FEDERAL SUPPLY SERVICES, RARITAN
DEPOT, EDISON, NEW JERSEY 1/

Activity

Case No. 32-1567

This case, which arose as a result of a representation petition filed by the National Association of Government Employees, Local Union R2-112 (NAGE), raised the questions of (1) agreement bar, and, (2) whether General Services Administration employees of the Federal Supply Service, Public Building Service, and Property Management and Disposal Services at the Raritan Depot were part of an existing unit currently represented on an exclusive basis by the American Federation of Government Employees, AFL-CIO, Local Union 2041 (AFGE), and, if so, whether they should be severed from that unit.

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL UNION R2-112

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL UNION 2041

Intervenor

The Assistant Secretary, noting that there was no bar in this case, found that the evidence demonstrated that since 1967 the employees in the claimed unit at the Raritan Depot, have been included in a unit exclusively represented by the AFGE. He further found that the AFGE has, since 1967, provided the Raritan employees with full, fair and effectual representation. In these circumstances, and in accordance with the policy enunciated in United States Naval Construction Battalion Center, A/SLMR No. 8, the Assistant Secretary ordered that the NAGE's petition be dismissed. Thus, he reaffirmed the policy that where the evidence shows that an established and fair collective bargaining relationship is in existence, a separate unit carved out of an existing unit will not be found appropriate except in unusual circumstances.

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Charles L. Smith. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the Activity, the Petitioner, National Association of Government Employees, Local R2-112, herein called NAGE, and the Intervenor, American Federation of Government Employees, AFL-CIO, Local 2041,

1/ The name of the Activity appears as corrected at the hearing.

herein called AFGE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The NAGE seeks an election in the following unit:

Including all nonsupervisory General Schedule and Wage Board Employees of the Federal Supply Service, Raritan Arsenal, Edison, New Jersey, excluding management officials, employees engaged in Federal personnel work, except in a purely clerical capacity, guards and supervisors as defined in Executive Order 11491, and also professionals. 2/

The Activity and the AFGE take the position that the petitioned for unit is part of a broader unit which is covered by a negotiated agreement which bars an election herein. The NAGE, on the other hand, takes the position that there is no bar, and that its petition raises a valid question concerning representation.

On January 3, 1963, under Executive Order 10988, the AFGE was granted exclusive recognition for the Federal Supply Service, Public Building Service, and Property Management and Disposal Service employees at the Belle Meade Depot, Belle Meade, New Jersey. 3/ Effective May 11, 1964, the AFGE and the Activity executed an agreement covering the Belle Meade unit. Among other things, the agreement contained a one year duration clause, with provision for automatic renewal for one year periods thereafter, absent timely notice by either party of an intent to terminate.

On November 16, 1966, the AFGE requested exclusive recognition as the representative of the Federal Supply Service and Public Building Service employees at the "Raritan Annex." 4/ On December 8, 1966, this was amended to include the Property Management and Disposal

2/ The unit description appears as amended at the hearing.

3/ Although the record is not clear, it appears that Federal Supply Service, Public Building Service and Property Management and Disposal Services are organizational components of the General Services Administration (GSA), at both the Belle Meade and Raritan Depots.

4/ It is clear that this facility was, in fact, the Raritan Depot. This Depot was not in operation at the time exclusive recognition was granted the AFGE for the Belle Meade Depot.

Services employees at Raritan. In addition, the AFGE requested that the Raritan employees be included in the Belle Meade unit, and be covered by the agreement covering the Belle Meade employees. Thereafter, on December 30, 1966, the Activity posted notices of this request on its bulletin boards, and a copy of this notice was given each employee. On January 27, 1967, the Activity informed the AFGE that its request for recognition had been granted, and that the Belle Meade agreement would apply to the Raritan employees, effective immediately. This grant of recognition also was the subject of a notice, which was posted on the Activity's bulletin boards and a copy which was given to all Raritan employees.

By letter dated October 24, 1968, the AFGE requested that negotiations for a new agreement be initiated. The Activity acceded to this request, and since that date negotiations have been conducted. There was no evidence that a new agreement has been consummated. In these circumstances, I find the parties' prior agreement is not a bar to the petition in this case.

Since January 27, 1967, the date that recognition was extended to cover the Raritan employees, it is clear that both the Activity and AFGE have considered the Raritan employees to be part of the Belle Meade unit, and have, in effect, extended coverage of their May 11, 1964 agreement to the Raritan employees. In this regard, the record discloses that when GSA acquired the Raritan facility, some employees were transferred from Belle Meade, including the then President of the AFGE. Since that time, a Raritan employee has occupied at least one of the elective offices of the AFGE. In addition, the record reveals that employee problems and grievances arising at Raritan have been discussed and resolved at regularly scheduled labor-management meetings. There was no record evidence, or allegation, that the AFGE has ever been unwilling or unable to provide Raritan employees with fair and effective representation.

Based on the foregoing, I find that the unit petitioned for herein is not appropriate. Thus, as I stated in United States Naval Construction Battalion Center, A/SLMR No. 8, where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances. 5/ The evidence in the subject case clearly reveals that the AFGE was granted exclusive recognition as the bargaining representative for a combined unit consisting of both the Belle Meade and the Raritan

5/ Cf. also Boston Naval Shipyard, A/SLMR No. 18.

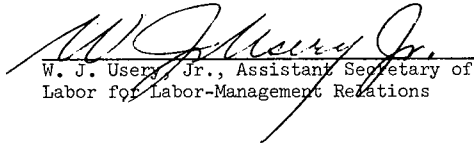
employees, as evidenced by the Activity's letter of January 27, 1967. Further, it is equally clear that the Raritan employees were fully apprised of AFGE's request for recognition and the Activity's action in granting this request. The record discloses that AFGE has, since January 1967, provided the Raritan employees with full, fair and effective representation, in that grievances and problems have been discussed regularly with the Activity, the Raritan employees have had one of their number as an elected officer, and there is no evidence that any Raritan employee has been refused representation by the AFGE.

Accordingly, in view of these circumstances, I shall dismiss the petition in the subject case.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 32-1567 be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 29, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ALABAMA AIR NATIONAL GUARD
A/SLMR No. 67

In this case, the American Federation of Government Employees, Local 997, AFL-CIO, (AFGE) sought an election in a unit consisting of certain nonprofessional and nonsupervisory, General Schedule and Wage Board Technicians, who perform maintenance, supply, administrative and clerical functions in the various units and activities of the Alabama Air National Guard. The evidence revealed that the AFGE sought only 123 technicians who were assigned to units and activities located in the southern portion of the State.

In finding the petitioned for unit to be inappropriate, the Assistant Secretary noted that the evidence in the record demonstrated that the Adjutant General of the State exercised centralized control and supervision over all Air National Guard Technician programs, including personnel programs and labor relations; and, that he administered these programs on a State-wide basis. He noted also that all technicians in the State, including the claimed employees, received the same pay, within their respective grade classifications; that they had uniform terms and conditions of employment; that all technicians in the State, both in and out of the claimed unit, had similar skills and occupations; and that they performed similar functions at the various Air National Guard activities.

In these circumstances, the Assistant Secretary concluded that the claimed employees did not possess a clear and identifiable community of interest which was separate and apart from the other technicians in the State. Accordingly, he dismissed the petition.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ALABAMA AIR NATIONAL GUARD

Activity

and

Case No. 40-1943 (RO)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 997, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Thomas J. Sheehan. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, including a brief filed by the Activity, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, Local 997, AFL-CIO, herein called AFGE, seeks an election in a unit composed of nonsupervisory and nonprofessional, General Schedule and Wage Board, Alabama Air National Guard Technicians in the southern portion of the State.

The record establishes that the claimed employees are in various occupational classifications and that they perform aircraft maintenance and repair functions as well as supporting supply, medical, administrative and clerical work in the various Alabama Air National Guard units and activities throughout the State. The record shows that, State-wide, the Activity employs 233 such employees at 7 separate Air National Guard activities; and, that technicians assigned to the various activities have

similar skills and occupations, and perform similar functions. 1/ As noted above, the AFGE seeks to represent only those technicians who are assigned to Air National Guard facilities located south of a line extending across the northern boundaries of Sumter, Greene, Hale, Bibb, Chilton, Coosa, Tallapoosa and Chambers counties in the State of Alabama. The petitioned for unit would consist of 123 Air National Guard Technicians who are assigned to 5 separate facilities. 2/

The AFGE contends that the claimed employees have a community of interest, in that they have similar skills and occupations, are engaged in similar jobs and functions, have the same personnel policy and programs, and are subject to the same terms and conditions of employment. Also, the AFGE claims that community of interest among the petitioned for technicians is shown by the fact that such employees receive their pay and logistical

1/ At the hearing, the parties stipulated that there were no differences between the functions performed by technicians in their respective classifications throughout the State.

2/ Specifically, the unit would consist of the technicians located in the Headquarters, Alabama Air National Guard, Montgomery (2); the 187th Tactical Reconnaissance Group (92) and 232nd Mobile Communications Squadron (10), both located at the Dannelly Air National Guard Base; the 280th Communications Squadron, Maxwell Air Force Base (7); and the 115th Tactical Control Flight, Dothan, Alabama (12). The Petitioner would exclude technicians who are assigned to the 225th Mobile Communications Squadron, Gadsden, Alabama (12) and the 117th Tactical Reconnaissance Wing and Group, Birmingham (99). The record shows that the 177th Tactical Reconnaissance Wing is the parent organization of the 187th Tactical Reconnaissance Group.

support from Dannelly Air National Guard Base, whereas, the excluded technicians receive these services from Birmingham ^{3/} and that less than State-wide units have been certified by an Area Administrator involving the Alabama Army National Guard. The Activity contends that the technicians in the claimed unit do not have a separate clear and identifiable community of interest, since all personnel policies and programs applicable to Air National Guard Technicians in the State, emanate from the Adjutant General and are administered on a State-wide basis. Also, the Activity asserts that only the Adjutant General has the statutory and managerial authority to negotiate with a labor organization. In these circumstances, the Activity contends that the only appropriate unit would be a State-wide unit.

The Adjutant General of the State administers the Air National Guard technicians' civilian personnel program on a State-wide basis under implementing regulations and guidelines promulgated by the Department of Defense, the Military Departments including the Department of the Air Force, and the National Guard Bureau. He exercises his authority and responsibilities in the Alabama Air National Guard through the offices of an appointed Commanding General, Alabama Air National Guard, and a Technicians Personnel Office, which directs the State-wide Air National Guard technicians'

^{3/} During the hearing, the AFGE adduced testimony to show that employees in the claimed unit are located in the same Wage Board Survey Area for determining Wage Board hourly pay rates. In this regard, it contended that Wage Board employees in the petitioned for unit have the right to be represented on the same Wage Survey Committee, and therefore, they should be found to have a community of interest. The record reveals that the AFGE seeks a unit composed of both General Schedule and Wage Board employees (approximately 66 General Schedule employees and 57 Wage Board personnel), and that some of the employees in the claimed unit are not located in the same Wage Survey Area as the other employees in the unit.

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civilian personnel programs, including labor relations.^{4/} Time and attendance accounting, and logistical support functions, for technicians are performed by the U.S. Property and Fiscal Office in Montgomery. This Office exercises State-wide control and supervision over these functions, but the record reveals that it has delegated actual disbursement and distribution responsibilities to regional activities.

Technicians in the Alabama Air National Guard perform day-to-day training, administrative, supply and maintenance functions to maintain the various units and activities in a state of military readiness. At other times they serve the Governor of the State to quell civil disorders and to act in natural disaster situations. They are Federal employees who must serve, actively, in the Alabama Air National Guard and they hold a military rank in addition to their civilian grade and occupational classifications.^{5/} They receive Federal pay, leave and vacations, and they participate in Federal employee health and retirement benefit programs. As noted above, all technicians employed by the Activity, including the claimed employees, have uniform personnel programs which are administered on a State-wide basis. They receive the same pay, within their respective grade classifications, and have the same tours of duty, hours of employment, leave and vacations, grievance and disciplinary procedures, and they participate in the same employee benefit programs. Also, the record shows that under the Activity's promotion program, the area of consideration is State-wide; and that all technicians throughout the State participate in a State-wide competitive reduction-in-force procedure.

^{4/} The Technicians Personnel Office performs technicians personnel administration with respect to both Army and Air National Guard personnel. However, personnel programs and procedures are implemented through the offices of the respective Commanding Generals. The Technicians Personnel Office maintains all technicians personnel files, and all official personnel actions emanate from that Office.

^{5/} Although the Technicians are in a noncompetitive Civil Service status, the Activity employs 9 classified Civil Service employees as secretaries and clerical personnel. These employees are not members of the Alabama National Guard, and are not included in the petitioned for unit.

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Technicians employed in the various Alabama Air National Guard units and activities are supervised by Branch Chiefs, who direct the work of personnel assigned to them. These Branch Chiefs report to Base Detachment Commanders who, in turn, report directly to the Commanding General, Alabama Air National Guard. These Base Detachment Commanders are responsible directly to the Technicians Personnel Office for carrying out established personnel policy and programs. On some occasions, technicians are assigned from one Air National Guard activity to another, on a temporary basis, for training purposes and to assist in emergency situations. Also, the evidence establishes that assignments have been made in which technicians who are in the petitioned for unit were assigned to Alabama Air National Guard activities located outside of the area covered by the claimed unit. Moreover, on occasion, technicians employed in the various Air National Guard units and activities have been combined with technicians of other activities, both in and out of the claimed unit, to form crews in training, emergency and ceremonial assignments.

Based on the foregoing, I find that the unit sought is not appropriate for the purpose of exclusive recognition under Executive Order 11491. The evidence establishes that the Adjutant General of the State exercises State-wide control and supervision over the Alabama Air National Guard technicians' programs, including technicians' civilian personnel programs and labor relations. The record shows that he exercises his authority and responsibilities on a State-wide basis, through the offices of the Commanding General, Alabama Air National Guard, the Technicians Personnel Office, and the U.S. Property and Fiscal Office. All Air National Guard technicians in the State, including the claimed employees, receive the same pay, within their respective grade classifications, and have the same terms and conditions of employment. In addition, the evidence demonstrates that technicians in the various Alabama Air National Guard units and activities, both in and out of the claimed bargaining unit, have similar skills and occupations and perform similar functions, and that there is a history of interchange among the technicians employed at various locations, in and out of the claimed unit. In these circumstances, I find that the employees in the claimed unit do not possess a clear and identifiable community of interest separate and apart from other Air National Guard technicians in the State.^{6/} Moreover, in my view, the petitioned for unit would not promote effective

^{6/} Compare Pennsylvania National Guard, A/SLMR No. 9; Minnesota Army National Guard, A/SLMR No. 14; and Ohio Air National Guard, A/SLMR No. 44.

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dealings or efficiency of Activity operations.
Accordingly, I shall order that the AFGE's petition be dismissed.^{7/}

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 40-1943 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 30, 1971

W. J. Usery, Jr.
W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

^{7/} I reject the contention that I am bound to accept as determinative in this case the fact that an Area Administrator has certified less than State-wide units involving the Alabama Army National Guard, Cf. Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25.

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... necessary.
... eligible to
... from one Section
... fill vacancies that
... of Staff's area of
... Section, he may give
... personnel on matters directly related
... schedule employees in both Sections are
... same fringe benefits. In addition, all
... same personnel policies and conditions of
... utilize one credit union, as well as the same
... With respect to the Petitioner's contention con-
... work scheduling, the record reflects that, while
... is performed only by Medical Service personnel, almost
... at Section's personnel perform their duties on a nonshift basis.
... For example, vacancies in the Administrative Section's supply division
... have been filled by Nursing Assistants from Medical Service.
^{4/} In this regard, it is noted that the Administrative Section is budgeted
... under the Medical Service Section.

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331

In October 1966, the Petitioner was
all Wage Board and Canteen employees

- 2 -

recognition

June 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VETERANS ADMINISTRATION CENTER,
WOOD, WISCONSIN
A/SLMR No. 68

This case involved a representation petition filed by Local No. 150, Service and Hospital Employees Union, Service Employees International Union, AFL-CIO, seeking a unit of nonprofessional employees of the Medical Service Section of the Activity under the direction of the Chief of Staff. The Activity contested the appropriateness of the claimed unit which was limited to the Medical Service Section employees, and which excluded the employees of the Administrative Section.

The Assistant Secretary found that a unit limited to the nonprofessional employees of the Medical Service Section, as proposed by the Petitioner, was not appropriate for the purpose of exclusive recognition. In reaching this determination, the Assistant Secretary relied on the highly integrated nature of the Activity's operations and the close physical proximity and interrelationship of function between the nonprofessional employees of the Medical Service Section and those of the Administrative Section. He noted also that all job vacancies are posted throughout the Activity and that all employees can, and do, compete for them; there is substantial movement back and forth of employees between the Medical Service Section and the Administrative Section; all nonprofessional employees are salaried and have the same fringe benefits; employees are subject to the same personnel policies; and, employees are changeable in some areas, as they have the same job titles and responsibilities and duties. The Assistant Secretary views that the unit proposed by the Petitioner, which divided the Activity, could not reasonably be expected to promote effective dealings and efficiency of agency operations.

Based on the foregoing, the Assistant Secretary dismissed the petition.

Based on the foregoing, I find that the unit sought by the Petitioner is not appropriate for the purpose of exclusive recognition, in that the claimed employees in the Medical Service Section do not possess a clear and identifiable community of interest apart from other nonprofessional employees of the Activity. The evidence established that the Activity's operation is of a highly integrated nature, requiring constant interaction between Medical Service personnel and those assigned to the Administrative Section. The record reveals also that vacancies are posted on an Activity-wide basis and all employees can, and do, compete for such vacancies; there is substantial physical proximity; all of the Activity's nonprofessional employees are salaried and have the same fringe benefits; all employees of the Section and the Administrative Section are interchangeable in some areas, as they have the same job titles and similar responsibilities and duties. In these circumstances, and noting that the unit proposed by the Petitioner, which artificially divides the Activity, cannot reasonably be expected to promote effective dealings and efficiency of agency operations, I shall order that the petition herein be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 50-4453 be, and it hereby is, dismissed.

Dated, Washington, D. C.
June 30, 1971

W. J. Usery, Jr.
W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

A/SLMR No. 68

UNITED STATES DEPARTMENT OF
BEFORE THE ASSISTANT SECRETARY FOR LABOR

VETERANS ADMINISTRATION CENTER,
WOOD, WISCONSIN

and

LOCAL NO. 150
EMPLOYEES
INTERNATIONAL

June 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VIRGINIA NATIONAL GUARD
HEADQUARTERS, 4TH BATTALION,
111TH ARTILLERY
A/SLMR No. 69

This case involved a representation petition filed by the National Association of Government Employees, seeking a unit of all nonsupervisory Wage Board and General Schedule employees of the 4th Battalion, 111th Artillery of the Virginia National Guard. The parties were in agreement as to the appropriateness of the unit petitioned for, but were not in agreement as to whether or not eighteen job classifications should be included in the unit.

Six of the disputed classifications include Sergeant of the Guard duty as a regular, recurring part of their employment. When performing this duty they are responsible for the Guard force, and their authority extends to both unit and nonunit personnel who come on the site. They are salaried and they have responsibility relating to the protection of property and the security of the site. In these circumstances, the Assistant Secretary found these employees to be guards within the meaning of the Executive Order, and therefore, should be excluded from the unit. The Assistant Secretary also found that all employees, regardless of specific classification, who perform guard duty on a regular recurring basis, should be excluded from the unit, in addition to employees assigned to the permanent guard force.

Determinations were made by the Assistant Secretary in other disputed job classifications, based on whether or not the affected employees had duties within the meaning of the Executive Order as supervisors, management officials, or employees engaged in Federal personnel work in other than a purely clerical capacity. He added that this exclusion would not apply to individuals merely based on access to personnel or statistical information upon which such policy-based.

Technicians employed in the various Alabama Air National Guard units and activities are supervised by Branch Chiefs, who direct the work of personnel assigned to them. These Branch Chiefs report to Base Detachment Commanders who, in turn, report directly to the Commanding General, Alabama Air National Guard. These Base Detachment Commanders are responsible directly to the Technicians Personnel Office for carrying out established personnel policy and programs. On some occasions, technicians are assigned from one Air National Guard activity to another, on a temporary basis, for training purposes and to assist in emergency situations. Also, the evidence establishes that assignments have been made in which technicians who are in the petitioned for unit were assigned to Alabama Air National Guard activities located outside of the area covered by the claimed unit. Moreover, on occasion, technicians employed in the various Air National Guard units and activities have been combined with technicians of other activities, both in and out of the claimed unit, to form crews in training, emergency and ceremonial assignments.

Based on the foregoing, I find that the unit sought is not appropriate for the purpose of exclusive recognition under Executive Order 11491. The evidence establishes that the Adjutant General of the State exercises State-wide control and supervision over the Alabama Air National Guard technicians' programs, including technicians' civilian personnel programs and labor relations. The record shows that he exercises his authority and responsibilities on a State-wide basis, through the offices of the Commanding General, Alabama Air National Guard, the Technicians Personnel Office, and the U.S. Property and Fiscal Office. All Air National Guard technicians in the State, including the claimed employees, receive the same pay, within their respective grade classifications, and have the same terms and conditions of employment. In addition, the evidence demonstrates that technicians in the various Alabama Air National Guard units and activities, both in and out of the claimed bargaining unit, have similar skills and occupations and perform similar functions, and that there is a history of interchange among the technicians employed at various locations, in and out of the claimed unit. In these circumstances, I find that the employees in the claimed unit do not possess a clear and identifiable community of interest separate and apart from other Air National Guard technicians in the State.^{6/} Moreover, in my view, the petitioned for unit would not promote effective

^{6/} Compare Pennsylvania National Guard, A/SLMR No. 9; Minnesota Army National Guard, A/SLMR No. 14; and Ohio Air National Guard, A/SLMR No. 44.

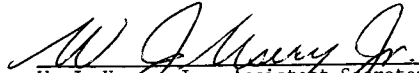
dealings or efficiency of Activity operations.

Accordingly, I shall order that the AFGE's petition be dismissed.^{7/}

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 40-1943 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
June 30, 1971


W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

^{7/} I reject the contention that I am bound to accept as determinative in this case the fact that an Area Administrator has certified less than State-wide units involving the Alabama Army National Guard. Cf. Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25.

June 30, 1971

A/SLMR No. 68

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VETERANS ADMINISTRATION CENTER,
WOOD, WISCONSIN
A/SLMR No. 68

This case involved a representation petition filed by Local No. 150, Service and Hospital Employees Union, Service Employees International Union, AFL-CIO, seeking a unit of nonprofessional employees of the Medical Service Section of the Activity under the direction of the Chief of Staff. The Activity contested the appropriateness of the claimed unit which was limited to the Medical Service Section employees, and which excluded the employees of the Administrative Section.

The Assistant Secretary found that a unit limited to the nonprofessional employees of the Medical Service Section, as proposed by the Petitioner, was not appropriate for the purpose of exclusive recognition. In reaching this determination, the Assistant Secretary relied on the highly integrated nature of the Activity's operations and the close physical proximity and interrelationship of function between the nonprofessional employees of the Medical Service Section and those of the Administrative Section. He noted also that all job vacancies are posted throughout the Activity and that all employees can, and do, compete for them; there is substantial movement back and forth of employees between the Medical Service Section and the Administrative Section; all nonprofessional employees are salaried and have the same fringe benefits; all employees are subject to the same personnel policies; and, employees of the Administrative Section and the Medical Service Section are interchangeable in some areas, as they have the same job titles and similar responsibilities and duties. The Assistant Secretary also was of the view that the unit proposed by the Petitioner, which artificially divided the Activity, could not reasonably be expected to promote effective dealings and efficiency of agency operations.

Based on the foregoing, the Assistant Secretary ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION CENTER,
WOOD, WISCONSIN

Activity

and

Case No. 50-4453

LOCAL NO. 150, SERVICE AND HOSPITAL
EMPLOYEES UNION, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO 1/

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John R. Lund. The Hearing Officer's ruling made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. Local No. 150, Service and Hospital Employees Union, Service Employees International Union, AFL-CIO, herein called the Petitioner, seeks an election in the following unit:

All full time and part time nonprofessional
employees under the direction of the Chief

1/ The name of the Petitioner appears as amended at the hearing.

of Staff, excluding all Wage Board and Canteen employees, all management, supervisors, professionals, guards, and employees engaged in Federal personnel work in other than a purely clerical capacity. 2/

The Activity contends that the only appropriate unit should include all full-time and part-time nonprofessional employees at the Activity.

The Activity is a general medical and surgical hospital, and domiciliary. It is divided into a Medical Service Section and an Administrative Section. The Petitioner seeks to represent all nonprofessional employees found in the Medical Service Section, which is under the direction of the Chief of Staff. This Section includes all areas of medicine, therapy and rehabilitation. The function of employees in the claimed unit is to carry out the major mission of the hospital, i.e., that of patient care activities. There are about 453 nonprofessional employees in this Section who work in scattered locations throughout the hospital. Employees in this Section, who are included in such classifications as nursing assistants, lab technicians, therapists' aides, library aides and photographers, spend a large portion of their work time in the wards and the clinics, performing work requiring direct contact with the patients. Other Medical Section employees, such as pharmacists' aides and lab technicians, work in places other than the wards and clinics and have no direct contact with the patients.

The Petitioner seeks to exclude the nonprofessional employees of the Administrative Section, which is under the direction of the Assistant Center Director. The Administrative Section contains the Engineering Division, Fiscal Division, Personnel, Administration, Supply and Building Management. An estimated 80 percent of the employees in this Section, such as ward clerks, typists and supply employees, have duties which require that they spend a great deal of time in the wards and clinics, bringing them in contact with the patients. They perform such duties as scheduling patients for testing, bringing in supplies for the wards and patients, making out prescriptions and orders pursuant to the doctor's orders and, in general, acting as intermediaries between the nurses, doctors, nursing assistants, and the patient. These employees are responsible for the entire clerical and administrative work in the wards and they also perform clerical work for the various professional employees of the hospital. There are also employees in this Section,

2/ In October 1966, the Petitioner was granted exclusive recognition for all Wage Board and Canteen employees at the Activity.

such as admission and discharge clerks and fiscal clerks, who are not stationed in the wards but have direct contact with the patients. While the employees of the Medical Service Section are concerned primarily with the actual physical care of the patients, the employees of the Administrative Section not only assist the Medical Service employees with the patient care, but they also handle many of the patients' personal matters, such as insurance and fiscal problems.

The record indicates that the employees of both Sections work very closely with each other in order to provide the best services possible to the patient. For example, when a patient is being admitted to the Center, normal processing procedure involves the patient being "admitted" by Administrative Section personnel who then turn him over to Medical Service employees for further processing. The employees of both Sections are interchangeable in some areas, as they have the same job titles and exercise similar responsibilities and duties. The record further indicates that it is not unusual for a job classification to be switched from one Section to the other, as the Center Director has the power to alter the Activity's organizational structure when he feels such action is necessary.

All Center job vacancies are posted and all employees are eligible to compete for the openings. As a result, employees may move from one Section to the other as the result of a promotion. The evidence reveals that employees are drawn from one Section to the other to fill vacancies. 3/ The record indicates also that although the Chief of Staff's area of responsibility is limited to the Medical Service Section, he may give instruction to Administrative Section personnel on matters directly related to conditions in patient care areas. 4/

All nonprofessional General Schedule employees in both Sections are salaried and they all receive the same fringe benefits. In addition, all employees are subject to the same personnel policies and conditions of employment, and they all utilize one credit union, as well as the same cafeteria facilities. With respect to the Petitioner's contention concerning variations in work scheduling, the record reflects that, while shift work generally is performed only by Medical Service personnel, almost one-half of that Section's personnel perform their duties on a nonshift basis.

3/ For example, vacancies in the Administrative Section's supply division have been filled by Nursing Assistants from Medical Service.

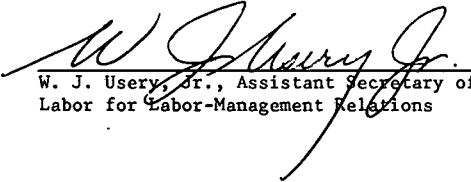
4/ In this regard, it is noted that the Administrative Section is budgeted under the Medical Service Section.

Based on the foregoing, I find that the unit sought by the Petitioner is not appropriate for the purpose of exclusive recognition, in that the claimed employees in the Medical Service Section do not possess a clear and identifiable community of interest apart from other nonprofessional employees of the Activity. The evidence established that the Activity's operation is of a highly integrated nature, requiring constant interaction between Medical Service personnel and those assigned to the Administrative Section. The record reveals also that employees in the two Sections work in close physical proximity; all job vacancies are posted on an Activity-wide basis and all employees can, and do, compete for such vacancies; there is substantial transferring of employees between the Medical Service Section and the Administrative Section; all of the Activity's nonprofessional employees are salaried and have the same fringe benefits; all employees are subject to the same personnel policies; and employees of the Administrative Section and the Medical Service Section are interchangeable in some areas, as they have the same job titles and similar responsibilities and duties. In these circumstances, and noting that the unit proposed by the Petitioner, which artificially divides the Activity, cannot reasonably be expected to promote effective dealings and efficiency of agency operations, I shall order that the petition herein be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 50-4453 be, and it hereby is, dismissed.

Dated, Washington, D. C.
June 30, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

June 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VIRGINIA NATIONAL GUARD
HEADQUARTERS, 4TH BATTALION,
111TH ARTILLERY
A/SLMR No. 69

This case involved a representation petition filed by the National Association of Government Employees, seeking a unit of all nonsupervisory Wage Board and General Schedule employees of the 4th Battalion, 111th Artillery of the Virginia National Guard. The parties were in agreement as to the appropriateness of the unit petitioned for, but were not in agreement as to whether or not eighteen job classifications should be included in the unit.

Six of the disputed classifications include Sergeant of the Guard duty as a regular, recurring part of their employment. When performing this duty they are responsible for the guard force, and their authority extends to both unit and nonunit personnel who come on the site. They are armed and they have responsibility relating to the protection of property and the security of the site. In these circumstances, the Assistant Secretary found these employees to be guards within the meaning of the Executive Order, and therefore, should be excluded from the unit. The Assistant Secretary also found that all employees, regardless of specific classification, who perform guard duty on a regular recurring basis, should be excluded from the unit, in addition to employees assigned to the permanent guard force.

Determinations were made by the Assistant Secretary in other disputed job classifications, based on whether or not the affected employees had duties within the meaning of the Executive Order as supervisors, management officials, or employees engaged in Federal personnel work in other than a purely clerical capacity.

With respect to confidential employees, the Assistant Secretary found it would effectuate the purposes of the Executive Order if employees were excluded from bargaining units who act in a confidential capacity to officials who formulate or effectuate general labor relations policies. He added that this exclusion would not apply to individuals merely having access to personnel or statistical information upon which such policy is based.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VIRGINIA NATIONAL GUARD
HEADQUARTERS, 4TH BATTALION
111TH ARTILLERY

Activity

and

Case No. 46-1611(RO)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Eugene M. Levine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{1/}

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

^{1/} The National Association of Government Employees, herein called NAGE, attempted to introduce evidence showing the composition of units at similar activities. This offer was rejected by the Hearing Officer. While I agree with the NAGE that such evidence would be relevant, in the circumstances of this case, I find the rejection of this evidence by the Hearing Officer did not constitute prejudicial error.

2. The NAGE seeks an election in a unit of all nonsupervisory Wage Grade and General Schedule employees of the 4th Battalion (Nike-Hercules), 111th Artillery, excluding supervisors, management officials, employees engaged in Federal personnel work except in a purely clerical capacity, guards and supervisors as defined in Executive Order 11491.^{2/}

The parties are in agreement as to the appropriateness of the unit petitioned for, but they do not agree as to whether or not the following job classifications at the following locations should be included in the unit:

- (1) Battalion Headquarters: Operations Specialist, Fire Control Mechanic, Electronics Materiel Chief, Chief Radar Mechanic, Administrative Specialist, Supply Specialist, and Administrative Supply Technician.
- (2) Battery Headquarters: First Sergeant, Administrative Specialist, and Supply Specialist.
- (3) Fire Control Platoon: Fire Control Section Leader, and Fire Control Mechanic.
- (4) Launching Platoon: Launcher Section Chief, Missile Mechanic, Platoon Sergeant, Senior Launcher Crewman, Electronics Materiel Chief, and Assembly Technician.

The Activity is a part of the Air Defense Mission, with its particular function being to provide a nuclear missile air defense for the Washington, D. C. and Hampton Roads, Virginia areas. Its mission is performed by Nike-Hercules missile firing Batteries A, B and C, located respectively at Lorton, Deep Creek and Denbigh, Virginia. A Headquarters Battery, which provides logistical and other types of support services, and the Battalion Headquarters also are located at the Deep Creek site. The 272 civilian technician employees in the unit sought are members of the National Guard. The evidence establishes that while performing their job functions they wear regular Army uniforms, and practice military courtesy and customs.

Each site involved in the subject case has a Fire Control Area, Launching Control Area and Exclusion Area. The Fire Control Area contains a missile target tracking radar, electronic test equipment, billeting, administrative and supply facilities. It is enclosed by a fence, and is separated from the Launching and Exclusion Areas, which also are fenced, by a distance of approximately one mile.

^{2/} The NAGE's claimed unit appears as amended.

The Launching Control Area contains a security office, launching control trailer, administrative and billeting housing, and a Limited Access Area, which contains the missile assembly and handling equipment, generator building and converters, security dog kennels, and an embedded area containing warhead facilities.

Within the Launcher Control Area is a separate fenced area containing the Exclusion Area, which contains a nuclear capable guided missile with its associated launching and testing equipment.

JOB CLASSIFICATIONS IN DISPUTE

The following six job classifications, all in the Launching Platoon, are considered together since the record reveals that employees in these classifications perform Sergeant of the Guard duty on a regular recurring basis in addition to their other duties: Assembly Technician; Electronics Materiel Chief (Battery level); Launcher Section Chief; Missile Mechanic; Platoon Sergeant; Senior Launcher Crewman. The Activity contends that the Sergeant of the Guard duty performed by these classifications is a sufficient basis for their exclusion from the proposed unit.

In the instant case, the amount of time spent by employees in the above-named job classifications performing Sergeant of the Guard duty varies. As noted above, the above-named employees perform Sergeant of the Guard duties on a regular basis and normally such duty accounts for twenty-five percent of their total work time. In addition, the record indicates that in some cases the time spent exceeds twenty-five percent of normal working time. The evidence establishes that the Sergeant of the Guard is armed and is authorized to apprehend, detain, and search intruders who have gained unauthorized entry to the site. He is also responsible for the guard force and his authority extends to both unit personnel and non-unit personnel who come on the site. Sergeant of the Guard duties are covered by specific instructions which relate to the protection of property and the security of the site. The Sergeant of the Guard instructs and inspects guards for proper weapons and equipment, and determines whether the men are fit to perform guard duty. He is responsible also for an Emergency Force which is composed of a Security Alert Team and a Backup Alert Force.

In these circumstances, and considering the substantial amount of time spent in performing Sergeant of the Guard duty and the extreme importance of the security function of this Activity in view of the role it plays in the National air defense program, I find that employees who perform the Sergeant of the Guard duties are guards within the meaning of

Section 2(d) of the Executive Order.^{3/} Accordingly, since Section 10(b)(3) of the Order precludes the establishment of a unit if it includes any guard together with other employees, I shall exclude from the unit found appropriate herein employees in the job classifications listed above whose duties include acting as Sergeant of the Guard.^{4/}

Administrative Specialist (Battalion level)

The Administrative Specialist is responsible to the Battalion Commander for the overall administration within the Battalion. Once a month, he inspects the record keeping procedures of Headquarters Battery and A, B and C Batteries. He is the Adjutant of the Activity; a member of the Battalion level Staff; Personnel Officer; and serves as a Duty Officer. In personnel matters he provides technical services to the Battery Commanders and formulates Standard Operating Procedures. Upon instructions from the Commanding Officer, he promulgates "special orders" and signs these orders. He is the only individual permitted to sign for the Commander in the latter's absence and sits on Promotion Boards which consist of three or four members. When performing this duty, he interviews employees and recommends whether or not they should be promoted. Moreover, as Adjutant, he signs correspondence on his own behalf, and in some cases signs the name of the Commander.

^{3/} Cf. United States Department of the Air Force, 910th Tactical Air Support Group (AFRES), Youngstown Municipal Airport, Veinma, Ohio, A/SLMR No. 12. In that case, I found that firefighters who engaged in certain security functions were not guards within the meaning of the Order. As distinguished from the subject case, the firefighters spent only a small portion of their time in security duties; were not armed; did not receive instruction or training with respect to guard duties; and their security duties were characterized as temporary.

^{4/} The record reveals that the parties have agreed that some Launcher Crewmen and Launcher Helpers should be included in the proposed unit, even though the record shows that at least some of these employees perform recurrent guard duties similar to that of the Sergeant of the Guard. In the circumstances noted above, since I have found such employees to be guards within the meaning of the Executive Order, in my view, the parties' agreement would not effectuate the purposes and policies of the Executive Order which, as noted above, provides in Section 10(b)(3) that an appropriate unit shall not include guards with other employees. Accordingly, I find that, despite the parties' agreement, all employees, regardless of specific classification, who perform regular recurring guard duty for substantial periods of time at the Activity should be excluded from the unit sought by the NAGE.

Based on the foregoing, I find in agreement with the Activity, that he is a management official in that his duties place his interests more closely with personnel who formulate, determine and oversee policy than with personnel in the proposed unit who carry out the resultant policy.^{5/} In these circumstances, I find that the classification of Administrative Specialist (Battalion level) should be excluded from the petitioned for unit.

Administrative Specialist (Battery level)

An employee in this classification assists the Battery Supervisor in planning and directing the overall administrative functions of the unit. He performs clerical work such as preparation, editing, and typing of personnel actions, payrolls, attendance records, and is engaged in the filing and compilation of reports related to administrative or personnel functions. He also is in charge of unit correspondence and the evidence reveals that he and the Battery Commander have access to the files containing labor relations material.

With respect to such labor relations material, there was undisputed testimony that the Battalion Commander has designated his three Battery Commanders to assist in labor negotiations with labor representatives. As a result, there have been discussions concerning labor relations matters which have been reduced to writing. These written reports are typed and edited at the battery level by the Administrative Specialist, and are then placed in a confidential file. The Administrative Specialist is responsible for the paper work in regard to grievances which are forwarded to Battalion Headquarters, and he also prepares memoranda of record concerning labor relations problems that arise in his battery. The evidence establishes that the Administrative Specialist is the only employee in his battery who handles confidential labor relations material.

It is clear from the record that the Administrative Specialist acts in a confidential capacity with respect to officials who formulate or effectuate general labor relations policies, and that in this regard he has regular access to confidential labor relations material. Thus, if he were to be included in the proposed unit, the Activity would be required to handle its labor relations matters through an employee who was included in the unit.

Section 10(b) of the Executive Order provides that employees in certain classifications cannot be included together with other employees in an appropriate unit. Although confidential employees are not mentioned in

these required exclusions, I consider that it would best effectuate the policies of the Executive Order if employees who assist and act in a confidential capacity to persons who formulate and effectuate management policies in the field of labor relations are excluded from bargaining units.^{6/}

In these circumstances, in agreement with the position of the Activity, I find that the Administrative Specialist (Battery level) should be excluded from the appropriate unit found herein on the basis that an employee in this job classification is a confidential employee.

Administrative Supply Technician

This job classification is responsible for all the maintenance supply and business activity for Headquarters Battery. This includes, among other things, administration of supply activities, and involves working with personnel folders, security-type clearances, posting, editing, filing and typing. The Administrative Supply Technician is responsible to the Unit Commander for the location of all the property in the Battery. He also is Motor Officer on the Battalion Commander's Staff. As Motor Officer, he is responsible to the Battalion Commander for all the motor activities within the Battalion including records, maintenance of equipment, inventories and inspection. In this phase of his duties, he is directly responsible for the Motor Sergeant who maintains all the motorized equipment. However, the Administrative Supply Technician does not have the authority to recommend discharge, assignment, reward, or the adjustment of grievances.

An individual in this classification testified to several administrative duties he has in addition to his regular work, but the record is not clear as to these additional duties. The record does reveal that the major part of his duties are to see that various administrative, clerical and supply functions are carried out, but the plans, policies and procedures to be followed are established by the Unit Commander or other higher authority. Considering the above factors, I find that an employee in this job classification is neither a management official nor a supervisor, as contended by the Activity, and I conclude therefore, that the classification of Administrative Supply Technician should be included in the proposed appropriate unit.

^{6/} Employees who merely have access to personnel or statistical information would not be deemed to be confidential employees.

^{5/} Cf. The Veterans Administration Hospital, Augusta, A/SLMR No. 3.

Chief Radar Mechanic

The primary duty of this classification is the operation and maintenance of the Target Simulator. The Target Simulator contains test equipment, and is enclosed in a trailer which is rotated between firing units. The purpose of this equipment is to simulate actual combat conditions by which Radar Operators and Battery Control Officers are trained.

The Chief Radar Mechanic is assisted by and gives work directions to one radar operator. The record indicates that they work together and arrange their time off so that one of them will at all times be available on the job. The evidence reveals that while operating equipment, both perform the same work. In the case of an electronic malfunction, the Chief Radar Mechanic would perform the repair work, with the operator assisting him. Such repair work requires knowledge that the operator does not have. The Chief Radar Mechanic prepares a Technician Performance Rating form for the operator.^{7/} In the circumstances, I find the work relationship between the Chief Radar Mechanic and the radar operator to be that of a more skilled employee being assisted by a less skilled employee and, of itself, not sufficient reason for finding that the Chief Radar Mechanic is a supervisor within the meaning of the Order, as contended by the Activity.

The Activity also contends that the Chief Radar Mechanic should be excluded from the proposed unit on the basis that he is a management official concerned with training, evaluation and advising the Battalion Commander. The record reveals, however, that the Chief Radar Mechanic does not decide how or what training will be performed. Thus, the Battalion Missile Supervisor prepares training schedules for the Target Simulator which are given to the Chief Radar Mechanic to follow. Also, training manuals are used as a guide for the training which is given. When the training has been completed the Chief Radar Mechanic prepares a written report on the mechanics of the operation; the actual training performed; and also makes a verbal report on the efficiency of the training. This information is submitted to admitted supervisors. If these reports reveal a serious deficiency, they are given to the Battalion Commander who takes appropriate action. As for advising the Battalion Commander, the record indicates this advice is given in conjunction with advice given by other members of the staff.

^{7/} Several disputed job classifications require preparation of such a form. The form provides for an adjective rating of outstanding, satisfactory or unsatisfactory. There is no indication in the record that any rating other than "satisfactory" has ever been given. Although the use of this particular form became effective about September 1969, an officer at the Activity testified that since he had been employed at the Activity in 1959, "There never has been any other than a satisfactory rating in the unit." In these circumstances, I find that the preparation of this form is a routine matter, and standing alone, it is not a sufficient reason to exclude an employee from the proposed unit on the basis of supervisory status.

Based on the foregoing, I conclude, contrary to the position of the Activity, that the Chief Radar Mechanic does not have duties which set him apart as a management official or supervisor, and therefore, this classification should be included in the proposed appropriate unit.

Fire Control Mechanic and Electronics Materiel Chief (Battalion Level).^{8/}

The Fire Control Mechanic's area of responsibility is the tracking station which is a part of the Firing Unit, and the Electronics Materiel Chief is an expert in missile and Launching Area equipment.

Both classifications involve employees who are essentially evaluators or inspectors and who are part of an evaluation team which performs evaluations of the various units. The evaluation team is headed by the Battalion Missile Supervisor who supervises two warrant officers, the Guided Missile Materiel Assistant and the Fire Control Assistant, as well as the Fire Control Mechanic, Electronics Materiel Chief, Chief Radar Mechanic and Radar Operator. The members of this team report on their particular areas, and this results in a group evaluation of the entire Fire Unit, forming a basis on which the Battalion Commander is able to judge the efficiency of the Fire Unit. The team participates in specific evaluations, such as Operation Readiness Evaluation, Short Notice Annual Practice and Level 5 Evaluation.

In making their evaluations, the Fire Control Mechanic and Electronics Materiel Chief, who are noncommissioned officers, are governed by established guidelines of performance which are provided by the various Army Outer Defense Commands. They evaluate the crews solely for their compliance with these guidelines. When they have completed their evaluations, they are submitted to admitted supervisors, who sign the actual evaluation or efficiency reports. While their evaluations affect the rating given, and are a factor in making an overall decision, the record is clear that final determinations on the effect of the evaluations are made at a higher level of authority.

Based on the foregoing, I find the evaluations made by these employees are not the result of independent judgment, but are made on predetermined guidelines, and subject to review as to their effect. Therefore, contrary to the position of the Activity that these employees are either management officials, or supervisors, I find that the classifications of Fire Control Mechanic and Electronics Materiel Chief (Battalion level) should be included in the unit found appropriate herein.

^{8/} These two classifications are considered together because their duties are essentially the same, although they have different areas of responsibility.

Fire Control Mechanic (Battery level)

It is the contention of the Activity that the Fire Control Mechanic is both a supervisor and a management official. The evidence establishes that he works under the immediate supervision of a Fire Control Warrant Officer and a Fire Control Leader and is a member of the "Red and Yellow" teams.^{9/} The record reveals that his major duty is to repair malfunctions and perform maintenance work on radar-missile equipment. Testimony was elicited that this type of work accounts for about ninety-five percent of his working time. In addition, he directs approximately ten operating personnel in the performance of checks and adjustments on the missile system on a daily, weekly, and non-periodic basis. In this regard, the record reveals that there is a schedule posted which regulates what particular checks and adjustments are to be done on a given day.

The record indicates also that the Fire Control Mechanic does not adjust grievances, has never formally evaluated an individual's performance and has no authority to give formal discipline. Moreover, he does not receive requests for annual or sick leave, and he does not have the authority to promote, discharge, or assign work or to effectively recommend such action. He works on a daily basis with a crew which consists of two mechanics, a crew chief, and operators. In this regard, if he sees an operator performing work incorrectly, he will show him the correct method of doing the job.

Based on the foregoing, I find that the Fire Control Mechanic is a skilled employee, but that he is neither a management official nor supervisor within the meaning of the Order. Accordingly, this classification should be included in the proposed unit.

Fire Control Section Leader

Employees in this classification are found in the Fire Control Platoon of each battery. The Activity contends they are supervisors within the meaning of the Order. The Fire Control Section Leader has approximately

^{9/} The Fire Control Section Leader is also a member of these teams. There is no evidence that the head of the agency excluded employees in this classification under Section 3(b)(3) of the Order. However, the Activity contends that membership on these teams is a sufficient basis for excluding this classification from the proposed unit. The Battalion Commander made reference to this subject in his testimony when he stated that, "The function of these teams deals with the custody, control of nuclear capable weapons and nuclear capable weapons release orders." However, due to the highly classified nature of the teams' activity, he could not give any more information. The fact that a group of employees is engaged in work of a classified nature would not exclude such group from an otherwise appropriate unit.

ten operators under his direction. The primary function of his crew is to perform checks and adjustments on radar equipment on a daily, weekly or monthly basis, and he is responsible that these checks and adjustments are made. The Fire Control Section Leader has the authority to settle minor grievances, and he makes recommendations on major grievances, which according to the record, are normally followed. He initials leave slips, and recommends the scheduling of annual leave, with the majority of his recommendations being followed. He has the immediate responsibility for maintaining discipline in his crew, and, on his own initiative, he has required employees to stay after normal working time to make up time for coming to work late. The record reveals also that he can effectively recommend promotions. In addition, employees in this classification are authorized to fill out a Supervisory Appraisal of Employee Performance, and they fill out the Technician Performance Rating forms for the employees in their crews. They also direct the training given to their crew members in the Training Station. Another responsibility of the Fire Control Section Leader is the performance of maintenance work on the site. In this regard, he directs his crew members in performing this work, which includes the cleaning of buildings and the cutting of grass.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, has the power to make effective recommendations as to promotions, has authority to adjust complaints, and has the power to discipline other employees, I find that the Fire Control Section Leader is a supervisor within the meaning of the Order, and therefore, he should be excluded from the unit.

First Sergeant

The Activity considers that the First Sergeant is a member of the command structure of the battery, and is both a supervisor and management official. The First Sergeant has overall supervision of the employees in the battery. At battery headquarters, he determines proper work methods and procedures, assigns and checks work, and maintains discipline. He conducts meetings with, and issues directives to, subordinates. The record indicates that he formulates, and assists in the formulation of battery policy and provides guidance on nontechnical matters to all technicians in the battery. The record reveals he can effectively recommend the discharge of an employee; he approves annual leave, subject to a final determination by the Battery Commander; and has the authority to adjust complaints. In addition, he can effectively recommend promotions, and he is a member of the Battery Promotion Evaluation Board.^{10/} The evidence reveals that in areas of his responsibility he has the authority to instruct employees to make corrections immediately when they are needed.

^{10/} As a member of this Board he utilizes the Supervisory Appraisal of Employee Performance form.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, has the power to make effective recommendations as to promotions and discharge, and has authority to approve annual leave and adjust complaints, I find that the First Sergeant is a supervisor within the meaning of the Order. In addition, his duties indicate that he determines proper work methods, and plays a part in policymaking. As it is apparent these duties require more than routine discretion and judgment, I find that the First Sergeant is also a management official within the meaning of the Order. Accordingly, in agreement with the Activity, I find that the First Sergeant should be excluded from the unit on the basis of being both a supervisor and management official.

Operations Specialist

The Operations Specialist works in the Headquarters Battalion where he serves principally as a personal secretary to the Battalion Commander. The Activity contends that he is a management official, confidential employee, and is engaged in Federal personnel work. His duties include administrative and clerical duties connected with training of Activity personnel, coordinating school quotas and courses available, and records pertaining to these activities.

As personal secretary of the Battalion Commander, he attends, takes notes and makes official memoranda of staff meetings, and other meetings in which the Battalion Commander participates, including meetings with representatives of labor organizations. In this capacity, it is clear that he is privy to communications between the Battalion Commander and Battery Commanders and other subordinates as to labor policy, contract negotiations, labor relations and labor disputes. Further, he maintains grievance files, and initiates any correspondence connected with grievances on behalf of the Command.^{11/}

In these circumstances, I find that the Operations Specialist acts in a confidential capacity to persons who formulate or effectuate management policies in the field of labor relations and has regular access to confidential labor relations material. For the reasons set forth above in regard to the Administrative Specialist (Battery level), I shall exclude the Operations Specialist from the unit on the basis that he is a confidential employee.^{12/}

^{11/} The evidence reveals that only he and the Battalion Commander have access to these files.

^{12/} I find the evidence is insufficient to establish that the Operations Specialist is a management official, or is engaged in Federal personnel work in other than a purely clerical capacity.

Supply Specialist (Battalion level)

The Activity contends that the duties of the Battalion Supply Specialist parallel those of his supervisor, the Battalion Supply Supervisor, who is an admitted supervisor. The supply function at Battalion level has the responsibility for all supply requirements in the Battalion; to advise the Battalion Commander in the field of supply and logistics; to make inspection trips to the batteries to assure that the supply functions are adequately performed; and to formulate plans or to recommend the formulation of plans in the field of supply and logistics. Although the record reveals the Battalion Supply Specialist assists in these responsibilities, I find that the requisite managerial and/or supervisory authority is exercised by the Battalion Supply Supervisor, and not by the Supply Specialist, as contended by the Activity. Accordingly, since in my view, the Battalion Supply Specialist is not a supervisor or a management official within the meaning of the Order, this classification should be included in the proposed unit.

Supply Specialist (Battery level)

The Activity contends that this job classification has duties as a management official and a supervisor. The evidence reveals that the Supply Specialist at the Battery level is responsible for ensuring that all items necessary for efficient operation are procured and properly stored and that he keeps a record of this material. The record reveals also that regulations set forth the correct level of supplies to be maintained at each unit, and that the Supply Specialist follows standardized procedures in performing his supply duties. In all of the circumstances, I find that his duties in the supply area are essentially clerical in nature, and, contrary to the position of the Activity, I find he is not a management official.

The Activity alleges that he "supervises" two Battery repair parts clerks, that he monitors the work of these clerks, and that he oversees them on a constant basis. However, the evidence establishes that he works alone in the supply room, and the parts clerks work by themselves in the parts room, which is separated from the supply room by an office. On occasion, the Supply Specialist at the Battery level gives the parts clerks instructions, but it is clear that these instructions come from the bulletin board or from news bulletins he receives. Also, there is testimony that the supervisor of the parts clerks is, in fact, the Guided Missile Fire Control Assistant, who gives them instructions as to their duties on a daily basis. The evidence reveals that the Supply Specialist can recommend the adjustment of a grievance, but the Battery Commander is the only

person who can adjust a grievance. Moreover, the Supply Specialist does not grant annual or sick leave, and does not have the authority to take disciplinary action.^{13/}

Considering the above factors, and the record as a whole, I find that the Supply Specialist (Battery level) does not responsibly direct other employees or have duties that would set him apart as a management official, and therefore he is not a supervisor or a management official within the meaning of the Order. Accordingly, he should be included in the proposed unit.

Based on all of the foregoing, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All employees of the Virginia National Guard Headquarters, 4th Battalion, 111th Artillery, including the classifications of Fire Control Mechanic (Battalion and Battery levels), Electronics Materiel Chief (Battalion level), Chief Radar Mechanic, Administrative Supply Technician, and Supply Specialist (Battalion and Battery levels), excluding the Operations Specialist, Administrative Specialist (Battalion and Battery levels), First Sergeant, Launcher Section Chief, Fire Control Section Leader, Missile Mechanic, Platoon Sergeant, Senior Launcher Crewman, Electronics Materiel Chief (Battery level), Assembly Technician, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations.

^{13/} The Supply Specialist also monitors and directs the performance of a carpenter and an electrician who are provided to the Activity by the Navy Department on a regular, but not permanent basis. If any problems arise in the handling of the Navy employees, he clears the matter with his Battery Supervisor.

- 13 -

Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designaged payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees.

Dated, Washington, D. C.
June 30, 1971

W J Usery Jr.

W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

- 14 -

July 1, 1971

A/SLMR No. 70

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, SOCIAL SECURITY
ADMINISTRATION, DISTRICT OFFICE,
ALBANY, NEW YORK
A/SLMR No. 70

This case arose as a result of a decertification petition filed by an employee of the Activity seeking to decertify Local 3055, American Federation of Government Employees, AFL-CIO (AFGE) as the exclusive representative of a unit of employees of the Social Security Administration's District Office in Albany, New York.

The Assistant Secretary concluded that under all the circumstances, further processing of the decertification petition was not necessary. He noted that the AFGE's request for recognition occurred during the insulated period of the Activity's negotiated agreement with the National Association of Government Employees (NAGE), that NAGE had been granted exclusive recognition earlier by the Activity and that no secret ballot election was held pursuant to the Agency's regulations under Executive Order 10988 with respect to the Agency's "recognition" of the AFGE. In these circumstances, the Assistant Secretary determined that the AFGE was at no time under Executive Order 10988 or Executive Order 11491 the duly recognized or certified exclusive representative of the employees at the Activity and, therefore, he ordered that the decertification petition, which sought specifically to decertify the AFGE, be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, SOCIAL SECURITY
ADMINISTRATION, DISTRICT OFFICE,
ALBANY, NEW YORK

Activity

and

Case No. 35-1254 E.O.

EDNA L. TAMAROFF

Petitioner

and

LOCAL 3055, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John A. LeMay. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The Petitioner, Edna L. Tamaroff, an employee of the Activity, seeks the decertification of Local 3055, American Federation of Government Employees, AFL-CIO, herein called AFGE, as the exclusive representative of the employees in a unit of:

All employees of the Social Security Administration
District Office at Albany, New York, excluding
management officials, employees engaged in Federal

personnel work in other than a purely clerical capacity, professional employees, supervisors and guards as defined by the Order. 1/

2. The Activity involved herein is the District Office of the Social Security Administration located in Albany, New York. The District Office is under the direction of a District Manager who reports to an Assistant Regional Representative, located in New York City, New York. The Assistant Regional Representative, in turn, reports to the Director, Bureau of District Office Operations, located in Baltimore, Maryland.

The record reveals that, under Executive Order 10988, the Activity granted exclusive recognition to the National Association of Government Employees, herein called NAGE. 2/ On October 8, 1968 the Activity and the NAGE executed a one-year agreement containing an automatic renewal clause. Thereafter, supplemental agreements were negotiated in January and April 1969 concerning "security" and "vacation and holiday leave." On September 8, 1969, the AFGE presented the Activity with a request for exclusive recognition. Subsequently, on December 31, 1969, the Deputy Assistant Commissioner for Administration of the Social Security Administration telephoned the AFGE's Executive Vice-President and advised the latter that he was granting exclusive recognition to the AFGE for the District Office located in Albany, New York. Thereafter, by letter dated January 5, 1970, the District Manager of the Activity advised the President of AFGE, Local 3055 that the AFGE had been granted exclusive recognition for the employees of the Albany District Office. The letter made no reference to any prior grant of recognition to the AFGE.

On May 11, 1970, the Petitioner filed the petition for decertification in the subject case. The Petitioner contends, among other things, that the Activity's granting of recognition to the AFGE was improper since at the time of recognition the AFGE did not represent a majority of the employees in an appropriate unit; that the NAGE held exclusive recognition and had a valid agreement with the Activity which barred the AFGE's request for recognition; and that the AFGE currently does not represent a majority of the employees in an

1/ The petition was amended at the hearing to clarify certain exclusions.

2/ The record is unclear as to the date exclusive recognition was granted.

appropriate unit. The AFGE and the Activity, on the other hand, assert that the AFGE was properly recognized on December 31, 1969 and that such recognition constitutes a bar to the petition in the subject case.

The record reveals that at the time the AFGE filed its request for exclusive recognition on September 8, 1969 there was in effect at the Albany District Office a negotiated agreement between the Activity and the NAGE which had a termination date of October 8, 1969. As noted above, this agreement, which became effective on October 8, 1968, provided for automatic renewal unless either party thereto gave written notice to the other of its desire to terminate the agreement, not less than 60 days prior to its anniversary date. There is no evidence in the record that either party to the agreement gave the prescribed notice to terminate. Additionally, there is no evidence in the record that the NAGE had either abandoned its agreement or, in any way, indicated that it no longer desired to represent exclusively the Albany District Office employees. 3/

Under all of the foregoing circumstances, I find that further processing of the decertification petition in this case is not necessary. Thus, as noted above, the AFGE's request for recognition on September 8, 1969 occurred during the insulated period of the Activity's agreement with the NAGE. 4/ In addition the Agency failed to follow its regulations under Executive Order 10988. Based on the foregoing, I find that at no time did the AFGE properly establish itself as the exclusive bargaining representative of the employees in the above-described unit since its request for recognition was untimely and no secret ballot election was held pursuant to the Agency's regulations under the Executive Order 10988.

3/ The fact that the NAGE did not participate in the hearing in the subject case was not considered to require a contrary conclusion where, as here, the evidence indicates that because of a procedural oversight the NAGE was not served with a Notice of Hearing in this matter.

4/ Official notice is taken of the fact that under Executive Order 10988, the Department of Health, Education, and Welfare's regulations concerning the timeliness of requests for recognition, which were adopted in accordance with the Rules for Nomination of Arbitrators, issued by the Secretary of Labor on August 20, 1964, precluded the consideration of a request for recognition or redetermination of majority status except during the 90-60 day period prior to the expiration date of a negotiated agreement. Additionally, the Agency's regulations required that any redetermination of majority status would be made by a secret ballot election.

In view of my above finding that the AFGE was at no time under either Executive Order 10988 or Executive Order 11491 the duly recognized certified exclusive representative of the employees in the above-described unit, further processing of the decertification petition in the subject case, which seeks specifically to decertify the AFGE, is not necessary. Accordingly, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 35-1254 E.O. be, and it hereby is, dismissed.

Dated, Washington, D.C.
July 1, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 1, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

SOCIAL SECURITY ADMINISTRATION,
MORRISTOWN, TENNESSEE BRANCH OFFICE
A/SLMR No. 71

This case involved a petition filed by the National Federation of Federal Employees, Local 1767 for a unit of nonsupervisory employees assigned to one of two Social Security branch offices within the Knoxville District.

The facts in the case disclosed that the branch office which included the claimed employees and the other branch office were located about 45 miles from the Knoxville District Office, which had management control over both branch offices. The record further revealed that employees of the district office and the two branch offices possessed the same skills and job classifications; that they were subject to the same personnel policies, and shared the same working conditions. In addition to the foregoing factors, the evidence indicated also that there was frequent interchange of employees between the two branch offices and the Knoxville District office and that, when the need arose, the District Manager had the authority to allocate and relocate district office employees to the other two branch offices. Since the record disclosed that only the employees of the Knoxville District were represented on an exclusive basis the Assistant Secretary noted that a unit comprising the employees of only one of the two branch offices would fragment and leave unrepresented a substantial number of employees who possessed the same job classifications and working conditions.

In these circumstances, and noting that the proposed unit would not promote effective dealings and efficiency of agency operations, the Assistant Secretary ordered that the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

SOCIAL SECURITY ADMINISTRATION
MORRISTOWN, TENNESSEE BRANCH OFFICE^{1/}

Activity

and

Case No. 41-1832

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1767

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including a brief filed by the employees of the Activity, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. Petitioner, National Federation of Federal Employees, Local 1767, herein called NFFE, seeks an election in the following unit:

All employees assigned to the branch office at Morristown, Tennessee excluding management officials, employees engaged in Federal personnel

^{1/} The name of the Activity appears as amended at the hearing.

work in other than a purely clerical capacity, professional employees and guards and supervisors as defined in the Order.^{2/}

There is no history of bargaining with respect to the employees covered by the petition in the instant case. However, the American Federation of Government Employees, AFL-CIO, Local 2630, herein called AFGE, was accorded exclusive recognition under Executive Order 11491 for a unit consisting of all nonsupervisory employees of the Social Security Administration's Knoxville District Office. An agreement entered into by these parties on September 18, 1970 provided, in part, that employees of branch offices established in the future within the geographic area of the Knoxville District would be included in the recognized unit.^{3/}

It is the position of the Social Security Administration, herein called the Agency, that the proposed unit is inappropriate inasmuch as the employees of the Morristown Branch Office do not have a community of interest which is separate and apart from those assigned to the other offices within the Knoxville District. The Agency also maintains that the unit in question will not promote effective dealings and efficiency of agency operations.

The Activity is one of numerous branch offices operated by the Agency's Bureau of District Office Operations. A branch office, which is an extension of a district office,^{4/} is the smallest component of the Agency's field operations. Responsibility for the branch and district offices is vested in the Headquarters of the Bureau of District Office Operations at the Agency's Central Office in Baltimore, Maryland. The Bureau structure is decentralized by regions, one of which is located in Atlanta, Georgia. The Atlanta Region comprises a number of districts including the Knoxville, Tennessee District. The Knoxville District consists of a district office in Knoxville and two branch offices, one in Morristown and the other in La Follette. The Branch Managers in Morristown and La Follette report directly to the District Manager in Knoxville who, in turn, is responsible to the Atlanta Regional Office.

^{2/} NFFE's claimed unit appears as amended at the hearing.

^{3/} Both the Morristown Branch Office involved in the subject case and the La Follette Branch Office of the Knoxville District were in existence at the time of the execution of the above-mentioned agreement. According to record testimony, neither branch office was intended to be covered by the agreement.

^{4/} According to the record, branch offices were established to assist the district offices in carrying out the Agency's program objectives.

The Knoxville District employs a staff of eighty nonsupervisory employees, 58 of whom are assigned to the Knoxville District Office. Of the remaining 22 employees, 13 are assigned to the Morristown Branch Office and 9 to the La Follette Branch Office. The two branch offices are located at a distance of approximately 45 miles from the Knoxville District Office.

The record discloses that the mission of the 3 offices of the Knoxville District are the same, i.e., to disseminate information concerning the Social Security program and to provide services to the public including assistance in the filing of claims for benefits payments. The nonsupervisory employees in all 3 offices possess the same skills and have many of the same job classifications.^{5/} Office hours, work assignments, personnel policies and general working conditions of the employees of the branch offices are also the same as those of the Knoxville District Office.

Whenever the need arises, the District Manager has the authority to allocate and relocate district office employees to the Morristown and the La Follette Branch Offices. While such assignments of personnel have generally been from the district office to the branch offices, there has also been movement of employees from the branch offices to the district office. The record reflects that some employees in the district office have worked both at the Morristown and the La Follette Branch Offices. Although minor grievances of an informal nature may be made to the Branch Manager, all informal grievances must be brought to the attention of the District Manager, who is responsible for all matters involving the labor relations of the district office as well as the branch offices.

While the Branch Managers exercise day to day supervision over the employees in their respective office, they may not take any unilateral disciplinary action against an employee and must seek the approval of the District Manager in such matters as the hiring of clerical employees, employee appraisal and promotion, granting of leave without pay and other personnel actions.

Based on the foregoing, I find that the unit sought by the NFFE does not constitute an appropriate unit for the purpose of exclusive recognition under Executive Order 11491. The record discloses that management control of the Morristown Branch and the two other offices of the Knoxville District is centralized in the Knoxville District Office and that employees

^{5/} Classifications which are common to both the district and the branch offices include that of Service Representative, Data Review Technician, Claims Representative and Field Representative.

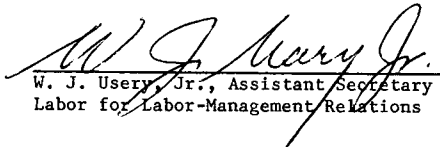
of the two branch offices as well as the district office possess the same skills and job classifications; that they are subject to the same personnel policies and share the same working conditions. Also, the evidence reveals that there is frequent interchange of employees between the district office and the branch offices and that, in periods of abnormal case loads, the resources of all three offices within the Knoxville District are pooled in a single coordinated and integrated work effort.

I, therefore, conclude that a unit comprising the employees of only one of these branch offices, namely Morristown, would fragment and leave unrepresented a substantial number of employees having the same job classifications and working conditions and would, therefore, be inappropriate. In these circumstances and noting that the establishment of the claimed unit would not, in my view, promote effective dealings and efficiency of agency operations, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 41-1832 be, and it hereby is, dismissed.

Dated, Washington, D. C.
July 1, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 2, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, OFFICE OF THE
SECRETARY, DATA MANAGEMENT CENTER
A/SLMR No. 72

The subject case involved representation petitions filed by two labor organizations, American Federation of Government Employees, AFL-CIO, Local 41 (AFGE), and National Federation of Federal Employees, Local 1768 (NFFE). The AFGE sought a unit of all professional and nonprofessional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center. The NFFE sought a unit of all nonsupervisory General Schedule employees in the Division of Data Processing (DDE), one of four divisions comprising the Data Management Center. The Activity contested the appropriateness of the unit sought by the NFFE, contending that DDP personnel did not possess a clear and identifiable community of interest apart from other DMC personnel, and contended that the appropriate unit is that requested by the AFGE.

Under all the circumstances, the Assistant Secretary found that the separate unit of DDP employees sought by the NFFE was not appropriate, and therefore, he ordered that the petition filed by NFFE be dismissed. In this regard, he noted that DDP employees are engaged in an inter-related mission with other DMC personnel; that there is interchange between the DDP and other Center Divisions; that generally, DDP employees had the same terms and conditions of employment as other DMC employees; that all DMC employees shared the same supervision at the decision making level; and that their job functions were closely related. He noted further that DDP employees would have an opportunity to vote in a more comprehensive unit.

The Assistant Secretary also found that the overall unit of the DMC petitioned for by the AFGE was appropriate for the purpose of exclusive recognition. In reaching this determination he noted that the DDP function is part of a continuous interrelated process wherein the DDP employees and other DMC employees interact to accomplish the data processing mission of DMC. Moreover, he observed that the employees had the same general working conditions, were involved in a certain amount of interchange, shared the same supervision at the decision making level, and that they enjoyed almost daily personal contact. Although he noted that while certain DDP employees, notably the computer operators and aides, share a certain distinction in that they perform shift work, this

was minimized by the fact that almost half of the other DDP employees are not shift workers. In these circumstances, and because, in his view, such a comprehensive unit would promote effective dealings and efficiency of agency operations, the Assistant Secretary directed that an election be conducted in the unit petitioned for by the AFGE with professional employees being accorded a self-determination election before being included in a unit with nonprofessionals.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, OFFICE OF THE
SECRETARY, DATA MANAGEMENT CENTER 1/

Activity

and

Case No. 22-1982

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1768

Petitioner

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, OFFICE OF THE
SECRETARY, DATA MANAGEMENT CENTER

Activity

and

Case No. 22-2098

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 41

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Dow E. Walker. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

1/ The name of the Activity appears as amended at the hearing.

2. In Case No. 22-2098, Petitioner, American Federation of Government Employees, AFL-CIO, Local 41, herein called AFGE, seeks an election in a unit of all professional and nonprofessional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center. 2/

In Case No. 22-1982, Petitioner, National Federation of Federal Employees, herein called NFFE, seeks an election in a unit of all non-supervisory General Schedule employees in the Division of Data Processing, excluding professional employees. The Activity contends that the unit sought by the AFGE is appropriate. On the other hand, it asserts that the employees sought by the NFFE do not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operations.

The Data Management Center (DMC) is one of three major subdivisions of the Activity's Office of Finance. The DMC, under the overall direction of the Assistant Secretary, Comptroller, is comprised of four divisions: Accounting Operations, Central Payroll, Data Processing, and Systems Planning. It is basically a computer oriented center employing approximately 433 individuals, 353 of whom are nonsupervisory. The record reflects that the DMC contains employees classified as professional as well as others classified as nonprofessionals. 3/

As noted above, the DMC contains the Division of Data Processing (DDP), whose basic function is to operate the computers and to perform data preparation functions such as payroll and conversion of raw data. In addition, the DDP operates the accounting machines and performs a production control function. The Division of Systems Planning is responsible for designing and developing computer systems, the application of the various types of such systems, writing computer programs, documenting the systems designed, and turning them over to the Division which requested the systems design. The Division of Accounting Operation is responsible for accounting for all the funds for the Office of the Secretary, and for departmental reporting of financial data. The Division of Central Payroll is responsible primarily for paying all of the approximately 110,000 employees of HEW. The record indicates that the four Directors of the Divisions comprising the DMC report to the Director of the DMC, who is responsible for evaluating their work performance, the performance of each division, and the coordination of the four divisions.

2/ The AFGE's claimed unit appears as amended at the hearing.

3/ Since the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc., to provide a basis for a finding of fact that persons in particular classifications are professionals, I will make no findings as to which employee classifications constitute professional employees.

The administration of the DMC is in the Office of the Director of the Center who also coordinates staffing requirements and levels, approves the budget for the various divisions, reviews progress and production reports from DDP, weekly activity and backlog reports from Central Payroll, and receives monthly reports from all divisions. The DMC Director is responsible for staffing the four divisions including transfers and initial assignments, as well as effectively recommending the hiring, firing and disciplining of employees and the approving or disapproving of promotions. He also has the authority to deal with labor organizations. While the record speaks of "effective recommending" by the DMC Director with respect to the foregoing, the ultimate decision making power in these matters resides in the Office of the Secretary of Personnel. As a practical matter, however, the Secretary of Personnel usually accepts the recommendations of the Director. It appears from the record that all organizational and administrative decision making and personnel policy formulation is achieved at the DMC or Division of Personnel level, and not at the lower Division level.

With respect to supervision, the record discloses that all DMC employees are under the general supervision of the DMC Director. The supervisory hierarchy includes the Director at the top, then the Division Directors, their deputies, branch chiefs, section chiefs, and unit chiefs within each of the DMC divisions.

The employees involved in the subject cases are, for the most part, classified as General Clerical and Administrative employees, secretaries, computer operators, computer aides, card punch operators, "EAM" operators, and "EAM" project planners. Although the record reveals that all of the computer operators are located in the DDP, two computer aides are found in other divisions of the DMC. The job functions in the DDP involving the operating of accounting machines, performing data preparation and production control are duplicated in other divisions of DMC, such as Central Payroll, Accounting Operations, and Systems Planning. Even though the computer operation appears to be centered in DDP, the record reveals that technical people from other divisions frequently discuss their problems with DDP computer operators, and occasionally even operate those computers when working on a particular problem. In this regard, employees of the Systems Planning Division and Advance Systems Division will often meet with DDP computer operators to discuss problems. The record discloses that each division is dependent upon the other for work product and output. By the nature of its work, DDP employees are constantly in contact with employees from the other divisions. The responsibilities of employees at the same grade level and same occupation in the divisions comprising the DMC, including DDP employees, are similar and are interchangeable. There is also personal contact and interaction between DDP and other divisions such as Payroll and Accounting, where payroll clerks regularly have to exchange data. Thus, Central Payroll employees are responsible for seeing that work is computed on each person's salary, which computer operation is performed by DDP employees. Moreover, of the approximately 10 occupations present in DDP, 7 are represented in other divisions of DMC.

The evidence establishes that the hiring qualifications for employees in the same occupations are identical wherever they may be located in the DMC. In this regard the record reveals that six employees regularly are assigned to perform overtime in the DDP, four from Central Payroll, and two from the Accounting Division. Also, there is a career progression program encompassing both the Central Payroll Division and DDP in computer operations. With respect to employee interchange, the record shows that between 1969 and 1970 there were seven details of 30 days to 6 months duration out of DDP, into other divisions. In addition, between 1967 and 1970 there were 15 transfers out and 6 into DDP. The record also discloses that employees are loaned between divisions to help out in work load situations.

In their respective classifications, DDP employees and other DMC employees enjoy the same benefits and other terms and conditions of employment. Although DDP computer operators and aides are on shift work, and therefore must necessarily tailor their lunch hours and breaks to the needs of the computers, they nonetheless are able to use, and do use the cafeterias frequented by other DMC employees. Because of the special equipment needed for the computers and the computers themselves, the DDP operation is located in the basement of the HEW building, while other DMC employees are located on the floor above. The record reveals that this physical separation occurred only because of the placement of the computers and not because of the uniqueness of the operators. 4/

Based on the foregoing, I find that the unit sought by the NFFE limited to employees of the Activity's Division of Data Processing is not appropriate for the purpose of exclusive recognition. As noted above, the record reveals that all of the employees of the Data Management Center are engaged in an interrelated mission resulting in DDP personnel having a close community of interest with employees of the other divisions within DMC. The record reveals also that there is interchange between the DDP and other Center divisions and DDP employees work in close physical proximity to other Center personnel and have substantial job contact, as evidenced by such factors as the cross training, exchange of information and details across division lines. Further, the skills and training of DDP employees is not limited to that particular division and there is evidence of significant overlap of job classifications between divisions. While the record discloses that DDP's computer operators and aides work a shift schedule which is different from the work schedule of other divisions, this factor is minimized by the fact that computer operators represent only slightly more than half of the employees in the DDP who are sought by the NFFE. In these circumstances and considering the fact that DDP employees

4/ As noted above, a substantial proportion of the DDP employee classifications, other than the computer operators, are found in other divisions.

will have an opportunity to vote in a more comprehensive unit, I find that the unit sought by the NFFE is not appropriate for the purpose of exclusive recognition.

I also find, based on the foregoing, that an overall unit of all professional and nonprofessional employees in the Data Management Center, as proposed by the AFGE, is appropriate for the purpose of exclusive recognition. The record reveals that all the DMC employees contribute to the same work product which is a result of a highly interrelated and integrated system, and that DDP's function is part of a continuous process wherein the DDP employees and employees of other divisions interact with each other to accomplish the DMC mission. In addition, there is some degree of interchange in all the divisions, all employees are located in a common building, share similar working conditions and benefits, and enjoy almost daily personal contact. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the AFGE. Moreover, such a comprehensive unit will, in my view, promote effective dealings and efficiency of agency operations.

Accordingly, I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All professional and nonprofessional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 5/

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

5/ Although the AFGE's amended petition excluded the classification of temporary employees, the record is not clear as to whether there are any temporary employees who, because of the particular nature of their employment, share no substantial community of interest with the unit employees and should, therefore, be excluded from the unit. Accordingly, I make no finding with respect to such classification.

Voting Group (a): All professional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the AFGE. 6/

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the AFGE. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether or not the AFGE was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

6/ As the NFFE's showing of interest is insufficient to treat it as an intervenor in Case No. 22-2098, I shall order that its name not be placed on the ballot.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center, excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Department of Health, Education, and Welfare, Office of the Secretary, Data Management Center, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-1982, be, and it is hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service, who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period

and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 41.

Dated, Washington, D. C.
July 2, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 2, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF THE NAVY,
NAVAL AIR STATION AND NAVAL AIR TEST CENTER,
PATUXENT RIVER, MARYLAND
A/SLMR No. 73

A/SLMR No. 73

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF THE NAVY,
NAVAL AIR STATION AND NAVAL AIR TEST
CENTER, PATUXENT RIVER, MARYLAND

Activity

and

Case No. 22-2137 (RO)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1787,

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1603, AFL-CIO

Intervenor

DECISION AND ORDER

This representation proceeding involves a severance request by the National Federation of Federal Employees, Local 1787 (NFFE) for a unit of firefighters currently included in an activity-wide unit of all civilian personnel which has been represented, for many years by the American Federation of Government Employees, Local 1603, AFL-CIO (AFGE).

The Activity and the AFGE contend that the unit sought is inappropriate because: (1) the firefighters do not possess a separate and distinct community of interest as contrasted with the clear and identifiable commonality of all employees in the overall unit; (2) recognition of firefighters would not promote effective dealings and efficiency of operations as has been achieved through the long and stable collective-bargaining relationship between the Activity and the Intervenor for the overall unit; and (3) the Petitioner is not a labor organization which traditionally represents firefighters.

The Assistant Secretary decided that the requested firefighter unit was inappropriate in the circumstances of this case. Reiterating the approach to be taken in severance situations, as first declared in United States Naval Construction Battalion Center, A/SLMR No. 8, "that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances", he found no "unusual circumstances" in this case. Thus, while the record points up certain distinct special interests possessed by the firefighters, it also demonstrates that these concerns have been, in effect, submerged into the broader community of interest firefighters share with other civilian employees by reason of years of uninterrupted association in the existing overall unit. Moreover, their inclusion in the established unit for purposes of collective bargaining has undisputedly served and promoted effective dealings and efficiency of Activity operations. In these circumstances, the Assistant Secretary directed that the petition be dismissed.

Pursuant to a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gerald W. Welcome. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{1/}

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

^{1/} Exceptions were taken by the Intervenor to the Hearing Officer's rulings with respect to the admissibility of documents relative to the Petitioner's qualifications to represent the employees sought and of certain testimony relative to the adequacy of the Intervenor's representation of these employees as part of an activity-wide unit. In view of my disposition below to deny the Petitioner's severance request, on the basis of the record made herein, I find it unnecessary to reverse his rulings rejecting the proffered evidence. Although I consider this rejection to be error in both instances, I am constrained to conclude that, in terms of the overall record in this case, it is not prejudicial.

2. The Petitioner, National Federation of Federal Employees, Local 1787, seeks to sever all firefighters from an activity-wide unit of all civilian personnel, currently represented on an exclusive basis by the Intervenor, American Federation of Government Employees, Local 1603, AFL-CIO. 2/

Defining the requested unit more precisely, the Petitioner would include in the unit all of the Activity's nonsupervisory firefighters, in all about 38 employees, and would exclude all other employees including employees engaged in Federal personnel work in other than a purely clerical capacity, professional and supervisory employees, management officials, and guards. Both the Activity and the Intervenor take essentially the same position that the proposed unit is inappropriate because (1) the employees in question do not possess a separate and distinct community of interest as contrasted with the clear and identifiable commonality of all employees in the overall unit; (2) recognition of the separate employee grouping would not promote effective dealings and efficiency of operations as has been achieved through the long and stable collective-bargaining relationship between the Activity and the Intervenor for the overall unit; and (3) the Petitioner is not a labor organization which traditionally represents firefighters.

The Activity employs approximately 1,104 civilian employees at the Naval Air Station and 964 at the Naval Air Center, located at Patuxent River, Maryland. It is composed of two commands, the Naval Air Station and the Naval Test Center. The mission of the Test Center is basically to test and evaluate aircraft weapon systems and to conduct test pilot training. The overall Air Station mission is to maintain and operate facilities and to provide services and material in support of the Test Center. The civilian employee complement comprising the established activity-wide unit includes many traditional craftsmen such as electricians, carpenters, and machinists, as well as service-oriented employees such as firefighters, photographers, librarians, and telephone operators. In September 1962, the Intervenor was granted formal recognition under Executive Order 10988 and in June 1966, it achieved exclusive recognition. Thereafter, the parties entered into a negotiated agreement which took effect on January 17, 1968, for a period of one year. It was renewed automatically in 1969 and 1970, and new Intervenor agreement proposals are pending for 1971-72.

Throughout the Activity-Intervenor bargaining relationship, the record discloses that a cooperative atmosphere has been maintained. At least once a month a regularly scheduled meeting is held, attended by representatives from each side, to discuss labor relations problems. Shop stewards from all departments are included and, for the past four years, firefighters have been represented by the chief steward. Although he is not a fire department employee, as an electrician in charge of the fire alarm system, he spends a substantial part of his time working on the system in the fire stations. There is no evidence that the special interests of the firefighters have not been adequately

handled by the Intervenor.

Firefighters are assigned to the Naval Air Station only, but they service both the Air Station and the Naval Test Center. They work out of three fire stations and their activities include standing fire watches, attending alarm-calls and combating fires, conducting fire inspections, and closing various base facilities. Also, they are charged with driving motorized fire fighting equipment and maintaining it and the fire stations in good working order. Each station is manned by two crews of about six firefighters working 24-hour shifts. Two of the stations are housed in separate buildings and the third shares a building with the air field control tower. All have their own parking area. Supervision is provided by a fire chief and an assistant fire chief. The fire chief reports to the air operations officer who is, in turn, responsible to the commanding officer.

Because of the 24-hour shift requirement for firefighters, a work schedule not duplicated by any other civilian employee group at the Activity, certain specific working conditions are entailed. Firefighters are paid the basic General Schedule rate, determined by law, but they also receive a 25 percent differential. Annual leave is computed on a different basis than that of other civilian personnel, but firefighters, in fact, accrue the same total yearly amount as do any other employees with the same length of service. All other firefighter fringe benefits are the same. Base facilities are also available to firefighters in the same manner as afforded to all civilian employees. Due to the firefighters' work schedule each fire station contains a galley, and most meals are prepared and eaten there by the firefighters. Sleeping quarters are also available in fire stations. Firefighters wear a required uniform for which they receive a uniform allowance.

Like other employees in the activity-wide unit, new hires are secured from the Civil Service Commission through its eligibility register, and there is no apprenticeship program for firefighters. There is relatively little permanent transferring in and out of the fire department, although any reduction-in-force opens up the possibility of bumping based upon individual employee retention rights throughout the civilian complement. Personnel and grievance problems for all employees in the present bargaining unit, including the firefighters, are handled by a central personnel office at the Activity.

Finally, the record reveals that firefighters in public employment have been organized and represented in separate bargaining units, and as members of overall units. The record also discloses that the Petitioner herein, while not a labor organization which represents firefighters exclusively, does include separate firefighter units among the groups of employees for which it is the exclusive bargaining representative.

2/ The parties stipulated that the petition herein was not barred by a negotiated agreement.

July 12, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTIONS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Based on the foregoing, I conclude that the requested unit of non-supervisory firefighters is not appropriate. Were this a situation in which initial recognition of such a unit was being sought, a different issue would be presented. ^{3/} However, what is involved in this case is the severance of a group of firefighters from an existing overall unit with a prior bargaining history. A severance issue raises entirely different applicable considerations and policies, and, as I previously concluded in United States Naval Construction Battalion Center, A/SLMR No. 8, the general theory of a severance case is "that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances."

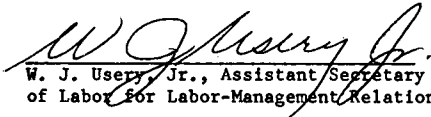
I find no "unusual circumstances" in the instant case. Notwithstanding that the firefighters may, under certain circumstances, constitute a functionally distinct department, working in an occupation and under conditions which give rise to special interests not shared by other civilian employees at the Activity, no evidence was adduced by the Petitioner to show that these employees have been denied effective representation by the Intervenor. Moreover, firefighters have not sought individually, or as a group, to deal directly with the Activity or, until now, with an outside labor organization. The overall and long-standing bargaining pattern maintained by the Activity and the Intervenor evidences nothing but an effective and stable character.

Accordingly, I find that any community of interest shared by the firefighter employees has been, in effect, submerged into the broader community of interest which they share with other civilian employees by reason of their years of uninterrupted association in the existing overall unit. Moreover, their inclusion in the established unit for purposes of collective bargaining has undisputedly served and promoted effective dealings and efficiency of operations within the Activity. In these circumstances, I find the unit sought by the Petitioner is inappropriate for the purpose of exclusive recognition, and shall, therefore, dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-2137 (RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
July 2, 1971


W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

3/ See, e.g., United States Department of the Air Force, 910th Tactical Air Support Ground (AFRES) Youngstown Municipal Airport, Vienna, Ohio, A/SLMR No. 12, in which a firefighter unit was found appropriate, although the contested issue in that case was whether the performance of certain limited security duties by the firefighters qualified them as "guards," thereby rendering the petitioning labor organization an unqualified representative under Section 10 (c) of Executive Order 11491.

DEPARTMENT OF DEFENSE,
NATIONAL GUARD BUREAU,
ADJUTANT GENERAL, STATE OF GEORGIA
A/SLMR No. 74

This case involved a consolidated representation proceeding in which the American Federation of Government Employees, AFL-CIO, Local 3094 (AFGE) sought a unit of all Georgia Army National Guard technicians and the Aaron B. Roberts Chapter, Association of Civilian Technicians, Inc., (ACT) petitioned for an overall unit of all Georgia Army and Air National Guard technicians.

The Assistant Secretary found separate units of Army National Guard technicians and Air National Guard technicians to be appropriate. In reaching this determination, he found the following to be particularly significant: transfer between the Army and Air National Guard requires resignation from membership in the one and application in the other; separate competitive areas for purposes of promotion and reduction-in-force among Army and Air National Guard technicians; and the specialized functions performed, under separate immediate supervision, by Army and Air National Guard technicians in the repair and maintenance of their respective equipment, including different types of aircraft.

Inasmuch as the unit of Air National Guard technicians was substantially smaller than the overall unit sought by the ACT, the Assistant Secretary provided that the ACT could withdraw its petition upon timely notice to the Area Administrator. In the event that it did wish to proceed to an election in that unit, the Assistant Secretary further directed that the Activity post a notice in the Air National Guard technicians unit to apprise potential intervenors of their right to intervene for the limited purpose of participating in the election.

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

DEPARTMENT OF DEFENSE,
NATIONAL GUARD BUREAU,
ADJUTANT GENERAL, STATE OF GEORGIA 1/

Activity

and

Case No. 40-1994

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3094 2/

Petitioner

DEPARTMENT OF DEFENSE,
NATIONAL GUARD BUREAU,
ADJUTANT GENERAL, STATE OF GEORGIA

Activity

and

Case No. 40-2260

AARON B. ROBERTS CHAPTER, ASSOCIATION
OF CIVILIAN TECHNICIANS, INC.

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Thomas J. Sheehan. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the American Federation of Government Employees, AFL-CIO, Local 3094, herein called AFGE, and the Aaron B. Roberts Chapter,

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

Association of Civilian Technicians, Inc., herein called ACT, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 40-1994, the AFGE seeks an election in a unit of all nonsupervisory General Schedule and Wage System technicians employed by the Georgia Army National Guard, excluding all management officials, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors and guards as defined in the Order. 3/

In Case No. 40-2260, the ACT seeks an election in a unit of all Army and Air National Guard technicians employed by the State of Georgia, excluding management officials, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors and guards as defined in the Order. 4/

The Activity contends that only the unit sought by the ACT is appropriate inasmuch as the employees involved have a community of interest and such unit will promote effective dealings and efficiency of operations.

With respect to bargaining history, the Activity accorded exclusive recognition to the ACT under Executive Order 10988 covering Air National Guard technicians at the 165th Military Airlift Group, Savannah, Georgia and the 116th Military Airlift Wing and the 129th Tactical Control Flight at Dobbins Air Force Base. 5/ However, the evidence reveals that there have been no negotiated agreements covering any of the above Air National Guard units. The evidence also establishes that under Executive Order 10988 the AFGE had been granted formal recognition by the

3/ The unit appears as amended at the hearing.

4/ The unit appears as amended at the hearing.

5/ The ACT makes no contention that these employees should be excluded from any election which may be directed.

Activity covering the Army National Guard technicians on a State-wide basis.

The National Guard Bureau is a Joint Bureau of the Departments of the Army and the Air Force, serving as a channel of communication on all matters pertaining to the National Guard. The Chief of the Bureau serves as adviser to the Army and Air Force Chiefs of Staff regarding National Guard matters as well as exercising such authority as may be delegated to him, including administration of the technicians' program.

Overall policy and guidance relating to the civilian personnel administration and functions of technicians, classified as Federal employees, is set forth under joint Army and Air National Guard Regulations. The Adjutant General of the State of Georgia administers the technicians' personnel program of the Activity on a State-wide basis within these regulations and guidelines. He has final authority for the assignment, promotion, discipline, or separation of technicians as well as the responsibility for establishing the basic workweek, prescribing hours of duty, and final resolution of any unresolved grievances. The State Technicians Personnel Office, operates on a centralized basis, performing the administrative and personnel functions of the Adjutant General. The U.S. Property and Fiscal Office maintains a centralized payroll for all Army and Air technicians.

Approximately 750 technicians are employed by the Activity, about 400 of whom are in the Army National Guard and the remainder in the Air National Guard. As Federal employees, both Army and Air technicians possess certain similarities with respect to job classifications, benefits and functions. Thus, although both groups of technicians are in the so-called excepted service, they are covered by the same life and health insurance program, severance pay, tenure, status and leave policies. Also, General Schedule Army and Air technicians are engaged in administrative and supply functions while Wage Board technicians, in both categories, perform repair and maintenance functions, with comparable pay scales. Specifically, the Activity employs administrative assistants, maintenance administrative technicians and mechanics within both the Army and Air programs. Further, within the Army National Guard, there is an aviation facility which utilizes, among others, employees engaged in flight instruction, training, and operations similar to those performed by Air National Guard technicians.

The Army National Guard is organized under three commands: (1) state headquarters; (2) Army Aviation; and (3) organizational maintenance shops. It maintains facilities at approximately 62 sites located throughout the State of Georgia. All Army technicians wear

Army uniforms; are paid from Army funds; receive their checks from the finance office located in Fort McPherson; and engage in duties associated with Army functions, namely the repair and maintenance of all types of Army equipment, including armament and transportation vehicles. In the performance of these duties, they are supervised only by Army technicians. Maintenance inspections of armament, found at every installation of the Army National Guard, are conducted annually by an Army technician, i.e., an artillery mechanic technician who rates the maintenance of such equipment in accordance with standards issued by the Command Management Maintenance Inspection Division of the Army. On the other hand, with respect to the Air National Guard, an Air technician, classified as a munitions weapons technician, has custody, apparently, of munitions stored at one location. In addition, the technicians in the Army Aviation Support and Flight operations which is part of the Army National Guard, maintain and repair aircraft, which is of a type different from the aircraft maintained by the Air National Guard. Such differences in aircraft require that Army technicians possess specialized skills different from that of Air National Guard technicians.

For purposes of promotion and reduction-in-force, the Army National Guard constitutes a separate competitive area. Thus, for example, the 18 Army organizational maintenance shops, each employing from 3 to 9 technicians, comprise a State-wide functional group based upon the identical nature of their functions. The Air National Guard competitive areas, on the other hand, are composed of five separate facilities, with the majority of the Air technicians concentrated at the 165th Military Airlift Group, Savannah, Georgia and Dobbins Air Force Base.

In addition to the foregoing, the record reveals that as a condition of employment, a technician whether Army or Air Force, must become a member of the National Guard. Thereafter, in order to effect a "transfer" between the Army and Air National Guard, a technician must resign from the military service to which he is assigned and apply for membership in the other. Thus, as there necessarily would be a hiatus between employments, the action assumes the character of a resignation and rehiring as opposed to a transfer. Testimony reveals that the incidence of such "transfer" by technicians has been minimal.

Based on the foregoing, I find a combined unit to be inappropriate, but that separate units of Army National Guard technicians and Air National Guard technicians are appropriate for the purpose of exclusive recognition. In reaching this conclusion, I consider the following circumstances significant: the transfer of technicians between the Army and Air National Guard requires resignation from membership in the one and application in the other; the limited extent of such transfers by Army or Air technicians; the separate competitive areas for purposes of promotion and reduction-in-force

DIRECTION OF ELECTIONS

among Army and Air National Guard technicians; and the specialized functions performed, under separate immediate supervision, by Army and Air National Guard technicians in the repair and maintenance of their respective equipment, including different types of aircraft. Moreover, the evidence is insufficient to establish that separate units of Army and Air technicians would not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491.

Under these circumstances, I find that the following employees constitute separate units appropriate for the purpose of exclusive recognition under Executive Order 11491: 6/

All General Schedule and Wage Board technicians employed by the Georgia Army National Guard, excluding all Georgia Air National Guard technicians, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

All General Schedule and Wage Board technicians employed by the Georgia Air National Guard, excluding all Georgia Army National Guard technicians, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

6/ In several prior cases, I have found separate units of Army or Air National Guard technicians to be appropriate. In this respect, see Pennsylvania National Guard, A/SLMR No. 9; Minnesota Army National Guard, A/SLMR No. 14; and Ohio Air National Guard, A/SLMR No. 44. In Department of Defense National Guard Bureau, Florida Army National Guard and Florida Air National Guard, 125th Fighter Group, A/SLMR No. 37, it was noted that no labor organization sought exclusive recognition in an overall unit of Army and Air National Guard technicians. Although the ACT is seeking an overall unit of Army and Air National Guard technicians in this case, I find that separate units are appropriate in the particular circumstances herein.

-5-

In the circumstances set forth below, elections by secret ballot shall be conducted among employees in the appropriate units described above, as early as possible, but no later than 45 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the appropriate units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who have quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Georgia Army National Guard technicians who are eligible shall vote whether they wish to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 3094, or by Aaron B. Roberts Chapter, Association of Civilian Technicians, Inc. 7/; or by neither.

Georgia Air National Guard technicians who are eligible shall vote whether or not they wish to be represented for the purpose of exclusive recognition by the Aaron B. Roberts Chapter, Association of Civilian Technicians, Inc. 8/

Inasmuch as the unit of Air National Guard technicians in which an election is being directed, is substantially smaller than the overall unit sought by the ACT, I shall permit it to withdraw its petition if it does not wish to proceed to an election in that voting unit, upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision. 9/ If the ACT desires

7/ Since the ACT has a sufficient showing of interest to treat it as an Intervenor in the unit of Army National Guard technicians found appropriate, I shall place its name on the ballot. However, it may, within 10 days of the issuance of this Decision, withdraw its name from the ballot in the event that it does not wish to proceed to an election in this unit. Such withdrawal may be made without prejudice to the ACT proceeding to an election, as directed, in the unit of Air National Guard technicians.

8/ Since the AFGE has not submitted any showing of interest in the unit of Air National Guard technicians found appropriate, I shall not place its name on the ballot at this time.

9/ Cf. Department of the Army, St. Louis District, Corps of Engineers, St. Louis, Missouri, A/SLMR No. 17.

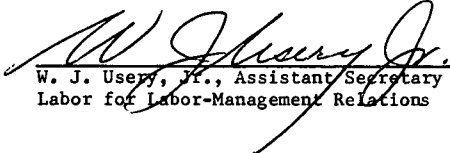
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July 12, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

to proceed to the election, as directed, then, inasmuch as the Air National Guard technicians unit found appropriate is substantially different from that which it petitioned for, I direct that the Activity post copies of Notice of Unit Determination, as soon as possible, in places where notices are normally posted affecting the employees eligible to vote in the Air National Guard technicians unit set forth herein. Such Notice shall conform in all respects to the requirements of Section 202.4(d) of the Assistant Secretary's Regulations. Further, any labor organization, including the AFGE, which may seek to intervene in this matter must do so in accordance with the requirements of Section 202.5 of the Assistant Secretary's Regulations. Any intervention, otherwise timely, will be granted solely for the purpose of appearing on the ballot in the election among all General Schedule and Wage Board technicians employed by the Georgia Air National Guard.

Dated, Washington, D.C.
July 12, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
NAVAL AIR STATION
JACKSONVILLE, FLORIDA
A/SLMR No. 75

The Petitioner, Methods and Standards Association, sought to represent a unit of employees assigned to the Methods and Standards Division at the Activity. The Activity sought the dismissal of the petition based on its contention that these employees did not possess a clear and identifiable community of interest apart from other employees.

The Assistant Secretary found that the unit sought was not appropriate for the purpose of exclusive recognition. In reaching this determination, the Assistant Secretary noted that the employees in the proposed unit were engaged in an integrated function whereby the completion of the Activity's mission requires that they interact with other employees in the Production Engineering Department, of which the Methods and Standards Division is a part. He further noted that Methods and Standards Division personnel share with other Activity personnel such indicia of community of interest as common employment background, terms and conditions of employment and job functions and that there was evidence of interchange and transfer of technicians between the Methods and Standards Division and other divisions and departments at the Activity.

In these circumstances, the Assistant Secretary concluded that the employees in the requested unit did not possess a clear and identifiable community of interest apart from other employees, and that such a unit would not promote effective dealings or efficiency of agency operations.

Accordingly, the Assistant Secretary ordered that the petition be dismissed.

employees, guards and employees engaged in Federal personnel work in other than a purely clerical capacity.^{3/}

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

DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY,
NAVAL AIR STATION,
JACKSONVILLE, FLORIDA ^{1/}

Activity

and

Case No. 42-1318 (RO)

METHODS AND STANDARDS ASSOCIATION

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer B.R. Withers, Jr. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, ^{2/} the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner seeks an election in the following unit:

All nonsupervisory and nonprofessional employees who are presently assigned to the Methods and Standards Division of the Naval Air Rework Facility, Naval Air Station, Jacksonville, Florida, excluding all supervisors, management employees, professional employees, clerical

The Activity contends that the proposed unit is inappropriate because: (1) the Methods and Standards Division is a small segment of the Production Engineering Department, which is a highly integrated operation; (2) there are several other divisions within the Production Engineering Department which are closely interrelated and contain employees who work with and have a community of interest with the employees in the Methods and Standards Division; (3) the Petitioner seeks to include employees who are supervisors in the proposed unit; and (4) the proposed unit would not promote effective dealings and efficiency of agency operations.

The Naval Air Rework Facility in Jacksonville, Florida is an industrial activity under the direction of the Naval Air Force System Command which operates through the Naval Air Systems Command Representative Atlantic located in Norfolk, Virginia. It is engaged in providing depot level rework operations on aircraft for the U.S. Navy Air Force under the direction of a Commanding Officer. The Activity is subdivided into 8 major departments, 31 divisions and 77 branches, employing more than 2,800 civilian personnel. The Shops Department, in which production operations are performed, is made up of 14 sections and 120 shop groups.^{4/}

The Production Planning and Control Department provides planning and control for the work which is performed by the Shops Department while the Production Engineering Department coordinates actions related to proper routing, processing and sequencing of the production workload of the Shops Department. The latter 3 Departments are under the direct supervision of a Production Officer.

^{3/} The unit appears as amended at the hearing. At the hearing, the Petitioner stated that it would accept alternate units of: (1) all industrial engineering technicians excluding four senior industrial technicians, or (2) all industrial engineering technicians and management technician series such as management technicians, management analysis and industrial systems analysis.

^{4/} Shops Department employees are covered by an existing exclusive recognition.

^{1/} The Activity's name appears as amended at the hearing.

^{2/} The Activity filed an untimely brief which was not considered.

The Production Engineering Department is divided into 5 divisions: Plant Engineering, Operations Analysis,^{5/} Methods and Standards, Industrial Planning and Plant Services,^{6/} and the Maintenance Control Center.^{7/} The Plant Engineering Division provides specialized engineering support and is made up both of technicians and professional engineers. The Operations Analysis Division is staffed primarily with technicians who are engaged in determining the capabilities of the facility to perform production functions. The Methods and Standards Division, which contains the employees in the proposed unit in the subject case, is involved with what is commonly referred to as "time and motion" work and is staffed only with technical employees. The Industrial Planning and Plant Services Division is engaged in determining the efficient and effective physical layout of equipment and the production process and is staffed by both technicians and professional engineers.

The Methods and Standards Division consists of approximately 30 Industrial Engineering Technicians who work in the 4 branches that comprise this Division.^{8/} The Division is headed by a Division Superintendent who supervises 2 Supervisor Industrial Engineering Technicians, each of whom are responsible for 2 branches of the Division. Each branch is staffed by a "Senior Industrial Engineering Technician" and from 4 to 8 Industrial Engineering Technicians.^{9/} The primary responsibility of an

5/ In Department of the Navy, Naval Air Rework Facility, Naval Air Station, Jacksonville, Florida, A/SLMR No. 59, I found that a unit consisting of Production Controllers and Electronic Technicians in the Operations Analysis Division was not appropriate for the purpose of exclusive recognition.

6/ The Industrial Planning and Plant Services Division is made up primarily of Wage Board employees who are included in the exclusive unit of the Shops Department employees.

7/ The Maintenance Control Center is made up primarily of employees classified as "planners and estimators," who are covered by an existing exclusive recognition.

8/ The record reveals that there are approximately 5 employees classified as Industrial Engineering Technicians, who are not included in the proposed unit, working in the Management Control Department and in the Shops Department. In addition, approximately 65 employees classified as Technicians, who are not included in the proposed unit, work in various other departments and divisions of the Activity.

9/ The supervisory status of the Senior Industrial Engineering Technician in the respective branches was disputed by the parties. However, in view of the disposition herein, I find it unnecessary to rule on this issue.

Industrial Engineering Technician is the application of time standards for all work performed at the Activity. He does this by stop watch studies and by estimating and pyramiding elemental time standards. He also is responsible for evaluating effectiveness reports, standard coverage reports and other data to assure that the work is being performed in the most efficient and effective manner. The duties of these employees require a background in one of the crafts at the Activity.^{10/} Upon promotion into the Methods and Standards Division, the Industrial Engineering Technicians are required to complete 17 weeks of classroom training and 35 weeks on-the-job training or have equivalent training or experience.

The record discloses that the functions performed by Methods and Standards personnel are part of an integrated process whereby these technicians must interact with other employees in the Production Engineering Department for the completion of the Activity's mission. This interaction has aspects of both functional and physical contact.^{11/} Also, there are similarities in the background requirements for technicians within all divisions of the Production Engineering Department. Thus, technicians from all of that Department's divisions generally have come up from the ranks of the shop craftsmen.

The record reflects a substantial degree of permanent transferring from the Methods and Standards Division to other areas of the Facility, although not necessarily limited to the Production Engineering Department. Further, in the event of a reduction-in-force or an "adjustment in ceiling," Methods and Standards Technicians are assigned or transferred to other departments and divisions at the Activity. Moreover, as noted above, Methods and Standards personnel are loaned periodically to other divisions within the Production Engineering Department.

All employees of the Activity classified as "technicians" including those included and excluded from the claimed unit, have the same terms and conditions of employment and the grade structure of all technicians within the divisions of the Production Engineering Department is comparable. The record reveals also that almost all technicians in the Production

10/ It appears that virtually all of the technicians at the Activity are journeymen from the various crafts who have competed in examinations and have been promoted to the position of technician.

11/ For example, the Operations Analysis Division must rely on time data compiled by the Methods and Standards Division in determining facility capabilities. Also, on occasion Methods and Standards technicians are loaned to the Industrial planning Division to perform some specialized functions.

Engineering Department are required to spend substantial portions of their work time in the shops, although the percentage of total work time spent there varies among the divisions.

In all the circumstances, I find that the claimed unit is not appropriate for the purpose of exclusive recognition under Executive Order 11491. Thus, the employees sought are engaged in an integrated production process which results in their having a substantial interaction with other employees in the Production Engineering Department. In addition, other employees in the Production Engineering Department share with employees in the unit sought common employment background, terms and conditions of employment and on-the-job functions, and there is evidence of interchange and transfer of technicians between Methods and Standards and other Activity departments and divisions.


With respect to the alternative units requested by the Petitioner, I find that they would similarly be inappropriate for the purpose of exclusive recognition. Thus, the record reveals that either alternative would artificially fragment employees who are part of the overall, integrated production process.

Accordingly, based on the foregoing, I shall order that the petition be dismissed since the employees in the unit sought do not share a clear and identifiable community of interest apart from other employees and such a grouping could not be expected reasonably to promote effective dealings or efficiency of agency operations.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 42-1318 (RO) be, and it hereby is dismissed.

Dated, Washington, D. C.
July 12, 1971


W. J. Usery Jr. Assistant Secretary
of Labor for Labor-Management Relations

July 12, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
CENTER FOR DISEASE CONTROL,
ATLANTA, GEORGIA
A/SLMR No. 76

The subject case involved representation petitions filed by American Federation of Government Employees, Local 2883, AFL-CIO (AFGE) and National Alliance of Postal and Federal Employees, Local 303, (A.L.A.) (NAPFE). The AFGE sought a unit of all eligible nonsupervisory employees who work at the following locations: Clifton Road, Lawrenceville, Chamblee, and Buckhead, excluding supervisors, guards, management officials, employees engaged in personnel work, whose duties are other than clerical, and professional employees. NAPFE petitioned for a unit of all eligible nonsupervisory employees, and all nonprofessional employees who occupy positions in the GS-400-0, GS-600-0, and GS-1300-0 Classification series, all Wage Board employees working in laboratories, laboratory glassware activities, and/or laboratory animal activities, including the Lawrenceville facility, located in the Atlanta metropolitan area, excluding all management officials, supervisors, and employees engaged in Federal personnel work in other than a purely clerical capacity, guards and professional employees.

The Assistant Secretary found that the evidence received during the hearing in these cases did not provide a sufficient basis upon which a decision could be made regarding the appropriateness of either unit. In reaching his decision, the Assistant Secretary noted that there was insufficient evidence as to the facilities of the Activity involved in this matter, their operation, history of bargaining, lines of supervision, and the duties and functions of the classifications involved in the units sought. Also, he noted that no evidence was adduced as to other terms and conditions of employment that would establish a community of interest among units sought.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
CENTER FOR DISEASE CONTROL,
ATLANTA, GEORGIA 1/

Activity

and

Case No. 40-2312 (RO-32)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2883, AFL-CIO 2/

Petitioner

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
CENTER FOR DISEASE CONTROL,
ATLANTA, GEORGIA

Activity

and

Case No. 40-2338

NATIONAL ALLIANCE OF POSTAL AND
FEDERAL EMPLOYEES, LOCAL 303, (A.L.A.) 3/

Petitioner

DECISION AND REMAND

Upon petitions duly filed under Section 6 of Executive
Order 11491, a consolidated hearing was held before Hearing
Officer Thomas J. Sheehan. The Hearing Officer's rulings

1/ The name of the Activity appears as corrected at the hearing.

2/ The name of the Petitioner appears as corrected at the hearing.

3/ The name of the Petitioner appears as corrected at the hearing.

made at the hearing are free from prejudicial error and hereby
affirmed.

Upon the entire record in this case, the Assistant Secretary
finds:

1. The labor organizations involved claim to represent certain
employees of the Activity.

2. In Case No. 40-2312 (RO-32), the American Federation of
Government Employees, Local 2883, AFL-CIO, herein called AFGE, seeks
an election in the following unit: All eligible nonsupervisory
employees of the Department of Health, Education, and Welfare, Center
for Disease Control, Atlanta, Georgia who work at these locations:
Clifton Road, Lawrenceville, Chamblee and Buckhead, excluding
supervisors, guards, management officials, employees engaged in per-
sonnel work whose duties are other than clerical, and professional
employees.

In Case No. 40-2338, the National Alliance of Postal and Federal
Employees, Local 303, (A.L.A.), herein called NAPFE, seeks an election
in the following unit: All eligible nonsupervisory employees, and all
nonprofessional employees of the Department of Health, Education, and
Welfare, Center for Disease Control, Atlanta, Georgia who occupy posi-
tions in the GS-400-0, GS-600-0 and GS-1300-0 Classification series
and all Wage Board employees working in laboratories, laboratory glass-
ware activities and/or laboratory animal activities, which are located
in the Atlanta, Georgia metropolitan area (including the Lawrenceville
facility), excluding all management officials, supervisors, and em-
ployees engaged in Federal personnel work in other than purely clerical
capacity, guards and professional employees.

At the hearing in this matter, limited testimony was adduced
as to the composition of the units involved. Also, limited evidence
was presented as to the organization of the Activity and its policies,
functional relationships and the interchange of employees and their
job duties. Based upon the limited evidence in the record, I find
that I am unable to make any determination as to the appropriateness
of either petitioned for unit. As indicated, while there is some
limited testimony as to the organization of the Activity, there is
no evidence in the record as to the physical location of the four
facilities involved, or their relationship to each other. Nor is
there any evidence as to whether or not there are any other facilities
of the Activity located in the Atlanta area that might possibly be
involved in these proceedings. Although the Activity presented certain
organizational charts and evidence as to its various programs, there

is little or no testimony as to its actual operation, how the various programs relate to each other, or the location and placement of the employees who are involved in the petitions.

Also, while mention is made in the record that the Petitioners herein have represented employees of the Activity in the past, the record is unclear as to whether such representation has involved the same employees as those being petitioned for herein, and, furthermore, there is no testimony as to the history of representation.

Additionally, the record lacks evidence which would establish clearly the supervisory hierarchy of the Activity. Although, during the hearing, the Activity indicated that it would present a chart showing the supervisory structure, no such chart was entered in the record.

While there is ample testimony regarding two of the classifications petitioned for by the NAPFE, ^{4/} no evidence was presented with regard to any other classifications in either of the proposed units. In this regard also, the Activity indicated that it would present job descriptions, but failed to do so.

Finally, the record is deficient as to specific instances of interchange and/or transfers of employees, either from facility to facility, job to job, or function to function, and, the record discloses little evidence as to the working conditions of the employees in the claimed units, their hours of work, location of work areas, contacts with each other, skills, education and training.

Accordingly, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the units being sought. Therefore, I shall remand the subject cases to the appropriate Regional Administrator for the purpose of reopening the record in order to secure additional evidence as discussed above.

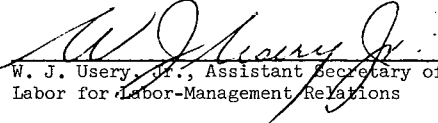
^{4/} Those classifications are: biological laboratory technician (animal caretaker) and laboratory worker.

ORDER

IT IS HEREBY ORDERED that the subject cases be, and they hereby are, remanded to the appropriate Regional Administrator.

Dated, Washington, D.C.

July 12, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 16, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION
OF ELECTION OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
MILITARY OCEAN TERMINAL,
BAYONNE, NEW JERSEY
A/SLMR No. 77

This case, which arose as a result of representation petitions filed by two labor organizations, the National Federation of Federal Employees, Local 1550 (NFFE) and Local 2855, American Federation of Government Employees, AFL-CIO (AFGE), presented a question as to whether a unit of all Wage Board employees or a unit of all Wage Board and General Schedule employees was appropriate. Also at issue was the eligibility status of a group of employees classified as "temporary."

The NFFE requested a unit of all Wage Board employees, including temporary employees, at the Military Ocean Terminal, Bayonne, New Jersey. The AFGE requested a unit of all Wage Board and General Schedule employees, excluding the temporary employees. The Activity's position was that a unit of all nonsupervisory Wage Board and General Schedule employees excluding temporary employees was appropriate.

The Assistant Secretary found that a unit limited to the Wage Board employees at the Activity, as proposed by the NFFE, was not appropriate for the purpose of exclusive recognition. In this regard, he noted that while Wage Board employees primarily performed "physical" tasks as opposed to the administrative and clerical tasks normally assigned to General Schedule employees, employees of both groups have a close working relationship by virtue of the highly integrated nature of the Activity's operation. The Assistant Secretary also noted the existence of close daily contact between the two groups of employees; the existence of common supervision and uniform personnel policies and practices; and the existence of a degree of overlap in job functions. Accordingly, he directed that the NFFE's petition be dismissed.

The Assistant Secretary found that an Activity-wide unit of Wage Board and General Schedule employees, as proposed by the AFGE, was appropriate for the purpose of exclusive recognition. In reaching this determination, he noted that the functions of all Activity employees are highly integrated; all Activity employees are covered by uniform and centralized personnel policies and practices; and Activity employees of all job and pay classifications have a substantial degree of on-the-job contact.

With respect to employees classified as "temporary," the Assistant Secretary found that, in the circumstances, such employees should be included in the claimed unit in that they perform work identical to that performed by unit employees; they are under common supervision; they are paid the same wages as the unit employees; work the same hours and receive the same leave benefits and holidays; have been employed at the Activity for a substantial period of time; and have a reasonable expectancy of continuing employment under the same conditions.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
MILITARY OCEAN TERMINAL,
BAYONNE, NEW JERSEY

Activity

and

Case No. 32-1692 E.O.

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1550

Petitioner

DEPARTMENT OF THE ARMY,
MILITARY OCEAN TERMINAL,
BAYONNE, NEW JERSEY

Activity

and

Case No. 32-1704 E.O.

LOCAL 2855, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO^{1/}

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491,
a consolidated hearing was held before Hearing Officer Charles Smith.

^{1/} The name of this Petitioner appears as amended at the hearing.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{2/}

Upon the entire record in this case, including the briefs of the NFFE and the American Federation of Government Employees, AFL-CIO, Local 2855, herein called AFGE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees at the Activity.

2. In Case No. 32-1692 E.O., the NFFE seeks to represent a unit of all nonsupervisory Wage Board employees, including WAE's (when actually employed) and temporary employees, employed at the Military Ocean Terminal, Bayonne, New Jersey, excluding, among others, employees covered by exclusive recognition. In Case No. 32-1704 E.O., the AFGE seeks to represent a unit of all nonsupervisory Wage Board and General Schedule employees at the Military Ocean Terminal, Bayonne, New Jersey, excluding employees covered by exclusive recognition, WAE's and temporary employees.^{3/}

^{2/} At the hearing, the National Federation of Federal Employees, Local 1550, herein called NFFE, sought to amend its petition to include "all non-supervisory WAE's and temporary employees." However, the Hearing Officer refused to approve the amendment because the other parties would not agree to the motion. While the approval of all parties should be sought on motions to amend a petition made at the hearing, such approval is not a prerequisite to granting such a motion where there appears to be no basis for a belief that permitting the amendment will, in some matter, prejudice the proceeding. As there is no apparent basis in the instant case for denying the NFFE's motion to amend, the Hearing Officer's ruling is hereby reversed and, therefore, the unit description above reflects the changes the NFFE sought to make at the hearing. Since I have considered the NFFE's position as reflected in its amended petition, the Hearing Officer's ruling was not found to constitute prejudicial error.

^{3/} The AFGE's claimed unit appears as amended at the hearing. The record reflects that the AFGE failed to attend the second day of hearing after raising the objection that the proceeding could not be continued as the Notice of Hearing stated only that the hearing should take place on November 19, 1970. Contrary to the AFGE's assertion in this respect, Section 202.12(k) of the Assistant Secretary's Regulations provides, with respect to the duties and powers of the Hearing Officer, that he shall have the authority to, "Continue, in his discretion, the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;" (Emphasis added).

The Activity is in agreement with the AFGE than an overall unit of both Wage Board and General Schedule employees, excluding, among others, WAE's, temporary employees, and employees covered by exclusive recognitions is appropriate.

The basic function of the Activity is the storage and movement of freight. It is divided into the Directorate of Administration, Directorate of Operation and the Directorate of Services, all of which are directly under the Activity's Commander.

The Directorate of Administration is made up of a headquarters group, an Adjutant Division and a Security Division.^{4/} This Directorate handles the Activity's mail, records, publications, distributions and other general housekeeping activities.

The Directorate of Operation is made up of a headquarters group, and a Freight Traffic Division, Cargo Division, Documents Control Division and Container Division. The divisions in the Directorate are responsible for such functions as traffic management, with respect to incoming and outgoing cargo; inspection of the incoming and outgoing cargo; supervision of the waterfront activity and the longshoremen activity; administration of outstanding contracts; storage of the cargo; and handling of all paperwork involved with the movement of the freight.

The Directorate of Services is made up of a headquarters group and an Engineer Division, ^{5/} Equipment Division, ^{6/} Property and Disposal Division, Supply and Services Division, and Packing Division. The divisions within the Directorate of Services are responsible for the logistical support of the terminal.

Both Wage Board and General Schedule employees are found in each of the above Directorates. The duties of the Wage Board employees are primarily involved with the "physical" aspects of the Activity's mission, that is, the movement and packing of cargo. Wage Board employees generally work in widely scattered warehouses and shop and loading dock areas

^{4/} On June 17, 1968, NFFE Local 1550 was granted exclusive recognition in a unit of civilian guards of the Security Division.

^{5/} On June 17, 1968, Local F-161, International Association of Firefighters was granted exclusive recognition in a unit of employees of the Fire Prevention and Protection Branch of the Engineer Division. On June 17, 1968 NFFE Local 1550 was granted exclusive recognition in a unit of employees of the Engineer Division excluding the employees of the Fire Prevention and Protection Division.

^{6/} On February 3, 1967, AFGE Local 1896 was granted exclusive recognition in a unit of employees of the Harbor Craft Section of the Equipment Division.

throughout the facility. On the other hand, the duties performed by the General Schedule employees are primarily of an administrative or clerical nature. A majority of the General Schedule employees are located in a number of administrative buildings; others work in various shops and warehouses. The record reflects that there is substantial "overlap" with respect to the work place of the two groups and the nature of the work performed. Thus, Wage Board employees can be found in administrative buildings performing such functions as janitorial work and the printing and distributing of the Activity's forms and publications. Also, there is a large number of General Schedule employees located in the various shops and warehouses throughout the Activity who handle "paperwork" functions in those areas. The evidence further reveals in this regard, that the General Schedule employees in the Activity's Container Division regularly help Wage Board employees in the packing of containers. Moreover, in emergency situations General Schedule employees may help in the moving and loading of freight.

With respect to the Activity's supervisory structure, generally the "first level" of supervision of Wage Board employees is by Wage Board supervisors and General Schedule employees by General Schedule supervisors. However, the record discloses that in areas where there are no corresponding supervisors, a Wage Board employee may be supervised by a General Schedule supervisor and a General Schedule employee by a Wage Board supervisor. Furthermore, "first level" Wage Board supervisors generally report to General Schedule supervisors who will have under their supervision both General Schedule and Wage Board employees.

There are uniform personnel policies for both Wage Board and General Schedule employees which are administered centrally by the Activity's Civilian Personnel Division. The evidence reveals that all grievances are processed through that Division, irrespective of whether the particular grievance was filed by a Wage Board or General Schedule employee. Although Wage Board employees are paid on the basis of an hourly rate and General Schedule employees are salaried, both groups of employees have the same fringe benefits.^{7/} With respect to the fact that Wage Board employees have slightly different starting and stopping times and many Wage Board employees get a one-hour lunch break as opposed to the 30-minute period allowed to General Schedule employees, it appears that this distinction is based on the need to have the working hours of the Wage Board employees correspond to those of employees of private employers who work at the Activity unloading ships.

^{7/} Wage Board and General Schedule employees also share such facilities as parking lots and eating areas.

As noted above, the mission of the Activity is the storage and movement of freight. The record reflects that the functions of the General Schedule employees are the administrative support of the Wage Board employees engaged in the actual handling of goods. The inter-relationship of these roles results in substantial "on-the-job" contact between Wage Board and General Schedule employees. For example, General Schedule employees provide the Wage Board employees with instructions on the handling of incoming and outgoing cargo and Wage Board employees report the need for repair and service of cargo-moving machinery to a General Schedule clerk.

In support of its contention that the Wage Board employees have a community of interest apart from that of the General Schedule employees, the NFFE places primary emphasis on the fact that work performed by Wage Board employees, by its very nature, raises certain problems and concerns not relevant to the work performed by General Schedule employees. In this regard, it is contended that the work performed by Wage Board employees is primarily "physical"; is performed generally in areas that are hot in the summer and cold in the winter; and persons performing such work are more likely to suffer on-the-job injuries than persons working in an office.

While the existence of such variances in work performed is a factor in the determination of "community of interest," in the subject case, in my view, these factors are offset by the substantial evidence of the close relationship between the Wage Board and General Schedule employees. As noted above, the evidence shows the highly integrated nature of the Activity; the close daily contact between the two groupings of employees; the existence of common supervision; uniform personnel policies and practices; and the existence of a degree of overlap in job functions, such as that which occurs in the Activity's Container Division. Based on these factors, I find that the unit sought by the NFFE is not appropriate for the purpose of exclusive recognition. Moreover, I find that such unit would not promote effective dealings and efficiency of agency operations.

I find also, based on the foregoing, that an Activity-wide unit of Wage Board and General Schedule employees, as proposed by the AFGE, is appropriate for the purpose of exclusive recognition. As noted above, the record reveals that the functions of all Activity employees are highly integrated; all Activity employees are covered by uniform and centralized personnel policies and practices; and all Activity employees have substantial on-the-job contact, irrespective of their pay classification status. In these circumstances, I find that there is a clear and identifiable community of interest among the employees

petitioned for by the AFGE. Moreover, in my view, such a comprehensive unit will promote effective dealings and efficiency of agency operations.

As noted above, the AFGE sought to exclude, among others, employees classified by the Activity as "temporary" and "WAE."^{8/} The record demonstrates that many employees classified as "temporary" have been employed in that capacity for substantial periods of time, in some cases for as long as four or five years. The record also reveals that these employees are being denied "permanent" status only because of the absence of authorized job openings. It is undisputed that "temporary" employees perform work identical to that performed by "permanent" Activity employees, are under common supervision and are paid the same wages. Moreover, temporary employees work the same hours as employees in the claimed unit and receive the same leave benefits and holidays.^{9/}

In my view, if employees are employed on a regular basis, for a substantial period of time, so as to demonstrate that they have a substantial and continuing interest in the terms and conditions of employment along with the other employees in the unit, such employees should be included in the unit. Thus, where, as in the subject case, an employee, although designated by the Activity as "temporary," has a reasonable expectancy of regular and continuing employment for a substantial period of time, he should be included in the unit and be eligible to vote.^{10/} On the basis of the foregoing, I find that the "temporary" employees at the Activity have a close community of interest with other employees in the proposed unit in that they perform the same work under common supervision and under many of the same conditions of employment, and the facts indicate that these employees have a reasonable expectancy of continuing employment. Accordingly, these employees should be included in the unit found appropriate.

^{8/} As the record reveals that there are no employees classified as "WAE" presently employed by the Activity, I shall not make any findings as to whether they should be excluded from the claimed unit.

^{9/} They do not receive such career benefits as retirement, life insurance, health insurance of severance pay.

^{10/} Cf. United States Army Training Center and Fort Leonard Wood, at Fort Leonard Wood, Missouri, A/SLMR No. 27.

I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All Wage Board and General Schedule employees, including "temporary" employees, employed at the Military Ocean Terminal, Bayonne, New Jersey, excluding those employees currently covered by exclusive recognition, all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order. 11/

ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 32-1692 E.O. be, and it hereby is, dismissed. 12/

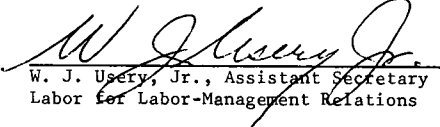
11/ The inclusion in the unit of employees identified as "temporary" is for the purpose of this case only and should not be construed as an abandonment of the general principle that temporary employees normally are excluded from bargaining units.

12/ As the NFFE's showing of interest is sufficient to treat it as an intervenor in Case No. 32-1704 E.O., I shall direct that its name be placed on the ballot. However, because the unit found appropriate is larger than the unit it sought initially, I shall permit it to withdraw from the election upon notice to the appropriate Area Administrator within ten days of the issuance of this Decision.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period, and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by Local 2855, American Federation of Government Employees, AFL-CIO; or, by the National Federation of Federal Employees, Local 1550, or by neither.

Dated, Washington, D. C.
July 16, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 19, 1971

A/SLMR No. 78

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

COMMANDER SERVICE FORCE,
U.S. ATLANTIC FLEET
A/SLMR No. 78

COMMANDER SERVICE FORCE,
U.S. ATLANTIC FLEET^{1/}

Activity

and

Case No. 22-2125(RO)

This case involves a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 53 (AFGE) and presents a question as to the appropriateness of the unit sought.

AFGE requests a unit of all nonsupervisory civilian employees in the Activity's Ships Material Office Branch (SMOLANT) which is one of the Activity's (COMSERVLANT) approximately twenty branches located in the vicinity of Norfolk, Virginia. The Activity opposed the proposed unit on the basis that the employees sought do not possess a clear and identifiable community of interest apart from that of COMSERVLANT's other employees and that in order to promote effective dealings and efficiency of agency operations the appropriate unit should include all of COMSERVLANT's non-supervisory employees at Norfolk, Virginia.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 53

Petitioner

DECISION AND ORDER

In all the circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate. In reaching this determination, the Assistant Secretary relied on the fact that the employees in the unit sought possess skills which were substantially the same as skills possessed by other employees of the Activity not included in the claimed unit and the fact that all employees of the Activity shared the same overall supervision at the command level, were subject to the same personnel policies and regulations, and that all employees of COMSERVLANT were involved in essentially the same overall mission. In these circumstances, the Assistant Secretary concluded that a basis did not exist for the establishment of the unit limited to a branch of the Activity as sought by the AFGE. In the Assistant Secretary's view, the employees in such unit did not possess a clear and identifiable community of interest, and the establishment of the petitioned for unit would neither promote effective dealings, nor contribute to the efficiency of agency operations. Accordingly, the Assistant Secretary ordered that the petition be dismissed.

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gerald W. Welcome. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs herein, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. American Federation of Government Employees, AFL-CIO, Local 53, herein called AFGE, seeks an election in a unit consisting of all eligible civilian employees employed by Commander Service Force, U.S. Atlantic Fleet, herein called COMSERVLANT, in its Ships Material Office Branch, located on the Naval Base at Norfolk, Virginia. COMSERVLANT contends that

^{1/} The name of the Activity appears as established by the record.

the unit sought is inappropriate as it does not encompass all eligible employees of COMSERVLANT and the employees in the claimed unit do not possess a community of interest which differs from that possessed by the other employees of the Activity. It also contends that the proposed unit would not promote effective dealings and efficiency of operations within the meaning of the Executive Order.

COMSERVLANT is one of five commands under the Commander-in-Chief of the Atlantic Fleet and has its headquarters, located within the Atlantic Fleet Compound, on the Sewells Point Naval Complex at Norfolk, Virginia. It serves as the logistics agent for the fleet and, in this capacity, it is responsible for supplying and overhauling all ships in the fleet. It provides navigational aids and commands construction units when such units are in port. In addition, COMSERVLANT manages nine naval stations, including the naval station at Norfolk, Virginia, which is located approximately two-and-a-half miles from its headquarters.

COMSERVLANT is divided into seven divisions and these divisions are, in turn, subdivided into approximately twenty branches. The employees sought by the AFGE are employed in the Ships Material Office Branch, herein called SMOLANT, which is one of five branches in the Division of Supply.^{2/} SMOLANT is responsible for material readiness of the Atlantic Fleet and, in this capacity, it monitors and expedites priority material requisitions for the fleet. It maintains liaisons with various supply and distribution agencies and also prepares various statistical reports for COMSERVLANT's headquarters.

COMSERVLANT is under the command of a Rear Admiral, whose offices are located at headquarters. Directly under the Admiral in COMSERVLANT's command hierarchy is a Chief-of-Staff. Each of COMSERVLANT's seven divisions is headed by a captain, who is an Assistant Chief-of-Staff, and who reports to the Admiral through the Chief-of-Staff. SMOLANT, like other branches within the divisions, is commanded by a Lt. Commander.

While the Admiral is responsible for all personnel and labor policies governing COMSERVLANT's civilian employees, a certain amount of this responsibility has been delegated to the Consolidated Civilian Personnel Office which has offices at the Naval Complex and which provides civilian personnel service for a total of thirty-seven different commands, including COMSERVLANT. The civilian personnel policies are made at the command level and cannot be altered by either division or branch supervision. The Admiral is responsible for all decisions regarding hiring, discharges, transfers, promotions, demotions, and suspensions. Also, the Admiral has

exclusive authority in such matters as collective bargaining and employee grievances.^{3/} COMSERVLANT operates a personnel office which processes forms relating to employment, promotions, resignations and transfers. Leaves and time cards also are processed in this office; it assists all COMSERVLANT employees in personnel matters, and maintains liaison with the Consolidated Civilian Personnel Office. All civilian personnel records are maintained by COMSERVLANT's personnel office and by the Consolidated Civilian Personnel Office.

The Lt. Commander in charge of SMOLANT has only limited authority. While he can authorize annual leave, sick leave, and initiate pay increases through the employee performance rating system, he cannot approve tardiness in excess of thirty minutes or discipline employees beyond an oral admonition, nor can he authorize overtime without prior approval. Moreover, he can adjust only minor employee grievances and has no authority to deal with matters involving labor-management relations.

COMSERVLANT employs approximately 45 civilian employees, of whom 13 are employed in the Division of Supply, and of that number 9 are employed by SMOLANT. The employees of SMOLANT are stationed in one of COMSERVLANT's four buildings at the Norfolk Naval Station, whereas the remaining employees of COMSERVLANT, including four employees in other branches in the Division of Supply, are stationed at other buildings. The positions occupied by COMSERVLANT's civilian employees require a substantial amount of clerical skills such as filing, coding, typing, and stenography. The majority of the employees are employed in positions such as mail and file clerk (typing), file clerk (typing), clerk typist, clerk stenographer, secretary stenographer and coding clerk with grades for these positions ranging from GS-3 to GS-5. The remaining positions, including those filled by SMOLANT's employees, require skills greater than those required by the aforementioned positions. Such skills involve the ability to monitor and expedite supplies, and to maintain supply records and charts. The wage scale for such employees ranges from GS-4 to GS-7. Five of the employees are classified as general supply assistants (typing) and four are classified as supply clerks (typing). Each of the positions require the performance of substantial amounts of clerical functions which do not differ materially from the work of COMSERVLANT's other civilian employees. The evidence reveals that the Force Supply Readiness Section Branch of the Division of Supply employs one employee whose duties are practically identical to those of SMOLANT's employees.^{4/} There are three other positions

^{3/} The Admiral has delegated the authority to negotiate and administer collective bargaining agreements to the Consolidated Civilian Personnel Office.

^{4/} While the AFGE did not seek to represent this employee, it stated it had no objection to his being included in the petitioned for unit.

^{2/} Nonsupervisory civilian employees are employed in four of the five branches.

occupied by civilian employees, two of which require clerical and accounting skills and the third is occupied by a public information specialist (typing).

The civilian employees of SMOLANT are eligible to apply for promotional opportunities outside SMOLANT, and some have done so. Also, bumping rights exist outside SMOLANT. Although there have not been any transfers into SMOLANT, there have been no vacancies in SMOLANT since it was staffed by civilian employees.

COMSERVLANT contends that the unit sought by the AFGE is inappropriate as the employees it seeks to represent do not constitute a homogeneous group with a community of interest distinct from that of COMSERVLANT's other employees. It further contends that, as the unit sought involves only one of many branches of its seven divisions, the granting of such a unit could lead to a multiplicity of units which would result in costly and time-consuming collective bargaining negotiations and contract administration. In this connection, COMSERVLANT asserts that such fragmentation could lead to enumerable employee personnel policies thereby imposing a burdensome task on those required to negotiate and administer negotiated agreements for COMSERVLANT. The AFGE, on the other hand, contends that the employees in its claimed unit possess a clear community of interest as evidenced by the differences between their skills and those of COMSERVLANT's other employees and the lack of employee interchange. The AFGE also contends that the fact it was accorded formal recognition as bargaining agent for SMOLANT's employees by COMSERVLANT under Executive Order 10988 evidences that the unit it seeks is appropriate, even though such recognition did not result in a bargaining relationship and it did not process any grievances on behalf of SMOLANT's employees.

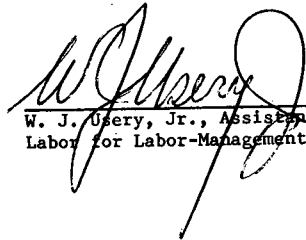
Based on the foregoing circumstances, I find that the unit petitioned for by the AFGE does not constitute an appropriate unit within the meaning of Executive Order 11491. Thus, employees of SMOLANT and other civilian employees of COMSERVLANT not covered by the AFGE's petition share similar skills; have the same overall supervision at the command level; and are governed by the same personnel policies and regulations. In addition, all of COMSERVLANT's employees are engaged in interrelated functions, have the same overall mission, and practically all are performing work which is essentially clerical in nature. Under these circumstances, I find that the employees in the petitioned for unit lack a clear and identifiable community of interest apart from other civilian employees of COMSERVLANT. Moreover, in the circumstances, the establishment of a unit on a branch basis would not, in my view, promote effective dealings and efficiency of agency operations. Accordingly, I shall dismiss the petition herein.

- 4 -

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-2125(RO) be, and it hereby is, dismissed.

Dated, Washington, D. C.
July 19, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

- 5 -

July 20, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

BAY AREA EXCHANGE

A/SLMR No. 79

This case involved a representation petition filed by Government Employees Union, Local No. 3, affiliated with Laundry and Dry Cleaning International Union, AFL-CIO (Petitioner), seeking a unit of food service employees, maintenance men and janitors employed at the Activity's Oakland Army Base. Alternatively, Petitioner sought a unit of all food service employees employed by the Activity. The Activity contended that the appropriate unit would consist of all employees at its various locations throughout the San Francisco Area, regardless of whether the employees were engaged in food services, retail sales or services.

The Assistant Secretary found that neither of the proposed units appropriate for the purpose of exclusive recognition as the employees sought do not possess a clear and identifiable community of interest separate and apart from the other employees of the Activity. In reaching this determination, the Assistant Secretary relied on the highly centralized control of the Activity; numerous instances of transfer and interchange between the various functions and locations; common supervision of the employees; an overlap in functions at certain locations; uniform personnel procedures; the fact that all employees receive the same fringe benefits and have the same working conditions; and the fact that all job vacancies are posted on an Activity-wide basis and all employees can and do compete for such vacancies. The Assistant Secretary also was of the view that the unit proposed by the Petitioner, which artificially fragments the Activity, could not reasonably be expected to promote effective dealings and efficiency of agency operations.

Based on the foregoing, the Assistant Secretary ordered that the petition be dismissed.

A/SLMR No. 79

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

BAY AREA EXCHANGE^{1/}

Activity

and

Case No. 70-1816

GOVERNMENT EMPLOYEES UNION,
LOCAL NO. 3, AFFILIATED WITH
LAUNDRY AND DRY CLEANING
INTERNATIONAL UNION, AFL-CIO^{2/}

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Richard F. de la Garza. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by all parties, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. Government Employees Union, Local No. 3, affiliated with Laundry and Dry Cleaning International Union, AFL-CIO, herein called the Petitioner, seeks an election in the following unit:

^{1/} The name of the Activity appears as amended at the hearing.

^{2/} The name of the Petitioner appears as corrected at the hearing.

All counter attendants, food service helper counter attendants, cooks, janitors, maintenance and mobile operators employed at the Oakland Army Base food service facilities, excluding military personnel employed during off-duty hours,^{3/} supervisors, management officials, any employee engaged in Federal personnel work in other than a purely clerical capacity.^{4/}

The Petitioner filed a post-hearing motion requesting that in the event the Assistant Secretary finds that the appropriate unit herein consists of "all food service operation employees" of the Activity, it be allowed to amend its petition to cover such a unit.

The Activity contends that the appropriate unit would consist of all the employees of the Bay Area Exchange, including those engaged in administration and retail sales in addition to those in the claimed unit who are employed in service and food service positions.

The Activity operates retail sales, service and food facilities at various military installations in and around the San Francisco, California area with its main offices located at the Presidio in San Francisco. All of the locations of the Activity are within a 60-mile radius of the Presidio.

The Activity's locations and the type of operations involved therein are as follows: Fort Baker (retail and service); Fort Scott (retail and snack bar); Letterman's General Hospital (retail); Oakland Army Base (food, retail and service); Sharp Army Depot (retail); Two Rock Range Station (retail and service); Sunnyvale (retail and food); and the Presidio (food and retail). There are approximately 156 full-time employees employed by the Activity, of whom the Petitioner seeks to represent approximately 60.

^{3/} With respect to the Petitioner's general exclusion of off-duty military personnel, for the reasons enunciated in Department of the Navy, Navy Exchange, Mayport, Florida, A/SLMR No. 24 and Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, I find that, once hired, off-duty military personnel stand in substantially the same employment relationship with the Activity as do other Activity employees and that their exclusion from the unit based solely on their military status is unwarranted.

^{4/} The Petitioner's claimed unit appears as amended at the hearing.

The Activity is managed by a civilian General Manager. He has a staff consisting of an Assistant General Manager, Accounting Manager, Personnel Manager, and separate chiefs for retail sales, food and services. At the military bases where the Activity has large food, retail sales and service operations, each has its own supervisor. However, at the smaller Activity locations, which include a majority of the locations herein, the supervisor for the largest function - food, retail sales or services - will supervise all Activity employees at the location regardless of the particular function to which they are assigned.^{5/}

The Activity's General Manager has control over all phases of the Activity's operations and has final decision making authority. The record discloses that the General Manager visits each of the locations at least once a week and maintains almost daily telephone contact. Additionally, other main office staff members visit the various locations more often than the General Manager, work closely with location personnel, and each week all the location supervisors come to the Presidio to meet with the General Manager and his staff to discuss problems that have arisen throughout the Activity.

Location managers are responsible for the technical operation of their respective facilities and are expected to see that the facility is functioning as efficiently as possible. They receive monthly budgets from the General Manager which are used to determine the number of hours employees will work. If they require more funds, they must make a request to the General Manager who may grant or deny the request. While location managers may, on occasion, have an opportunity to state their choice of an employee from a group of prospective employees sent to them by the General Manager, the General Manager has the final word on who is hired and generally does the hiring himself. While the location supervisors can recommend discharges, only the General Manager has the authority to discharge employees. Also, the General Manager handles all grievances and personally approves all grants of leave, pay increases and overtime.

The evidence reveals that all employees in identical job classifications perform the same duties regardless of the location to which they are assigned. Employees are not recruited specifically to be assigned to food, retail sales or service, but are placed wherever needed, in whatever function they are needed. Also, all employees are hired without any experience requirements and are trained on the job.

^{5/} For example, at the Two Rock Range Station, the retail manager supervises the retail and service employees and at Sunnyvale, the cafeteria manager supervises the food and retail employees.

The record indicates that there is a close community of interest between all employees of the Activity. Job openings are posted throughout the Activity and all employees are eligible to be considered regardless of the job involved. Although there are separate career progressions for retail sales, food, and service employees, the record reveals that employees transfer from one classification to another both by way of promotion and lateral movement. In this respect, the Activity provides training courses to improve the skills and expertise of the employees and such courses are open to all employees, regardless of where, and to what function, they have been assigned.

The record also reflects that there is considerable interchange and physical contact between Activity employees without regard to the location or function to which they are assigned. Moreover, the cafeterias and the retail stores are situated in close proximity to one another, in some cases are under the same roof, and employees may be moved back and forth whenever the situation requires.^{6/} The evidence establishes that there have been temporary transfers of employees between locations and functions to cover absences and employee vacations and, during slack or busy times, employees are moved around between locations on a temporary basis to achieve efficient use of manpower. In addition, there have been numerous permanent transfers between the locations and, in some cases, from one type sales function to another.

Personnel procedure is uniform throughout the Exchange and all personnel records are kept at the main office. All full-time employees share the same fringe benefits and have the same working conditions. All employees are paid pursuant to the same system, which is based on area wage surveys.

The Activity has a three-man maintenance crew which operates directly under the General Manager. These three employees, who are stationed at the Presidio, but who perform work at all Activity locations, are included

^{6/} For example, retail sales employees at Oakland check what retail goods are needed at the snack bar, which is part of the food service function, and pick up the required goods and stack the shelves. At inventory time, food service employees and retail sales employees work together taking inventory. The record further indicates that the clerical employees from the Presidio office go out to various locations to help take the inventory.

in the unit sought by the Petitioner. While the Petitioner seeks to include these employees as part of its "food service" unit, it is clear also, that their duties do not directly involve either food preparation or sale.^{7/}

The Petitioner alleges that there is a clear functional division between food service and retail sales and service. However, the record indicates that, among other things, the two Activity snack bars not only sell food but they also handle such retail items as toiletries, clothing, and luggage. As a result, the employees working in the snack bars are engaged in selling retail goods as well as food.^{8/}

Based on the foregoing, I find that neither the claimed unit nor the alternative unit sought by the Petitioner is appropriate for the purpose of exclusive recognition since the claimed employees do not possess a clear and identifiable community of interest separate and apart from the other employees of the Activity. The record reveals that the Activity's operations are highly centralized; there are numerous instances of employee interchange and transfer involving job functions and job locations; in some instances the employees sought share common supervision with those who would be excluded; all job vacancies are posted Activity-wide with areas of competition not being limited to employees with experience in the particular function where the vacancy exists; there are uniform personnel procedures for all employees; all employees have the same working conditions; all employees are covered by the same area wage survey system; and all full-time employees receive the same fringe benefits. In these circumstances, and noting also that the unit proposed by the Petitioner, which artificially fragments the Activity, cannot reasonably be expected to promote effective dealings and efficiency of agency operations, I shall order that the petition herein be dismissed.^{9/}

^{7/} The Petitioner also includes in its sought unit employees classified as janitors. However, the record reflects that there are no such employees now working. Janitorial work is done by part-time employees, generally military personnel working during off-duty hours.

^{8/} The record reveals that one employee at Sunnyvale divides her work day between the cafeteria and the retail store.

^{9/} In view of the disposition of the case, I find it unnecessary to rule on the procedural issues raised by the Activity.

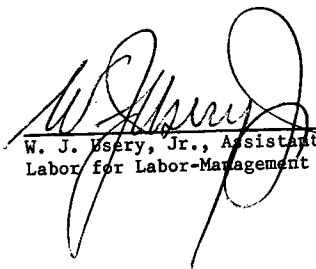
July 21, 1971

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 70-1816 be, and it hereby is, dismissed.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Dated, Washington, D. C.
July 20, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

U. S. ARMY ENGINEER DISTRICT, PHILADELPHIA,
CORPS OF ENGINEERS
A/SLMR No. 80

The Petitioner, Willie Williams, an employee of the Activity, sought the decertification of the Intervenor, American Federation of Government Employees, AFL-CIO, Local 902 (AFGE) in a unit of nonsupervisory unlicensed employees on the dredges COMBER and GOETHALS. The AFGE contended there was an agreement bar to the petition. The Intervenor, National Maritime Union of America, AFL-CIO (NMU) claims to represent certain employees in the unit and asserts there is no agreement bar to an election.

The AFGE was granted exclusive recognition in the unit in August, 1962, and subsequently entered into a number of negotiated agreements with the Activity, the most recent of which expired May 9, 1969. A new agreement was executed at the local level on April 15, 1970, and was transmitted to a higher management level of the agency for final review and approval. On June 30, 1970, the AFGE representative was given a marked up copy of the executed agreement indicating changes required for approval by higher authority. Thereafter, in exchanges between the parties, the AFGE indicated a desire not only to reopen negotiations with respect to these changes, but also to discuss new issues not considered in previous negotiations. The agreement was returned to the Activity for renegotiation, and, on November 2, 1970, the AFGE advised the Activity that the employees had requested further changes, that the process of rewriting was being undertaken, and that, at the membership's request, the complete agreement was to be submitted for their approval before negotiations began. On January 22, 1971, the AFGE submitted proposals and requested a meeting with the Activity. The petition for decertification was filed January 4, 1971.

While the Activity and the NMU contended there was no agreement bar, the AFGE asserted it should not be penalized for corrections in an executed agreement which are required by the head of an agency; that such corrections should be treated as mid-term modifications which do not abrogate the agreement bar; and that the AFGE should not be prejudiced or penalized for asserting its rights to have negotiations or make changes in its already executed agreement.

In deciding that there was no agreement bar to an election, the Assistant Secretary noted that there had been a substantial delay at higher levels in reviewing the executed agreement, contrary to the express

policy of the Department of Defense; that the problem of delay was recognized by the Study Committee in its Report preceding the issuance of Executive Order 11491; and that the failure to complete review of the agreement within the time set forth in the Department of Defense directive was not consistent with the purposes of the Order. However, in the particular circumstances of this case, the Assistant Secretary concluded that higher management's return of the agreement to the local level for renegotiation removed the agreement from the status of awaiting higher management level approval and that the AFGE's indication it wished to negotiate further changes in the agreement, together with the abovementioned return of the agreement to the local level for renegotiation constituted, in effect, a mutual rescission by the parties of the April 15, 1970, agreement. Accordingly, as there was no agreement bar, the Assistant Secretary ordered the election in the unit described in the decertification petition.

A/SLMR No. 80

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY ENGINEER DISTRICT, PHILADELPHIA,
CORPS OF ENGINEERS 1/

Activity

and

WILLIE WILLIAMS

Case No. 20-2376(32)

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 902

Intervenor

and

NATIONAL MARITIME UNION OF AMERICA,
AFL-CIO 2/

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Terrance J. Martin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the parties' briefs, the Assistant Secretary finds:

1/ The Activity's name appears as amended at the hearing.

2/ The Intervenor's name appears as amended at the hearing.

1. The Petitioner, Willie Williams, an employee of the Activity, seeks the decertification of the American Federation of Government Employees, AFL-CIO, Local 902, herein called AFGE, as the exclusive representative of employees in a unit of:

All nonsupervisory unlicensed employees on dredges COMBER and GOETHALS, excluding master, mates, engineers, guards, professional employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors as defined in the Executive Order. 3/

The Intervenor, National Maritime Union of America, AFL-CIO, herein called NMU, claims to represent certain employees of the unit and asserts there is no agreement bar to an election.

2. The Activity involved herein is the United States Army Engineer District, Philadelphia, Corps of Engineers, located in Philadelphia, Pennsylvania. The District is under the supervision of the District Engineer, a Colonel in the United States Army. The mission of the Activity is to conduct engineering studies and investigations of river and harbor conditions, flood control, and navigation projects. It designs and constructs projects for the above purposes, maintains and operates river and harbor navigation projects, dams, recreational areas, and water supply and pollution abatement projects. Also, it designs and constructs floating plants for the Corps of Engineers, and acquires real estate needed for authorized projects. The Activity's geographic area of operation is approximately a 100-mile radius of Philadelphia and includes parts of Pennsylvania, New Jersey, New York, Maryland and Delaware. The District work force averages about 1,000 employees.

In carrying out part of its mission, the District Office utilizes three hopper dredges, namely, COMBER, GOETHALS and ESSAYONS, which work along the Atlantic seacoast from New York to Norfolk. The dredges are large seagoing ships which carry crews ranging from 100 to 120 men. For the most part, the jobs found on a hopper dredge are similar to those found on maritime ships.

The record reveals that the International Organization of Masters, Mates and Pilots, AFL-CIO, is the exclusive representative for deck officers on the dredges, COMBER and GOETHALS. Similarly, the National Marine Engineers Beneficial Association, AFL-CIO, is exclusive representative for engine room officers on the COMBER and GOETHALS. Nonsupervisory employees on the COMBER and GOETHALS are represented

3/ The unit appears as amended at the hearing.

currently by the AFGE. The NMU represents exclusively nonsupervisory employees on the ESSAYONS.

The record discloses that the Activity granted exclusive recognition to the AFGE for a unit of unlicensed employees on the COMBER and GOETHALS in August, 1962. Such recognition has been in effect since that time. Negotiated agreements between the Activity and the AFGE covering the employees involved herein have had durations of one year. The parties' most recent agreement became effective on May 10, 1968, and expired on May 9, 1969.

The record reveals that on August 5, 1969, the AFGE submitted proposed changes in the expired agreement to the Activity indicating (1) that its submission was delayed in accordance with the Activity's request for such delay, and (2) its desire to go on record as having presented a new proposed agreement. Negotiations between the parties began in late September, 1969, and were concluded on October 30, 1969. The following month, the Activity advised the AFGE that the issuance of Executive Order 11491 necessitated some changes in the impasse procedure provisions agreed to on October 30. Shortly thereafter, the Activity sent suggested language on the impasse procedure to the AFGE indicating at the same time that interpretive guidance from the Agency concerning the Order would not be available for several months. Finally, on March 17, 1970, the Activity forwarded a copy of the proposed agreement to the AFGE for review. This agreement was executed at the local level on April 15, 1970, and, thereafter, was sent to Engineer Division North Atlantic, New York, for review and approval, then to Headquarters, Corps of Engineers, for similar action, and eventually, to the Department of the Army, Deputy Chief of Staff for Personnel, Office of Civilian Personnel (DCSPER/OCP) for final review and approval.

The evidence reveals that on June 30, 1970, the Activity representative handed the AFGE's representative a marked up copy of the executed agreement indicating the changes therein which were required for approval by DCSPER. In a letter dated July 2, 1970, the AFGE advised the Activity it could agree with only one of the suggested changes at that time, and requested that the approving authority communicate to it in writing the changes being requested and the basis therefor. This letter was forwarded through channels to DCSPER. The DCSPER responded to the AFGE request in a memorandum dated August 22, 1970, addressed to the Chief of Engineers, Department of the Army, which was forwarded to the District Engineer, Philadelphia, on August 25, 1970. The record reveals that the Activity incorporated the substance of the August 22 memorandum into a letter to the AFGE dated September 4, 1970.

Thereafter, an exchange of correspondence between the Activity and the AFGE took place in which the latter appeared to indicate a desire to reopen negotiations not only to discuss the DCSPER changes, but also to discuss some new issues not considered in previous negotiations. In this

regard, a letter from the AFGE dated October 7, 1970, admitted that additions to some of the DCSPER changes were suggested. In the same letter, the AFGE left the decision to recall the agreement up to the District stating that if the agreement was recalled for further negotiations, the AFGE would have additional changes to propose. On October 9, the Activity notified the AFGE that it had requested higher authority to return the agreement.

In a letter dated October 27, 1970, the Office of the Chief of Engineers returned the agreement to the District Engineer, Philadelphia, stating that "...considerations of the agreement by this headquarters and DCSPER/OCP has been terminated and it is returned for renegotiations." Also, it was pointed out that, "In view of the above, and since the agreement which was effective 10 May 1968 has expired, the union should be made aware that it has no agreement in effect, and that the unit is no longer protected by a temporary contract bar." The record establishes that the AFGE never was advised to that effect; however, on October 28, 1970, the Activity advised the AFGE by letter that the returned agreement had been received and suggested mid-November dates for the renegotiation of articles still in dispute.

On November 2, 1970, the AFGE advised the Activity that the employees had requested the Union to make further changes while the agreement was back at this level, that the process of rewriting the changes was being undertaken, and that "at the request of the membership the complete agreement to be negotiated is to be sent two (sic) both dredges for their approval before negotiations can begin." Subsequently, on November 5, 1970, the Activity advised the AFGE that it would take no further action pending the submission of proposals. On January 22, 1971, the AFGE submitted proposals and requested a meeting with the Activity within 15 days to begin negotiations. The Activity acknowledged receipt of the proposals and suggested March 2, 1971, as the date for a negotiations meeting.

The petition for decertification in the subject case was filed on January 4, 1971, by Willie Williams, covering the unit of employees on the COMBER and GOETHALS dredges currently represented exclusively by the AFGE. The Activity takes the position that there is no agreement with a labor organization until one is approved by the Department of the Army, and, therefore, in this case, since no agreement had been approved there was no agreement bar to the processing of the petition in this matter. 4/

4/ Section 202.3(c) of the Assistant Secretary's regulations states, in part: "when there is a signed agreement covering a claimed unit, a petition or other election petition will not be considered timely if filed during the period within which that agreement is in force or awaiting approval at higher management level---"

The NMU contends that there is no bar to an election in this case since the last executed agreement between the AFGE and the Activity is more than 2 years old, and there is currently no agreement awaiting approval by higher authority. The AFGE, on the other hand, contends that where the head of an agency requires corrections in an executed agreement to bring it into conformity with applicable rules and regulations, the labor organization involved should not be penalized by having its agreement bar protection lifted. It suggests that the logical position in such a situation is to treat any changes or corrections which agency headquarters requests as mid-term modifications which would not abrogate the agreement bar. Further, the AFGE argues that a labor organization should not be prejudiced or penalized for asserting its rights to have negotiations or make changes in its already executed agreement. It asserts that the whole purpose of the agreement bar doctrine would be nullified if it is determined that an agreement which is returned for corrections no longer provides a labor organization with any security from petitions filed by rival labor organizations.

The circumstances in this case indicate clearly that the Department of the Army engaged in substantial delays in reviewing the parties' executed agreement for final approval. Despite the expressed policy contained in Department of Defense Directive Number 1426.1 that the review of agreements, prior to approval, should be completed no later than 45 days after the date of execution by the parties, 5/ the evidence establishes that 75 days elapsed (April 15, 1970 - June 30, 1970) from the date the agreement was signed at the local level, until the AFGE was advised by the Activity that the agreement would not be approved without certain revisions. In addition, another 65 days elapsed before the AFGE was apprised in writing by the Activity of the required changes and the reasons therefor.

In the Report and Recommendations on Labor-Management Relations in the Federal Service which preceded the issuance of Executive Order 11491, the Study Committee recognized the problem of unwarranted delays involved in approving agreements by higher authority and expressly recommended that some limitations should be incorporated into the approval process. 6/ The record in this case reveals that the higher authority did not review the executed agreement within the time period set forth in the Department of Defense Directive, and that it failed to advise the parties expeditiously of the changes required to secure final approval. 7/

5/ Department of Defense Directive Number 1426.1, March 26, 1970, Para. VII D2i, page 17.

6/ Report and Recommendations, pp. 39-40

7/ Under Section 19 of the Order, a party, at an appropriate time, may seek corrective action in situations where dilatory bargaining conduct allegedly has occurred. However, this issue cannot be resolved appropriately in the context of a representation proceeding. Moreover, the record establishes that the AFGE, as indicated by its letter of November 2, 1971, preferred to renegotiate the agreement rather than accept the suggested changes for approval, and did not raise any objection to the Activity's recall of the agreement for that purpose.

In the particular circumstances of this case, I find that the return of the agreement by Headquarters to the Activity for renegotiation, in October, 1970, in effect, removed the agreement from the status of "awaiting approval at a higher management level." Furthermore, the record reveals that it was Headquarters' express position that with the return of the agreement for renegotiation, no agreement was in effect and no agreement bar existed. In my view, the AFGE's subsequent indication that it wanted to negotiate further changes, together with the Headquarters' return of the agreement for renegotiation constituted, in effect, a mutual rescission by the parties of the agreement previously executed on April 15, 1970. Accordingly, I find that since the May 10, 1968, agreement between the Activity and the AFGE had expired and there was no agreement awaiting approval by higher authority, no agreement bar existed at the time the petition in this case was filed.

I therefore shall direct that an election be conducted in the unit described in the petition and find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All unlicensed employees on the dredges COMBER and GOETHALS, ^{8/} excluding master mates, engineers, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

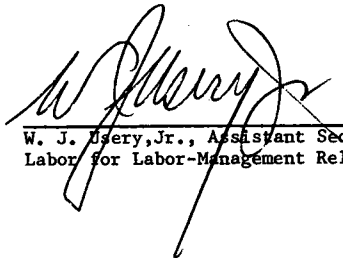
DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found to be appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill,

^{8/} The parties stipulated that the classification launch operator should be included in the claimed unit.

or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 902; or the National Maritime Union of America, AFL-CIO, or by neither.

Dated, Washington, D. C.
July 21, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 21, 1971

A/SLMR No. 81

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON OBJECTIONS OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
DOWNEY, ILLINOIS
A/SLMR No. 81

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
DOWNEY, ILLINOIS

The subject case involved a hearing on Objections to Election which were filed by National Association of Government Employees (NAGE) to a runoff election between it and Lodge 2107, American Federation of Government Employees, AFL-CIO, (AFGE) held on December 9, 1969.

Upon review of the Hearing Examiner's Report and Recommendations and the entire record in the case, the Assistant Secretary adopted the Hearing Examiner's recommendations and overruled the objections, based on the fact that the NAGE failed to appear at the hearing and therefore failed to meet the burden of proof of sustaining its objections as required by Section 202.20(d) of the Regulations of the Assistant Secretary.

Additionally, since the original proceedings in this case occurred in December 1969, prior to the effective date of Executive Order 11491, the Assistant Secretary returned the case to the Activity for further appropriate action.

Activity

and

Case No. 50-4634

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

Petitioner

and

LODGE 2107, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Intervenor

DECISION ON OBJECTIONS

On June 11, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations on Objections to Election in the above entitled proceeding, recommending that the objections be overruled.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations on Objections to Election and the entire record, including requests for review filed by the Activity and Lodge 2107, American Federation of Government Employees, AFL-CIO, herein called AFGE 1/, I adopt the findings and recommendations of the Hearing Examiner.

1/ In view of my findings herein, the AFGE's motion to reopen the record is denied.

The evidence discloses that under Executive Order 10988 the National Association of Government Employees, herein called NAGE, filed timely objections with the Activity with respect to a runoff election conducted on December 9, 1969, between it and the AFGE. The matter was then processed in accordance with the Activity's regulations under Executive Order 10988 and, thereafter, with the advent of Executive Order 11491, a timely appeal was filed with the Assistant Secretary. On December 14, 1970, the Acting Regional Administrator issued his report on objections, wherein he overruled nine of the eleven objections and found that the remaining two objections raised questions of fact which could best be resolved on the basis of record testimony. Accordingly, on April 27, 1971, a Notice of Hearing on Objections was issued by the Regional Administrator with a hearing date set for May 27, 1971.^{2/} Although the Activity and the AFGE appeared at the hearing as scheduled, the NAGE failed to make an appearance. In these circumstances, the Hearing Examiner, relying on Section 202.20(d) of the Regulations of the Assistant Secretary^{3/}, recommended that the objections be overruled since the NAGE failed to appear at the hearing and thereby failed to meet the prescribed burden of proof.

Inasmuch as the evidence establishes that the NAGE received proper and timely notice of the hearing on objections in this case, and since the NAGE made no request for a delay or postponement of the hearing, I am constrained to conclude that the NAGE had no interest in presenting evidence in support of its objections. Accordingly, I adopt the recommendations of the Hearing Examiner and I shall overrule the NAGE's objections to the election in this matter.

The Hearing Examiner noted certain inconsistencies in the Tally of Ballots of the runoff election, in that item 8 of the Tally shows that challenges are sufficient in number to affect the results of the election, while item 9 reflects that a majority of the valid votes counted plus challenged ballots has been cast for the AFGE. In their requests for review, both the AFGE and the Activity submitted notarized statements from their election observers, wherein the observers certified that the 13 challenged ballots appearing in item 6 of the Tally were declared "void" at the ballot count by the parties, inasmuch as they were cast by

^{2/} The record reveals that all parties, including the NAGE, were served with the Notice of Hearing.

^{3/} The pertinent portion of this Section reads: "The objecting party shall bear the burden of proof regarding all matters alleged in its objections to conduct affecting the results of the election."

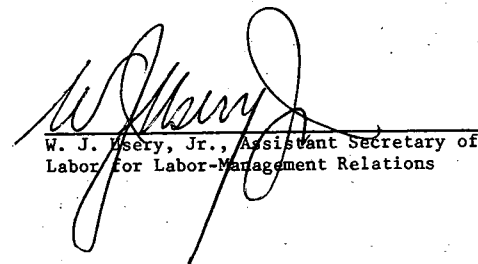
ineligible voters. If, as these unrebutted statements indicate, the parties agreed that the determinative challenges were, in fact, resolved^{4/}, it appears that no question regarding challenge ballots can now be raised.

Accordingly, based on the foregoing, I shall order that the objections to the election be overruled and return the case to the Activity for further appropriate action.

ORDER

IT IS HEREBY ORDERED that the objections in the above entitled proceeding be, and they hereby are, overruled, and that the case be returned to the Activity for appropriate action.

Dated, Washington, D. C.
July 21, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{4/} There is no evidence that an appeal was taken by any of the parties concerning the disposition of the challenged ballots

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

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
DOWNEY, ILLINOIS

Agency and Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

CASE NO. 50-4634

Objecting Party

and

LODGE 2107, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Interested Party

William R. Berg, Chief, Personnel Division,
Veterans Administration Hospital,
Downey, Illinois 60064, for the Agency
and Activity.

James L. Neustadt, Esq., Staff Counsel,
American Federation of Government Employees,
AFL-CIO, 400 First Street, N. W.,
Washington, D. C., 20001, for the Interested
Party.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS
ON OBJECTIONS TO ELECTION

Statement of the Case

This proceeding was heard at Chicago, Illinois, on May 27, 1971, upon
a Notice of Hearing on Objections issued on April 27, 1971, by the

Regional Administrator of the United States Department of Labor,
Labor-Management Services Administration, Chicago Region, pursuant
to Section 202.20(d) of the Rules and Regulations of the Assistant
Secretary of Labor for Labor-Management Relations (herein called
the Assistant Secretary).

Involved were certain objections filed by National Association of
Government Employees (herein referred to as NAGE) to a run-off
election held among a unit of employees of the above-named Agency
and Activity (herein referred to as the Activity) on December 9,
1969. The Activity and Interested Party (herein referred to as
AFGE) were represented at the hearing. However, NAGE was not
represented at the hearing, although it was duly served with the
Notice of Hearing. NAGE made no requests for postponement of the
hearing and did not relay any messages, either prior to or on the
date of the hearing, to the Regional Administrator or the Hearing
Examiner indicating that it would not appear at the hearing.
Inasmuch as NAGE was the objecting party, and Section 202.20(d) of
the Rules and Regulations of the Assistant Secretary provides that,
"The objecting party shall bear the burden of proof regarding all
matters alleged in its objections to conduct affecting the results
of the election," no substantive evidence with respect to the
objections was received at the hearing. The record in this matter
includes principally the various documents which resulted in the
issuance of the Notice of Hearing.

Upon the entire record in this matter, the Hearing Examiner makes
the following:

Findings and Conclusions

I. The Objections to the Election

A. The Elections

Pursuant to an election agreement signed by all the parties on
October 27, 1969, a secret ballot election was conducted on Novem-
ber 25, 1969, in accordance with the provisions of the previous
Executive Order, No. 10988, in the following unit of the Activity's
employees (quoted verbatim from the Election Agreement):

"1. The Appropriate Unit: Station-wide

Those Eligible to Vote: Non-professional employees who are a part
of the regular work force without a time limited appointment, have

a regularly scheduled tour of duty, and were employed prior to October 13, 1969, and are still employed on election day.

Those Not Eligible to Vote: Professional Employees (Physicians, Dentists, and Registered Nurses appointed under Title 38 U. S. Code and any classified employee whose position qualifications require a degree from a recognized College or University). Other employees who are (a) managerial executives, (b) any employee engaged in personnel work in other than a purely clerical capacity, and (c) supervisors who are defined as: Wage Board employees with a supervisory level above one (1) and Classified employees with a supervisory level below nine (9)."

The election conducted on November 25, 1969, was inconclusive and a run-off election between NAGE and AFGE was conducted on December 9, 1969. The tally of ballots signed and certified by observers for all the parties which issued subsequent to the election is reproduced below:

- | | |
|--|-------------|
| 1. Approximate number of eligible voters. . . | <u>1363</u> |
| 2. Void ballots. | <u>13</u> |
| 3. Votes cast for AFGE, AFL-CIO | <u>482</u> |
| 4. Votes cast for NAGE | <u>475</u> |
| 5. Valid votes counted (sum of 3 and 4) | <u>957</u> |
| 6. Challenged ballots | <u>13</u> |
| 7. Valid votes counted plus challenged ballots
(sum of 5 and 6) | <u>970</u> |
| 8. Challenges are (not) sufficient in number to
affect the results of the election | |
| 9. A majority of the valid votes counted plus
challenged ballots (Item 7) has (not) been cast for: | |

American Federation of Government Employees - AFL-CIO ."

Of course, line 8 and line 9 of the tally are inconsistent in that line 8 states that challenges are sufficient to affect the results and line 9 states that a majority of votes was cast for AFGE. Simple arithmetic reveals that 486 votes are required for a majority, and the tally records only 482 votes cast for AFGE. It may well be that challenges were resolved by all the parties at the time ballots were counted and the tally is incorrectly drawn. At any rate, the issue of challenges or the conclusiveness of the run-off election were not matters directed to the Hearing Examiner by the Notice of Hearing. The only issues assigned to the Hearing Examiner for disposition involved the objections filed by NAGE.

B. The Objections

NAGE filed timely objections to the run-off election alleging that 11 points of objection affected the results of the election.

On February 13, 1970, following investigation, the Activity rendered its decision overruling all objections. NAGE filed a timely appeal with the Agency, and on April 20, 1970, the Agency rendered its decision sustaining the Activity in all of its findings. Thereafter, NAGE filed a timely appeal with the Assistant Secretary requesting that the same 11 points of objection be considered. 1/

On December 14, 1970, the Acting Regional Administrator for the Chicago Region issued his report on objections, overruling 9 of the 11 objections. He found with respect to the remaining two objections that they raised relevant questions of fact that could best be resolved on the basis of record testimony. These two objections were:

1/ The procedure followed is in accord with decisions of the Assistant Secretary. In connection with objections to elections held under Executive Order 10988, he stated that the local activity should issue its findings and decisions on objections, with rights of appeal to the agency. Further, upon issuance of the agency's final decision, appeals could be taken to the Assistant Secretary, through the appropriate Area Administrator, within 15 days after receipt of the agency's final decision. See the United States Department of Labor, Assistant Secretary for Labor-Management Relations, Report On A Decision of the Assistant Secretary Pursuant to Section 6 of Executive Order 11491, Report Numbers 1 and 2, February 13, 1970.

Objection 4 - NAGE alleges it was denied the use of a glass-enclosed bulletin board in Building 4, while AFGE had use of the board.

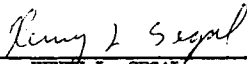
Objection 7 - NAGE alleges that NAGE representatives were not allowed to drop off employees on leave when they had driven to the hospital, that Security Guard Thomas Joplin in fact did not allow certain eligible employees to vote, and that these infractions were reported to the Activity's civilian personnel office.

NAGE filed a request for review of the Acting Regional Administrator's report with the Assistant Secretary which was untimely. By letter to NAGE dated February 3, 1971, the Assistant Secretary advised that the request for review would not be considered because it was not timely filed. Thereafter, the Notice of Hearing on Objections 4 and 7 issued.

As noted above, the objecting party did not appear at the hearing and accordingly its burden of proof required by Section 202.20(d) of the Assistant Secretary's Rules and Regulations was not met. I, thus, have no alternative but to recommend that the Assistant Secretary overrule the objections.

RECOMMENDATIONS

In view of all the above, it is recommended that NAGE's Objections 4 and 7 to the run-off election be overruled by the Assistant Secretary.


HENRY L. SEGAL
Hearing Examiner

Dated at Washington, D. C.,

JUNE 11, 1971

July 22, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES PUBLIC HEALTH
SERVICE HOSPITAL,
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
A/SLMR No. 82

This case involved a petition by the American Federation of Government Employees, AFL-CIO, (AFGE) for an election in a unit of all Wage Board and General Schedule employees at the Activity, and a petition by the California Licensed Vocational Nurses Association (CLVNA) for a unit of licensed vocational and licensed practical nurses (herein called "LVN's"). The three Intervenors in the case were Industrial, Technical, and Professional Workers, Division of National Maritime Union, AFL-CIO, NMU; Clerical, Office & Technical Workers Union, Division of the Military Sea Transport Union affiliated with Seafarers International Union of North America, AFL-CIO; and United Technical, Industrial & Professional Employees Union of America.

The CLVNA, in seeking a unit of LVN's, argued that they share a community of interest distinct from others in the nursing assistant category, of which they are a part; that their separate representation would increase efficiency of operations at the Activity; and that effective dealings would thereby be improved.

The Activity, AFGE, and the three Intervenors all contended that LVN's would not constitute an appropriate unit, and these parties agreed that the comprehensive unit sought by the AFGE is appropriate.

The Assistant Secretary determined that the unit sought by the CLVNA was not appropriate for the purpose of exclusive representation. He found that except for the fact that they administer medication, the duties of the LVN's are the same as those of other unlicensed nursing assistants; that although the "LVN" designation is used informally on some internal hospital documents there is no such formal job title or designation; and that otherwise there is no distinction between the licensed vocational nurses and the other employees in the nursing assistant category. Finally, the Assistant Secretary found no evidence to establish that LVN's had not been effectively and fairly represented during the time they have been part of a larger unit exclusively represented by the NMU, which is essentially the same as that sought by the AFGE.

The Assistant Secretary found that the unit sought by the AFGE, which would include all Wage Board and General Schedule employees at the Activity including all nursing assistants, is appropriate. He noted that such a unit is that which has existed at the Activity since 1968; the history of bargaining in that unit discloses neither a hindrance to agency operations nor to effective dealings; and that the Activity and all parties, except the CLVNA, agree that this would be an appropriate unit.

A/SLMR No. 82

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

UNITED STATES PUBLIC HEALTH SERVICE HOSPITAL,
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Activity

and

Case No. 70-1803 1/

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Petitioner

and

CALIFORNIA LICENSED VOCATIONAL NURSES
ASSOCIATION, INC.

Petitioner

and

INDUSTRIAL, TECHNICAL, AND PROFESSIONAL
WORKERS, DIVISION OF NATIONAL MARITIME
UNION, AFL-CIO

Intervenor

and

CLERICAL, OFFICE & TECHNICAL WORKERS UNION,
DIVISION OF THE MILITARY SEA TRANSPORT UNION
affiliated with SEAFARERS INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

Intervenor

1/ Two separate petitions were filed in the subject case. However, apparently in view of their related nature, the Area Administrator assigned the same case number to both petitions.

and

UNITED TECHNICAL, INDUSTRIAL & PROFESSIONAL
EMPLOYEES UNION OF AMERICA

Intervenor

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer George R. Sakanari. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the Activity and the two Petitioners, 2/ the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. Petitioner AFGE seeks an election in a unit of all General Schedule and Wage Board employees of the U.S. Public Health Hospital, San Francisco, California, excluding management officials, supervisors, guards, nurses, 3/ and employees engaged in Federal personnel work in other than a clerical capacity, and professionals. The three intervenors, Clerical, Office & Technical Workers Union, Division of the Military Sea Transport Union, affiliated with Seafarers International Union of North America, AFL-CIO, herein called SIU, United Technical Industrial and Professional Employees Union of America, herein called U.T.I.P., and the NMU, all seek essentially the same unit as the AFGE.

Petitioner California Licensed Vocational Nurses Association, herein called CLVNA, seeks an election in a unit of all employees holding licenses as Licensed Practical Nurse or Licensed Vocational Nurse, 4/ excluding all other employees. The CLVNA argues that separate representation of LVN's

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- 2/ Intervenor Industrial, Technical and Professional Workers, division of National Maritime Union, AFL-CIO, herein called NMU, filed a statement concurring in the brief filed by Petitioner American Federation of Government Employees, AFL-CIO, herein called AFGE.
- 3/ From the record, it is clear that those nurses sought to be excluded are registered nurses.
- 4/ The designations "Licensed Practical Nurse," and "Licensed Vocational Nurse" are used interchangeably, and are herein called "LVN."

-2-

would facilitate the recognition of LVN's as a job category; that other public and private hospitals in the San Francisco Bay area have such a separate category; that the policy of the United States is to encourage upgrading of LVN's; that in practice the Activity already treats LVN's as a distinct class; and that separate representation would enhance efficiency of operations and lead to more effective dealings.

The Activity, the AFGE, and the Intervenor all take the position that the unit of LVN's sought by the CLVNA would be inappropriate in that the interrelationship and similarity of job function, working conditions and mutual benefits establishes a community of interest among the employees in the comprehensive unit sought by the AFGE, and that the personnel policies, practices and matters affecting working conditions are of common interest to the employees in the overall unit sought by the AFGE. Additionally, the Activity submitted that while the nursing assistant category, of which the LVN's are a part, would be an appropriate unit 5/, efficiency of operations and effective dealings would be impaired if a separate unit of LVN's were granted.

After an election in 1968, the NMU won exclusive recognition in an Activity-wide unit, excluding supervisory, managerial and professional personnel. Thereafter, a two-year agreement was executed between the NMU and the Activity covering that unit. 6/

There are approximately 409 Wage Board and General Schedule employees in the unit sought by Petitioner AFGE. The Nursing Department has approximately 190 employees, consisting of some 90 registered nurses (professionals, who would be excluded from either petitioned unit), some 80 nursing assistants, and secretaries, clerk-typists and laborers. Approximately 20 of the 80 nursing assistants are the LVN's sought by the CLVNA.

Hospital policy does not formally recognize LVN's as a category separate from the rest of the nursing assistants, nor is that designation part of their official job title or their official time card. Functionally, however, the Activity does require them to use the "LVN" designation in signing many internal documents such as nursing notes and it lists the "LVN" designation on time schedules used to notify personnel of assignments. Name tags issued by the Activity do not designate the "LVN" title; however, some LVN's have purchased, and are permitted to use, their own tags with this designation.

-
- 5/ No petition, however, seeks such a unit.
- 6/ There has been no new agreement since the expiration of that agreement in October, 1970. The Activity also has a negotiated agreement with the California Nurses Association, covering registered nurses at the Hospital.

-3-

The record shows that, in addition to their regular duties as nursing assistants, some LVN's administer medication to patients. Although there is no formal policy preventing non-licensed nursing assistants from performing this duty, it appears that only LVN's have taken the 40 hour pharmacology refresher course given by the hospital which is a prerequisite to giving medication. 7/ Non-licensed nursing assistants as well as LVN's appear to have all other duties in common, such as patient care, personal services, sterile technique and service on acutely ill wards. However, on three separate occasions over the past two years an LVN has filled in for RN's when no RN was available for duty. Supervision is common to all nursing assistants without distinction as to their license status.

Grade scales for nursing assistants generally range from GS-2 to GS-5. The lowest entry level for LVN's is GS-3. Non-licensed nursing assistants also could enter at that level if qualified. LVN's are licensed by the various States after examination; some prepare by attending schools, others take the examination after on-the-job experience.

Based on the foregoing, I conclude that the unit of LVN's sought by CLVNA is not appropriate for the purpose of exclusive recognition under Executive Order 11491. Thus, the duties of this group of employees are identical to those of the rest of the nursing assistants except for the administration of medication; and it does not appear from the record that all the LVN's perform this task. The pay scale of LVN's and the rest of the nursing assistants overlaps. Although the record reveals the "LVN" designation is used informally and on some internal hospital documents, there is no such formal designation, and job titles and descriptions do not distinguish between licensed and non-licensed nursing assistants. In addition, all nursing assistants are subject to the same supervision. The record reveals that although some LVN's may have had formal educational preparation for their licensing examination, a nursing assistant with sufficient on-the-job experience also could qualify to become an LVN. Finally, there is no evidence to establish that LVN's have not been effectively and fairly represented during the period they have been part of the exclusively represented unit; and moreover, the bargaining history reflects no evidence of an impediment to agency operations during that time.

In view of the foregoing, I find that the LVN's do not share a community of interest sufficiently distinct from the other employees in their job category to warrant separate representation and that to permit separate representation would, in my view, impede effective dealings and

7/ The record does not indicate how much of their time is spent administering medication, nor does it disclose how many of the approximately 20 LVN's are currently qualified to perform this task.

efficiency of agency operations. In these circumstances, I find the unit sought by the CLVNA is not appropriate for the purpose of exclusive recognition, and I shall therefore dismiss its petition.

On the other hand, the unit sought by the AFGE would include all Wage Board and General Schedule employees at the Activity excluding, among others, professional employees. This is essentially the unit which has existed at the Activity since 1968. The history of bargaining in that unit discloses neither a hindrance to agency operations nor to effective dealings. Moreover, all remaining parties, including the Activity, agree that this would be an appropriate unit. I shall therefore find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board employees of the U.S. Public Health Hospital, San Francisco, California, excluding employees engaged in Federal personnel work in other than a clerical capacity, nurses and other professional employees, management officials, and supervisors and guards as defined in the Order. 8/

ORDER

IT IS HEREBY ORDERED that the petition of the California Licensed Vocational Nurses Association in Case No. 70-1803, be, and it hereby is dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged

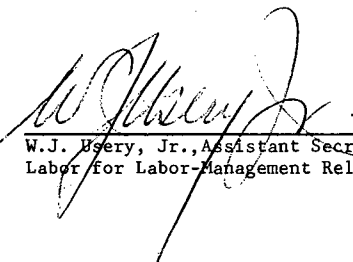
8/ Since the showing of interest of the CLVNA is insufficient to treat it as an intervenor in the unit found appropriate, its name will not appear on the ballot.

July 22, 1971

for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they wish to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO; by the Industrial, Technical and Professional Workers, Division of National Maritime Union, AFL-CIO; by the Clerical, Office & Technical Workers Union, Division of the Military Sea Transport Union affiliated with Seafarers International Union of North America, AFL-CIO; by the United Technical, Industrial & Professional Employees Union of America; or by none of the above labor organizations.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Dated, Washington, D.C.
July 22, 1971



W.J. Geery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

DEPARTMENT OF THE ARMY,
U.S. ARMY ELECTRONICS COMMAND,
FORT MONMOUTH, NEW JERSEY
A/SLMR No. 83

This case involved representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 1904 (AFGE) and the National Federation of Federal Employees, Local 476 (NFFE). The AFGE and NFFE both sought a unit of professional and nonprofessional employees employed in the Research and Development Technical Support Activity (TSA). However, NFFE sought to exclude from that unit employees working within the Fabrication Branch of TSA.

The Assistant Secretary found the unit proposed by NFFE, which would exclude Fabrication Branch employees, to be inappropriate. In making the determination that a broad unit of all TSA employees is appropriate, the Assistant Secretary concluded that the specific function of each of the branches and divisions of TSA is dependent upon the interaction and cooperation of the other sections and is but an integral part of the integrated work process necessary for TSA to fulfill its support function. Furthermore, the Assistant Secretary, in finding a clear community of interest among all the employees of TSA, relied on the close geographic proximity of the Fabrication Branch employees to other employees of TSA, their substantial work contacts, their use of the same physical facilities, a centralized personnel office for all of the Activity's employees and the same supervision at the decision making level. The Assistant Secretary further noted that certain job classifications found in the Fabrication Branch were also found in other branches and that Wage Board employee benefits, if not identical, were similar throughout the proposed unit.

In these circumstances, the Assistant Secretary found the Activity-wide unit as proposed by AFGE would promote effective dealings and efficiency of agency operations. Accordingly, he ordered that the petition filed by NFFE be dismissed and directed that an election be conducted in the unit petitioned for by the AFGE, with professional employees being accorded a self-determination election before being included in a unit with nonprofessionals.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
U.S. ARMY ELECTRONICS
COMMAND, FORT MONMOUTH,
NEW JERSEY

Activity

and

Case No. 32-1788 E.O.

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 476

Petitioner

DEPARTMENT OF THE ARMY,
U.S. ARMY ELECTRONICS
COMMAND, FORT MONMOUTH,
NEW JERSEY

Activity

and

Case No. 32-1843 E.O.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1904

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Charles L. Smith. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including the briefs filed herein, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In its amended petition filed in Case No. 32-1788 E.O., Petitioner, National Federation of Federal Employees, Local 476, herein called NFFE, seeks

an election of all nonsupervisory professional and nonprofessional employees in the Research and Development Technical Support Activity, herein called TSA, of the U.S. Army's Electronic Command located at Fort Monmouth, New Jersey, but excluding, among others, all Fabrication Branch employees. In Case No. 32-1843 E.O., Petitioner, American Federation of Government Employees, AFL-CIO, Local 1904, herein called AFGE, seeks an election of all nonsupervisory employees, both professional and nonprofessional, in TSA, including the employees of the Fabrication Branch. The Activity contends that in order to promote effective dealings the appropriate unit is that petitioned for by the AFGE, which includes all employees of TSA.

Thus, it appears that with the exception of the Fabrication Branch of the Activity's Material Service Division, both Petitioners and the Activity are in agreement that the employees of the four divisions of TSA have a clear and identifiable community of interest and should be considered an appropriate bargaining unit under Section 10(b) of the Order. It is the NFFE's contention that the employees of the Fabrication Branch, based on their classifications, functions, and past bargaining history, lack sufficient commonality to be included within the overall unit.

In compliance with the Electronic Commands Regulation 10-1, effective as of June 30, 1968, and subsequent reorganizations, the Electronics Command Research and Development Directorate was reorganized to form the Research and Development Technical Support Activity. TSA is a technical service organization providing research and development capability for items, techniques, procedures and services that are common to all developmental laboratories of the Electronics Command. It currently consists of four divisions: the Engineering Support Division, the Installation Design and Evaluation Division, the Mathematics and Computer Service Division and the Material Service Division. In turn, the Material Service Division consists of three branches: the Fabrication Branch, which the NFFE is seeking to exclude from the overall unit, the Instrument Calibration and Maintenance Branch and the Logistics Branch.

The record reflects that of the approximate 630 employees in TSA, 270 have Wage Board classifications and 360 have General Schedule classifications. Of these, the Fabrication Branch employs approximately 220 Wage Board and 11 General Schedule employees in its seven technical shops. With the exception of eight Air Conditioning Equipment operators in the Installation Design Division, all Wage Board employees of TSA are to be found in the various branches of the Material Service Division. Testimony discloses that, in general, Wage Board positions in other branches require less skill than those specific skills required for work in the technical shops of the Fabrication Branch. However, certain job classifications in the Fabrication Branch such as woodworker, laborer and fork lift operator are to be found in the other branches. There is also evidence as to interchange of personnel between the Fabrication Branch and other branches and divisions with the majority of the flow of Wage Board employees moving into the Fabrication Branch. Although an Activity program exists whereby Wage Board employees from the Fabrication Branch are promoted to General Schedule classifications throughout the Research and Development Activity, the record does not reflect that such promotions have been made during the past year.

Since the laboratories of the Electronics Command do not have their own support elements, it is TSA's primary mission as a technical service organization to provide such support. Both the Activity and the AFGE contend that the performance of the TSA mission requires the coordinated efforts of each of the divisions and branches and that success of the project is dependent upon their interrelationship, cooperation and teamwork. Although each branch and division performs its own function, testimony discloses that through an integrated work process each is dependent on the other for the successful completion of the particular service to be rendered. Thus, in a typical situation, where a project engineer from one of the laboratories, in conjunction with his work, requires the construction of a physical model, he may request assistance from TSA. Before the model can be constructed in one or more shops of the Fabrication Branch, drawings and examination of designs must be prepared by the engineers and draftsmen in the Engineering Support Division; previous data and possible trial tests on the drawings and designs may be run through the computers of the Mathematics and Computer Service Division for a determination as to whether such a design is feasible; and the Logistics Branch may be contacted with regard to procurement of necessary materials. After the model is constructed, a requirement test may then be conducted on it by members of the Installation Design and Evaluation Division. The record reflects that in the accomplishment of their particular function Fabrication Branch employees generally have direct and functional contact with employees of the different divisions and branches of TSA as well as the laboratories.

With minor exceptions, all divisions of TSA, including the Material Service Division and the shops of the Fabrication Branch, are located in the Hexagon Building and in the Evans Building. The employees of TSA use common physical facilities, such as the cafeteria and rest rooms. All employees have the same Civilian Personnel Office, the same retirement benefits, are under the same wage rates and receive the same overtime benefits and hazardous pay rates. The supervisory hierarchy is common through each of the divisions with most decision making authority such as the approval of administrative leave, promotions, the development of personnel policies and the signing of labor-management agreements, resting with the Director of TSA, who makes the final determinations based on the recommendations of the division and branch chiefs.

With respect to bargaining history, the Research and Development Directorate, the predecessor of TSA, accorded exclusive recognition to the AFGE in October 1964, for the Fabrication Division of the Research and Development Directorate and, subsequently, the parties negotiated and signed an agreement for that unit effective from November 4, 1966, through November 4, 1968. Although the record reveals that this agreement was never renegotiated and there has been no agreement in effect since November 4, 1968, there is no evidence that the Activity withdrew recognition from the AFGE. ^{1/} The evidence reveals

^{1/} Additionally noted is the fact that Research and Development Directorate accorded formal recognition to the NFFE in May 1966, for employees in the Directorate, excluding the Fabrication Division.

that neither the functions nor the operations of the Fabrication Division were changed in the reorganization which established TSA and placed Fabrication as a branch in the Material Service Division.

Viewed in its entirety, I find that the record does not establish a basis for finding a unit of TSA employees excluding Fabrication Branch employees to be appropriate. Section 10(b) of the Executive Order provides for the establishment of a unit on a functional basis when such a unit will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. The record clearly demonstrates, and I so find, that the specialized task of each branch and division of TSA is dependent upon the interaction and cooperation of the other sections of the Activity and each branch is but an integral part of the integrated work process necessary for TSA to fulfill its support mission. I do not view the Fabrication Branch's function as constituting a clear demarcation from those functions of other branches and divisions or from the overall function of TSA. Moreover, the record reflects that Fabrication Branch personnel work in close geographic proximity with the other personnel of TSA and have substantial working contact with these employees; that all employees of TSA use the same physical facilities and have the same centralized personnel office; and that all employees are under the same supervision at the decision making level. Additionally noted is the fact that there is some overlapping of Fabrication Branch job classifications in other branches of the Material Service Division and that working conditions, rates of pay and other benefits for Wage Board employees in the unit proposed by the NFFE are similar, if not identical, to those enjoyed by Wage Board employees throughout TSA.

Based on the foregoing, I conclude there exists a clear and identifiable community of interest among all the employees of TSA, including those in the Fabrication Branch. Moreover, such a comprehensive unit will, in my view, promote effective dealings and efficiency of agency operations. Accordingly, I find the unit sought by the AFGE to be appropriate. ^{2/} I also find based on the foregoing, that the employees in the unit sought by the NFFE do not share a clear and identifiable community of interest separate and apart from

^{2/} I do not consider the Activity's previous grant of exclusive recognition to the AFGE for the employees in the Fabrication Branch to bar the inclusion of that Branch in the overall unit sought by the AFGE. Noted particularly in this respect is the fact that neither the AFGE nor the Activity raised the contention that the previous exclusive recognition in the Fabrication Branch would bar the inclusion of that Branch in the claimed unit sought. Moreover, as testified by the AFGE's president, when the AFGE petitioned for the broad TSA unit in this case, it understood that it was putting its exclusive recognition status in the Fabrication Branch "on the line." In these circumstances, I find that by petitioning for exclusive recognition and proceeding to an election in an overall unit encompassing the Fabrication Branch, the AFGE will have, in effect, waived its exclusive recognition status with respect to employees in that Branch, and, therefore, may continue to represent those employees on an exclusive basis only in the event it is certified for its petitioned for unit in Case No. 32-1843 E.O.

other employees of TSA and that such a unit will not promote effective dealings and efficiency of agency operations. Accordingly, I shall order that the NFFE's petition be dismissed.

I find that the following employees of the Activity may constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All professional and nonprofessional employees in the Research and Development Technical Support Activity of the U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 3/

As stated above, the unit found appropriate includes professional employees. 4/ However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees in the Research and Development Technical Support Activity, U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees in the Research and Development Technical Support Activity, U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

3/ The parties stipulated at the hearing that "temporary employees" would be excluded from the unit. Noting that the record does not set forth any facts as to how the parties define "temporary employees," I will make no findings with regard to employees in this category. See, in this regard, United States Army Training Center at Fort Leonard Wood, Missouri, A/SLMR No. 27.

4/ Since the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc., to provide a basis for a finding of fact that persons in particular classifications are professional, I will make no findings as to which employee classifications constitute professional employees.

The employees in the nonprofessional voting group (b) will be polled whether they desire to be represented by the AFGE, the NFFE, 5/ or neither.

The employees in the professional voting group (a) will be asked two questions on their ballot: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether they wish to be represented for the purpose of exclusive recognition by the AFGE, the NFFE or neither. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether the AFGE, the NFFE or no labor organization was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees in the Research and Development Technical Support Activity, U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate.

5/ As the NFFE's showing of interest is sufficient to treat it as an intervenor in Case No. 32-1843 E.O. I shall order that its name be placed on the ballot. However, because the unit found appropriate is larger than the unit it sought initially, I shall permit it to withdraw from the election upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision.

for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees of the Research and Development Technical Support Activity, U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees of the Research and Development Technical Support Activity, U.S. Army Electronics Command, Fort Monmouth, New Jersey, excluding all non-professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

ORDER

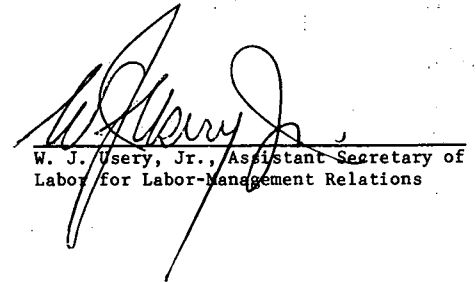
IT IS HEREBY ORDERED That the petition filed in Case No. 32-1788 E.O. be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of

Government Employees, AFL-CIO, Local 1904; or by the National Federation of Federal Employees, Local 476; or by neither.

Dated, Washington, D.C.
July 22, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

July 22, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VETERANS ADMINISTRATION CENTER,
TOGUS, MAINE
A/SLMR No. 84

This case involved representation petitions filed by Maine State Nurses Association (MSNA) and American Federation of Government Employees, AFL-CIO, Local 2610 (AFGE). The MSNA sought a unit of registered nurses and nursing instructors of the Veterans Administration Center, Togus, Maine. The AFGE petitioned for a unit of all nonprofessional classified employees of the Activity.

The Intervenor, National Federation of Federal Employees, Local 902 (NFFE) has been the exclusive representative for the above petitioned for employees since 1966 in two separate units, one covering all professional employees and the other all nonprofessional classified employees. The NFFE contended that the MSNA sought to fragment the larger recognized unit of professional employees by limiting its claimed unit to registered nurses and nursing instructors.

In denying the proposed severance of registered nurses and nursing instructors from the larger unit of professional employees, the Assistant Secretary noted the existence of an effective and fair collective bargaining relationship, and applied the policy enunciated in United States Naval Construction Battalion Center, A/SLMR No. 8.

With respect to the unit sought by the AFGE, which was the same unit represented currently by the NFFE, the Assistant Secretary, noting the absence of any evidence that such unit would not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491, determined that such unit was appropriate and directed an election therein.

A/SLMR No. 84

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
VETERANS ADMINISTRATION CENTER,
TOGUS, MAINE 1/

Activity
and
MAINE STATE NURSES ASSOCIATION
Petitioner Case No. 31-4301 E.O.
and
NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 902
Intervenor
VETERANS ADMINISTRATION CENTER,
TOGUS, MAINE
Activity
and
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2610 2/
Petitioner Case No. 31-4307 E.O.
and
NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 902
Intervenor

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Robert J. Tighe. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the brief filed by the Maine State Nurses Association, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 31-4301 E.O., the Maine State Nurses Association, herein called MSNA, seeks a unit of all full-time and part-time non-supervisory and nonmanagerial registered professional nurses and nursing instructors of the Veterans Administration Center, Togus, Maine, excluding all managerial officials, employees engaged in Federal personnel work in other than a purely clerical capacity, all nonprofessional and all other professional employees, and supervisors and guards as defined in the Order.

In Case No. 31-4307 E.O., the American Federation of Government Employees, AFL-CIO, Local 2610, herein called AFGE, seeks a unit of all classified employees of the Veterans Administration Center, Togus, Maine, excluding managerial employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, and supervisors and guards as defined in the Order.

The Activity takes no position regarding the appropriateness of either of the requested units. The Intervenor, National Federation of Federal Employees, Local 902, herein called NFFE, contends that the MSNA seeks to fragment the larger recognized unit of professional employees, inasmuch as a unit limited to registered nurses and nursing instructors, would result in other categories of professional employees being excluded.

With respect to bargaining history, in 1966 the Activity accorded exclusive recognition to the NFFE covering two separate units. A current agreement, entered into on January 28, 1967, contains an automatic renewal clause and defines the units covered as (1) all professional employees except management, supervisory, and any time-limited appointees; and (2) all classified employees except management, supervisory, personnel office employees, and any time-limited appointees. 3/

The Veterans Administration Center consists of a Regional Office which administers a veterans benefits' program and a hospital engaged in

3/ There is no contention that the petitions herein were not timely filed.

the care and treatment of veterans. The overall management of the Center is under the authority of a nonmedical Director. The Assistant Center Director heads the Department of Veterans' Benefits and all divisions thereunder. The Department of Medicine and Surgery of the Center is under the jurisdiction of the Chief and Associate Chief of Staff.

The Activity employs a total nonsupervisory complement of approximately 803 professional and nonprofessional employees, of whom 155 are professional employees and 434 are nonprofessional employees represented by the NFFE in each of the separate units noted above. 4/ Of the 155 employees comprising the recognized professional unit, 99 are registered nurses. The remaining 56 professional employees include, among others, therapists, doctors, dentists, pharmacists, librarians, and social workers.

The registered nurses and nursing instructors sought by the MSNA, are assigned to nursing services within the Department of Medicine and Surgery. The nurses work on a team which usually consists of a registered nurse and a nursing assistant. These employees rotate among three shifts within 24 hours, seven days a week. The supervisory hierarchy consists of the head nurse, day, evening and night nursing supervisors, assistant chief nurse, associate chief nurse and the chief nurse who reports to the Chief of Staff. Staff nurses, as well as doctors and dentists, are appointed to the Department of Medicine and Surgery under authority of Title 38 of the U.S. Code, a separate statute regulating their employment. There are specific educational and training requirements for a registered nurse.

As stated above, the NFFE has been the exclusive bargaining representative of the nurses, as part of a larger professional employees' unit, since 1966. There is no evidence that the nurses' interests have been neglected by the NFFE, nor is there any evidence that the NFFE has failed or refused to represent any of the nurses. 5/

In United States Naval Construction Battalion Center, A/SLMR No. 8, I found that, absent unusual circumstances, where the evidence shows that an established, effective and fair collective bargaining relationship existed, a proposed severance from an established larger unit would not be permitted. Since the record in the subject case reveals no such unusual circumstances, I find that the unit sought by the MSNA is inappropriate for the purpose of exclusive recognition under Executive Order 11491, and shall, therefore, dismiss its petition.

The petition filed by the AFGE covers the same unit of nonprofessional classified employees represented currently by the NFFE. There is no contention that this unit is inappropriate nor does the evidence indicate that

4/ The remaining 214 are Wage Board employees who are represented currently on an exclusive basis by the AFGE.

5/ While certain provisions of the single negotiated agreement executed between the Activity and the NFFE covering both the professional employees and the nonprofessional classified employees do not apply to the nurses, the record reveals that this is based on the fact that the nurses are governed by separate regulations under Title 38 of the U.S. Code.

July 26, 1971

the employees included in this unit do not share a clear and identifiable community of interest, or that such a unit would not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491.

In these circumstances, I find that the following unit petitioned for by the AFGE is appropriate for the purpose of exclusive recognition under Executive Order 11491:

All classified employees of the Veterans Administration Center, Togus, Maine, excluding employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

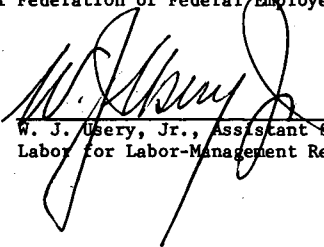
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 31-4301 E.O. be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 2610; or by the National Federation of Federal Employees, Local 902; or by neither.

Dated, Washington, D. C.
July 22, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

THE VETERANS ADMINISTRATION HOSPITAL,
HINES, ILLINOIS
A/SLMR No. 85

This case involves a severance request by the National Federation of Federal Employees, Local 428 (NFFE) for a unit of telephone switchboard operators currently included in a unit of all General Schedule employees of the Activity, which is represented on an exclusive basis by the General Service Employees Union, Local 73, affiliated with Service Employees International Union, AFL-CIO (GSEU).

The NFFE contends that the proposed unit is appropriate because the operators have a clear and identifiable community of interest distinct from the other employees in the current unit and questions whether they have been adequately represented by the GSEU. The Activity and the GSEU contend that the current unit lends itself to the efficient operation of the hospital and has promoted effective dealings with its employees.

The Assistant Secretary concluded that the requested unit was inappropriate. Citing the policy set forth in United States Naval Construction Battalion Center, A/SLMR No. 8, "that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances," he found no "unusual circumstances" in this case. He noted that no evidence was adduced to show that the employees in the claimed unit had been denied effective representation by the GSEU. Rather, he found that the evidence showed that the claimed employees had been represented effectively and that the existing bargaining relationship between the Activity and the GSEU has been maintained in a harmonious atmosphere. In these circumstances, the Assistant Secretary found no basis for permitting severance of the claimed unit from the existing unit of all General Schedule employees and he therefore ordered that the NFFE's petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

THE VETERANS ADMINISTRATION HOSPITAL,
HINES, ILLINOIS

Activity

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 428

Case No. 50-5007

Petitioner

and

GENERAL SERVICE EMPLOYEES UNION, LOCAL 73,
AFFILIATED WITH SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer William J. Thyer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Petitioner, National Federation of Federal Employees, Local 428, herein called NFFE, seeks an election in the following unit:

"Included switchboard operators employed at the Hines Veterans Hospital, and excluded all management officials, supervisors, guards, employees engaged in Federal Personnel work in other than a purely clerical capacity, and professional employees." ^{1/}

Intervenor, General Service Employees Union, Local 73, affiliated with Service Employees International Union, AFL-CIO, herein called GSEU, is the current exclusive bargaining representative for a unit composed of all General Schedule regular work force employees of the Activity. The telephone switchboard employees in the claimed unit, who are classified as General Schedule employees, are included in the unit represented by the GSEU. Both the GSEU and the Activity take the position that the existing unit lends itself to the efficient operation of the Hospital and has promoted effective dealings with the employees. The Activity also maintains that a community of interest exists between the telephone switchboard operators and various other General Schedule employees of the Hospital in such areas as personnel policies, supervision, working conditions, work sites and employee facilities.

The NFFE contends that its proposed unit is appropriate because the telephone switchboard operators have a clear and identifiable community of interest distinct from other General Schedule employees in the existing unit. Further, the NFFE questions whether the employees in the claimed unit have been adequately represented by the GSEU and asserts that the proposed unit will promote efficient agency operations as well as effective dealings.

The Veterans Administration Hospital, Hines, Illinois, is one of four main activities on the Hines compound. The other three are the Data Processing Center, the Supply Department and the Marketing Center. These activities are separate and distinct from the Hospital. They do, however, receive telephone service through the Hospital switchboard. The Hospital has approximately 3,000 employees, including a full and part-time staff. The Director heads the Hospital staff. The Chief of Staff is in charge of the Professional Services and the Assistant Director is in charge of the administrative functions at the Hospital. There are three basic groups of employees at the

^{1/} The unit description appears as amended at the hearing.

Hospital, i.e. the medical personnel, (physicians, dentists, and nurses), Wage Board employees, and General Schedule employees. There are approximately 1,300 General Schedule employees, 850 Wage Board employees and 850 physicians, dentists and nurses. Medical personnel work in the Medical Services, Dental Services and Nursing Services. Wage Board employees are concentrated in four departments: Engineering, Dietetic Food Service, Building Management and House-keeping, Laundry and Supply. ^{2/} General Schedule employees work in all departments of the Hospital.

The telephone switchboard operators at the Hospital are General Schedule employees and are in the so-called 300 series which covers a wide range of clerical employees, administrative employees and office equipment operators. The telephone operators are in the telephone unit which constitutes one unit of the Office Services Section of the Medical Administration Division. This unit consists of 8 operators, a supervisor and an assistant supervisor.

The telephone operators are assigned to, and are physically located in the Hines Veterans Hospital, but they provide service for both the Hospital and the other activities located on the Hines compound. They are required to have one year of experience in the operation of a switchboard, which qualification is not applicable to other General Schedule employees in the existing unit. The telephone unit is located in close proximity to employees in several other units in the Office Services Section who are concerned with the communication function. These include the Information Receptionist and Teletypist. Telephone operators handle local and long distance calls received through the switchboard and put them through to the proper extensions. They also handle emergency paging throughout the Hospital. The operators are one of several groups of employees who work 3 shifts a day, seven days a week. Others who work 3 shifts include employees in the nursing service, the admissions unit and the Information Receptionist. The evidence reveals that on the evening and night tours of duty, provision has been made for the Information Receptionist to receive incoming calls on a limited basis when it is necessary for the operator to leave the switchboard. Telephone operators have an

^{2/} A few Wage Board employees work as caretakers and laboratory helpers.

immediate supervisor in the unit, but are also supervised by the Chief, Office Services Section. This latter individual provides assistance to the immediate supervisors in his Section with regard to scheduling, planning, employee relations and other matters as needed.

The record reveals that telephone operators are subject to the same personnel policies and practices, including classification, pay, performance ratings, promotion, disciplinary actions and leave as the other General Schedule employees at the Hospital. They also use the same facilities as the other employees and work generally under the same conditions. Personnel and grievance problems for all employees in the present bargaining unit, including the telephone operators, are handled by the Personnel Office at the Activity.

With respect to the history of bargaining, the GSEU was granted exclusive recognition by the Activity on February 27, 1968, under Executive Order 10988, for a unit of all General Schedule employees at the Hospital, excluding guards, firefighters, managerial executives, supervisors, professional employees and employees engaged in Federal personnel work in other than a purely clerical capacity. An agreement was negotiated by the parties and became effective on January 17, 1969. The agreement was for a one year period and was automatically renewable. ^{3/} Negotiations for a supplemental agreement were in progress at the time of the hearing in this case.

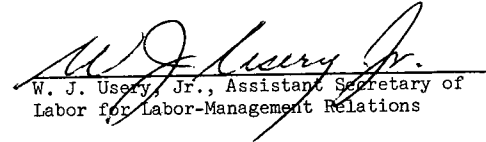
The record discloses that a cooperative atmosphere has been maintained between the Activity and the GSEU throughout their bargaining relationship. For example, a weekly meeting is held between representatives of the GSEU and the Personnel Office of the Activity to discuss matters concerning personnel policies and practices. These meetings have resulted in the implementation of certain practices designed to benefit employees in the unit. The record reveals that these meetings have included specific discussions concerning the problems of the telephone operators as well as the other General Schedule employees of the Activity. Also, in this regard, there is evidence which indicates that the GSEU has been influential

^{3/} There is no contention that an agreement bar exists in this proceeding.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 50-5007 be, and it hereby is, dismissed.

Dated, Washington, D.C.
July 26, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

in resolving many problems encountered by the Activity's telephone operators. Among these were restrictions on their leaving the work area during the morning coffee break, delays in receiving "pay slips," i.e. earnings and leave statement, and alleged favoritism with respect to shift and holiday assignments. As a result of the efforts of the GSEU, the operators now are permitted to leave the work area during coffee breaks, receive their "pay slips" without delay, and have obtained rotation of shift assignments with work schedules posted two weeks in advance of a change. In addition, some training courses have been established to enable employees in the unit, including telephone operators, to qualify for other positions and the record indicates that some telephone operators have participated in these courses. There is no evidence in the record that the interests of the telephone operators have been handled inadequately by the GSEU or that the GSEU has ever declined to represent the operators. ^{4/}

As I have stated previously in United States Naval Construction Battalion Center, A/SLMR No. 8, "where the evidence shows an established, effective and fair bargaining relationship in existence, a separate unit carved out of the existing unit will not be found to be appropriate except in unusual circumstances."

I find no "unusual circumstances" in this case. Thus, no evidence was adduced to show that the employees in the claimed unit have been denied effective representation by the GSEU. Rather, the record indicates that these employees have been represented effectively and that a harmonious atmosphere has been maintained between the Activity and the GSEU throughout their bargaining relationship. In these circumstances, I find no basis for concluding that the telephone operators in the petitioned unit should be severed from the existing unit. Accordingly, I find the unit sought by the NFFE is not appropriate for the purpose of exclusive recognition, and shall, therefore, dismiss its petition.

^{4/} The fact that there has been some dissatisfaction among the telephone operators concerning their current work facilities and a problem concerning parking lot accommodations for an operator on the evening shift was not considered, standing alone, to show a lack of adequate representation.

July 27, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
SACRAMENTO ARMY DEPOT,
SACRAMENTO, CALIFORNIA
A/SLMR No. 86

This case, which arose as a result of a representation petition filed by the National Association of Government Employees, Local R12-733 (NAGE), presented a question whether employees classified as "temporary" by the Activity should be included in the petitioned for unit and whether the Assistant Secretary is required to acquiesce in the parties' position as to temporary employees because there is no dispute between the parties on this question.

The Assistant Secretary, relying on his decision in Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25, concluded that neither the Order nor the Regulations which implemented the Order required that the Assistant Secretary must accept unit exclusions because the parties agree on such matters or that an election must be held in every case where the parties agree to the appropriateness of the unit sought.

Under all the circumstances, the Assistant Secretary concluded that those employees classified as "temporary" by the Activity, have a substantial and continuing interest in terms and conditions of employment and should be included within the petitioned for unit, if an election were directed. The Assistant Secretary found that both the temporary and permanent employees at the Activity have the same job descriptions, perform the same duties, are subject to the same general working conditions and share common employment benefits. Moreover, all of the temporary employees in question have been employed by the Activity for periods exceeding 90 days and have a reasonable expectancy of regular and continuous employment for substantial periods of time up to and exceeding one year.

With respect to the appropriateness of the unit sought by the NAGE, the Assistant Secretary found that insufficient evidence had been adduced at the hearing as to whether the employees in the unit sought had a clear and identifiable community of interest and whether such a unit will promote effective dealings and efficiency of agency operations. As a result, the Assistant Secretary decided that the record provided a less than adequate basis for making a determination with regard to the appropriateness

of the unit sought. In view of the foregoing, the Assistant Secretary determined that the case be remanded to the appropriate Regional Administrator for further hearing for the purpose of receiving evidence concerning the appropriateness of the petitioned for unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
SACRAMENTO ARMY DEPOT,
SACRAMENTO, CALIFORNIA

Activity

and

Case No. 70-1585

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R12-733 (IND)

Petitioner

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 646 (IND)

Intervenor

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1681, AFL-CIO

Intervenor

DECISION AND REMAND

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Richard F. de la Garza. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. Petitioner, National Association of Government Employees, Local R12-733, herein called NAGE, seeks an election in a unit of all General Schedule employees serviced by the Activity's Civilian Personnel Office, but excluding "temporary" employees, 1/ professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, supervisors and guards. 2/

At the outset of the hearing, the NAGE questioned the propriety of the Area Administrator's refusal to approve an agreement for consent election and moved to require the Area Administrator to approve the parties' agreement for consent election. 3/ Thereafter, at the close of the hearing, the NAGE again protested the actions taken by the Area Administrator and the Regional Administrator and moved to have the NAGE reimbursed for all costs incurred by it as the result of the hearing. In this latter motion, the NAGE was joined by the National Federation of Federal Employees, Local 646, herein called NFFE. As I have indicated previously, 4/ in the processing of representation cases, where it appears that questions of policy are present, there is no basis in either Executive Order 11491 or in the Regulations promulgated thereunder which would require that because the parties are in agreement on the unit, an election must be held automatically without resort to a hearing on the issues involved. Furthermore, the Assistant Secretary is not bound by Agency determinations regarding the categorization of employees in a unit claimed to be appropriate for exclusive recognition. With respect to the requests for reimbursement

1/ The appointments of all "temporary" employees of the Activity are limited to one year or less.

2/ The unit appears as amended at the hearing.

3/ Although the parties did not dispute the appropriateness of the claimed unit, the Area Administrator, based on the view that a policy question was raised as to the exclusion of employees designated by the Activity as "temporary," refused to approve the parties' consent election agreement. Basically, it is the NAGE's contention that where, as here, there is no dispute among the parties as to the appropriateness of the unit sought, the Assistant Secretary has no basis for holding a hearing and must direct an election. The NAGE further submits that the position taken by the Area Administrator is inconsistent with the established policy of permitting the exclusion of temporary employees.

4/ See Army and Air Force Exchange Service, White Sands Missile Range Exchange, White Sands Missile Range, New Mexico, A/SLMR No. 25.

of costs incidental to the hearing, neither the Order nor the Regulations provide for the reimbursement of costs incurred by the parties as the result of their participation in such proceeding. In these circumstances, the Hearing Officer's denial of the NAGE's motion to require the Area Administrator to approve the parties' agreement for consent election is hereby affirmed and the motions by the NAGE and the NFFE for reimbursement of costs incurred as a result of the hearing in the matter are hereby denied.

The record discloses that the "temporary" employees sought to be excluded from the unit requested by the NAGE consist of 41 General Schedule employees currently working for the Activity under appointments which vary from three months to one year. With the exception of a nurse, GS-5 5/ and an electrician technician, GS-7, all of these employees occupy clerical positions which are generally at the entrance grade level of GS-2 or GS-3. According to the Activity, all of the employees in question are classified as "temporary" inasmuch as they are initially appointed for short term periods not to exceed one year.

The record reveals that because the mission of the Activity involves the repair and supply of equipment used by the Armed Forces, the need for personnel at the Sacramento Army Depot is dependent upon the extent and duration of the U.S. involvement in Vietnam. For this reason, employees hired by the Activity are hired under temporary appointments which, almost invariably, are extended beyond a one year period. Moreover, based on the Activity's employment projection, the employment of approximately 90 percent of the employees currently working under temporary appointments will be extended for additional periods of up to one year. 6/

The evidence indicates that all of the employees sought to be excluded have the same job descriptions and perform the same duties as those employees designated as permanent by the Activity. Also, "temporary" employees are paid on the same salary scale, work the same number of hours, accrue the same annual and sick leave and are subject to the same general working conditions as those employees classified by the Activity as permanent. The evidence further discloses that "temporary" employees are automatically included in the employees' Civilian Welfare Council and participate along with all other employees in the recreational activities of such organization.

5/ It appears that she is the only employee in the claimed unit working on a part-time basis.

6/ Of the 41 "temporary" employees involved herein, more than 50 percent (23) have been continuously employed by the Activity for periods in excess of one year. All of the 41 employees in question have been continuously employed for periods exceeding 90 days.

Thus, it is apparent from the foregoing facts that the employees which the NAGE seeks to exclude have been employed on a regular basis for substantial periods of time under circumstances which demonstrate that they share, along with other employees, a substantial and continuing interest in the terms and conditions of employment. Although designated as "temporary" by the Activity, it is clear that the employees in question have a reasonable expectancy of regular and continuous employment for substantial periods of time up to and exceeding one year.

Based on the foregoing and for the reasons enunciated in United States Army Training Center and Fort Leonard Wood, at Fort Leonard Wood, Missouri, A/SLMR No. 27, I find that, if an election were directed, those employees designated as "temporary" by the Activity should be included within the unit. 7/

With respect to the appropriateness of the unit sought, there is insufficient evidence to indicate whether or not the employees in the claimed unit have a clear and identifiable community of interest and whether such a unit will promote effective dealings and the efficiency of agency operations. Thus, the record was deficient with respect to such matters as the Activity's organizational structure; the scope and composition of the proposed unit, including whether the unit encompasses General Schedule employees of tenant activities serviced by the Civilian Personnel Office; the job classifications, geographic location and community of interest of any tenant activity employees included within the proposed unit; and with respect to information regarding employees not covered by the NAGE's petition, including whether they are represented currently and, if so, the scope of their presently recognized bargaining units.

Since, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the claimed unit, I shall remand the subject case to the appropriate Regional Administrator for the purpose of reopening the record and securing additional evidence concerning the appropriateness of the unit sought by the NAGE.

7/ Such inclusion should not be construed as an abandonment of the general principle that temporary employees normally are excluded from bargaining units.

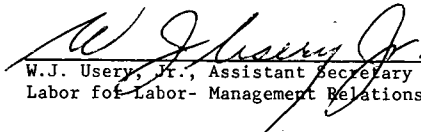
ORDER

August 3, 1971

IT IS HEREBY ORDERED that the subject case be, and it hereby is, remanded to the appropriate Regional Administrator.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Dated Washington, D.C.
July 27, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

VETERANS ADMINISTRATION HOSPITAL,
CHARLESTON, SOUTH CAROLINA
A/SLMR No. 87

This case involves a complaint filed by Service Employees International Union, Local 552, AFL-CIO (SEIU) against Veterans Administration Hospital, Charleston, South Carolina (VA) alleging violations of Sections 19(a)(1) and (6). The 19(a)(6) "refusal to bargain" contention was based on an allegation that the VA implemented changes in working conditions set forth in the parties' negotiated agreement without required consultation with the SEIU, the exclusive representative of the VA's employees. The 19(a)(1) allegation was based on the VA's alleged failure to process grievances which had been filed by employees over the implementation of the changes in working conditions.

The VA contended that any disputes over such changes which may have been implemented were matters of contract interpretation not subject to the provisions of the Executive Order and, further, that all issues in dispute had been resolved to the satisfaction of the SEIU. With respect to the processing of grievances, the VA contended that any delays in such processing were based on its good faith belief that the matters raised in them had been resolved. The VA also contended that certain procedural errors and deficiencies in the processing of the case required a dismissal of the complaint.

In its post-hearing brief, the VA raised, for the first time, a contention that no pre-complaint charge had been filed as is required by the Assistant Secretary's Regulations. The Assistant Secretary denied the motion to dismiss based on this contention, finding that orderly processing of unfair labor practice complaints requires that such alleged pre-complaint defects be raised prior to the issuance of the Notice of Hearing. The second procedural issue was raised by the VA at the hearing and involved a contention that the 19(a)(6) portion of the complaint lacked specificity. The Assistant Secretary found that the contents of the complaint contained sufficient detail to comply with the Regulations, noting particularly that there was no evidence to indicate that the VA had any misconception as to what allegations it would have to defend against or that it was denied an adequate opportunity at the hearing to present its defense.

With respect to the merits of the 19(a)(6) allegations, the Assistant Secretary, in agreement with the Hearing Examiner, found that the VA had unilaterally implemented changes in negotiated terms and conditions of employment involving work scheduling. While noting that all alleged "contract violations" do not constitute violations of the Order, the Assistant Secretary concluded that where a party initiates a course of action which clearly contravenes the agreed upon terms of a negotiated agreement, without prior negotiations, the bargaining requirements of the Order have not been met. Applying this guideline to the facts in the above-entitled case, the Assistant Secretary concluded that the unilateral change implemented by the VA constituted a violation of Section 19(a)(6) of the Executive Order. The Assistant Secretary further concluded that this conduct violated Section 19(a)(1) of the Order in that it interfered with the Section 1(a) rights of employees by evidencing to them that it could act unilaterally with respect to their negotiated terms and conditions of employment without regard to their exclusive representative.

A 19(a)(1) violation also was found by the Assistant Secretary based on the manner in which employee grievances were processed. He concluded in this regard that the VA had been unreasonably dilatory in the processing of grievances and that such conduct inherently interferes with the rights of employees to utilize the negotiated grievance procedure, notwithstanding the Activity's "good faith" belief that there was no need for further processing of the grievances.

The Assistant Secretary ordered that the VA cease and desist from unilaterally changing negotiated working conditions without consulting, conferring or negotiating with the SEIU and that it cease refusing to process or cease dilatorily processing the grievances of employees.

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

VETERANS ADMINISTRATION HOSPITAL
CHARLESTON, SOUTH CAROLINA

Respondent

and

Case No. 40-1978(CA)

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 552, AFL-CIO

Complainant

DECISION AND ORDER

On April 15, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it take certain affirmative action as set forth in the attached Hearing Examiner's Report and Recommendations. Thereafter, the Respondent filed exceptions and a supporting brief with respect to the Hearing Examiner's Report and Recommendations.^{1/}

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in the subject case, including the exceptions, statements of positions and briefs, I hereby adopt the findings, conclusions, and recommendations of the Hearing Examiner to the extent consistent herewith.

^{1/} Complainant filed no exceptions to the Hearing Examiner's Report and Recommendations.

The amended Complaint in the instant case was filed by the Service Employees International Union, Local 552, AFL-CIO, (herein called the Complainant) against the Veterans Administration Hospital, Charleston, South Carolina (herein called Respondent). It is alleged that the Respondent violated Section 19(a)(6) of Executive Order 11491 by the implementation of changes without required consultation with the Complainant, the exclusive representative of employees of the Respondent.^{2/} It is alleged further that the Respondent violated Section 19(a)(1) of the Order by failing and refusing to process certain employees' grievances. With respect to the merits of the 19(a)(6) allegation, the Respondent contends that any disputes over changes which may have been implemented are matters of contract interpretation not subject to the provisions of the Executive Order and that all issues in dispute have been resolved to the satisfaction of the Complainant. As to the 19(a)(1) allegations, the Respondent contends that any delays in the processing of grievances were based on a good faith belief that the matters raised in those grievances had been resolved. The Respondent also contends that certain procedural errors and deficiencies in the processing of the case require a dismissal of the complaint.

The essential facts of the case, which are not in dispute, are set forth, in detail, in the Hearing Examiner's Report and Recommendations, and I shall repeat them only to the extent necessary.

As noted above, the Respondent seeks the dismissal of the complaint on, among other things, the basis of alleged procedural defects. In this respect, in its post-hearing brief, the Respondent raised for the first time a contention that no pre-complaint charge had been filed as is required by Section 203.2 of the Assistant Secretary's Regulations. Further, as there had been no charge, the Respondent contends that the report of investigation could not have been filed with the complaint, as is required by Section 203.3(e) of the Regulations. The Hearing Examiner rejected the Respondent's contentions in this regard concluding that these matters had been untimely raised.

I agree with the Hearing Examiner that the Respondent's assertion that no pre-complaint charge was filed in accordance with the Assistant Secretary's Regulations should have been made to the Area Administrator during the investigation period provided for in Section 203.5 of the Regulations and certainly prior to the time the Regional Administrator issued the Notice of Hearing in this case. The establishment of time

^{2/} The Respondent's contention of "lack of specificity" with respect to this allegation is discussed later in this Decision.

limitations for such procedural contentions is necessary for the orderly processing of unfair labor practice complaints. Where, as here, the Respondent had an adequate opportunity to raise such issue prior to the hearing, I find that it would not effectuate the purposes of the Order to permit this matter to be raised, for the first time, either during the hearing or in a post-hearing brief. Accordingly, the Respondent's motion to dismiss, based on the Complainant's alleged noncompliance with the pre-complaint charge requirements of the Assistant Secretary's Regulations, is hereby denied.^{3/}

At the hearing, the Respondent, for the first time, contended that the complaint filed in this case lacked specificity with respect to the 19(a)(6) allegation and on that basis should be dismissed. The Hearing Examiner, in addition to finding such a contention to be untimely raised,^{4/} concluded that the complaint was sufficient to meet the "purpose" of putting the Respondent on notice as to what allegations it was required to defend against.

In agreement with the Hearing Examiner, I find that the content of the amended Complaint in this case met the requirements of Section 203.3 of the Regulations. While such Complaint may not have been artfully drafted, it clearly alleges that Section 19(a)(6) of the Order had been violated because "changes had been implemented" and that such conduct had been engaged in since March 1970. There is no evidence to indicate that the Respondent had any misconception as to what allegations it would have to defend against or that it was in any way denied an adequate opportunity at

^{3/} Having concluded that the Respondent's contention with respect to the alleged lack of a pre-complaint charge was untimely raised, I find it unnecessary to reach the question as to whether such a charge was, in fact, filed. However, I do not adopt the Hearing Examiner's conclusion that in order to satisfy the charge filing requirement of the Regulations, all that is necessary is that the charged party be "aware" of the alleged unfair labor practice. In this regard, see Report on a Decision of the Assistant Secretary, Report Number 33, where I stated that a charge, among other things, must be in writing to satisfy the requirements of the Regulations.

^{4/} As discussed below, since the Complaint herein is found to be sufficient to satisfy notice requirements, I find it unnecessary to decide whether the Respondent's motion in this regard was timely raised at the hearing.

the hearing to present its witnesses and contentions.^{5/} Accordingly, I find that the Respondent's motion to dismiss based on an alleged lack of specificity in the Complaint is without merit and it is hereby denied.

With respect to the merits of the 19(a)(6) allegation, the Hearing Examiner found that the work schedule of employees is a "matter affecting working conditions" over which the Respondent was obligated to negotiate with the Complainant.^{6/} There is no dispute over the Complainant's contention that a "supplemental" agreement was reached over the manner in which shifts would be scheduled in the Nursing Service but that the system thereafter put into effect was at variance with the terms of that agreement. The Hearing Examiner concluded that a unilateral change in negotiated terms and conditions of employment would be inconsistent with the requirements of Section 19(a)(6) of the Executive Order and rejected the contention of the Respondent that such a "change" should be handled as a "contract dispute" through the grievance procedure. I am in agreement with these conclusions of the Hearing Examiner.

5/ While the Hearing Examiner stated that the Respondent had not alleged "surprise," the record reflects that such a contention was made with respect to certain testimony adduced by the Complainant in support of its 19(a)(1) allegation. However, as was noted by the Hearing Examiner, the Respondent was put on notice by the amended Complaint as to what alleged course of conduct it would have to defend against and there is no contention that its defense was impaired by the alleged "surprise" testimony.

6/ As noted by the Hearing Examiner in his Errata, the Section 11(b) exclusions from the obligation to meet and confer includes, among other things, matters related to the numbers, types, and grades of positions or employees assigned to a "tour of duty" and is not applicable to the issue in dispute in the instant case; that being the manner in which days off would be scheduled. With respect to the Hearing Examiner's additional reference to the fact that the agreement in this case was negotiated prior to the advent of the Order, in view of the inapplicability of Section 11(b) in this case, I find it unnecessary to reach the question whether Section 11(b) is applicable to agreements negotiated prior to the effective date of Executive Order 11491.

- 4 -

The obligation of an agency or activity to consult, confer and negotiate with an exclusive representative and the privilege of such a representative to negotiate a binding agreement would become meaningless if a party to such relationship was free to make unilateral changes in the agreement negotiated. Every dispute which arises as to interpretation or application of a provision of a negotiated agreement does not necessarily constitute a 19(a)(6) or 19(b)(6) violation simply because one party accuses the other of violating such agreement. However, where, without prior negotiations, a party initiates a course of action which clearly contravenes the agreed upon terms of its negotiated agreement, I view the bargaining requirements of the Order to have been violated. In the subject case, the Respondent does not contend that the action it took with respect to scheduling employees in the Nursing Service was based on its interpretation of the parties' agreement and there is no evidence that there was any reasonable question as to the meaning of the agreement in this regard. Accordingly, I find that the Respondent's action in unilaterally altering agreed upon conditions of employment violated Section 19(a)(6) of the Order.^{7/} In these circumstances, I also reject the Respondent's motion to dismiss based on a contention that the alleged change in agreed upon conditions of employment involves a contractual dispute which is not subject to the jurisdiction of the Assistant Secretary.

In agreement with the Hearing Examiner, I find that the Respondent's action in unilaterally changing agreed upon conditions of employment also constitutes a violation of Section 19(a)(1) of the Executive Order.^{8/} Section 1(a) of the Order grants to each employee the right to form, join, and assist a labor organization and Section 19(a)(1) prohibits Agency management from interfering with that right. As in the instant case, where an Activity engages in a course of conduct which has the effect of evidencing to employees that it can act unilaterally with respect to negotiated

7/ In reaching a determination that the unilateral alteration of agreed upon terms of employment may constitute a violation of the Order, I do not necessarily adopt the reasoning of the Hearing Examiner that in the absence of access to the Federal judiciary, enforcement of negotiated agreements must vest in the Assistant Secretary.

8/ My finding of a Section 19(a)(1) violation is based on an independent evaluation of the conduct involved as it applies to that Section, and is not based upon the adoption of a principle that such a finding is "derivative" when another provision of Section 19(a) has been violated.

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terms and conditions of employment without regard to their exclusive representative,^{9/} I find that Section 1(a) rights of employees have been interfered with in violation of Section 19(a)(1) of the Order.

The Hearing Examiner also concluded that the Respondent did not violate Section 19(a)(1) of the Order with respect to the processing of the grievances filed by employees Beulah Hicks and Verajeane Smith. Based on a careful review of the evidence on this issue, I reject the Hearing Examiner's conclusions and recommendations in this respect.^{10/}

With respect to Hicks' grievance, the record reflects that while she was grieving over a lack of a transfer, she also was alleging a contract violation in that she had been given "split days off." It is undisputed that Hicks had been given split days off on two or three occasions in violation of the parties' supplemental agreement. The evidence reveals that Hicks' grievance was processed expeditiously through the first two steps of the grievance procedure. However, it is clear that subsequent to the Respondent's denial of the grievance at the second step, the Union representative's attempts to obtain a third step meeting were futile. Thus, the Complainant's President made four requests of the Activity for a grievance meeting between September 9 and October 5, 1970, but was never able to schedule a meeting. The evidence establishes that Hicks' transfer request was honored on November 12 and her transfer was effective on November 22. However, the record also reflects that from September 9 through October 26, the date the amended complaint was filed, and, in fact, until the opening of the hearing in this case, the Respondent took no affirmative action with respect to the Union's requests for a third step meeting.

With respect to Smith's grievance over split days off scheduling, the record discloses that while a third step meeting was held on her grievance, the Respondent was unresponsive to her request for the fourth step hearing before an Agency Hearing Officer. In this regard, it appears that rather than act affirmatively on the request, the Respondent sought to placate Smith with an offer to attempt "to avoid unnecessary split days off in future scheduling." Understandably Smith did not view

^{9/} Cf. United States Army School Training Center, Fort McClellan, Alabama, A/SLMR No. 42.

^{10/} The Complainant filed no exceptions to the Hearing Examiner's Report and the Recommendations. While the Assistant Secretary's Regulations specify the manner in which exceptions may be filed, there is no requirement that, in the absence of such filing, there will be an automatic adoption of the findings of the Hearing Examiner.

such an offer as a remedy to her complaint concerning a violation of the parties' negotiated agreement and, by letter dated November 1, she renewed her request for a hearing. As of the time of the hearing in this case, the Respondent had not answered that request.

In the circumstances of this case, I do not view Respondent's contention that its conduct as to these grievances, based on a "good faith" belief that there was no need for further processing of the grievances, is controlling or conclusive. I have stated that,

...in the processing of grievances pursuant to a negotiated grievance procedure, good faith is not demonstrated where...an activity informs the exclusive representative that a grievance has been decided not on the basis of the undertakings of the grievance procedure but on the activity's own personal judgments.^{11/}

The foregoing statement would similarly be applicable to an agency or activity which unilaterally determines whether there is need for complying with a request for a grievance meeting which is made pursuant to a negotiated grievance procedure. Quite obviously, granting such a privilege to management could render useless the establishment of bilateral grievance and arbitration machinery.

In the instant case, the grieving employees, both individually and through their exclusive representative, make known their desire for further processing of their respective grievances. In the case of Hicks, the Respondent was clearly dilatory in complying with the request for a third step meeting. While certain circumstances may justify a delay in the holding of grievance meetings, a test of reasonableness must be applied on a case by case basis. Certainly the Complainant in this case had a right to have its request acted upon during a period of approximately 6 weeks, particularly where, as here, the Respondent did not even allege some overriding reason for delaying the meeting. Similarly, in the case of Smith's request for a hearing, as a minimum it was incumbent on the Respondent to respond to that request rather than to conclude unilaterally that the hearing was not necessary. I view the Respondent's conduct in both situations to have the inherent effect of interfering with the rights of employees to utilize the grievance procedure negotiated by their exclusive representative.

^{11/} See United States Army School Training Center, Fort McClellan, Alabama, cited above, at page 6.

Accordingly, based on the foregoing, I find that the Respondent interfered with the Section 1(a) rights of employees in violation of Section 19(a)(1) of the Order by its dilatory conduct in connection with the processing of employee grievances filed pursuant to the terms of the parties' negotiated agreement.^{12/}

CONCLUSION

By changing agreed upon terms and conditions of employment with respect to the scheduling of "days off" without consulting, conferring or negotiating with the exclusive representative, the Respondent violated Section 19(a)(6) of Executive Order 11491. By such conduct, the Respondent also interfered with, restrained and coerced employees in the exercise of rights assured by the Order in violation of Section 19(a)(1). The Respondent further violated Section 19(a)(1) of the Order by its dilatory conduct in connection with the processing of employee grievances filed pursuant to the terms of the parties' negotiated agreement.

THE REMEDY

Having found that the Respondent has engaged in certain conduct prohibited by Section 19(a)(1) and (6) of Executive Order 11491, I shall order the Respondent to cease and desist therefrom and take specific affirmative action, as set forth below, designed to effectuate the policies of the Order.

ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the Veterans Administration Hospital, Charleston, South Carolina, shall:

1. Cease and desist from:

(a) Unilaterally changing the scheduling of the days off of its employees in violation of Article XI, Section 3 of its Supplemental Agreement or any other terms and conditions of employment without consulting, conferring or negotiating with Service Employees International Union, Local 552, AFL-CIO.

^{12/} Since the complaint alleges the Respondent's conduct with respect to the processing of grievances as violative only of Section 19(a)(1), I do not reach the issue whether such conduct would also violate Section 19(a)(6).

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(b) Interfering with, restraining or coercing employees by unilaterally changing their terms and conditions of employment without consulting, conferring or negotiating with their exclusive bargaining representative.

(c) Refusing to process or dilatorily processing the grievances of employees.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

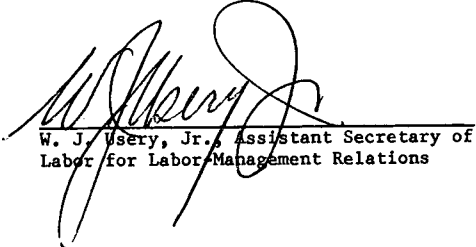
2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

(a) Upon request, consult, confer or negotiate in good faith with Service Employees International Union, Local 552, AFL-CIO in the processing of grievances of employees.

(b) Post at its facility at Veterans Administration Hospital, Charleston, South Carolina copies of the attached notice marked "Appendix" on forms to be furnished by the Assistant Secretary for Labor-Management Relations. Upon receipt of such forms they shall be signed by the Hospital Director and shall be posted and maintained by him for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. The Hospital Director shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D. C.
August 3, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS in the FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT change the scheduling of the days off of our employees in violation of Article XI, Section 3 of our Supplemental Agreement, or any other terms and conditions of employment without consulting, conferring or negotiating with Service Employees International Union, Local 552, AFL-CIO.

WE WILL NOT interfere with, restrain or coerce our employees by changing the terms of the negotiated agreement without consulting, conferring or negotiating with their exclusive bargaining representative.

WE WILL NOT refuse to process or delay, without cause, the processing of grievances of employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

VETERANS ADMINISTRATION HOSPITAL
Charleston, South Carolina
(Agency or Activity)

Dated _____ By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, U. S. Department of Labor whose address is Room 300, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION HOSPITAL
CHARLESTON, SOUTH CAROLINA

Respondent ^{1/}

and

CASE NO. 40-1978 (CA)

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 552, AFL-CIO

Complainant

John S. Mears, Esq., and Joseph Resutsek, Esq.,
of Veterans Administration, Washington, D.C.,
for the Respondent.

William H. Rutland, President, Service Employees
International Union Local 552, AFL-CIO,
Charleston, South Carolina, for the Complainant.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding, heard at Charleston, South Carolina, on March 2, 1971, arises under Executive Order 11941 (herein called the Order) pursuant to a Notice of Hearing issued by the Regional Administrator, Atlanta Region, on January 12, 1971. It was initiated by

^{1/} The Agency is designated on the Notice of Hearing as the "Activity," however, in accordance with established practice in unfair labor practice proceedings, I am designating the Agency as the "Respondent."

an amended Complaint filed by the Complainant on October 26, 1970,^{2/} alleging that the Respondent has engaged in and is engaging in violations of Section 19, subsections (a)(1) and (a)(6) of the Order.

At the hearing both parties were represented by counsel who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, submit oral argument and file briefs. Upon the entire record in this matter, from observation of the witnesses and after due consideration of the briefs filed by the parties, I make the following:

Findings and Conclusions

I. Procedural Issues

Before a discussion of the substantive issues is appropriate it is necessary to dispose of certain procedural matters raised by Respondent. At the hearing Respondent moved to dismiss the Complaint on two grounds: (1) The amended Complaint does not meet the specificity requirements of Section 203.3 of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations (herein called the Assistant Secretary); and (2) Breach of a negotiated agreement is not an unfair labor practice within the meaning of the Order.^{3/} I reserved ruling on the motion to dismiss for the Assistant Secretary noting that under the Rules and Regulations I could only make recommendations with respect to disposition of a case.

In its brief to me, Respondent for the first time alleges that Section 203.2 of the Rules and Regulations of the Assistant Secretary, requiring direct filing of unfair labor practice charges with the party or parties against whom the charge is filed and a minimum of 30 days thereafter for informal attempts to resolve the matter, was not complied with. This allegation was not raised at the hearing, and accordingly a record was not developed with respect to the filing of charges directly with the Respondent. Respondent notes in its brief a decision of the Assistant Secretary in support of its position that

^{2/} An original Complaint was filed by the Complainant on April 24, 1970. However, the amended Complaint includes all allegations upon which the Notice of Hearing issued, and they are the only allegations before me for consideration.

^{3/} I will discuss the second ground in a later section of this Report and Recommendations.

Section 203.2 must be complied with, Report on a Decision of the Assistant Secretary Pursuant to Section 6 of the Executive Order 11491, Report Number 16, November 9, 1970. In that decision the Assistant Secretary sustained a Regional Administrator's dismissal of a Complaint on the ground that no unfair labor practice charges were filed in compliance with Section 203.2. Also, in connection with its allegation that the amended Complaint did not meet the specificity requirements of Section 203.3(c) of the Rules and Regulations, Respondent cites another decision of the Assistant Secretary, Report on a Decision of the Assistant Secretary Pursuant to Section 6 of Executive Order 11491, Report Number 14, October 29, 1970, for the proposition that, "the Assistant Secretary has indicated that his regulations must be followed." In Report Number 14, the Assistant Secretary sustained a Regional Administrator's dismissal of objections to an election on the grounds that the objections and the subsequent request for review did not comply with the Service requirements contained in the Assistant Secretary's Regulations.

I agree with Respondent that the Rules and Regulations of the Assistant Secretary should be complied with, but allegations of failure to comply with the Rules and Regulations should be expeditious. Both reports of the Assistant Secretary cited above involved dismissals by Regional Administrators before notices of hearing had issued. The allegation here of lack of specificity of the Complaint was made for the first time immediately after the hearing opened. There were no contentions made that Respondent was unable to ascertain the issues involved, nor was there a contention made during the hearing that any issues heard were new to the Respondent. The allegation of failure to file proper unfair labor practice charges was made for the first time in a post-hearing brief. In the processing of this case, the Regional Administrator perfected the case to the point of issuing a notice of hearing pursuant to Section 203.8 of the Rules and Regulations, having apparently satisfied himself that the Complaint was sufficiently specific, that 30 days for informal attempts at adjustment after proper filing of unfair labor practice charges had elapsed and that all other requirements for the issuance of a notice of hearing had been met. The thrust of the above discussion is that the allegations of failure to comply with the Rules and Regulations come too late. Such allegations should have been made with the Area Administrator after the Complaint was filed during the investigation period provided for in Section 203.5 of the Rules and Regulations, and certainly at least with the Regional Administrator before Notice of Hearing issued. There is no contention by Respondent that these allegations were made with either the Area or the Regional Administrator. Finally, in this context, another decision of the Assistant Secretary, Report on a Decision of the Assistant Secretary Pursuant to Section 6 of Executive Order 11491, Report Number 25, March 1, 1971, appears to support the conclusion that the allegations of failure to comply with the Rules and Regulations comes too late. In that report the Assistant Secretary sustained the dismissal of a complaint alleging violations of

Section 19(a)(1), (2), and (4) of the Order on the ground that the parties had an established grievance procedure under Section 19(d) of the Order. In his decision the Assistant Secretary stated, "The Assistant Secretary will not proceed in a case when the issue is an alleged violation of Section 19(a)(1), (2), and (4) of the Executive Order, when it is determined an established grievance or appeals procedure covers the complaint, and the agency alleges a lack of jurisdiction under Section 19(d) of the Executive Order." [Emphasis supplied.] Implicit in this decision is that an agency must itself raise any issues of procedural defects, and that they should be raised before a case proceeds to hearing.

Although I have indicated above that the allegations of non-compliance with Sections 203.2 and 203.3 of the Assistant Secretary's Rules and Regulations come too late, I will also discuss the merits of the allegations. With respect to specificity of Complaint, Section 203.3(c) provides that the Complaint shall contain, "a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts and a statement of the portion or portions of the Order alleged to have been violated." As conceded by Respondent in its brief, this proceeding is based on the allegations of the amended complaint filed on October 26, 1970, on a form prescribed by the Assistant Secretary. The Amended Complaint clearly states the portions of the Order alleged to have been violated. It states as violations of Section 19(a)(1) of the Order the alleged failure of Respondent to proceed to later steps of the grievance procedure on the grievances of Verajean Smith and Beulah Hicks. With respect to allegations of violations of Section 19(a)(6) of the Order, the Amended Complaint alleges that changes have been implemented by Respondent without conferring with Complainant, and by references made in the Amended Complaint to the Original Complaint it is implicit that the changes referred to were those caused by the actions of Mrs. Morson, Chief of Nursing Service. Of course, it is apparent that the Amended Complaint is not artfully drafted and is somewhat vague and ambiguous. However, the purpose of a complaint is to put the Respondent on notice as to what allegations it must defend against, and the allegations of the Amended Complaint were sufficient to give the Respondent such notice. There was no contention made by Respondent of "surprise" at the substantive issues raised at the hearing, nor was there any indication that Respondent was unable to defend against those issues.

With respect to the allegations made in Respondent's brief of non-compliance with Section 203.2 of the Assistant Secretary's Rules and Regulations, the purpose of that section is to encourage informal resolutions of unfair labor practices. There is no specified form or

formal procedure prescribed by the Assistant Secretary for filing unfair labor practice charges directly with the Agency involved. In my opinion all that is required is that the charging party make the charged party aware of the alleged unfair labor practices to permit attempts at resolution. The record in this class clearly reveals that the Respondent was aware of Complainant's allegations for much more than 30 days before October 26, 1970, and there was adequate opportunity for resolution. In fact, one of the contentions made by the Respondent at the hearing is that the matters complained of by Complainant have already been resolved and there is no need for a remedy.

In view of the above, I will recommend that the Assistant Secretary deny Respondent's motion for dismissal on procedural grounds.

II. The Substantive Issues

Section 19(a)(1) of the Order provides that Agency Management shall not "interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order," (these rights are set forth in Section 1(a) of the Order) and Section 19(a)(6) of the Order provides that Agency Management shall not "refuse to consult, confer, or negotiate with a labor organization as required by this Order."

The Complainant alleges that the Respondent failed to process grievances of employees Beulah Hicks and Verajean H. Smith in the later stages in violation of Section 19(a)(1) of the Order and instituted unilateral changes in working conditions in violation of Section 19(a)(6) of the Order. From the record developed at the hearing it appears that the issues to be resolved are:

- (1) Did Respondent change tours of duty of employees in "Nursing Service" in contravention of the negotiated agreement between Respondent and Complainant which requires two consecutive "days off" without consulting, conferring, or negotiating with the Complainant?
- (2) Assuming that issue (1) is answered in the affirmative, did Respondent thereby violate Section 19(a)(6) of the Order; and if so, was there also a derivative violation of Section 19(a)(1) of the Order?
- (3) Did Respondent fail to properly process grievances filed by employees Beulah Hicks and Verajean H. Smith, and if so, did such failure constitute violations of Section 19(a)(1) of the Order?

III. The Negotiated Agreements

The Complainant was granted exclusive recognition by the Respondent in November, 1968, pursuant to the previous Executive Order, No. 10988. The initial basic negotiated agreement between Respondent and Complainant was approved by Respondent on January 3, 1969. A supplemental agreement was executed by the parties on March 7, 1969, and a second basic agreement replacing the initial agreement was executed on November 3, 1970. The terms of the supplemental agreement were not incorporated into the second basic agreement, however, the parties stipulated that the terms of the supplemental agreement are still in full force and effect. Certain provisions of the supplemental agreement, as will be adduced below, are material in the disposition of the allegations herein.

IV. The Unfair Labor Practices

A. Change in Tour of Duty in "Nursing Service"

Article XI of the Supplemental Agreement executed on March 7, 1969, contains provisions relating to Tours of Duty. Section 3. of Article XI provides: "The basic work week shall consist of five (5) days with two (2) consecutive days off. For the purpose of scheduling, a maximum of six (6) days may be worked within the administrative work week when approved by the Hospital Director. During two (2) administrative work weeks, no more than six (6) consecutive days may be worked." In the closing negotiation sessions leading to the supplemental agreement the question was raised as to whether any administrative segment of the Respondent's operations could continue on its existing schedule rather than the one set forth in Section 3 (quoted above) if supervisors and the employees involved desired to do so. Accordingly, an oral side agreement, which the parties characterized as a "gentleman's agreement," was consummated. Basically the oral agreement was that if the employees and supervisor of a specific department or service of the hospital chose to follow an existing schedule of tours rather than the schedule set forth in the supplemental agreement they could do so. However, the parties were not clear on the terms of the oral agreement with respect to the machinery for making the choice. Thus, a "guard" testified that in his department the supervisor initiated a poll of the employees and they signed individual statements to the effect that they wished to remain on their old schedules. The Chief of Respondent's Personnel Division, A.E. Sansom, testified that what was involved in making a choice was a ballot to be initiated by the supervisor and a majority vote of the employees in the department or service involved would control. Every department, but

Nursing Service, ultimately chose to follow schedules other than the one provided in the supplemental agreement. During the negotiations preceding the supplemental agreement, Betty J. Morson, Chief of Nursing Service, and a management member of the negotiating team, stated, in substance, that she was not too certain that the schedule provided in Article XI, Section 3 of the Supplemental Agreement could work for Nursing Service but that she was nonetheless going to follow that schedule as long as she could, and she did initiate that schedule.

In July, 1969, Morson attempted to call the employees in Nursing Service together to make a choice on schedules of work pursuant to the "gentleman's agreement." However, Rutland, Complainant's president, complained to the Respondent that he should have been consulted first, and no actual ballot was taken. Rutland had never complained before about the methods of inculcating schedules under the "gentleman's agreement" in the other departments.

Morson subsequently determined that under the schedule she was following pursuant to the supplemental agreement there was too little coverage in Nursing Service on Monday through Friday, and too much on Saturday and Sunday when many patients left the hospital on pass. In early 1970, Morson discussed her problem with higher management and a subcommittee of management personnel attempted to work up new schedules but were unable to resolve the problem without splitting "days off" for some of the personnel to a Sunday and the following Saturday rather than two days consecutively as required by the supplemental agreement. Accordingly, Sansom met with Rutland to discuss the problem. Rutland then worked up schedules which involved a Sunday-Saturday split in "days off" only when a shift was changed for employees, for example from evening to day. At any rate, new schedules in Nursing Service, which at times would prevent two (2) consecutive "days off," was announced by Morson, who stated to employees that President Rutland had agreed to it. These changes put into effect on April 6, 1970, however, did not restrict the Sunday-Saturday "split days off" exclusively to times of shift changes.

There were many complaints respecting the changes made to President Rutland by employees in Nursing Service, and Rutland conducted a meeting of employees in the hospital auditorium sometime in April, 1970, to explain his position. No evidence was presented at the hearing as to what occurred at that meeting.

B. Grievance of Vera Jean H. Smith

Smith, who is employed as a nursing assistant in Nursing Service, initiated an individual grievance based on the change in schedules initiated on April 6, 1970. On certain dates in May, July, and August, 1970, Smith was scheduled for "split days off," which she alleged was in violation of Article XI, Section 3 of the Supplemental Agreement. Smith proceeded through Step 1 of the grievance procedure ^{4/} by engaging in an informal discussion with her immediate supervisor, the head nurse of her ward, on August 20, 1970. On August 26, 1970, she met with the Chief of Nursing Service, Betty Morson, in accordance with Step 2 of the grievance procedure. Also present at this step was J.N. Heilig, Jr., an assistant to A.E. Sansom, Chief of the Personnel Division. By memorandum to Smith dated August 27, 1970, Morson responded to the Step 2 discussion. In the memorandum, Morson noted that it was true that three times during the period from January 4, 1970, through August 22, 1970, Smith had single days off, that all employees in the ward had at least two consecutive days off most of the time, that in comparison with other employees Smith was treated fairly, that it is necessary to use a Sunday-Saturday split as "days off" to permit good scheduling and that such would continue on as equitable a basis as possible. Smith then proceeded to Step 3 of the grievance procedure which consisted of an informal discussion with Sansom, as well as Morson. By memorandum to Smith dated September 16, 1970, Sansom replied to the Step 3 discussion. The reply was substantially similar to Morson's reply to Step 2, but it added that if Smith was dissatisfied with the informal explanations and answers to her grievance regarding scheduling patterns and how they might affect her in the future she might wish to pursue Step 4 of the negotiated grievance procedure.

On September 17, 1970, the Complainant filed a Grievance Report Form seeking Step 4 of the grievance procedure. Step 4 gives the grievant the choice of a hearing before a Veteran's Administration Hearing Officer or Advisory Arbitration. The form indicated that Smith requested a Veteran's Administration hearing and that she designated Complainant's President Rutland as her official employee representative.

In response to the grievance form, Hospital Director Robert L. Russell, by letter dated September 21, 1970 to Rutland, acknowledged receipt of the request for a grievance hearing, and noted that the

grievance reported a violation of Article XI, Section 3 of the Supplemental Agreement and that the grievance requested that Nursing Service employees be scheduled in accordance with the supplemental agreement in the future. The letter ended with a request that Rutland advise if he considered it appropriate for all the Divisions and Services to apply the provisions of Article XI, Section 3 of the Supplemental Agreement in the same manner that Rutland was requesting for the employees in Nursing Service covered by the agreement. ^{5/}

By letter dated October 27, 1970 to Smith, copy to Rutland, Russell advised that it was his desire to solve complaints of employees through mutual understanding, that Smith had orally expressed an understanding to Mrs. Morson that "split days off" were occasionally necessary when changing tours of duty and that was the situation that resulted in the May 24 and May 30 "split days off" as Smith was changing from an evening to a day shift. However, Russell conceded in the letter that the July 18 and August 15 "split days off" were not justified by the needs of the Service. Russell stated further "I have asked the Chief of Nursing Service to instruct those preparing schedules to avoid unnecessary 'split days off' in future scheduling.", and ended the letter by advising Smith that if she was not satisfied with the solution of the grievance to inform him so that the assignment of a Hearing Officer could be requested.

Smith responded by letter to Russell dated November 1, 1970. The text of her letter is set forth verbatim as it indicates clearly the basic problem in Smith's mind, and is an indication of the concern of at least one employee that an agreement negotiated by her representative be honored:

"I am not satisfied with the solutions you have offered in your letter because there are too many questions remaining unanswered.

1. Why is it, Mrs. Morson can change the Supplemental agreement to suit herself, when this agreement was entered into by both Management and Union. Just about everytime Mrs. Morson changes the agreement, it is in violation of the written agreement we the employees are required to live by.

^{4/} The grievance procedure is outlined in Article V of the Supplemental Agreement.

^{5/} The record is silent as to whether Rutland responded to this letter.

2. You stated you asked the Chief of Nursing Service to avoid "Unnecessary" [sic] split-days" off. Who will determine, when it is necessary and when it is unnecessary. It is more than evident that Mrs. Morson made a determination that split-days off were necessary all the time.

3. I do not have any assurance at this time, that it will not happen again and I do not have any assurance that the contract agreement will not be violated again in the near future.

Unless these questions are answered and unless I receive some assurance that the Contract Agreement will be honored by Management in the Future, I see no other way to receive satisfaction except to go ahead and request a Hearing Officer to get this matter settled."

Since the date of Russell's letter to Smith, October 27, 1970, there have been no "split days off" assigned to any employee in Nursing Service and that Service has been adhering strictly to Article XI, Section 3 of the Supplemental Agreement.

In cross-examination of Smith by Respondent, she was asked what a hearing officer could do that Russell had not already done, and what more she desired from the grievance. Smith replied that Morson owed an apology to all the employees in Nursing Service.

C. Grievance of Beulah Sharpe Hicks

Beulah Sharpe Hicks is a nursing assistant employed in Nursing Service. In April, 1970, Hicks initiated a grievance based on her being taken off of a permanent or indefinite evening shift, resulting in rotation of evening and day shifts for her. As noted above, the grievance procedure is outlined in Article V of the Supplemental Agreement. The grievance was taken to Step 1, which consisted of a discussion between the grievant, Hicks, and her immediate supervisor in an attempt to resolve the grievance. Apparently, the grievance was not resolved, because it proceeded to Step 2 which was a conference with Mrs. Morson, Chief of Nursing Service, on April 13, 1970. Morson responded to the grievance by memorandum to Hicks dated April 16, 1970. In her response Morson pointed out the necessity and advantages of rotation of shifts. Morson also noted that Hicks had used more than an average amount of

sick leave and that it was easier to make adjustments for absences on the day shift than on the evening or night tours of duty when the staff is limited. Also noted in the memorandum is that Article XI, Section 5 of the Supplemental Agreement permits assignments to varied tours on a fair and equitable basis, that other employees are rotated and no exceptions should be made for Hicks.

During the oral discussion with Hicks, Morson promised Hicks that if her attendance improved she would be considered for a permanent evening shift.

In August, 1970, Hicks again asked for a transfer back to the evening shift and also initiated a grievance over being given "split days off" on two or three occasions when the Supplemental Agreement under Article XI, Section 3 provides for two (2) consecutive days off. 6/ The new grievance moved through the first two steps of the procedure, on August 20, 1970, with the head nurse of Hicks' Ward, and on August 28, 1970, with Morson. Morson responded to the grievance in writing by memorandum to Hicks dated September 3, 1970. Morson noted in the memorandum that attendance, among other things, is a criteria for assignment to an indefinite tour, that while Hicks' attendance had improved [since the previous grievance] other criteria centered around attitude and ability to work as a good team member. The memorandum noted that Hicks had by-passed the head nurse in the past, complained about work load and other conditions (most of the complaints generated when Hicks was on the evening shift), and that Hicks had informed her head nurse that she would be requesting assignment to another ward where the workload was not as heavy. Morson also stated in the memorandum, "Since I can only assume that you are unhappy with the working conditions on the evening tour of duty in your ward, I think we are justified in saying that your attitude is not that of a satisfied and cooperative team member." 7/ The memorandum concluded by advising that Hicks' assignment to an indefinite evening tour of duty had not been approved, but that if her attendance continued to be

6/ The two or three times occurred between April, 1970, when Morson initiated new schedules, and October 27, 1970, when the Respondent answered Verajean Smith's grievance.

7/ The President of the Local, William Rutland, stated that he inferred from these words that there was some question raised as to Hicks' authority to file a grievance. In my opinion such an inference does not necessarily follow from mere criticism of an employee's attitude by a supervisor.

satisfactory and her attitude improved, she would be considered for assignment to a late tour of duty at a future date. This response did not reply to the grievance concerning the two or three occasions when Hicks received "split days off."

President Rutland, on September 9, 1970, requested a Step 3 grievance meeting with Chief of Personnel Sansom. As noted above, Step 3 provides for a discussion between the Personnel Officer and all persons concerned. Rutland renewed the request on September 14, September 28, and on October 5, 1970. According to Rutland, Sansom replied that he would set it up, but Sansom never did.

On October 21, 1970, while the grievance was pending third step, Hicks requested a transfer to another ward. By memorandum dated November 12, 1970, Morson advised Hicks that her request was being honored. The memorandum further advised that Hicks' head nurse had recommended that Hicks be assigned to an indefinite tour of evening duty but the request for transfer of October 21, 1970, was given precedence. Further Hicks was advised that if in the future she decided she wanted an indefinite assignment to a late tour of duty, she should again make a request and consideration would be given to her request.

On November 22, 1970, Hicks was transferred to another ward on the 7:30 A.M. to 4:00 P.M. shift. Hicks testified at the hearing that she was not satisfied with the transfer as there was no chance of obtaining a permanent evening shift assignment. However, she has not filed a new grievance.

According to Sansom, he did not proceed with the third step because he felt that Hicks' request for transfer and the subsequent transfer to another ward remedied the matter. Sansom further surmised that Rutland apparently was not aware of the transfer request or else he would not have persisted in his attempt to obtain the third step. However, Sansom stated at the hearing that he would be willing to proceed with Step 3 anytime the Complainant desired.

CONCLUSIONS

Turning first to the allegations that the Respondent's failure to properly process the grievances of Hicks and Smith were violative of the Order. The record indicates that Hicks' grievance was processed through the first two steps in good faith. With respect to the third

step, the Respondent believed, perhaps erroneously, that Hicks' request for a transfer to another ward and her subsequent transfer negated the necessity for processing the grievance further. Respondent had not refused to process the grievance further, although it was dilatory in answering Complainant's request for a third step meeting. Likewise with respect to Smith's grievance, the Respondent processed her grievance through the first three steps in good faith, and believed that a fourth step hearing before a Veteran's Administration Hearing Officer was unnecessary in view of Hospital Director Russell's letter to Smith of October 27, 1970, purporting to resolve the grievance. Again, there was no refusal on the part of the Respondent to proceed to the fourth step of the grievance procedure and Respondent indicated a willingness to do so if Complainant still felt it was necessary.

Absent an outright refusal to process grievances, I cannot conclude that, in this case where the Respondent processed early steps of the grievance procedure in good faith and delayed processing later steps in a good faith belief that they were unnecessary, there was a violation of the Order in not proceeding immediately to the later steps. To conclude that it was violative would mean that the Assistant Secretary would be inundated with problems of policing grievance procedures. Such policing is best left for the agencies and labor organizations involved. Of course, as noted, my conclusion would perhaps be different if there was an outright refusal to process grievances. 8/

Turning now to the allegation of a violation of Section 19(a)(6) of the Order by the Respondent's unilateral change of working conditions in Nursing Service in breach of the negotiated agreement requiring two consecutive days off with respect to tours of duty. 9/

8/ Though decisions of the National Labor Relations Board are not controlling, the Assistant Secretary has recognized that it is appropriate to take into account the experience gained from the private sector under the Labor-Management Relations Act, as amended. Charleston Naval Shipyard, A/SLMR No. 1. The National Labor Relations Board has concluded that failure to proceed to arbitration is not violative where a Respondent deals in good faith in processing the earlier steps of a grievance procedure, and the refusal to arbitrate was not designed to subvert the terms of the collective bargaining agreement. Textron Puerto Rico, 107 NLRB 696, 700. cf. also Hortex Manufacturing Company, Inc., 147 NLRB 1151, affirmed in Amalgamated Clothing Workers of America v. N.L.R.B., (CCA-D.C.), 343 F.2d 329.

9/ It is noted that under Section 11(b) of the Order, in connection with negotiation of agreements an agency's obligation to meet and confer does not include matters with respect to tour of duty. However, in this case the Respondent did confer with respect to tours of duty and negotiated an agreement covering the subject prior to the advent of the Order.

First it is necessary to dispose of Respondent's motion made at the hearing to dismiss on the ground that breach of an agreement is not an unfair labor practice. The Respondent cited two court cases arising in the private sector under the Labor-Management Relations Act, as amended, United Mine Workers v. N.L.R.B., (CCA-D.C.), 257 F.2d 211, and Amalgamated Clothing Workers v. N.L.R.B., (CCA-D.C.), 343 F.2d 329. Of course, decisions in the private sector are not binding on the Executive Secretary in the performance of his functions in deciding complaints of unfair labor practices. Moreover, unlike the Executive Order, the Labor-Management Relations Act, as amended, contains specific provisions at Section 301 for bringing suits in District Courts for violations of collective bargaining contracts. Further, the courts would not appear to have authority to review the provisions of the Executive Order. The U. S. District Court for the District of Columbia in Local 1106, National Federation of Federal Employees, et al. v. Laird, etc., et al., (No. 1752-70, June 23, 1970), 76 LRRM 2373 stated, "The right of a plaintiff to challenge an alleged violation of the provisions of the Executive Order is extremely limited. Executive Order 11491 is in essence a 'Formulation of broad policy by the President for the guidance of federal employing agencies,' and 'the President did not undertake to create any role for the judiciary in the implementation of this policy.'" Citing Manhattan-Bronx Postal Union v. Gronowski, (1965) 121 U.S. App. D.C. 321, 350 F.2d 451, 456. In view of the above, I conclude that where an Agency engages in unilateral action which would be violative of Section 19(a)(6) of the Order, notwithstanding that such action might also constitute a breach of a negotiated agreement a complaint alleging such action is a matter properly within the purview of the functions of the Assistant Secretary. Accordingly, I shall recommend that the Assistant Secretary deny Respondent's motion to dismiss on the ground that a breach of contract is not an unfair labor practice.

In general, where a unit of employees is represented by an exclusive representative and an agency unilaterally changes working conditions of employees in the unit without proper consultation and negotiation with the exclusive representative, the agency would be in violation of Section 19(a)(6) of the Order which provides that Agency Management shall not refuse to consult, confer or negotiate with a labor organization as required by the Order. 10/ It is clear that the working

10/ For comparison in the private sector, Section 8(a)(5) of the Labor-Management Relations Act, as amended, makes it an unfair labor practice for an employer to refuse to bargain collectively with representatives of his employees. The National Labor Relations Board has consistently held that unilateral changes in working conditions are violative of Section 8(a)(5) of the Act. See, for example, a case where the employer unilaterally changed hours and days of work. Oil City Brass Works, 141 NLRB 131.

conditions of the employees in Nursing Service with respect to tours of duty encompassed two (2) consecutive days off in accord with Article XI, Section 3 of the Supplemental Agreement from the time the Agreement was executed in March, 1969, until the change initiated by Morson in April, 1970. The parties provided through their oral "gentlemen's agreement" a method to permit deviations from the provision of Article XI, Section 3 of the Supplemental Agreement. But, this method was not utilized before the change. Rather, when the Respondent reached the stage where changes were required to permit proper staffing, the President of the Complainant, Rutland, was consulted. According to Sansom, the Chief of the Personnel Division, Rutland indicated that he could see nothing wrong with "split days off" as long as they were assigned only when a shift change took place, such as from day shift to evening shift. Further Rutland worked up schedules for Nursing Service which provided for "split days off" when a change from one shift to another occurred. Rutland did not rebut Sansom's testimony, so I must conclude that Rutland agreed to a deviation from the terms of the supplemental agreement. However, Sansom admitted that then the changes were initiated, contrary to Rutland's agreement that "split days off" would be assigned only when there is a change of personnel from one shift to another, there were actually "split days off" provided for on other occasions.

Unlike the climate of "give and take" in bargaining negotiations leading to an agreement, where an agreement exists which prescribes certain conditions of work, a party seeking a change during the term of the agreement is literally "at the mercy" of the other party, and for any changes in such working conditions to occur properly, the other party must agree. In this case, although Rutland did agree to certain changes, the actual changes were not in strict conformance with Rutland's agreement. On that basis, I conclude that the Respondent unilaterally changed working conditions with respect to "days off" in tours of duty at Nursing Service, and thereby violated Section 19(a)(6) of the Order. 11/

The Respondent urges in its brief that there is an established grievance procedure in the negotiated agreement within the meaning of Section 19(d) of the Order and the Complainant is bound to follow the grievance route rather than the Complainant route before the Assistant Secretary. Moreover, Respondent urges that through the grievances of Hicks and Smith, Complainant did choose the grievance route and is bound to that method of adjustment. Section 19(d) provides that an

11/ I note here that if tours of duty were not covered in the Supplemental Agreement, under Section 11(b) of the Order discussed above, such unilateral change might be permissible.

established grievance or appeals procedure is the exclusive procedure for resolving a Complaint only in connection with alleged violations of Section 19(a), paragraphs (1), (2), or (4). Further, Section 19(d) states, "All other complaints of alleged violations of this section initiated by an employee, an agency, or a labor organization, that cannot be resolved by the parties, shall be filed with the Assistant Secretary." Involved here is a violation of Section 19(a)(6) of the Order, which specifically under Section 19(d) is a matter for the Assistant Secretary.

Assuming that Respondent is correct in its contention that through the grievances of Hicks and Smith, Complainant first chose to resolve the matter of the unilateral changes resulting in a breach of the negotiated agreement through the grievance procedure, there is nothing in the Order which would prevent Complainant from also following the Complaint route at least prior to the conclusion of the last stage of the grievance procedure and a resolution by a disinterested third party. Further, I do not believe that the grievances of Hicks and Smith were tantamount to grievances filed by the Complainant in protest of the unilateral change and resultant breach of the negotiated agreement. The grievances were individual grievances of Hicks and Smith intended to resolve their own problems even though the problems in part arose from the unilateral change. They were not grievances of the Complainant designed to seek a remedy for a unilateral change in working conditions which had or could have had an effect on all the employees in the unit.

Respondent also argues that a remedy is not necessary since the unilateral change which constituted a deviation from the terms of the Supplemental Agreement only continued from April 6, 1970, until October 27, 1970, when Respondent wrote to Smith concerning her grievance, and Nursing Service discontinued "split days off" for the whole Service. In substance the Respondent is arguing that the issue is "moot." Notwithstanding that the Respondent has discontinued the practice of "split days off" in Nursing Service, I will recommend to the Assistant Secretary that he provide a remedy. In order to effectuate the policies of the Order, all the employees in the unit must be assured that the Respondent will not again unilaterally change working conditions, especially where the working conditions involved are covered in the negotiated agreement. Moreover, I am not certain that Hospital Director Russell's letter of October 27, 1970, to Mrs. Smith completely settled the matter. The letter states that in future scheduling the Respondent will only avoid unnecessary "split days off,"

it does not assure that there will be no more "split days off" unless the Complainant agrees to them or the employees in Nursing Service choose to accept "split days off" pursuant to the "gentleman's agreement" which permits such a choice.

There remains one further matter for discussion. I have concluded above that Respondent violated Section 19(a)(6) of the Order by its action in changing "days off" with respect to tours of duty in Nursing Service. I now conclude that this action also violated Section 19(a)(1) of the Order. Unilateral changes without proper consultation and negotiation with an exclusive representative also interferes with, restrains and coerces an employee in the exercise of the rights assured by the Order. 12/ Nor would the established grievance procedure be the exclusive procedure for resolving such 19(a)(1) violation, since such violation derives from the violation of Section 19(a)(6) of the Order which is not encompassed by Section 19(d).

In summary, I have concluded that Respondent has not engaged in conduct violative of Section 19(a)(1) of the Order with respect to the processing of the grievances of Beulah Hicks and Vera Jean Smith. I have also concluded that Respondent has engaged in conduct violative of Sections 19(a)(1) and (a)(6) by unilaterally changing working conditions with respect to scheduling of days off on tours of duty in Nursing Service.

12/ As noted above, Section 1.(a) of the Order outlines the rights of employees, "without fear of penalty or reprisal to form, join, and assist a labor organization or to refrain from any such activity." This section also states, "The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization." Unilateral changes in working conditions obviously constitute such interference, restraint, or coercion as would tend to discourage membership in a labor organization.

RECOMMENDATIONS

In view of my findings and conclusions above, I make the following recommendations to the Assistant Secretary.

(A) That Respondent's motions to dismiss on procedural grounds for failure to properly file charges as required by Section 203.2 of the Rules and Regulations, and for lack of specificity of the Complaint as required by Section 203.3 of the Rules and Regulations be denied.

(B) That Respondent's motion to dismiss on the ground that breach of contract is not an unfair labor practice be denied.

(C) That allegations in the Complaint of violations of Section 19(a)(1) of the Order by the failure of Respondent to properly process grievances of Beulah Sharpe Hicks and Verajean H. Smith be dismissed.

(D) Having found that the Respondent has engaged in certain conduct prohibited by Sections 19(a)(1) and (a)(6) of Executive Order 11491, it is my considered judgment that it would be appropriate for the Assistant Secretary to adopt the following order which is designed to effectuate the policies of Executive Order 11491.

RECOMMENDED ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that Veterans Administration Hospital, Charleston, South Carolina, shall:

1. Cease and desist from:

(a) Refusing to consult, confer, or negotiate with Service Employees International Union Local 552, AFL-CIO, as the exclusive representative of its employees in the following unit,
"all non-professional and non-supervisory employees (including Veterans Canteen

Canteen Service) with the following exclusions:

a. All professional employees as defined in VA Personnel Manual MP-5, Part I, Chapter 711, Section A, Paragraph 4d. b. All supervisory employees in Wage Administration classified as having supervisory responsibility at Level II and above; all supervisors in General Schedule as defined in VA Personnel Manual MP-5, Part I, Chapter 711, Section A, Paragraph 4e. c. Any managerial executive. d. Employees on temporary limited appointment. e. Any employee engaged in Federal Personnel work other than in a purely clerical capacity. f. Secretaries to the Hospital Director, Assistant Hospital Director, Chief of Staff, and Personnel Officer,"

by unilaterally changing the tours of duty of any of its employees in the above unit in violation of Article XI, Section 3 of its Supplemental Agreement with said labor organization, or any other terms and conditions of employment.

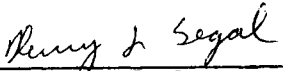
(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Section 1(a) of Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

(a) Post at its Hospital, copies of the attached notice marked "Appendix." Copies of said notice shall be signed by the Hospital Director and shall be posted and maintained by him for sixty (60) days thereafter, in conspicuous places where notices to employees are customarily posted. The Hospital Director shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(b) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D. C.,
April 15, 1971


Henry L. Segal
Hearing Examiner

APPENDIX

(Notice recommended for adoption by the Assistant Secretary)

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS in the FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT refuse to consult, confer, or negotiate with Service Employees International Union Local 552, AFL-CIO as the exclusive representative of our employees in the following unit,

"all non-profession and non-supervisory employees (including Veterans Canteen Service) with the following exclusions: a. All professional employees as defined in VA Personnel Manual MP-5, Part I, Chapter 711, Section A, Paragraph 4d. b. All supervisory employees in Wage Administration classified as having supervisory responsibility at Level II and above; all supervisors in General Schedule as defined in VA Personnel Manual MP-5, Part I, Chapter 711, Section A, Paragraph 4e. c. Any managerial executive. d. Employees on a temporary limited appointment. e. Any employee engaged in Federal Personnel work other than in a purely clerical capacity. f. Secretaries to the Hospital Director, Assistant Hospital Director, Chief of Staff, and Personnel Officer,"

by unilaterally changing the tours of duty of any of our employees in the above unit in violation of Article XI, Section 3 of our Supplemental Agreement with said labor organization, or any other terms and conditions of employment.

- 1 -

APPENDIX, cont'd.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

VETERANS ADMINISTRATION HOSPITAL
Charleston, South Carolina
(Agency or Activity)

Dated _____ By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor whose address is Room 323, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309.

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

August 4, 1971

VETERANS ADMINISTRATION HOSPITAL
CHARLESTON, SOUTH CAROLINA

Respondent

and

CASE NO. 40-1978 (CA)

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 552, AFL-CIO

Complainant

ERRATA

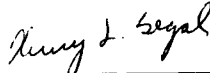
The undersigned Hearing Examiner issued his Report and Recommendations in the subject case on April 15, 1971. Footnote "9" on page 13 of said Report and Recommendations, as written, incorrectly interprets the provisions of Section 11(b) of Executive Order 11491 with respect to the obligation of an agency to negotiate matters concerning "tour of duty." Accordingly, footnote "9" on page 13 of the said Report and Recommendations is hereby corrected to read:

"It is noted that under Section 11(b) of the Order, in connection with negotiation of agreements, an agency's obligation to meet and confer does not include certain matters with respect to tour of duty, namely, the numbers, types, and grades of positions or employees assigned to a tour of duty. Of course, in this case the agreement was negotiated prior to the advent of the Order."

In view of the above correction of footnote "9," footnote "11" on page 15 of the Report and Recommendations is hereby deleted, and footnote 12 on page 17 is hereby renumbered, "11."

Please be advised that the above corrections do not affect the findings, conclusions, and recommendations of the undersigned.

Dated at Washington, D. C.,
APRIL 20, 1971


Henry L. Segal
Hearing Examiner

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. DEPARTMENT OF AGRICULTURE,
REGION FORESTER OFFICE,
FOREST SERVICES, REGION 3
SANTA FE NATIONAL FOREST
SANTA FE, NEW MEXICO
A/SLMR No. 88

This case arose as the result of a representation petition filed by Local Union 3137, American Federation of Government Employees, AFGE, AFL-CIO, seeking a unit of all nonsupervisory employees of the Activity. The Activity did not contest the appropriateness of this unit sought, but, in opposition to the AFGE, contended that employees classified as "temporary" should be excluded from the unit.

The Assistant Secretary found that the alleged "temporary" employees were in fact "seasonal" employees, most of whom worked specified periods of time each year. The Assistant Secretary further found that the seasonal employees had a community of interest with the permanent employees in the claimed unit, as the majority of the seasonal employees have a reasonable expectancy of future employment, and, thus, have a substantial and continuing interest in the terms and conditions of employment along with the permanent employees. In these circumstances, the Assistant Secretary concluded that the exclusion of seasonal employees, as a group, from the claimed unit, is not warranted.

The Assistant Secretary, in reaching his above decision, relied on the following factors: seasonal employees perform work identical to that performed by permanent employees and have the same supervision and working conditions; seasonal employees are paid under the same wage schedule, receive grade and step promotions and they have the same leave benefits and holidays as permanent employees; the majority of the seasonal employees have been employed on a regular basis and, thus, have a reasonable expectancy of future employment; seasonal employees who have worked over 90 days receive preference in hiring each season and a number of seasonal employees have become permanent employees when vacancies in permanent jobs occur.

The Assistant Secretary further found that the unit petitioned for by the AFGE, including seasonal employees, was appropriate for the purpose of exclusive recognition. In this regard, he relied on the fact that the unit contains all employees involved in the actual physical care of the forest and related supporting services and that all employees are under the same centralized supervision. Under these circumstances, the Assistant Secretary found that there is a clear and identifiable community of interest among the employees in the unit sought, including regular seasonal employees. Moreover, he found that such a unit would promote effective dealings and efficiency of agency operations.

In view of the inclusion of seasonal employees in the unit, the Assistant Secretary found that all such employees employed on or after January 1, 1971, should be eligible to vote.

A/SLMR No. 88

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF AGRICULTURE,
REGION FORESTER OFFICE,
FOREST SERVICES, REGION 3,
SANTA FE NATIONAL FOREST,
SANTA FE, NEW MEXICO 1/

Activity

and

Case No. 63-2329

LOCAL UNION 3137,
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFGE,
AFL-CIO 2/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Oscar E. Masters. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. Local Union 3137, American Federation of Government Employees, AFGE, AFL-CIO, herein called AFGE seeks an election in the following unit:

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

All nonsupervisory employees employed at the Santa Fe National Forest whose Activity headquarters office is in Santa Fe, New Mexico, excluding supervisors, management officials, professionals, guards and employees engaged in personnel work other than purely clerical nature.

The Activity does not contest the appropriateness of the unit sought but, in opposition to the AFGE, contends that employees classified as "temporary" should be excluded from the unit.

The Activity encompasses 1,400,000 acres of National Forest land and is divided into 8 ranger districts. It employs approximately 49 full-time nonsupervisory employees whom the AFGE seeks to represent. ^{3/} During the spring, summer, and the fall months, the Activity hires a large number of employees to help the permanent employees work on timber thinning, soil erosion and other related projects, to handle the fire watch and to fight fires. ^{4/} Although the Activity and the AFGE have characterized these employees as "temporary," the record shows, and I find, that these employees are, in fact, seasonal employees, most of whom work specified periods of time each year.

These seasonal employees, for the most part, are engaged in farming or livestock operations for part of the year and work for the Activity the rest of the year. Most of them work in the areas in which they live and many seasonal employees, who live in remote areas are, in fact, hired because of their locations. The record reveals that the number of seasonal employees hired each year depends upon the weather and the money that is available to the Activity. When the Activity determines how many seasonal employees it will need and can hire, it checks its re-employment list consisting of all employees who have worked in previous years. The Activity then sends out letters to employees on the list asking them if and when they would like to work. When the Activity receives replies to its letters, it commences hiring those employees who have indicated a desire to work, giving priority to employees who have worked at least 90 days for the Activity in past years. The majority of the seasonal employees employed have worked for the Activity a number

^{3/} The Activity also employs 63 other permanent employees. In its exhibits, they have been designated as supervisors, professionals, and management employees.

^{4/} The number of seasonal employees employed by the Activity in 1970 ranged from 2 in January to 104 in June. Of the "temporaries" employed in 1970, 26 were students. The evidence reveals that there were 73 "temporaries" employed at the time the petition was filed in the subject case.

of years and the record shows that certain employees have been employed up to nine months a year, for periods totaling up to 26 years of service. Seasonal employees receive the same wages and sick and annual leave as their permanent counterparts; however, they do not receive the same fringe benefits.^{5/} Each seasonal employee is evaluated at the end of the year for the purpose of determining whether he will be asked to return the following year, and whether he is eligible for promotion. While seasonal employees receive grade and step promotions, the evidence reveals that the highest grade they can attain is GS-5. However, the record indicates that seasonal employees are eligible to apply for permanent positions when there are vacancies and it further shows that a number of seasonal employees have become permanent employees in the last three years.

Based on the foregoing, I find that, as a group, seasonal employees have a clear and identifiable community of interest with other employees in the claimed unit. Thus, seasonal employees perform work identical to that performed by permanent employees and have the same supervision and working conditions as permanent employees. Furthermore, seasonal employees are paid under the same wage schedules, receive grade and step promotions, and have the same leave benefits and holidays as permanent employees. The record also shows that the majority of the seasonal employees have been employed on a regular basis and, therefore, have a reasonable expectancy of future employment. Moreover, seasonal employees who have worked over 90 days receive preference in hiring each season and a number of seasonal employees have become permanent employees when vacancies in permanent jobs occur. In these circumstances, since the evidence establishes that the majority of these employees are regular seasonal employees who have a reasonable expectancy of future employment, thereby evidencing a substantial and continuing interest in the terms and conditions of employment along with the permanent employees, I find that the exclusion of seasonal employees, as a group, from the claimed unit, is not warranted.

I also find that the unit petitioned for by the AFGE, including seasonal employees, is appropriate for the purpose of exclusive recognition under the Order. The unit sought contains all the employees involved in the actual physical care of the forest and in related supporting services and the evidence reveals that all of the claimed employees are under the same centralized supervision. Under these circumstances, I find there is a clear and identifiable community of interest among the employees in the unit sought, including regular seasonal employees. Moreover, such a unit, in my view, will promote effective dealings and efficiency of agency operations.

^{5/} Thus, they are not eligible for such career benefits as retirement pay, life insurance, or health insurance.

Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

August 9, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

All employees, including regular seasonal employees, employed at the Santa Fe National Forest, whose Activity headquarters office is in Santa Fe, New Mexico, excluding professionals, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 6/

VETERANS ADMINISTRATION CENTER,
MOUNTAIN HOME, TENNESSEE
A/SLMR No. 89

DIRECTION OF ELECTION

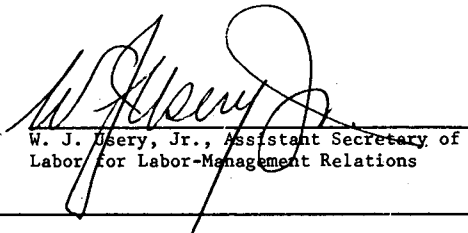
An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed at any time between January 1, 1971 and the payroll period immediately preceding the date below^{7/}, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period, and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Local Union 3137, American Federation of Government Employees, AFGE, AFL-CIO.

The subject case, involving a representation petition filed by the Tennessee Nurses Association, Inc. (TNA), raised the following questions:

- (1) Whether the current agreement between the Activity and American Federation of Government Employees, Local 1687, AFL-CIO, (AFGE) acted as a bar to the processing of the petition in this matter?
- (2) Whether in the particular circumstances a separate unit of registered nurses should be carved out of the existing unit?

With respect to the first issue, the Assistant Secretary concluded that the existing negotiated agreement was terminable upon 60 days notice by either party thereto after a period of two years from its effective date and therefore was viewed as an agreement terminable at will. He determined in this regard that such an agreement creates the uncertainty which is inconsistent with the agreement bar principle. Accordingly, the Assistant Secretary found that the agreement did not constitute a bar to the processing of the petition in this case.

Dated, Washington, D. C.
August 4, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

As to the second issue, the Assistant Secretary determined that the policy set forth in United States Naval Construction Battalion Center, A/SLMR No. 8 was controlling. In that decision the Assistant Secretary found that where there was in existence an established, effective and fair collective bargaining relationship, a separate unit carved out of an existing unit would not be found to be appropriate, except in unusual circumstances. The Assistant Secretary found that the registered nurses in the instant case had been fairly and effectively represented in an Activity-wide unit of professional and nonprofessional employees which had been in existence for approximately 8 years. Therefore, he concluded that severance of the registered nurses from the existing unit was unwarranted and he ordered that the TNA's petition be dismissed.

6/ As indicated above in footnote 3, the Activity placed in evidence several lists of employees whom it designated as supervisors, management employees and professional employees. As there are no facts in the record to indicate whether these employees were designated properly, I make no findings as to their status and eligibility.

7/ The extended eligibility period adopted in this decision is necessitated by virtue of the seasonal employee problem discussed above.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION CENTER,
MOUNTAIN HOME, TENNESSEE

Activity

and

Case No. 41-1947(RO)

TENNESSEE NURSES ASSOCIATION,
INC., (ANA) 1/

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1687, AFL-CIO 2/

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Seymour X. Alsher. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by all the parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Tennessee Nurses Association, Inc., (ANA), herein called TNA, 3/ seeks an election in a unit of staff nurses and other nonsupervisory

1/ The name of the Petitioner appears as amended at the hearing.
2/ The name of the Intervenor appears as amended at the hearing.
3/ The record established that the TNA is a labor organization which limits its membership to registered nurses.

registered nurses, excluding the chief nurse, the assistant chief nurse, the associate chief nurse for education, nurse supervisors, coordinator, nurse instructors, head nurses, nurse anesthetists, 4/ all other professional employees, and nonprofessional employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, guards and supervisors as defined in the Executive Order. 5/

The Activity and the American Federation of Government Employees, Local 1687, AFL-CIO, herein called AFGE, contend that the employees being sought are covered by a signed agreement which constitutes a bar to the processing of the petition in the subject case. They further contend that the unit sought should not be granted because it constitutes an attempt to fragment an Activity-wide unit which has been in existence since 1963, and which has an established history of effective dealings and representation. They also assert that the employees sought by the TNA do not possess a separate and distinct community of interest apart from that of other Activity employees and that the granting of the requested unit would not serve to promote efficiency in the Activity's operations. In connection with the foregoing contentions, the AFGE moved to dismiss the petition in this case on the basis of agreement bar and the inappropriateness of the unit sought.

The TNA contends that the negotiated agreement between the AFGE and the Activity does not constitute a bar to the petition in this case because it is an agreement of indefinite duration; and, moreover, because it was reopened for midterm negotiations on substantive issues. It also contends that the agreement is not a bar because it is terminable at will. The TNA asserts that the employees it seeks to sever from the existing Activity-wide unit represented by the AFGE constitute an appropriate unit for exclusive recognition, and that severance should be granted because the record shows that the AFGE has failed to represent such employees effectively and fairly.

The registered nurses in the unit sought by the TNA are currently included in a bargaining unit which consists of all of the Activity's nonsupervisory employees, including professional employees. The Activity accorded the AFGE exclusive recognition as the bargaining agent for this unit as a result of a representation election held on March 27, 1963. The professional employees who at the time numbered approximately 131, including 77 registered nurses, were accorded a self-determination election and voted to be included in the Activity-wide unit. On August 25, 1963, the AFGE and Activity entered into a negotiated agreement which covered all

4/ The parties agreed that nurse anesthetists, who are currently included in an Activity-wide unit represented by the Intervenor, should be excluded from the unit sought by the TNA if such a unit is found appropriate.
5/ The unit appears as amended at the hearing.

employees. The agreement was to be effective for one year with a provision making it automatically renewable each anniversary date until modified or terminated by the parties. The basic agreement remained in effect until it was terminated on or about February 29, 1968, and at which time the AFGE and Activity executed a new agreement. The new agreement was effective for a two-year period and contained a provision which made it automatically renewable every two years until terminated or modified. 6/ On November 29, 1968, the parties entered into two supplemental agreements, one covering all employees in the unit and the second covering all employees except physicians, dentists, nurses, and canteen employees. The negotiated agreement, consisting of the basic agreement and the aforementioned supplemental agreements, has remained in effect without change since July 26, 1969, at which time the second supplemental agreement was amended to conform to certain newly issued Civil Service Regulations.

During the summer of 1970, the Activity and the AFGE reopened the agreement for negotiations on substantive issues in accordance with the provision for midterm modifications. 7/ The evidence revealed that these negotiations had not resulted in any changes in the agreement at the time of the hearing, nor was there any discussion regarding possible termination of the agreement prior to the automatic renewal date.

As stated above, the Activity and the AFGE contend that their current agreement which was executed initially on February 29, 1968, and which automatically renewed itself for another two-year period on February 28, 1970, constitutes a bar to further proceedings in the subject case. The TNA, on the other hand, contends that the agreement does not constitute a bar to the processing of its petition because, among other defects, it is an agreement which is terminable at will.

I have found that "in order for an agreement to constitute a bar to the processing of a petition it should contain a clearly enunciated fixed term or duration from which employees and labor organizations can ascertain, without relying on other factors, the appropriate time for the filing of representation petitions." 8/ In my view, an agreement which

6/ The pertinent clause provided: "It shall remain in effect for a period of two years from its effective date, and it shall be automatically renewable every two years thereafter until modified or terminated as provided herein.

7/ The provision with respect to midterm modifications provides that either party may request modification of the agreement, but no more than once each calendar year unless by mutual agreement. The notice of intent to modify is required to state the nature of the desired changes and the reasons therefor, and must be given at least 60 days before the agreement's anniversary date.

8/ See Treasury Department, United States Mint, Philadelphia, Pennsylvania, A/SLMR No. 45.

is terminable at will necessarily does not contain a clearly enunciated fixed term or duration. Rather, such an agreement creates instability in labor-management relations, and, therefore, may not serve as a bar to the processing of a representation petition.

Article XI, Section 2 of the negotiated agreement between the Activity and the AFGE provides in pertinent part: "Either party may, after giving the other party 60 days notice, terminate this Basic Agreement and all Supplemental Agreements hereto after a period of two years from its effective date." The Activity asserts that the foregoing provision does not render the agreement terminable at will in that it should be interpreted to mean that either party may terminate it by giving the other 60 days notice prior to the current February 28, 1972, expiration date. In addition, the Activity and the AFGE contend that the TNA's assertion that Article XI, Section 2 renders the agreement inoperative as a bar to its petition should be rejected in view of the fact that the agreement has not, in fact, been terminated and neither party has given the other party notice of an intention to do so.

Contrary to the position of the Activity and the AFGE, I find that the language contained in Article XI, Section 2, clearly renders the agreement terminable at will upon 60 days notice by either party after a period of two years from its original effective date of February 29, 1968. Thus, in effect, since February 28, 1970, the agreement has been subject to termination by either party thereto upon 60 days notice. In my view, it is the power to terminate an agreement at will, and not necessarily the actual exercise of that power, which creates the uncertainty which is inconsistent with the agreement bar principle. Therefore, the fact that neither of the parties to the agreement in the subject case has given a notice to terminate does not, in my view, cure the agreement's inherent defect. Accordingly, based on the foregoing, I find that the current negotiated agreement between the AFGE and the Activity does not constitute a bar to the petition herein filed on September 10, 1970, and, therefore, I shall deny the AFGE's motion to dismiss the petition on the basis of agreement bar. 9/

The Veterans Administration Center is located near Johnson City, Tennessee, and consists of a 500 bed general hospital, a 58 bed nursing home care unit, and a 1,280 bed domiciliary. The Center has about 50 permanent structures and employs approximately 950 employees, including approximately 87 registered nurses who have professional status. Overall direction of the facility is vested in the Center Director, who has several assistants, and a chief-of-staff, who exercises overall direction of employees engaged in providing functions related to patient care.

9/ In view of my finding that the agreement herein is terminable at will, I find it unnecessary to determine whether it is not a bar to the petition because it has been reopened for midterm modifications.

The nursing service is divided into two units, nursing home care and nursing service. Supervision and direction of nursing employees flow from the unit chiefs who report directly to the chief-of-staff. Each unit consists of a number of registered nurses, licensed practical nurses, and nursing assistants. The units operate on a three shift basis, so that nursing care is provided on a continuous basis, and personnel are totated among the shifts.

All registered nurses have specific educational, training and licensing requirements, the same working conditions and are governed by the same personnel policies. There is no interchange between registered nurses and employees in other professional classifications, such as dentists and physicians, or employees in nonprofessional classifications. However, registered nurses, by the nature of their duties, have substantial work related contact with other employees engaged in patient care, such as licensed practical nurses, assistant nurses and physicians. Registered nurses also have contact with sanitation employees, who are responsible for keeping the Center clean; engineering department employees who are responsible for repairs; and food management employees, who are responsible for preparing and serving food to patients.

In United States Naval Construction Battalion Center, A/SLMR No. 8, I found that where the evidence shows the existence of an established, effective and fair collective bargaining relationship, severance from an established larger unit will not be granted, absent unusual circumstances.

As noted above, the record reveals that since 1963 the registered nurses and other professional employees have been represented exclusively by the AFGE. The record shows that the AFGE has represented registered nurses in the processing of a number of grievances, including those concerning tours of duty, days off, duties and obligations and job assignments. ^{10/} Moreover, the evidence establishes that the problems and complaints of registered nurses, as well as other employees in nursing service, have been discussed by the AFGE and the Activity on a bi-weekly basis.

The evidence shows that the AFGE has fairly and effectively represented all employees in its represented unit for a period of approximately 8 years and that such representation has resulted in stability in labor relations at the Activity. Thus, the record revealed that employees at the Activity have been covered by a succession of negotiated agreements and the AFGE has represented employees, including registered nurses, on a regular basis by, among other things, processing grievances on their

^{10/} It appears, based on the record, that the current Vice President of the AFGE is a registered nurse. In addition, a registered nurse formerly served as steward for the Activity's professional employees.

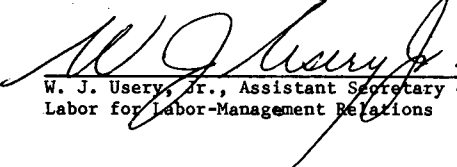
behalf. Further, I reject the TNA's contention that the fact that nurses are not covered by one of the parties' current supplemental agreements shows that they have not been fairly and effectively represented. In this respect, the evidence establishes that the nurses have been covered by all other agreements and there is no evidence to show that their exclusion, as well as the exclusion of doctors, dentists and canteen employees from the current supplemental agreement, is a result of inadequate representation. Rather, it appears that the exclusion of these employees resulted from the special rights and privileges accorded them under Title 38 of the U. S. Code. ^{11/}

In all the circumstances, since the record does not establish any unusual circumstances, justifying the severance of registered nurses from the existing unit, I find the unit sought by the TNA to be inappropriate for the purpose of exclusive recognition, and therefore, I shall dismiss the TNA's petition.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 41-1947(RO), be, and it hereby is, dismissed.

Dated, Washington, D. C.
August 9, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{11/} Cf. Veterans Administration Center, Togus, Maine, A/SLMR No. 84, footnote 5.

August 10, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
U.S. ARMY ENGINEER DISTRICT, PHILADELPHIA
A/SLMR No. 90

The subject case involved representation petitions filed by two labor organizations, National Federation of Federal Employees, Local 23 (NFFE) and American Federation of Government Employees, AFL-CIO, Local 902 (AFGE). The NFFE sought a unit of all nonsupervisory professional and nonprofessional General Schedule employees located in the Marine Design Division (MDD), one of five divisions comprising the Technical Staff of the U.S. Army Engineer District, located in the U.S. Custom House, Philadelphia, Pennsylvania. The AFGE sought a unit of all General Schedule and Wage Board employees of the U.S. Army Engineer District, located in the U.S. Custom House, Philadelphia, Pennsylvania. The Activity contested the appropriateness of the unit sought by the NFFE, contending that MDD personnel did not possess a clear and identifiable community of interest apart from other District office personnel, and contended that the unit requested by the AFGE was appropriate.

Under all the circumstances, the Assistant Secretary found that the unit of MDD employees sought by the NFFE was not appropriate, and therefore, he ordered that the petition filed by the NFFE be dismissed. In this regard, he noted that MDD employees are engaged in an interrelated mission with other District Office personnel; that there is some interchange between the MDD and other District Office Staffs; and that, generally, MDD employees had the same terms and conditions of employment as other District office employees and shared common supervision and personnel policies.

The Assistant Secretary also found that the overall unit of the District Office petitioned for by the AFGE was appropriate for the purpose of exclusive recognition. He found that the employees received similar pay and benefits, shared similar working conditions, were subject to common supervision and personnel policies, and there was interchange and job progression among the various divisions and offices of the Activity. In these circumstances, the Assistant Secretary found a clear and identifiable community of interest among employees in the petitioned for unit and that such a comprehensive unit would promote effective dealings and efficiency of agency operations. Accordingly, he directed that an election be conducted in the unit petitioned for by the AFGE.

A/SLMR No. 90

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
U.S. ARMY ENGINEER DISTRICT,
PHILADELPHIA, PENNSYLVANIA 1/

Activity

and

Case No. 20-2319

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 23

Petitioner

DEPARTMENT OF THE ARMY,
U.S. ARMY ENGINEER DISTRICT,
PHILADELPHIA, PENNSYLVANIA

Activity

and

Case No. 20-2328

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 902

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Patrick Dooner. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1/ The name of the Activity appears as corrected at the hearing.

Upon the entire record in these cases, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 20-2319, Petitioner, National Federation of Federal Employees, Local 23, herein called NFFE, seeks an election in a unit of all nonsupervisory, professional and nonprofessional General Schedule employees located in the Marine Design Division, Room 400, at the U.S. Army Engineer District, which is located in the U.S. Custom House, Philadelphia, Pennsylvania, excluding, among others, Wage Board Employees. ^{2/}

In Case No. 20-2328, Petitioner, American Federation of Government Employees, AFL-CIO, Local 902, herein called AFGE, seeks an election in a unit of all General Schedule and Wage Board employees in the U.S. Army Engineer District, which is located in the U.S. Custom House, Philadelphia, Pennsylvania, excluding, among others, professional employees. ^{3/} The Activity contends that the employees in the unit sought by the NFFE do not possess a clear and identifiable community of interest apart from other employees of the Activity, and that such a unit would not promote effective dealings and efficiency of agency operations. The Activity contends also that the unit sought by the AFGE is appropriate.

The U.S. Army Engineer District, Philadelphia, is in charge of maintaining the navigable water ways within a geographic area under the District's jurisdiction. The District also has the responsibility of studying the flood control requirements of the Delaware River watershed, including the tributaries leading into the Delaware River.

^{2/} The NFFE's claimed unit appears as amended at the hearing.

^{3/} The Stroudsburg Project Office, Beltsville Resident Engineer Office, Chesapeake City Resident Engineer Office, and Fort Mifflin Project Office, which are not located in U.S. Custom House in Philadelphia, are divisions within the responsibility of the District Engineer. It appears from the record that they are not encompassed within the unit petitioned for by the AFGE. However, the field survey personnel, who are directed from the District Office, are included in the unit petitioned for by the AFGE. It appears the AFGE received formal recognition covering employees in its petitioned for unit in December 1966.

Basically, the Activity serves the Delaware Valley and the New Jersey and Delaware Coastal areas. Additionally, the role of the District is to develop the natural resources of the area by providing flood control, and water supply and recreational areas.

The District Office, under the overall supervision of the District Engineer and his Deputy, is subdivided into three staffs: (1) The Executive Staff; (2) the Advisory and Administrative Staff; and (3) the Technical Staff.

The Executive Staff consists of a number of Military Assistants and Special Assistants, as well as 8 Boards and Committees, such as the Welfare and Recreation Association, Employees Training Committee, Value Engineering Committee and the Automatic Data Processing Systems Coordinating Committee. The Advisory and Administrative Staff consists of seven offices: The Comptroller, which is concerned with all of the fiscal budgeting and management analysis operations in the Districts and services all of the staffs in the District; the Counsel, who is the attorney for the District, and provides legal advice and assistance to all of the District staff on an equal basis, as needed; the Automatic Data Processing Center, which operates the computer and related equipment, and services all of the District staffs on an equal basis; the Safety Office, which advises and assists all of the staffs in carrying out the safety program; the Office of Administrative Services, which furnishes space, office equipment and supplies, printing, reproduction, mail services and files services; the Public Affairs Office; and the Personnel Office, which provides a fully integrated personnel management program for all staffs. The Technical Staff is subdivided into five divisions; the Real Estate Division, which is involved in the acquisition, appraisal, and management of real estate that the Activity requires for the construction of assigned projects; the Engineer Division, which is engaged in studies and designs of assigned projects that have to do with navigation and maintenance of water ways, and construction of dams and flood control works; the Supply Division which is concerned with the procurement and storage of items that are needed by other divisions in the District; the Operations Division, which is engaged in the placement and maintenance of navigational aids; and the Marine Design Division (MDD), which contains the employees petitioned for by the NFFE, and which is subdivided into two branches, the Design Branch, and the Contract Liaison Branch.

The MDD, under the direction and supervision of the U.S. Army and Engineer District, Philadelphia, operates as the central floating plant design group for the U.S. Corps of Engineers. It is principally engaged in research, design, and construction of various types of floating plants, such as self-propelled hopper dredges, sidcasting

dredges, pipeline cutterheads, and dustpan dredges. MDD also is responsible in the District's area for the administration of construction contracts and for the supervision of construction. To accomplish its mission, the MDD is staffed with approximately 27 employees, including 14 professionals, 10 nonprofessional, and three clerical employees. The following job classifications are included in the MDD: Naval Architect, Mechanical Engineer, and Electrical Engineer, who are professional; Naval Architect Technician, Mechanical Engineer Technician, Engineer Draftsman, and Shipbuilding Inspector, who are nonprofessional; General Clerk Typist, Clerk Typist, and Secretary-Stenographer, who are clerical.

The record discloses that authority for the administration of the District Office is invested in the District Engineer. This includes authority for the hiring, firing, disciplining, and promotion of all employees of the District, and also includes coordinating of the staffing requirements and levels for all of the subordinate offices of the District. The record reveals further that the District Engineer has delegated most, if not all, of his authority in these matters to the Office of Personnel. Thus, although the chiefs of the respective Divisions and Offices have limited authority to recommend employees for hire, fire, and disciplining, as well as promotions, and limited authority to talk to Union representatives about problems concerning their respective organizational units, final authority in all of these matters resides in the Office of Personnel. It appears that all organizational and administrative decision making as well as personnel policy formulation is made in the Office of the District Engineer or the Office of Personnel rather than at any of the lower staff levels.

As noted above, all District employees are under the general supervision of the District Engineer. In descending order, the supervisory hierarchy flows from the District Engineer through his Deputy, to the chiefs of the respective offices and divisions within the Staffs, and, subsequently, to their respective branch chiefs.

Although the record reveals that the MDD's function is not duplicated in any of the other divisions of the Technical Staff, it indicates that every job classification within MDD, other than that of Marine Architect, is present in almost all divisions of the Technical Staff. Further, the record shows that although the design operation performed by the MDD is unique in the sense that it is solely performed therein, to accomplish this mission, cooperation is required and given by units of other Staffs throughout the District Office. For example, the record indicates that the MDD is dependent on the Comptroller for payrolls and funding, records assistance,

timekeeping and the issuing of checks; and the Supply Division processes MDD's contracts, MDD's invitation for bids projects and buys MDD's Office supplies. The Operations Division relies on MDD for advice and engineering expertise for making the floating plant; the MDD, in turn, relies on the Office of Administrative Services for its reproduction services, with respect to getting prints and reproduction of drawings. Moreover, MDD deals with the Office of Counsel for legal advice. Although the specific work of the divisions of Technical Staff differs in some respects depending on the particular division function, basically all of the engineering work concerns research, design, the creation of specifications and the preparation of estimates. Thus, while terminology as well as general training of Marine Architects differ from that of other engineers in other technical staff divisions, the basic characteristics of the work of the divisions in the Technical Staff are essentially the same as in any engineering oriented field, and the basic techniques used by all of the divisions are the same. Moreover, all the divisions necessarily must depend on each other for accomplishment of the overall mission of the Activity, and this is reflected in the common supervisory staff meetings, common direction, and common mission goals.

In their respective classifications, MDD employees and other District Office employees located in the U.S. Customs House enjoy the same benefits and other terms and conditions of employment; receive similar pay; are supervised in a similar fashion; enjoy almost daily personal contact with each other; and are subject to the same personnel policies. With respect to interchange and transfers, the record indicated that some interchange has occurred between MDD personnel and the other divisions. Moreover, there are occasionally details from MDD into other staffs of the District, as well as details to other Districts which vary in time from two weeks to sixty days duration. The record reveals also that there is a career progression program encompassing nonprofessionals in the MDD and other division staffs, through which employees can move into other divisions and offices, and there have, in fact, been transfers into and out of MDD. Furthermore, the responsibility of employees at the same grade level and in same occupations in the Staffs comprising the District, including MDD employees, are similar and interchangeable.

Based on the foregoing, I find that the unit sought by the NFFE, limited to employees of the Activity's Marine Design Division of the Technical Staff is not appropriate for the purpose of exclusive recognition. As noted above, the record reveals that all of the employees of the District Office are engaged in an interrelated mission and have common supervision and personnel policies. The record reveals also that there is some interchange between employees in the MDD and other District divisions and offices, there is a career progression program for nonprofessionals in MDD and other divisions and offices,

and the MDD employees work in close physical proximity to other District personnel and have substantial job contacts. Further, the skills and training of the MDD employees are not limited to that particular Division, and there is evidence of significant overlap of certain job classifications throughout the District Office, including the MDD. In these circumstances, I find that the employees in the unit sought by the NFFE do not have a community of interest separate and apart from employees in the other divisions and offices in the District Office. Accordingly, since a unit limited to employees of MDD is not appropriate, I shall order that the NFFE's petition be dismissed.

I also find, based on the foregoing, that an overall unit of all General Schedule and Wage Board employees in the U.S. Army Engineer District, located in the U.S. Custom House, Philadelphia, Pennsylvania, as proposed by the AFGE, is appropriate for the purpose of exclusive recognition. As noted above, the record shows that all the employees in the unit petitioned for by the AFGE receive similar pay and benefits, share similar working conditions, and are subject to common supervision and personnel policies. In addition, there is interchange and job progression among the divisions and offices of the Activity. In these circumstances, I find that there is a clear and identifiable community of interest among the employees petitioned for by the AFGE. Moreover, such a comprehensive unit will, in my view, promote effective dealings and efficiency of agency operations.

Accordingly, I find that the following unit is appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board Employees
in the U.S. Army District, Corps of Engineers,
located in the U.S. Custom House, Philadelphia,
Pennsylvania, excluding professional employees,
employees engaged in Federal personnel work in
other than a purely clerical capacity, management
officials, and supervisors and guards as defined
in the Order.

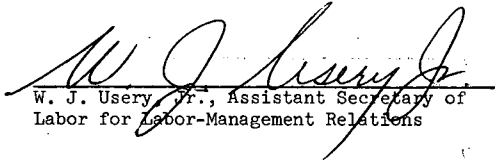
ORDER

IT IS HEREBY ORDERED that the petition filed in Case No. 20-2319, be, and it hereby is dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO, Local 902. ^{4/}

Dated, Washington, D.C.
August 10, 1971


W. J. Usery Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{4/} As the NFFE's showing of interest is insufficient to treat it as Intervenor in Case No. 20-2328, its name will not be placed on the ballot.

August 10, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

FEDERAL AVIATION ADMINISTRATION,
BUREAU OF NATIONAL CAPITAL AIRPORTS
A/SLMR No. 91

The Petitioner, National Federation of Federal Employees, Local 1709 (NFFE) and the incumbent Intervenor Local F-91, International Association of Firefighters (IAFF) sought to represent a unit of "firefighters" including those classified as Crew Chiefs (Lieutenants), Training Officers, and Fire Inspectors at the Activity's Washington National and Dulles International Airports located in Virginia. The parties stipulated that the unit was appropriate, but the Activity, in opposition to the NFFE and the IAFF, sought to exclude Lieutenants, Training Officers and Fire Inspectors as supervisors.

The Assistant Secretary found that the Lieutenants were not "supervisors" within the meaning of Executive Order 11491 and therefore should be included in the firefighter unit. In this respect, he noted that they spend a substantial portion of their work time performing duties identical to other firefighters; they have no authority to hire, transfer, suspend, layoff, recall, promote or discharge employees, and that they did not "make" work assignments, which are governed by rotation rosters or other methods. The Assistant Secretary noted also that while some Lieutenants have evaluation and recommendation functions they do not "effectively evaluate" employees in that, with rare exception, all such evaluations were standard "satisfactory" evaluations.

With regard to the Training Officers and the Fire Inspectors, the Assistant Secretary found that they also were not supervisors within the meaning of the Executive Order. In this regard, he noted that while both classifications perform functions which are not specifically viewed as "firefighting," these specialized functions fall within the overall mission of the Activity. Moreover, neither the Training Officers nor the Fire Inspectors exercised any supervisory authority over unit employees.

In these circumstances, the Assistant Secretary directed that an election be held in a unit of all Firefighters, including employees classified as Crew Chiefs (Lieutenants), Fire Inspectors and Training Officers.

A/SLMR No. 91

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

FEDERAL AVIATION ADMINISTRATION,
BUREAU OF NATIONAL CAPITAL AIRPORTS^{1/}

Activity

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1709

Petitioner

and

LOCAL F-91, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO^{2/}

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Terrence J. Martin. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the Activity's brief,^{3/} the Assistant Secretary finds:

-
- ^{1/} The name of the Activity appears as amended at the hearing.
 - ^{2/} The name of the Intervenor appears as amended at the hearing.
 - ^{3/} The Intervenor, Local F-91, International Association of Fire Fighters, AFL-CIO, herein called IAFF, filed an untimely brief which has not been considered.

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The Petitioner, National Federation of Federal Employees, Local 1709, herein called NFFE, seeks an election in a unit of all firefighters, including crew chiefs (Lieutenants), Training Officers (Captains) and Fire Inspectors (Captains) both at the Washington National and Dulles International Airports. The IAFF is in agreement with the NFFE as to the appropriateness of the claimed unit. The parties stipulated that a unit composed of the two airports is appropriate.^{4/}

The Activity contends, in opposition to the NFFE and the IAFF, that the Lieutenants who perform as Crew Chiefs, the Captains who perform as Training Officers, and the Captains who perform as Fire Inspectors are supervisors within the meaning of Section 2(c) of the Order and should, therefore, be excluded from the petitioned for unit.^{2/} In addition, the Activity contends that the employees in the disputed categories do not have a community of interest with other employees in the unit.^{8/}

Since November 1969, the IAFF and the Activity have had an exclusive bargaining relationship and a negotiated agreement covering a unit of all firefighters, including crew chiefs, training officers, and fire inspectors at Dulles and National Airports.^{7/} Each of the two airports operates a

^{4/} Thus, the parties stipulated that a unit appropriate for the purpose of exclusive recognition would encompass the firefighting crews at both Washington National and Dulles International Airports. In this regard, the record reflects that these two airports are the only two airports in the metropolitan Washington, D. C. area which are operated by the Activity. Further, as noted below, there is an established collective bargaining history in the unit sought.

^{5/} The IAFF urged, in the alternative, that if all Lieutenants and Captains are found to be supervisors, employees in these classifications should still be given the opportunity to select the IAFF as their bargaining representative pursuant to the provisions of Section 24(a)(2), one of the "Savings clauses" of the Executive Order.

^{6/} The Activity further contended at the hearing that the Training Officers and Fire Inspectors were management officials as defined by Section 2(f) of the Order. However, the evidence was insufficient to support this contention.

^{7/} The parties stipulated that the petition herein was not barred by a negotiated agreement.

fire prevention and fire protection branch, with each branch under the immediate supervision of a Chief. In addition to the Chief, the following personnel are employed at Dulles: 2 Assistant Chiefs, GS-7; 1 Training Officer, GS-7; 1 Fire Inspector, GS-7; 8 Lieutenants, GS-6; 19 Driver-Operators, GS-5; and 12 Privates, GS-4. At National, in addition to the Chief, the employee complement is as follows: 2 Assistant Chiefs, GS-7; 1 Training Officer, GS-7; 1 Fire Inspector, GS-7; 8 Lieutenants, GS-6; 18 Driver-Operators, GS-5; and 13 Privates, GS-4.^{8/}

Each branch operates on a 24-hour basis. The Assistant Chiefs, Lieutenants, Privates and Driver-Operators work a total of 72 hours per week, working three 24-hour shifts per week. They receive a 25 percent pay differential for overtime, holiday and night work. The Chief, Training Officers and Fire Inspectors each work 56 hours per week, four 8-hour days and one 24-hour shift. They receive a 15 percent differential. The work shift for the Training Officers and Fire Inspectors is dictated by the nature of their work which includes some night time responsibilities. A typical shift complement at Dulles includes 1 Assistant Chief, 1 Training Officer, 1 Fire Inspector, 4 Lieutenants, 8-9 Driver-Operators, and 5 Privates. At National, the typical shift breakdown includes 1 Assistant Chief, 1 Training Officer, 1 Fire Inspector, 4 Lieutenants, 8 Driver-Operators, and 7 Privates.

With respect to the physical facilities of the 2 branches, the record discloses that the Dulles branch is housed in a single 3-story building. The Lieutenants, Training Officer and Fire Inspector share the same sleeping quarters in the bunk room on the first floor with the Privates and Driver-Operators while the Chief and Assistant Chief sleep in their respective offices on the second floor. Lieutenants, the Training Officer and the Fire Inspector have their lockers in a common area with Privates and Driver-Operators and all classifications use the same toilet facilities, eating facilities and engage in common recreational activities. At National, the branch is housed in a 2-story building. The Lieutenants, Training Officer and Fire Inspector sleep in the same quarters with the Privates and Driver-Operators; all classifications eat in the same kitchen; and, with the exception of the Training Officer, all others share common locker areas.

In the day-to-day operations of each branch, the record revealed that the equipment and "in-house" details performed by the firefighters are routine in nature and require little or no follow-up supervision. Further,

^{8/} All firefighting personnel, including the Lieutenants, Training Officers, and Fire Inspectors, have the same Civil Service Commission Position Classification Code Series No. GS-081.

in both branches, Lieutenants perform many of the same job functions as are performed by the crew members. The evidence established that, whether involved in a house detail or with fighting a fire, the crew members are aware of the job function to be performed and they perform their duties with a minimum of instruction.

Assignment to firefighting equipment is accomplished generally on an annual basis. While these assignments are posted on a bulletin board by a Lieutenant, the actual assignment of equipment is the responsibility of the Assistant Chief. A Lieutenant is assigned to each vehicle and is responsible for that vehicle and the personnel assigned to it. However, there are never more than 2 additional men on a vehicle and often the crew consists of the Lieutenant and 1 other man. In consequence, the Lieutenant, who is designated as a "crew chief," is "responsible" usually for only 1 or 2 firefighting employees. The Lieutenant also makes a daily equipment check with his crew. Again, the record reflects that the check is highly routine in nature and that firefighting employees require little or no supervision with respect to the maintenance of their equipment. The record reveals in this respect that if something wrong was discovered during the check the Lieutenant would work along with the men to correct the situation. In addition, the evidence establishes that Lieutenants often assist other firefighters in cleaning equipment.

Assignment of the daily house details is accomplished by drawing "watch balls" at one branch, and by a rotating system at the other. It is clear that Lieutenants do not "make" the assignments. While Lieutenants theoretically are responsible for the performance of the various house details, including cleaning the building and quarters, it is undisputed that little or no actual direction is involved. In addition, Lieutenants, who are designated on a pre-determined basis to act as "house captain" to see that the overall house is cleaned, could on any day be assigned to one of the house details, such as "KP" or cleaning latrines.

An Assistant Chief is on duty at each of the branches for the entire shift. He has the authority to grant leave, vacations, approve overtime, and to recall employees. In his absence, a Lieutenant who has been designated as "senior officer for the month" would act as Assistant Chief, and exercise the authority of that position. The record disclosed that under the rotating system for designating the "senior officer for the month," a Lieutenant would normally act as Assistant Chief on four or five tours of duty for that month and that this would arise only once every four months. The record reveals further that Lieutenants are not required to assume the Assistant Chiefs' position and some have elected not to do so.

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When attending a fire, the Assistant Chief rides the command vehicle, directs the fire operation and gives assignments to the various Lieutenants on the equipment. The Lieutenant, on the other hand, rides on the equipment with his crew. At the fire, the Lieutenant works with the crew in manning turrets, handling nozzles, dragging the hose and manning the equipment. While it is contended that Lieutenants spend approximately 25 percent of their time "directing" and 75 percent working, it is undisputed that crew members have a thorough knowledge of their assignments and the tasks to be performed at a fire. Also, any judgment with respect to positioning of equipment or moving men exercised by the Lieutenants during a fire are subject to change by the Assistant Chief, who is present at all fire calls.

While the Lieutenants are assigned additional responsibilities, such as maintenance officer, supply officer, and procurement officer, the record reveals that the performance of these functions is merely "clerical" and requires no use of independent judgment. Thus, the record reveals that on one shift, 95 percent of the reports prepared are done by one Lieutenant, "because he is a pretty good typist." Although Lieutenants are responsible for filling out "run reports" describing each run of the equipment, the report is reviewed and signed by both the Chief and Assistant Chief before it is forwarded to the Bureau of National Capital Airports. Likewise, while a Lieutenant is responsible for procurement, the record shows that this function is clerical in nature and that the decision to make such procurements rests solely with the Chief. Further, in the absence of a Lieutenant, a Driver-Operator acts as the procurement officer. Although 2 Lieutenants keep time and attendance cards, they merely record the time a man worked or was absent on the card. The Lieutenant then signs the card as "timekeeper" which the Chief signs as "supervisor." Although Lieutenants prepare a Weekly Labor Distribution Report, the evidence reveals that this also is a clerical undertaking and the final product is signed by an Assistant Chief.

Lieutenants have no role in hiring or firing employees. While it is suggested that Lieutenants may "discipline" or "write up" employees, it is clear that they exercise little, if any, independent judgment in this respect and that their recommendations are not independently effective, but are subject to investigation and review by the Assistant Chief and Chief. Also, there is no evidence that Lieutenants transfer or suspend employees or perform any labor relations functions.

Some Lieutenants are responsible for preparing Employee Appraisal Reports (EAR). At Dulles, all Lieutenants prepare the EAR's and are assigned a specific number of firefighters for appraisal. Following the Lieutenant's appraisal, the EAR's are sent to the Assistant Chief for

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further review and then to the Chief who is empowered to make changes. In this regard, the record reveals that while there are several choices of rating, all men receive "satisfactory" ratings.^{9/} Unlike Dulles, at National only some of the Lieutenants prepare EAR's, and prior to the filing of the petition in the subject case, no Lieutenant performed this task. As noted above, each EAR prepared by a Lieutenant is subject to review and revision by an Assistant Chief and the Chief who are empowered to make changes. In this regard, it was noted that those conducting the review of EAR's are also constantly working with the crews and are therefore able to make an independent evaluation of their performance.

Based on the foregoing, I find that employees classified as crew chiefs (Lieutenants) do not possess the indicia of supervisory status as provided in Section 2(c) of the Executive Order. Thus, Lieutenants clearly have no authority to hire, transfer, suspend, layoff, recall, promote or discharge employees. Regarding their ability to make job assignments, the record disclosed that the daily equipment and in-house details are pre-determined by an Assistant Chief and that the Lieutenant has no part in their selection. Moreover, the nature of any instructions which a Lieutenant may give in this respect relates to tasks which are so routine as to not require actual supervision and, in effect, require no exercise of independent judgment.

With respect to the Activity's contention that Lieutenants have the authority to "effectively evaluate" personnel, the evidence reveals that the Lieutenants who fill out the evaluation^{10/} form do so in conjunction with an officer of higher rank, and that all employees are rated "satisfactory." In addition, the effectiveness of the recommendation is reduced by the fact that the Assistant Chief, who is present on each shift, has the opportunity to observe and formulate directly his own evaluation of each employee, rather than relying primarily on that of a Lieutenant.

With respect to the fact that some Lieutenants act as Assistant Chiefs, when Assistant Chiefs are on leave, the Activity contends that this part-time function makes the Lieutenants supervisors. Although the evidence discloses that, on occasion, Lieutenants act as Assistant Chiefs and

^{9/} The record reflects that on at least one occasion a Lieutenant who sought to rate a man higher than "satisfactory" was discouraged from doing so by an Assistant Chief.

^{10/} As noted above, the record reveals that all Lieutenants are not required to fill out the Employee Appraisal Report and some, in fact, do not perform this function.

exercise the Assistant Chiefs' authority, it also shows that an individual Lieutenant serves in such a capacity only once every four months, for four or five days in that month. In addition, the evidence establishes that some Lieutenants have chosen not to act as Assistant Chief. In these circumstances, and noting particularly that the Lieutenant's authority is generally of a routine or clerical nature not requiring the use of independent judgment; that they spend a substantial portion of their work time performing duties identical to other firefighters; that they have no authority to hire, transfer, suspend, layoff, recall, promote, or discharge employees; that their work assignment authority is governed completely by rotation rosters or other methods and is of a highly routine nature; and that the evidence is insufficient to establish that they make effective recommendations with respect to personnel action, I find that the employees classified as Lieutenants do not possess the indicia of supervisory status as provided in Section 2(c) of the Executive Order and, therefore, they should be included in any unit found appropriate for the purpose of exclusive recognition.^{11/}

Regarding the 2 Training Officers, both of whom are classified as GS-7's and hold the rank of Captain, their job descriptions provide that they are responsible for developing, directing and implementing an ongoing training program for all personnel at the aircraft rescue and firefighting branches. The Training Officers at both branches give classroom instructions and conduct fire drills. The classroom training involves 2 to 2½ hours a day. The record reveals that the Training Officers perform certain other administrative functions, such as filling out procurement forms, stock requisitions and attendance cards. While they do not perform any house details during the remainder of their work day, the Training Officers are in constant contact with the other unit personnel as they work almost exclusively and entirely with the firefighting personnel.^{12/}

The evidence establishes that Training Officers report directly to the Chief, but do not exercise any supervisory authority and do not implement labor-management policies, and do not effectively evaluate personnel. The record also reveals that although Training Officers normally attend fires in an advisory capacity, on isolated occasions they have assisted the crew in putting out fires.

^{11/} See United States Department of the Navy, United States Naval Weapons Station, Yorktown, Virginia, A/SLMR No. 30, wherein I concluded that Fire Captains were not supervisors within the meaning of Section 2(c) of the Order.

^{12/} The evidence discloses that both Training Officers were promoted through the ranks of firefighters at the respective branches.

Each branch employs one Fire Inspector, GS-7, who is considered a regular part of the firefighting branch. The Fire Inspector's duties involve conducting inspections of buildings, hangars, maintenance shops and other buildings on the facility, to discover and prevent fire hazards. Both Fire Inspectors are former firefighters who have progressed through the ranks. They report directly to their Chief, spend approximately 30 percent of their time in the firehouse, and exercise no supervisory authority over the firefighters. The record reveals further that the Fire Inspectors eat, sleep and engage in recreational activities with the firefighters and that they attend training sessions and fires. The Activity contends that Training Officers and Fire Inspectors are, in effect, staff employees who lack a community of interest with the other firefighters, and, therefore, should not be included in the claimed unit.

Under all the circumstances, I find no basis in the record for excluding employees classified as Training Officers and Fire Inspectors from the unit sought. Thus, the evidence establishes that they do not implement any labor-management policies or exercise any supervisory authority over the firefighters at the Activity. Moreover, the record reveals that the employees in both classifications perform functions which are integrated with and necessary to the overall operation of the respective branches involved herein. In these circumstances and noting their substantial daily contact and their commonly shared working conditions with the firefighters, I find that both the Training Officers and Fire Inspectors share a community of interest with the firefighters and should be included within the petitioned for unit.^{13/}

^{13/} Inasmuch as I have concluded that the Lieutenants, Training Officers, and Fire Inspectors are not supervisors within the meaning of Section 2(c) of the Executive Order, it was considered unnecessary to pass upon the IAFF's alternative theory concerning the application of Section 24(a)(2) of the Executive Order. However, it should be noted that Section 24(a)(2), by its terms, refers to units of supervisors rather than to the inclusion of supervisors in units appropriate pursuant to Section 10 of the Order. Moreover, the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, the "legislative history" of the Executive Order, also indicates that Section 24(a)(2) refers to supervisors being represented in separate units by labor organizations which traditionally represent such supervisors in the private sector.

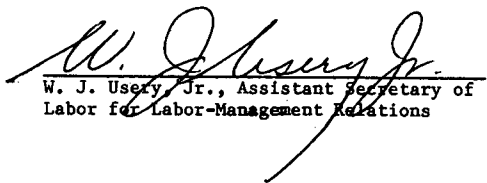
Accordingly, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All Firefighters including Crew Chiefs (Lieutenants), Fire Inspectors, and Training Officers at Washington National and Dulles International Airports, Virginia, excluding Chiefs, Assistant Fire Chiefs, employees engaged in Federal personnel work other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1709; or by the Local F-91, International Association of Firefighters, AFL-CIO; or by neither.

Dated, Washington, D. C.
August 10, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

August 19, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VETERANS ADMINISTRATION HOSPITAL,
EAST ORANGE, NEW JERSEY
A/SLMR No. 92

The subject case arose as the result of a petition filed by Local 2735, American Federation of Government Employees, AFL-CIO (AFGE) seeking a unit of all regular full time and regular part time employees of the Activity, including "purchase and hire" employees, but excluding, among others, employees at the VA Outpatient Clinic located in Newark, New Jersey and Canteen employees. The Activity contested the appropriateness of the unit sought by the AFGE, contending that "purchase and hire" employees do not share a community of interest with the other employees and that the appropriate unit should include Canteen employees, who, since 1965 have been a part of an exclusive bargaining unit represented by Local 1154, National Federation of Federal Employees, (NFFE). The Activity also took the position that the appropriate unit should include the employees of the Outpatient Clinic located in Newark, New Jersey. NFFE essentially agreed with the position taken by the Activity.

Under all the circumstances, the Assistant Secretary found that the petitioned for unit was inappropriate for exclusive recognition under the Executive Order, because of the exclusion of the Canteen employees and the inclusion of "purchase and hire" employees. He noted that the Canteen employees had been included in the bargaining unit since 1965 and that the effect of the petition herein would be to sever a substantial number of employees from the existing exclusively recognized bargaining unit which included Canteen employees. In these circumstances, he applied the principle set forth in United States Naval Construction Battalion Center, A/SLMR No. 8, that where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out from an existing unit will not be appropriate except in unusual circumstances.

The Assistant Secretary also found that the "purchase and hire" employees did not share a community of interest with the other employees of the Activity and their inclusion in the unit would be inappropriate. In this regard, the Assistant Secretary noted that "purchase and hire" employees were hired by the Activity on a temporary basis for the purpose of completing certain remodeling and/or construction projects; that these employees are referred to the

Activity by appropriate craft unions in the area; that they are paid the prevailing rates established for their respective crafts in that area and are not hired subject to Civil Service Regulations; that they do not receive any Civil Service benefits; that they are not integrated with the regular employees of the Activity, either as to work duties or performance; and that they are subject to layoff or discharge without prior notice.

In these circumstances, the Assistant Secretary ordered that the AFGE's petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION HOSPITAL,
EAST ORANGE, NEW JERSEY

Activity

and

Case No. 32-1793

LOCAL 2735, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Petitioner

and

LOCAL 1154, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Thomas B. Daley. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the brief filed by Local 1154, National Federation of Federal Employees, herein called NFFE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. Local 2735, American Federation of Government Employees, AFL-CIO, herein called AFGE, seeks an election among employees of the Activity in the following unit:

All regular full-time and part-time employees, including purchase and hire employees, excluding managers, supervisors, professionals, guards, personnel division employees engaged in other than clerical work, and employees who work at the VA Outpatient Clinic at 20 Washington Place, Newark, New Jersey. 1/

The Activity contends that Outpatient Clinic employees and Canteen Service employees should be included in any unit found appropriate herein, and that "purchase and hire" employees should be excluded. 2/ The NFFE agrees essentially with the Activity's position concerning the unit composition. 3/

The Activity is engaged in providing total medical and rehabilitative services for veterans. To achieve this mission, it employs a staff of approximately 1600 employees including professionals, technicians, General Schedule and Wage Board employees. The petitioned for unit, as amended, includes approximately 860 employees. The Activity is organized under the direction of a Hospital Director. Directly under the Hospital Director is the Assistant Hospital Director, who, in addition to his other duties, is responsible for the administrative and housekeeping details attendant to the operation of the Activity, and supervises such services as Engineering, Fiscal, Supply, Personnel, Medical Administration, Building Management, Management Analysis and the Canteen Service. Directly under the Assistant Hospital Director is the Chief of Staff, who is responsible for all medical services. Under the Chief of Staff are two Associate Chiefs of Staff; one of whom is responsible for Research and Education, and the other of whom is responsible for allied services, such as Dietetics,

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- 1/ The unit definition appears as amended at the hearing. The record reveals that as a consequence of this amendment, approximately 100 regular part-time employees were added to the petitioned for unit.
 - 2/ Although the AFGE's unit definition, as amended at the hearing, does not specifically exclude Canteen employees, the record reflects that it would exclude such employees from the unit.
 - 3/ As discussed below, the NFFE has had a negotiated agreement with the Activity covering a unit of all regular full-time and regular part-time employees, including Canteen employees and guards, but excluding professionals and others normally excluded under Executive Order 11491. With respect to the Outpatient Clinic employees, the NFFE contends that they constitute an accretion or addition to its presently recognized unit.

Social Work, Psychology, Pharmacy, Chaplain, Medical Illustration, Library and Voluntary Services. Reporting directly to the Chief of Staff are the Chiefs of the following services: Medical, Surgical, Pulmonary Disease, Psychiatry, Neurology, Physical Medicine and Rehabilitation, Radiology, Laboratory, Nuclear Medicine, Dental, Nursing, and Extended Care. The Chief of the Extended Care Service is responsible for the Restoration Center, the Intermediate Care Section and the Outpatient Clinic. ^{4/}

The record reveals that in 1965 the Activity granted the NFFE exclusive recognition for a bargaining unit defined as follows:

All regular employees of the hospital (including the Canteen and Restoration Center) with the exception of the following categories: Professional employees, management and supervisory employees, and employees in the Personnel Division whose work is other than clerical.

The most recent negotiated agreement between the Activity and the NFFE was effective November 17, 1968, with a two year duration. The agreement provided for automatic renewal for periods of two years thereafter, in the event either party failed to notify the other of an intent to modify or terminate the agreement at least 60 days prior to the terminal date. A Supplemental Agreement entered into by the parties on June 19, 1969, did not alter the duration or effective date of the basic agreement. ^{5/}

As noted above, the Canteen employees, whom the AFGE would exclude from the petitioned for unit, are included in the unit for which the NFFE received exclusive recognition in 1965. The record reveals that the Canteen is operated by the Veteran's Canteen Service, which operates certain services at all of the Veteran's Hospitals. The Canteen Service at the Activity is under the supervision of the

^{4/} The Restoration Center is on the Hospital grounds, but is located in a separate building from the rest of the Hospital. The Outpatient Clinic is located in Newark, New Jersey, about 10 miles from the Hospital.

^{5/} There is no contention that the AFGE's petition was barred by a negotiated agreement. The Activity also has granted exclusive recognition to Local 1431, National Federation of Federal Employees as the representative of a unit of professional employees, including physicians, dentists and nurses and a negotiated agreement covering this unit was executed on July 23, 1968. On March 12, 1968, the Activity granted formal recognition to Local 2832, American Federation of Government Employees, AFL-CIO, for a unit of nonsupervisory nonprofessional General Schedule employees of the Outpatient Clinic located in Newark, New Jersey.

Assistant Hospital Director. The immediate supervisor of the Canteen Service at the Activity is the Canteen Officer who reports directly to the Assistant Hospital Director. In addition, the Canteen Officer is responsible to the Canteen Director of the Veterans Administration, who, in turn, is responsible to the Chief Medical Officer of the Veterans Administration. The evidence establishes that Canteen Officer serves on committees and panels at the direction of the Assistant Hospital Director of the Activity and, in fact, served on the negotiating committee with the Assistant Hospital Director in negotiating the agreement with the NFFE. At the Activity, the Veterans Canteen Service operates a retail store, a cafeteria, a barber shop, and provides other services. It further appears that the Canteen Service contracts with an outside firm for the placement and servicing of vending machines on the Hospital property.

With regard to "purchase and hire" employees, whom the AFGE would include in its petitioned for unit, the record discloses that these employees are building construction tradesmen who are hired on a temporary basis for certain remodeling and construction work on the Hospital. They are employed on projects which are not large enough to justify the Activity securing an outside contractor, but which are too large for the regular maintenance employees of the Activity to handle. In such situations, the Hospital is authorized to hire these construction tradesmen for the purpose of completion of the individual projects involved. The record reveals that the Hospital has authorized its Engineering Officer to hire craftsmen from the local labor area to complete such projects. The Engineering Officer normally calls the union halls for the particular skills needed. When hired, the craftsmen are under the supervision of the Engineering Officer or his subordinates.

The record shows that "purchase and hire" employees are not hired or paid on the same basis as the Activity's regular employees. Rather, they are hired when referred by the union hiring-hall and are paid the prevailing hourly rate established by the particular craft union involved, which is usually greater than that paid to Wage Board employees of the Activity performing comparable work. These employees do not acquire Civil Service status of any kind, are not allowed to acquire or accumulate sick leave or annual leave, do not qualify for any Civil Service insurance benefits and are hired only for the duration of the particular project involved. The record reveals that when any problems develop concerning the "purchase and hire" employees, they are discussed with officials of the union which referred them. In addition, these employees are subject to discharge or lay off without prior notice or compliance with any of the personnel policies or Civil Service Regulations applying to

regular employees of the Activity. The evidence establishes further that they are not intermingled with any of the Activity's regular employees, but rather are assigned to their work on a project only in conjunction with other "purchase and hire" employees.

The Outpatient Clinic in Newark, New Jersey, whose employees the AFGE would exclude from its petitioned for unit, employs some 145 employees of whom approximately 76 are in the same classifications as employees in the petitioned for unit. The record discloses that prior to January 1, 1967, the Outpatient Clinic was organizationally attached to the Veterans Administration Regional Office. On November 23, 1966, the Chief Medical Officer of the Veterans Administration directed that, as of January 1, 1967, the Activity would assume jurisdiction over, and responsibility for, the Clinic. Since that time, the Activity has provided all personnel services for the Clinic employees.

The record discloses that for every service or organizational component at the Clinic, there is a similar service or organizational component at the Activity. However, the evidence establishes that the designation of a common chief of each of the services for both the Clinic and the Hospital has not been accomplished in all services. Thus, at present, a common chief has been designated only in the following services: Radiology, Social Work, Nursing, Psychology, Library Service and Dietetics. Moreover, the record reveals that aside from certain professional and supervisory employees only three Radiology Service employees are being rotated regularly between the Hospital and the Clinic. The evidence establishes that the delay in the consolidation and integration of the other services has been occasioned by the desire of the Activity to minimize the adverse impact of the consolidation.

In view of my conclusion below that the unit sought is inappropriate, I find it unnecessary to decide whether the employees at the Outpatient Clinic constitute accretion or an addition to the existing unit represented by the NFFE. However, I note, in this connection, that although the Clinic became administratively attached to the Activity two years after the NFFE received exclusive recognition at the Hospital, it is geographically separated from the main Activity center, administrative integration of the two facilities is still incomplete, and, at present, there is only minimal rotation of employees between the two locations.

Based upon the foregoing, I find that the unit petitioned for by the AFGE is inappropriate for the purpose of exclusive recognition under Executive Order 11491 by reason of its exclusion of the Canteen employees and its inclusion of the "purchase and hire" employees.

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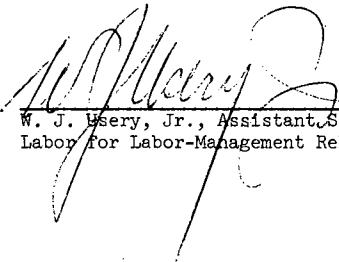
The effect of the AFGE's petition in the subject case is to sever a substantial number of employees from the existing exclusively recognized bargaining unit, which includes Canteen employees. As I stated in United States Naval Construction Battalion Center, A/SLMR No. 8, where the evidence shows that an established, effective and fair collective bargaining relationship is in existence, a separate unit carved out from the existing unit will not be found to be appropriate except in unusual circumstances. The record in the instant case does not show any such unusual circumstances as would justify the severance of the employees in the claimed unit from the Canteen employees who, as noted above, have been part of the exclusively recognized unit since 1965. Moreover, I find that the "purchase and hire" employees, who the AFGE would include in its claimed unit, do not have a clear and identifiable community of interest with other employees in the petitioned for unit. Thus, the evidence establishes that "purchase and hire" employees are hired temporarily and only for the duration of a particular project; that they are subject to layoff without prior notice; that they do not enjoy Civil Service status or benefits; that their hourly rate of pay is usually in excess of that paid to regular employees of the Activity engaged in similar activities; and that they do not work with other regular employees of the Activity to accomplish their mission.

In these circumstances, I find the unit petitioned for by the AFGE to be inappropriate for the purpose of exclusion recognition under Executive Order 11491. I shall, therefore, order that the AFGE's petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 32-1793 be, and it hereby is, dismissed.

Dated, Washington, D.C.
August 19, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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August 20, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. COAST GUARD, SECOND
COAST GUARD DISTRICT
A/SLMR No. 93

The petitioning National Federation of Federal Employees, Local 1783 (NFFE) and the intervening American Federation of Government Employees, AFL-CIO, Local 3095 (AFGE) sought an election in a unit composed of the Activity's employees at the Office of the District Commander and at the Coast Guard Base. The Activity contested the appropriateness of the proposed unit contending that the two groups of employees lacked a clear and identifiable community of interest.

The record reflected that the Activity is composed of approximately 15 locations in a 22 state area. The Office of the District Commander, which is located in St. Louis, Missouri, is involved in the administration and support of all Coast Guard facilities in the 22 state area. The employees in that Office are all General Schedule employees performing clerical functions. The Coast Guard Base, which is the only other Activity facility in the metropolitan St. Louis area, is engaged in providing mooring facilities for Coast Guard water-going units and the employee complement is almost entirely Wage Board employees performing various manual skills.

The Assistant Secretary determined that the proposed unit was not appropriate for the purpose of exclusive recognition. The Assistant Secretary noted that notwithstanding that both groups of employees were parts of the same Activity and were in geographic proximity apart from other Activity facilities, such factors were offset by the substantial variance in function, the lack of common supervision, the lack of transfer or interchange, the lack of any "on-the-job" contact, the almost total divergence in job skills, the distinction in conditions of employment and the fact that the Base and the Office of the District Commander do not comprise an integrated operation wherein one is dependent on the other for the day-to-day completion of the Activity's mission. The Assistant Secretary noted that to group together segments of an activity which lack a controlling community of interest would constitute establishing a unit solely on the basis of the extent of organization, which is prohibited by the Executive Order.

The Assistant Secretary further found that encompassed within the petitioned for unit was an appropriate unit of employees assigned to the Coast Guard Base, which was comprised of employees who were engaged in a common mission and function and who shared common supervision and common working conditions. In these circumstances, the Assistant Secretary directed that an election be held in the Coast Guard Base unit. In addition, because the unit found appropriate was substantially different than that sought initially, the Assistant Secretary directed the Activity to post copies of a notice in the appropriate unit in order to ascertain the existence of any additional intervenors in that unit.

Inasmuch as neither labor organization had a thirty percent showing of interest in a unit of employees at the Office of the District Commander, the Assistant Secretary made no findings as to the appropriateness of such a unit.

U.S. COAST GUARD, SECOND
COAST GUARD DISTRICT

Activity

Case No. 62-2310

and

NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, LOCAL 1783

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3095

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Gregory P. Egan. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Petitioner, National Federation of Federal Employees, Local 1783, herein called NFFE, seeks an election in a unit of:

All non-supervisory, non-professional GS and WB employees of U.S. Coast Guard located at 1520 Market, 210 North Twelfth and the Foot of Iron Street, St. Louis, Missouri, EXCLUDING all management officials, supervisors, guards, employees engaged in Federal personnel work in other than a purely clerical capacity, professional and temporary employees.

The Intervenor, American Federation of Government Employees, AFL-CIO, Local 3095, herein called AFGE, is in agreement with the Petitioner that the above-described unit is appropriate for the purpose of exclusive recognition.

The Activity contends that the unit petitioned for is not appropriate in that there is not a clear and identifiable community of interest among the employees at the three locations covered by the petition.

The U.S. Coast Guard, Second Coast Guard District encompasses a geographic area of some 22 states and approximately 15 "locations." The Office of the District Commander, which is responsible for the administration and support of all Coast Guard operations in the District, is located in St. Louis, Missouri in office buildings at 1520 Market Street and 210 North Twelfth Street. The complement of the Office consists of 50 employees who the parties agree are nonsupervisory ^{1/} and nonprofessional. ^{2/} All of these employees are described as being engaged in various types of clerical endeavors and all are classified as General Schedule. ^{3/}

^{1/} The parties stipulated to the supervisory status of certain named employees by virtue of their responsibility to assign and distribute work; to give day-to-day supervision to employees and to participate in employees performance appraisals.

^{2/} The parties stipulated that the Mechanical, Naval, Civil and Structural Engineers in the Office of the District Commander were professional employees due to the non-standardized nature of their work, the educational requirements of the positions, the exercise of independent judgment in their work and their classification by the Civil Service Commission.

^{3/} The record reflects that there are certain classifications of employees that the parties view as "temporary" and excludable from any unit found appropriate for the purpose of exclusive recognition. Employees classified as "Summer Aids," "Student Aids," and "Summer Clerk Typist" all perform routine clerical duties within the Office of the District Commander, but on less than a full-time permanent basis. Also, there is within the District complement a classification known as "lamp-lighters" who tend river lights for a small annual sum. These employees are not a part of the Coast Guard Base complement. In view of my ultimate conclusions herein, I find it unnecessary to determine whether employees within these classifications would be eligible to vote.

The only additional Coast Guard facility located in the metropolitan St. Louis area ^{4/} is known as the Coast Guard Base, which is located at the Foot of Iron Street, some 8 miles from the above discussed Office of the District Commander. The Base, which is under the command of a Base Commanding Officer, is engaged in what is described as "operational and industrial" operations, which include the providing of mooring facilities for two floating Coast Guard units. The complement at the Base is 15 employees, 13 of whom are engaged in "manual labors" in such classifications as Maintenance Mechanic, Motor Vehicle Operator, Automotive Crane Operator, Laborer, Welder, Electrical Equipment Repairman, Electronic Mechanic, Stockman and Helper. All of these employees are in Wage Board classifications. The remaining two employees at the Base are the Supply Clerk and Purchasing Agent, both of whom are classified as General Schedule and they perform duties that are described as essentially clerical.

The record reflects that while the Base employees and the employees working in the Office of the District Commander are subject to the same Activity-wide rules and regulations, the latter employees are subject to the direction and authority of the District Commander while the Base has its own supervisory structure with the Base Commander having responsibilities for the implementation of personnel policies. Thus, except for the overall management exercised by the District Commander, there is no common supervision over the Base and the Office of the District Commander employees.

As noted above, the functions performed by employees assigned to the Base vary substantially from those performed by Office of the District Commander employees. While it appears that employees in each of the 2 groups could bid on vacancies in the other, the evidence reveals that there has only been 1 transfer from 1 group to the other in the last 10 years. Moreover, there is no evidence of any temporary interchange between the 2 groups. ^{5/} The record reflects that there is little, if any,

^{4/} The other Activity locations are field offices containing from 1 to 3 employees and are located in Paducah and Louisville, Kentucky; Cincinnati, Ohio; Dubuque, Iowa; Huntington, West Virginia; Memphis, Nashville, and Paris, Tennessee; Pittsburgh, Pennsylvania; Greenville, Mississippi; Minneapolis, Minnesota; and Leavenworth, Kansas.

^{5/} While theoretically the "bumping" area in case of reduction in force would be the St. Louis metropolitan area, i.e., the unit sought by the NFFE, because of the almost total lack of commonality of skills such bumping rights would appear to have little effect.

on-the-job contact between Base employees and those assigned to the Office of the District Commander. Thus, according to record testimony, there has never been an occasion when employees of the two groups attended any type of joint meeting.

With respect to conditions of employment, as noted above, all Office employees are General Schedule while 13 of the 15 Base employees are in Wage Board classifications. The record reveals that the Activity's existing grievance procedure covers both Base and Office employees with the District Personnel Officer having a degree of participation regardless of the group involved. In addition, The District Personnel Officer generally services all employees within the District, including those at locations other than in the St. Louis area. However, the evidence establishes also that there is a Military Personnel Officer at the Base who has some duties related to civilian employees at that facility.

Based on the foregoing, I find that a unit encompassing employees of both the Base and the Office of the District Commander is not appropriate for the purpose of exclusive recognition. Section 10(b) of the Executive Order requires that units be established on a basis which will ensure a clear and identifiable community of interest among the employees concerned. While the groupings of employees covered by the petition in the instant case are portions of the same "activity" and are located in geographic proximity to each other, apart from other Activity locations, the evidence establishes that the claimed employees have a substantial variance in functions; lack any common supervision; do not transfer or interchange; do not have any "on-the-job" contact; have an almost total divergence in job skills; and have substantial distinctions in conditions of employment. Moreover, the record reveals that the Base and the Office of the District Commander do not comprise an integrated operation wherein one is dependent on the other for the day-to-day completion of the Activity's mission. ^{6/} In my view, to group together segments of an activity which lack a controlling community of interest would constitute establishing a unit solely on the basis of the extent of organization, which is prohibited by

^{6/} Compare United States Army Engineer Division, New England, A/SLMR No. 5, which is relied on by the NFFE, where I found appropriate a unit which included a Headquarters and field operations. However, in that case, as distinguished from the subject case, I found that employees in the Activity-wide unit shared a community of interest by virtue of such factors as integrated work process, similarity of job classifications and evidence of interchange and transfer.

the Executive Order. In these circumstances, and noting that the grouping together of employees who lack a clear and identifiable community of interest could not be expected to promote effective dealings and efficiency of agency operations, I find that the unit petitioned for is not appropriate. 7/

I further find, in accordance with the position of the Activity, that encompassed within the petitioned for unit is an appropriate unit comprised of employees of the above described Coast Guard Base. 8/ Employees in such a unit possess a clear and identifiable community of interest by virtue of the fact that such a unit would encompass all employees who are engaged in a common mission and function and who share common supervision and common working conditions. In this regard, the evidence establishes that the Coast Guard Base employees are engaged in an integrated mission at the same location and under the same supervision and do not interchange with any other employees of the Activity.

Accordingly, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All employees assigned to the Coast Guard Base, U.S. Coast Guard, Second Coast Guard District, Foot of Iron Street, St. Louis, Missouri, excluding all other employees of the U.S. Coast Guard, Second Coast Guard District, employees engaged in Federal personnel work in other than

7/ Cf. Department of the Army, St. Louis District, Corps of Engineers, St. Louis, Missouri, A/SLMR No. 17.

8/ As I am advised administratively that neither the NFFE nor the AFGE has submitted to the Area Administrator the required thirty percent showing of interest which would warrant an election at this time in a unit of employees of the Office of the District Commander, 1520 Market Street and 210 North Twelfth Street, St. Louis, Missouri, I find it unnecessary to determine the appropriateness of such a unit for the purpose of exclusive recognition.

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a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.9/

DIRECTION OF ELECTION

In the circumstances set forth below, an election by secret ballot shall be conducted among the employees in the unit found appropriate, not later than 45 days from the date upon which the appropriate Area Administrator issues his determination with respect to any interventions in this matter. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1783, or by the American Federation of Government Employees, AFL-CIO, Local 3095; or by any other labor organization which, as discussed below, intervenes in this proceeding on a timely basis; or by neither, or none if another labor organization intervenes.

Inasmuch as the Coast Guard unit found appropriate is substantially different from that which was petitioned for, I direct that the Activity

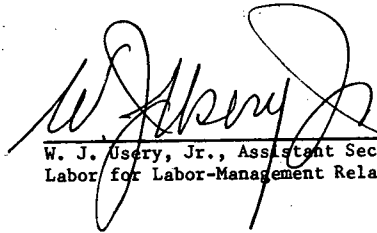
9/ I am advised administratively that the NFFE has submitted to the Area Administrator the required showing of interest in the unit found appropriate and that the AFGE has submitted the necessary showing of interest required to intervene in the proceeding and have its name placed on the ballot. Both labor organizations stated on the record that they desired to seek exclusive recognition for a unit of employees limited to those assigned to the Coast Guard Base.

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August 20, 1971

post copies of a Notice of Unit Determination, as soon as possible, in places where notices are normally posted affecting the employees eligible to vote in the Coast Guard Base unit set forth herein. Such Notice shall conform in all respects to the requirements of Section 202.4 (c) and (d) of the Assistant Secretary's Regulations. Further, any other labor organization which may seek to intervene in this matter must do so in accordance with the requirements of Section 202.5 of the Assistant Secretary's Regulations. Any intervention, otherwise timely, will be granted solely for the purpose of appearing on the ballot in the election among all employees assigned to the Coast Guard Base, Second Coast Guard District.

Dated, Washington, D. C.
August 20, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
AIRWAY FACILITIES DIVISION,
EASTERN REGION
A/SLMR No. 94

The subject case involves representation petitions filed by National Association of Government Employees, Local R2-10-R, FASTA (NAGE) and National Federation of Federal Employees, Local 1673, NFFE. NFFE sought a unit of General Facilities Equipment Technicians whereas NAGE petitioned for a unit of all General Facilities Equipment Technicians and Electronic Technicians. Both petitions sought employees in the Southern Branch of the Eastern Region of the Activity.

The Assistant Secretary found that the employees in the geographic area covered by the petitions constituted a residual unit entitled to separate representation in view of the special circumstances arising from the reorganization of the Activity.

Under all the circumstances, the Assistant Secretary found that the unit petitioned for by the NAGE, which included General Facilities Equipment Technicians (Wage Board) and Electronic Technicians (General Schedule), was appropriate in that these employees had similar working conditions; had the same supervision at the decision making level; worked at the same location; and frequently worked together. The Assistant Secretary also noted that the employees possessed similar skills as evidenced by the fact that the Electronic Technicians spent approximately 10 percent of their time doing work normally performed by the General Facilities Equipment Technicians.

The Assistant Secretary found that a separate unit of General Facilities Equipment Technicians sought by NFFE was not appropriate, noting that General Facilities Equipment Technicians and Electronic Technicians had similar terms and conditions of employment; both groups of employees shared the same supervision; and that their job functions and skills were closely related. In dismissing the NFFE's petition, the Assistant Secretary stated that the General Facilities Equipment Technicians would have an opportunity to vote in a more comprehensive unit on whether or not they desired union representation.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
AIRWAY FACILITIES DIVISION,
EASTERN REGION 1/

Activity

and

Case No. 22-2241

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R2-10-R, FASTA 2/

Petitioner

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
AIRWAY FACILITIES DIVISION,
EASTERN REGION

Activity

and

Case No. 46-1809

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1673

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491,
a consolidated hearing was held before Hearing Officer Earl T. Hart.

1/ The name of the Activity appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the Activity and National Federation of Federal Employees, Local 1673, herein called NFFE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 46-1809, the NFFE seeks an election in a unit consisting of all nonsupervisory Wage Board employees employed in the Southern Branch of the Eastern Region of the Activity's Airway Facilities Division, with the exception of those employed in the State of Pennsylvania, excluding professional employees, managerial employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors and guards as defined in the Order. 3/ In Case No. 22-2241, the National Association of Government Employees, Local R2-10-R, FASTA, herein called NAGE, seeks an election in a unit consisting of all nonsupervisory electronic technicians and Wage Board employees employed in the Southern Branch of the Eastern Region of the Airway Facilities Division, except those employed in the State of Pennsylvania, excluding management officials, employees engaged in Federal personnel work except those engaged in a purely clerical capacity, guards and supervisors as defined in the Order. 4/ The Activity agrees that the employees in the Southern Branch, excluding those employed in the State of Pennsylvania, constitute an appropriate unit. In taking this position, it points to special circumstances arising from a reorganization plan which the Activity issued on March 10, 1971 and which was effective on April 2, 1971. The plan contemplated increasing the number of Regional Offices from 5 to 9 and replacing the administrative subdivisions, known as Area Offices, with Branches. Under the plan, the Eastern Region, the only Region involved herein, was divided into a Northern Branch, consisting of New York, New Jersey, Delaware and Pennsylvania, and a Southern Branch, consisting of Virginia, West Virginia, Maryland, and the District of Columbia. 5/ The Branches, in turn, were subdivided into Sectors, as were the former Area Offices. The plan specified a chain of command which included a Regional Chief, Branch Chiefs and Sector Chiefs. Each level of supervision was given a certain degree of responsibility for the Activity's administrative, operational and personnel functions.

3/ The unit appears as amended at the hearing.

4/ The unit appears as amended at the hearing.

5/ The proposed Southern Branch encompassed the area previously included under the Washington, D. C. Area Office.

On March 16, 1971, the reorganization plan was modified by moving 12 Sectors in the Western and Southern portions of Pennsylvania from the Region's Northern Branch to its Southern Branch. The chain of command also was modified by restricting the Branch Chiefs to operational functions and making the Regional Chief directly responsible for all personnel and administrative functions.

On, or about, March 10, 1971, prior to the modification of the reorganization plan, the Activity and the NAGE, pursuant to a petition filed by the latter in June 1970, entered into an Agreement for Consent or Directed Election covering the electronic technicians and Wage Board employees employed in the area designated in the original reorganization plan as the Northern Branch of the Eastern Region, which, as noted above, included the State of Pennsylvania. An election was held in this unit on May 4, 1971, and the NAGE was certified as exclusive bargaining representative on May 12, 1971.

With respect to the two units sought in the subject cases, the Activity contends that in order to promote effective dealings and efficiency of agency operations the appropriate unit should include both Wage Board employees and electronic technicians as petitioned for by the NAGE. The NFFE contends, on the other hand, that Wage Board employees constitute a separate appropriate unit on the basis of their having different skills, duties and working conditions.

The record shows that the Airway Facilities Division is one of five major operating divisions of the Federal Aviation Administration and that it is engaged in maintaining aircraft navigational aides, such as airway and airport surveillance radar units, approach light systems, remote communications equipment, teletype equipment, flight services stations, air traffic control towers, ventilation equipment, and standby electric power sources. The portion of the Southern Branch involved herein is divided into 24 Sectors which are under the supervision of Sector Chiefs. Seven of the Sectors are manned continuously by General Schedule electronic technicians, hereinafter called ET's, and three are manned continuously by Wage Board employees, who are classified as General Facilities Equipment Technicians, hereinafter called GFET's. The work force is utilized on a shift basis under the supervision of a shift supervisor. Depending upon work requirements, shifts in the larger Sectors may have groups of ET's and GFET's working under separate supervision.

The primary function of ET's is to repair and adjust electronic equipment, such as radar units and remote communication equipment, and to certify its performance as to accuracy and reliability. The primary function

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of GFET's, is to maintain the electro-mechanical equipment, such as generators, approach lights, ventilation equipment and mechanical parts of radar units. Approximately 10 percent of the ET's time is spent on work normally performed by GFET's, such as checking the water and oil levels of diesel engines used to operate the standby electric generators, testing the generators, and changing air conditioner filters. The ET's and the GFET's use the same tools and work together in emergencies and on jobs which require two men, such as "trouble shooting" power cables and making repairs on radar units which have electronic as well as mechanical parts. The ET's perform the duties of the GFET's in the latter's absence and in Sectors where there are no GFET's. In the latter situation, the ET receives on-the-job training with respect to any GFET skills which may be lacking.

The ET's and GFET's have the same work periods, are subject to the same personnel policies and have the same fringe benefits, such as vacations, retirement, sick leave and health benefits. In addition, as indicated above, they have the same immediate supervision except in Sectors where the work force is sufficient to warrant separate supervision of ET's and GFET's. The record reveals that the minimum qualifications for the ET's and GFET's are similar. Thus, the ET's are required to have two years of training in electronics above the high school level and the GFET's are required to have training in electro-mechanical equipment and air-conditioning work, in addition to high school training. Inexperienced employees in both groups are required to attend the Activity's training academy where they are taught a number of common subjects. In addition, both groups must be familiar with the Activity's new equipment and GFET's may become ET's if they qualify under Civil Service Regulations.

Both ET's and GFET's travel within their particular Sectors, although GFET's engage in more travel than ET's. Also, both groups of employees receive time and a half for overtime and both receive night differentials although amounts received by the two groups differ.

The history of bargaining on an exclusive basis involving the employees sought by the petitions herein is limited to Sector-wide combined units of ET's and GFET's involving 7 of the Activity's 24 Sectors covered by the subject petitions. 6/ The Activity and the NAGE have current negotiated agreements covering employees in the Roanoke,

6/ The evidence reveals that the NAGE was granted exclusive recognition for employees in the following Sectors: Norfolk, Virginia; Richmond, Virginia; Roanoke, Virginia; Washington, D. C.; Leesburg, Virginia; Wheeling, West Virginia; and Baltimore, Maryland.

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Virginia Sector, the Washington, D.C. Sector, and the Leesburg, Virginia Sector. 7/ Neither the NAGE nor the Activity contend that the aforementioned agreements constitute a bar to an election in these Sectors. Also, the NAGE seeks to waive any rights it may have as exclusive representative of the employees in the various Sectors mentioned above, including the Baltimore Sector, which is the only Sector in which recognition was granted under Executive Order 11491. 8/

Under all the circumstances, including those arising from the recent reorganization of the Activity, as the employees sought herein constitute the only remaining employees in the Eastern Region, I find, in agreement with the Activity, that such employees constitute an appropriate residual unit. I also find, based on the foregoing, that the ET's and the GFET's who are included in the unit petitioned for by the NAGE, have a clear and identifiable community of interest in that they share the same general working conditions; the same supervision at the decision-making level; the same immediate supervision in a number of the Sectors involved; work at the same location; and frequently work together. In addition, they have similar skills as evidenced by the fact that they require similar training and the fact that the ET's spend approximately 10 percent of their time performing work which is primarily the function of GFET's. In these circumstances, I find that the following unit petitioned for by the NAGE is appropriate for the purpose of exclusive recognition under Executive Order 11491:

All nonsupervisory Electronic Technicians and General Facilities Equipment Technicians employed in the Southern Branch of the Eastern Region, with the exception of the State of Pennsylvania, excluding professional employees, employees engaged in Federal personnel work except in a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

7/ The record is not clear as to whether the agreement covering the employees in Roanoke, Virginia Sector is still in effect.

8/ As the NAGE has waived its rights, for the purposes of this proceeding, as exclusive representative of the employees in certain of the Sectors involved, as discussed below, I have included those Sectors in the unit found appropriate and should the employees in the appropriate unit vote against representation by the NAGE, it shall lose its rights as the exclusive representative of such Sectors. See, in this respect, Department of the Army, U.S. Army Electronics Command, Fort Monmouth, New Jersey, A/SLMR No. 83, footnote 2.

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I also find that a unit of Wage Board employees (GFET's), as sought by the NFFE, is not appropriate. Thus, as noted above, these Wage Board employees, perform work which is similar to that performed by ET's.. Moreover, both groups of employees are subject to the same supervision at the decision making level, have the same immediate supervisors in a number of the Sectors involved, and, in many instances, have the same terms and conditions of employment. Accordingly, and considering the fact that the GFET's will have the opportunity to be represented in a more comprehensive unit, I find that the unit sought by the NFFE is not appropriate for the purpose of exclusive recognition, and I shall order, therefore, that its petition be dismissed. 9/

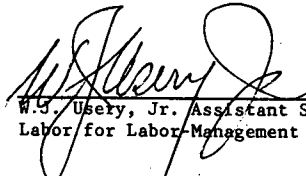
ORDER

IT IS HEREBY ORDERED that the petition in Case No. 46-1809 be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period, and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the National Association of Government Employees, Local R2-10-R, FASTA.

Dated, Washington, D.C.
August 20, 1971


W.J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

9/ As the NFFE's showing of interest is insufficient to treat it as an Intervenor in Case No. 22-2241, I shall order that its name not be placed on the ballot.

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August 26, 1971

A/SLMR No. 95

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

VOLUNTEERS IN SERVICE TO
AMERICA (VISTA)
A/SLMR No. 95

VOLUNTEERS IN SERVICE TO
AMERICA (VISTA)^{1/}

Activity

and

Case No. 22-2348(RO)

This case involves a representation petition filed by the National Vista Alliance requesting a unit of all volunteers as described in Part A, Title VIII of the Economic Opportunity Act of 1964, as amended. This case was transferred to the Assistant Secretary pursuant to Section 205.5(b) of the Rules and Regulations after the Activity's motion to dismiss the petition raised the question of whether the Vista volunteers are "employees" within the meaning of the Executive Order.

NATIONAL VISTA ALLIANCE

Petitioner

DECISION AND ORDER

In all the circumstances, the Assistant Secretary concluded that the Vista volunteers do not possess the status of "employees" within the meaning of the Executive Order. In reaching this determination, the Assistant Secretary relied heavily upon the fact that Section 833 of the Economic Opportunity Act explicitly provides that the Vista volunteers are not to be deemed Federal employees nor subject to laws relating to Federal employment, with certain exceptions which do not include the Executive Order, its predecessor, or the legislation which authorized their issuances. The Assistant Secretary also viewed as particularly relevant the legislative history of the Economic Opportunity Act, which reveals that Congress considered the volunteers to be in a special status apart from Federal employees. The Assistant Secretary further noted that the Congressional action in amending Section 833 on two occasions also supported the view that Congress intended that Section to be all-inclusive with respect to the employee status of the volunteers.

Upon a petition duly filed under Section 6 of Executive Order 11491, this matter is before the Assistant Secretary pursuant to Regional Administrator W. J. R. Overath's Order Transferring Case to the Assistant Secretary of Labor, dated April 29, 1971, pursuant to Section 205.5(b) of the Rules and Regulations. Upon consideration of the entire record in this case, including briefs filed by the parties, the Assistant Secretary finds as follows:

The Assistant Secretary dismissed the petition based upon his finding that the Vista volunteers are not "employees" within the meaning of Section 2(b) of the Executive Order.

The Petitioner, National Vista Alliance, herein called the Alliance, seeks an election in a unit composed of all Vista volunteers employed under Part A of Title VIII of the Economic Opportunity Act of 1964, as amended (42 U. S. Code, Section 2992, et. seq.). The Activity moved that the instant petition be dismissed, and in support thereof submits that

^{1/} Congress, on June 3, 1971, approved Presidential Reorganization Plan No. 1 of 1971, which transferred the Activity out of the Office of Economic Opportunity and into a newly established agency of the Executive Branch known as "Action." See 36 Fed. Reg. No. 112 (June 10, 1971).

Section 833 of the Economic Opportunity Act of 1964, as amended,^{2/} herein called the Economic Opportunity Act, establishes conclusively that the petitioned for volunteers do not possess the legal status of "employees" within the meaning of Executive Order 11491. The Alliance, however, submits that the volunteers are "employees" within the meaning of Section 2(b) of the Executive Order and that a contrary conclusion is not compelled by Section 833 of the Economic Opportunity Act. It is, therefore, in this posture that the Assistant Secretary must determine the employee status of the Vista volunteers as a matter of law.^{3/}

2/ Application of Federal Law. Section 833(a). Except as provided in Section 8332 of Title 5 of the United States Code, and subsections (b) and (c) of this section, volunteers under this title shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal employment.

(b) Individuals who receive either a living allowance or a stipend under Part A shall, with respect to such services or training, (1) be deemed, for the purposes of subchapter III of Chapter 73 of Title 5 of the United States Code, persons employed in the Executive Branch of the Federal Government, and (2) be deemed Federal employees to the same extent as enrollees of the Job Corps under Section 116(a)(1), (2) and (3) of this Act, except that for purposes of the computation described in 116(a)(2)(B) the monthly pay of a volunteer shall be deemed to be that received under the entrance salary for GS-7 under Section 5332 of Title 5, United States Code.

(c) Any period of service of a volunteer under Part A of this title shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government.

(1) For the purposes of Section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U. S. Code, Section 1092(a)(1)), and every other Act establishing a retirement system for civilian employees of any United States Government agency; and (2) except as otherwise determined by the President for the purposes of determining seniority, reduction in force, and lay off rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of 1946, and every other act establishing or governing terms and conditions of service of civilian employees of the United States Government: Provided, that service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

3/ Cf. Mississippi National Guard, 172nd Military Airlift Group (Thompson Field), et. al., A/SLMR No. 20.

The Vista volunteer program was created by Congressional enactment of the Economic Opportunity Act for the following stated purpose:

Section 801. This title provides for a program of full-time volunteer service, for programs of part-time or short-term community volunteer service, and for special volunteer programs, together with other powers and responsibilities designed to assist in the development and coordination of volunteer programs. Its purpose is to strengthen and supplement efforts to eliminate poverty by encouraging and enabling persons from all walks of life and all age groups, including elderly and retired Americans, to perform meaningful and constructive service as volunteers in part-time or short-term programs in their home or nearby communities, and as full time volunteers serving in rural areas and urban communities, on Indian reservations, among migrant workers, in Job Corps centers, and in other agencies, institutions, and situations where the application of human talent and dedication may help the poor to overcome the handicaps of poverty and to secure and exploit opportunities for self-advancement.^{4/}

The Director of "Action", herein called the Director, possesses authority to recruit, select, and train persons to serve in full-time Vista volunteer programs and may assign such individuals, upon request, to Federal, State, or local agencies, or private nonprofit organizations.^{5/} Once selected, Vista volunteers are enrolled for one-year periods of actual service. Volunteers are required to make a full-time personal commitment to combating poverty, and, when practicable, to live among and at the economic level of the people served. Further, they must remain available for service, without regard to regular working hours, at all times except for authorized periods of leave.^{6/}

The Director is authorized to provide volunteers with monthly stipends not to exceed \$50.00 during the volunteers' first year in service nor \$75.00 per month in the case of volunteer leaders, which stipends, except under extraordinary circumstances, are to be payable only upon completion of a term of service. The Director is also authorized to provide volunteers with their necessities and with work-connected transportation.^{7/}

4/ 42 U. S. Code, Section 2991; see also H. R. Rep. No. 1458, 88th Cong., 2nd Sess., (1964); U. S. Code Cong. and Ad. News, 1964, Volume II, P. 2937.

5/ 42 U. S. Code, Section 2992.

6/ 42 U. S. Code, Section 2992a.

7/ 42 U. S. Code, Section 2992b.

The Assistant Secretary, in the circumstances of this case, must be guided by the Economic Opportunity Act, which explicitly defines and limits the Federal employee status of the volunteers. Section 833,^{8/} thereof, limits such employee status to coverage under the following legislation and benefits: Internal Revenue Code of 1954; Title II of the Social Security Act; Federal Employees' Compensation Act (Workmen's Compensation); Federal Torts Claims Act;^{9/} Hatch Act;^{10/} and the Service Credit provisions found in Section 833 of the Economic Opportunity Act.^{11/} Significantly, Section 833 clearly states that volunteers will not be subject to the provisions of laws relating to Federal employment except as provided in that section.

In support of the Alliance's position that the volunteers are employees within the meaning of Executive Order 11491, the following contentions are made:

1. Section 833 of the Economic Opportunity Act does not affect the application of Executive Order 11491 as an executive order is not law.

2. No single definition of "employee" as found in Federal legislation is conclusive in determining the meaning of "employee" for the purposes of Executive Order 11491.

3. Congress, by including Section 833 in the Economic Opportunity Act, did not intend to deprive volunteers of Federal employee status, but rather intended to free the volunteers from burdensome "red tape" which would otherwise delay their expedient assignment to active service.

4. The fact that Congress considered the volunteers to be Federal employees is evidenced by the amendments to the Economic Opportunity Act which provided additional Federal employment benefits to the volunteers.

5. The authority exercised by the Director over volunteers is that type found in typical employer-employee relationships.

^{8/} See footnote 2 above for the full text of Section 833.

^{9/} The application of these statutes was included in Section 603(b) of the original Act which was renumbered as 833 by the 1966 amendments to the Act.

^{10/} Added by 1966 amendments to Act. See Public Law 89-794 (80 STAT. 1451).

^{11/} Added by 1969 amendments to Act. See Public Law 91-177 (83 STAT. 827, 831, 832).

6. In State of Oregon v. Cameron,^{12/} an action to remove a misdemeanor prosecution against Vista volunteers from a state court to a United States District Court, a Federal court held that two volunteers worked under the Director of the Office of Economic Opportunity. The Alliance contends that this court decision recognized the Federal employee status of the Vista volunteers.

The contentions of the Alliance must be examined in the context of the Economic Opportunity Act and its legislative history. That Statute explicitly recognizes the special status of Vista volunteers and explains the imposition of restrictions upon their political activities on the ground that they live among persons with whom they work.^{13/} Significantly, Congress did not predicate such restrictions upon an indication that the volunteers are Federal employees.

The legislative history reveals that Congress intended to deny to Vista volunteers all Federal employee benefits not specifically provided for in the Economic Opportunity Act.^{14/} The history further reveals that Congress accorded service credit to Vista volunteers (to vest only when a volunteer subsequently enters Federal employment) in order to encourage former volunteers to become Federal employees. Congress considered the service credit amendment to "...mean that Vista volunteers would for this purpose be treated the same as former military personnel who transfer to civil service jobs."^{15/}

In my view, Section 833 of the Economic Opportunity Act and its legislative history, fully and conclusively define the status of the volunteers.^{16/}

^{12/} 290 F. Supp. 36, 37 (D. Ore., 1968).

^{13/} 42 U. S. Code, Section 2992.

^{14/} See H. R. Rep. No. 1458, 88th Cong., 2nd Sess. (1964); U. S. Code Cong. & Ad. News, 1964, Volume II, p. 2959.

^{15/} See Senate Report No. 91-453, 91st Cong., 1st Sess. (1969); U. S. Code Cong. & Ad. News, 1969, Volume II, pp. 2671, 2672.

^{16/} The employment status of the Vista volunteers has not been ruled upon by the courts, including the court in Oregon v. Cameron, supra, cited by the Alliance, which held as follows:

This limited employee status of Vista personnel does not remove them from 28 U. S. Code, Section 1442(a). One can be a "person acting under" an officer of the United States though not a "Federal employee." (290 F. Supp. 36 at 37).

August 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

VETERANS ADMINISTRATION HOSPITAL,
BUFFALO, NEW YORK
A/SLMR No. 96

In these circumstances, I find to be without merit the contention of the Alliance that no particular definition of "employee" may determine the applicability of Executive Order 11491 to the Vista volunteers. Nor am I persuaded, as the Alliance contends, that Section 833 of the Economic Opportunity Act is not controlling upon the application of Executive Order 11491 in this case. In making this finding, I note that Section 833, in pertinent part, must be read in the disjunctive. It, therefore, specifically defines the status of the volunteers and then provides that with certain exceptions Vista volunteers will not be subject to laws relating to Federal employment.^{17/} In any event, I find that the statutory definition of the volunteers' status is controlling in determining the employee status of Vista volunteers under the Executive Order.

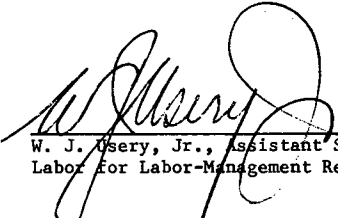
I also find to be without merit the Alliance's contention that Congress acknowledged the employee status of the volunteers by amending the Economic Opportunity Act to provide them with additional Federal employment benefits. In my view, the incidence of such amendments further reveals the intent to limit the employee status of the Vista volunteers to only that provided in Section 833 of the Economic Opportunity Act, which does not include within its coverage Executive Order 11491, or its predecessor, Executive Order 10988 or the legislation which authorized their issuances.

Consequently, based upon the foregoing and after due consideration of all of the Alliance's contentions, I find that the Vista volunteers in the petitioned unit are not employees within the meaning of Section 2(b) of Executive Order 11491. Accordingly, I shall dismiss the petition in the subject case.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-2348(RO) be, and it hereby is, dismissed.

Dated, Washington, D. C.
August 26, 1971


W. J. Osery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{17/} I find that the Executive Order constitutes a "law relating to Federal employment" within the meaning of Section 833(a) of the Economic Opportunity Act. In this regard, I note that the Order was issued under the authority of 5 U. S. Code, Section 3301, and 7301, and further note that in enacting other legislation, Congress has considered an executive order to be law. See Peace Corps Act, 22 U. S. Code, Section 2515.

This case involved a representation petition filed by the New York State Nurses Association, affiliated with the American Nurses Association (NYSNA), seeking a unit of all registered nurses employed as Head Nurses at the Activity. The Activity contended that the Head Nurses are clearly supervisors and that a separate unit of Head Nurses would be inappropriate under Executive Order 11491.

The Assistant Secretary found that the Head Nurses in the claimed unit were supervisors within the meaning of Section 2(c) of the Order. In reaching this determination, the Assistant Secretary relied on the following job functions: The Head Nurse responsibly directs the work of ward employees by planning the goals and objectives of the ward; assigns subordinate nursing personnel to teams and tours of duty; designates the duties of the team personnel and assigns patients to respective teams for care; uses independent judgment in the exercise of her authority; plays an important role in evaluating the performance of staff members and in the promotions of staff members. In addition, the Head Nurse initiates merit awards procedures which are given great weight; has the authority to discipline staff members and effectively recommends discharge in appropriate instances; and is involved in the handling of employee grievances.

In these circumstances, the Assistant Secretary ordered that the petition be dismissed on the basis of the Section 10(b)(1) prohibition against the establishment of a unit which includes management officials or supervisors.

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

VETERANS ADMINISTRATION HOSPITAL,
BUFFALO, NEW YORK

Activity

and

Case No. 35-1196

NEW YORK STATE NURSES ASSOCIATION,
affiliated with the AMERICAN
NURSES ASSOCIATION

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John A. LeMay. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the brief of the Activity, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, New York State Nurses Association, affiliated with the American Nurses Association, herein called NYSNA, seeks an election in the following unit:

All registered nurses employed as head nurses at the VA Hospital, Buffalo, New York, excluding all supervisory and managerial registered nurses employed at Buffalo VA Hospital.

The Activity contends that Head Nurses are clearly supervisors and that a separate unit of Head Nurses would be inappropriate under Executive Order 11491.

The Activity is a general medical and surgical hospital which also supplies, among other things, outpatient services. The hospital has 24 wards for inpatient care, plus an operating room and an outpatient department. All nurses ultimately are responsible to the Chief of Nursing Services, who has 2 Associate Chiefs. Under the Chief and Associate Chiefs are 10 Clinical Supervisors, 6 on the day shift, 3 on the evening shift and 1 on the night shift. Under the immediate supervision of the Clinical Supervisors are 26 Head Nurses, one in each of

the 24 wards, and one each in the Operating Room and the Outpatient Department. On each ward there are several nursing teams consisting of Staff Nurses, 1/ Licensed Practical Nurses and Nursing Assistants.

The record indicates that the Head Nurse has administrative and clinical responsibility for providing continuity of nursing care on a 24-hour basis, assigns the ward staff to nursing teams, assigns tours of duty, 2/ assigns duties to the Staff Nurses, Licensed Practical Nurses and Nursing Assistants and assigns patients to a team for care. In addition, the Head Nurse develops goals and objectives for her unit and provides for staff development through consultation and in-service training programs to meet individual and group staff needs.

Typically, the tour of duty for the Head Nurse is the day tour. The record discloses that Staff Nurses on the evening and night shifts operate the unit within the framework of the overall plan for providing nursing care established by the Head Nurse. In this regard, any problems which arise on the evening or night shifts are handled by the Clinical Supervisors on those shifts, who discuss the problems with the Head Nurse at the first opportunity. Control of the wards 24-hour operation is maintained by the Head Nurse through meetings and discussions with the incoming evening shift and the outgoing night shift.

Although the Head Nurse spends a great deal of her time in patient care, she is responsible for a certain amount of administrative work and must finish such work each day before she leaves, even if this requires that she remain after her shift is completed. In addition, the Head Nurse attends periodic meetings and training sessions with higher supervisors and training personnel, as well as meetings with other Head Nurses and subordinate personnel.

The Head Nurse makes an annual proficiency rating on each Staff Nurse, Licensed Practical Nurse and day tour Nursing Assistant under her direction. The Head Nurse's rating cannot be changed by any of her supervisors. Thus, if a Clinical Supervisor disagrees with a rating prepared by a Head Nurse, she can only note her disagreement. The record reveals that the Head Nurses' ratings are accepted approximately 95 percent of the time. The record indicated further that the proficiency rating made by the Head Nurse is one of the important factors considered by the Nurse Professional Standards Board in recommending promotions. Thus, when a member of her staff is eligible for promotion, the Head Nurse must give an affirmative recommendation, or the processing of the promotion is carried no further.

1/ On December 24, 1969, the Activity granted exclusive recognition to the NYSNA for a unit composed of Staff Nurses and Instructors.

2/ The facts indicate that each floor of the Hospital is divided into 4 wards and that the 4 Head Nurses on each floor take turns preparing the time planning for the floor, including the assignment of tours of duty.

ORDER

The Head Nurse also initiates recommendations for awards to members of her staff. Such recommendations pass through successive levels of higher supervision for endorsement, and if concurred in, are sent to the final approving authority.

The evidence established that the Head Nurse may discipline members of her staff by issuing an admonishment, without recourse to higher authority; she may also recommend other types of disciplinary actions, such as reprimand or discharge. In this respect, the record indicates that a Head Nurse's recommendation for discharge has, on several occasions, been effectuated without further independent investigations being conducted.


The Head Nurse also handles certain employee grievances. If she cannot resolve such grievances, the record reveals that she refers them to higher authority and that she participates in the matter as it goes through the grievance procedure to final resolution.

Based on the foregoing, I find that Head Nurses are "supervisors" within the meaning of the Order, inasmuch as they responsibly direct the work of ward employees by planning the goals and objectives of the ward, assign subordinate nursing personnel and assign patients to respective teams for care. In addition, the record establishes that the Head Nurse uses independent judgment in the exercise of the above-mentioned authority; plays an important role in evaluating the performance of staff members; has an effective role with the respect to promotions of staff members; initiates merit awards procedures, of which her recommendation plays an important part; has the authority to discipline staff members and may effectively recommend discharge in appropriate instances; and is involved in the handling of employee grievances. 3/

Since a unit of employees classified as Head Nurses, as sought by the NYSNA, would include supervisors as defined by Section 2 (c) of the Executive Order and since Section 10 (b) (1) of the Order prohibits the establishment of a unit if it includes any management official or supervisor, I find that the petition herein should be dismissed. 4/

IT IS HEREBY ORDERED that the petition in Case No. 35-1196 be, and it hereby is, dismissed.

Dated, Washington, D.C.
August 30, 1971


W.J. Usery Jr., Assistant Secretary of
Labor for Labor-Management Relations

3/ See The Veterans Administration Hospital, Augusta, A/SLMR No. 3 and U.S. Soldier's Home, Washington, D.C., A/SLMR No. 13, where, based on similar facts, I found Head Nurses to be supervisors within the meaning of the Order.

4/ Cf. United States Department of Agriculture, Soil Conservation Service, A/SLMR No. 48.

August 31, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY,
DCASR BOSTON-QUALITY ASSURANCE
A/SLMR No. 97

Pursuant to the Decision and Remand of the Assistant Secretary in A/SLMR No. 34, involving the same parties as those in the subject case, for the purpose of taking evidence with respect to the appropriateness of the unit sought by the National Association of Government Employees, Local R1-202, a subsequent hearing was held. The Assistant Secretary found that a unit of employees in the Quality Assurance Directorate, Operations Division, who were represented currently on an exclusive basis in the same unit by the American Federation of Government Employees, AFL-CIO, Local 1906, have a clear and identifiable community of interest, in that they share the same general working conditions and salary schedules; have common supervision; engage in similar duties and are subject to transfer and interchange among the various locations of the Division.

In these circumstances, the Assistant Secretary directed an election in the unit sought.

A/SLMR No. 97

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

DEFENSE SUPPLY AGENCY,
DCASR BOSTON-QUALITY ASSURANCE

Activity

and

Case No. 31-4300 (EO)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R1-202

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1906

Intervenor

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held in this case. Thereafter, on May 7, 1971, I issued my Decision and Remand, 1/ in which I affirmed the Hearing Officer's denial of the Intervenor's 2/ motion to present evidence challenging the adequacy and validity of the Petitioner's 3/ showing of interest and in which I remanded the case to the appropriate Regional Administrator to reopen the record solely for the purpose of receiving evidence concerning the appropriateness of the unit sought. On June 8, 1971, a further hearing was held before Hearing Officer Anthony D. Wollaston. The Hearing Officer's rulings made at the reopened hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this matter, including the facts developed at both hearings, I find:

-
- 1/ A/SLMR No. 34
2/ Herein called the AFGE
3/ Herein called the NAGE

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The NAGE, seeks an election in a unit of all employees of the Defense Contract Administration Services Region Boston-Quality Assurance Directorate, Operations Division, of the Defense Supply Agency, excluding those employees located at the Boston Army Base, 666 Summer Street, Boston, Massachusetts, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, and supervisors and guards as defined in the Order.

The Defense Supply Agency was established on October 1, 1961, and is responsible for providing supplies and services used in common by the military services. Defense Supply Agency facilities are located at strategic points throughout the country, with its headquarters located in Alexandria, Virginia. These facilities include Supply Centers, Distribution Depots, Service Centers, and Defense Contract Administration Services Regions.

The Defense Contract Administration Services Region (DCASR), Boston, Massachusetts, was established in August 1965. The mission of a DCASR is to provide contract administration services in support of, among others, the Army, Navy, Air Force, and the Defense Supply Agency. The DCASR, Boston, is under the direction of a Regional Commander, who is a commissioned officer in the Navy stationed at Regional headquarters located at 666 Summer Street, Boston, Massachusetts.

The DCASR, Boston, is divided geographically into a headquarters operations' area in Boston and two districts. Eight plant offices, located at the plants or facilities of suppliers, and four area offices, are subordinate to the headquarters and the two districts. Functionally, the DCASR, Boston, is divided into several offices and directorates. One of the directorates is the Directorate of Quality Assurance which contains five divisions, including the Operations Division.

Quality Assurance employees are responsible for insuring that the quality of commodities produced by a contractor complies with the standards outlined in the procurement contract. There are approximately 250 employees, including quality assurance representatives and clericals, in the petitioned for unit of the Operations Division. These employees work in approximately 120 locations outside of Boston Regional headquarters, are classified as quality assurance specialists and quality inspection specialists, and their grades range from GS-7 for quality inspection specialists to GS-9 or GS-11 for quality assurance specialists. There are resident and nonresident types of employees within this group. The non-resident employees, although assigned to a duty station, travel on a regular schedule to a number of plants within their own area. The resident quality assurance employees are assigned to certain areas while

others are assigned to offices in particular plants of contractors and, as a rule, do not travel. All quality assurance specialists engage in similar duties and are under common supervision. Those who are employed in offices located in particular plants also report to a Defense Contract Administration Services Office (DCASO) plant chief who is in charge of the offices of the particular plant and who reports directly to the Regional Commander. There is one central personnel office located within the Regional headquarters from which administrative matters, work assignments and a central payroll originates. The record reveals that there is transfer and interchange of the quality assurance employees among the various locations.

The record indicates that on November 13, 1967, the Activity accorded exclusive recognition to the AFGE, covering the same unit as that petitioned herein by the NAGE. On December 27, 1968, the Activity and the AFGE entered into a negotiated agreement. At the hearing held on March 23, 1971, the parties agreed that the NAGE's petition was filed in a timely manner and that there existed no agreement bar to any election which might be directed.

The parties do not dispute the appropriateness of the unit sought, nor was any evidence offered by the parties to establish that the claimed unit would not promote effective dealings and efficiency of agency operations within the meaning of Section 10(b) of Executive Order 11491.

Under all the circumstances, I find that the employees in the unit sought have a clear and identifiable community of interest in that they share the same general working conditions and salary schedules; have common supervision; engage in similar duties; and are subject to transfer and interchange among the various locations of the Division.

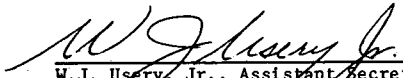
Accordingly, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All employees of the Defense Contract Administration Services Region Boston-Quality Assurance Directorate, Operations Division, of the Defense Supply Agency, excluding those employees located at the Boston Army Base, 666 Summer Street, Boston, Massachusetts, employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and supervisors and guards as defined in the Order.

September 30, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work that period because they were out ill, or on vacation or on furlough including those in the military services who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by National Association of Government Employees, Local R1-202; or by American Federation of Government Employees, AFL-CIO, Local 1906; or by neither.

Dated, Washington, D.C.
August 31, 1971


W.J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION,
REGION 2
A/SLMR No. 98

This case involved representation petitions filed by the National Federation of Federal Employees, Local 1715 (NFFE) and the American Federation of Government Employees, AFL-CIO (AFGE). The NFFE sought a unit of all General Schedule professional and nonprofessional employees in Federal Highway Administration (FHWA), Region 2. The AFGE sought a nation-wide unit covering all Regional Motor Carrier Safety Inspectors in the Bureau of Motor Car Safety (BMCS) and BMCS employees located in its headquarters in Washington, D.C.

The Assistant Secretary found that a unit composed of all BMCS employees on a nation-wide basis (both headquarters and field), as proposed by AFGE, was inappropriate. In reaching this conclusion the Assistant Secretary noted that the administrative structure of the FHWA was "decentralized" to the extent that the Regional Administrator in each of 9 FHWA Regions exercises complete authority over employees in three FHWA programs, which include federal aid, traffic and motor vehicle safety and motor carrier safety; he directs the personnel and labor management relations for his Region; and he has the authority to promote, grant leave, overtime and holiday pay, approve employees suggestions, set the hours of work, authorize in-service training and grant performance awards and grade increases. Thus, while the BMCS employees located within the Region administered a different program, they were subject to the same personnel and administrative policies established by the Regional Administrator as the other Regional personnel. While there appeared to be some contact between the BMCS Regional employees and those in the Washington headquarters, the Assistant Secretary noted that this contact related to job functions rather than to "line" matters. In these circumstances, the Assistant Secretary concluded that the unit sought by the AFGE encompassing a nation-wide unit of all BMCS employees, (both headquarters and field), was not appropriate for the purpose of exclusive recognition and, accordingly, he directed that its petition be dismissed.

The Assistant Secretary also found that the Region-wide unit sought by the NFFE was appropriate for the purpose of exclusive recognition. In reaching this conclusion he noted particularly that centralized personnel and administrative functions were vested in the Regional Administrator. With respect to the Regional Administrator's

authority, the Assistant Secretary noted that the various programs were administered on a day-to-day basis by a Regional Director, who assisted the Regional Administrator as a staff member, and that all reports, training, and personnel matters had to be cleared through the Regional Administrator before action was taken by the Regional Director. It was further noted that while different programs were administered in the Region each program was designed to complete the specific mission of the FHWA. In the circumstances, and because, in his view, such a unit would promote effective dealings and efficiency of agency operations, the Assistant Secretary directed that an election be conducted in the unit petitioned for by the NFFE with professional employees being accorded a self-determination election as to whether they wished to be included in the unit with nonprofessionals.

A/SLMR No. 98

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
REGION 2

Activity

and

Case No. 22-1962(RO)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1715

Petitioner

DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
AND BUREAU OF MOTOR CAR SAFETY

Activity

and

Case No. 22-2322(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO

Petitioner

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Robert W. Harvey. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the National Federation of Federal Employees, Local 1715, herein called NFFE, the American Federation of Government Employees, AFL-CIO, herein called AFGE, and the Activity, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 22-1962(RO), the NFFE seeks an election in a unit of all General Schedule professional and nonprofessional employees in the Federal Highway Administration, herein called FHWA, located in Region 2. 1/ In Case No. 22-2322(RO) the AFGE seeks an election in a nation-wide unit covering all Regional Motor Carrier Safety Inspectors, Hazardous Materials Specialists and clericals in the Bureau of Motor Car Safety, herein called BMCS, and BMCS employees in its headquarters located in Washington, D.C. 2/

The Activity contends that the Region-wide unit sought by the NFFE is appropriate for the purpose of exclusive recognition. On the other hand, it asserts that the employees sought by the AFGE do not possess a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operations. 3/

1/ The NFFE's petition appears as amended at the hearing. While it is contended that certain employees in the unit sought by the NFFE are professional and must be accorded a self-determination election before being included in a unit with nonprofessionals, the record does not set forth sufficient facts with respect to such criteria as duties, training, educational background, etc. to provide a basis for a finding of fact that employees in particular classifications are professionals. Accordingly, I will make no findings as to which employee classifications constitute professional employees.

2/ I find that because the NFFE's amendment to its original petition encompassed additional employees the Area Administrator properly ordered a reposting of the notice of petition and that AFGE's petition was timely filed during this posting period. The AFGE's claimed unit contains approximately 150 employees.

3/ The record discloses that the NFFE was certified under Executive Order 11491 as the exclusive representative for a unit of all nonprofessional employees in the FHWA Regional Office located in Portland, Oregon, which included BMCS employees located in that Region. In view of this exclusive recognition, the AFGE requested that I determine what effect agreement or election bars have on a nation-wide petition. Further, the AFGE requested that should I rule that in the circumstances presented here such agreement and election bars are effectual, that it be allowed to amend its petition to exclude those employees already covered by exclusive recognition. In view of the disposition herein, I find it unnecessary to reach the questions raised by the AFGE and to allow amendment of its petition.

General responsibility for the administration of each of the 9 FHWA Regional Offices is in a Regional Administrator assisted by Regional Directors for each of three programs. Thus, each Regional Administrator represents the FHWA in administering the following: (1) federal aid and direct federal highway programs; (2) traffic and motor vehicle safety programs; and (3) motor carrier safety and hazardous material regulations and compliance activity. Also, each Region is responsible for the operations of Division offices located within its boundaries. There is an operating Division office located in each State, the District of Columbia, and Puerto Rico.

The record reveals that each Region employs several classifications of employees including engineers, highway specialists, 4/ auditors, accountants, clerical and personnel employees. The BMCS Regional employees are engaged in safety inspections of vehicles and drivers involved in interstate commerce and they provide safety education for the States. They are the only employees in the Regions performing such functions. Thus, other classifications of FHWA employees are concerned with building, designing and constructing roads, highway beautification and passenger vehicle safety. The record reveals that due to the different emphasis in the programs, the job classifications in each program require employees to have different educational backgrounds and training.

Each classification in the Region deals with a different specialty and there is no interchange of employees between programs. However, the record reveals that consideration for promotions in all programs are made on a Region-wide basis and that all promotions are subject to final approval by the Regional Administrator. Although different training programs are held for the various job classifications, the evidence establishes that all training is subject to approval by the Regional Administrator and that meetings involving Regional matters are attended by all Regional employees.

Regarding the BMCS operations in the Region, the procedure for conducting road checks, safety checks, driver checks and safety

4/ This classification includes highway safety specialists, hazardous materials specialists and motor carrier safety specialists and all have the same Civil Service Classification Code Number "2125."

education programs is established in Washington, as are other Regional programs, in order to assure national uniformity and standards. Nonetheless, the record reveals that the Regional Administrator ultimately is responsible for the performance of each classification in the field. Thus, the evidence establishes in this respect, that the Regional Administrator "clears" all BMCS reports before they are forwarded to Washington.

There is little interchange between BMCS field and headquarters employees. While there has been an instance of a Regional employee transferring to Washington, there have been no transfers from Washington to the Regions. Regarding job interaction among the Regions, the record discloses that the day-to-day operation of the BMCS requires that the Regional offices have contact with each other regarding records and reports of certain accidents. However, the record reveals also that this contact is limited merely to telephone communications between the Regional office BMCS employees.

With respect to the BMCS headquarters in Washington, the record shows that this operation contains approximately 35 employees and is under the direction of the Director, BMCS. As noted above, this office has program authority for BMCS but has no personnel management authority and exercises no supervisory or labor relations functions over the BMCS Regional employees. Moreover, although there is some contact between headquarters and Regional operations, the record reveals that this contact relates to functional rather than directional or "line" communications. While BMCS employees in the Regions wear uniforms and are issued a BMCS manual and special tools for the performance of their work, BMCS headquarters personnel require no additional material or equipment which distinguishes them from other FHWA office employees. Further, unlike BMCS employees in the Regions, BMCS headquarters personnel do not work different hours than other FHWA Washington personnel. Also, the BMCS Washington headquarters does not employ safety inspectors or perform safety investigations as do the Regional employees. The BMCS Washington headquarters receives and compiles finished reports on investigations sent to the headquarters unit from the BMCS Regional Director in the field through the Regional Administrator. It also prepares operation manuals which are issued to BMCS employees in the field giving specific instructions as to how to perform investigations, but, as noted above, the headquarters personnel do not perform such investigations.

With respect to the Region-wide unit petitioned for by the NFFE, of the approximately 80 employees in the claimed unit, about 20 are BMCS personnel, including 18 safety inspectors and two clericals. The Region's headquarters is located in Baltimore, Maryland and employs, in addition to the above-mentioned BMCS

personnel, engineers, accountants, auditors, clerical and personnel employees. Its Divisional offices are located in Delaware, Maryland, Virginia, West Virginia, Ohio and Pennsylvania. At least one BMCS employee and a highway engineer are located in each Divisional office. In addition, other BMCS safety inspectors are dispersed throughout the Regional area and work in conjunction with state highway officials in conducting their safety inspections and driver checks. ^{5/} As in the case of the other Regional offices, Region 2 administers three separate FHWA programs under the direction of a Regional Administrator. Although policy and technical direction for the three programs comes from Washington, the evidence establishes that the Region's personnel and administrative functions are "decentralized" and directed by the Regional Administrator through a Regional Executive Officer. Thus, while the program Regional Directors may initiate certain actions, ultimate responsibility in these areas is retained by the Regional Administrator. Also, the Region provides the office space, personnel service, processes travel claims and provides office unit service for all Regional personnel. Labor relations also are controlled by the Regional Administrator who has the authority to approve negotiated agreements. The record reveals that while a BMCS Regional Director may initiate promotions, incentive awards, and other actions for the safety inspectors and clericals in BMCS and is also responsible for day-to-day employee work assignments and training, his decisions in this connection are subject to approval by the Regional Administrator. Moreover, all BMCS field reports are "cleared" through the Regional Administrator before they are forwarded to Washington and the Regional Administrator is consulted and must approve BMCS training. The record reveals also that the Regional Administrator is consulted before any actions are taken on BMCS or other programs and that he has authority to hire, fire, assign, transfer or promote any employees within his Region. Additionally, he has authority to establish their hours of work; grant overtime; approve leave, time cards, holiday schedules, travel orders, performance evaluations and incentive awards; and process grievances. In addition, the Regional Administrator is responsible for employee safety as well as any other administrative or personnel matters.

Based on the foregoing, I find that a nation-wide unit of all BMCS employees (both headquarters and field), as proposed by the

^{5/} Safety inspectors are located outside Divisional offices in Toledo, Cleveland, and Cincinnati, Ohio; Pittsburgh, Philadelphia, Scranton, and Pittston, Pennsylvania; and Roanoke and Arlington, Virginia.

AFGE, is inappropriate. In reaching this conclusion, I consider the following circumstances to be of particular significance: the administrative structure of the FHWA is "decentralized" to the extent that the various Regional Administrators exercise substantial authority over employees in the various programs which they direct, including the BMCS program; personnel and labor-management relations of the various Regions are directed by Regional Administrators and not by BMCS headquarters; and the Regional Administrators exercise almost complete personnel and administrative authority over all employees assigned to their respective Regions, including those employees assigned to the BMCS program. While BMCS employees administer a different program than other Regional employees, they are subject to the same personnel and administrative policies as the other employees in the Regions in which they are located and although diversity of the three different FHWA programs requires that different classifications in the Regions have different qualifications and training requirements, each program administered is but a part of the designated overall functions of FHWA. 6/

In these circumstances, I find that a nation-wide unit consisting of BMCS employees, (both headquarters and field), as petitioned for by the AFGE, is not appropriate for the purpose of exclusive recognition since such employees do not share a clear and identifiable community of interest. Moreover, in view of the decentralized nature of the Activity's administrative structure, such a unit which crosses Regional lines could not reasonably be expected to promote effective dealings and efficiency of agency operations. Accordingly, I shall order that the petition in Case No. 22-2322(RO) be dismissed.

In all the circumstances and for the reasons noted above, I find also that the unit petitioned for by the NFFE, which covers Region 2 of the Activity located in Baltimore, Maryland, is appropriate. As noted above, the personnel and administrative functions of the Region are vested in the Regional Administrator.

6/ In the circumstances of this case, the lack of employee interchange and the differences in qualifications and training among employees in the different FHWA programs does not preclude a finding that all Regional employees share a clear and identifiable community of interest. Thus, the evidence also establishes that in many instances BMCS employees work in the same offices and share the same facilities and working conditions as do other FHWA employees in the respective Regions.

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While the record indicated that the Regional Administrator directs three different programs within his Region, it is clear that each of these programs is designed to complete the overall mission of the FHWA and that the responsibility for the carrying out of the separate programs is vested in the FHWA's Regional Administrator. Thus, I find that a clear and identifiable community of interest exists among the employees in the unit petitioned for by the NFFE and that such a unit will promote effective dealings and efficiency of agency operations.

Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule professional and nonprofessional employees of Region 2, Department of Transportation, Federal Highway Administration, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 7/

As stated above, the unit found appropriate includes professional employees. However, the Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless a majority of the professional employees votes for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I shall, therefore, direct separate elections in the following voting groups:

Voting Group (a): All professional employees of the Department of Transportation, Federal Highway Administration, Region 2, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

7/ The NFFE's petition excluded "temporary" employees. However, there is insufficient evidence to determine the basis for this exclusion. In these circumstances, no finding is made as to the eligibility of such employees. It should be noted, however, that if the employees designated as "temporary" by the Activity have a reasonable expectancy of regular and continuous employment for a substantial period of time, they would be eligible to vote in the election. Cf. United States Army Training Center and Fort Leonard Wood, Missouri, A/SLMR No. 27; Department of the Army, Sacramento Army Depot, Sacramento, California, A/SLMR No. 86.

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Voting Group (b): All employees of the Department of Transportation, Federal Highway Administration, Region 2, excluding professional employees, all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The employees in the nonprofessional voting group (b) will be polled whether they desire to be represented by the NFFE, or the AFGE, or by neither. ^{8/}

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition and (2) whether they wish to be represented for the purpose of exclusive recognition by the NFFE, or the AFGE, or by neither. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are cast against inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued indicating whether the NFFE, or the AFGE, or neither was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon the results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I

^{8/} The record does not show clearly that the AFGE had a sufficient showing of interest to intervene in Case No. 22-1962(RO). Accordingly, before proceeding to an election, the appropriate Area Administrator is directed to reevaluate the AFGE's showing of interest. If he determines that the AFGE's showing of interest is inadequate in the unit found appropriate, the AFGE should not be included on the ballot.

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find that the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All General Schedule professional and nonprofessional employees of the Department of Transportation, Federal Highway Administration, Region 2, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees does not vote for inclusion in the same unit as the nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

- (a) All General Schedule employees of the Department of Transportation, Federal Highway Administration, Region 2, excluding all professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.
- (b) All General Schedule professional employees of the Department of Transportation, Federal Highway Administration, Region 2, excluding all nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-2322(RO) be, and it hereby is, dismissed.

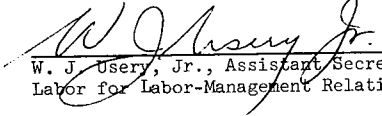
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DIRECTION OF ELECTION

October 12, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or who were discharged for cause, since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1715, or by the American Federation of Government Employees, AFL-CIO, or by neither.

Dated, Washington, D. C.
September 30, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS,
NAVAJO AREA,
GALLUP, NEW MEXICO
A/SLMR No. 99

This case arose from a petition filed by National Council of Bureau of Indian Affairs Educators/National Education Association, (NCBIAE) and raised questions of (1) appropriate unit, (2) certification bar, (3) election bar, and (4) supervisory status of guidance counselors.

The amended petition, which included all nonsupervisory professional educators of the Navajo Area in the GS-1710 classification series, included employees of the Shonto, Intermountain and Hunter's Point Boarding Schools, where elections had been held within the preceding 12 months. At Shonto, the National Federation of Federal Employees (NFFE) had been certified on October 2, 1970, as representative of all GS professional and nonprofessional employees, and at Intermountain, the American Federation of Government Employees, AFL-CIO, Local 2969 (AFGE) had been certified on October 6, 1970, as representative of all employees at the school. At Hunter's Point, the professional employees voted against representation in an election conducted on October 28, 1970, which resulted in the certification of NFFE as representative of all nonsupervisory, nonprofessional employees. Both the NFFE and the AFGE intervened in the instant proceeding.

The Assistant Secretary found that an Area-wide unit of nonsupervisory professional educators in the GS-1710 classification series was appropriate. In reaching his decision, he noted that this classification series is composed of teachers, education specialists and guidance counselors, who have similar education, skills, duties, functions, and interests and that they are the only professionals directly involved with the education of the Navajo students. Further, they all work in the classroom on a full or part-time basis and are the only professional group located at the schools. Accordingly, he concluded that these employees share a clear and identifiable community of interest and constitute an appropriate bargaining unit. The Assistant Secretary noted also that an Area-wide unit of GS-1710 series of professional educators would promote effective dealings and efficiency of agency operations.

The Assistant Secretary excluded the Shonto and the Intermountain Boarding Schools from the Area-wide unit, since he found that Section

202.3(b) of the Regulations acted as a certification bar to their inclusion.

As to the Hunter's Point Boarding School, he found no election bar inasmuch as the claimed unit was neither the same unit nor a subdivision of the unit in which an election had been held previously.

As to the supervisory issue, the Assistant Secretary found that those guidance counselors, who had the additional duty of managing student dormitories, did not possess any of the supervisory indicia as set forth in Section 2(c) of the Order. He noted that the record revealed that while the guidance counselor was in charge of the operation of the dormitory, and in such capacity directed several instructional aides in their day-to-day duties, such directions and instructions were routine in nature, and were similar to those given by a group or crew leader. Further, while the guidance counselor made recommendations with regard to personnel actions concerning the instructional aides such recommendations could not be found to be effective. In these circumstances, the Assistant Secretary found the guidance counselors to be nonsupervisory and included them in the unit.

A/SLMR No. 99

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS,
NAVAJO AREA,
GALLUP, NEW MEXICO

Activity

and

Case No. 63-2355 (RO)

NATIONAL COUNCIL OF BUREAU OF INDIAN AFFAIRS EDUCATORS/
NATIONAL EDUCATION ASSOCIATION 1/

Petitioner

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Intervenor

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 2969

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Paul Hall. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 2/

1/ The name of the Petitioner appears as corrected at the hearing.
2/ During the early stages of the hearing, the Hearing Officer erroneously refused to allow the parties to cross-examine an Activity witness who had given a narrative statement as to the geographical and organizational structure of the Navajo Area. Later in the hearing, the Hearing Officer corrected his error and afforded the parties an opportunity to cross-examine. In these circumstances, I find that no prejudicial error was committed.

Upon the entire record in this case, including briefs filed by the National Council of Bureau of Indian Affairs Educators/National Education Association, herein called NCBAIE, and the American Federation of Government Employees, AFL-CIO, Local 2969, herein called AFGE, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The NCBAIE seeks an election in the following unit:

All nonsupervisory professional educational employees (1710 series) of the Navajo Area. Excluded: All management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, all guards and supervisors as defined in Executive Order 11491. 3/

The record reveals that the National Federation of Federal Employees, herein called NFFE, was certified on October 2, 1970, as the exclusive representative of all General Schedule professional and nonprofessional employees at the Activity's Shonto Boarding School and that the AFGE was certified on October 6, 1970, as the exclusive representative of all employees, including professionals, at the Activity's Intermountain Boarding School. The record further discloses that on October 28, 1970, professional employees at the Hunter's Point Boarding School voted against representation. NFFE was certified as representative of all nonsupervisory nonprofessional employees at that location on November 6, 1970. Additionally, the record reflects that under Executive Order 10988 the NFFE was granted exclusive recognition at several other Area Boarding Schools,

3/ The unit appears as amended at the hearing, which amendment removed the Shonto Boarding School and the Intermountain Boarding School from the unit exclusions. During the hearing, the NCBAIE challenged the right of the AFGE to intervene, since the original petition specifically excluded the Intermountain Boarding School where the AFGE has been certified as exclusive representative and since it was unaware of any other proper or timely intervention by the AFGE. Additionally, the AFGE requested that since the amended petition enlarges the original unit, the NCBAIE should be required to file a new petition, with an additional showing of interest and a new posting period should be required. Section 202.2(f) of the Assistant Secretary's Regulations provides that the Area Administrator shall determine the adequacy of the showing of interest administratively, and such decision shall not be subject to collateral attack at a unit or representation hearing. Accordingly, the NCBAIE's challenge of the AFGE's intervention is denied. Also, in view of my findings herein regarding the appropriate unit, the AFGE's request noted above is denied.

located at Leupp, Thoreau, Standing Rock, Mariano Lake, Baca, Pinedale, Borrego Pass and Greasewood in units which include GS-1710 series employees. 4/

The NCBAIE contends that an Area-wide unit of employees in the classification series GS-1710, including such employees at the Shonto and Intermountain Boarding Schools, is appropriate. However, in view of the recent certifications at those schools, it takes the alternative position that it would agree to a unit which did not include those schools. The Activity takes the position that the only appropriate unit would be an Area-wide unit of GS-1710 series employees and asserts that the Assistant Secretary should disregard the recent certifications at the Shonto and Intermountain Boarding Schools as well as the prior election at the Hunter's Point School. Both the NFFE and the AFGE take the position that Section 202.3(b) of the Assistant Secretary's Regulations bars the inclusion of the Shonto and Intermountain Boarding Schools in the unit because of the recent certifications, 5/ and that Section 202.3(a) of the Assistant Secretary's Regulations bars the inclusion of the Hunter's Point Boarding School in the unit because of the election of October 28, 1970. 6/ Also, the AFGE contends that the claimed unit is not appropriate and that the

4/ In the circumstances, the exclusive recognitions held by the NFFE at these schools would not constitute a bar to their inclusion in the Area-wide unit sought by the NCBAIE in the subject case. In this respect, the NFFE took the position in this proceeding that an Area-wide unit of GS-1710 series educators, excluding only those at the Shonto, Intermountain and Hunter's Point Boarding Schools, would be appropriate. Accordingly, I find that with the exception of the Shonto Boarding School, the NFFE, in effect, has waived its exclusive recognition status with respect to the GS-1710 classification series employees at the other schools mentioned above, and may continue to represent those employees on an exclusive basis only in the event it is certified in the unit found to be appropriate in this case. Cf. Department of the Army, U.S. Army Electronics Command, Fort Monmouth, New Jersey, A/SLMR No. 83, footnote 2.

5/ This Section reads, in part, as follows: "When there is a recognized or certified exclusive representative of the employees, a petition will not be considered timely if filed within twelve (12) months after the grant of exclusive recognition or certification as the exclusive representative of employees in an appropriate unit..."

6/ This Section reads as follows: "When there is no recognized or certified exclusive representative of the employees, a petition will be considered timely filed provided there has been no valid election within the claimed unit within the preceding twelve (12) month period and provided further that the claimed unit is not a subdivision of a unit in which a valid election has been held within such period."

appropriate unit should be either, all employees of each individual school or, in the alternative, if an Area-wide unit is found to be appropriate, the unit should include employees other than those in the GS-1710 series.

The Activity is one of eleven Areas that compose the Bureau of Indian Affairs, herein called BIA, and is responsible for the affairs of the Navajo Indian people within its area of jurisdiction. The Navajo Area is spread over 24,000 square miles in the states of Arizona, New Mexico and Utah, with an Area headquarters located in Gallup, New Mexico and a staff office at Window Rock, Arizona. The Area Director is responsible for the operation of the Area and, in this connection, he has line authority over all operating and administrative divisions of the Area. Responsibility for labor relations is in the Area Director and agreements are negotiated at the Area level.

The Area is divided into 7 operating offices, of which 5 are Agencies which direct the operation of the Area's 65 dormitories, day schools, boarding schools and trailer school. 7/ These 5 Agencies have the following breakdown: Shiprock Agency has 9 separate school units; Tuba City Agency has 12; Eastern Navajo Agency has 21; Chinle Agency has 9; and Fort Defiance Agency has 14. Each school is headed by a principal, who is in charge of the total operation of his school. In larger schools, the principal may be called a principal-superintendent and he is assisted in carrying out his responsibilities by supervisors who are in charge of various divisions, such as guidance, teaching, and the feeding of the students. In the smaller schools, the principal is in charge of the entire program, including the feeding and dormitory operations, where applicable. Almost all schools have a local school board composed of Navajo Indian people who act as an advisory body. There are approximately 24,000 students in the Navajo Area and approximately 3,500 employees of the Activity, including approximately 900 GS-1710 series employees.

Area-wide policies and procedures are developed at the Area level and reflect the goals of the Navajo people as determined by the Tribal Education Committee --- a committee established to further and promote the education of the Navajo children. Additionally, the budget is developed and administered at the Area level. The record reveals that the Area Division of Education establishes the curriculum to be followed throughout the Area. 8/ All teachers are assigned to the various schools from the Area office. In addition, the Area office has the right of final approval on promotions and the right to review all adverse actions taken by subordinate units.

7/ The remaining two offices are the Navajo Irrigation Project and the Intermountain Boarding School.

8/ However, this can be altered to meet the specific needs of a particular school.

The GS-1710 classification series is composed of three types of professional employees: teachers, education specialists and guidance counselors. 9/ The teachers are located in all of the schools as well as in the education divisions in the Area and in Agency offices. It appears further, that there is at least one education specialist at each school and that guidance counselors are located at almost all the schools.

All of the employees in the classifications covered by the petition have a Bachelor's Degree in education and are required to have had specific college courses in their respective subject fields. While education specialists and guidance counselors are hired in accordance with the usual Agency procedures, teachers are hired by the BIA's centralized recruiting system for teachers located at Albuquerque, New Mexico. In this regard, teachers are hired in accordance with the needs of the Area involved and are assigned to that Area, which, in turn, assigns them to a particular school. The record reveals that a teacher can progress up to the position of education specialist and that an education specialist may perform as a teacher if he or she has the required subject training.

The evidence also established that the employees in the GS-1710 series are the only professionals who are located at the schools and also are the only professionals who are directly involved with the students. Other professionals, such as engineers and social and welfare workers, who work with the Navajo people, do not have any contact with the students. 10/

Based on the foregoing, I find that an Area-wide unit composed of nonsupervisory professional educational employees in the GS-1710 classification series is appropriate. It is apparent that the three classifications in this series have similar skills, education, functions, and interests, as well as being directly involved in the education and welfare of the Navajo children. All of these educators work in the classroom on either a full or part-time basis and they are the only professional group of employees physically located at the school. Further, in the smaller schools they are all under the common supervision of the principal. In such circumstances and noting also the substantial Area-wide administrative and operational control exercised by the Area Director, I find that the petitioned group of employees share common goals and interests that are separate from other professional employees and that an Area-wide unit of such employees is appropriate for the purpose of exclusive recognition. Moreover, in my view, such a comprehensive unit will promote effective dealings and efficiency of Agency operations.

9/ The issue involving the supervisory status of certain of the guidance counselors will be considered hereinafter.

10/ As to nonprofessional employees who are located at some of the schools, such as cafeteria workers, the record reveals that their skills, duties and functions are clearly distinguishable from those of the GS-1710 professionals.

With respect to the Shonto and Intermountain Boarding Schools, since Section 202.3(b) of the Assistant Secretary's Regulations effectively bars the processing of any petition involving employees in any unit where a certification has been in effect for less than 12 months, I shall exclude those two schools from the unit description. As to the Hunter's Point Boarding School, since the unit found appropriate herein is neither the same unit nor a sub-division of unit in which a valid election has been held in the last 12 months, I shall include the GS-1710 series professional educators of the Hunter's Point Boarding School in the voting unit.

The Activity and the NFFE take the position that those guidance counselors who have job responsibility in the dormitories are in positions that possess supervisory authority and therefore should be excluded from the unit. On the other hand, the NCBAIE and the AFGE take the position that such guidance counselors do not possess any indicia of a supervisor and should be included in the unit. 11/

As indicated in the record, the 127 guidance counselors in issue reside in, and are responsible for, the management of the student dormitories. In this capacity, the guidance counselor is in charge of the dormitory and is responsible for its day-to-day operation, determining the needs of the dormitory, deciding on the programs to be carried out in the dormitory, and making job assignments to subprofessional employees. 12/ He coordinates activities with other school programs and is responsible for the recreational program, as well as the care and control of the children for 24 hours a day.

The guidance counselor is supervised directly by a principal, in smaller schools, or by a supervisory guidance counselor in the larger

11/ The parties stipulated that 18 guidance counselors who did not have dormitory responsibilities did not possess any of the supervisory indicia and therefore should be included in the unit.

12/ The instructional aide and the supervisory instructional aide are considered to be subprofessionals by the Activity and, according to their job descriptions, are apparently at the GS-4 and GS-5 grade levels. They function in the dormitory situation, working with students, insuring that they maintain personal cleanliness as well as the cleanliness of the facility, counseling students on dress, manners, conduct, etc., and coordinating recreational activities. The supervisory instructional aide acts as a liaison for the guidance counselor in charge of dormitory and the instructional aides, and makes day-to-day assignments to instructional aides, reviewing and evaluating their work, as well as training new employees. In larger schools, the number of instructional aides ranges from 10 to 15, whereas in the smaller schools, 2 or 3 instructional aides are employed.

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schools. Further, the record reflects that the principal supervises all of the employees of the school, including the instructional aides. The guidance counselor spends from 75 percent to 80 percent of his time in the dormitory function, with the remainder of his time spent in the performance of counseling of students, which is done both in the classroom and the dormitory. The evidence establishes that the guidance counselor makes recommendations, concerning additional staffing, promotions and hiring and firing to his supervisor, who is generally a supervisory guidance counselor, who, in turn, makes a recommendation to the principal.

The principal is responsible for the final decision at the school level, although the Area Office has the right to approve or disapprove promotions. 13/ The guidance counselor also handles disciplinary action insofar as possible, but if the matter cannot be settled, it is referred to the next step.

In these circumstances, I conclude that the evidence fails to support a finding that the guidance counselor possesses supervisory authority. Although he can make recommendations on personnel actions, there is no evidence that such recommendations are actually effective. Moreover, with respect to the management of the dormitory, it appears that any orders, directions or instructions given to subordinates by the guidance counselor are no more than routine in nature and are of the type that would be given by a group or crew leader, rather than a supervisor.

Accordingly, I find that the guidance counselors involved herein do not possess the supervisory indicia set forth in Section 2(c) of the Executive Order and therefore, I shall include them in the unit.

Based on the foregoing, I find that the nonsupervisory professionals in the GS-1710 series, classified as teachers, education specialists and guidance counselors of the Navajo Area share a clear and identifiable community of interest. Accordingly, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All nonsupervisory professional educational employees in the GS-1710 classification series employed in the Navajo Area, excluding employees employed at the Shonto and the Intermountain Boarding Schools, employees engaged in Federal personnel work in other than a purely clerical capacity, management

13/ Despite the Activity's opportunity to present evidence in this respect, it was unable to point to any instance where the recommendations made by the guidance counselor concerning staffing, promotions and hiring or firing were effective. The evidence also revealed that 18 guidance counselors are assigned currently to a pilot program which is designed eventually to remove all guidance counselors from the dormitory situation.

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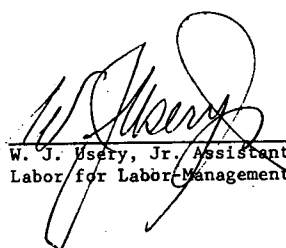
officials, and supervisors and guards as defined in the Order.

October 19, 1971

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Council of Bureau of Indian Affairs Educators/National Education Association; or by the National Federation of Federal Employees; or, by neither. 14/

October 12, 1971
Dated, Washington, D.C.



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

14/ Since the AFGE did not submit any showing of interest in the unit of GS-1710 series educators found appropriate, I shall order that its name not be placed on the ballot.

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON CHALLENGED BALLOTS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

GENERAL SERVICES ADMINISTRATION
MEMPHIS, TENNESSEE
A/SLMR No. 100

This case involved challenges to the ballots of six voters in an election held at the above-entitled Activity in which Local R5-66, National Association of Government Employees (NAGE) and Local 359, National Association of Post Office and General Service Maintenance Employees (NAPOGSME) participated.

A hearing was held before a Hearing Examiner. With respect to one of the challenged ballots the Assistant Secretary adopted the findings and recommendations of the Hearing Examiner based upon a stipulation entered into by the parties at the hearing that the employee involved was either a supervisor or a management official. In this regard, the Hearing Examiner sustained the challenge to this employee's ballot and recommended that his ballot not be opened and counted. The Assistant Secretary also adopted the Hearing Examiner's finding and recommendation concerning the challenge to the ballot of an employee who is employed as an Occupational Health Nurse at the Activity. The Hearing Examiner found this employee to be a "professional" within the meaning of the Order. Inasmuch as this employee, admitted by the Activity to be a professional employee, was not provided a self-determination ballot in accordance with the requirements of Section 10(b)(4) of the Order, the Hearing Examiner sustained the challenge to her ballot and recommended that her ballot not be opened and counted.

The Assistant Secretary affirmed the findings of the Hearing Examiner in overruling the challenges to the ballots of two employees whom the Hearing Examiner found not to be supervisors, and adopted his recommendation that the ballots of these individuals be opened and counted. Similarly, the Assistant Secretary adopted the Hearing Examiner's finding that an employee working as a telephone operator at the Activity was not a temporary employee in view of the regularity of her employment and therefore was eligible to vote in the election.

The Assistant Secretary rejected the finding of the Hearing Examiner that one individual, whose ballot was challenged, was not eligible to vote since, at the time of the election, this individual had been absent from work for about 3 years and there was no reasonable

expectancy that he would return to work, and therefore he had no community of interest with employees in the unit regarding terms and conditions of employment.

Under the circumstances involved here, the Assistant Secretary found this individual to be an employee of the Activity despite his extended leave without pay status based on health considerations. Accordingly, the Assistant Secretary directed that the ballot of this employee be opened and counted.

A/SLMR No. 100

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

GENERAL SERVICES ADMINISTRATION
MEMPHIS, TENNESSEE

Activity

and

Case No. 41-1736 (RO)

LOCAL R5-66, NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES

Petitioner

and

LOCAL 359, NATIONAL ASSOCIATION OF
POST OFFICE AND GENERAL SERVICE
MAINTENANCE EMPLOYEES

Intervenor

DECISION ON CHALLENGED BALLOTS

On March 11, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations in the above-entitled proceeding. He recommended that the challenges to the ballots of Eva Cathcart, Louis Spry and Charles McCormick be sustained and their ballots not be counted, and that the challenges to the ballots of Charles W. Sommers, Richard D. Holder and Elsie Daniels be overruled and their ballots be opened and counted.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record, 1/ I adopt the findings and recommendations of the Hearing Examiner except as modified herein.

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1/ No timely requests for review of the Hearing Examiner's Report and Recommendations were filed with the Assistant Secretary by any of the parties.

Eva Cathcart

Miss Cathcart is classified as an Occupational Health Nurse, GS-7. Local R5-66, National Association of Government Employees, herein called NAGE, challenged her ballot on the ground that she is a professional employee. The Activity agrees that she is a professional employee but urges that her vote be counted because it was through lack of experience at the time of the execution of the consent election agreement that no provision was made for furnishing Miss Cathcart a self-determination professional employee ballot. The National Association of Post Office and General Service Maintenance Employees, herein called NAPOGSME, contends that she is an eligible voter.

Miss Cathcart's job description states that she serves as the nurse in charge of the Health Unit operated by the General Services Administration for employees of participating Federal agencies in the Federal Building, Memphis, Tennessee. A requirement for appointment to this position is that the applicant be a Registered Nurse. The record establishes that Miss Cathcart is licensed as a Registered Nurse in the State of Tennessee.

I agree with the Hearing Examiner's conclusion that Miss Cathcart, as a registered nurse, is a "professional employee" within the meaning of the Order and that therefore it would be contrary to the policy of Section 10(b)(4) of the Order to count Miss Cathcart's ballot where she cast a ballot identical to those provided for the nonprofessional employees. Accordingly, I hereby adopt the recommendation of the Hearing Examiner that the challenge to Miss Cathcart's ballot be sustained and that her ballot not be opened and counted.

Louis Spry

Mr. Spry was employed by the Activity as a general mechanic in options of electrical and plumbing work. He suffered an injury on the job in 1967 and was placed in a leave without pay status (LWOP) on February 12, 1968. While in this status Mr. Spry received compensation under the Federal Employees Compensation Law from the Bureau of Employees Compensation, United States Department of Labor. He remained in this status until his retirement on January 29, 1971. Thus, at the time of the election on July 15, 1970, Mr. Spry was in an LWOP status. The NAPOGSME challenged his ballot since his name was not on the eligibility list.

The Hearing Examiner concluded that Mr. Spry was not eligible to vote since, at the time of the election, he had been absent from work for approximately three years and there was no reasonable expectancy that he would return to work. Under these circumstances, the Hearing Examiner concluded that Mr. Spry had no community of interest with the

employees in the unit with respect to the terms and conditions of employment and recommended that the challenge to his ballot be sustained and his ballot not be counted.

Record testimony indicates that the Activity, acting pursuant to Federal Personnel Manual Letter 630-18, issued by the United States Civil Service Commission on May 1, 1969, believing that Mr. Spry would not be able to return to work, wrote to the Bureau of Employees Compensation on June 2, 1969, advising the Bureau that the Activity proposed to separate Mr. Spry unless he returned to work by August 11, 1969. As a result of this letter, Mr. Spry was examined by the United States Public Health Service which advised the Activity on September 23, 1969, that Mr. Spry could not return to his former job but could perform light duty.

The evidence reveals that despite Mr. Spry's extended LWOP status because of health considerations, he, at all relevant times, was maintained on the Activity's rolls as being in an employee status. As stated in the parties' Agreement for Consent Election, eligible employees are those "who were employed during the payroll period indicated including employees who did not work during that period because they were out ill, or on vacation, or on furlough...who appear in person at the polls..." (Emphasis added). In these circumstances, I conclude that Mr. Spry was employed by the Activity during the payroll period indicated in the parties' Agreement for Consent Election.

Accordingly, I find that Louis Spry was an employee who was eligible to vote in the election, and I hereby direct that his ballot be opened and counted.

Charles McCormick

Mr. McCormick is the Area Utilization Officer and is concerned with the disposal of surplus personal property. He assists other agencies in complying with the reporting requirements for excess property. In this regard, he examines and verifies the condition of such property and, within guidelines, decides whether to offer such property for sale or transfer it to another Federal Agency or a State or Local Agency.

Mr. McCormick's vote was originally challenged by the NAGE on the ground that he was a supervisor. At the hearing, both the NAGE and the NAPOGSME took the position that Mr. McCormick was a supervisor, while the Activity took the position that he was a management official. As a result, the parties stipulated that Mr. McCormick was either a supervisor or a management official and, therefore, was not eligible to vote. In view of such agreement by the parties and because there is no evidence to indicate that the parties' stipulation was improper, I hereby affirm the recommendation of the Hearing Examiner that the challenge to the ballot of Charles McCormick be sustained and his ballot not be opened and counted.

Charles W. Sommers

Mr. Sommers works in the Inter-Agency Motor Pool as an Automotive Equipment Inspector, WG-11. It is his responsibility to inspect all the automobiles in the pool for preventive maintenance and, when automobiles come in for repairs, to insure that they need such repairs before referring them to a contractor. He also checks the automobiles after the repairs have been made. His ballot was challenged by the NAGE on the ground that he was a supervisor. After testimony was taken at the hearing concerning his duties, all parties stipulated that Mr. Sommers was not a supervisor within the meaning of the Order and therefore was eligible to vote.

As there is no evidence to indicate that the parties stipulation was improper, I hereby affirm the recommendation of the Hearing Examiner that the challenge to the ballot of Charles W. Sommers be overruled and his ballot be opened and counted.

Richard D. Holder

The ballot of Mr. Holder was challenged by the NAGE on the ground that he is a supervisor. Mr. Holder is employed as a Transportation Operations Assistant (Motor), GS-7, in the Inter-Agency Motor Pool. He reports to the Chief of the Pool, an acknowledged supervisor, and on those occasions when the Chief is absent, he acts as Pool Chief.

The Hearing Examiner concluded that in the performance of his normal duties Mr. Holder met none of the supervisory criteria set forth in the Order. He concluded also that the training he gave new employees consisted of no more than assistance from a more experienced employee to a less experienced employee, and that other employees within the proposed unit similarly assisted in training. In addition, the Hearing Examiner found that the fact that Mr. Holder substituted for the Chief of the Motor Pool on a limited or sporadic basis was not a sufficient basis for finding that he was a supervisor.

The record establishes that Mr. Holder is concerned basically with making studies and recommendations concerning the use and care of vehicles in the pool. He advises other government agencies on the proper use of these vehicles to reduce operating and repair costs. Testimony indicates that while Mr. Holder assists in training new employees, no employees report to him and he makes no performance evaluations or effective recommendations concerning their retention. Testimony indicates also that Mr. Holder acted as Chief for a total of two or three weeks in the course of a year.

Based on the foregoing, I adopt the conclusion of the Hearing Examiner that Richard D. Holder is not a "supervisor" within the meaning of the Order, and I hereby affirm the recommendation of the Hearing Examiner that the challenge to the ballot of this individual be overruled and his ballot be opened and counted.

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Elsie Daniels

The ballot of Mrs. Daniels was challenged by the NAGE on the ground that at the time of the election, July 15, 1970, she was a temporary employee and not eligible to vote.

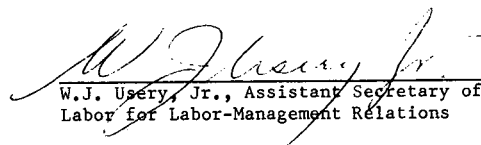
The Hearing Examiner noted that Mrs. Daniels was given a career-conditional appointment under terms which made her eligible for employment only as required by the Activity, which meant she might work any amount of time from one hour to 40 hours per week. He reasoned that the controlling factor in determining whether Mrs. Daniels had a community of interest with the other employees in the unit should be the number of hours she worked and, more significantly, the regularity of her employment rather than the type of appointment she received. He noted that her attendance record indicates that she had worked during every week from the date she began work in May 1970 up to the time that she was converted to a part-time employee in January 1971, and that during that period she worked a substantial number of hours in each pay period. The Hearing Examiner noted also that she performed the same work as the other telephone operators before and after the election, and worked with such regularity that she had a sufficient community of interest with the other employees to render her eligible to vote.

The evidence demonstrates that in her first nine months of employment, Mrs. Daniels worked 70 percent or more of each 80-hour pay period, and while at work, performed the same functions as other telephone operators in the group. In these circumstances, I find that Mrs. Daniels was not a temporary employee as of the date of the election, and I hereby adopt the recommendation of the Hearing Examiner that the challenge to the ballot of Elsie Daniels be overruled and her ballot be opened and counted.

DIRECTION TO OPEN AND COUNT BALLOTS

IT IS HEREBY DIRECTED that the ballots of Louis Spry, Charles W. Sommers, Richard D. Holder and Elsie Daniels be opened and counted at a time and place to be determined by the appropriate Regional Administrator. The Regional Administrator shall have a Revised Tally of Ballots served on the parties, and take such additional action as required by the Regulations of the Assistant Secretary.

Dated, Washington, D.C.
October 19, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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

GENERAL SERVICES ADMINISTRATION,
MEMPHIS, TENNESSEE

Activity

and

LOCAL R5-66, NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

Petitioner

and

LOCAL 359, NATIONAL ASSOCIATION OF
POST OFFICE AND GENERAL SERVICE
MAINTENANCE EMPLOYEES

Intervenor

Paul A. Smith, Regional Personnel Officer,
General Services Administration,
Atlanta, Georgia, for the Activity.

Drew Boykin, President, Local R5-66,
National Association of Government Employees,
Memphis, Tennessee, for the Petitioner.

Vernon L. Daniel, National Vice President,
National Association of Post Office and General
Service Maintenance Employees, Nashville,
Tennessee, for the Intervenor.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding was heard at Memphis, Tennessee, on
February 16, 1971. It arises pursuant to a Notice of Hearing on

Challenged Ballots issued on December 30, 1970, by the Regional
Administrator for the Atlanta, Georgia Region under the authority
of Executive Order 11491 (herein called the Order) and pursuant to
Section 202.20(d) of the Rules and Regulations of the Assistant
Secretary for Labor-Management Relations (herein referred to as the
Assistant Secretary).

The issues heard concerned the eligibility to vote of six
voters whose ballots were challenged at an election conducted among
a unit of the Activity's employees on July 15, 1970, under the
supervision of the Assistant Secretary.

Upon the entire record in this matter and from observation
of the witnesses, 1/ the Hearing Examiner makes the following:

Findings and Conclusions

I. The Election

Pursuant to an "Agreement for Consent or Directed Elec-
tion" approved by the Area Administrator on June 19, 1970, a
secret ballot election was conducted on July 15, 1970, under the
supervision of the Assistant Secretary in accordance with the
provisions of the Order, in the following unit of the Activity's
employees:

General Services Administration,
Memphis Unit, Memphis, Tennessee

The results of the election were as follows:

Approximate number of eligible voters	42
Void ballots	0
Votes cast for Local R5-66, National Association of Government Employees	18
Votes cast for Local 359, National Association of Post Office and General Service Maintenance Employees	14
Votes cast against exclusive recognition	0
Valid votes counted	32
Challenged ballots	6
Valid votes counted plus challenged ballots	38

1/ No briefs were filed.

Challenges are sufficient in number to affect the results of the election.

II. The Activity

The Activity at Memphis, Tennessee, which provides certain services for Federal agencies in the area is organized into five principal elements.

The Buildings Management Group, which was included in the appropriate unit, consists of approximately 30 employees. In the group are an administrative and clerical staff, a mechanical staff of maintenance men such as electricians and plumbers, a custodial staff which is concerned with cleaning the buildings, guards who were properly excluded from the unit, and a nurse who is the subject of one of the six challenges. The acknowledged supervisors excluded from the appropriate unit are the Buildings Manager and Assistant Buildings Manager, the Mechanical Supervisor and Assistant Mechanical Supervisor, and the Custodial Foreman and Assistant Custodial Foreman. The Clerical Assistant for Management was also excluded from the unit.

The Telephone Operators Group, which was included in the appropriate unit, consists of approximately five employees who operate the telephone switchboards. The acknowledged supervisor of the group, the Telephone Operator Supervisor, was excluded from the unit.

The Inter-Agency Motor Pool, which was included in the appropriate unit, consists of five employees who arrange for the charge-out of cars to the user agencies and for inspection and upkeep of the vehicles. They do not perform any repair or maintenance work which is done by private shops under contract. The Pool Chief was excluded from the unit as a supervisor.

The Area Utilization Office consists of an area utilization officer who is the subject of one of the challenges and whose duties will be discussed infra, and a clerical employee who was included in the appropriate unit.

The Federal Supply Service representative is engaged in certain inspection work and was included in the appropriate unit.

III. The Challenges

A. Eva Cathcart

Eva Cathcart is classified as an Occupational Health Nurse, GS-7. The Petitioner challenged her ballot on the ground that she is a professional employee. The Intervenor contends that she is an eligible voter. The Activity agrees that she is a professional employee but urges that her vote be counted because it was through lack of experience that at the time of the execution of the Consent Agreement for the election no provision was made for a self-determination ballot for Cathcart in compliance with Section 10(b)(4) of the Order. That section of the Order provides that no unit shall be established if it includes both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Cathcart is the nurse in charge of the Health Unit operated by the General Services Administration for employees of participating Federal agencies in the Federal Building, Memphis, Tennessee. She is a graduate of the St. Joseph Hospital School of Nursing, an accredited nursing school in the State of Tennessee, and received a license as a Registered Nurse from the State, a requirement for appointment to her position.

Cathcart, who performs the usual functions of a Registered Nurse, works independently, although for administrative purposes she reports to the Building Manager. Cathcart ministers to employees when they report to the Health Room and if necessary, recommends that they see a family doctor. Among the tasks listed on her position description are the following which are noted only as examples: participates in a program of health counseling and the maintenance of a system of follow-up of employees with compensable injuries; administers emergency treatment by applying pressure dressings or tourniquets in case of severe hemorrhage, temporarily immobilizing parts of the body when bones are broken, and otherwise as necessary administers first aid as a temporary expedient until a physician can give treatment. She cares for minor emergency illnesses and injuries, such as irrigating eyes and throats, treating minor ailments such as cuts, burns, and sprains. Upon prescription of a physician, she administers hypodermic medications such as hormones, liver, insulin. She gives advice and assistance on special diets and works on immunization programs.

Unlike the Labor-Management Relations Act in the private sector the Order does not specifically define the term "professional employees." Thus, it becomes necessary to consider each case individually, and determine from the nature of the work involved and the training and education required whether the position merits the designation of "professional employee." I have no reservations in concluding that Cathcart, as a registered nurse, is a "professional employee" within the meaning of the Order. Her work is predominantly intellectual and varied in character involving consistent exercise of discretion and judgment in its performance, and requires knowledge of an advanced type acquired by study in a hospital nursing school. 2/

Having concluded that Miss Cathcart is a "professional employee," it would be contrary to the policy of Section 10(b)(4) of the Order to count her ballot where she cast a ballot identical to those provided for the rest of the employees. 3/

2/ The Assistant Secretary has recognized that it is appropriate to take into account the experience gained from the private sector under the Labor-Management Relations Act, as amended, policies and practices developed in other jurisdictions and rules developed in the Federal Sector under the prior Executive Order 10988. Charleston Naval Shipyard, A/SLMR No. 1. Registered nurses performing duties similar to those of Cathcart have been found to be "professional employees" by the National Labor Relations Board as well as by other jurisdictions. See, e.g., University Hospital (Massachusetts Labor Relations Commission), 60 LRRM 1508; Square Sanitariums, Inc. (New York State Labor Relations Board), 25 NY SLRB No. 125, 54 LRRM 1259; Reynolds Electrical and Engineering Co., Inc., 133 NLRB 113.

3/ It is unnecessary for me to speculate at this time as to what the Assistant Secretary's position would be with respect to establishing a professional unit, where, if Cathcart were given a self determination election and she chose union representation in a separate unit, a one man unit would result.

B. Charles W. Sommers

Sommers is employed in the Inter-Agency Motor Pool as an Automotive Equipment Inspector, WG-11. He inspects automobiles for preventive maintenance and determines if an automobile must be sent to a contractor for repair. No other employees report to him. He was challenged at the election by the Petitioner on the ground that he is a supervisor. However, at the hearing, after testimony was taken as to his duties, all of the parties stipulated that he is not a supervisor within the meaning of the Order and was eligible to vote.

C. Richard D. Holder

Holder was challenged by the Petitioner on the ground that he is a supervisor within the meaning of the Order. The Intervenor and Activity contend that he is not a supervisor. Holder is employed as a Transportation Operations Assistant (Motor), GS-7, in the Inter-Agency Motor Pool and he reports to the Chief of the Pool, the acknowledged supervisor.

Holder is basically concerned with making studies, recommendations, and advising the user government agencies on the care and utilization of the vehicles in the pool. His principal objective is to prevail upon the agency users to handle the vehicles properly so as to cut down on repair expense and other costs in operating the vehicles. He schedules servicing and repair of vehicles, and analyzes repair expenses and gasoline mileage of vehicles in order to pinpoint problems. Holder is also responsible for special reports required by the Activity. In performing his duties, he is required to make field trips to customer agencies and commercial suppliers.

Other employees do not report to Holder in the performance of his normal duties. He does assist, however, in training new employees. But, according to the testimony, this training consists of no more than assistance from a more experienced employee to a less experienced employee, and other employees in the appropriate unit also assist in training. Holder makes no recommendations as to the retention of new employees, but, on occasion, if asked by the Chief of the Pool will comment on how a new employee is progressing. He does not prepare employee appraisals, such appraisals being the sole responsibility of the Chief of the Pool.

Holder acts as Pool Chief in the absence of the Chief occasioned usually by sick or annual leave. The Chief can designate other employees to act in his absence, but in the past year has designated Holder. It is estimated that Holder has acted as Chief for a sum total of two to three weeks in the past year.

The Order at Section 2(c) defines a supervisor as follows:

"Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Applying the supervisory definition of the Order, it is concluded that Holder is not a supervisor. In the performance of his normal duties Holder meets none of the criteria set forth in the Order for a "supervisor." Actually, in the course of his day to day duties, he has no authority over any employee. The fact that he substitutes for the Chief on a limited or sporadic basis is not a sufficient basis for a supervisory finding. Mere sporadic exercise of supervisory functions should not disqualify an employee otherwise having a community of interest with the other employees from inclusion in an appropriate unit. ^{4/} Moreover, ratio of supervisors to employees should be considered in assessing supervisory status. Thus, if Holder were found to be a supervisor, there would be two supervisors for a total of five individuals employed in the Inter-Agency Motor Pool including Holder. This would constitute an excessive number of supervisors for the inter-agency motor pool operation, especially where the Chief of the Pool and the employees all work substantially the same hours. ^{5/}

^{4/} cf. in the private sector, Indiana Refrigeration Lines, Inc., 157 NLRB 539, 549-550; Gordon Mills, Inc., 145 NLRB 771.

^{5/} In the private sector, ratio of supervisors to employees is given great weight in determining supervisory status. See Sanborn Telephone Co., 140 NLRB 512, 515.

D. Charles McCormick

As area Utilization Officer, McCormick is responsible for disposal of excess personal property. He works with agencies to assure that they adhere to the reporting requirements for surplus property. He examines and verifies the condition of surplus property, and disposes of it either by sale or by distribution to Federal, State, or Local Agencies. McCormick was originally challenged by the Petitioner on the ground that he was a supervisor. After some testimony was taken at the hearing as to McCormick's position, all of the parties stipulated that he is a management official within the meaning of Section 10(b)(1) of the Order which provides that a unit shall not be established if it includes any management official.

E. Elsie Daniels

Elsie Daniels was challenged by the Petitioner on the ground that as of the time of the election, July 15, 1970, she was a temporary employee not eligible to vote. The Intervenor and Activity disagree. Daniels was hired as a telephone operator in the Telephone Operators Group on April 27, 1970 (the eligibility period for participating in the election was all employees on the payroll as of June 15, 1970) and given a career conditional appointment. Such an appointment made her eligible for employment only as required by the Activity, which meant she might work any amount of time from one hour to 40 hours per week. On January 10, 1971, her status was converted to that of a part time employee which accords her a guaranteed minimum of 35 hours per week.

In assessing whether Daniels had a community of interest with the other employees in the unit her type of appointment would not appear to be controlling. Rather, the controlling factors should be the number of hours she actually did work, and more significantly, with what regularity she was employed. A review of her attendance record shows that from the date of May 4, 1970, when she actually entered on duty, to the time that she was converted to a part time employee on January 10, 1971, she worked every week. On a pay period basis (two week periods), out of 18 pay periods she worked a full 80 hours in four, between 70 and 80 hours in 10, between 60 and 70 hours in three, and 56 hours in one. Thus, she performed the same work as the other telephone operators before and after the election, and worked with such regularity that she had a sufficient community of interest with the other employees to render her eligible to vote.

F. Louis Spry

As of the date of the election conducted on July 15, 1970, Spry was carried by the Activity on Leave Without Pay (LWOP) status. The Petitioner contends that Spry was eligible to vote. The Activity and Intervenor disagree.

Spry, who was employed by the Activity as a general mechanic in options of electrical and plumbing work, was disabled on the job in 1967, and was placed on LWOP status on February 12, 1968. He remained continuously on LWOP status until January 21, 1971, when he finally acceded to the Activity's request and accepted a disability retirement.

During the total period of his LWOP status, Spry received compensation under the Federal Employees' Compensation Law from the Bureau of Employees Compensation of the United States Department of Labor.

On May 1, 1969, the United States Civil Service Commission issued Federal Personnel Manual Letter No. 630-18, subject, "Use of Leave Without Pay for Employees Receiving Benefits Under the Federal Employees' Compensation Law as a Result of Work-Related Illness or Injury." In substance the Commission urged that in the interest of promoting uniform practices among agencies for protection of the status and benefit of employees with work related illnesses or injuries (an employee receives credit for retirement, leave accrual rate, reduction in force and other benefits if on LWOP while he is receiving benefits under the Federal Employees' Compensation Law) agencies grant LWOP in the following situations:

During any period in which an employee's claim resulting from work-related illness or injury is pending action by the Bureau of Employees' Compensation; and

For at least one year while an employee is being compensated by the Bureau of Employees' Compensation with extensions in increments of six months or one year when a review of the case indicates the employee may be able to return to work at the end of six months or a year. (If review of the case indicates the employee will not or cannot return to work, leave without pay should not be extended and

appropriate steps should be taken to separate the employee. An employee's election between retirement annuity and employees' compensation is discussed in FPM Supplement 831-1, Subch. 7.)

Believing that Spry would never be able to return, the Activity, on June 2, 1969, wrote to the Bureau of Employees' Compensation advising that in accordance with FPM Letter 630-18 it proposed to separate Spry unless he returned to work prior to the expiration of the six month period ending August 11, 1969. Further the Activity requested that the Bureau of Employees' Compensation review the case and advise whether Spry would be able to return by August 11, 1969. The Bureau referred the Activity to the U. S. Public Health Service. Subsequently, a series of correspondence between the Activity and the Bureau of Employees' Compensation, and between the Activity and the U. S. Public Health Service resulted. Spry was examined and re-examined by the Public Health Service and on September 23, 1969, that Service advised the Activity that Spry could not return to his old job but could perform light duty. The lightest duty position, according to the Activity was that of "guard," and there were no "guard" openings available. Moreover, after another physical examination the U. S. Public Health Service on October 26, 1970, advised that Spry was not physically able to perform as a "guard." Finally on December 14, 1970, the Activity advised Spry that it was going to seek his retirement, and Spry accepted retirement on January 29, 1971.

As of the date of the election Spry had already been absent from work for approximately three years. The occurrences after the election and his ultimate retirement support the conclusion that as of the time of the election, although he was still carried on LWOP status, there was no reasonable expectancy that he would return to work. The credits toward benefits such as retirement that Spry was receiving by virtue of his LWOP status are established by law and such would not be affected by union representation. Under the circumstances it is apparent that Spry had no community of interest with the employees in the unit with respect to terms and conditions of employment and it is concluded that he was not eligible to vote.

IV. RECOMMENDATIONS

On the entire record it is recommended:

1. That in accordance with the stipulation of the parties the challenge to the ballot of Charles W. Sommers be overruled and his ballot be counted.

2. That in accordance with the stipulation of the parties the challenge to the ballot of Charles McCormick be sustained and his ballot not be counted.

3. That the challenges to the ballots of Eva Cathcart and Louis Spry be sustained and their ballots not be counted.

4. That the challenges to the ballots of Richard D. Holder and Elsie Daniels be overruled and their ballots be counted.

Henry L. Segal

Henry L. Segal
Hearing Examiner

Dated at Washington, D. C.
March 11, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ILLINOIS AIR NATIONAL GUARD TECHNICIANS,
O'HARE INTERNATIONAL AIRPORT, CHICAGO, ILLINOIS
A/SLMR No. 101

The subject case involved a representation petition filed by the Local 2971, American Federation of Government Employees, AFL-CIO, (AFGE) seeking a unit composed of "all non-professional employees" of the Activity. During a pre-hearing meeting among the parties, the Activity and the AFGE agreed to exclude, among others, certain employees who they alleged to be management officials and/or supervisors as defined in the Order. The Intervenor, Association of Civilian Technicians, Inc., (ACT) challenged the status of 37 of the excluded personnel on the basis of its contention that such employees did not possess or exercise managerial or supervisory authority or responsibilities.

The Assistant Secretary noted that evidence and testimony received during the hearing, although concerned, primarily, with the functions and duties of the 37 excluded employees, was insufficient to form the basis for a finding as to their exclusion from the claimed unit. In addition, the Assistant Secretary found that the record did not contain a sufficient amount of information regarding the scope and composition of the claimed unit. In this regard, he stated that the record did not show locations, functions and duties of all employees who comprised the unit, or their relationship with other unrepresented Illinois Air National Guard employees, if any, throughout the State.

In these circumstances, the Assistant Secretary concluded that there were insufficient facts in the record on which he could decide the appropriateness of the claimed unit for the purpose of exclusive recognition. Therefore, he ordered that the case be remanded to the appropriate Regional Administrator for the purpose of reopening the record to obtain additional facts.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ILLINOIS AIR NATIONAL GUARD TECHNICIANS,
O'HARE INTERNATIONAL AIRPORT, CHICAGO, ILLINOIS 1/

Activity

and

Case No. 50-5021

LOCAL 2971, AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO

Petitioner

and

ASSOCIATION OF CIVILIAN TECHNICIANS, INC.

Intervenor

DECISION AND REMAND

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John R. Lund. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record, including briefs filed by the Activity and the Intervenor, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.
2. The Petitioner, Local 2971, American Federation of Government Employees, AFL-CIO, herein called AFGE, seeks an election in a unit

1/ The name of the Activity is shown as it appears in the record. It should be noted, however, that the record is not clear as to the inclusion of the word, "Technicians" in the name of the Activity, i.e., whether it is an official designation of the Illinois Air National Guard component involved, or is intended to show the specific class of employees that the Petitioner seeks to represent in this case.

composed of, "All non-professional employees, Illinois Air National Guard technicians, O'Hare International Airport, Chicago, Illinois; excluded, all management officials, supervisors, guards, professional employees and employees engaged in Federal personnel work [in] other than [a] truly [sic] clerical capacity." 2/

The record indicates that during a pre-hearing meeting among the parties, the Activity and the AFGE agreed to exclude, among others, certain employees who they alleged to be management officials and/or supervisors as defined in the Executive Order. The Intervenor, Association of Civilian Technicians, Inc., herein called ACT, challenged the status of 37 of the excluded personnel on the basis that such employees did not possess or exercise managerial or supervisory authority and responsibilities. 3/ Furthermore, the ACT asserted that the ratio of supervisors to nonsupervisors, which would result from the exclusion of the 37 disputed employees, was unrealistic, in that, if they were excluded from the unit, there would be 74 supervisors in total work force of 198 employees at the Activity.

At the hearing in this matter, the parties submitted evidence and testimony concerning, primarily, the functions and duties of the 37 contested employees. Consequently, the record contains limited facts regarding the scope and composition of the claimed unit. In this respect, the record is unclear as to whether the AFGE seeks a unit limited to technicians, and, as noted above, it does not show the locations, functions and duties of all of the employees who would be included in the unit. 4/ Further, the record

2/ The unit description is shown as it appears in the record.
3/ Presumably, the ACT does not disagree with the Activity and the AFGE regarding other employees of the Activity who have been included or excluded on the basis of the parties' pre-hearing agreement. However, the agreement was not entered into the record; nor does the record provide sufficient information regarding the locations, functions, and duties of the agreed-upon employees, on which a decision can be based as to whether certain categories of such employees appropriately would be included in or excluded from the claimed unit.
4/ The record reveals that certain employees in the claimed unit are assigned to subordinate components of a 126th Air Refueling Wing. The evidence indicates, also, that some of the claimed employees are in 264th Mobile Communications Squadron and in the 217th Electronics Installation Squadron. While the record shows that the 126th Air Refueling Wing, the 264th Mobile Communications Squadron and the 217th Electronics Installation Squadron are located at O'Hare Airport, there is no evidence as to whether components of these groups are located at other Illinois Air National Guard bases, nor is the record clear with respect to the organizational and functional relationship between the 126th wing and the two squadrons, or any other groups which might be located at O'Hare or at other bases.

does not indicate whether there are other unrepresented Air National Guard employees located at O'Hare Airport, or at other locations throughout the State of Illinois.

While the record indicates that the Adjutant General of Illinois is responsible for the employment of Air National Guard Technicians throughout the State, and for their assignments, transfers, promotions, discipline, suspension, discharge and grievance adjustment, the evidence does not show the manner in which he exercises or delegates these authorities and responsibilities at the various organizational levels of the Illinois Air National Guard. Also, the record does not show the relationship between the claimed employees and other unrepresented employees, if any, located at other Illinois Air National Guard installations throughout the State and the manner in which they may be affected by personnel programs administered by the Adjutant General.

The record indicates also that some of the disputed employees, and others who have been omitted from the unit, do not have "subordinate" employees assigned to them. Nevertheless, the record shows that the Activity and the AFGE assert that these employees have authorities and responsibilities which are more closely allied with the interests of the Activity's management than with the interests of employees in the claimed unit. In this regard, the evidence in the record concerning these alleged "management" functions and duties is insufficient to reach a determination as to inclusion or exclusion of such employees. Also, the record reveals that employees alleged to be supervisors prepare two annual performance rating forms with respect to other employees in the unit. The facts show that one such form entitled "Technician Performance Rating" (National Guard Bureau Form 2), is prepared, distributed and used in accordance with existing National Guard regulations. However, the record is not clear as to the purpose, preparation, distribution and actual use of a second rating form entitled "Evaluation of Performance (Nonsupervisor)" which, apparently, is prescribed by the State of Illinois.

In view of the deficiencies in the evidence noted above, I find that the record in this case contains insufficient facts as to the employees the parties would include in the petitioned for unit. In this regard, the record fails to show whether these employees, to the extent they can be determined, share a clear and identifiable community of interest which is distinct and separate from the interests of other unrepresented employees of the Illinois Air National Guard, if any, who are located at O'Hare Airport and/or other locations throughout the State. In addition, the record is insufficient for me to make a finding as to the status of the 37 employees alleged to be either management officials or supervisors with the meaning of the Order.

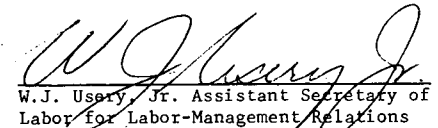
-3-

Accordingly, I shall remand the subject case to the appropriate Regional Administrator for the purpose of reopening the record to obtain the additional facts discussed herein.

ORDER

IT IS HEREBY ORDERED that the subject case be, and it hereby is, remanded to the appropriate Regional Administrator.

Dated, Washington, D.C.
October 26, 1971


W.J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

-4-

October 28, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
HEALTH SERVICES & MENTAL HEALTH ADMINISTRATION,
NATIONAL CENTER FOR MENTAL HEALTH SERVICES,
TRAINING AND RESEARCH, ST. ELIZABETH'S HOSPITAL
A/SLMR NO. 102

In this case the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) petitioned for one unit of Wage Board employees in the Housekeeping Section at the Activity plus House-keeping Aides in the Nursing Branch. In a second petition, the AFSCME sought Wage Board and General Schedule employees of the Nursing Branch, except those Housekeepers encompassed in the other petition, plus similar employees in other organizational branches of the Activity.

The Activity took the position that neither petitioned unit was appropriate but that the two together would be appropriate if a third group of employees, Wage Board and General Schedule Dietary Section employees, were also included.

The Assistant Secretary found that neither unit petitioned for was appropriate. He noted that clericals were sought to be included in one of the petitioned units and not the other and that both units sought would cross organizational lines. In the circumstances, he concluded that the units sought would unnecessarily fragment labor relations at the Activity, would not rationally follow the Activity's organizational structure and that employees of neither of the two units sought shared a clear and distinct community of interest separate and distinct from other unrepresented employees of the Activity.

The Assistant Secretary also found that the unit suggested by the Activity is inappropriate. The Activity asserted that the only appropriate unit would include, in addition to those employees sought by the two petitions, employees of the Dietary Section. The Assistant Secretary noted that the evidence establishes that the AFSCME currently represents the employees in the Dietary Section on an exclusive basis, is party to an existing negotiated agreement with the Activity, and has not indicated that it intends to waive its exclusive recognition status. Thus, he found that the unit proposed by the Activity would not be appropriate because it would include employees already represented by the AFSCME, as exclusive representative.

The Assistant Secretary did, however, find appropriate a residual unit of all unrepresented employees at the Activity. The unit would include all employees sought by the AFSCME in its two petitions and would include additionally all other unrepresented nonprofessional Wage Board and General Schedule employees at the Activity. This conclusion was based on a finding that these employees share a community of interest in that they are engaged in a common overall mission of patient care, are located in the same complex, and are responsible administratively to the Director of the Activity. The Assistant Secretary found further that effective dealings and efficiency of operations would be promoted by such a comprehensive residual unit.

Inasmuch as the unit found appropriate differed substantially from those sought in the original petitions, the Assistant Secretary noted that the AFSCME would be permitted to withdraw its petitions if it did not desire to proceed to an election in the unit found appropriate. Further, if the AFSCME desired to proceed to an election, the Assistant Secretary directed that the Activity post copies of a new Notice of Unit Determination so that labor organizations might intervene in this proceeding for the sole purpose of appearing on the ballot.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
HEALTH SERVICES & MENTAL HEALTH ADMINISTRATION,
NATIONAL CENTER FOR MENTAL HEALTH SERVICES,
TRAINING AND RESEARCH, ST. ELIZABETH'S HOSPITAL ^{1/}

Activity

and

Case Nos. 22-2134 and
22-2280

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Earl T. Hart. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including the parties' briefs, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, American Federation of State, County and Municipal Workers, AFL-CIO, herein called AFSCME, seeks elections in two separate units at the Activity.

In Case No. 22-2134, the AFSCME originally sought all Wage Board employees in the Housekeeping Section, St. Elizabeth's Hospital, excluding management officials, employees engaged in Federal personnel work

^{1/} The name of the Activity appears as amended at the hearing.

in other than a purely clerical capacity, and supervisors. In Case No. 22-2280, it sought all nonprofessional General Schedule and Wage Board employees in the Activity's Nursing Section.

At the hearing, the unit descriptions were amended extensively. ^{2/} Essentially, the AFSCME seeks one unit encompassing all Wage Board employees in the Housekeeping Section plus the few housekeeping aides attached to the Nursing Branch and a second unit of all Wage Board and General Schedule nonprofessional employees in the Nursing Branch and in other organizational branches at the Activity, including, among others, all nonprofessional nurses and nursing assistants.

The Activity asserts that the proposed separate units would be inappropriate, and that the only appropriate unit should include essentially all nonsupervisory Wage Board and General Schedule employees of the Dietary Section, in addition to those sought by the two petitions.

The National Center for Mental Health Services, Training and Research, was established in 1968, in three divisions. The Center is comprised of approximately 100 buildings, on 350 acres, located in Washington, D.C. There are approximately 3,800 permanent and 200 temporary employees at the facility. All employees sought in the subject cases are in the largest of the three organizational divisions,

^{2/} In Case No. 22-2134, the unit sought, as amended, includes all Wage Board employees in the Housekeeping Section and all housekeeping aides in the Nursing Branch at St. Elizabeth's Hospital, excluding all management officials, employees engaged in Federal personnel work other than in a purely clerical capacity, supervisors, professional employees and guards and temporary and summer student employees.

In Case No. 22-2280, the unit sought, as amended, includes all General Schedule and Wage Board employees in the Nursing Branch of St. Elizabeth's Hospital, including nursing aides, psychiatric nursing assistants, licensed practical nurses and clerical employees in the Community Mental Health Center (Area D), employees of the Special Mental Health Services Unit of St. Elizabeth's Hospital, and pharmacy helpers in the W.W. Eldridge Unit. Excluded are management officials, professional employees, barbers, beauticians, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors, guards, temporary and summer student employees and all housekeeping aides employed in the Nursing Branch of St. Elizabeth's Hospital.

St. Elizabeth's Hospital, Division of Clinical and Community Services, which was founded in 1855. St. Elizabeth's has approximately 3,650 permanent and 130 temporary employees. The Director of the National Institute of Mental Health (NIMH) manages and directs all of the activities of St. Elizabeth's.

Organizationally, the employees sought are in different departments of the Hospital. The Nursing Branch is part of the Division of Medical Services. The Housekeeping Section is in the Business Management Branch, Division of Administration. The Dietary Section which, as noted above, is asserted by the Activity to be appropriate for inclusion, is, like the Housekeeping Section, in the Business Management Branch.

The bargaining history at the Activity shows that at the time of the hearing there were approximately 9 separate recognitions covering 8 employee bargaining units, including one unit represented by 2 labor organizations ^{3/} These included five units in which the Activity had accorded exclusive recognition. The record reveals that the AFSCME already represents most of the employees sought herein under various forms of recognition reached between 1963 and 1969 (prior to Executive Order 11491). Thus, it has exclusive recognition for a unit of all nonsupervisory employees of the Dietary Section and for food service workers of the Nursing Branch, ^{4/} excluding clerical employees, and previously had formal recognitions covering other employees of the Nursing Branch as well as housekeepers.

As noted above, one of the units sought herein (Case No. 22-2134) would include housekeeping aides and would cross organizational lines. The record reveals that the majority of these employees are in the recently organized Housekeeping Section; some, however, remain in the Nursing Branch. ^{5/} The other petition, as amended, (Case No. 22-2280)

^{3/} Because of reorganizations and consolidations at the Activity since the granting of some of these recognitions, not all of the units remain in existence.

^{4/} This latter group is one of the groups of employees affected by the reorganizations referred to above. Thus, the food service workers who were formerly in the Nursing Branch are now in the Dietary Section.

^{5/} There was record testimony that at some unspecified future time all of these employees will be in the Housekeeping Section, as they perform the same duties. At present, however, those housekeeping aides in the Nursing Branch are under supervision in that Branch.

seeks to include nearly all Wage Board and General Schedule employees in the Nursing Branch, except for the housekeepers sought by the petition in Case No. 22-2134, as well as various Wage Board and General Schedule employees located in other organizational departments of the Activity.

It appears from the record that while clericals would be included in the requested unit in Case No. 22-2280, they would be excluded from the other claimed unit in Case No. 22-2134. Also, the petitioned units each cross organizational lines. Thus, the proposed Housekeeping unit would include aides organizationally attached to the Nursing Branch, who are under the supervision of Head Nurses, while the proposed Nursing Unit would include employees under the immediate supervision of personnel in several different organizational subdivisions of the Activity. Under these circumstances, I find that the units sought would unnecessarily fragment labor relations at the Activity, would not rationally follow the Activity's organizational structure and that employees in neither of the two units sought share a clear and distinct community of interest separate and distinct from other unrepresented employees of the Activity.

As noted above, the Activity asserts that only a single unit would be appropriate including, in addition to those employees sought by the two petitions, the employees of the Dietary Section. In this latter regard, the evidence establishes that the AFSCME currently represents the employees in the Dietary Section on an exclusive basis, is party to an existing negotiated agreement with the Activity, and has not indicated that it intends to waive its exclusive recognition status. In these circumstances, the unit proposed by the Activity would not be appropriate because it would include employees already represented by the AFSCME as exclusive representative.

However, based on all of the foregoing factors, I find that a residual unit of all unrepresented employees at the Activity's St. Elizabeth's facility would be appropriate for the purpose of exclusive recognition. Such a unit would include all of the employees sought by the AFSCME in its two petitions in the subject cases. Additionally, the unit would include other unrepresented nonprofessional Wage Board and General Schedule employees at the Activity. The evidence establishes that these employees of the Activity share a community of interest in that they are engaged in a common overall mission of patient care, are located in the same complex, and are responsible administratively to the Director of the NIMH. I also find that effective dealings and efficiency of operations would be promoted by such a comprehensive residual unit. Accordingly, I find, that the following employees

constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491: 6/

All Wage Board and General Schedule employees employed at St. Elizabeth's Hospital, National Center for Mental Health Services, Department of Health, Education and Welfare, excluding all employees already covered by exclusive recognition, professional employees, employees engaged in Federal personnel work other than in a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. 7/

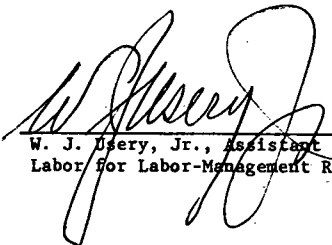
DIRECTION OF ELECTION

In the circumstances set forth below, an election by secret ballot shall be conducted among the employees in the unit found appropriate not later than 45 days from the date upon which the appropriate Area Administrator issues his determination with respect to any interventions in this matter. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they desire to be represented for the purpose of exclusive recognition by American

Federation of State, County, and Municipal Employees, AFL-CIO, or by any other labor organization which, as discussed below, intervenes in this proceeding on a timely basis.

Because the above Direction of Election is in a unit substantially different than those sought by the AFSCME, I shall permit it to withdraw its petitions if it does not desire to proceed to an election in the unit found appropriate in the subject case upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision. If the AFSCME desires to proceed to an election, because the unit found appropriate is substantially different than those it originally petitioned for, I direct that the Activity, as soon as possible, shall post copies of a Notice of Unit Determination, in places where notices are normally posted affecting the employees in the unit I have herein found appropriate. Such Notice shall conform in all respects to the requirements of Section 202.4(c) and (d) of the Assistant Secretary's Regulations. Further, any labor organization which seeks to intervene in this matter must do so in accordance with the requirements of Section 202.5 of the Assistant Secretary's Regulations. Any intervention, otherwise timely, will be granted solely for the purpose of appearing on the ballot in the election among the employees in the unit found appropriate.

Dated, Washington, D.C.
October 28, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

6/ I am advised administratively that the AFSCME's showing of interest is in excess of thirty percent in the unit found appropriate. If the AFSCME does not wish to proceed to an election in the unit found appropriate, I will permit it to withdraw its petitions.

7/ The record contained references to various specific job categories, such as "temporary employees" and "summer students" which the parties agreed to exclude from the petitioned units. As the record does not contain sufficient facts as to such job categories, I will make no finding as to whether their exclusion from the petitioned units was warranted.

October 29, 1971

A/SLMR No. 103

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

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

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
BUTLER, PENNSYLVANIA
A/SLMR No. 103

VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION HOSPITAL,
BUTLER, PENNSYLVANIA

Activity

and

Case Nos. 21-2205
21-2370

LOCAL R3-74, NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 227, (AFL-CIO)

Intervenor

The subject case involving representation petitions filed by Local R3-74, National Association of Government Employees (NAGE) raised a question as to whether the agreement between the Activity and Service Employees International Union, Local 227, (AFL-CIO) (SEIU), constituted a bar to the processing of the petitions in this matter.

The Assistant Secretary, relying on his decision in Veterans Administration Center, Mountain Home, Tennessee, A/SLMR No. 89, concluded that the parties' negotiated agreement was terminable upon 60 days notice by either party thereto after a period of two years from its effective date and therefore he viewed the agreement as terminable at will. The Assistant Secretary noted that such an agreement creates the uncertainty which is inconsistent with the agreement bar principle. Accordingly, he concluded that the agreement did not constitute a bar to the processing of the petitions in this case and directed an election in the appropriate unit.

DECISION AND DIRECTION OF ELECTION

Upon petitions filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Hilary M. Shepley. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 1/

1/ During the hearing the Intervenor sought to challenge the validity of the Petitioner's showing of interest. Section 202.2(f) of the Assistant Secretary's Regulations provides, in part, that "Any party challenging the validity of showing of interest must file his challenge with the Area Administrator within ten (10) days after the initial date of posting of the notice of petition as provided in Section 204.4(b) and support his challenge with evidence. The Area Administrator shall investigate the challenge and report his findings to the Regional Administrator who shall take such action as he deems appropriate." In Report on a Decision of the Assistant Secretary, Report No. 21, I determined that no request for review of a Regional Administrator's action dismissing a challenge to validity of showing of interest would be entertained by the Assistant Secretary. In these circumstances, I find that the Intervenor's attempt at the hearing to challenge the validity of the Petitioner's showing of interest was improper as this matter has been decided previously by the Regional Administrator and such decision is not subject to collateral attack at a hearing. Accordingly, the Hearing Officer's rulings with respect to the Intervenor's challenge to the validity of the Petitioner's showing of interest are hereby affirmed.

Upon the entire record in this case, including the briefs of the Activity and the Intervenor, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. Local R3-74, National Association of Government Employees, herein called NAGE, seeks an election in the following unit:

"All nonprofessional wage rate, and general schedule employees, including the canteen employees, excluding management officials, the secretary for the Director, the secretary to the Assistant Director, the secretary to the Chief Personnel Officer, employees engaged in Federal personnel work except in a purely clerical capacity, professionals, guards and supervisors as defined in the Executive Order." 2/

The record reveals that the Service Employees International Union, Local 227, (AFL-CIO), herein called SEIU, has been the exclusive bargaining representative of the employees in the claimed unit since April 1965. A basic agreement, negotiated by the Activity and the SEIU and approved by the Chief Medical Director, was received at the Activity on May 4, 1965. 3/ This agreement was for the fixed term of one year and contained an automatic renewal clause, which provided that it would be automatically renewable each anniversary date unless modified or terminated by the parties. 4/ It also provided that it could be terminated

2/ The parties stipulated to the appropriateness of the unit.

3/ The record reveals that it is agency policy that basic agreements and amendments thereto become effective upon their receipt at the Activity after their approval by the Chief Medical Director and that supplementary agreements become effective upon approval by the Director of the Activity.

4/ The basic agreement provided that modifications could be accomplished by either party notifying the other, in writing, 60 days prior to the agreement's expiration date of its intention to negotiate modifications of the agreement.

by either party on any anniversary date by giving the other party written notice sixty (60) days in advance. 5/

The record reveals that the parties executed a supplemental agreement which was approved by the Director of the Activity on October 8, 1965, and another which was approved on December 5, 1966. Also, in December 1966, the parties met and signed an amendment to the basic agreement of May 4, 1965, which was approved by the Chief Medical Director and received at the Activity on either January 3 or January 8, 1967. 6/ This amendment changed the duration of both the basic and supplemental agreements from a one year to a two year term and retained the automatic renewal provision. The amendment also modified the language regarding the conditions for terminating the agreement. Thus, under Article VII, Section 2 of the amended agreement, either party could, "after giving the other party at least sixty (60) days notice terminate this Basic Agreement and all Supplemental Agreements hereto after a period of two years from its effective date." 7/ Thereafter, on May 23, 1969, the parties negotiated a new supplemental agreement which, together with the basic agreement and the amendments thereto, was printed in booklet form and distributed to employees and the SEIU. 8/

5/ Article VIII of the basic agreement provided that withdrawal of exclusive recognition would also result in termination of the agreement. Consistent with agency policy, the agreement also provided that amendments to the basic agreement would become effective upon receipt by the Activity of the approval by the Chief Medical Director.

6/ Although the date stamp appearing on the cover letter of this amendment is illegible, in view of the disposition therein, I find it unnecessary to make a determination as to the actual date of receipt.

7/ Although not relevant to the issues herein, the parties in February 1969 approved another amendment to the basic agreement for the purpose of effecting changes in its impasse provisions.

8/ Apparently through inadvertance, the date appearing on the signature sheets of both basic and supplemental agreements was May 23, 1969.

The record discloses that, on September 15, 1970, counsel for the NAGE contacted the Activity's personnel office as to the proper date for challenging the SEIU's exclusive recognition, and was advised by the personnel officer that, in his opinion, the proper challenge period was 60 to 90 days prior to January 8, 1971. ^{9/} Based on this advice, the NAGE filed a representation petition on October 22, 1970, in what it believed to be the "open season" of the existing agreement. ^{10/}

The Activity submits that the basic agreement, as amended in January 1967, should be determinative with respect to the question of agreement bar. In this regard, it contends that since this amendment changed the duration provisions of the basic agreement, the two year term should be determined based on the date that the amendment to the basic agreement took effect. Accordingly, it is the Activity's position that the first petition filed by the NAGE on October 22, 1970 was timely. ^{11/} The NAGE takes the position that its original petition was timely filed and, therefore, that an election should be ordered. However, it further asserts that if, for any reason, the first petition is dismissed, its second petition should be found to be timely. The SEIU maintains that neither of the NAGE petitions were timely filed, since the basic agreement of May 4, 1965, which was renewed automatically, is controlling for agreement bar purposes. It contends, in this regard, that neither the amendments to the basic agreement nor the supplemental

^{9/} The personnel officer apparently interpreted the date of the amendment of January 1967 to be January 8 rather than January 3, 1967. In his view, the date of this amendment was controlling for agreement bar purposes.

^{10/} This petition initially was dismissed as untimely by the Regional Administrator in view of the May 23, 1969 date which appeared on the printed booklet of the basic and supplemental agreements. The NAGE requested review of this dismissal, and because of the conflict in evidence regarding the effective dates of the basic and supplemental agreements, I directed that the petition be reinstated and processed. Pending consideration of its request for review, the NAGE filed a second petition, on March 24, 1971 during what it believed to be the "open season" for any agreement expiring on May 23, 1971. Both cases were consolidated for hearing.

^{11/} In its brief, the Activity urges that, in the alternative, the original basic agreement dated May 4, 1965 should be controlling for the purposes of resolving the agreement bar issue.

agreements should serve as a basis for resolving the agreement bar issue. ^{12/}

According to the language of Article VII, Section 2 of the basic agreement, as amended, either party, after a period of two years from its effective date, may unilaterally terminate the agreement by giving the other party 60 days notice of its intention to terminate. I have held previously that such provision would render an agreement terminable at will upon the expiration of its initial two year term. ^{13/} Moreover, as I stated in Veteran Administration Center, Mountain Home, Tennessee, cited above, it is the power to terminate an agreement at will and not necessarily the actual exercise of that power which creates the uncertainty that it is inconsistent with the agreement bar principle. Thus, the fact that neither of the parties to the basic agreement in this case has given a notice to terminate, does not, in my view, affect the basic condition of a "terminable at will" agreement. ^{14/}

Based on the foregoing, I find that the negotiated agreement between the SEIU and the Activity does not constitute a bar to either of the petitions filed herein and that an election can be directed. In these circumstances, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All nonprofessional Wage Bpard and General Schedule employees, including the canteen employees, excluding the secretary for the Director, the secretary to the Assistant Director, the secretary to the Chief Personnel Officer, all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, and guards and supervisors as defined in the Order.

^{12/} The SEIU also contends that the "open season" for the supplemental agreement executed on May 23, 1969, terminated on March 23, 1971, and thereby rendered the NAGE's second petition untimely, assuming the May 23, 1969, date was utilized by the Assistant Secretary in resolving the issues herein.

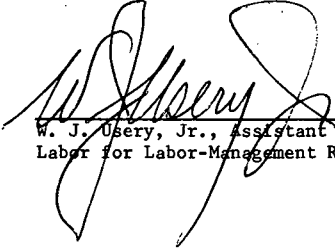
^{13/} See Veterans Administration Center, Mountain Home, Tennessee, A/SLMR No. 89

^{14/} As indicated previously, there is a dispute as to whether the termination date of the basic agreement is in January or May. Regardless of which date is used for computation, the two year period set forth in Article VII has elapsed in either instance and, therefore, either party now may freely terminate the agreement at any time merely by giving the required 60-day written notice.

October 29, 1971

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election subject to the Assistant Secretary's Regulations. Eligible to vote are all those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by Local R3-74, National Association of Government Employees; or by the Service Employees International Union, Local 227, (AFL-CIO); or by neither.

Dated, Washington, D.C.
October 29, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND DIRECTION OF ELECTION
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 112491

VETERANS ADMINISTRATION HOSPITAL,
LEECH FARM ROAD,
PITTSBURGH, PENNSYLVANIA
A/SLMR No. 104

This case involves a representation petition filed on May 5, 1971, by the American Federation of Government Employees, AFL-CIO, (AFGE), for a unit of all nonprofessional General Schedule and Wage Board employees of the Activity. The Intervenor, National Alliance of Postal and Federal Employees, Local 510 (NAPFE), which is the current exclusive representative, asserts the petition of the AFGE was filed untimely in that the claimed employees are covered by a new agreement between the NAPFE and the Activity which was signed May 3, 1971, and which is currently awaiting approval at a higher management level. The NAPFE maintains the May 3, 1971 agreement constitutes a bar to the AFGE's petition. The Activity contends the AFGE petition was timely filed.

The record reflects that the NAPFE was accorded exclusive recognition in the unit on March 19, 1965; that an agreement was entered into, effective July 22, 1966, between the NAPFE and the Activity; that the agreement was to remain in effect for one year and would be automatically renewable from year to year thereafter, until modified or terminated; and that the latest renewal was on July 22, 1970, for a period of one year ending July 21, 1971. The record further shows that during negotiations for a supplemental agreement a decision was made by the NAPFE and the Activity to negotiate a new basic agreement instead of supplements to the basic agreement, and that these negotiations resulted in the new basic agreement of May 3, 1971.

Under all the circumstances, the Assistant Secretary found the petition of the AFGE to be filed timely. With respect to the basic agreement, as renewed through July 21, 1971, the petition of May 5, 1971, was clearly within the "open period" provided for in Section 202.3(c) of the Assistant Secretary's Regulations. The Assistant Secretary found also that the new basic agreement of May 3, 1971, did not bar the AFGE's petition, as this agreement constituted, in effect, a premature extension of the existing negotiated agreement and consistent with Section 202.3(e) of the Assistant Secretary's Regulations could not stand as a bar to a petition otherwise filed timely. The Assistant Secretary noted that a contrary result would empower parties to an exclusive bargaining relationship to foreclose

employees or other labor organizations from challenging the representative status of an incumbent by entering into new agreements prior to the "open period," or, as in the instant case, by entering into a new agreement before the "open period" had expired. Moreover, the Assistant Secretary found that while the basic agreement of July 21, 1966, appeared to be terminable at will, it remained valid and binding on the parties; that the AFGE was reasonable in attempting to file its petition in the "open period;" and that, while the parties might have corrected the defect, such correction might not be utilized to extend the agreement to the detriment of employees or labor organizations desiring to file representation petitions. Accordingly, as the Assistant Secretary found there was no agreement bar to the petition of the AFGE, he ordered an election in the appropriate unit.

A/SLMR No. 104

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION HOSPITAL,
LEECH FARM ROAD,
PITTSBURGH, PENNSYLVANIA

Activity

and

Case No. 21-2485

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO

Petitioner

and

NATIONAL ALLIANCE OF POSTAL AND
FEDERAL EMPLOYEES, LOCAL 510^{1/}

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Norman S. Ward. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including a brief filed by the Petitioner,^{2/} the Assistant Secretary finds:

^{1/} The name of the Intervenor appears as amended at the hearing.

^{2/} The Intervenor filed an untimely brief which has not been considered.

1. The labor organizations involved claim to represent certain employees of the Activity.

2. The Petitioner, American Federation of Government Employees, AFL-CIO, herein called AFGE, seeks an election in a unit of all nonprofessional General Schedule and Wage Board employees, including canteen employees of the Activity, excluding, among others, secretary to the Director, Assistant Director and Chief, Personnel Division.^{3/} The AFGE contends that its petition, which was filed on May 5, 1971,^{4/} is timely, in that it was filed during the "open season" of the existing agreement covering the claimed employees which had a termination date of July 21, 1971.^{5/} Also, the AFGE asserts that its proposed unit is appropriate within the meaning of the Executive Order.

The Intervenor, National Alliance of Postal and Federal Employees, Local 510, herein called NAPFE, is the current exclusive representative in the petitioned for unit. It submits that the AFGE's petition in this case was filed untimely, in that the claimed employees are covered by a new agreement between the Activity and the NAPFE, which was signed on May 3, 1971, and which is currently awaiting approval at a higher management level. Thus, the NAPFE maintains that parties' May 3, 1971 agreement constituted a bar to the AFGE's petition in accordance with Section 202.3(c) of the Assistant Secretary's Regulations. The Activity contends that the AFGE's petition was timely.

Under Executive Order 10988, the Activity accorded exclusive recognition to the NAPFE, on March 19, 1965, in a unit consisting of all regular nonprofessional employees of the Activity.^{6/} Thereafter, the Activity and

^{3/} The unit appears as amended at the hearing. The record indicates the unit is the same as the unit represented currently by the Intervenor, except for the exclusion of guards, which exclusion all parties agreed to during the hearing.

^{4/} The AFGE filed an amended petition on May 11, 1971.

^{5/} Section 202.3(c) of the Assistant Secretary's Regulations provides, in part, that "...a petition for exclusive recognition or other election petition will not be considered timely if filed during the period within which that agreement is in force or awaiting approval at a higher management level, ...unless (1) a petition is filed not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of such agreement or two years, whichever is earlier..."

^{6/} The unit excluded managerial executives, supervisors and the secretary to the Director, Assistant Director and Chief, Personnel Division. Based on evidence in the record, it appears that the unit included guards and canteen personnel.

the NAPFE entered into negotiations which culminated in a negotiated agreement with an effective date of July 22, 1966. ^{7/} The agreement was to remain in effect for a period of one year, and it provided that it would be automatically renewable from year to year thereafter until modified or terminated. Under the agreement, either party could request its modification by issuing a written notice to the other party, not less than 45 working days before its anniversary date, stating a desire for a conference for that purpose. With respect to termination, Article XI, paragraph 1 of the agreement provided for termination of the basic agreement and all supplemental agreements in the event exclusive recognition was withdrawn from the NAPFE. In addition, Article XI, Section 2 provided, in part, "Either party may, after giving the other party at least 60 days notice, terminate this basic agreement and/or supplemental agreement hereto after a period of one year from its effective date. Neither party shall unilaterally terminate this agreement -- until every effort including labor-management meetings and negotiating sessions has been made to resolve the differences pertaining to the termination notice."

The record reveals that in September 1966, a supplemental agreement was negotiated by the parties. Also, in 1967 and 1968, negotiations between the parties took place concerning additional supplemental agreements covering operating practices and procedures at the Activity. The evidence establishes that these negotiations continued until a decision was made to negotiate for a new basic agreement instead of supplements to the existing basic agreement. ^{8/} The evidence indicated that during the period of bargaining commencing in 1967, the basic agreement of July 22, 1966, continued to renew itself, automatically, from year to year, without formal notice or correspondence relating to such renewals by either of the parties. ^{9/}

A new basic agreement between the Activity and the NAPFE was signed on May 3, 1971. The agreement contained most of the provisions of the original basic agreement, but also included some pertinent changes and additions.

^{7/} The agreement provided that any supplemental agreements between the Activity and the NAPFE, on personnel policies and practices and working conditions, would be subject to the provisions of the parties' basic agreement.

^{8/} It appears that the decision to negotiate a new agreement was made after the parties became aware that there would be changes in Executive Order 10988. In this regard, the record reveals that it was decided that a new agreement would be negotiated, incorporating those changes provided in the new Executive Order.

^{9/} In this regard, the record shows that the basic agreement was renewed, automatically, on July 22, 1970, for a period of one year, ending July 21, 1971.

The agreement provided that it was to become effective upon ratification by the Union membership and approval by the Department head. It was to remain in effect for 2 years from its effective date, and was to be automatically renewable for a two-year period thereafter, until modified or terminated.

The record shows that on April 29, 1971, the NAPFE's membership voted to ratify the new agreement and, as noted above, the agreement subsequently was signed on May 3, 1971. The evidence reveals further that the signed agreement was sent to the Activity's national headquarters for approval on May 6, 1971, and that it is still awaiting approval.

Under all the circumstances, I find that the petition in this case filed by the AFGE on May 5, 1971 was timely and that neither the basic agreement of 1966 nor the new agreement signed on May 3, 1971, constitute an agreement bar. With respect to the basic agreement of 1966, which was renewed on an annual basis through July 21, 1971, the AFGE's petition filed on May 5, 1971, falls clearly within the "open period" provided for in Section 202.3(c) of the Assistant Secretary's Regulations. Moreover, I find that the new basic agreement of May 3, 1971, did not bar the AFGE's petition. Thus, in my view, the parties' agreement of May 3, 1971, which was signed more than 60 days before the July 21, 1971 terminal date of the prior basic agreement, constitutes, in effect, a premature extension of their existing negotiated agreement and, consistent with Section 202.3(e) of the Assistant Secretary's Regulations, may not stand as a bar to a petition which is otherwise timely filed.^{10/} A contrary result would empower the parties to an exclusive bargaining relationship to foreclose employees or other labor organizations from challenging the representative status of an incumbent labor organization by entering into new agreements prior to the "open period" for filing representation petitions, or as in the instant case, by entering into a new agreement before the "open period" had expired.

^{10/} Section 202.3(e) provides, in part, "When an extension of agreement has been signed more than sixty (60) days before its terminal date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein." I find Section 202.3(e) to be applicable to any agreement, whether an amendment to an existing agreement or a new agreement, entered into by a bargaining representative and an activity more than 60 days before expiration of an existing negotiated agreement.

^{11/}

Based on the foregoing circumstances, I find that the AFGE's petition was not barred by the negotiated agreement signed on May 3, 1971. Accordingly, I find that the following employees of the Activity constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All General Schedule and Wage Board employees of the Veterans Administration Hospital, Leech Farm Road, Pittsburgh, Pennsylvania, including canteen employees; excluding secretary to the Director, Assistant Director and Chief, Personnel Division, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order. ^{12/}

DIRECTION OF ELECTION

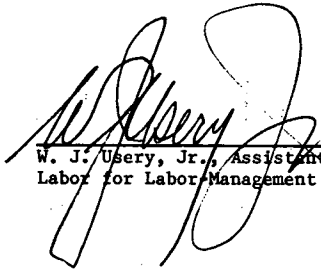
An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible

^{11/} The fact that language contained in Article XI, Section 2 of the basic agreement of July 22, 1966 appeared to render that agreement terminable at will upon 60 days notice by either party after a period of one year from its original effective date, (see Veterans Administration Center, Mountain Home, Tennessee, A/SLMR No. 89), would not require a contrary result in this case. Thus, the basic agreement of July 22, 1966 was, at all times, valid and binding on the parties thereto and, in the circumstances, I find that, notwithstanding the ambiguity in the termination clause, the AFGE was reasonable in attempting to file its petition during the "open period" of that agreement in accordance with the Assistant Secretary's Regulations. Although parties to an agreement which contains an ambiguity as to its duration may, at any time during the term of that agreement correct the ambiguity, such a correction may not be utilized to extend the duration of the agreement to the detriment of employees or labor organizations desiring to file representation petitions.

^{12/} The record does not contain sufficient facts to permit a finding as to whether certain "temporary" employees, hired by the Activity to meet certain particular needs, should be included in the claimed unit.

to vote are all those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on furlough including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the American Federation of Government Employees, AFL-CIO; or by the National Alliance of Postal and Federal Employees, Local 510; or by neither.

Dated, Washington, D. C.
October 29, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor Management Relations

October 29, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

ILLINOIS AIR NATIONAL GUARD,
182nd TACTICAL AIR SUPPORT GROUP
A/SLMR NO. 105

This case involved a petition for clarification of unit filed by Illinois Air Chapter, Association of Civilian Technicians, Inc. (ACT), seeking to include 29 individuals in the certified bargaining unit. The Activity contended that each of these employees is a supervisor within the meaning of Section 2(c) of the Order and should be excluded from the unit.

An election had been conducted pursuant to an Agreement for Consent or Directed Election, in which 25 challenged ballots were determinative of the results. The ACT and the Activity entered into two written stipulations, involving a total of 16 of the 25 challenged ballots, in which the parties agreed that each of the 16 named individuals was a supervisor within the meaning of the Executive Order. On this basis, inasmuch as the remaining challenged ballots were not determinative of the results of the election, a Certification of Representative was issued to the ACT.

The subject petition for clarification which was subsequently filed by the ACT, included 14 individuals whom the ACT had previously agreed to as being supervisors.

Under all the circumstances the Assistant Secretary found that the ACT, by seeking to include certain individuals as being nonsupervisory whom it previously had agreed were supervisors, had entered into sham stipulations in order to obtain a Certification of Representative. Such conduct, in the opinion of the Assistant Secretary, constituted an abuse of the election process. Accordingly, he dismissed the petition for clarification of unit. In addition, in view of the substantial doubt cast upon the validity of the prior certification, the Assistant Secretary directed that the Certification of Representative, concerning the unit involved issued to the ACT, be revoked by the appropriate Area Administrator.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

ILLINOIS AIR NATIONAL GUARD,
182nd TACTICAL AIR SUPPORT GROUP

Activity

and

Case No. 50-4752

ILLINOIS AIR CHAPTER, ASSOCIATION OF
CIVILIAN TECHNICIANS, INC.

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer John R. Lund. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the brief of the Petitioner, the Assistant Secretary finds:

1. The Petitioner, Illinois Air Chapter, Association of Civilian Technicians, Inc., herein called ACT, is the exclusive representative of certain employees of the Activity. In this proceeding, it seeks clarification of the status of 29 individuals, requesting that they be included in the certified unit. The Activity contends that each is a supervisor within the meaning of Section 2(c) of the Order and should be excluded from the unit.

2. I am informed administratively that an election was held on June 25, 1970 pursuant to an Agreement for Consent or Directed Election, and the Tally of Ballots contained the following results:

Votes Cast for the ACT.....	46
Votes Cast against exclusive recognition.....	36
Valid votes counted	82
Challenged ballots	25
Valid Votes counted plus challenged ballots.....	107

On July 2, 1970, the parties entered into two written stipulations embracing 16 of the 25 challenged ballots. One stipulation, covering 15 of the challenged ballots, reads, in pertinent part, as follows:

"It is hereby jointly stipulated ... that the following named individuals are ... supervisors, as defined by Section 2(c) of ... Executive Order 11491 and therefore are ... not eligible to vote ...:"

- BLANK, W. J., Job No. 65-10, Procurement Technician
- CRANK, O. P., Job No. 43-17, Aircraft Dock Supervisor
- CUNNINGHAM, L. G., Job No. 64-10, Inventory Management Supervisor
- GAINES, R. A., Job No. 43-14, Periodic Maintenance Superintendent
- LAWRENCE, J. E., Job No. 90-13, Medical Services Technician
- LOHMANN, W. E., Job.No. 64-20, Materiel Facilities Supervisor
- MCQUEARY, S. (NMI), Job No. 47-10, Motor Vehicle and Equipment Superintendent
- NEEDHAM, R. J., Job No. 43-11, Quality Control Superintendent
- NORMAN, R. W., Job No. 43-22, Aircraft Maintenance Technician
- OGLESBY, G. K., Job No. 30-13, Air Electronics Superintendent
- REID, J. L., Job No. 68-10, Data Processing Superintendent
- SELLERS, W. L., Job No. 43-15, Flight Supervisor
- STACHOWIAK, R. F., Job No. 43-13, Field Maintenance Supervisor
- WELLS, H. L., Job No. 43-12, Flight Line Superintendent
- WILSON, J. L., Job No. 64-54, Equipment Management Superintendent

The second stipulation by the parties, containing language similar to the above stipulation, excluded D. P. Resler, Flight Supervisor.

Resolution of these 16 challenged ballots by stipulations resulted in a revision of the results of the election. Thus, in view of the agreed-upon exclusion of these 16 employees from the appropriate unit, on the basis of their supervisory status, the 46 votes cast for the ACT constituted a majority of the total of 82 valid votes plus the remaining unresolved challenged ballots. As these remaining unresolved challenges were not determinative, on July 8, 1970, the ACT was certified as exclusive bargaining representative in the following unit:

"All nonmanagement and nonsupervisory wage board and general schedule air national guard technician personnel at the 182nd Tactical Air Support Group, Peoria, Illinois. Excluded: All management officials, supervisors, professionals, guards, and employees engaged in Federal personnel work in other than a purely clerical capacity."

On September 25, 1970, the Activity, in a letter to the ACT, listed 29 employees who, as supervisors within the meaning of Section 2(c), had to be excluded from the unit in accordance with the provisions of the Order. Those listed were:

ARMSTRONG, Garland L.	Personnel Supt.
BARNETT, Robert J.	Maintenance Control Supt.
BEEBE, Frank E.	Maint. Support Supv.
BLACK, Victor E.	Acft. Eng. Supv. (Piston)
BLANK, William J.	Procurement Tech.
BOWMAN, Alan L.	Military Pay Tech.
BROWN, William E.	Acft. Dock Supv.
BUDISALICH, George J.	Accounting Supt.
COON, William S.	Career Control Tech.
CRANK, Ora P.	Acft. Dock Supv.
CUNNINGHAM, Lyle G.	Inv. Manag. Supv.
GAINES, Robert A.	Periodic Maint. Supt.
LAWRENCE, Jack E.	Medical Services Tech.
LOHMANN, Walter E.	Matel. Facil. Supv.
McQUEARY, Shelva	Motor Veh/Equip. Supt.
MORRIS, Lawrence C.	Air Opn. Supt.
NEEDHAM, Robert J.	Quality Control Supt.
OGLESBY, George K.	Elect. Supt.
RESLER, Deward P.	Flight Supv.
RESLER, Robert L.	Acft. Elect. Supv.
SCALES, Edward F.	Chief, CBPO
SELLERS, Wilfred L.	Flight Supv.
SIMMERING, Norman E.	Aerospace Gnd. Equip. Supv.
SLANE, Robert B.	Radio Maint. Chief
STACHOWIAK, Robert F.	Field Maint. Supt.
WELLS, Homer L.	Flight Line Supt.
WILLIAMS, Lawrence F.	Admin. Supt.
WILSON, Forrest B.	Mun/Wpns. Supt.
WILSON, James L.	Equip. Manag. Supt.

Fourteen of these 29 individuals previously had been the subject of the above-noted stipulations entered into by the parties on July 2, 1970, namely, W.J. Blank; O.P. Crank; L.G. Cunningham; R.A. Gaines; G.E. Lawrence; W.E. Lohmann; S. McQueary; R.J. Needham; G.K. Oglesby; D.P. Resler; W.L. Sellers; R. F. Stachowiak; H.L. Wells; and J.L. Wilson.

In filing its petition in this case, the ACT does not contend that the post-election stipulations should be set aside on the basis

of any newly discovered evidence or information not previously available. Rather, the ACT, in seeking to obtain a clarification of the unit involved, states that its action at the time of the election was taken because a long period of time had elapsed in its efforts "to find out if the personnel at this base wanted to be represented ..."

Parties to an election are afforded the opportunity to resolve, by mutual agreement, the eligibility of employees whose ballots have been challenged. Such agreement by the parties must be deemed to be dispositive of the particular eligibility issue, so long as it does not contravene established policy or practice. To permit the parties to deviate from their agreement, would, of course, preclude finality and impede expeditious processing of the case involved.

The evidence establishes that the ACT was able to obtain a certification as the exclusive representative of the employees in the above-described unit on the basis of two stipulations entered into with the Activity involving the minimum number of challenged ballots needed to permit it to attain a majority of the valid votes cast in the election. However, the ACT did not consider the stipulations to be dispositive as evidenced by the fact that, after obtaining its desired certification, it filed the petition in the subject case seeking to include in its certified unit 14 of the 16 employees whom it previously had stipulated were supervisors as defined by Section 2(c) of the Order.

In my view, by its filing of the subject petition, the ACT is attempting, clearly, to negate its prior stipulations, thus casting substantial doubts on the circumstances under which it obtained its Certification of Representative. It is evident, from the facts outlined above, that the stipulations entered into by the ACT were predicated, at the very least, upon considerations of expediency, in order to avoid the prescribed procedures for resolving determinative challenged ballots rather than upon considerations involving application of the supervisory criteria set forth in Section 2 of the Executive Order.

Effective administration of Executive Order 11491, including the procedures established for the resolution of determinative challenged ballots, necessarily imposes an obligation upon those seeking the benefits of the Order to refrain from any abuse or misuse of its processes. In the circumstances of this case, I conclude that the ACT, by entering into sham stipulations, engaged in conduct constituting flagrant disregard of the purpose and significance of the processes under which such "resolution" was achieved. Accordingly, I deem it necessary, in order to effectuate the purposes and policies of the

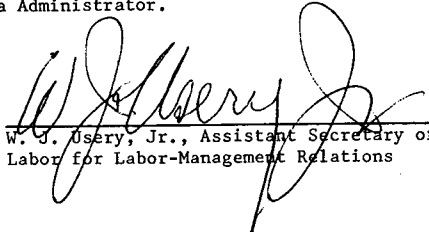
Executive Order, to dismiss the petition in the subject case. In addition, because of the substantial doubt which has now been cast upon the validity of the prior Certification of Representative obtained by the ACT, I shall order that such certification be revoked by the appropriate Area Administrator.

November 3, 1971

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 50-4752, be, and it hereby is, dismissed. Further, it is ordered that the Certification of Representative issued to the ACT in the above-described unit be revoked by the appropriate Area Administrator.

Dated, Washington, D. C.
October 29, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY,
NAVAL AIR RESERVE TRAINING UNIT,
MEMPHIS, TENNESSEE
A/SLMR No. 106

This case involves an unfair labor practice complaint filed by Local 1347, American Federation of Government Employees, AFL-CIO (AFGE) against United States Department of Defense, Department of the Navy, Naval Air Reserve Training Unit, Memphis, Tennessee (Navy) alleging that by unilaterally rescinding the AFGE's existing exclusive recognition the Navy had violated Sections 19(a)(1), (5) and (6) of Executive Order 11491. The Navy contended that there was not an improper withdrawal of exclusive recognition but rather that recognition had been "abolished" when one of the parties to the recognition was "disestablished."

The facts of the situation giving rise to the complaint were not in dispute. At a facility where the AFGE held an exclusive recognition a reorganization resulted in a drastic cut in the size of the bargaining unit. The Navy thereafter took the position that the unit was no longer "identifiable" and, as a result, the recognition as well as the parties' negotiated agreement and dues withholding agreement had "expired." The Assistant Secretary concluded that while the reductions in the size of the unit had been drastic, it continued to be "recognizable and viable." In this regard, the Assistant Secretary noted that unit employees continued to perform unit work in essentially the same manner as they did before the reductions at the facility; that with one minor exception all current job classifications were in the exclusively recognized unit before the reorganization and such classifications still encompass the same functions, the same grade designations and are under the same immediate supervision; and that remaining unit employees were generally performing the same tasks which they performed before the reorganization, follow the same schedule of work and work in the same buildings utilized prior to the reorganization.

The Assistant Secretary, noting that an integral part of the obligation to accord recognition to a labor organization qualified for such recognition is the additional obligation to continue to accord such recognition as long as that labor organization remains qualified under the provisions of the Order, concluded that the withdrawal of recognition under the facts described above violated Section 19(a)(5). The Assistant

- 5 -

November 22, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

With respect to temporary employees, the evidence discloses that DDMT employs about 130 such employees in a variety of jobs. These employees perform the same type of work as permanent employees, work side by side with other DDMT employees, enjoy the same hours of work, shifts, working conditions and receive the same rate of pay for comparable work. According to the record, the appointment of temporary employees is for a period not to exceed one year but can be extended yearly for a period not to exceed 3 years. In this regard, the evidence reveals about 30 temporary employees are approaching the 3-year employment limit at the DDMT. Based on the foregoing, I find that an employee, although designated as "temporary" by the DDMT, has a reasonable expectancy of regular and continuous employment for a substantial period of time and should be included in the unit determined to be appropriate. 9/

I am advised administratively that the inclusion of approximately 400 term employees as well as temporary employees in the petitioned for unit renders inadequate the NAGE's showing of interest.

Accordingly, I shall dismiss the NAGE's petition in this case. 10/

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 41-2169(RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
November 19, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

9/ Cf. United States Army Training Center and Fort Leonard Wood at Fort Leonard Wood, Missouri, Non-Appropriated Fund Branch, Directorate of Personnel and Community Activities, A/SLMR No. 27 and Department of the Army, Sacramento Army Depot, Sacramento, California, A/SLMR No. 86.

10/In view of the disposition of this case I do not find it necessary to rule on the inclusion or exclusion of part-time employees.

In its brief, the AFGE moved that the subject case be remanded for additional hearing inasmuch as the Hearing Officer refused to receive evidence on community of interest between guards and nonguard employees, past harmonious relations, and effective representation. As discussed above, I find that the policy announced in United States Naval Construction Battalion Center, cited above, is not applicable in the unusual circumstances presented here. Accordingly, the AFGE's motion to remand is denied.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE (HEW),
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION (HSMHA),
MATERNAL AND CHILD HEALTH SERVICES AND FEDERAL HEALTH
PROGRAMS SERVICE
A/SLMR No. 108

This case, which arose as a result of representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 41, (AFGE), presented a question as to whether individual headquarters units of nonsupervisory professional and nonprofessional employees of the Maternal and Child Health Services (MCHS) and the Federal Health Programs Service (FHPS) were appropriate. The MCHS and the FHPS are components of the Health Services and Mental Health Administration (HSMHA) of the Department of Health, Education and Welfare.

The AFGE requested a unit of all headquarters nonsupervisory professional and nonprofessional employees of the MCHS and a unit of all headquarters nonsupervisory professional and nonprofessional employees of the FHPS. The Activity contended that a unit consisting of the HSMHA headquarters is an appropriate unit and that the two requested units were inappropriate.

The Assistant Secretary found that the evidence adduced during the hearing in these cases did not provide a sufficient basis upon which a decision could be made regarding the appropriateness of either unit. In reaching his decision, the Assistant Secretary noted that there was insufficient evidence with respect to the functions of the HSMHA; the relationship of MCHS and FHPS with the other components and subdivisions of HSMHA; and the duties of the Administrator of HSMHA, including his relationship with MCHS and FHPS. He also noted that there was little or no testimony as to the actual operation of MCHS and FHPS or the jobs performed by the employees within each of these services. The Assistant Secretary further noted that there was little testimony with respect to the classification, duties and number of professionals within MCHS and FHPS and there was no testimony with respect to the transfer or interchange of professionals within HSMHA or the day-to-day contact of the professionals of MCHS and FHPS with the other professionals and nonprofessionals within HSMHA, or with the other employees of their respective services.

The Assistant Secretary also found that he was unable to rule on the inclusion or exclusion of "temporary" employees in the petitioned for units as there was insufficient evidence on the number of temporaries, their jobs, the length of their appointments, and their expectation of continuing or future employment.

The AFGE also sought to exclude Public Health Service Commissioned officers from its claimed units, but as there was no evidence with respect to their functions and their relationship with other employees the Assistant Secretary determined that no sound basis had been established for the exclusion of such employees.

In these circumstances, the Assistant Secretary remanded the matter to the Regional Administrator for the purpose of securing additional evidence in accordance with his Decision.

A/SLMR No. 108

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE (HEW),
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION (HSMHA),
MATERNAL AND CHILD HEALTH SERVICES 1/

Activity

and

Case No. 22-2432

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 41

Petitioner

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE (HEW),
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION (HSMHA),
FEDERAL HEALTH PROGRAMS SERVICE 2/

Activity

and

Case No. 22-2530

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 41

Petitioner

DECISION AND REMAND

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Madeline Jackson. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the parties, the Assistant Secretary finds:

1. The labor organization involved claims to represent

1/ The name of the Activity appears as corrected at the hearing.

2/ The name of the Activity appears as corrected at the hearing.

certain employees of the Activities.

2. In Case No. 22-2432, the American Federation of Government Employees, AFL-CIO, Local 41, herein called AFGE, seeks an election in the following unit: All headquarters nonsupervisory professional and nonprofessional employees of Maternal and Child Health Services, HSMHA, Parklawn Building, Rockville, Maryland, excluding supervisors, management officials, guards, Public Health Service Commissioned officers, and employees engaged in Federal personnel work in other than a purely clerical capacity.

In Case No. 22-2530, the AFGE seeks an election in the following unit: All headquarters nonsupervisory professional and nonprofessional employees of Federal Health Programs Service, HSMHA, HEW, Washington, D.C. excluding supervisors, management officials, guards, Public Health Service Commissioned officers and the employees engaged in Federal personnel work in other than a purely clerical capacity and occupational health nurses of Federal Health Programs Service. 3/

The Activity argues that a single unit consisting of HSMHA headquarters, located in the Parklawn Building is an appropriate unit and that the two requested units, which are components of HSMHA, are inappropriate. At the time of the filing of the petitions in these cases there were 11 components of HSMHA, including the 2 petitioned for units. At the hearing in this matter, limited testimony was adduced as to the composition of the units involved. Also, limited evidence was presented as to the organization of HSMHA, including its organizational subdivisions, policies and functional relationships. Based upon the limited evidence in the record, I find that I am unable to make a determination as to the appropriateness of either petitioned for unit.

Although the record contains a discussion of the policies and functions of HEW, it is limited in its description of the functions of HSMHA and the relationships of the Maternal and Child Health Services, hereinafter called MCHS, and the Federal Health Programs Service, hereinafter called FHPS, with the other components and subdivisions of the HSMHA, also located in the Parklawn Building. There is also insufficient information in the record concerning the Administrator of HSMHA, his duties with respect to HSMHA, as well as his relationship with MCHS and FHPS and the other components of HSMHA.

While the record lists the functions of both MCHS and FHPS, there is little or no testimony as to their actual operation or the

3/ The record is clear that the employees sought by the petition in Case No. 22-2530 are located in the Parklawn Building, Rockville, Maryland.

jobs performed by the employees within each of these services. The record contains a listing of the job titles found within each of the aforementioned components. However, such titles alone generally are nondescriptive of the actual duties performed and moreover, it is difficult to determine the employee complement in each instance. Furthermore, while the record indicates that there are numerous professionals in the MCHS and the FHPS, it is unclear as to their classifications, duties and number. In addition, there is no testimony with respect to transfers or interchange of professionals within HSMHA nor does the record reflect such factors as the extent of day-to-day contact between the professionals of MCHS, FHPS and other professionals and nonprofessionals within HSMHA, or with other employees of their respective services.

Another issue in this case was whether "temporary" employees should be included in the petitioned for units. The record is almost totally devoid of any testimony with respect to the number of temporaries, their jobs, the length of their appointments, and their reasonable expectation of continuing or future employment.

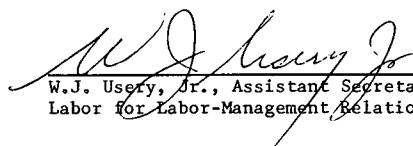
Although the AFGE seeks to exclude the Public Health Commissioned officers from its claimed units, there is no evidence in the record with respect to their functions and relationships with other employees found in MCHS, FHPS, or HSMHA, and no sound basis has been established for their exclusion.

Accordingly, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the units being sought. Therefore, I shall remand the subject cases to the appropriate Regional Administrator for the purpose of reopening the record in order to secure additional evidence, as discussed above.

ORDER

IT IS HEREBY ORDERED that the subject cases be, and they hereby are, remanded to the appropriate Regional Administrator.

Dated, Washington, D.C.
November 22, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

November 22, 1971

A/SLMR No. 109

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

GENERAL SERVICES ADMINISTRATION,
TRANSPORTATION AND COMMUNICATIONS SERVICE,
ATLANTA, GEORGIA
A/SLMR NO. 109

This case involves a representation petition filed by the American Federation of Government Employees, AFL-CIO, Local 1568 (AFGE) for a unit of the Activity's teletype employees located in Atlanta, Georgia. The teletype operators are in the Communications Division of the Transportation and Communications Service (TCS) of Region 4 of the General Services Administration (GSA). TCS is one of the five services provided by GSA.

In all circumstances, the Assistant Secretary concluded that the petitioned for unit was not appropriate based on the view that the teletype employees did not possess a clear and identifiable community of interest separate and apart from other GSA employees. In reaching this determination, the Assistant Secretary relied on the facts that the teletype employees had the same overall supervision, were governed by common personnel policies and regulations administered through a centralized personnel office and were engaged in a common overall mission with other Activity employees who were not included in the petitioned for unit. The Assistant Secretary concluded also that establishment of the petitioned for unit would not promote effective dealings and efficiency of agency operations.

Accordingly, he ordered the petition be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION,
TRANSPORTATION AND COMMUNICATIONS SERVICE,
ATLANTA, GEORGIA

Activity
and Case No. 40-2867(RO)
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1568

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Renee B. Rux. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including briefs filed by the parties, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 1568, herein called AFGE, seeks an election in a unit of all teletype employees of the General Services Administration, Transportation and Communications Service, located at Peachtree and 7th Building, Atlanta, Georgia, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, supervisors and guards, as defined in Executive Order 11491. 1/

The Activity contends that the proposed unit is inappropriate because it would fragment a specific service line and would not promote effective dealings and efficiency of operations.

1/ The unit description appears as amended at the hearing.

The General Services Administration, herein called GSA, is headquartered in Washington, D. C. and has ten regional offices, each under a Regional Administrator. Atlanta is the headquarters for Region 4 which encompasses seven southeastern states and employs some 2200 people in Atlanta and in approximately 78 field locations throughout the Region. ^{2/} One of five program services provided by GSA for Federal agencies is the Transportation and Communications Service, herein called TCS.

The TCS in Region 4 is under the direction and supervision of a Regional Director. Located in Atlanta are two divisions of the TCS; namely, the Communications Division and Motor Equipment Division. In Atlanta, the Communications Division consists of some seven teletypists located at the Peachtree 7th Building and a number of telephone operators located at the 273 Peachtree Building. The Motor Equipment Division in Atlanta consists of motor pool employees located in the courtyard of the Peachtree 7th Building. The AFGE's petition in this case covers the teletypists in the Communications Division of the TCS in Atlanta. ^{3/}

The Regional Director for the TCS is responsible for direction and supervision of all Regional employees in the TCS. Directly under him in Atlanta are chiefs for the Communications Division ^{4/} and the Motor Equipment Division. Below the chief for the Communications Division, there are additional levels of supervision over components of that Division. While the Regional Director for the TCS signs all personnel actions involving employees in the TCS, all personnel actions in the Region are processed through the centralized personnel office headed by a Regional Director of Personnel, and actions involving employees above a certain grade level must be approved by this Regional Director.

The record shows that all employees of the Region are subject to common personnel policies and regulations, and that all employees in the Atlanta area, including teletype operators, may bid for other positions on an area-wide basis. The evidence establishes further that while there has not been any transfer or interchange within the past year between the teletypists in the claimed unit and telephone operators of the Communications Division, or employees of the Motor Equipment Division, the claimed teletypists function as telephone operators on a rotational basis for approximately one out of every six or seven weeks in a room partitioned off from their work place at the Peachtree 7th Building. Moreover, while

^{2/} The employment total does not include the GSA personnel located in Kentucky which was recently added to Region 4.

^{3/} In the course of the hearing, the AFGE indicated its interest in an alternate unit of all TCS employees located in Atlanta, if such a unit were found appropriate.

^{4/} The Regional Director for the TCS is currently acting as chief of the Communications Division.

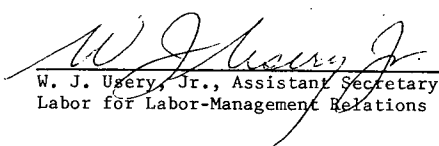
the teletypists are classified as more skilled than the telephone operators, the record indicated that with some minimal training a telephone operator could function as a teletypist. In addition, the record shows that at least two teletypists relieve a data communications operator who is attached organizationally to the teletypist but who is not physically located with them at the Peachtree 7th Building.

Based on the foregoing, and noting particularly that teletype employees have the same overall supervision as other TCS personnel not included in the claimed unit, are engaged in a common overall mission with other TCS and GSA Region 4 employees who, similarly, are not included in the claimed unit, and are subject to the same personnel policies and regulations administered through a centralized personnel office as other TCS and GSA Region 4 employees, I find that the employees in the petitioned for unit do not possess a clear and identifiable community of interest separate and apart from other GSA employees. Moreover, the establishment of a unit which includes some, but not all, employees who share a community of interest would not promote effective dealings and efficiency of agency operations. Accordingly, I shall dismiss the petition herein. ^{5/}

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 40-2867(RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
November 22, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{5/} Although the AFGE indicated its interest in proceeding to an election in an alternate unit of all the TCS employees in Atlanta, if such a unit were found appropriate, (see footnote 3, above) I am administratively advised that its showing of interest is insufficient in such an alternate unit. In these circumstances, it is unnecessary to decide whether the alternate unit is appropriate for the purpose of exclusive recognition.

November 29, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT
SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. DEPARTMENT OF DEFENSE, DOD
OVERSEAS DEPENDENT SCHOOLS
A/SLMR No. 110

This case involved representation petitions filed by the Overseas Education Association (OEA); the Overseas Federation of Teachers, American Federation of Teachers, AFL-CIO (OFT) and various locals of the OFT. The OEA sought a unit of all nonsupervisory professional employees who were assigned to the Atlantic, European and Pacific Areas, including those whose appointments are "not to exceed" the school year. The OFT and its various locals sought units of all nonsupervisory professional and nonprofessional employees in various individual school units, in an area-wide unit of secondary schools in the European Area, and in a unit composed of three schools in the London area.

The Assistant Secretary found that the European and Pacific Area agreements between the Activity and the OEA, barred the OEA's petition for a world-wide unit and that the European Area agreement constituted a bar to the OFT petitions for various individual school units, an area-wide unit of secondary schools in the European Area, and its petitioned for unit composed of three schools in the London area.

In reaching his decision, the Assistant Secretary rejected the OEA's attempt to waive unilaterally the agreement bar resulting from its negotiated agreement with the Activity. Accordingly, he directed that the OEA's untimely petition and all but two of the petitions filed by the OFT be dismissed on the basis of agreement bar.

The Assistant Secretary also found that the OFT's proposed unit at the Zweibrucken American High School, which currently was not represented, was inappropriate. He noted that the Area Superintendent establishes the general educational goals in the area, provides for the uniform administration of the education program within the Area, arranges for logistical support for the program and its personnel, and has the authority to assign and transfer teacher personnel within the Area. In addition, he noted that the same personnel policies, merit promotion policies, leave program and adverse action procedures apply to all teachers in the European Area. Accordingly, he found that the OFT's petition covering employees at the Zweibrucken American High School was an inappropriate unit and directed that it be dismissed.

The Assistant Secretary also ordered that the OFT's petition covering employees at the Verona Elementary School be dismissed. In this regard, he noted that since 1969 the OFT had represented on an

exclusive basis essentially the same employees covered by its petition and that there is no challenge to its majority status in such a unit. In these circumstances, the Assistant Secretary concluded that where a labor organization already represents exclusively the employees it has petitioned for, it would not effectuate the purposes of the Order to direct an election in the same unit since no question concerning representation existed as to such employees.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF DEFENSE, DOD
OVERSEAS DEPENDENT SCHOOLS

Activity

and

OVERSEAS EDUCATION ASSOCIATION,
NATIONAL EDUCATION ASSOCIATION

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS, LOCAL 1619,
VERONA CHAPTER, AMERICAN FEDERATION OF
TEACHERS, AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
LOCAL 1471, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
LOCAL 1471, WIESBADEN CHAPTER,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO

Petitioner

Case No. 46-1813 (RO)

Case No. 22-2061 (RO)

Case No. 22-2074 (RO)

Case No. 22-2076

Case No. 22-2077 (RO)

and

OVERSEAS FEDERATION OF TEACHERS,
LOCAL 1834, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
LOCAL 1471, WIESBADEN CHAPTER,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
LOCAL 1551, ZWEIBRUCKEN COUNCIL
OF TEACHERS, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO

Petitioner

and

OVERSEAS FEDERATION OF TEACHERS,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO 1/

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order
11491, a consolidated hearing was held before Hearing Officer

1/ The names of the Petitioners in Case Nos. 22-2061 (RO), 2074 (RO), 2076,
2077 (RO), 2078 (RO), 2079 (RO), 2080 (RO) and 2105 (RO) appear as corrected
at the hearing.

Eugene M. Levine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs filed by all parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 46-1813 (RO) the Petitioner, Overseas Education Association, National Education Association, herein called OEA, seeks an election in the following unit: All nonsupervisory professional employees who are employed by the Department of Defense Overseas Dependent Schools assigned to the Atlantic, European and Pacific Areas, including those whose appointments are "not to exceed" the school year, excluding supervisors and substitute teachers.

In Case Nos. 22-2061(RO), 22-2074(RO), 22-2076, 22-2077(RO), 22-2078 (RO), 22-2079(RO), 22-2080(RO), and 22-2105(RO), the Petitioners, Overseas Federation of Teachers, American Federation of Teachers, AFL-CIO, herein called OFT, and certain of its locals, amended their various petitions to encompass "all professional employees, [and] all nonsupervisory nonprofessional employees who are employed by the Department of Defense Overseas Dependent Schools excluding all others" in the following units, all of which are located in the European Area; 2/ all secondary schools in the European Area (Case No. 22-2061(RO)); three schools in the London Area, namely: the London Central Dependent Schools, the West Ruislip Dependents School, and the Woodbridge Dependents School (Case No. 22-2078(RO)); the Verona American Elementary School (Case No. 22-2074(RO)); the Wiesbaden Junior High School (Case No. 22-2076); the Arnold High School (Case No. 22-2077(RO)); the Lindsey Elementary School (Case No. 22-2079(RO)); the Zweibrucken American High School (Case No. 22-2080(RO)); and the Spangdahlen School (Case No. 22-2105(RO)).

The Activity, herein called DOD, contends that there are certain existing negotiated agreements which should operate to bar the OEA's petition. The DOD also asserts that the worldwide unit proposed by the OEA is inappropriate because the employees involved do not share a clear and identifiable community of interest. With respect to the various units proposed by the OFT, including individual school units, an area-wide unit of secondary schools in the European Area, and a unit composed of three schools in the London area, the DOD contends that they are similarly inappropriate. It is the DOD's position that the appropriate unit involving

2/ The unit descriptions for the various units appear as amended at the hearing. The record further indicates that the OFT would exclude from its proposed units substitute teachers and teachers whose appointments are "not to exceed" one school year.

the claimed employees should be one which coincides with the geographical and administrative jurisdiction of the three employing Departments involved, i.e., the European Area (Army), the Atlantic Area (Navy), and the Pacific Area (Air Force). It further contends, in agreement with the OEA, that the appropriate unit should include teachers whose appointments are "not to exceed" one school year.

At the hearing, the OEA took no position on the agreement bar issue. However, in its brief to the Assistant Secretary, the OEA contended that its agreements with the DOD should not stand as bars to its petition. The OEA argues that its claimed worldwide unit is appropriate because negotiations between management and the employees involved would be effective only at the highest Agency level and it further contends, with respect to the DOD position regarding the appropriateness of units at the Area level, that the Assistant Secretary may not find appropriate any bargaining unit other than the unit or units requested by one of the petitioners involved in these proceedings.

In addition to its claim that its petitioned for units are appropriate, the OFT contends that its existing agreement covering the Frankfurt American High School and several other executed agreements currently in Department of the Army channels awaiting approval operate as bars to an election in the units covered by such agreements. However, in the event that the Assistant Secretary should find that the above agreements do not bar an election, the OFT argues in the alternative that the employees in the individual schools covered by agreements should be allowed to vote to determine whether they wish to be represented in the larger unit or in the currently existing individual school unit.

The Overseas Dependents Schools System, which was established in 1964 by the DOD, provides elementary and secondary education for minor dependents of DOD military and civilian personnel stationed overseas. Policy direction over the school system was delegated to the Assistant Secretary of Defense (Manpower and Reserve Affairs). In 1966, through an administrative change, each military department, i.e., Navy, Army, and Air Force, was given jurisdiction in the Atlantic, European, and Pacific Areas respectively for the academic administration of the Dependent Schools System as well as the responsibility for all personnel employed by the Overseas Dependents Schools in the Respective areas. Thus, the Secretary of the Army was assigned responsibility for the operation and administration of all Dependents Schools in the European Area, including Africa and Asia to 90° East Longitude; the Secretary of Navy was assigned responsibility for all Dependents Schools in the Atlantic Area, including North, Central, and South America, 3/ and the Secretary of the Air Force was made responsible for all Dependents Schools in the Pacific Area, including all countries in the Far East to 90° East Longitude, Australia, and New Zealand.

3/ Excluding the continental United States and its territories.

The OEA has represented exclusively, under separate negotiated agreements, all nonsupervisory teachers in Area-wide units in the Pacific and the European Areas, except for certain currently unrepresented individual schools in the European Area, and certain other schools in the European Area which are represented currently by the OFT. The European Area agreement, which had a two year duration, expired on April 1, 1971, and the Pacific Area agreement, which had a one year duration, expired on July 16, 1971. The OEA's petition in Case No. 46-1813(RO) was filed on June 10, 1970.

The OFT was granted exclusive recognition under Executive Order 10988 in 14 individual school units in the European Area, including the Frankfurt American High School and the Verona Elementary School. A negotiated agreement covering employees at the Frankfurt American High School was in effect at the time the petitions in the subject cases were filed. ^{4/} Also, the OFT was party to 5 additional negotiated agreements covering individual schools in the European Area which had been executed at the local school level and then forwarded to higher management level for final approval. Subsequently, some or all of these agreements were returned by higher management to the local level for renegotiation of items which were not in conformance with Executive Order 11491. ^{5/}

The record reveals that the DOD considers its European and Pacific Area negotiated agreements with the OEA, as well as the negotiated OFT agreement at the Frankfurt American High School, and the five other OFT negotiated agreements awaiting approval at a higher management level, to operate as a bar to the OEA's petition for a worldwide unit. In this regard, the DOD indicated clearly that it would not waive such negotiated agreements insofar as they constituted a bar to the OEA's petition.

The agreement bar rule, set forth in Section 202.3(c) of the Assistant Secretary's Regulations,^{6/} was promulgated under the authority

^{4/} The agreement expired subsequently on March 30, 1971.

^{5/} The record is not clear as to the current status of these 5 agreements. The schools involved are: Torrejon Elementary and Jr. High School, the Madrid American School, the Farragut Junior and Senior High School, the Ramstein Junior High School and the Forrest Sherman School.

^{6/} Section 202.3(c) provides: "When there is a signed agreement covering a claimed unit, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period within which that agreement is in force, or awaiting approval at a higher management level but not to exceed an agreement period of two (2) years, unless (1) a petition is filed not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of such agreement or two (2) years, whichever is earlier, or (2) unusual circumstances exist which will substantially affect the unit or the majority representation."

vested in the undersigned by Executive Order 11491. The basic objective of this rule is to afford each of the parties to a negotiated agreement a reasonable period of stability in their relationship without interruption and at the same time afford employees the opportunity, at reasonable times, to change or eliminate their exclusive representative if they choose to do so. In my view, the above established rule may not be waived unilaterally by one of the parties to a negotiated agreement. A contrary interpretation would be inconsistent with the above-stated objective. Accordingly, I find that the DOD-OEA negotiated agreements which were in effect at the time the petition in Case No. 46-1813(RO) was filed, constitute a bar to the OEA's petition in that case. Further, I find that the European Area negotiated agreement between DOD and OEA constitutes a bar to those OFT petitions for individual school units covered by the European Area negotiated agreement, the OFT's petition for an area-wide unit of secondary schools in the European Area, and the OFT's petition for a unit composed of 3 schools in the London Area.^{7/} Accordingly, I shall order that the OEA's petition in Case No. 46-1813(RO) be dismissed as untimely filed. I shall order also that the OFT's petitions in Case Nos. 22-2061(RO), 22-2078(RO), 22-2076, 22-2077(RO), 22-2079(RO), and 22-2105 (RO) be dismissed as untimely filed.

With respect to the OFT's petition covering employees at the Verona Elementary School (Case No. 22-2074(RO)), the evidence indicates that since 1969 the OFT has been recognized as exclusive representative for employees at that School. In view of the dismissal of the OEA's petition in Case No. 46-1813(RO), there is no valid challenge at this time to the OFT's majority status in its exclusively recognized unit. In similar circumstances, I have found that where, as here, a labor organization already is the recognized exclusive representative of essentially the same employees it has petitioned for, it would not effectuate the purposes of the Order to direct an election in the same unit since no question concerning representation exists as to these employees.^{8/} Accordingly, I shall order that the OFT's petition, Case No. 22-2074(RO) be dismissed.

With respect to the OFT's petition covering employees at the Zweibrucken American High School (Case No. 22-2080(RO)), the record reveals that the employees at that School are not represented currently by an exclusive representative. The OFT contends that a unit of employees

^{7/} In view of the disposition herein, I find it unnecessary to determine whether the 5 OFT negotiated agreements awaiting approval at a higher management level constitute a bar to the OEA petition. Also, in view of the disposition herein, I find it unnecessary to determine whether the OFT's negotiated agreement at the Frankfurt American High School constitutes a bar to the OEA petition.

^{8/} See United States Treasury Department, Bureau of Customs, Region V., New Orleans, A/SLMR No. 65.

in an individual school is appropriate because such employees share a clear and identifiable community of interest separate and apart from employees in other schools in the Area. On the other hand, the DOD asserts that employees of an individual school do not have a clear and identifiable community of interest and that such a unit would not promote effective dealings and efficiency of agency operations.

As noted above, the Secretary of the Army has been delegated responsibility for the administration of the Overseas Dependent Schools System in the European Area, which consists of 218 schools employing approximately 5,000 teachers. The Chief Administrative Officer of the Area's school system is the Area Superintendent who is responsible for the organization, administration and supervision of the Dependents Schools' education program within the Area. Under the Area Superintendent are 7 District Superintendents each of whom supervises an unspecified number of individual school principals, who, in turn, supervise the teachers employed at the individual schools. The Area Superintendent implements basic guidelines issued by the Department of the Army. He prepares and issues documents designed to provide uniform administration within the Area. The record reveals that the Area Superintendent establishes the general educational goals of the schools in the Area and, through the execution of agreements with individual local United States military installations, arranges for logistical support for the program and its personnel.

The record reveals that the Dependents Schools System's teachers are recruited in the United States by a committee composed of representatives of the three Area Superintendents, and then are hired by one of the military departments for its respective area. However, it is the Area Superintendent who makes the final decision on the assignment of teacher personnel within the Area. Further, the evidence establishes that the Area Superintendent has authority to transfer teachers within the Area pursuant to applicable Army regulations. Moreover, teacher training programs, personnel policies, a merit promotion system, a leave program and grievance and adverse action procedures are established by the Department of the Army and are administered by the Area Superintendent with respect to all teachers within the Area.^{9/}

Based on the foregoing, I find that the employees in the proposed unit at the Zweibrucken American High School do not share a clear and identifiable community of interest apart from other employees in the Dependent Schools System in the European Area. Moreover, in my view, the establishment of

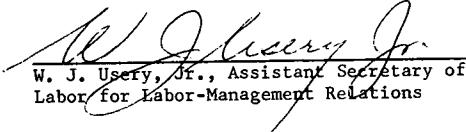
^{9/} Although it appears that negotiated agreements covering employees in individual schools have been executed at the local school level and signed by the school principal, the evidence establishes that the scope of negotiations at the school level is limited inasmuch as authority to make decisions on certain matters in connection with the negotiations exists only at the Area Superintendent level.

such a unit would not promote effective dealings or efficiency of agency operations.^{10/} Thus, it is clear that the Area Superintendent establishes the general educational goals for the schools in the Area, provides for the uniform administration of the Area's education program, arranges for the logistical support for the program and its personnel, and has authority to assign and transfer teacher personnel within the Area. In addition, the same personnel policies, merit promotion policies, grievances and adverse action procedures are applicable to all teacher personnel in all schools within the Area. Accordingly, I find that the unit sought by the OFT in Case No. 22-2080(RO) is not appropriate for the purpose of exclusive recognition under Executive Order 11491, and I shall order that its petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petitions in Case Nos. 46-1813(RO), 22-2061(RO), 22-2074(RO), 22-2076, 22-2077(RO), 22-2078(RO), 22-2079(RO), 22-2080(RO), 22-2105(RO), be, and they hereby are, dismissed.

Dated, Washington, D.C.
November 29, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{10/} This is not to be construed to mean that where exclusive recognition has been granted for individual schools and there has been a history of collective bargaining on that basis, that such units are necessarily inappropriate.

November 30, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND REMAND OF THE
ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

PORTLAND AREA OFFICE,
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
A/SLMR No. 111

This case arose as a result of representation petitions filed by two labor organizations, Local 7, National Federation of Federal Employees, Independent (NFFE) and Local 3293, American Federation of Government Employees, AFL-CIO, (AFGE).

The NFFE requested a unit of all employees including professionals of the Portland Area, Department of Housing and Urban Development under career and career-conditional appointments, excluding, among others, "temporary" employees. The AFGE requested essentially the same unit but would include "temporary" employees. At issue was the eligibility status of "temporary" employees as well as other employee classifications.

The Assistant Secretary found that the "temporary" employees did not have a substantial and continuing interest in the terms and conditions of employment along with other employees in the unit and should be excluded from any unit found appropriate. His findings were based on the fact that the record indicated that the "temporary" employees had no reasonable expectation of future employment as they were hired for the purpose of handling a particular workload and that when their appointments expire, they would not be rehired. Moreover, he noted that they receive no fringe benefits and have no career status.

The Assistant Secretary concluded that those part-time clericals employed under a special work program arrangement with Portland State University should not be included in any unit found appropriate as they had no career status and no expectancy of continued employment after completion of their limited employment.

As to the "Clerical Service Supervisor", the Assistant Secretary determined that an employee in this classification was a supervisor within the meaning of the Order, inasmuch as she responsibly directed the work of the employees under her by assigning them where they are needed and by transferring employees from one job to another if necessary. In addition, the record established that she was empowered to handle minor grievances, discipline employees, effectively recommend promotions and adverse actions, grant time off and was responsible for "breaking in" new employees. In these circumstances, the Assistant

Secretary excluded an employee in this classification from any unit found appropriate.

The Assistant Secretary found that the secretary to the Activity's Area Director was a confidential employee and should be excluded from the unit because the evidence established that an employee in this classification acted in a confidential capacity with respect to an official who formulates or effectuates official labor relations materials.

It was determined by the Assistant Secretary that the Activity's Equal Opportunity Specialist was neither a supervisor nor a management official within the meaning of the Order and could be included in any unit found appropriate because he did not participate in the formulation or determination of Activity policy or supervise any employees.

The Assistant Secretary concluded that because of the limited evidence in the record, he was unable to make any determination as to the appropriateness of the petitioned for unit. He noted that the record contained minimal evidence on the relationship of the Portland Area Office to the Seattle Regional Office or the Seattle Area Office; interchange and transfer of employees between these offices, as well as other HUD offices; the area of consideration in promotions, transfers, and reductions in force; the extent of authority of the Portland Area Director; the work performed by the Portland Area Office; and the working conditions in the Portland Area Office as compared with other HUD offices in the Region involved. As a result, the Assistant Secretary remanded the case to the Regional Administrator for the purpose of reopening the record to secure additional evidence on the appropriateness of the claimed unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

PORTLAND AREA OFFICE,
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

Activity

and

Case No. 71-1770(RO)

LOCAL 7, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, INDEPENDENT 1/

Petitioner

and

LOCAL 3293, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Petitioner

DECISION AND REMAND

Upon petitions duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Dale L. Bennett. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. Petitioner, Local 7, National Federation of Federal Employees, Independent, herein called NFFE, seeks an election in a unit of all General Schedule and Wage Board employees, including professionals of the Portland Area, Department of Housing and Urban Development under career and career-conditional appointments,

1/ The name of this Petitioner appears as amended at the hearing. Two separate petitions were filed in the subject case. However, apparently, in view of their related nature, the Area Administrator assigned the same case number to both petitions.

excluding managers, supervisors, guards, and employees engaged in Federal personnel work in other than a purely clerical capacity. 2/ Local 3293, American Federation of Government Employees, AFL-CIO, herein called AFGE, seeks essentially the same unit as the NFFE but contends that the unit petitioned for by the NFFE is not appropriate because it excludes "temporary" employees.

The Activity, the Portland Area Office of the Department of Housing and Urban Development (HUD), is a part of the HUD's Region X which has its Regional Office in Seattle, Washington. The Seattle Regional Office is headed by a Regional Administrator, who has the responsibility of supervising and directing the activities of the Regional Office as well as subordinate offices located throughout the Region. 3/ The mission of the Seattle Regional Office is to direct the activities of the HUD offices in dealing with and handling all of the HUD programs. The Portland Area Office, headed by an Area Director, is responsible for carrying out the various programs of the HUD in its assigned geographical area.

The Activity has in its employ some 23 "temporary" clerical employees. These "temporaries" are either under "700 hour appointments" or appointments "not to exceed one year." 4/ These "temporary" employees have no career status, receive no fringe benefits and do not receive annual or sick leave. Further, they receive neither overtime nor compensatory time. "Temporary" employees report each morning to the Clerical Services Supervisor who places them where they are needed. The main function performed by these employees is the processing of Federal home loan applications. The evidence establishes that, on the average, the "temporaries" work 79 hours a pay period, but may work fewer hours, depending on the workload. The record shows also that most of the "temporaries" herein were hired because of a sudden influx in the spring of 1971 in home loan applications and that the Activity does not intend to rehire them when their appointments expire.

In addition to the "temporary" employees, the Activity employs also several students in clerical positions, under a special work program arrangement with Portland State University, who work for the Activity

2/ The record indicates that there are no Wage Board employees in the unit sought. It also indicates that the NFFE seeks to exclude from its claimed unit employees classified as "temporary."

3/ In addition to the Portland Area Office, there is in Region X a Seattle Area Office and HUD-FHA Issuing Offices located in the four States comprising Region X.

4/ The evidence reveals that several of the "temporaries" were originally hired for a shorter period of time but were later given "700 hours" or "not to exceed one year" appointments.

full-time during the summer and part-time during the school year. These employees have no career status and do not receive any fringe benefits except that during the summer, when they work 40 hours a week, they receive annual and sick leave.

Based on the foregoing, and noting particularly that the "temporary" employees herein were hired primarily to assist in the reduction of a specific workload; that they will not be rehired when their appointments expire and they therefore have no reasonable expectation of future employment by the Activity; and that they receive neither fringe benefits nor career benefits, I find that the "temporary" employees herein do not have a substantial and continuing interest in the terms and conditions of employment along with other employees of the Activity. I would, therefore, exclude the "temporary" employees from any unit found appropriate. In addition, I would exclude the students in the Activity's special work program as the record does not establish that they may expect to be employed by the Activity upon completion of their present limited employment.

The record herein also raises questions concerning whether certain employee classifications, i.e., the Clerical Services Supervisor, the secretary to the Area Director, the Equal Opportunity Specialist, and the Labor Relations Specialist, are supervisors, management officials, or confidential employees, and should, therefore, be excluded from the claimed unit.

The record reveals that the "Clerical Services Supervisor" primarily is responsible for overseeing the clericals who are processing loan applications. She "breaks in" new employees and sees that the workload is evenly distributed among the clericals; evaluates the performance of employees; and can recommend effectively that promotion be granted or that adverse action be taken against an employee. Also, she may discipline employees, grant time off, transfer employees from one job to another and may adjust minor grievances. The record also indicates that the temporary employees report to the Clerical Services Supervisor each morning and she assigns them to where they are needed. Based on the foregoing, I find that the Clerical Services Supervisor is a supervisor within the meaning of Section 2(c) of the Executive Order and should be excluded from any unit found appropriate herein.

The secretary to the Activity's Area Director works directly for the Director who has authority to negotiate and sign labor agreements and has responsibility in the areas of hiring and discharging employees and adjusting grievances. The record reveals also that the secretary to the Director has access to office and personnel files not available to other employees in the claimed unit; types all the Area Director's

correspondence and memoranda, including personnel appraisals; sits in on conferences involving the Area Director and other high officials when adverse actions against employees are discussed; and prepares memoranda and documents for the Area Director in adverse action situations. In my view, the foregoing evidence establishes that the secretary to the Area Director acts in a confidential capacity with respect to an official who formulates or effectuates general labor relations policies and has regular access to confidential labor relations materials. As I have previously concluded, it would best effectuate the policies of the Executive Order if employees, such as the secretary to the Area Director, who assist and act in a confidential capacity to persons who formulate and effectuate management policies in the field of labor relations, were excluded from bargaining units. 5/ Accordingly, I would exclude the secretary to the Area Director from any unit found appropriate in this case.

With respect to the Activity's Equal Opportunity Specialist, the main function of an employee in this classification is to assure that Titles 6 and 8 of the Civil Rights Act are being implemented at all of the HUD federally assisted construction projects in the area. He does not make policy in this respect, but rather advises the Area Director on HUD's existing policies with regard to equal employment opportunity on federally assisted construction programs. He is not involved with the equal opportunity programs as they may be applied to employees of the Activity; nor does he supervise any employees. As the Equal Opportunity Specialist does not participate in the formulation or determination of Activity policies and as he does not supervise any employees, I find that he is neither a management official nor a supervisor within the meaning of the Order and may be included in any unit found appropriate.

The parties in the subject case agree that the HUD's Portland Area Office constitutes an appropriate unit. However, the fact that the parties agree that a petitioned for unit is appropriate without supporting record evidence is, in my view, an insufficient basis for me to make a determination of the appropriateness of the unit. 6/ In the instant case, the parties have failed to present evidence necessary to support a finding that the Portland Area Office is an appropriate unit. Thus, there is minimal evidence concerning the relationship between the Seattle Regional Office, the Portland Area Office, and the Seattle Area Office and the control, if any, exercised over these Area Offices by the Regional Office. Nor was

5/ See Virginia National Guard Headquarters, 4th Battalion, 111th Artillery, A/SLMR No. 69.

6/ See e.g., Defense Supply Agency, DCASR Boston-Quality Assurance, A/SLMR No. 34.

November 30, 1971

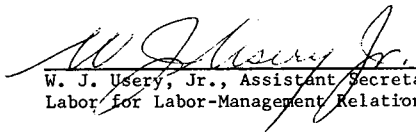
there any testimony presented by the parties with respect to interchange and transfer of employees, if any, between the Portland Area Office, the Seattle Area Office and the Seattle Regional Office, as well as any other HUD offices throughout the country. In addition, the record does not clearly show the area of consideration for promotions, transfers and reductions in force. Although there was limited testimony with respect to the powers of the Portland Area Director, the record does not reflect clearly the extent of his authority independent of review by the Regional Administrator. There also was limited testimony about the work performed by the Portland Area Office in comparison to that performed by the Seattle Regional Office, or the Seattle Area Office. In addition, the record does not reflect the working conditions of the employees in the Portland Area Office and whether they differ from those of the employees in the Seattle Area Office and the Seattle Regional Office.

Accordingly, in my view, the record does not provide an adequate basis on which to determine the appropriateness of the unit being sought. Therefore, I shall remand the subject case to the appropriate Regional Administrator for the purpose of reopening the record in order to secure additional evidence, as to the appropriateness of the claimed unit. In addition, while the parties agreed that the Activity's Labor Relations Specialist was a management official and should be excluded from the claimed unit, there was no record evidence to support this exclusion. Therefore, in addition to developing the evidence noted above, evidence should be adduced on the duties and responsibilities of the Labor Relations Specialist in order to determine whether he should be included or excluded from any unit found appropriate.

ORDER

IT IS HEREBY ORDERED that the subject case be, and it hereby is, remanded to the appropriate Regional Administrator.

Dated, Washington, D. C.
November 30, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEFENSE SUPPLY AGENCY,
DEFENSE CONTRACT ADMINISTRATION SERVICES
REGION (DCASR), SAN FRANCISCO
A/SLMR No. 112

These cases involved petitions filed by National Federation of Federal Employees and its locals Nos. 1 and 7 (NFFE) and American Federation of Government Employees, AFL-CIO, Local No. 3204 (AFGE). One of the petitions by the NFFE sought a unit which included all of the Activity's employees stationed in California and the other sought a unit which included all of the Activity's employees stationed at its Portland, Oregon Office. The AFGE sought a unit which would include all of the employees in the Activity's Seattle District which included the Portland, Oregon Office.

In all of the circumstances, the Assistant Secretary concluded that the petitioned for units were not appropriate. In this connection, the Assistant Secretary noted that personnel and labor-management relations matters were centralized at the Activity's headquarters, that a substantial number of vacancies and promotions were filled on an Activity-wide basis, and that there was evidence of a substantial number of employee transfers within the Activity's operations. Moreover, the record revealed that all major decisions regarding personnel actions affecting employees in the units sought were made on an Activity-wide basis.

In these circumstances, the Assistant Secretary concluded that the employees in the units sought by the Petitioners did not possess a clear and identifiable community of interest and that the units sought would not promote effective dealings or efficiency of agency operations. Accordingly, he ordered that the petitions be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEFENSE SUPPLY AGENCY,
DEFENSE CONTRACT ADMINISTRATION
SERVICES REGION, (DCASR),
SAN FRANCISCO 1/

Activity

and

Case Nos. 70-1860 and
71-1813

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCALS NOS. 1 and 7

Petitioners

DEFENSE SUPPLY AGENCY,
DEFENSE CONTRACT ADMINISTRATION
SERVICES REGION, (DCASR),
SAN FRANCISCO

Activity

and

Case No. 71-1681 (RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL No. 3204

Petitioner

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL No. 7

Intervenor

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Henry Lee. The Hearing Officer's rulings made at the hearing are free from prejudicial

error and are hereby affirmed.

Upon the entire record in these cases, including a brief filed by the Activity, 2/ the Assistant Secretary finds:

1. The labor organizations involved claimed to represent certain employees of the Activity.

2. In Case No. 70-1860, National Federation of Federal Employees, Local No. 1, herein called NFFE, seeks an election in a unit of all employees of the Activity with duty stations in California, excluding management officials, supervisors, guards and employees engaged in Federal personnel work in other than a purely clerical capacity. In Case No. 71-1813, NFFE, Local No. 7, seeks an election in a unit of all nonsupervisory General Schedule, Wage Grade and professional employees of the DCASR, Portland, Oregon, excluding all supervisors, managers, guards and employees engaged in Federal personnel work except in a purely clerical capacity. In Case No. 71-1681 (RO) American Federation of Government Employees, AFL-CIO, Local No. 3204, herein called AFGE, seeks a unit consisting of all employees of the Activity employed in the States of Washington, Oregon and Montana, including professional employees, excluding managers, supervisors, temporary employees, personnel employees (other than clericals), and guards as defined by Executive Order 11491. 3/ The Activity contends that all three units are inappropriate and the appropriate unit should encompass all of its employees, including those in the three requested units. The Activity also contends that the proposed units would not promote effective dealings and efficiency of operations within the meaning of the Executive Order.

At the hearing, the NFFE moved to bar the Activity from raising objections to the units sought by its petitions in Case Nos. 70-1860 and 71-1813, based on the contention that the Activity failed to comply with Section 202.4(g) of the Assistant Secretary's Regulations which requires an Activity, after the filing of a petition, to furnish the other parties and organizations with copies of its response to the petition made to the Area Administrator. The record established that the Activity did not, in fact, comply with the service requirements of Section 202.4(g). I do not condone the Activity's conduct in this respect. Thus, it should have complied and in the future will be expected to comply fully with all of the implementing Regulations of the Executive Order. However, in the particular circumstances of this case, including the fact that the NFFE apparently was advised of the Activity's objections to the units sought

2/ The National Federation of Federal Employees submitted a letter which apparently was intended to serve as a brief. However, as it was filed untimely, it was not considered.

3/ The unit sought by the AFGE, if granted, would encompass the employees sought by the NFFE in Case No. 71-1813.

1/ The name of the Activity appears as amended at the hearing.

prior to the hearing and the fact that the NFFE participated in the hearing and made no contention that it required additional time to formulate or present its position with respect to the Activity's objections to its petitions, I conclude that NFFE did not suffer any material prejudice as a result of the Activity's failure to comply fully with the Regulations. I shall, therefore, deny the NFFE's motion.

The Defense Contract Administration Services Region (DCASR), San Francisco, is one of a number of regions of the Defense Contract Administration Services. It employs approximately 1,051 rank and file employees. DCASR, San Francisco, administers the procurement and distribution of goods for the Department of Defense and other Federal agencies, and includes a geographic area which encompasses the States of Utah, Montana, Oregon, Washington, Idaho, Alaska, Hawaii, Nevada, (except for Clark County), Northern California and the territory of Guam. 4/ The Region is divided into two Defense Contract Administration Service Districts (DCASD); DCASD, Seattle, with approximately 172 employees and DCASD, Salt Lake City, with approximately 93 employees. DCASD, Seattle, encompasses a geographic area which includes the States of Washington, Montana, Alaska, and Oregon; and DCASD, Salt Lake City, includes the States of Utah and Nevada (except Clark County). Within the geographic area administered by DCASD, Seattle, are two Defense Contract Administration Offices (DCASO's), one located at Portland, Oregon and the other at Glasgow, Montana. 5/ The Activity's Northern California operations have approximately 716 employees and include the Activity's headquarters at San Francisco, and four DCASO's located at San Jose, Palo Alto, Mt. View, and Sunnyvale, California. 6/ The California DCASO's and the DCASD's report directly to headquarters as does the Activity's Hawaii operations which employ approximately 7 employees.

DCASR, San Francisco, is under the command of a military officer whose office is located in San Francisco at the Activity's headquarters.

4/ The Activity has no permanent employees in either Alaska or Idaho.

5/ The unit sought by the AFGE includes all employees assigned to the geographic area covered by DCASD, Seattle. The unit sought by the NFFE in Case No. 71-1813 would include only the employees covered by DCASO, Portland.

6/ The DCASO's located in California are concerned generally with administering contracts with particular defense contractors. Thus, the Palo Alto DCASO administers contracts with Philco; the DCASO at Mt. View administers contracts with Sylvania; the DCASO at Sunnyvale administers contracts with Westinghouse; and the DCASO at San Jose administers the Activity's contract with the FMC Corporation.

Directly under the Commander and located at headquarters are a number of Offices and Directorates that are responsible for planning and monitoring all facets of the Activity's operations. In this regard, the Offices are concerned primarily with matters regarding planning, administration, security problems at defense plants and contract compliance problems. On the other hand, the Directorates are concerned primarily with matters of production and quality assurance. The Administrative chiefs of DCASD Seattle and Salt Lake City and of the DCASO's located at Palo Alto, San Jose, Mt. View and Sunnyvale, report directly to the Commander. The DCASO Portland and Glasgow chiefs report to the administrative chief of DCASD Seattle. Each of the DCASD's and DCASO's have staffs which are similar to the staff of the Commander. The Activity's supervisory authority flows from the Commander through the DCASD and DCASO administrative chiefs to the first line supervisors. Technical direction and advice, however, flow from the Directorates' either through supervisors or directly to the employees.

The Activity's administration is highly centralized with all major decisions affecting employees and production being made at the headquarters. All personnel policies are established at this level and are applicable to all of the Activity's employees. All hiring, firing and equivalent personnel actions are effected by the Activity's Commander through a civilian personnel office. While first line supervisors may initiate letters of reprimand and DCASO chiefs may discipline employees up to and including suspensions of 30 days, the personnel office must be advised prior to the time any disciplinary action is taken. 7/

Pursuant to the Activity's policy, vacancies and promotions in Grades GS-1 through GS-6 are filled by competition within the commuting area of the vacant job. Vacancies and promotions in grades GS-7 through GS-13 are filled by competition on an Activity-wide basis, and vacancies in higher grades are filled on a national basis. A similar policy applies to reductions in force, where the Activity is divided into six competitive areas, some of which do not conform to the Activity's administrative subdivisions. The record reveals that there are occasional temporary reassignments of employees within the geographic area covered by the Activity. The record further shows that there have been a substantial number of employee transfers within the Activity's operations, occasioned by the needs of the Activity. Thus, if for any reason defense work at a particular plant or in a particular area lessens, the employees at that location are transferred elsewhere in the Activity's operations. The record reveals that such transfers depend on where employees are needed rather than on the particular administrative subdivision to which they have been assigned previously.

7/ With two exceptions, all personnel employees are located at the Activity's headquarters.

The record reflects that all matters involving labor management relations, including employee grievance, are handled by or with the assistance of the headquarters Civilian Personnel Office. Moreover, only the Region's Commander has final authority to approve negotiated labor agreements, and this authority may not be delegated. The evidence also established that a number of the Activity's field functions are conducted by employees stationed at the Regional headquarters. In this regard, matters having to do with defense plant security, litigation on defense contracts, compliance with equal opportunity laws and compliance by contractors with federal engineering standards are handled on an Activity-wide basis by employees stationed at headquarters. In addition, the disbursement of all funds in the geographic area covered by the Activity, whether to employees or defense contractors, is handled at headquarters.

As stated above, the NFFE seeks two units, one in Case No. 70-1860 which would include the Activity's employees, both at the headquarters and in field operations, who have California duty stations, and the other in Case No. 71-1813 which would include employees assigned to DCASO Portland, Oregon. The AFGE seeks a unit in Case No. 71-1681 (RO), which would consist of employees assigned to DCASD Seattle, including the employees assigned to DCASO Portland sought by the NFFE in Case No. 71-1813.

Based on the foregoing, I find that none of the petitioned for units constitute distinct and homogeneous groupings of the Activity's employees. The evidence establishes that all major decisions regarding personnel actions such as hiring, discharges and suspensions in excess of 30 days are made at the Activity level; that decision making authority regarding labor-management relations and employee grievance is vested at the Activity's headquarters; that the Regional Commander has final authority to approve labor agreements; that a significant amount of the Activity's field operations are conducted on an Activity-wide basis by employees stationed at headquarters; that there are permanent assignments of employees in the claimed units to other points in the Activity; that a significant number of vacancies and promotions are filled by competition on an Activity-wide basis; and that all of the employees of the Activity, including those in the three proposed units, appear to share similar skills and identical fringe benefits. In addition, there is no evidence that the employees in the proposed units share any interest apart from other employees-other than working in different geographic locations-and this latter factor alone does not, in my view, justify finding appropriate any one of the proposed units.

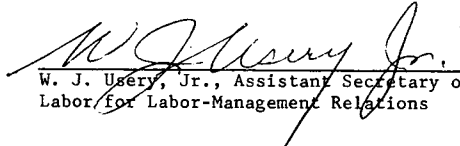
In these circumstances, I find that the employees in the units sought by the NFFE and the AFGE do not possess a clear and identifiable community of interest separate and distinct from other employees of the Region.

Moreover, I find that such units would artificially divide and fragment the Activity's operations, and cannot be reasonably expected to promote effective dealings or efficiency of operations. Accordingly, I find that the units requested by the NFFE and the AFGE do not constitute appropriate units for the purpose of exclusive recognition under Executive Order 11491.

ORDER

IT IS HEREBY ORDERED that the petitions in Case Nos. 70-1860; 71-1813; and 71-1681 (RO) be, and they hereby are, dismissed.

Dated, Washington, D. C.
November 30, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

December 8, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON CHALLENGED BALLOTS
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE ARMY,
ARMY MATERIEL COMMAND,
AUTOMATED LOGISTICS MANAGEMENT
SYSTEMS AGENCY
A/SLMR No. 113

This case involves the eligibility of 22 employees whose ballots were challenged at an election held at the Army Materiel Command, Automated Logistics Management Systems Agency, St. Louis, Missouri.

A hearing was held before a Hearing Examiner. Upon review of the Hearing Examiner's Report and Recommendations and the entire record, including the request for review of the Hearing Examiner's Report and Recommendations filed by the National Federation of Federal Employees, Local 1763, the Assistant Secretary found as follows:

At the hearing in this matter, the parties stipulated as to the eligibility or ineligibility of certain voters. The Hearing Examiner accepted these stipulations. The Assistant Secretary adopted the Hearing Examiner's recommendation in this regard noting the absence of any evidence indicating that the parties' stipulations were improper.

As to other challenged individuals, the Hearing Examiner concluded that they were supervisors within the meaning of the Order and the challenges to their ballots should be sustained notwithstanding the fact that they were not designated as supervisors on the eligibility list. He noted that a consent election agreement should be considered as a final and binding agreement unless it contravenes the policy of the Executive Order or established policy of the Assistant Secretary. Because inclusion of supervisors in an appropriate unit would contravene the express policy of the Executive Order, the Hearing Examiner concluded that notwithstanding the terms of the parties' consent election agreement, the ballots of these individuals should not be counted in view of their supervisory status. The Assistant Secretary agreed with the Hearing Examiner's finding that employees involved were supervisors within the meaning of the Order and therefore sustained the challenges to their ballots.

As to other challenged individuals, the Hearing Examiner found that they were not management officials. Nevertheless, the Hearing Examiner determined that their ballots should not be opened and counted since they were excluded in the parties' consent election

agreement. The Assistant Secretary disagreed with the Hearing Examiner, stating that the parties' exclusions in their consent election agreement did not contain sufficient specificity or clarity to warrant a finding that they should be excluded as management officials under the Order. Accordingly, in accordance with the findings of the Hearing Examiner that such individuals were not management officials on the date of the election, the Assistant Secretary directed that their ballots be opened and counted.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
ARMY MATERIEL COMMAND,
AUTOMATED LOGISTICS MANAGEMENT
SYSTEMS AGENCY

Activity

and

Case No. 62-1800(RO)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1763

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R14-85

Intervenor

DECISION ON CHALLENGED BALLOTS

On January 21, 1971, Hearing Examiner Henry L. Segal issued his Report and Recommendations in the above-entitled proceeding finding:

1. That in accordance with the stipulation of the parties, the challenges to the ballots of C. Dengler, Gerald Holmstrom, Don Larose, S. Lindsey, Charles Newton, and R. Patterson be sustained and that their ballots not be opened and counted.

2. That in accordance with the stipulation of the parties, the challenge to the ballot of John Rathmann be overruled and that his ballot be opened and counted.

3. That the challenges to the ballots of Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker, be sustained and their ballots not be opened and counted.

4. That the challenges to the ballots of Richard Wargin, Dennis K. Frey, Paul Harris, Randall Sigite, and Esther Gober be overruled and that their ballots be opened and counted.

5. That the challenges to the ballots of Robert Rybacki, Marvin Meng, Herbert B. Pearson, Jr., and Raymond Rahn be sustained and their ballots not be opened and counted.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record, including the request for review of the Hearing Examiner's Report and Recommendations filed by the National Federation of Federal Employees, Local 1763, herein called NFFE, I adopt the findings and recommendations of the Hearing Examiner except as modified herein.

CHALLENGED BALLOTS

C. Dengler, Gerald Holmstrom, Don Larose, S. Lindsey, Charles Newton, and R. Patterson

The ballots of the above-named individuals were challenged either by the Activity, the NFFE, the National Association of Government Employees, Local R14-85, herein called NAGE, or by two or more of the parties, on the basis that these individuals were either professionals 1/, supervisors or management officials.

At the hearing, the parties stipulated that these individuals should be excluded from the unit. In accordance with this stipulation, the Hearing Examiner recommended that these challenges be sustained and that the ballots of these individuals not be opened and counted.

In view of the stipulation by the parties and because there is no evidence to indicate that the stipulation was improper, I hereby adopt the recommendation of the Hearing Examiner that these challenges be sustained and that the ballots of these individuals not be opened and counted.

1/ Professional employees had been excluded from the petitioned for unit.

John Rathmann

The ballot of John Rathmann was challenged by the NFFE on the ground that he was a supervisor. The NFFE withdrew its challenge at the hearing and the parties stipulated that Mr. Rathmann was not a supervisor at the time of the election, and therefore, was eligible to vote.

Based on this stipulation, the Hearing Examiner recommended that the challenge to the ballot of John Rathmann be overruled and that his ballot be opened and counted. As there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendations of the Hearing Examiner overruling this challenge and directing that the ballot be opened and counted.

Robert Rybacki, Marvin Meng, Herbert B. Pearson, Jr., Raymond Rahn

The ballots of the above-named individuals were challenged by the NFFE on the ground that they were supervisors. The Hearing Examiner found that these individuals were supervisors within the meaning of the Executive Order on the date of the election and, pursuant to Section 10(b)(1), should be excluded from the unit. In reaching this conclusion, he noted the fact that these individuals were not designated as supervisors on the eligibility list. The Hearing Examiner concluded that a consent agreement which has been approved by an Area Administrator, should be considered as a final and binding document, unless it contravenes the policy of the Executive Order or established policy of the Assistant Secretary. In the circumstances, the Hearing Examiner found that to include supervisors in an appropriate unit would contravene the policy of the Executive Order, which states specifically in Section 10(b)(1) that a unit shall not be established if it includes any supervisor. Accordingly, he recommended that, notwithstanding the terms of the parties' consent election agreement, the challenges to the ballots of these individuals be sustained and that their ballots not be opened and counted.

After careful review of the record testimony concerning the responsibilities and duties of these individuals, I concur with the Hearing Examiner's conclusion that they were supervisors within the meaning of the Executive Order on the date of the election. Accordingly, the recommendation of the Hearing Examiner that the challenges to the ballots of Robert Rybacki, Marvin Meng, Herbert Pearson, Jr., and Raymond Rahn be sustained and their ballots not be opened and counted is hereby affirmed.

Richard Wargin, Randall Sigite, Dennis K. Frey, Paul Harris, Esther Gober

The ballots of the above-named individuals, except Esther Gober, were challenged by the NFFE solely on the ground that they were supervisors. Miss Gober's ballot was challenged by both the NFFE and the Activity. The former challenged on the ground that she was a supervisory or managerial employee and the latter on the ground that she was a non-clerical employee in the Plans and Management Office of ALMSA, herein called PMO.^{2/}

The Hearing Examiner found that none of these individuals was either a supervisor or a management official. Accordingly, he recommended that the challenges to the ballots of these individuals be overruled and their ballots be opened and counted.

After careful consideration of the record testimony concerning the responsibilities and duties of these individuals, I concur with the Hearing Examiner's conclusion that they were neither supervisors nor management officials within the meaning of the Executive Order on the date of the election. Accordingly, the recommendation of the Hearing Examiner that the challenges to the ballots of Richard Wargin, Randall Sigite, Dennis F. Frey, Paul Harris and Esther Gober be overruled and their ballots be opened and counted is hereby affirmed.

Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker

The ballots of these individuals were challenged by the Activity on the ground that they were nonclerical management employees of the PMO, who were excluded from the unit as set forth in the parties' consent election agreement.

The Hearing Examiner concluded that the evidence established that the interests of these individuals were more closely aligned with the employees in the unit than with management and, accordingly, they were not management officials within the meaning of the Executive Order. Notwithstanding the foregoing finding, however, the Hearing Examiner determined that these employees were ineligible to participate in the

^{2/} The Activity subsequently withdrew its challenge on the basis that Miss Gober had transferred to another job within the Activity before the date of the election.

election in view of the unit exclusions contained in the parties' consent election agreement, among which were "Managerial employees -- all non-clerical personnel in the Plans and Management Office." In this regard, the Hearing Examiner viewed the consent election agreement as final and binding on the parties, and he did not find the exclusion of these employees to be in derogation of the Executive Order or of the established policy of the Assistant Secretary. 3/ Accordingly, he recommended that challenges to the ballots of the above-named individuals be sustained and that their ballots not be opened and counted.

The NFFE contends that the challenges to the ballots of the voters employed in PMO at the time of the election should be overruled. It asserts that irrespective of what the parties may agree to in a consent election agreement, the aim of the Executive Order is not to exclude those employees from voting who are entitled to vote. The NFFE further contends that the parties in this case did not fully comprehend the eligibility of all persons entitled to vote and that it was the duty of the Hearing Examiner to inquire into the matter of eligibility. In this regard, it is argued that since he found these individuals eligible to vote as a part of the unit, it was improper to exclude these employees from voting notwithstanding their exclusion in the consent election agreement.

In agreement with the Hearing Examiner, I find that the above individuals were not management officials within the meaning of the Executive Order on the date of the election. 4/ I do not adopt, however, the finding of the Hearing Examiner that the exclusion of "Managerial employees -- all non-clerical personnel in the Plans

3/ The Hearing Examiner noted that his finding might be different if the situation were one where the consent election agreement specifically included employees who were management officials.

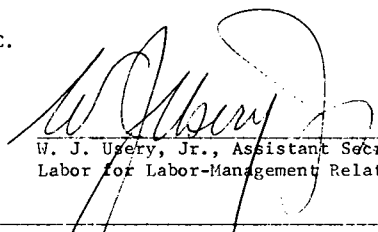
4/ In reaching the above disposition, I do not adopt the Hearing Examiner's general conclusion that "the key to a 'management official' is the formulation or establishment and the effectuation of policy." In the Veterans Administration Hospital, Augusta, A/SLMR No. 3, I stated with respect to the question of management officials, that the functions assigned to an employee in a classification determined to be a "management official" are those which place the interests of such employee more with personnel who formulate, determine and oversee policy than with personnel in the proposed unit who carry out the resultant policy.

and Management Office" in the parties' consent election agreement had the effect of precluding the above-named individuals, employed on the date of the election in PMO from having their ballots opened and counted. Thus, as noted above, the evidence establishes that in their consent election agreement the parties' excluded as managerial employees as all nonclerical personnel in PMO. The parties' exclusion in this regard did not indicate the specific employees covered. Nor was there any evidence that there were, in fact, any employees in PMO who were management officials within the meaning of the Executive Order. In these circumstances, I conclude that the parties' exclusion of "all non-clerical personnel in the Plans and Management Office" as "managerial employees" did not contain sufficient specificity or clarity to warrant a finding that these employees were management officials under the Order and as such ineligible to vote in the election. 5/ Accordingly, in accordance with the findings of the Hearing Examiner that Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker were not management officials on the date of the election in this case, I hereby direct that their ballots be opened and counted.

DIRECTION TO OPEN AND COUNT BALLOTS

IT IS HEREBY DIRECTED that the ballots of John Rathmann, Richard Wargin, Randall Sigite, Dennis K. Frey, Paul Harris, Esther Gober, Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker be opened and counted at a time and place to be determined by the appropriate Regional Administrator. The Regional Administrator shall have a Revised Tally of Ballots served on the parties, and take such additional action as required by the Regulations of the Assistant Secretary.

Dated, Washington, D.C.
December 8, 1971



W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

5/ In view of the above disposition, it was considered unnecessary to decide whether parties would be bound by a clear stipulation contained in their consent election agreement.

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

DEPARTMENT OF THE ARMY
ARMY MATERIEL COMMAND
AUTOMATED LOGISTICS MANAGEMENT SYSTEMS AGENCY
Activity

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 1763
Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,
LOCAL R14-85
Intervenor

Robert D. Harman, Civil Personnel Officer,
Automated Logistics Management Systems Agency,
St. Louis, Missouri, for the Activity.
Irving I. Geller, Esq., Washington, D. C.
for the Petitioner.
Clifford E. Monken, National Representative,
Boston, Massachusetts, for the Intervenor.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding was heard at St. Louis, Missouri, on December 10 and 11, 1970. It arises pursuant to a Notice of Hearing issued on November 20, 1970, by the Regional Administrator for the Kansas City Region under the authority of Executive Order 11491 (herein called the Executive Order) and in accordance with Section 202.20(d) of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations (herein referred to as the Assistant Secretary).

The issues heard concerned the eligibility to vote of 22 voters whose ballots were challenged at an election held among a unit of the above-named Activity's employees on August 26, 1970, under the supervision of the Area Administrator, St. Louis, Missouri.

Upon the entire record in this matter from observation of the witnesses, and after due consideration of the brief filed by the Petitioner, the Hearing Examiner makes the following:

Findings and Conclusions

I. The Election

Pursuant to an "Agreement for Consent or Directed Election" approved by the Area Administrator on August 3, 1970, a secret ballot election was conducted on August 26, 1970, in accordance with the provisions of Executive Order 11491, in the following unit of the Activity's employees:

All non-supervisor classification act and wage grade employees employed by the Automated Logistics Management Systems Agency except those employed in existing units of exclusive recognition which are none. Supervisory employees excluded are those occupying positions classified with an S (for supervisor) behind the job number on the official job description. All non-supervisory classification act and wage grade personnel employed at AIMSA, not later than 22 August 1970, are considered within the unit except the following:

- a. Temporary excepted appointment personnel such as Summer Employment Youth (SEY), Youth Opportunity Back-to-School (YOB), Neighborhood Youth Corps, etc.
- b. Managerial employees--all non-clerical personnel in the Plans and Management Office.
- c. Professional employees; i.e., those with 510, 1410 and 1515 series codes.
- d. All non-clerical personnel assigned to the Civilian Personnel Office.
- e. Guards.

The results of the election were as follows:

Approximate number of eligible voters	630
Void ballots	1
Votes cast for NFFE, LU 1763	131
Votes cast for NAGE, LU R14-85	116
Votes cast against exclusive recognition	244
Valid votes counted	491
Challenged ballots	22
Valid votes counted plus challenged ballots	513

Challenges are sufficient in number to affect the results of the election.

A tabulation of the 22 challenges as listed in the Notice of Hearing of this proceeding follows:

<u>Person Challenged</u>	<u>Challenged By</u>	<u>Reason for Challenge</u>
(1) C. Dengler	Activity and Petitioner	Management
(2) Ora Edwards	Activity	Plans and Management Office
(3) Dennis K. Frey	Petitioner	Acting Supervisor
(4) Cleo Furlong	Activity	Plans and Management Office
(5) Esther Gober	Activity and Petitioner	Plans and Management Office
(6) Mary Gorman	Activity	Plans and Management Office
(7) Paul Harris	Petitioner	Acting Supervisor
(8) Gerald Holmstrom	Activity, Petitioner, and Intervenor	Professional
(9) Don Larose	Activity, Petitioner, and Intervenor	Supervisor
(10) S. Lindsey	Activity	Supervisor
(11) Marvin A. Meng	Petitioner	Acting Supervisor
(12) Charles Newton	Petitioner	Supervisor
(13) R. Patterson	Petitioner	Supervisor
(14) H. Pearson	Petitioner	Acting Supervisor
(15) John Peterie	Activity	Plans and Management Office
(16) Marvin Porter	Activity	Plans and Management Office
(17) Raymond Rahn	Petitioner	Acting Supervisor
(18) John Rathmann	Petitioner	Acting Supervisor
(19) Robert Rybacki	Petitioner	Supervisor
(20) Randall Sigite	Petitioner	Acting Supervisor
(21) Chalmer Tucker	Activity	Plans and Management Office
(22) Richard Wargin	Petitioner	Supervisor

During the course of the hearing the parties stipulated that the challenges to the ballots of C. Dengler, Gerald Holmstrom, Don Larose, S. Lindsey, Charles Newton, and R. Patterson be sustained and to the ballot of John Rathmann be overruled. 1/ In due course I shall make my recommendations with respect to these challenges in conformity with the stipulations of the parties.

With respect to the remaining 15 challenges, basically, with some exceptions hereinafter noted, the Activity's challenges were to the ballots of non-clerical employees of the Plans and Management Office who were specifically excluded from the unit by paragraph 1 b. of the unit description set forth in the consent election agreement. (At a date subsequent to the election the Activity changed the name of the Plans and Management Office to the Programs Management Office (PMO), and hereinafter that office will be referred to by its present name.) The Petitioner's challenges were principally to voters whom it alleges are supervisory employees, and some few whom it alleges are "managerial officials."

II. Challenges by the Activity to Ballots of Voters Employed in the Programs Management Office

Section 10(b)(1) of Executive Order 11491 provides that a unit shall not be established if it includes any "management official," except in certain situations provided in Section 24 of the Executive Order. (The Section 24 exception is not applicable herein.) Thus, the issues to be resolved with respect to these challenges are two in number:

- (1) Are any of the employees involved "management officials" within the meaning of the Executive Order?
- (2) Assuming some or all are not "management officials" would they nonetheless be excluded from the unit in view of the provisions of the consent election agreement, which at paragraph 1 b. excludes as managerial employees, all non-clerical employees in the Plans and Management Office [now called the Programs Management Office (PMO)]?

1/ The Intervenor's Representative, Mr. Clifford E. Monken, after lunch on the first day of the hearing, requested that he be excused from further participation in the hearing, which request was granted. Prior to leaving, he entered into the above stipulations, and further stated that he believed that all challenged votes were eligible except for the six stipulated to be ineligible.

The Automated Logistics Management Systems Agency (herein called ALMSA or the Activity) located in St. Louis, Missouri, is the central Automated Data Processing (ADP) Systems Design Agency of the U. S. Army Materiel Command (AMC). It has been in existence for approximately two years. 2/

The Programs Management Office (herein called PMO) which reports directly to the Commander of ALMSA through his executives serves as ALMSA command's management consultant. 3/ While the function of PMO in its totality is to serve as a management consultant to the Commander of ALMSA, it does not necessarily follow that all of its non-clerical employees are management officials within the meaning of the Executive Order. The duties of each of the challenged voters employed by PMO will be discussed briefly, and the conclusion of the Hearing Examiner

2/ Activity's Exhibit 3, an ALMSA Regulation titled "Organization, Mission and Functions of ALMSA," describes ALMSA's mission in the following manner: To develop ADP application programs for the AMC commodity command level and procurement agencies; to develop ADP software principles for the entire AMC ADP Program; and to serve as the single focal point for ADP communications, technology, and the data element and codes standardization program.

3/ Activity Exhibit 3 referred to in fn. 1 above, breaks down the functions of PMO as follows: It advises and assists the commander of ALMSA and his staff in matters pertaining to overall command planning, management systems and philosophies, budget, programming, financial management, manpower management, procurement and contract administration, systems audit, command review and analysis, progress reporting and data systems training. It directs and controls all activities related to accomplishment of assigned responsibilities in systems audit, plans and resources, management engineering and systems research, review and analysis, and progress reporting. It provides staff guidance, coordination, and control of assigned command-wide programs and projects involving multi-directorate participation. It serves as management consultant to user organizations or agency-developed ADP standard systems. It establishes and operates the Command Operations Center and Emergency Control Center of ALMSA. It develops and maintains the training program for ALMSA developed standard systems throughout the Army Materiel Command.

as to whether they are "management officials" will be made on a group basis. 4/

Ora Lane Edwards is a Management Analyst, GS-11, in the Resources Division of PMO. He works on the manpower team and reports to a team chief, GS-12, who in turn reports to the division chief, GS-13. His area of responsibility is to compile certain data with respect to three elements of ALMSA, the Readiness Assurance Directorate, the Data Management Directorate, and the Administrative Office. His duties consist of preparing personnel status listings on the three elements of his responsibility. In so doing he prepares a weekly machine listing, and compiles overtime and associated reports. With respect to overtime, the Commander of ALMSA sets a dollar limitation on overtime, and as requests are made for overtime by the three elements for which he is responsible, Edwards processes the requests to make certain they fit within the limitations. Edwards described his duties as administrative, but he does occasionally do analytical work in his field and make recommendations to his superiors.

Edwards' official job description provides with respect to supervisory controls that he consult with his supervisor on unusual or controversial problems encountered, and that his completed assignments are reviewed for adequacy, effectiveness of coordination, soundness of conclusions and feasibility of recommendations.

Mary H. Gorman is classified as a Procurement Analyst, GS-12, in the Resources Division of PMO. She reports to the Division Chief whose grade is GS-13. Gorman has technical expertise in the field of

4/ In many instances official job descriptions were received in evidence. As is customary with job descriptions, they list many functions and potential functions in broad language. This is not to say that the job descriptions are not accurate or that they have no value in arriving at a conclusion as to the incumbent's status, but mere readings of such descriptions do not give the reader a true understanding of the incumbent's actual performance on a day-to-day basis. Accordingly, in making findings of facts, primary reliance will be afforded to oral testimony and other material, and references to the job descriptions will be limited. In fact, some of the witnesses testified that they did not actually perform some of the functions listed on their job descriptions. For example, Ora Lane Edwards, discussed *infra*, testified that contrary to his job description he does not participate in the planning, organization, or control associated with his responsibility.

procurement garnered from experience with Army procurement regulations and directives. She assists the various elements of AIMSA in the preparation of requests for supplies, equipment and materiel and in the preparation of procurement packages. The Aviations Systems Command (AVSCOM) gives procurement support to AIMSA, and the Contracting Officer of AVSCOM sets the requirements for procurement packages. Gorman acts as liaison between AIMSA and the Contracting Officer of AVSCOM. Occasionally she prepares procurement advice or technician reports on procurement which are submitted to the Division Chief. There are a total of 18 employees in the Division, three of whom, including Gorman and one other Procurement Analyst, are engaged in contract work.

Gorman's official job description with respect to supervisory controls, provides that her supervisor is available for consultation on complex problems and unusual policy questions or precedent-setting matters, and that her work is reviewed and evaluated in terms of overall effectiveness and technical proficiency demonstrated.

John Peterie is classified as a Budget Officer, GS-12, in the Resources Division of PMO. He reports to the Division Chief, GS-13. Peterie is involved in budget preparation for AIMSA along with a Budget Analyst, a Cost Accountant and a Plans Analyst whose authority is equivalent to Peterie's. At the appropriate time of the year the different elements of AIMSA submit their budget requirements. The budget group, under the supervision of the Division Chief, combine the total package for approval and submission to Army Materiel Command (AMC), which then sets the total budget limitation for AIMSA. The Commander of AIMSA, with the assistance of the Resources Division, sets the limitations for each of AIMSA's elements consistent with Army Materiel Command's limitations. Peterie maintains certain budget controls over the various elements of AIMSA in a daily ledger. His entries are based on daily reports from the Aviation Systems Command (AVSCOM), which handles the bookkeeping for AIMSA, and on reports from AMC. Peterie advises elements of AIMSA if they are exceeding their budget, and within dollar limitations set by the Commander of AIMSA can transfer money between elements of AIMSA. If more money is needed the element involved will justify the additional request (Peterie might aid in preparation of the justification) and AIMSA will send a teletype to AMC, requesting the additional allotment. According to Peterie, AMC has never denied such a request.

With respect to supervisory controls, Peterie's official job description provides that he work under general supervision receiving assignments in terms of broad general objectives and guidance on major problems which may arise. It further provides that he has full

authority for directing the formulation, presentation, and execution of all command appropriated fund budgets and the dissemination of budget program information, and that his performance is evaluated in terms of attainment of objectives, application of mature judgment, and reasonableness of decisions and recommendations.

Cleo Furlong is employed as a Program Analyst, GS-12, in the Review Analysis Division of the PMO. There are approximately 12 employees in the Division headed by a Division Chief, GS-13, to whom Furlong looks for direction and supervision. Furlong is engaged in attempting to set out procedures for obtaining information from the various segments of AIMSA so that he can upon assignment from his Division Chief ascertain problem areas in AIMSA's performance of its functions in developing an Automated Data Processing system for logistics management. He reviews and analyzes the problem areas and may make suggestions. These analyses and suggestions are given to his Division Chief for further processing.

The supervisory controls portion of Furlong's job description provides that his supervisor establishes overall functional responsibility and furnishes broad general direction and guidance; that he is recognized as a top technical expert in the program analysis area administered; that he operates with maximum latitude and independence and is expected to plan his work and accomplish assignments with a very minimum of assistance; and that his work is spot checked for compliance with policy and guidelines and is reviewed for adequacy of results achieved.

Furlong stated that there are many more controls on his work than outlined in his job description. For example, considerable restrictions are placed by the Division Chief upon his movements to other offices and directorates of AIMSA to obtain information.

Marvin Porter is employed, as he was at the time of the election herein, as a Management Analyst, GS-13, in the Review Analysis Division of the PMO. Porter was not available to testify at the time of the hearing, however it was stipulated by all the parties that Porter's functions were the same as those of Cleo Furlong discussed above, and that his supervision was the same as Furlong's. The only distinction between the two is that Porter as a grade GS-13 has less controls over his work than Furlong, a grade GS-12.

Chalmer C. Tucker is currently employed as a Computer Specialist, GS-12, by the Implementation Division, Readiness Assurance Directorate, having been reassigned on September 20, 1970. At the time

of the election, August 26, 1970, Tucker was employed as a Computer Specialist, GS-12, in the Audit Systems Division of PMO, where he started approximately one month before the election. Prior to that employment he was in the Systems Training Division of PMO.

While employed in the Audits System Division, Tucker's primary job was to identify security problems within the system and make recommendations with respect to security of the office system of AIMSA to AMC Headquarters, Directorate of Management Information Systems. The purpose was maintenance of security on data files, printings and listings, in view of the "secret" and "top secret" classifications processed by AIMSA. His ability to perform this work was based on his understanding of the I.B.M. 360 type environment which AIMSA was using and a conceptual understanding at least of the AMC's Logistic Program Hardware Automated (ALPHA) which is the total system being worked on by AIMSA to provide a standard automatic data processing system for elements of cataloging, provisioning, stock control, supply management, procurement and production and financial management at the Commodity Command level.

In making his analyses and recommendations Tucker worked with an auditor in the division. They collaborated with other elements of AIMSA as well as AIMSA's Security Officer. Any papers or letters prepared by Tucker with respect to his function were given to the Division Chief of the Audit Systems Division for further processing.

Tucker's job description provides that his work is typically evaluated in terms of feasibility of solutions to unusual or unsatisfactory conditions and for soundness of judgment exercised in attaining audit objectives.

Conclusions With Respect to Challenges of Voters Employed in the Programs Management Office

1. Conclusion as to whether Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker were "management officials" on the date of the election, August 26, 1970

As stated above, Section 10(b)(1) of the Executive Order provides that a unit shall not be established if it includes any "management official." The Executive Order does not provide a formal definition for the term "management official" as used in Section 10(b)(1). However, in a recent Decision and Direction of Election, the Assistant Secretary provided guidance for the determination of whether

an employee is a "management official." In The Veterans Administration Hospital, Augusta, A/SLMR No. 3, the Assistant Secretary in finding a "clinical coordinator" to be a "management official," stated that ". . . , the functions assigned the clinical coordinator place the interests of an employee in this classification more closely with personnel who formulate, determine and oversee Hospital policy than with personnel in the proposed unit who carry out the resultant policy." Thus, the key to a "management official" is the formulation or establishment and the effectuation of policy. 5/

The task of resolving the issue as to whether the employees involved are "management officials" is not an easy one, inasmuch as their functions are such that they fall close to the line of demarcation between management and employees in the unit. They are basically highly skilled technicians, most of them well versed in the field of automatic data processing. Most of them prepare analyses of the system as it is operating, and work within established policy and guidelines. 6/ In my opinion they do not formulate or establish and effectuate policy. At most, some of their work might be used by

5/ The Petitioner, in its brief, cites the "Report and Recommendations" of another Hearing Examiner issued on December 23, 1970, in Veterans Administration, Regional Office, Newark, New Jersey, Cases nos. 32-1498 E.O. and 32-1499 E.O., where in determining the status of certain employees, that Hearing Examiner found that the employees were not part of "Agency Management" as defined in Section 2.(f) of the Executive Order. Of course a recommendation of another Hearing Examiner is not binding on me. Moreover, in my opinion, it is obvious that the Section 2.(f) definition for "Agency Management" was not meant to be used to define the term "management official" in Section 10.(b)(1) of the Executive Order inasmuch as the Section 2.(f) definition is limited to those involved in the implementation of the agency labor-management relations program established under the Executive Order.

6/ Thus, Edwards compiled certain personnel data on three elements of AIMSA, Gorman worked on procurement of materiel within established Army Regulations, Peterie kept tab on the budget within established limitations, Furlong and Porter ascertained problem areas in the system for use of their superiors, and Tucker analyzed security problems so that established security classifications of materiel could be maintained.

management as a tool in making or effectuating policy. But, this is also true of work done by analysts and computer specialists employed in other offices and directorates of ALMSA. For example, compare the duties of Richard Wargin, Dennis K. Frey, Paul Harris, Jr., Randall Sigite and Esther Gober, all discussed herein under Section III which follows. All of these latter employees make recommendations which could be used as a tool by management in formulating and effectuating policies.

Highly significant is the amount of supervisory control exercised over the performance of the challenged voters under discussion. It is unlikely that such control would be exercised over employees who formulate or effectuate policy or whose interests would be more aligned with management than with other employees in the unit.

In view of the above, it is concluded that the interests of Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker lie more with the employees in the unit (which includes like classifications, such as computer programmers, computer specialists, and various types of analysts) than with management and that they were not "management officials" within the meaning of the Executive Order as of the date of the election.

2. Conclusion as to the effect of paragraph 1 b. of the Agreement for Consent or Directed Election on the eligibility to vote of Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter, and Chalmer Tucker

Having concluded that the above-named employees are not management officials, the Hearing Examiner now concludes that they were nevertheless ineligible to vote in the election. The Agreement for Consent or Directed Election was entered into by all the parties. There must be some finality to actions of the parties or administrative processes would be hindered. Although the Petitioner's representative testified that he signed the Agreement excluding the non-clerical employees of the Programs Management Office in ignorance, ignorance is not a sound basis for disrupting administrative processes. He also stated that there was insufficient time to consider the Agreement. On the contrary, the record reveals that there were at least two meetings at which the Petitioner was represented held with respect to the petition before the Agreement for Consent or Directed Election was finally executed. The Petitioner, in its brief, also argues that there were many changes made by the Activity on individual eligibility between May 8, 1970, when a preliminary list of eligibles was furnished and August 24, 1970, two days before the election, when another list of

eligibles was submitted, and that this demonstrates the inadequacy and failure of appropriate identification on both sides. The Hearing Examiner considers it entirely normal for changes in eligibility to occur over a three-month period. There are such matters to consider as quits, transfers and new hires and the date for eligibility to vote was established as those employed not later than August 22, 1970, by the "Agreement for Consent or Directed Election." Moreover, questions as to whether an employee was employed on the eligibility date or whether he falls within the unit description, have no impact on the basic unit description which was agreed to by all parties. The challenged ballot procedure, which was properly used herein, resolves such questions. But challenges do not normally affect the unit description. Accordingly, the Agreement must be considered final and binding unless, of course, it contains provisions which are contrary to the policy of the Executive Order or established policy of the Assistant Secretary. 7/ The Hearing Examiner is of the opinion that to exclude a group of employees by agreement of the parties, especially under the circumstances of this case where the non-clerical employees of an entire element of the Activity was excluded, does not contravene the policy of the Executive Order or established policy of the Assistant Secretary. It should be noted that the finding might be different if

7/ In a recent Decision and Order issued by the Assistant Secretary, Charleston Naval Shipyard, A/SLMR No. 1, he stated that he did not consider decisions issued in the private sector under the Labor-Management Relations Act, as amended, controlling under the Executive Order, but would take into account experience gained under that Act, as well as policies and practices in other jurisdictions and rules developed in the federal sector under the prior Executive Order 10988. Taking into account experience gained in the private sector under the Labor-Management Relations Act, the National Labor Relations Board likewise considers a consent-election agreement as final and binding unless it is contrary to the Act or established Board policy. See Norris-Thermador Corporation, 119 NLRB 1301; Lake Huron Broadcasting Corporation, 130 NLRB 908, 909-910. cf. Cruis-Along Boats, Inc., 128 NLRB 1019, where the Board honored a stipulation at a hearing that certain employees were non-supervisory when in fact they were. However, the Board stated in Lake Huron Broadcasting Corporation, *supra*, that the policy established by Cruis-Along is limited to stipulations on unit placement made at representation hearings.

the situation were one where the Agreement for Consent or Directed Election specifically included employees who were "management officials" and challenges to their ballots were the subjects of resolution.

In view of the above discussion, it is concluded that the challenged voters assigned to the Programs Management Office on the date of the election were not eligible to vote in the election conducted on August 26, 1970.

III. Challenges of Ballots by Petitioner of Voters contended to be Supervisors or Management Officials within the Meaning of the Executive Order

Section 10(b)(1) of the Executive Order also specifies that a unit shall not be established if it includes any supervisor, except in certain situations provided for in Section 24 of the Executive Order. (The Section 24 exception is not applicable herein.) The "Agreement for Consent or Directed Election" specifically provides in the description of the unit that, "supervisory employees excluded are those occupying positions classified with an S (for supervisor) behind the job number on the official job description." In view of the requirement for exclusion of supervisors from an appropriate unit by the Executive Order coupled with the supervisory definition included in the unit description in the "Agreement for Consent or Directed Election," the issues to be resolved with respect to the supervisory challenges are:

- (1) Were any of the challenged voters involved "supervisors" within the meaning of the Executive Order on the date of the election?
- (2) Assuming that some or all were "supervisors" on the day of the election would they nonetheless be included in the unit inasmuch as they did not meet the definition of "supervisor" set forth in the unit description in the "Agreement for Consent or Directed Election"?

Unlike the term "management official," the term "supervisor" is specifically defined by the Executive Order at Section 2(c) as follows:

"Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in

connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In resolving the first issue as to whether any of the nine voters involved were "supervisors" on the date of the election, necessarily the resolution will be based on whether the voter under discussion performed within the criteria set forth in Section 2(c) of the Executive Order. The nine voters will be discussed in groups according to the element of ALMSA in which they were employed as of the date of the election, and conclusions with respect to the first issue (supervisory status) will be included on an individual basis.

8/
The Readiness Assurance Directorate

Robert M. Rybacki

As of the time of the hearing, Rybacki, classified as a Computer Specialist, was employed as the ALMSA System Management representative on the ALMSA testing management team, a position acknowledged by the Activity to be a management position. However, during the period of time in which the election was conducted, Rybacki was employed by the Implementation Division, Readiness Assurance Directorate.

8/ The mission of this directorate, as described by Activity Exhibit #3, is to plan, direct and control systems integration, implementation and computer operation activities related to the development, implementation and maintenance of standard data systems. Serve as the focal point for AMC Major Subordinate Commands in all matters related to operation of standard systems. Operate, monitor, control and analyze final program/system test to improve efficiency and further, to assure maximum standardization. Receive, analyze and recommend MSC proposals in the area of bridging, changes, problems, and question to insure timeliness of action, systems maintenance and expansion. Operate the Computer Center and maintain the required computer program libraries.

Rybacki's position from July to October, 1970, resulted from a division of the operations of the Implementation Division. In July, 1970, there were 23 employees in the Implementation Division, with grades from GS-3 through GS-13. Although there were a few clerical employees, most were higher ranked employees in grades GS-9 through 13. At that time, the Implementation Division which was located in one building was separated into two buildings. The Division Chief, Glenn Davis, and his assistant chief, Mr. Duffy, moved to Aviation Systems Command (AVSCOM) to manage what was referred to as the "forward effort" and Rybacki was orally advised by Davis that he was to remain at AIMSA with some of the personnel and manage the "backward effort." Approximately 11 employees remained with Rybacki. Rybacki was given official designation "as Certifying Officer."

Rybacki made task assignments to the 11 employees reporting to him. Those assignments were made in line with the function of the Implementation Division which was to test the office system after it was designed, and field the system after it was tested. This work required considerable documentation and assistance in all liaison functions with National Inventory Control Points of the Army Materiel Command. Rybacki would base his decisions as to assignments on the relative experience and capabilities of his personnel. Along with the function of assigning work, he reviewed the work of the assignees. Although Division Chief Davis prepared the career appraisals of all employees in the Implementation Division, Rybacki made recommendations to Davis with respect to evaluation of the 11 employees reporting to him. Rybacki testified that he handled discipline problems, e.g., he had to censure certain employees for tardiness and their punctuality improved after his censure. He was also responsible for approving annual leave for his employees.

One of the employees, a computer programmer who worked under Rybacki, testified that all the employees involved looked on Rybacki as their supervisor, and went to him for solution of their problems.

It is concluded that Rybacki is a supervisor within the meaning of the Executive Order. The definition of "supervisor" in the Executive Order is written in the disjunctive, accordingly to meet the definition it is not necessary that the individual involved possess all the authorities listed in Section 2(c), but the possession of any one of the authorities listed places the employee invested with this authority in the supervisory class. Of course being merely invested with the authority is not sufficient. The true test is whether the employee in fact exercises the authority. The key to Rybacki's supervisory status is that at the time of the election he was the only individual present in the division with authority over the 11 employees remaining. In that capacity, with the type of sophisticated work being performed, his assignments and direction of work were not of a routine or clerical

nature but required the use of independent judgment. He also disciplined employees as evidenced by his testimony concerning the tardiness of certain employees. Moreover, most significant, the employees looked upon Rybacki as their supervisor, and valid basis existed for such judgment on their part. 9/

Marvin Allen Meng

Meng, since September 1, 1970, has been employed as Chief of Operations, GS-13, in the Implementation Division of the Readiness Assurance Directorate. At the time of the election he was classified as a Lead Technician, GS-12, in Test Operations of the Readiness Assurance Directorate. He held this position as Lead Technician for a period running from approximately one week before through three weeks after the election. In this position he was in charge of a second shift of three employees working on test operations from 4 p.m. to midnight. They tested the subsystems of the ALPHA (AMC's Logistics Program Hardcore Automated) System, the name given for the overall automatic data processing system being developed by AIMSA.

There was no higher ranking employee over Meng on the second shift in test operations. Meng gave the assignments to his shift, which were based on his evaluation of the technical competence and ability to communicate of his personnel. Meng could grant time off to employees on his shift, e.g., if an employee wanted to leave early, and could approve annual leave, although the leave slips were not signed by him.

In his present job, Meng is chief of all three shifts, with approximately eight to 16 employees, and he now has the authority to transfer personnel from shift to shift. He also now prepares career appraisals of employees, although during the period of the election he only made recommendations with respect to evaluation of employees.

Meng is also concluded to have been a supervisor within the meaning of the Executive Order on the date of the election. The touchstone in so concluding is that Meng was the only individual on the second shift whom the employees could look to for direction. Meng assigned and directed the work. Being the only individual present with such authority, his assignment and direction of work was not of a routine or clerical nature, but required the use of independent judgment. A significant indicia of his use of independent judgment, was his authority to give employees time off.

9/ Cf. in the private sector, Bama Co., 145 NLRB 1141.

Richard Wargin

Wargin was not available to testify at the time of the hearing. However, William Smith, Director of the Materiel Management Directorate testified that for a period until June 28, 1970, Wargin was Acting Stock Control Chief in the Materiel Management Directorate, where he supervised 50 or 60 employees, including programmers, computer specialists and computer systems analysts. Included in his responsibilities on that job were making assignments to and preparing career appraisals of his employees. That job is acknowledged by the Activity to be a supervisory position. From the period June 28 to September 21, 1970, during which period the election was conducted, Wargin was employed in the Readiness Assurance Directorate, but not under the supervision of William Smith. In October or November, 1970, Wargin returned to the Materiel Management Directorate, as William Smith's Assistant Director, acknowledged by the Activity to be a supervisory or managerial position.

John E. Smith, who is now Special Assistant to the Commander of ALMSA, was Assistant Director of the Readiness Assurance Directorate during the critical period in which the election was conducted. He testified concerning the duties of Wargin performed during the period from June 28 to September 21, 1970, when Wargin worked in the Integration Division of the Readiness Assurance Directorate under the supervision of the Division Chief. Wargin, because of his great knowledge of the functional areas of ALMSA was assigned to coordinate audits and balances in the ALPHA system. His job consisted of counting the number of records or transactions that came into a program, and identify the areas of the ALPHA system where the transactions were happening. He then made recommendations as to sufficiency to implement the system. Wargin's recommendations were submitted to the Division Chief for his approval. The Division Chief, after his approval, would transmit Wargin's work to the Director of the Readiness Assurance Directorate and finally any recommendations adopted would be signed by the Executive Assistant to the Commander for distribution to the appropriate Directorates and other elements of ALMSA.

Although Wargin held an acknowledged supervisory position during a period before the election and now holds an acknowledged managerial or supervisory position, his status at the time of the election is controlling. At this stage the Hearing Examiner is not called upon to determine whether Wargin would at the present time be included in the unit for bargaining purposes if a labor organization gained exclusive recognition. Rather, the Hearing Examiner must determine his status at the time of the election for the purpose of determining his eligibility to vote. Although the Petitioner argues that Wargin's current job should render him ineligible, there is no indication in the record that the job

Wargin held at the time of the election was temporary, nor did the possibility of elevation to a supervisory position in the future merit exclusion. ^{10/} It is clear that Wargin was not a supervisor at the time of the election inasmuch as he had no employees to supervise. His job was that of an automatic data processing technician. Further, applying the tests discussed above with respect to the challenged voters who worked in the Programs Management Office, he was not a "management official."

Systems Concepts Directorate ^{11/}

Herbert B. Pearson, Jr.

Pearson's position is now, and was as of the time of the election, Project Officer, GS-14, in the Systems Concepts Directorate. He reports to the Director, Ralph L. Gunn. There are approximately 39 or 40 employees in the Systems Concepts Directorate, and Pearson is one of four project officers working under Gunn. All four project officer positions were not filled as of the time of the election but the "slots" were available. At present the Project Officers are Pearson, Paul Harris, Grady Reeves, and Ken Dolly (Acting). Pearson is responsible for four project areas, Commodity Command Management Information System (CCMIS), Automated Inquiry Display Entry Reject System (AIDERS), Automated Cost Data Base (ACDB), and Project Management Information System (PROMIS). Pearson has approximately nine employees working in these project areas, each of which has a project leader. Pearson describes the work in his areas, developing systems requirements, as highly sophisticated and complex. He prepares task assignments and may assign work directly to an individual or through a project leader. He edits the work before passing it on to the Director. Pearson coordinates annual leave for his group with the Director. Pearson makes recommendations as to promotions and testified that it was unlikely that a man would receive a promotion if he recommended against it. He also interviews applicants for vacancies in the Directorate, and the Director gives great weight to Pearson's recommendations with respect to filling vacancies. Finally, with respect to his duties, Pearson serves as Acting Director in the absence of the Director. Pearson testified that the Director travels

^{10/} cf. in the private sector, Weaver Motors, 123 NLRB 209.

^{11/} This Directorate is basically involved in the development of new ADP systems requirements and major changes to existing systems.

considerably in connection with his duties, and that since August 1970, the Director has been absent three or four times for varying durations of time. In fact, at the time of the hearing Pearson was Acting Director because of the absence of the Director, who was to be absent for two weeks. Pearson testified that the other three project officers could also act in the Director's absence, however he has been the only Acting Director since August, 1970.

The Activity agrees with the Petitioner that Pearson is a supervisor within the meaning of Section 2(c) of the Executive Order. However, as noted above, the Intervenor contends that Pearson was eligible to vote in the election.

The Systems Concepts Directorate is responsible for developing highly sophisticated automatic data processing systems. In determining supervisory status, the ratio of supervisors to employees should be considered. ^{12/} If the Director, Ralph Gunn, were considered to be the only supervisor for the approximately 39 employees under him, a ratio of only one supervisor for 39 employees engaged in complex projects would appear to be unrealistic. The next employee layer under Gunn is the Project Officers of which one is Pearson. Pearson is responsible for three areas of complex projects in the Directorate. He assigns and directs the work of nine employees, including three project leaders. He interviews applicants for vacancies in the Directorate. He recommends employees for promotions. Such recommendations are effective inasmuch as the record reveals that it is unlikely that an employee would be promoted without Pearson's recommendation. He also has served as Acting Director in the absence of the Director, whose duties require considerable travel. Finally, the Activity concedes that Pearson is a supervisor. In view of all the above, it is concluded that Pearson meets the criteria for a "supervisor" within the meaning of the Executive Order.

Dennis K. Frey and Paul A. Harris, Jr.

Frey and Harris have been joined for discussion since they occupied similar positions as Project Leaders on the date of the election.

^{12/} In the private sector, ratio of supervisors to employees is given great weight in determining supervisory status. See Sanborn Telephone Co., 140 NLRB 512, 515.

Frey is classified as a Computer Systems Analyst, GS-12, in the Systems Concepts Directorate. Since April, 1970, Frey has been utilized as a Project Leader on the Major Items Project. At present one of the four Project Officers in the Systems Concepts Directorate stands between Frey and the Director. However, at the time of the election there was no Project Officer over Frey, and temporarily he was reporting directly to the Director of the Systems Concepts Directorate.

At the time of the election, Frey had three employees, graded GS-11 and GS-12 working with him. As Project Leader, Frey was assigned broad tasks by the Director. (At the time of the hearing he also received assignments from a Project Officer.) Frey would break the tasks down, documented on a task assignment sheet, for assignment to the employees in his work group. In making assignments, he would consider the grades of the prospective assignees and type of work to be done. He would give technical assistance to members of his group, help them in their writing, give constructive criticism, and edit papers before being given to a typist. In fulfilling tasks, the assignees follow set procedures devised by AIMSA. Frey gave an example of the type of work being performed as follows: "We are in the process of developing federal systems requirements and these are a document what the functional person needs in a system, and we break that down, then, into chapters, if you will, and assign them to individuals to work on it." There is an established procedure for chapter requirements and the individual, who has access to the procedure, then proceeds on his own.

With respect to career appraisals, Frey testified that he does not prepare them. However, he could make evaluation judgment recommendations to the Director, who might or might not follow his recommendations. With respect to promotions, an individual might discuss with Frey his qualifications for a promotion, but Frey would refer the individual directly to the Director. Frey has no part in the hiring or firing process.

Harris has had many assignments since his employment at AIMSA, including many staff assignments. At present, and since November 15, 1970, he has been a Project Officer, GS-14, in the Systems Concepts Directorate, a position similar to that performed by Pearson, described above.

For a period of time prior to the election, in approximately July and Early August, 1970, Harris was assigned outside of AIMSA to AVSCOM in a test group consisting of 30 to 40 people. This group reported at various times to Mr. Lux, the Executive Assistant to the Commanding Officer of AIMSA, or to some designated director. Harris

worked in the group as a Staff Writer to develop a test plan or communication vehicle between ALMSA and AVSCOM which supplies certain support to ALMSA.

During a period of approximately four weeks, including the date of the election, August 26, 1970, Harris was a Project Leader working under Pearson. At the time he was classified GS-13, and had four to six employees, with grades of GS-11 and GS-12 working with him. The group was engaged in developing a standards performance indicator for commodity commands automatic data processing systems. His job was to give technical advice to his group and check and edit their work. He also personally worked on various tasks assigned to him. He gave "intermediate" approval to annual leave requests. Harris did not evaluate personnel.

At various intervals during latter 1970 until November 15, 1970, when he was assigned to his present job, Harris worked on several special projects.

It is concluded that Frey and Harris were not supervisors within the meaning of the Executive Order as of the date of the election. 13/ As Project Leaders, they acted as more skilled employees assisting less skilled employees. As testified there were set procedures for the work to be performed, and these procedures were followed by the individual employee working on his own. Any recommendations made by Frey or Harris with respect to annual leave, career appraisals or promotions were merely those of a more skilled employee concerning a less skilled employee and were not effective, for, as testified, the Director might or might not follow the recommendation. (Where an employee's recommendations are not acted on without an independent investigation his recommendations are not effective, and he does not have the attributes of a "supervisor" as set forth in the Executive Order. 14/) Finally, if Harris and Frey were considered supervisors along with other project leaders, the ratio of supervisors to employees would be highly unrealistic, and as noted above such ratio should be taken into account in determining supervisory status. As there are approximately 39 employees in the Systems Concepts Directorate, and in view of the Hearing Examiner's conclusion above that Project Officer Herbert Pearson is a supervisor, there would be five supervisors included among the 39 employees in the Directorate, four Project Officers (albeit all slots were

13/ As in the case of Richard Wargin discussed above, the fact that Harris might now be holding a supervisory position is not controlling; rather, the Hearing Examiner is concerned with Harris's position at the time of the election.

14/ cf., in the private sector, Security Guard Service, 154 NLRB 8.

not filled at the time of the election) and the Director. If the Project Leaders, and at least three (Harris, Frey, and Mrs. Lorenz) are named in the record, although presumably there are more, were also included as supervisors, the number of supervisors would be highly unreasonable. Accordingly, Harris and Frey were not supervisors as of the date of the election.

Randall Sigite

Sigite is employed as a Computer Systems Analyst, GS-13, Systems Concept Directorate. He has held this position since June 14, 1970, although for several months previously he held an acknowledged supervisory position, that of Acting Chief of the Management Information Systems Branch. At the time of the election and at present he works in a group along with two other employees, of which one is the Project Leader, Mrs. Lorenz. Mrs. Lorenz, in turn, reports to her Project Officer, Mr. Pearson, whose position is described above. Mrs. Lorenz's group was working on standard performance indicators in the area of commodity command management information systems (CCMIS) at the time of the election. When Sigite has technical problems in connection with his work he takes them up with Mrs. Lorenz or he and Mrs. Lorenz discuss them with Pearson. For personnel problems, such as leave, he clears with Mr. Gunn, the Director. He has attended one meeting of the steering committee for the commodity management systems with Mrs. Lorenz. This committee consists of representatives from the commodity commands and is made up of functional and automatic data processing personnel.

Sigite, although he held a supervisory position until June, 1970, was clearly not a supervisor within the meaning of the Executive Order at the time of the election. He was and is now a computer systems analyst, working under Project Officer Pearson, through Project Leader Lorenz. There are no employees reporting to Sigite. Sigite is also not a "management official" applying the criteria discussed above with respect to the challenged voters working in the Programs Management Office.

Esther S. Gober

Miss Gober is currently employed as a Program Analyst in the Systems Concepts Directorate. Her ballot was challenged by both the Petitioner and Activity, the Petitioner challenging on the ground that she was supervisory or managerial and the Activity on the ground that she was a non-clerical employee in the Programs Management Office. However, the Activity has withdrawn its challenge to her ballot because she transferred to her present position from the Programs Management Office on August 17, 1970, (a date prior to the election).

Miss Gober, under the supervision of Project Officer Grady Reeves, performs program analysis work on subcells, manpower surveys, and floor planning.

Subcells are the subsystems within the Automatic Data Processing System. Miss Gober maintains a knowledge of the total subcells assigned for ALMSA development, and she assures that the regulations are updated, and recommends through Mr. Reeves if updating is required. She prepares packages of the subcell systems for the agency arranged according to missions, functions, and subfunctions.

Miss Gober's function with respect to floor planning is limited to the Systems Concepts Directorate. The Director allocates space and resolves any problems, but Miss Gober assists in the actual office layout work by breaking down the space according to regulations with respect to prescribed square footage per individual.

With respect to manpower surveys, she prepares reports on manpower within the directorate based on requirements submitted by the various Project Officers. In preparing the reports she must engage in a certain amount of analysis to make certain they conform with the guides set up for the directorate. She can make recommendations to the Director with respect to manpower requirements. The surveys are fed through the Director to the Programs Management Office and the Commander of ALMSA makes determinations as to ALMSA manpower within Army Materiel Command guidelines which surveys manpower requirements of each organization.

Miss Gober does not supervise any personnel, and looks to Project Officer Reeves or the Director for guidance and supervision. Her job description indicates that she functions under very general supervision, and that her work is subject to spot check review for compliance with policy and guidance and for adequacy of results achieved.

Mrs. Gober, like Sigite, also is not a supervisor as no employees report to her. Likewise she is not a "management official" applying the criteria discussed above with respect to the challenged voters assigned to the Programs Management Office.

15/
Materiel Management Directorate

Raymond Rahn

Rahn, who was transferred from ALMSA to a position in Washington, D. C. on December 6, 1970, was employed from May, 1970, to the date of his transfer as Acting Chief of the Special Requirements Branch, Supply Management Division, Materiel Management Directorate. There were approximately 15 employees in the branch including computer programmers and specialists. Rahn made the assignments in the Branch, adjusted personnel problems, gave work direction to the employees, approved and signed annual leave requests, and rated employees through preparation of career appraisal forms.

As a Branch Chief, Rahn clearly performed as a supervisor within the meaning of the Executive Order at the time of the election. He gave assignments to the 15 employees under him, adjusted personnel problems, and most significantly he evaluated employees through preparation of their official career appraisals. See The Veterans Administration Hospital, Augusta, A/SIMR No. 3.

Conclusion as to Eligibility of
Supervisors to Vote in view of
Consent Election Agreement
Definition of Supervisors

Having concluded above that Richard Wargin, Dennis K. Frey, Paul Harris, Randall Sigite and Esther Gober were not supervisors within the meaning of the Executive Order on the date of the election, they were eligible to vote, and it will be recommended that their ballots be opened and counted. However, the Hearing Examiner has concluded that Robert Rybacki, Marvin Meng, Herbert Pearson and Raymond Rahn were supervisors within the meaning of the Executive Order on the date of the election. Under Section 10(b)(1) of the Executive Order "supervisors" should be excluded from the unit. But, the "Agreement for Consent or Directed Election" executed by the parties defines supervisors as those occupying positions classified with an S (for supervisor) behind the job

15/ The mission of this Directorate is to direct and control the development documentation, maintenance and user implementation assistance of standard information and data systems in the areas of supply management and stock control.

number on the official job description, and these employees do not meet that definition. As stated above, in connection with the Hearing Examiner's conclusions on the status of the challenged voters in the Programs Management Office, a consent election agreement is final and binding unless it contravenes the policy of the Executive Order or policy established by the Assistant Secretary. In this matter it is the opinion of the Hearing Examiner that to include supervisors in the unit would contravene the policy of the Executive Order, which specifically states that a unit shall not be established if it includes any supervisor. The reasons for the policy of excluding supervisors are well stated in the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service dated August, 1969, at paragraph C. titled, "Status of Supervisors":

We view supervisors as part of management, responsible for participating in and contributing to the formulation of agency policies and procedures and contributing to the negotiation of agreements with employees. Supervisors should be responsible for representing management in the administration of agency policy and labor-management agreements, including negotiated grievance systems, and for expression of management viewpoints in daily communication with employees. In short, they should be and are part of agency management and should be integrated fully in that management.

In view of the above, it is concluded that Robert Rybacki, Marvin Meng, Herbert Pearson and Raymond Rahn, as supervisors, were not eligible to vote in the election.

IV. RECOMMENDATIONS

On the entire record it is recommended:

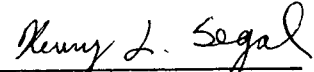
1. That in accordance with the stipulation of the parties the challenges to the ballots of C. Dengler, Gerald Holmstrom, Don Larose, S. Lindley, Charles Newton, and R. Patterson be sustained and that their ballots not be opened and counted.

2. That in accordance with the stipulation of the parties the challenge to the ballot of John Rathmann be overruled and that his ballot be opened and counted.

3. That the challenges to the ballots of Ora Edwards, Mary Gorman, John Peterie, Cleo Furlong, Marvin Porter and Chalmer Tucker be sustained and their ballots not be opened and counted.

4. That the challenges to the ballots of Richard Wargin, Dennis K. Frey, Paul Harris, Randall Sigite and Esther Gober be overruled and that their ballots be opened and counted.

5. That the challenges to the ballots of Robert Rybacki, Marvin Meng, Herbert B. Pearson, Jr., and Raymond Rahn be sustained and their ballots not be opened and counted.


Henry L. Segal
Hearing Examiner

Dated at Washington, D. C.
January 21, 1971

December 9, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
NATIONAL CAPITAL PARKS
A/SLMR No. 114

A/SLMR No. 114

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

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
NATIONAL CAPITAL PARKS 1/

Activity

and

Case No. 22-2438 (RO)

LOCAL 1757, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Andrew B. Beath. The Hearing Officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed. 2/

Upon the entire record in this case, including briefs filed by the parties, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

1/ The name of the Activity appears as amended.

2/ The Hearing Officer deferred ruling on a motion by Petitioner's attorney to strike certain portions of the testimony of a witness for the Activity. Although the basis for the motion to strike was that the witness had based his testimony on a document which had not been entered into evidence, such document subsequently was made an exhibit and made part of the record. In these circumstances, I find that no prejudicial error was committed. Accordingly, the motion to strike is denied.

The subject case involved a petition filed by Local 1757, National Federation of Federal Employees, (NFFE) seeking a unit of all non-supervisory Wage Board and wage leader employees, including temporary employees who have an appointment of 180 days or more on a recurring basis. The Activity took the position that the only appropriate unit would be one consisting of all nonsupervisory employees in both the Wage Board (WB) and General Schedule (GS) categories in view of their overall community of interest.

The Assistant Secretary found that a unit composed solely of WB and work leader employees, as proposed by the NFFE, was not an appropriate unit for the purpose of exclusive recognition. In reaching this determination, he noted that both WB and GS employees of the Activity are covered by centralized personnel policies and practices and that employees in all job categories and pay systems have regular on-the-job contact, as well as being under common supervision. Further, he noted that they share similar working conditions, such as shift work and overtime. Accordingly, the Assistant Secretary concluded that the claimed unit was inappropriate in that it did not include GS employees who share a community of interest with the petitioned for employees. Moreover, he determined that such a fragmented unit would not promote effective dealings and efficiency of operations.

Accordingly, the Assistant Secretary ordered that the petition be dismissed.

2. Local 1757, National Federation of Federal Employees, herein called NFFE, seeks an election in a unit of all Wage Board and work leader employees, including temporary employees who have 180 days or more appointments on a recurring basis in the National Capital Park Service, excluding supervisors, managerial officials, employees engaged in Federal personnel work in other than a purely clerical capacity, other temporaries, and park police (guards). 3/

The NFFE takes the position that because the Wage Board (WB) employees are under a different pay system, have a different standard for overtime pay and are often subject to hazardous working conditions, a unit composed solely of WB employees would be appropriate. The Activity, on the other hand, takes the position that a unit composed of both the WB and General Schedule (GS) employees, including temporary employees with 9 months of continuous employment, would comprise an appropriate unit under the Order. Such a unit, in the Activity's view, would provide economical and efficient management, thus promoting effective dealings and efficiency of operations.

The Activity is the largest line unit of the National Park Service, operating in Maryland, Virginia and the District of Columbia and encompassing approximately 50,000 acres of land. Its mission is to make effective use of the park facilities within the District of Columbia and adjacent areas in providing a variety of recreational and other services to visitors and local residents.

Organizationally, the Activity is composed of nine administrative units 4/, each headed by a superintendent, who reports to the central headquarters unit 5/. There are 726 WB employees in the claimed unit and 317 nonsupervisory permanent GS employees working throughout the Activity. The Activity has a centralized personnel management program, with both the WB and GS employees under the central control of the Personnel Officer. Employees in both the WB and GS categories participate in the same merit promotion and transfer plans, as well as in the same incentive awards program; orientation program and counseling service;

3/ The unit appears as amended at the hearing. Although the NFFE amended its petition to include the "180 day" temporary employees, no attempt was made to define the term "temporaries" as used in the exclusionary portion of the unit description.

4/ Although witnesses testified that there are 8 administrative units, the evidence presented at the hearing established that there are, in fact, 9 such units.

5/ The Activity Headquarters is located on Ohio Drive in the National Capital Park Central Area. The nine administrative units are: Catoctin Mountain Park, Baltimore-Washington Parkway, Antietam - C and O Canal, Prince William Forest Park, National Capital Park North, National Capital Park Central, National Capital Park East, George Washington Parkway and Wolf Trap Farm Park.

employee development program; grievance and appeals procedures; reduction in force procedures; credit union facilities; first-aid and safety regulations; health and life insurance; and other benefits and services. Additionally, the evidence reveals that both WB and GS employees serve on the Promotion and Evaluation Committee, the Director's Incentive Award Committee and the Director's Safety Committee, without any distinction as to employee categories or job classification.

According to the record, both WB and GS employees are located at the various sections of the Activity's administrative units, such as Greenbelt Park, Ford's Theater, Branch of Memorials and Monuments, Branch of Office Services and Branch of Construction and Repair. The evidence shows also that WB and GS employees share common supervision in many instances and, at National Capital Park Central, Brentwood, Ford's Theater, Catoctin Folk Culture Center and other locations, regularly work together and fill in for each other whenever necessary. Further, the record reveals that there are transfers of employees from one pay system to another either by way of lateral transfers or promotions. Moreover, nearly all employees wear some type of uniform 6/, share eating and parking facilities and perform outside work in one form or another. In addition, all employees regularly work on shifts and receive overtime at some locations, such as Baltimore-Washington Parkway, National Capital Park Central, Prince William Forest Park, Wolf Trap Farm Park, Brentwood and Parks For All Seasons.

In support of its position that a separate unit of WB employees is appropriate, the NFFE presented evidence to show that WB and GS employees are paid under different systems and are subject to different terms and conditions of employment. In this connection, it was established that WB employees who work overtime are required to receive time and a half, while GS employees have the option of either receiving time and a half, or accepting compensatory time. The evidence indicated also that some WB employees may be exposed to certain hazardous conditions of employment, such as working near water, climbing trees or operating potentially dangerous machines and equipment, whereas GS employees are not required to perform under such conditions.

Based upon a consideration of all of the factors described above, I find that the employees classified as WB, sought by the NFFE, do not have a community of interest which is separate and distinct from the Activity's employees classified as GS. As noted above, the evidence reflects centralized personnel policies and programs which are common

6/ The WB employees generally wear a work type uniform, while several classifications of GS employees wear a non-work type uniform. While WB employees receive an annual uniform allowance of \$50, the GS employees receive \$100.

December 13, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

U.S. ARMY CORPS OF ENGINEERS,
ST. LOUIS DISTRICT, ST. LOUIS, MISSOURI
A/SLMR No. 115

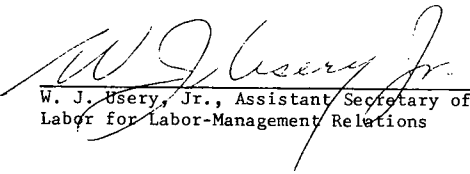
to both classifications as well as the fact that there are transfers from one category to another. Also, the WB and GS employees share similar working conditions, have common supervision and regular on-the-job contact, mutually assist each other in the course of their assignments, and share common eating and parking facilities.

In these circumstances, I find the unit petitioned for by the NFFE to be inappropriate for the purpose of exclusive recognition under Executive Order 11491 in that it does not include GS employees who share a community of interest with the claimed employees. Moreover, I find that such a fragmented unit would not promote effective dealings and efficiency of agency operations. Accordingly, I shall order that the NFFE's petition be dismissed. ^{7/}

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 22-2438(RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
December 9, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

The subject case arose as the result of a petition filed by Local R14-96-C, National Association of Government Employees (NAGE), seeking an election in a unit of all Wage Board employees in the Engineering Division of the U.S. Army Corps of Engineers, St. Louis District, who work out of the Service Base, Foot of Arsenal Street, St. Louis, Missouri. The Activity contended that the unit sought was inappropriate because: (1) the employees in question did not possess a separate and distinct community of interest apart from the General Schedule employees of the Engineering Division headquartered at the Foot of Arsenal Street Service Base and (2) the proposed unit would not promote effective dealings and efficiency of agency operations.

Under all the circumstances, the Assistant Secretary found that the unit of Wage Board employees sought by the NAGE was not appropriate for the purpose of exclusive recognition under the Executive Order. In this regard, he noted that, despite separate pay classifications, there was functional integration and close contact between the Wage Board employees sought by the NAGE and the General Schedule employees at the Service Base. He noted also that Wage Board and General Schedule employees had the same terms and conditions of employment, shared common supervision and were subject to the same personnel policies. Moreover, the Assistant Secretary found that in the circumstances, a unit limited to Wage Board employees would not promote effective dealings or efficiency of agency operations.

Accordingly, the Assistant Secretary ordered that the NAGE's petition be dismissed.

^{7/}In view of my determination with respect to the inappropriateness of the claimed unit, it was considered unnecessary to make any findings as to the inclusion or exclusion of temporary employees in either of the classifications noted above.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY CORPS OF ENGINEERS,
ST. LOUIS DISTRICT,
ST. LOUIS, MISSOURI

Activity

and

Case No. 62-2409(RO)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R14-96-C

Petitioner

DECISION AND ORDER

Pursuant to a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Arno Cooper. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.

2. The Petitioner, National Association of Government Employees, Local R14-96-C, herein called NAGE, seeks an election in a unit of all Wage Board employees in the Engineering Division of the U.S. Army Corps of Engineers, St. Louis District, who work out of the Service Base, Foot of Arsenal Street, St. Louis, Missouri, excluding employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, supervisors, guards, and all employees covered under exclusive recognition by the National Association of Government Employees, Local R14-96. 1/ The Activity

1/ The unit appears as amended at the hearing.

takes the position that (1) the proposed unit is inappropriate because the Wage Board employees in question do not possess a community of interest separate and apart from the General Schedule employees of the Engineering Division who similarly are headquartered at the Foot of Arsenal Street Service Base and (2) the proposed unit would not promote effective dealings and efficiency of agency operations.

The St. Louis District Corps of Engineers is engaged essentially in the planning, construction, operation and maintenance of improvements of rivers, harbors and other waterways for navigation, flood control, and other water uses. To accomplish its mission, the St. Louis District is divided into three major organizational components: (1) the Advisory and Administrative Staff; (2) the Technical Staff; and (3) a number of Field Offices. The Technical Staff consists of the Operations, Construction, Real Estate, Supply, and Engineering Divisions.

The Engineering Division is divided into seven branches, which, in turn, are subdivided into various sections. The evidence reveals that there are approximately 250 employees in the Engineering Division, some 42 of whom are headquartered at the Service Base located at the Foot of Arsenal Street in St. Louis. The remainder of the Engineering Division employees are located in the District Office at 210 North Twelfth Street, St. Louis, Missouri. The three sections of the Engineering Division, which are based at the Foot of Arsenal Street are the Subsurface Exploration Section and the Laboratory Section of the Foundation and Materials Branch, and the Survey Section of the Survey Branch. The Wage Board employees at the Service Base consist of 12 core drill operators located in the Subsurface Exploration Section and 3 survey boat operators located in the Survey Section. The remainder of the Engineering Division complement at the Service Base consists of approximately 27 General Schedule employees in the job classifications of Civil Engineer, Geologist, Civil Engineering Technician, Survey Technician, Engineering Aid, and Survey Aid.

The employees of the Engineering Division at the Foot of Arsenal Street are engaged in the collection and evaluation of basic engineering field data for use in the development of civil works projects by the Corps of Engineers. Requests for surface and subsurface investigations emanate from the Chief of the Engineering Division, through the Chiefs of the Foundation and Materials Branch and the Survey Branch, to their respective sections. The section heads then carry out the necessary operations through their core drillers, inspectors, laboratory technicians, and surveyors. The record reveals that working parties from the Subsurface Exploration and Survey Sections proceed to the field where surveyors locate the boring sites. They are followed by the core drillers who make the borings which are picked up weekly by the laboratory for prime identification analysis. As the investigation proceeds, there may be requests from the laboratory requiring additional

explorations based upon information obtained. The survey boat operators of the Survey Section operate boats when certain types of surveys are made on the river, an operation which occurs two to four months out of the year. The record reveals, also, that the survey boat operators are assigned to survey parties during the winter months.

The foregoing evidence demonstrates that the surveyors, core drillers, and laboratory personnel work on the same project in the same area with a unity of purpose. All of the data which is collected by the different sections is noted in a "boring log", which is the basic source of information for the project's design and which provides the necessary information for construction planning by contractors.

The record discloses that all Service Base personnel, including those in the claimed unit, acquire their tools and supplies at a common location at the Service Base. Also, the teams from the different sections experience similar problems because of the nature of their field operations. All Engineering Division personnel headquartered at the Service Base share the same over-all supervision by the Chief of the Engineering Division. Generally, the immediate supervision of Wage Board and General Schedule employees at the Service Base is by supervisors in their respective classifications. However, above the immediate supervision level are General Schedule supervisors who have responsibility for both Wage Board and General Schedule employees. The record reveals also that both General Schedule and Wage Board employees at the Service Base are subject, in most instances, to the same personnel policies and regulations, including health and insurance benefits, and the same grievance and appeals system, merit promotion plan, and reduction in force regulations. ^{2/}

In support of its contention that the Wage Board employees have a community of interest separate and apart from that of the General Schedule employees, the NAGE places primary emphasis on the fact that these employees have separate pay classifications. While the existence of separate pay classifications is a factor in the determination of community of interest, in my view, this factor, in the subject case, is offset by the substantial evidence, discussed above, of the close relationship between the Wage Board and General Schedule employees at the Service Base.


^{2/} However, there are different reduction in force procedures for Wage Board and General Schedule employees, as well as a separate retention register for each classification.

Therefore, based on the foregoing I find that the unit sought by the NAGE would constitute an artificial fragmentation of employees who do not possess a clear and identifiable community of interest apart from other Service Base personnel. Moreover, in my view, such a grouping of employees would not promote effective dealings or efficiency of agency operations. Accordingly, I shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 62-2409(RO) be, and it hereby is, dismissed.

Dated, Washington, D.C.
December 13, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

December 16, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, REMAND AND DIRECTION OF ELECTIONS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, SCHENCK CIVILIAN
CONSERVATION CENTER, NORTH CAROLINA AND
FOREST SERVICE, NATIONAL FORESTS OF NORTH CAROLINA
A/SLMR No. 116

This case arose as a result of representation petitions filed by the American Federation of Government Employees, AFL-CIO, Local 2694 (AFGE) and the National Federation of Federal Employees, Local 1563 (NFFE). The AFGE sought to represent a unit of all professional and nonprofessional Wage Board and General Schedule employees of the Schenck Civilian Conservation Center (one of two Job Corps Centers located in the National Forests of North Carolina). The NFFE sought an Activity-wide unit of all employees in the National Forests of North Carolina, including employees of the two Civilian Conservation Centers.

As in United States Department of Agriculture, Black Hills National Forest, A/SLMR No. 58, the Assistant Secretary found that a unit comprising employees in both a National Forest and a Civilian Conservation Center was not appropriate for the purpose of exclusive recognition. He noted that while the mission of the Forest Service is the implementation of policies and regulations concerned with the conservation and protection of natural resources, the main concern of the Civilian Conservation Center is the development of human resources. Although administered by the Department of Labor in consultation with the Department of Agriculture, the Assistant Secretary observed that the Civilian Conservation Centers are located geographically apart and function independently of the Ranger Districts and other components of the Forest Service. Also, the evidence disclosed that there is little or no interchange among employees of these two organizational entities and that the work performed by personnel assigned to the Centers involves essentially different skills, education and experience requirements.

On the basis of the above, the Assistant Secretary found that an Activity-wide unit of all employees in the National Forests of North Carolina, excluding the employees of the two Civilian Conservation Centers, was appropriate. Accordingly, the Assistant Secretary directed that elections be conducted in the unit found to be appropriate with professional employees being accorded a self-determination election before being included in a unit with nonprofessionals. Because the unit found appropriate was substantially different than that sought initially, the Assistant Secretary directed the Activity to post copies of a notice in the appropriate unit in order to ascertain the existence of any additional intervenors in that unit.

With respect to the petition filed by the AFGE, the Assistant Secretary found that because of the lack of pertinent information regarding the interrelationship of the two Civilian Conservation Centers in the National Forests of North Carolina, the record provided a less than adequate basis for determining the appropriateness of the unit comprising only the employees of the Schenck Civilian Conservation Center. Accordingly, the Assistant Secretary remanded the case to the appropriate Regional Administrator to obtain additional evidence.

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

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, SCHENCK CIVILIAN
CONSERVATION CENTER,
NORTH CAROLINA 1/

Activity

and

Case No. 40-2692(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2694

Petitioner

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, NATIONAL FORESTS
OFF NORTH CAROLINA

Activity

and

Case No. 40-2914(RO)

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1563

Petitioner

DECISION, REMAND AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 6 of Executive Order 11491,
a consolidated hearing was held before Hearing Officer Renee B. Rux.

1/ The name of the Activity appears as amended at the hearing.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and, except as indicated herein, are hereby affirmed. 2/

Upon the entire record in these cases, including briefs filed by the parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 40-2692(RO), the American Federation of Government Employees, AFL-CIO, Local 2694, herein called the AFGE, seeks an election in a unit of all professional and nonprofessional General Schedule and Wage Grade employees of the Schenck Civilian Conservation Center in the National Forests of North Carolina, excluding management officials, supervisors, guards, temporary employees and employees engaged in Federal personnel work in other than a purely clerical capacity.

In Case No. 40-2914(RO), the National Federation of Federal Employees, Local 1563, herein called NFFE, seeks an election 3/ in a unit of all professional and nonprofessional General Schedule and Wage Grade employees assigned to the Forest Supervisor's Office, ten Ranger Districts and two Civilian Conservation Centers in the National Forests of North Carolina 4/, excluding all management officials, employees engaged in Federal personnel work other than in a purely clerical capacity and guards and supervisors as defined in Executive Order 11491. 5/

2/ At the hearing, the Hearing Officer erroneously permitted the Activities' representative to introduce into evidence his written opening statement containing certain matters of fact. Because the factual matters contained in the statement were introduced without being subject to cross-examination, I consider them to have no probative value and they have not been relied upon in reaching my decision herein. However, I have considered those facts contained in the opening statement which were adduced subsequently at the hearing and were subject to cross examinations. In the circumstances discussed above, I find that none of the parties herein was prejudiced by the erroneous acceptance of the Activities' written opening statement into evidence.

3/ During the hearing, the AFGE moved to dismiss the petition filed by the NFFE based on the view that it was untimely under Section 202.5 of the Assistant Secretary's Regulations. The Hearing Officer referred this motion to the Assistant Secretary for decision. In view of the particular circumstances of this case, including the appropriate unit findings discussed below, the AFGE's motion is denied.

4/ The record reveals that these are the Schenck Civilian Conservation Center (sought by the AFGE) and the Arrowood Civilian Conservation Center, also referred to herein as the Job Corps Centers.

5/ The unit appears as amended at the hearing.

The Activities, in essential agreement with the NFFE, take the position that the appropriate unit herein should include all permanent nonsupervisory General Schedule and Wage Grade employees assigned to the Forest Supervisor's Office, the ten Ranger Districts of the National Forests of North Carolina and the two Civilian Conservation Centers. Additionally, the Activities further contend that employees classified as "temporary" or "seasonal" should be excluded unless they have worked during two or more seasons. 6/ The Activities object to the unit proposed by the AFGE on the ground that such a unit, among other things, would result in an unreasonable fragmentation of employees who constitute an appropriate bargaining unit. 7/

The Forest Service, under the overall direction of the Secretary of Agriculture, is responsible for the conservation and utilization of the national forests and grasslands. These functions are the direct responsibility of the Washington Office, which is under the direction of the Chief of the Forest Service, who reports to the Secretary of Agriculture through the Assistant Secretary for Rural Development and Conservation. The Washington Office is organized administratively into 5 functional divisions. 8/ For the purpose of administering all activities except Research and State and Private Forestry, the Forest Service is organized into 9 Regions. 9/ Each of the 9 Forest Service Regions encompasses one or more states and the state or states involved may include one or more National Forests. Each Region is administered by a Regional Office which is under the direction of a Regional Forester. The Regional Forester is a line administrative officer. He is responsible to the Chief of the Forest Service in Washington, D. C. for the operation of the National Forests within his jurisdiction. The Regional Offices are further subdivided

6/ The record reveals that there are employees working in the various components of the National Forests of North Carolina under appointments not to exceed 700 hours, 180 days or 220 days.

7/ In a telegram to the Area Administrator prior to the hearing, the Activities indicated that the Job Corps Centers herein may be considered as a separate unit and it was proposed that employees of the two Job Corps Centers be excluded from the claimed unit. However, in a subsequent telegram, the Activities changed their position and contended that the appropriate unit should include the two Job Corps Centers. In this latter regard, the Activities submit that there is an overriding community of interest among employees under the supervision of the Forest Supervisor's Office.

8/ These divisions are (1) the National Forest System, (2) Program Planning and Legislation, (3) Research, (4) Administration, and (5) State and and Private Forestry.

9/ The petitions herein involve certain employees of the Southern Region whose Regional Office is in Atlanta, Georgia and which includes the States of Virginia, Kentucky, North Carolina, South Carolina, Tennessee, Arkansas, Oklahoma, Florida, Alabama, Mississippi, Louisiana and Texas.

into other line components including, in order of administrative importance, Forest Supervisors' Offices and 778 Ranger Districts, each of which is managed by a District Ranger. 10/ Thus, the line of authority for administering the activities of the Forest Service runs from the Chief to the Regional Forester to the Forest Supervisor to the District Ranger.

According to the evidence of record, Forest Supervisors have the same overall responsibility at their Forest level as the Chief and the Regional Forester have at their respective levels. Their functions include providing supervision designed to insure compliance with the Forest Service policy and procedural work standards. The Forest Supervisor's Office is organized mainly to provide direction, coordination and control of the work done at the Ranger Districts. The Ranger District is the basic operating unit of the National Forest. 11/ Ranger Districts are manned to meet the specific workload needs of each National Forest as determined by workload analysis and available funds.

Employees in the Forest Supervisor's Office at Asheville, North Carolina are subject to the same personnel policies, promotion procedures and other working conditions as those in the 10 Ranger Districts of the National Forests of North Carolina. Also, there is a similarity of skills among employees of the various Ranger Districts and those of the Forest Supervisor's Office. 12/

Under the terms of an agreement between the Secretary of Labor and the Secretary of Agriculture, the Forest Service also participates in the operation of the Civilian Conservation Centers (Job Corps Centers) which are located in some National Forests. 13/ Although the Centers are

10/ As noted above, the NFFE is seeking a unit which consists of the employees of the Forest Supervisor's Office and the employees of the ten Ranger Districts and the two Civilian Conservation Centers which come under the jurisdiction of that Office. The Forest Supervisor's Office has jurisdiction over the four National Forests of North Carolina which are the Pisgah, the Nantahala, the Uwharri, and the Croatan National.

11/ In the instant case, the Forest Supervisor, whose office is located at Asheville, North Carolina, is responsible to the Regional Forester for the direction and control of the 10 Ranger Districts located throughout the 4 National Forests of North Carolina.

12/ The Forest Supervisor's staff includes Foresters, Civil Engineers, Budget and Accounting Analysts, Forestry Technicians, Purchasing Agents, Clerk Typists and other professional, technical and clerical classifications. Some of the aforementioned classifications, e.g., Forestry Technician, Purchasing Agent, Clerk Typists, Clerk, etc., also exist in the Ranger Districts.

13/ Although the Job Corps originally was established under the Office of Economic Opportunity, the Department of Labor, in coordination with the Department of Agriculture and the Department of the Interior, assumed administrative responsibility in July 1969.

separate administrative entities, they are, in the Forest Service organizational scheme, parallel to the Ranger Districts and report on administrative matters to the Forest Supervisors. While technical guidance to the Center Director regarding education and training of Job Corps enrollees is given by staff specialists in Washington, D. C., responsibility and authority for administration are vested in the Forest Supervisor and the Center Director.

The Schenck Civilian Conservation Center, petitioned for by the AFGE, is one of two conservation centers operated in the National Forests of North Carolina. It is located in the Pisgah Forest approximately 45 miles south of the Forest Supervisor's Office, 15 miles east of the Arrowood Center, (the other Civilian Conservation Center), and about 3 miles from the nearest Ranger District. The highest ranking official at the Center is the Center Director. His supervisory responsibilities include the authority to approve leave and overtime. He also has authority to hire temporary employees below grades GS-5 and WG-10 for periods not to exceed 700 hours.

As I noted in my prior decision involving the Black Hills National Forest 14/, the mission of Civilian Conservation Centers, such as Schenck, is to develop human resources. Thus, the Schenck Center provides Job Corps enrollees with basic education, work training and experience as well as the social skills necessary to prepare them for responsibilities of citizenship and to increase their opportunities for employment. The corpsmen assigned to the Civilian Conservation Centers are trained according to Job Corps training standards established by the Department of Labor's Manpower Division in consultation with the Department of Agriculture's Forest Service. To effectuate such programs, the Schenck Center has a personnel staff which includes elementary education teachers, guidance counselors, vocational training instructors, group leaders and cooks. The training, which includes such vocations as carpentry, painting, masonry, cooking and operation of heavy equipment, is conducted almost exclusively by personnel assigned to the Schenck Center. 15/ The length of such training is commensurate with the needs of the individual but generally may not exceed two years. As part of their training, corpsmen, accompanied by the Schenck instructor, may assist the Forest Service in certain projects such as the construction and maintenance of roads and recreational facilities. Although it appears that a few of the employees currently assigned to the work program area at the Schenck Center may have worked formerly with the Forest Service, there is no indication that the

14/ United States Department of Agriculture, Black Hills National Forest, A/SLMR No. 58.

15/ The record discloses that, on occasion, employees of the Forest Service are requested to instruct corpsmen on firefighting or tree climbing techniques but not as a regular teacher or instructor.

Center Director or any of the teachers and counselors currently assigned to the Schenck Center were employed formerly by the Forest Service in any capacity.

Based on the foregoing, I find that the unit sought by the NFFE, composed of employees in the Forest Supervisor's Office and the employees of the 10 Ranger Districts and the two Civilian Conservation Centers is not appropriate. As noted in the Black Hills National Forest decision, cited above, the mission of the Civilian Conservation Centers and the Forest Service are distinct and separable. Although the Centers are administered by the Department of Labor in consultation with the Department of Agriculture, they are geographically separated from the Ranger Districts and other organizational components of the Forest Service and they function as separate entities independent of the Ranger Districts and other components of the Forest Service. Moreover, the personnel assigned to the Centers have separate supervision and require essentially different skills, education and experience than that of the Forest Service employees. In addition, there is little or no interchange among employees of the Centers and the Forest Service.

In view of the foregoing circumstances, it appears that the employees of the Schenck, and possibly the employees of the Arrowood Civilian Conservation Centers, together share a clear and identifiable community of interest which is separate and distinct from the remaining Forest Service employees of the National Forests of North Carolina. As to the Forest Service employees, I find, for the reasons cited above, that the employees of the Forest Supervisor's Office and the 10 Ranger Districts located in the National Forests of North Carolina, share a clear and identifiable community of interest and thus constitute a separate appropriate bargaining unit. 16/

With respect to the Activities' position that employees classified as "temporary" or "seasonal" should be excluded from the claimed units unless they have worked during two or more seasons, the record discloses there are approximately 80 such employees assigned to the various Forest Service facilities in the National Forests of North Carolina. Of this number, approximately 50 have worked during two or more seasons and some have worked as many as 9 consecutive seasons. The evidence does not indicate that these employees receive separate supervision, nor does it show that they perform duties or are subject to working conditions which are different from those of the permanent employees of the Forest Service. For reasons stated in U. S. Department of Agriculture, Forest Services, Santa Fe National Forest, Santa Fe, New Mexico, A/SLMR NO. 88, I am persuaded that because the majority of the aforementioned employees in fact have worked during two or more seasons, I find that the "temporary" or "seasonal" employees herein have a reasonable expectancy of future employment and thus manifest a substantial and continuing interest in the terms and conditions of employment along with the

16/ See United States Department of Agriculture, Black Hills National Forest, cited above.

permanent employees. In these circumstances, I find, therefore, that they are eligible to vote based on the view that they are all regular "seasonal" or "temporary" employees.

Accordingly, I find that the following employees may constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of Executive Order 11491:

All professional and nonprofessional employees assigned to the Supervisor's Office and the 10 Ranger Districts in the National Forests of North Carolina, including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, employees engaged in Federal personnel work other than in a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

It is noted that the unit found appropriate includes professional employees. ^{17/} The Assistant Secretary is prohibited by Section 10(b)(4) of the Order from including professional employees in a unit with employees who are not professional unless the majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees as to inclusion in a unit with nonprofessional employees must be ascertained. I, therefore, shall direct separate elections in the following voting groups:

Voting Group (a): All professional employees assigned to the Supervisor's Office and 10 Ranger Districts in the National Forests of North Carolina including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

Voting Group (b): All employees assigned to the Supervisor's Office and 10 Ranger Districts in the National Forests of North Carolina including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

^{17/} Since the record does not set forth sufficient facts as to who are professional employees, I make no findings with respect to this category of employees.

The employees in the nonprofessional voting group (b) will be polled whether or not they desire to be represented by the NFFE ^{18/} or, as discussed below, any other labor organization which intervenes on a timely basis.

The employees in the professional voting group (a) will be asked two questions on their ballots: (1) whether or not they wish to be included with the nonprofessional employees for the purpose of exclusive recognition, and (2) whether or not they wish to be represented for the purpose of exclusive recognition by the NFFE or, as discussed below, any other labor organization which intervenes on a timely basis. In the event that a majority of the valid votes of voting group (a) are cast in favor of inclusion in the same unit as nonprofessional employees, the ballots of voting group (a) shall be combined with those of voting group (b).

In the event that a majority of the valid votes of voting group (a) are not cast for inclusion in the same unit as nonprofessional employees, they will be taken to have indicated their desire to constitute a separate unit, and an appropriate certification will be issued by the appropriate Area Administrator indicating whether or not the NFFE, or any other labor organization which intervened timely, was selected by the professional employee unit.

The unit determination in the subject case is based, in part, then, upon results of the election among the professional employees. However, I will now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees votes for inclusion in the same unit as the nonprofessional employees, I find the following employees will constitute a unit appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

All professional and nonprofessional employees assigned to the Supervisor's Office and 10 Ranger Districts in the National Forests of North Carolina, including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

2. If a majority of the professional employees **does** not vote for inclusion in the same unit as the nonprofessional employees, I find that

^{18/} Inasmuch as the unit in which an election is being directed is smaller than that petitioned for by the NFFE, I shall permit it to withdraw its petition if it does not wish to proceed to an election in the unit found appropriate, upon notice to the appropriate Area Administrator within 10 days of the issuance of this Decision. As the AFGE's showing of interest is insufficient to treat it as an intervenor in Case No. 40-2914(RO), I shall order that its name not be placed on the ballot if elections are conducted unless in response to the new posting, discussed below, it intervenes with a sufficient showing of interest.

the following two groups of employees will constitute separate units appropriate for the purpose of exclusive recognition within the meaning of Section 10 of the Order:

(a) All employees assigned to the Supervisor's Office and 10 Ranger Districts in the National Forests of North Carolina including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

(b) All professional employees assigned to the Supervisor's Office and 10 Ranger Districts in the National Forests of North Carolina, including regular "seasonal" or "temporary" employees, excluding employees of the Schenck and Arrowood Civilian Conservation Centers, nonprofessional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

While the record evidence is sufficient to show that there is some community of interest among the employees of the Schenck Civilian Conservation Center, there is little or no information concerning whether the employees of the Arrowood Civilian Conservation Center share a community of interest with the Schenck Civilian Conservation Center employees. Thus, in order to determine whether these facilities, either separately or combined, may be considered appropriate for the purpose of exclusive recognition, it is necessary that the record reflect information regarding the employees in the Arrowood Center (e.g., their job classifications, skills, education and training, type of work performed and other working conditions), and their relationship with the employees of the Schenck Center, including information as to interchange and transfer, if any, of employees between the two Centers as well as their respective supervisory and administrative hierarchies. It should also be ascertained whether the AFGE or, possibly the NFFE, ^{19/} would be willing to represent on an exclusive basis the employees at both Centers in a single unit if such unit is found to be appropriate.

^{19/} In connection with the remand of Case No. 40-2692(RO), the appropriate Area Administrator is directed to evaluate the NFFE's showing of interest in order to ascertain whether it would be qualified to intervene in Case No. 40-2692(RO) and participate in the remanded proceedings.

In view of the above-mentioned deficiencies in the record, I find that it does not provide an adequate basis for determining the appropriateness of the unit being sought by the AFGE. Therefore, I shall remand Case No. 40-2692(RO) to the appropriate Regional Administrator for the purpose of reopening the record to obtain the additional facts discussed herein.

ORDER

IT IS HEREBY ORDERED that Case No. 40-2692(RO) be, and it hereby is, remanded to the appropriate Regional Administrator.

DIRECTION OF ELECTIONS

With respect to Case No. 40-2914(RO), in the circumstances set forth below, elections by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date upon which the appropriate Area Administrator issues his determination with respect to any interventions in this matter. The appropriate Area Administrator shall supervise the elections, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether or not they wish to be represented for the purpose of exclusive recognition by the National Federation of Federal Employees, Local 1563, or by any other labor organization which, as discussed below, intervenes in this proceeding on a timely basis.

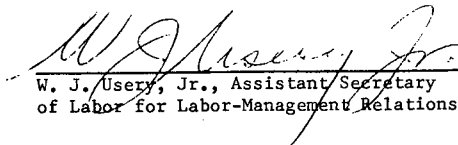
Inasmuch as the unit found appropriate in Case No. 40-2914(RO) is substantially different from that which was petitioned for, I direct that the Activity post copies of a Notice of Unit Determination, as soon as possible, in places where notices are normally posted affecting the employees eligible to vote in Case No. 40-2914(RO). Such Notice shall conform in all respects to the requirements of Section 202.4(c) and (d) of the Assistant Secretary's Regulations. Further, any other labor organization which may seek to intervene in this matter must

do so in accordance with the requirements of Section 202.5 of the Assistant Secretary's Regulations. Any intervention, otherwise timely, will be granted solely for the purpose of appearing on the ballot in the election in the unit found appropriate in Case No. 40-2914(RO).

December 17, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Dated, Washington, D.C.
December 16, 1971


W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION
AERONAUTICAL CENTER
A/SLMR No. 117

This case arose as a result of an unfair labor practice complaint filed by the American Federation of Government Employees, AFL-CIO, Local Union 2282 (AFGE) alleging that an order issued by Department of Transportation, Federal Aviation Administration Aeronautical Center (Center) interfered with, restrained or coerced the instructors of its FAA Academy in violation of Section 19(a)(1) of Executive Order 11491.

The order issued by the Center restricted instructors from engaging in any activity in behalf of the union and also denied instructors the right to wear any form of union button or insignia at all times. The Center took the position that its order did not violate the Executive Order, since the instructors were both management officials and supervisors as well as employees whose participation or activity in behalf of a labor organization would create a conflict of interest under Section 1(b) of the Executive Order.

The Hearing Examiner concluded that the instructors were not management officials, supervisors, or employees excluded from coverage of the Executive Order by Section 1(b) of the Executive Order. In these circumstances he found that the Center's order violated Section 19(a)(1) of the Executive Order, as it restricted union activity during the instructors off-duty time and restricted the wearing of union insignia at all times.

Upon review of the record, including the Hearing Examiner's Report and Recommendations, the exceptions and supporting brief filed by the Center, the Assistant Secretary adopted the findings of the Hearing Examiner. Accordingly, the Assistant Secretary ordered the Center to cease and desist from promulgating and enforcing its order to the extent that it violated Section 19(a)(1) and ordered that a Notice to Employees to that effect be posted on the Center's premises for a period of 60 days and that such Notice be distributed to all assigned instructors.

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

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION
AERONAUTICAL CENTER

Respondent

and

Case No. 63-2589 (CA)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL UNION 2282

Complainant

DECISION AND ORDER

On August 5, 1971, Hearing Examiner Henry E. Segal issued his Report and Recommendations in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it take certain affirmative action as set forth in the attached Hearing Examiner's Report and Recommendations. Thereafter, the Respondent filed exceptions and supporting brief with respect to the Hearing Examiner's Report and Recommendations.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in the subject case, including the exceptions 1/, statements of positions

1/ A letter attached to the exceptions filed by the Respondent has not been considered inasmuch as it is dated March, 1970, over a year prior to the hearing in this case; it was not presented as evidence during the hearing; and there is no contention that it is either newly discovered evidence or evidence previously unavailable to the Respondent.

and briefs, I hereby adopt the findings, conclusions, and recommendations of the Hearing Examiner. 2/

ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary of Labor for Labor-Management Relations hereby orders that the Department of Transportation, Federal Aviation Administration Aeronautical Center shall:

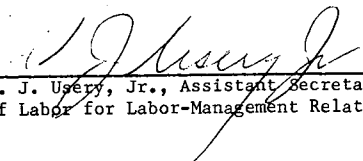
1. Cease and desist from:
 - (a) Promulgating or maintaining an order which prohibits instructors of the Federal Aviation Administration Academy from engaging in solicitation, or any other legitimate activity, on behalf of the complainant or any other labor organization at their workplace or elsewhere during their non-work time providing there is no interference with the work of the Agency.
 - (b) Promulgating or maintaining an order which prohibits instructors from wearing union membership buttons.
 - (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

2/ However, in reaching this decision, I do not agree with the statement of the Hearing Examiner characterizing the instructor-student relationship, wherein he notes that only a naive student may be influenced by an instructor. Nor do I adopt footnote 4 of the Hearing Examiner's Report and Recommendations to the extent that it implies that the effective evaluation of the performance of employees, standing alone, would constitute an insufficient basis for finding an individual to be a supervisor within the meaning of Section 2(c) of the Order.

- (a) Distribute to all instructors still assigned to the Federal Aviation Administration Academy the attached notice marked "Appendix A." Copies of said notice shall be signed by the Superintendent of the Academy and shall be posted and maintained by him for 60 days thereafter, in conspicuous places, including all places where notices to instructors are customarily posted. The Superintendent of the Academy shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.
- (b) Cancel Order No. AC 3710.10B to the extent that it is inconsistent with the above.
- (c) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

Dated, Washington, D.C.
December 17, 1971


W. J. Usery, Jr., Assistant Secretary
of Labor for Labor-Management Relations

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491,

LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT promulgate or maintain an order which prohibits instructors of the Academy from engaging in solicitation or any other legitimate activity on behalf of American Federation of Government Employees, AFL-CIO, Local Union 2282, or any other labor organization, at their workplace or elsewhere during their non-work time providing there is no interference with the work of the Agency.

WE WILL NOT promulgate or maintain an order which prohibits instructors from wearing union membership buttons.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

To the extent that Order AC 3710.10B, dated August 5, 1970, is inconsistent herewith, it is hereby cancelled.

Department of Transportation, Federal
Aviation Administration Aeronautical Center
(Agency or Activity)

Dated _____ By _____
(Signature)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor, whose address is: Room 2511 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

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

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
AERONAUTICAL CENTER

Respondent

and

CASE NO. 63-2589 (CA)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL UNION 2282

Complainant

George H. Foster, Esq., of the Federal
Aviation Administration, Washington,
D. C., for the Respondent.

Gary B. Landsman, Esq., of the American
Federation of Government Employees,
AFL-CIO, Washington, D. C., for the
Complainant.

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding, heard at Oklahoma City, Oklahoma, on May 11, 1971, arises under Executive Order 11491 (herein called the Order) pursuant to a Notice of Hearing issued by the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor, Kansas City Region, on March 8, 1971, in accordance with Section 203.8 of the Regulations of the Assistant Secretary for Labor-Management Relations (herein called the Assistant Secretary). It was initiated by a complaint filed by the Complainant on January 27, 1971, alleging that Respondent has engaged in and is engaging in violations

of Section 19, subsection (a)(1) of the Order in that certain written orders of the Aeronautical Center (herein referred to as the Center) interfere with, restrain, or coerce an employee in the exercise of the rights assured by the Order.

At the hearing both parties were represented by counsel who were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue orally and file briefs. Upon the entire record in this matter, 1/ from observation of the witnesses and after due consideration of the briefs filed by the parties on June 15, 1971, I make the following:

Findings and Conclusions

I. The Activity

The Aeronautical Center located at Oklahoma City, Oklahoma, is the logistics and service center for the entire Federal Aviation Administration, herein called the FAA. Thus, among the various operations at the Center are included a supply depot, a civil aeromedical institute, a records center (for all civilian aircraft registrations and airmen's records), an aircraft services base to maintain and modify FAA aircraft, and the FAA Academy which is the training and retraining center for all FAA personnel. In addition, located at the Center are the various staff functions necessary to support the operations of the Center such as administrative services, budget, accounting, plant engineering, etc. There are a total of 3900 to 4000 employees at the Center. Directly involved in this proceeding are the instructors employed at the FAA Academy which utilizes approximately 825 employees of which 700 are instructors.

II. Respondent's Motions to Dismiss

Respondent moved to dismiss the complaint on several grounds. Three of the grounds, that the instructors are supervisors, that they are management officials and that they are employees whose participation or activity in a labor organization would result in a

1/ The Complainant has proposed corrections to the transcript to which I concur. These corrections, as well as others noted by me, are listed in Appendix B attached hereto.

conflict or apparent conflict of interest or otherwise be incompatible with law or their official duties within the meaning of Section 1(b) of the Order, are aligned to the merits of the case and I will make my recommendations with respect to these grounds in due course. However, two additional grounds for dismissal are procedural in nature and should be resolved before a discussion of the substantive issues.

The first procedural ground urged by the Respondent at the hearing and in its brief is that Complainant has no standing to file an unfair labor complaint. It argues that such a complaint implies that Local 2282 holds some form of recognition on an Aeronautical Center-wide basis, when actually, while Local 2282 has recognition for several units in other divisions of the Aeronautical Center, it has no form of recognition for the Academy and the gravamen of the complaint deals with an order or policy of management applying only to instructors employed by the Academy.

Of course if such argument is given validity it would mean that only a labor organization which has some form of recognition in a unit which includes employees against whom the alleged unfair labor practices are directed could file a complaint. This would mean, for example, in a situation where a labor organization is engaged in an organization drive and an agency commits unfair labor practices, the labor organization would be powerless to file a complaint. Such recognition requirement for filing a complaint would defeat the policy of the Order. Moreover Section 203.1 of the Assistant Secretary's Regulations provides that complaints may be filed by an employee, an agency, activity, or a labor organization. There are no conditions specified for filing, such as recognition, contained in the regulations. Therefore, I will recommend that the Assistant Secretary overrule the motion to dismiss on the ground that Local 2282 has no standing to file the complaint. 2/

The second procedural ground urged by Respondent as meriting dismissal of the complaint is that the complaint is not sufficiently particularized to meet the requirements of Section 203.3(c) of the Assistant Secretary's Regulations. It is clear that the complaint with its attachments, and the Respondent so acknowledged at the hearing, alleges a violation by the Respondent in maintaining a Center

2/ It is noted that the record indicates that some of the instructors are members of the Complainant.

Order and Policy which would interfere with, restrain, or coerce the instructors at the Academy in the exercise of their rights assured by the Order. The Respondent argues that there is no allegation that any specific employee was interfered with, restrained, or coerced. However, the Complainant's allegations are based on the very existence of the FAA's Order and Policy, and if such interferes with, restrains, or coerces the instructors in the exercise of their assured rights, it is not necessary to allege that any specific instructor complained that his assured rights were derogated by the Academy Order. 3/ Therefore, I will recommend that the Assistant Secretary also overrule the motion to dismiss on this ground.

III. The Issues

As noted above, the Complainant's allegations are based on the existence of an FAA Order and policy governing the conduct of instructors of the Academy with respect to certain union activity. It follows that the principal issue before me is whether the FAA Order and policy in question is violative of Section 19(a)(1) of the Order. In making such determination, a resolution must be made as to whether the instructors are supervisors, or management officials, or employees whose participation in or activity on behalf of a labor organization would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with their official duties within the meaning of Section 1(b) of the Order.

3/ The Respondent would also apply the time limitations established by the Assistant Secretary in Section 203.2 of his Regulations, reasoning that if there is no evidence of any instructor complaining of interference with his rights by the Academy Order within six months of the filing of the unfair labor practice charge, the complaint falls. However, as noted above, it is the current existence of the Academy's Order and Policy which is alleged to be violative, and thus the time limitations of Section 203.2 of the Regulations are met.

IV. The Unfair Labor Practices

A. The FAA Order and Policy

On December 6, 1968, the Center issued an order, AC 3710.10A, subject: "Conflict of Interest -- Student/Instructor Relationships as Related to Employee-Management Cooperation Program and Professional Societies." This order governed, inter alia, the conduct of instructors in their relationships with the students with respect to employee organizations. I will not discuss this order in detail since it was later replaced by a second order which is the subject of the Complaint. However, the record indicates that the genesis of this order and the subsequent order was based on instructors in the past wearing large emblems of a labor organization other than the Complainant, and alleged coercion of students by instructors on behalf of this other labor organization.

On April 16, 1970, the Center issued a memorandum to all FAA Academy instructors, by its FAA Academy Superintendent, subject: "Wearing organization insignia." It would be well to set forth this memorandum in its totality, since it indicates the Respondent's position with respect to the role of the instructor.

"Recently it has come to my attention that instructor personnel are wearing emblems or other insignia reflecting their support of and/or membership in an employee organization.

As outlined in Order AC 3710.10A, 12/6/68, we consider our instructors to be an arm of management in carrying out the function of training agency employees. Because of this role, instructors are particularly susceptible to incurring a conflict or apparent conflict of interest under the Labor-Management Relations Program. They must, therefore, avoid any actions which tend to encourage or discourage membership in any employee organization, or which may appear or be construed to imply this. A strictly impartial position must be maintained at all times with respect to employee organizations.

This is to advise all instructors that the practice of wearing insignia of this type shall be discontinued immediately."

By letter dated June 16, 1970, W. H. Burns, President, Local 2282, requested that the Director of the Center rescind Order AC 3710.10A, because, according to Burns, it was inconsistent with Executive Order 11491 and the rules and regulations of the Assistant Secretary.

By letter dated June 26, 1970, the Director of the Center advised Burns that an in-depth study of AC 3710.10A was being conducted by the FAA Academy Superintendent and that it was anticipated that he would publish a revision in the near future, and that like AC 3710.10A, the revision would be distributed to all Academy employees.

On July 14, 1970, Burns again wrote to the Director of the Center voicing his opposition to any special order restricting employees in their rights governed by Executive Order 11491. Burns further stated that the labor organization might find it necessary to apply, "a more strenuous effort to remedy this inequity if the present attitude of management continues to persist."

The personnel officer of the Center responded to Burns by letter dated July 22, 1970, which stated that Order 3710.10A was a necessary and vital publication, but that the anticipated revision, "will more clearly outline Academy instructor/student relationships."

Subsequently, a new order, AC 3710.10B, was issued by the Director of the Center on August 5, 1970, titled, "Instructor/Student Relationships as related to the Labor-Management Relations Program under Executive Order 11491." The complete text of the Center's order follows:

- "1. PURPOSE. This order sets forth FAA Academy policy on instructor/student relationships as they pertain to the agency's Labor-Relations Program.
- "2. CANCELLATION. AC 3710.10A, Conflict of Interest--Student/Instructor Relationships as Related to Employee-Management Cooperation Program and Professional Societies, is canceled.
- "3. POLICY. Academy instructors are considered to be part of the agency's management structure. As such their official contacts with students must faithfully reflect FAA organizational and operational doctrines. Failure to maintain the integrity and responsibility of the instructor's role shall be dealt with promptly.
- "4. EMPLOYEE PARTICIPATION IN EMPLOYEE ORGANIZATIONS. All employees are free to form and join any lawful employee organization or to refrain from such activities. However, the right of an employee to participate in the activities of an employee organization does not include activities which would be incompatible with the employee's official duties.
- "5. THE ROLE OF THE INSTRUCTOR. Training of agency employees at the FAA Academy is a management function; therefore, insofar as the agency is concerned as well as in the eyes of students, instructors are management representatives.
 - a. Labor-Management Relations matters involving students properly fall within the jurisdiction of the students' employing regions or offices; however, instructors--because of their unique relationship with students--are susceptible to involvement in situations which may be incompatible with their official duties. Instructors must, therefore, maintain at all times a strictly impartial position with respect to employee organizations and avoid any actions tending to encourage or discourage student membership in any employee organization.

b. Situations instructors specifically shall avoid are:

- (1) Recruiting students for membership in an employee organization.
- (2) Conveying the impression that students might be favored if they were to participate in a particular employee organization.
- (3) Engaging in controversial discussions with students on the subject of belonging to, or participating in, employee organizations.
- (4) Wearing emblems or other insignia reflecting to students, support of and/or membership in an employee organization.

"6. REQUESTS FOR ADVICE. Students with questions or problems involving employee organizations who may require advice or counsel while at the Academy should be referred to the Personnel Relations Branch (AC-13)."

On November 3, 1970, Burns requested, in writing, a meeting with the Director of the Center to discuss Order AC 3710.10B. By another letter, dated November 9, 1970, Burns requested that AC 3710.10B be rescinded, because the labor organization believed that a violation of Section 19(a)(1) of the Order existed. This letter concluded with a statement that it was submitted in accordance with Section 203.2 of the Assistant Secretary's Regulations, and that the labor organization stood ready to cooperate in the 30-day period during which informal attempts should be made to resolve the matter.

A meeting between the parties was held on November 25, 1970, but they were unable to resolve their differences.

Finally, the Complaint herein was filed on January 27, 1971.

B. The courses and duties of instructors

The Academy is a training and retraining center for students who come from the various facilities of the FAA located throughout the

United States and elsewhere. During fiscal year 1970, approximately 11,000 employees graduated from the Academy. As a representative sample of where the students come from, during the first six months of fiscal year 1971, 5.6 percent were from other divisions of the aeronautical center, and the remainder came from regions of the F.A.A. located throughout the nation.

The students are all employees hired by their own divisions or regions. The selection of employees to take courses is made by their own field supervisors back home. The hiring, firing, etc. of employees who may become students at the Academy is done by supervision in the field.

The program branches of the Academy which are assigned teaching responsibilities are the Air Traffic Training Branch (initial and advanced courses in air traffic control for new and career employees), Flight Standards Training Branch (courses for personnel concerned with certification of aircraft and air men), Air Navigation Facilities Training Branch (principally electronics courses), General Training Branch, and the Airport Training Branch. There are approximately 240 courses conducted at the Academy, and the length of the courses run from one to thirty-six weeks. In the Air Traffic Training Branch in which air traffic controllers may receive training, there were approximately 550 students at the time of the hearing and in the Flight Standards Branch there were approximately 200 students. Of these 750 students, 20 to 25 percent were new hires from the regions and the remainder were career employees being retrained or receiving special training. All of the other branches, such as Air Navigation Facilities Training in which at the time of the hearing 800 electronics technicians were taking courses, offer primarily advanced training courses rather than initial training courses, and only approximately 5 percent of the students were new hires. The remainder of the courses are courses for airport engineers, logistics courses, and methods courses for new instructors.

The instructors are recruited from the field. They are now given two-year tours of duty at the Academy but are expected to renew for a second two-year tour of duty. They have return rights to the field and have no option to become permanent instructors under present regulations. Under previous regulations instructors had the option, the Academy willing, of becoming permanent instructors. Thus, of the approximately 700 instructors, 350 are old instructors who became permanent and have no return rights. The other 350 were hired as instructors under new regulations and the intentions are that they are to serve two two-year tours of duty, and then return to their own regions.

When an instructor enters his tour he is given instructor courses at the Academy. There are present plans to send instructors to supervisory training courses.

The student classes at the Academy consist of both academic and laboratory courses. Instructors can be rotated between teaching in the laboratory and the academic courses. Written examinations are given in the academic courses at the end of each segment of the course and a final examination is given at the end of the course. The instructor may give surprise quizzes to the student. The written academic examinations are totally objective. Laboratory examinations where performance is being rated require some subjective evaluation by the instructor. In each classroom there is a lead instructor and the necessary number of instructors. The instructors rotate as lead instructors, and report to supervisory instructors. (They may be required to fill in as supervisory instructors, in the occasional absence of supervisory instructors.) Instructors are given complete freedom in teaching, but they must follow established guidelines as to content. The regulations require that an instructor must be monitored in the classroom by supervisors at least twice a year, and each monitoring block must consist of at least two hours of classroom observation. The grade structure of the instructors breaks down as follows: 50 percent are GS-12's, 33 1/3 percent are GS-13's, the remainder are principally GS-11's and there are a few holding GS-9 grades.

Suggestions as to courses are submitted from the field and from FAA headquarters. Courses are then written by staffs in the respective branches who plan and write the courses. They are then submitted to FAA headquarters for approval. Instructors may make suggestions on courses and as required assist in the writing of the content of the courses. Courses are standardized as much as possible.

The Respondent offered considerable testimony with respect to disposition of students taking initial terminal training, i.e., basic training for control tower operators. The students in this nine-week course (a new course starts every five weeks, and there are approximately 40 students per course) are all new hires by the domestic regions of the FAA with some from the Alaska and Pacific Regions, selected for the course by supervision at their own regions. Their grades are GS-5, GS-7, or GS-9, depending on qualification when hired. Half of the course is classroom work and the other half is laboratory. Instructors assign work, give exams, administer surprise quizzes. The written examinations are objective, but there is some subjective

evaluation on laboratory work. The final examination is the Control Tower Operator's examination, which a student must pass in order to work in a control tower. There are examinations administered after each phase, both written and laboratory, and at any phase if a student receives a grade of less than 60, he is returned to his facility. If a student receives grades of between 60 and 69, a review board determines if he can continue the course and attempt to bring his grades up to 70. The Board consists of a supervisory instructor as chairman, the class lead instructor, an instructor, and a fourth man assigned from another section of the Academy who is neutral. The review board rates the student and sends the rating to the Section Chief who determines if the student stays. If the determination is negative the student is sent back to his region. This procedure is set out in an FAA order which only applies to students taking the initial training course. It provides in general that when such a student fails and is sent back to his region where he was hired, if the student had a previous specialization in which he was performing satisfactorily, he returns to that job at either his own facility or in a facility of comparable level in the same specialization. Another alternative provided is to review the qualifications of the failing employee to determine if he can be retained by FAA in another occupation other than air traffic. The final alternative to be made by the failing employee's region is separation from the service.

The procedure for disposition of students in the initial air traffic course is different from those taking the other courses at the Academy, since the other courses are principally designed for additional training of employees who are already career employees of FAA. In the other courses, any use made of students after they return to their facilities is up to their supervisors. Thus, if they fail, they might be retained on their previous job or might be reassigned. If they pass, and have taken a course for a new specialization, they might be reassigned. If the training received is to advance the student's knowledge in his present specialization, the use made of his accomplishment in the course is up to his supervisors at his home facility.

In the initial air traffic course, approximately 85 percent of the students pass. In other courses, approximately 93 percent of the students pass.

Instructors do not attend staff meetings at the Center, at which management representatives from the various installations at the Center set policies and procedures.

Considerable documentary evidence was presented by Respondent to show that the FAA considers instructors to be arms of management who must maintain a neutral position in all respects with their students. The Respondent contends that although the students are employees of their own facilities, while at the Academy for courses which could run from one week to thirty-six weeks, they look to their instructors for solution of problems other than ones connected to the course, such as absence for sickness.

Conclusions

Preliminarily, Respondent generally contends that its Order AC 3710.10B is a legitimate exercise of its rights retained for management by Section 12(b) of Executive Order 11491 to direct employees of the Agency; to determine the methods, means and personnel by which such operations are conducted; and to maintain the efficiency of government operations entrusted to them. I agree that in the exercise of these rights, management may issue orders governing the conduct of employees during working time. Thus, the duties of the instructors are to teach their courses, and they may be restricted from discussing employee organizations with students during work time. In fact, Section 20 of the Order restricts union activity to non-duty hours of the employees concerned, and the Complainant concedes that the instructors may be restricted in their discussion of matters in the classroom not concerned with the course subject. However, the Center Order is designed to govern the relationships of instructors to their students with respect to union activity at all times including non-working time. Section 19(a)(1) of the Order states that it is an unfair labor practice for Agency Management to interfere with, restrain, or coerce an employee in the exercise of the rights assured by the Order. Section 1(a) of the Order describes the rights of employees as follows: ". . . each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right." It follows that if the instructors are employees within the meaning of the Order and there is no other provision of the Order which would restrict them, they have the right to discuss unions and engage in activity on behalf of unions on their own time among employees of the FAA, including students who are also employees of the FAA. The Assistant Secretary has held that if an Agency Order or Directive interferes with the right of employees to engage in legitimate union

activity on their own time, the Agency Order is violative of Section 19(a)(1) of the Order. Charleston Naval Shipyard, A/SIMR No. 1. Thus, a bare assertion that Center Order No. AC 3710.10B is a legitimate exercise of the rights retained for management by Section 12(b) of the Order is not a valid defense here.

Respondent, however, does not rest its defense on Section 12(b) of the Order. Its principal defenses are three in number:

1. If instructors are merely employees they would still be barred from activity as representatives of a labor organization since their participation or activity in the labor organization would be incompatible with law or their official duties within the meaning of Section 1(b) of the Order;
2. Instructors perform duties which are supervisory as that term is defined in Section 2(c) of the Order; and
3. Instructors are management representatives of the FAA and are barred as labor representatives.

I will discuss the latter two defenses first, because if the instructors are management officials or supervisors they would be speaking for management. In fact, the Study Committee on Labor-Management Relations in the Federal Service, in its Report and Recommendations dated August 1969, stated that supervisors are part of agency management and are responsible for stating management viewpoints in daily communication with employees. Thus, management officials and supervisors should not engage in any type of union activity with rank and file employees at any time since views expressed by them would be considered, under the Order, to be expressions of agency management.

A. Instructors are not Management Officials and/or Supervisors.

The Respondent contends that the instructors are part of agency management and are supervisors. With respect to the contention that the instructors are supervisors, the Respondent relies mainly on the authority that instructors have over students. Students receive classroom assignments from the instructors, they are graded by the

instructors, and the students' accomplishments in the courses may have an effect on their career with the FAA. Actually, however, the courses are standardized and while the instructors may have a role in writing the courses the contents of the courses are established by higher authority. While the instructors are given freedom in the classroom, they are restricted by established course guidelines, and they are monitored in the classroom by supervisory instructors. While they evaluate the students, this evaluation is made within established guidelines. The grading of written examinations is purely objective, and although some subjective evaluation is required for grading performance in the laboratory, as indicated above, the evaluation is subject to standardized procedures.

Most significant, however, is that the students are under the aegis of instructors for a temporary period of time, they are not subject to the direction of the instructors in the supervisor/employee sense, rather they are subject to the direction of instructors in the teacher/student sense. As employees, the students are directed by supervision at their home stations. What happens to the students with respect to the effect of their accomplishments in the courses on their careers as employees of FAA is the province of their own supervisors and not the instructors. Most of the courses are designed for training of employees who are already performing in a specific job for the FAA. Even in connection with the air controller courses for new employees, which is not typical of other courses, the disposition of a failing air traffic controller student is governed by set procedures and his ultimate disposition is made by his home base. ^{4/}

The Respondent also points to the fact that with respect to supervision of other instructors, all the instructors are given the opportunity to fill in for supervisory instructors when such supervisory instructors are absent. However, such supervisory functions would only arise sporadically, and with 700 instructors, the likelihood of all of them being afforded the opportunity to act as a supervisory instructor is highly remote. Finally, considering the

^{4/} The Assistant Secretary has held that the task of evaluating employees is not sufficient, standing alone, to find an individual to be a supervisor where the evaluations are submitted to other authority and the effect of the evaluations are made by different authority. Virginia National Guard, Headquarters, 4th Battalion, 111th Artillery, A/SIMR No. 69.

instructors as a group and their relationship with each other, to find them all to be supervisors would result in an unrealistic ratio of supervisors to rank and file employees. Cf. United States Department of the Navy, United States Naval Weapons Station, Yorktown, Virginia, A/SIMR No. 30, where the Assistant Secretary considered the ratio of supervisors to employees in determining whether certain employees were supervisors within the meaning of the Order.

I agree with the Respondent that by the phraseology of Section 2(c) of the Order which defines supervisors, it must be read in the disjunctive, and if an individual meets any one of the criteria set forth therein, he is a supervisor. The Assistant Secretary has so found, by implication, where in various cases he has determined that individuals were supervisors where they only met some, but not all, the criteria established by Section 2(c) of the Order. See, e.g., District of New Jersey, Delaware and Maryland, Farmers Home Administration, A/SIMR No. 50. However, I am of the opinion that the criteria set forth in Section 2(c) of the Order is meant to apply to a genuine supervisor-employee relationship and is not meant to apply to the direction, evaluation, assignment of work, etc., given by an instructor to a student, where the student in his regular work tasks as an employee is not subject to direction of the instructor and the effects of his accomplishments at the Academy are determined by his home supervision. ^{5/} In view of all the above, I conclude that the instructors are not supervisors within the meaning of the Order.

As for the contention that the instructors are arms of management, it is necessary to consider whether they meet the criteria established by the Assistant Secretary for management officials within the meaning of Section 10(b)(1) of the Order. To be a management official, the Assistant Secretary requires that the duties or interests of the individual in issue be more closely aligned with those who formulate, determine and oversee policy rather than those who carry out resultant policy. See, e.g., Veterans Administration, Regional Office, Newark, N. J., A/SIMR No. 38; Virginia National Guard, Headquarters, 4th Battalion, 111th Artillery, A/SIMR No. 69. There is no evidence that the instructors formulate, determine or oversee

^{5/} The Assistant Secretary will take into account experience gained in the private sector. Charleston Naval Shipyard, supra. In a case decided by the National Labor Relations Board, instructors in a school were included in a unit of school employees. The Board held in determining that the instructors were not supervisors within the meaning of the Labor-Management Relations Act, that supervision and guidance given to students was not controlling, rather the test was whether they supervised other employees of the school. Henry Ford Trade School, 58 NLRB 1135.

policy. While they may have a function in helping to write courses, the decisions as to what courses to teach, the content of the courses, and long range policy of the Academy, are made by other authority. The instructor's function is to teach certain prescribed courses, and in so doing, they are carrying out resultant policy. They do not attend staff meetings of the Aeronautical Center. To argue, as the Respondent does, that instruction is a management function, and the instructors, therefore, speak for management, would require a finding that every employee speaks for management since all operations of an agency are a management function. The instructors perform a function for management, teaching students, just as, for example, a payroll clerk performs a function for management, preparing payrolls. I, therefore, conclude that the instructors, herein, are not management officials within the meaning of the Order.

B. Instructors are not barred from activity on behalf of, or participation in a labor organization by Section 1(b) of the Order.

As noted above, Section 1(a) of the Order sets forth the rights of employees of the executive branch of the Federal Government to form, join, and assist a labor organization or to refrain from any such activity. Section 1(b) provides that Section 1(a) does not authorize, "participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, . . . , or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee." I have already concluded above that the instructors are not supervisors, so remaining for resolution is the issue whether instructor participation in or activity on behalf of a labor organization would result in a conflict of interest or otherwise be incompatible with law or with the official duties of instructors.

The Respondent concedes that the instructors may join a labor organization. However, the Respondent argues that any labor organization activity, pro or con, engaged in by the instructors among their students would result in a conflict or apparent conflict of interest or would otherwise be incompatible with their official duties.

Before discussing this issue, I will dispose of a contention by Complainant that there can be no conflict of interest with respect to the students since Complainant Local 2282 prohibits students who

are employed at facilities of the FAA other than the Aeronautical Center from joining its organization. This contention is invalid, since, as the Respondent correctly notes, the American Federation of Government Employees is a national organization and it no doubt maintains locals at many of the facilities at which the students are based, six percent of the students are employed at the Center and are eligible to join the Complainant local which already is recognized for units at divisions, other than the Academy, at the Center. Moreover, if instructors are free to engage in activity on behalf of a labor organization, they are not restricted to activity on behalf of a local affiliated with the American Federation of Government Employees. Accordingly, it is conceivable that instructors could sell the merits of membership in the AFGE or other labor organizations notwithstanding that most of the students could not be members of Local No. 2282.

There would be no problem with the Respondent's policy if it only restricted instructors from engaging in labor organization activity in the classroom. As noted above, like any other employees, instructors are not permitted to engage in such activity on company time. See Charleston Naval Shipyards, supra. However, Respondent's policy extends to non-work time, and gags the instructors from discussing labor organizations with students at any time.

The Respondent seems to argue that simply because of the relationship of the instructor to the student any discussion of a labor organization or attempt to recruit a student in a labor organization would be construed by the student to require his accession to the instructor's position in order to obtain favor from the instructor with respect to his success in the course. Such a position assumes a great deal of naivete on the part of students. These students are already employed by the FAA, and they are actually subject for employment purposes to supervision at their own home stations, not supervision of the instructor. The instructor is merely a fellow employee performing his function of instructing the student. I cannot believe that any reasoning student at the Academy, who must have a certain amount of sophistication to obtain federal employment, would feel that he had to agree with the views of his instructors concerning labor organizations in order to progress in his courses.

The Respondent argues that its policy has its genesis in the fact that in 1963 students complained that they were being coerced to join a certain organization (not the Complainant) and that there was

an inference, either veiled or actual, that their performance in the course would be affected by their actions in joining the organization. I agree that an instructor should not coerce students into joining a labor organization or intimate that their performance in a course would be affected by their actions in joining or not joining a labor organization. In fact, in Charleston Naval Shipyard, supra, the Assistant Secretary held that employees could only engage in legitimate activity on behalf of a labor organization on their own time. [Emphasis supplied.] Coercion or promise of favor to students certainly would not be legitimate activity, and the Respondent is free to restrict such conduct and could take disciplinary action against any instructor who coerced a student or promised favors to the student if he acceded to the instructor's position. However, I cannot conclude that mere recruitment of membership, or discussion pro and con concerning benefits of labor organizations, without coercion or promise of favor constitutes activity which results in a conflict of interest or is incompatible with law or with the official duties of the instructors.

The Respondent also argues that any attempt to recruit students for employee organizations would be in violation of the Code of Ethics for Government Service which states that a person should:

"1. Never discriminate unfairly by dispensing special favors or privileges to anyone whether for remuneration or not . . . , and;

"2. Make no private promises of any kind binding upon the duties of his office. . . ."

Again, I agree that an instructor should not dispense favors or make promises to students in connection with his activity on behalf of a labor organization. However, again I cannot conclude that legitimate union activity including recruitment implies the dispensation of favors or promises to students in connection with their course progress.

The Assistant Secretary has issued a decision involving teachers at a naval shipyard who taught apprentices in such courses as science, mathematics, drafting, English, and basic organization and management. Like in the instant case, these teachers had freedom in determining the manner in which the course was presented, but the training program was developed by other authority. The Assistant Secretary found that the teachers were not employees engaged in federal

personnel work within the meaning of Section 10(b)(2) of the Order and were not excluded from coverage of the Order. He, accordingly, directed an election. Portsmouth Naval Shipyard, Apprentice Training School, A/SIMR No. 2. The Assistant Secretary placed no limitations on the coverage of teachers by the Order. Implicit from that case is that the instructors here, who perform similar functions as the teachers in that case, have all the rights assured by Section 1(a) of the Order. Such rights include the rights to engage in legitimate union activity on their own working time. Legitimate union activity encompasses the right to discuss benefits of membership in labor organizations, pro and con, to solicit membership from employees. 6/ Such activity by teachers under Section 1(a) may be extended to activity among employees other than those in the same unit.

There remains the issue of restrictions on the wearing of emblems. Center Order AC 3710.10B prohibits instructors from wearing emblems, or other insignia, reflecting to students support of and/or membership in an employee organization. (Some of the instructors are members of the Complainant.) This prohibition also had its genesis in the activities of another labor organization where the instructors wore large membership patches and campaign propaganda. I agree that instructors should not be permitted to wear large membership emblems and campaign propaganda in the classroom. However, the Complainant only seeks permission for the instructors to wear unobtrusive membership pins bearing no campaign propaganda, and the wearing of such a pin, while on working time or not, is protected by Section 1(a) of the Order. In fact, taking into account experience gained in the private sector, the Supreme Court has upheld the right of union members to wear union membership buttons at work. Republic Aviation Corporation v. N.L.R.B., 324 U.S. 793.

I have concluded above that the instructors are not supervisors or management officials and that they are not excluded from coverage of Executive Order 11491 by the provisions of Section 1(b) of the Order. Accordingly, I find that the instructors are assured the rights set forth in Section 1(a) of the Order. As noted above, these rights encompass the rights to engage in legitimate activity on behalf of or against any labor organization. Such rights include the right of an

6/ For comparison, the rights of teachers in public schools to engage in legitimate union activity has been held to be protected by the first and fourteenth amendments to the constitution. e.g., Shelton v. Tucker, 362 U.S. 479, 81 S. Ct. 247; McLaughlin v. Tilendis, 398 F. 2d 287 (7th Cir., 1968).

instructor on non-work time to discuss benefits of membership in a labor organization, pro and con, with any employee, including students, and to solicit membership of any such employee. Also, instructors are assured the right to wear membership buttons of a labor organization at any time. Of course, it is understood that in the exercise of these rights the instructors may not promise, either explicitly or by implication, or grant favors to students in their courses for acceding to the instructor's viewpoint, nor may they otherwise coerce students in exercising their rights. Such activity would not be legitimate activity on behalf of a labor organization. Insofar as Respondent's policy, as set forth in its directive, Center Order No. 3710.10B, interferes with the instructor's legitimate rights guaranteed by Executive Order 11491, such policy and directive is violative of Section 19(a)(1) of the Order. See Charleston Naval Shipyard, supra.

RECOMMENDED REMEDY AND ORDER

In view of all the above, I recommend that the Assistant Secretary deny Respondent's motions to dismiss on procedural and substantive grounds. In view of my findings and conclusions that the Respondent has engaged in certain conduct prohibited by Section 19(a)(1) of Executive Order 11491, I recommend that the Assistant Secretary order the Respondent to cease and desist therefrom and take specific affirmative action, as set forth below, designed to effectuate the policies of Executive Order 11491.

RECOMMENDED ORDER

Pursuant to Section 6(b) of Executive Order 11491 and Section 203.25(a) of the Regulations, the Assistant Secretary for Labor-Management Relations hereby orders that Department of Transportation, Federal Aviation Administration, Aeronautical Center, shall

1. Cease and desist from:

- (a) Promulgating or maintaining an order which prohibits instructors of the Federal Aviation Administration Academy from engaging in

solicitation, or any other legitimate activity, on behalf of the Complainant or any other labor organization, or from discussing the merits of membership in a labor organization, pro or con, among employees of the Federal Aviation Administration, including students, at their workplace or elsewhere during their non-work time providing there is no interference with the work of the Agency.

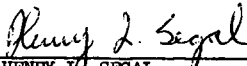
- (b) Promulgating or maintaining an order which prohibits instructors from wearing union membership buttons.
- (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by Executive Order 11491.

2. Take the following affirmative action in order to effectuate the purposes and provisions of the Order:

- (a) Distribute to all employees to whom Order No. AC 3710.10B was distributed the attached notice marked "Appendix A." Copies of said notice shall be signed by the Superintendent of the Academy and shall be posted and maintained by him for 60 days thereafter, in conspicuous places, including all places where notices to instructors are customarily posted. The Academy Superintendent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.
- (b) Cancel Order No. AC 3710.10B inasmuch as it is in part inconsistent with the above.
- (c) Pursuant to Section 203.26 of the Regulations, notify the Assistant Secretary in writing within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

7/ For a decision of the Assistant Secretary affirming the Section 1(a) rights of an employee to engage in activity against a labor organization, see California Army National Guard, 1st Battalion, 250th Artillery, A/SIMR No. 47.

Dated, Washington, D. C.,
AUGUST 5, 1971


HENRY J. SEGAL
HEARING EXAMINER

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

and in order to effectuate the policies of

EXECUTIVE ORDER 11491,

LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

We hereby notify our employees that:

WE WILL NOT promulgate or maintain an Order which prohibits instructors of the Academy from engaging in solicitation or any other legitimate activity on behalf of American Federation of Government Employees, AFL-CIO, Local Union 2282, or any other labor organization, or from discussing the merits of membership in a labor organization, pro or con, among employees of the Federal Aviation Administration, including students, at their work place or elsewhere during their non-work time providing there is no interference with the work of the Agency.

WE WILL NOT promulgate or maintain an Order which prohibits instructors from wearing union membership buttons.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by Section 1(a) of Executive Order 11491.

Inasmuch as Order AC 3710.10B dated August 5, 1970, is in part inconsistent herewith, it is hereby cancelled.

(Agency or Activity)

Dated _____ By _____
(Signature)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Administrator of the Labor-Management Services Administration, United States Department of Labor, whose address is: 2511 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

CORRECTIONS IN THE TRANSCRIPT

UNITED STATES DEPARTMENT OF LABOR
 ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
 SUMMARY OF DECISION AND REMAND OF THE ASSISTANT SECRETARY
 PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

<u>Page</u>	<u>Line</u>	<u>Change From</u>	<u>Change To</u>
5	7	thirty	three
17	19	9411	11491
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DEPARTMENT OF THE ARMY,
 HEADQUARTERS, CAMP MCCOY, WISCONSIN
 ST. LOUIS METROPOLITAN AREA
 ST. LOUIS, MISSOURI
 A/SLMR No. 118

The Petitioner, American Federation of Government Employees, AFL-CIO, Local 3154 (AFGE), sought to represent a unit of General Schedule Army Reserve Technicians serviced by the Civilian Personnel Office at Camp McCoy and working in the St. Louis metropolitan area. The claimed unit would include employees from 4 different Army Reserve Commands (ARCOMS). The Activity took exception to inclusion in the proposed unit of one of the categories, that of Staff Administrative Assistant, contending that such employees were supervisors.

With respect to the appropriateness of the unit sought by AFGE, the Assistant Secretary found that insufficient evidence had been adduced at the hearing as to whether the unit sought was appropriate, because, among other things, the record failed to reflect the relationship among the claimed technicians in various ARCOM units in St. Louis; their relationship with technicians in their respective ARCOMS outside the St. Louis area; the respective authority of the Civilian Personnel Office, Camp McCoy and the various ARCOM Commanders with respect to personnel administration and information about Wage Board employees whom the AFGE did not include in its proposed unit.

Also, the Assistant Secretary noted that evidence and testimony received during the hearing concerning the functions and duties of a disputed job classification, Staff Administrative Assistants, was insufficient to form the basis for a finding as to this classification's inclusion or exclusion from the claimed unit.

In view of the foregoing, the Assistant Secretary concluded that there were insufficient facts in the record on which he could decide the appropriateness of the claimed unit or decide whether Staff Administrative Assistants were supervisors within the meaning of the Order. Therefore, he ordered that the case be remanded to the appropriate Regional Administrator for the purpose of reopening the record to obtain additional facts in accordance with his Decision.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY,
HEADQUARTERS, CAMP MCCOY, WISCONSIN,
ST. LOUIS METROPOLITAN AREA,
ST. LOUIS, MISSOURI

Activity

and

Case No. 62-2361 (RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3154

Petitioner

DECISION AND REMAND

Upon a petition duly filed under Section 6 of Executive Order 11491, a hearing was held before Hearing Officer Roger B. Schlueter. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record, the Assistant Secretary finds:

1. The labor organization involved claims to represent certain employees of the Activity.
2. The Petitioner, American Federation of Government Employees, AFL-CIO, Local 3154, herein called AFGE, seeks an election in a unit of all General Schedule Army Reserve Technicians, i.e., Staff Administrative Assistants, Staff Administrative Specialists, Staff Training Assistants, Staff Supply Assistants 1/ and Administrative Supply Technicians, serviced

1/ The petition was amended at the hearing to include this position. There are currently no technicians working in this category in the proposed unit.

by the Civilian Personnel Office, Camp McCoy, Wisconsin, and working in the St. Louis metropolitan area, which includes St. Louis City, and the Missouri counties of St. Louis, Jefferson and St. Charles, and the Illinois counties of Monroe, St. Claire, Madison, Jersey and Calhoun; excluding all Wage Board employees, management officials, supervisors, professionals, guards, and any employee engaged in Federal personnel work in other than a purely clerical capacity.

The Activity contends that the Staff Administrative Assistants are supervisors within the meaning of the Order and, therefore, should not be included in the unit.

The record shows that the responsibility for personnel administration for twelve major Army Reserve Commands (ARCOMS) in a nine-state area, including St. Louis, Missouri, has been delegated to the Civilian Personnel Officer at Camp McCoy, Wisconsin. The unit petitioned for by the AFGE includes certain technicians from four of these Commands who are working in the St. Louis metropolitan area. The four Commands which would be included, in part, in the petitioned for unit are: the 102nd ARCOM, which has its headquarters in St. Louis and has technicians working both in the St. Louis metropolitan area and outside the metropolitan area in Missouri, Kansas and Illinois; and the 425th, 85th and 416th ARCOMS, which are headquartered outside the St. Louis metropolitan area, with the preponderance of their technicians scattered throughout Missouri, Illinois, Kansas, Nebraska, Iowa, Minnesota, Michigan, Wisconsin and Indiana, and which have small numbers of technicians working in the St. Louis area.

On the basis of the record before me, I am unable to make a determination as to the appropriateness of the unit sought by the AFGE. In this connection, the record does not reflect the relationship the claimed technicians have with each other or with other technicians located outside the St. Louis area but within the same ARCOMS. While the record indicates that the Civilian Personnel Office at Camp McCoy, Wisconsin is responsible for providing civilian personnel services for the Army Reserve Technician Program in a nine-state area, 2/ it is not clear from the record what authority the various ARCOM commanders or unit commanders have with respect to personnel administration, or their authority and role in hiring and discharging technicians. With respect to promotions, transfers, interchange and reductions in force, the record reveals that the retention register for reduction in force consists of the St. Louis metropolitan area, but the record does not show whether promotion opportunities are posted on an ARCOM-wide basis or whether they are restricted to technicians of the various ARCOMS in the St. Louis area. Nor is there testimony concerning

2/ This authority is reflected in 4th U. S. Army regulations entered into evidence at the hearing. The record reveals that the unit requested previously was within the jurisdiction of the 4th U. S. Army which was inactivated on June 30, 1971, and its units assigned to the 5th U. S. Army, with the same regulations remaining in effect.

December 22, 1971

temporary or permanent employee interchange within or between the various ARCOMS. As noted above, it is unclear from the record how much daily contact the technicians in the various ARCOMS in the St. Louis area have with technicians in other ARCOMS in the St. Louis area or in other locations, or the extent of their contact with other technicians in their own ARCOM working at other locations. Furthermore, although the petitioned for unit would include only General Schedule technicians, the record indicates that there are Wage Board technicians working also in the St. Louis metropolitan area. Although the Hearing Officer sought to elicit information about the status of the Wage Board employees, ^{3/} a review of the record reveals that additional information concerning their numbers, locations, duties, and relationship with the General Schedule technicians is necessary to determine whether the claimed General Schedule technicians have a community of interest separate and distinct from the Wage Board technicians.

With respect to the supervisory status of the Staff Administrative Assistants, whom the Activity would exclude from the unit as supervisors, there is little testimony as to the day-to-day duties performed by these individuals. Further, testimony distinguishing between the duties of Staff Administrative Assistants at various grade levels is minimal. Although the parties stipulated at the hearing that one GS-12 Staff Administrative Assistant is a supervisor, the record evidence is insufficient with respect to whether his duties, were, in fact, different from those of other Staff Administrative Assistants at lower grade levels.

Accordingly, in my view, the record does not provide an adequate basis upon which to determine the appropriateness of the unit being sought. Therefore, I shall remand the subject case to the appropriate Regional Administrator for the purpose of reopening the record in order to secure additional evidence as discussed above.

ORDER

IT IS HEREBY ORDERED that the subject case be, and it hereby is, remanded to the appropriate Regional Administrator.

Dated, Washington, D. C.
December 21, 1971



W. J. Usary, Jr., Assistant Secretary of
Labor for Labor-Management Relations

^{3/} The AFGE objected strenuously to this line of inquiry. It should be noted that it is the duty of the Hearing Officer and the parties to develop a full and complete factual record upon which an appropriate decision may be based, and in my view, anything less than full cooperation by the parties to attain this objective violates the purposes and policies of the Executive Order.

- 3 -

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER OF THE
ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES AIR FORCE,
6486th AIR BASE WING,
HICKAM AIR FIELD, HAWAII
A/SLMR No. 119

This case involved representation petitions filed by the International Brotherhood of Electrical Workers, Local 1186, AFL-CIO, (IBEW) seeking separate units of all General Schedule nonsupervisory employees in the 6486th Supply Squadron and the 6486th Services Squadron of the 6486th Air Base Wing at Hickam Air Force Base, Honolulu, Hawaii. In the alternative, the IBEW stated that if the two separate petitioned for units were found inappropriate, it would agree to an election in a unit combining the employees of the two claimed units. The Activity contested the appropriateness of the units sought by the IBEW, contending that, either separately or in combination, the employees of the claimed units did not share a clear and identifiable community of interest.

The petitioned for units represent 2 of the 12 line squadrons of the 6486th Air Base Wing. The Air Base Wing also provides services, including personnel services, for the various tenant organizations located on bases throughout the Hawaiian Islands, and the Commander of the Base is delegated authority to negotiate and sign collective bargaining agreements covering employees of both line and tenant organizations.

Under all the circumstances, the Assistant Secretary found that the claimed units, either separately or in combination, were not appropriate, for the purpose of exclusive recognition under Executive Order 11491, and therefore, he ordered that the petitions filed by the IBEW be dismissed. In this regard, he noted that the claimed units, either separately or in combination, exclude other employees of both line and tenant organizations who have similar skills and job classifications. Further, he noted the centralized personnel administration for all civilian employees of line and tenant organizations, the frequency of transfers into and out of the claimed units, and the Base-wide area of consideration with respect to matters involving promotions, reduction-in-force and other personnel actions.

In these circumstances, the Assistant Secretary decided that the employees in the claimed units, either separately or in combination, did not possess a clear and identifiable community of interest separate and apart from other employees of the Base. Accordingly, he ordered that the petitions be dismissed.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES AIR FORCE,
6486th AIR BASE WING,
HICKAM AIR FIELD, HAWAII

Activity

and

Case Nos. 73-382 and
73-386

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 1186, AFL-CIO

Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 882, AFL-CIO

Intervenor

DECISION AND ORDER

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Gordon M. Byrholdt. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including briefs filed by the Activity and the Petitioner, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 73-382 the Petitioner, International Brotherhood of Electrical Workers, Local 1186, AFL-CIO, herein called IBEW, seeks an election in a unit of all General Schedule employees of the 6486th Services Squadron, of the 6486th Air Base Wing, excluding military personnel, Wage Board employees, supervisors, management officials, employees engaged in personnel work in other than a purely clerical capacity, guards and professional employees.

In Case No. 73-386, the IBEW seeks an election in a unit of all General Schedule employees of the 6486th Supply Squadron of the 6486th Air Base Wing, excluding all military personnel, Wage Board employees, supervisors, management officials, employees engaged in personnel work in other than a purely clerical capacity, guards and professional employees.

As an alternative to the above described units, the IBEW indicated that it would agree to an election in a combined unit of all General Schedule employees of both the Services Squadron and Supply Squadron of the 6486th Air Base Wing at Hickam Field, Hawaii, excluding military personnel, Wage Board employees, supervisors, management officials, employees engaged in personnel work in other than a purely clerical capacity, guards and professional employees.

It is the Activity's position that neither the petitioned for units nor the combined unit described in the IBEW's alternative position is appropriate. Thus, the Activity contends that the employees in the proposed units share a community of interest with other employees employed in other line squadron and tenant organizations. 1/

The 6486th Air Base Wing is located on Hickam Air Force Base, Honolulu, Hawaii. Its twelve line squadrons provide administrative, logistic and base services for all constituent and attached organizational components. 2/ The line squadrons, including the two squadrons petitioned for, are under the direct command authority of the Air Base Wing Commander and Squadron Commanders. Components of the 30 tenant organizations on bases throughout the Hawaiian Islands are serviced by the 6486th Air Base Wing. 3/

Approximately 350 nonsupervisory General Schedule employees are employed by the 12 line squadrons. The 6486th Supply Squadron employs approximately 126 of these employees and the 6486th Services Squadron

1/ The Intervenor, American Federation of Government Employees, Local 882, AFL-CIO, took no position on the appropriateness of any of the claimed units.

2/ The base services include maintenance of aircraft and avionics equipment, supply, building and grounds maintenance, and personnel servicing for both military and civilian personnel.

3/ The tenant organizations obtain services (including personnel services) from the 6486th Air Base Wing, but are under the command jurisdiction of military organizations located elsewhere.

employs approximately 74 such employees. There are approximately 1050 nonsupervisory General Schedule personnel employed by the various tenant organizations.

The Central Civilian Personnel Office at Hickam Field provides personnel services for all the civilian employees of the Air Force in the Hawaiian Islands. All of these employees, including those in line and tenant organizations, are subject to the same personnel policies and practices, including such matters as the applicable grievance procedure, and they compete, within grade and job series, in a Base-wide merit plan in matters involving promotions as well as being covered by the same reduction-in-force procedures. The Commander of the Base where the Central Personnel office is located is delegated the authority to negotiate with employee organizations, and the record reveals in this regard that he designates bargaining representatives and that he executes collective bargaining agreements negotiated with employee representatives of both line and tenant organizations.

There is no history of collective bargaining with respect to the employees petitioned for by the IBEW. However, the evidence established that the Activity has accorded exclusive recognition under Executive Orders 10988 and 11491 to three labor organizations, in five separate units, among which is a unit represented by the IBEW encompassing all of the Wage Board employees serviced by the Central Personnel Office at Hickam Air Force Base. This latter unit includes all Wage Board employees of the 6486th Air Base Wing as well as the Wage Board employees of the various tenant organizations.

6486th Services Squadron

The six sections of the 6486th Services Squadron perform functions for the entire base including housing services, the preparation of food for sale, the exchange of laundry and the sale of uniform clothing and and grocery items to authorized personnel. Personnel of the 6486th Services Squadron include billeting clerks, sales store checkers, clerk typists, supply clerks and other related classifications. The record reveals that these employees undergo no specialized training program and their classifications, duties and skills are similar to those of employees in other line squadrons and tenant organizations. In this regard, the evidence establishes that only about one-seventh of the personnel currently holding similar job classifications in the line and tenant organizations at Hickam Air Force Base are included within the claimed unit.

During the performance of their duties, employees in the petitioned for unit have regular contacts with many other employees in the 6486th Air Base Wing and tenant organizations at various locations throughout the Air Base. The evidence further discloses that there were some 17

transfers during the last two and one half years involving employees of the 6486th Services Squadron transferring to other line or tenant organizations or employees of other line or tenant organizations transferring into the 6486th Services Squadron.

In these circumstances and noting particularly the Base's centralized personnel administration, the frequency of transfers into and out of the Services Squadron, the Base-wide area of consideration with respect to matters involving promotions, reduction-in-force, and other personnel actions and the existence of a number of related job classifications located in other line and tenant organizations outside the claimed unit, I find that employees in the proposed unit do not share a clear and identifiable community of interest separate and apart from other employees of the Base. Accordingly, I find that a unit consisting of employees of the 6486th Service Squadron is inappropriate for the purpose of exclusive recognition under Executive Order 11491.

6486th Supply Squadron

The mission of the 6486th Supply Squadron is to furnish supplies ^{4/} and equipment to the line and tenant organizations of the Air Base Wing. Employees of the 6486th Supply Squadron are included in such classifications as supply clerk, supply technician, secretary, clerk-typist and clerk-stenographer. The record reveals that these positions are at the GS-3 and GS-4 grade levels and may be filled by employees of other components of the 6486th Air Base Wing or the tenant organizations, without their meeting any special training requirements. The record also reveals that only about one-fifth of the personnel holding similar job classifications in the line and tenant organizations at Hickam Air Force Base are included within the claimed unit. Additionally, the evidence establishes that during the past two and one half years there were some 39 transfers involving employees of the 6486th Supply Squadron transferring to other line or tenant organizations or employees of other line or tenant organizations transferring into the 6486th Supply Squadron.

The Supply Squadron is physically located in a building complex which also houses employees of the Transportation and Maintenance Squadrons. The record reveals that because of the nature of the supply function, employees of the 6486th Supply Squadron have frequent contact with employees of other line and tenant organizations during the performance of their duties.

Based on the foregoing and essentially for the same reasons set forth above with respect to the claimed employees in the 6486th Services Squadron, I find a unit limited solely to employees of the 6486th Supply

^{4/} Except for food and medical supplies.

Squadron to be inappropriate for the purpose of exclusive recognition under Executive Order 11491 as the employees do not have a community of interest which is separate and apart from other employees of the Base.

December 23, 1971

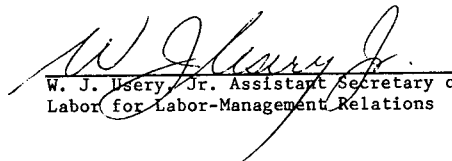
As noted above, the IBEW indicated that in the alternative, it would agree to an election on a unit combining the employees of both the 6486th Services Squadron and the 6486th Supply Squadron if that unit were found to be appropriate. Based on the foregoing, I find that such a unit similarly would be inappropriate for the purpose of exclusive recognition. Thus, employees in a combined unit of both Squadrons are subject, together with other employees of line and tenant organizations, to centralized personnel policies, are in the same area of consideration with other Base employees for the purposes of promotions and reduction in force and have been transferred into or out of the proposed unit to other line and tenant organizations. Moreover, a significant number of employees in other line and tenant organizations, sharing the same skills and classifications as employees in the proposed unit, would remain outside the proposed unit if it were found to be appropriate. Accordingly, I find a unit comprised of employees of both the 6486th Services Squadron and the 6486th Supply Squadron is inappropriate for the purpose of exclusive recognition under Executive Order 11491.

In view of my findings above that the proposed units, either separately or in combination, are inappropriate for the purpose of exclusive representation, I shall dismiss both petitions.

ORDER

IT IS HEREBY ORDERED the the petitions in Case No. 73-382 and Case No. 73-386 be, and they hereby are, dismissed.

Dated, Washington, D. C.
December 22, 1971


W. J. Usery, Jr. Assistant Secretary of
Labor for Labor-Management Relations

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION ON CHALLENGED BALLOTS
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

UNITED STATES DEPARTMENT OF AGRICULTURE,
NORTHERN MARKETING AND NUTRITION RESEARCH
DIVISION, PEORIA, ILLINOIS.

A/SLMR No. 120

The subject case involved thirty challenged ballots which were sufficient in number to affect the results of a self-determination election for professional employees. Also involved were three challenged ballots which were determinative in the nonprofessional employee election. In the professional employee election, three of the ballots were challenged on the grounds that the voters were Assistants to the Director and are considered management officials. An additional 27 ballots were challenged on the grounds that the voters were supervisors. In the nonprofessional employee election, one ballot was challenged on the ground that the voter was not an employee of the Activity. Another ballot was challenged on the ground that the voter was not employed as of the eligibility date for participating in the election. The third ballot was challenged on the ground that the voter was a supervisor.

A hearing was held before a Hearing Examiner. Upon review of the Hearing Examiner's Report and Recommendations and the entire record, the Assistant Secretary adopted the findings and recommendations of the Hearing Examiner sustaining the challenges to the ballots of 3 nonprofessional employees and 29 professional employees.

The Assistant Secretary rejected the finding of the Hearing Examiner that a professional research chemist, GS-12, is a supervisor within the meaning of the Order, because he effectively evaluates the performance of another employee. The Assistant Secretary noted that the Order defines a "supervisor" as an employee having authority over other employees. Inasmuch as the authority this employee exercises is limited to one employee, the Assistant Secretary found that he is not a supervisor within the meaning of the Order and overruled the challenge to his ballot. Accordingly, he directed that, in the event the employee's ballot affects the results of the overall election, his ballot be opened and counted.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPARTMENT OF AGRICULTURE,
NORTHERN MARKETING AND NUTRITION RESEARCH
DIVISION, PEORIA, ILLINOIS

Activity

and

Case No. 50-5165

LOCAL 3247, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Petitioner

and

LOCAL 1696, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES

Intervenor

DECISION ON CHALLENGED BALLOTS

On August 26, 1971, Hearing Examiner, Henry L. Segal issued his Report and Recommendations in the above-entitled proceedings. He recommended that the challenges to the ballots of the following professional employees be sustained: Roy A. Anderson, Leonard T. Black, R.A. Buchanan, James F. Cavins, Thomas F. Clark, Verle L. Davison, Arthur C. Eldridge, John J. Ellis, George F. Fanta, Edwin N. Frankel, John P. Friedrich, Lyle E. Gast, Curtis A. Glass, William C. Haynes, Alberta I. Herman, Joseph E. Hubbard, Allene R. Jeanes, Charles L. Mehlretter, K.L. Mikolajczak, Richard G. Powell, Joseph J. Raykis, W.K. Rohwedder, Wilbur C. Schaeffer, Odette L. Shotwell, Karl L. Smiley, Herbert E. Smith, Virginia M. Thomas, Harvey A. Tookey, Hwa L. Wang, and Michael J. Wolf. He further recommended that challenges to the ballots of the following nonprofessional employees be sustained: Joanne E. Chapman, Cecil C. Harris and Irma Stein.

The Assistant Secretary has reviewed the rulings of the Hearing Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Hearing Examiner's Report and Recommendations and the entire record in this case, I/ I hereby adopt the findings and recommendations of the Hearing Examiner except as modified herein.

1/ No timely requests for review of the Hearing Examiner's Report and Recommendations were filed with the Assistant Secretary by any of the parties.

Professional Employees

Wilbur C. Schaefer, Joseph E. Hubbard and Verle L. Davison

The ballots of Wilbur C. Schaefer, Joseph E. Hubbard and Verle L. Davison were challenged on the ground that they are Assistants to the Director, and are considered management officials. At the hearing, the parties stipulated that Schaefer, Hubbard and Davison are Assistants to the Director and, as such, are management officials. It was stipulated that Assistants to the Director are in the Director's inner council and their duties and interests are more closely aligned with those who formulate policy than with those who carry out the resultant policy.

As there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendations of the Hearing Examiner that the challenges to the ballots of Wilbur C. Schaefer, Joseph E. Hubbard and Verle L. Davison be sustained, and that their ballots not be opened and counted.

Thomas F. Clark, Lyle E. Gast, Charles L. Mehlretter, Michael J. Wolf, and Miss Virginia M. Thomas.

The ballots of Thomas F. Clark, Lyle E. Gast, Charles L. Mehlretter, Michael J. Wolf and Miss Virginia M. Thomas were challenged on the ground that they are supervisors. At the hearing, the parties stipulated that these individuals performed duties which meet some of the criteria for supervisors set forth in Section 2(c) of the Order, inasmuch as they responsibly direct the work of other employees, evaluate their performance, and discipline employees, and inasmuch as the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

As there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendations of the Hearing Examiner that the challenges to the ballots of Thomas F. Clark, Lyle E. Gast, Charles L. Mehlretter, Michael J. Wolf and Miss Virginia M. Thomas be sustained and that their ballots not be opened and counted.

Roy A. Anderson

The ballot of Roy A. Anderson was challenged by the Activity on the ground that he is a supervisor.

At the hearing, and subsequent to receiving testimony on the question of Anderson's supervisory status, the Hearing Examiner accepted a stipulation from the parties that Anderson is a supervisor within the meaning of Section 2(c) of the Order. As there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendation of the Hearing Examiner that the challenge to the ballot of Roy A. Anderson be sustained and that his ballot not be opened and counted.

Allene R. Jeanes

The ballot of Allene R. Jeanes was challenged by the Activity on the ground that she is a supervisor. At the hearing, the parties stipulated that if Jeanes were to testify her testimony would be substantially the same as that of Roy A. Anderson with respect to supervisory duties over other employees. In view of such agreement by the parties and because there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendation of the Hearing Examiner that the challenge to the ballot of Allene R. Jeanes be sustained and her ballot not be opened and counted.

Leonard T. Black

The ballot of Leonard T. Black was challenged by the Activity on the ground that he is a supervisor. At the hearing and subsequent to Black's testimony, the parties stipulated that Black's duties meet the criteria for a supervisor as defined in Section 2(c) of the Order. As there is no evidence to indicate that the parties' stipulation was improper, I hereby adopt the recommendation of the Hearing Examiner that the challenge to the ballot of Leonard T. Black be sustained and his ballot not be opened and counted.

The ballots of the following employees also were challenged by the Activity on the ground that they are supervisors. As noted by the Hearing Examiner, all of these employees voted in the professional group except Cecil C. Harris, who voted in the nonprofessional group.

R.A. Buchanan	K.L. Mikolajczak
James F. Cavins	Richard G. Powell
Arthur C. Eldridge	Joseph F. Raykis
John J. Ellis	W.K. Rohwedder
George F. Fanta	Odette L. Shotwell
Edwin N. Frankel	Karl L. Smiley
John P. Friedrich	Herbert E. Smith
Cecil C. Harris	Harvey A. Tookey
William C. Haynes	Hwa L. Wang
Alberta I. Herman	

At the hearing, the parties stipulated that if the above named employees were to testify their testimony would be substantially the same as that of Leonard T. Black with respect to their supervisory functions.

In view of such agreement by the parties and my conclusion as to Leonard T. Black's supervisory status, I hereby adopt the recommendations of the Hearing Examiner that the challenges to the ballots of the 19 employees listed above be sustained and their ballots not be opened and counted.

Curtis Glass

Curtis Glass is a research chemist, GS-12, performing research work in the Cereal Properties Laboratory on Nuclear Magnetic Resonance (NMR) of oilseed components. His ballot was challenged by the Activity on the ground that he is a supervisor. Working with Glass is another chemist, L.W. Tjarks, who is a GS-7.

The Hearing Examiner, although concluding that the work direction of Tjarks by Glass can be characterized as that of a more experienced employee to a less experienced employee rather than that of a supervisor to a subordinate, found that Glass did meet one of the criteria for a supervisor as defined in Section 2(c) of the Order based on Glass' use of independent judgement in evaluating Tjark's performance on a form entitled, "Career Service Evaluation of Research Scientist for Merit Promotion Plan." In reaching his determination, the Hearing Examiner concluded that the criteria set forth in Section 2(c) are applicable whether a supervisor has authority over one employee or many employees. He reasoned in this regard that the usage of the plural words "employees" "them" and "their" in Section 2(c) of the Executive Order should not be determinative particularly in view of the fact that the definition of "supervisor" in the Labor-Management Relations Act of 1947, as amended, defines supervisors in substantially the same terms as the Order and the National Labor Relations Board has found an employee to be a "supervisor" notwithstanding the fact that he supervises one employee. The Hearing Examiner noted also that the Order did not specify supervision of more than one employee as a requisite for supervisory status and that the Study Committee's "Report and Recommendations on Labor-Management Relations in the Federal Service, August 1969" contained no indication that it was the intent of the Order to require supervision of more than one employee to attain supervisory status.

I reject the Hearing Examiner's reasoning. In my view, the language of the Order is clear and free from ambiguity in stating that " 'Supervisor' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgement" (Emphasis added). In these circumstances, for the purpose of unit placement and voting eligibility, I find that Glass is not a supervisor within the meaning of the Order inasmuch as the

authority he exercises is limited to one employee. 2/ Accordingly, I hereby overrule the challenge to his ballot, and direct that, in the event Glass' ballot affects the results of the overall election, his ballot be opened and counted. 3/

Nonprofessional Employees

Irma Stein and Joanne Chapman

The ballot of Irma Stein was challenged on the ground that she is not an employee of the Activity.

The ballot of Joanne Chapman was challenged on the ground that she was not employed at the Activity as of the eligibility date for participating in the election.

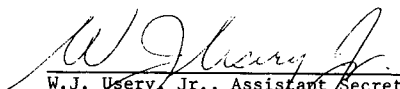
At the hearing, the parties stipulated that Stein is not an employee of the Activity and that Chapman was not employed as of the eligibility date for participating in the election.

As there is no evidence to indicate that the parties' stipulation was improper, I hereby affirm the Hearing Examiner's recommendation that the challenges to the ballots of Irma Stein and Joanne Chapman be sustained and their ballots not be opened and counted.

DIRECTION TO OPEN AND COUNT BALLOTS

IT IS HEREBY DIRECTED that the ballot of Curtis A. Glass be opened and counted, only if it effects the ultimate results of the election, at a time and place determined by the appropriate Regional Administrator. The Regional Administrator shall have a Revised Tally of Ballots served on the parties, and take such additional action as required by the Regulations of the Assistant Secretary.

Dated, Washington, D.C.
December 23, 1971


W.J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

2/ With respect to the application of private sector experience, as noted by the Hearing Examiner, in Charleston Naval Shipyard, A/SLMR No. 1, I indicated that I will take into account experience gained in the private sector under the Labor-Management Relations Act but will not be bound by decisions under the Act in the administration of labor-management relations in the Federal sector.

3/ In view of the disposition herein, I find it unnecessary to determine whether Glass' duties meet any of the criteria for a supervisor as defined in Section 2(c) of the Order.

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

UNITED STATES DEPARTMENT OF AGRICULTURE
NORTHERN MARKETING AND NUTRITION RESEARCH
DIVISION, PEORIA, ILLINOIS

Agency and Activity

and

LOCAL 3247, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

CASE NO. 50-5165

Petitioner

and

LOCAL 1696, NATIONAL FEDERATION OF FEDERAL
EMPLOYEES

Intervenor

Herman Meyners, Personnel Officer,
Northern Marketing and Nutrition Research
Division, Peoria, Illinois, for the
Agency and Activity
Curtis A. Glass, President, Local 3247,
American Federation of Government
Employees, AFL-CIO, Peoria, Illinois,
for the Petitioner
Peter Bata, National Representative, National
Federation of Federal Employees, Sault Sainte
Marie, Michigan, for the Intervenor

Before: Henry L. Segal, Hearing Examiner

REPORT AND RECOMMENDATIONS

Statement of the Case

This proceeding was heard at Peoria, Illinois, on July 22, 1971. It arose pursuant to a Report, Findings, and Notice of Hearing on Challenged Ballots issued on July 1, 1971, by the Acting Regional Administrator of the United States Department of Labor, Labor-Management Services Administration, Chicago Region, under the authority of Executive Order 11491 (herein called the Order) and pursuant to Section 202.20(d) of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations (herein referred to as the Assistant Secretary).

The issues heard concerned the eligibility to vote of 30 voters in a voting group of professional employees and of three voters in a voting group of nonprofessional employees whose ballots were challenged at an election conducted among a unit of the Activity's employees on May 11, 1971, under the supervision of the Assistant Secretary.

Upon the entire record in this matter and from observation of the witnesses, 1/ the Hearing Examiner makes the following:

Findings and Conclusions

I. The Election

Pursuant to an "Agreement for Consent or Directed Election" approved on April 21, 1971 by the Area Administrator, Labor-Management Services Administration, Chicago, Illinois, a secret ballot election was conducted on May 11, 1971 under the supervision of the Assistant Secretary in accordance with the provisions of the Order and the Regulations of the Assistant Secretary, in the following unit of the Activity's employees:

1/ No briefs were filed.

Included: All General Schedule Employees of the Division including Professionals;

Excluded: All Management Personnel, Supervisors, Guards, Employees engaged in Federal Personnel work in other than a purely clerical capacity and Wage Board Employees.

Two tallies of ballots were served with respect to the results of the election as follows:

Tally of Ballots for Professional Employees

Approximate number of eligible voters	201
Void ballots	5
Votes cast for inclusion in the non-professional unit	69
Votes cast for a separate professional unit	53
Valid votes counted	122
Challenged ballots	30
Valid votes counted plus challenged ballots	152

Challenges are sufficient in number to affect the results of the election.

Tally of Ballots

Approximate number of eligible voters	109
Void ballots	0
Votes cast for Local 3247 AFGE-AFL-CIO	27
Votes cast for Local 1696 NFFE (Ind.)	28
Votes cast against exclusive recognition	29
Valid votes counted	84
Challenged ballots	3
Valid votes counted plus challenged ballots	87

Challenges are sufficient in number to affect the results of the election.

The second tally of ballots is apparently a tally of the count made of the ballots cast by the nonprofessional voters. However, this tally was premature since the unit includes both professional and nonprofessional employees in a single unit. The professional employees' ballots must be counted first to determine if they desire inclusion in the single unit. If they vote for inclusion their ballots should be pooled with those of nonprofessionals, and the determination of majority status should be made on the basis of total votes cast. 2/ Accordingly, in this case, the nonprofessional votes should not have been counted and should have been impounded until the professional voters self-determination as to whether they wished to be included in the single unit was resolved. Before the question of inclusion can be resolved, disposition of the 30 professional challenged ballots must be made since they affected the results of the election. It is these 30 challenges plus three challenged ballots cast by nonprofessional employees which have been directed to me for hearing.

II. The Activity

The Northern Marketing and Nutrition Research Division is part of the Agriculture Research Service of the Department of Agriculture. Research by the Department of Agriculture covers a number of broad areas, such as production of farm products, use of farm products, services to the farmers and consumers. The Division has responsibility for research on the major farm crops of the Northern Region of the United States -- cereal grains, corn, wheat, oil seed crops such as soybeans, linseed and high arucic acid oil seed. Its research encompasses better ways of producing crops, development of potential crops, better and expanded use of crops as feed, for human consumption and for industrial use.

2/ See "Procedural Guide for Conduct of Elections under Supervision of the Assistant Secretary Pursuant to Executive Order 11491," issued by the Assistant Secretary on February 9, 1970, at page 5. Also, see "Clarifying Information for Conduct of Elections Involving the Inclusion of Professional Employees with Non-professional Employees," issued by the Assistant Secretary in September 1970.

The Division is headed by a Director, who is assisted by several assistant directors. It includes the necessary housekeeping facilities such as administrative and personnel facilities, stenographic services, maintenance services. The challenges in the main involved individuals engaged in performing the mission of the Division, research. Those challenged are principally chemists, or chemical engineers. The research mission of the Division is divided into laboratories, Cereal Products Laboratory, Cereal Properties Laboratory, Engineering and Development Laboratory, Fermentation Laboratory, Industrial Crops Laboratory, and Oilseed Crops Laboratory. There is a laboratory chief at the head of each laboratory. Each laboratory is divided into investigations branches, headed by investigation chiefs, and the branches are divided into groups involved in specific projects. It appears from the record that the research performed is highly sophisticated.

III. The Challenges

A. Initial Stipulations

At the outset of the hearing a written stipulation was received in evidence in which the parties stipulated that ten of the challenged voters were not eligible for reasons as follows.

Miss Irma Stein, who cast a challenged ballot in the non-professional voting group is not an employee of the Activity.

Mrs. Joanne Chapman, who cast a challenged ballot in the nonprofessional voting group, was not on the rolls of the Activity as of May 2, 1971, the eligibility period for participating in the election.

Wilbur C. Schaefer, Joseph E. Hubbard and Verle L. Davison, who cast challenged ballots in the professional voting group, occupy positions as assistants to the Director, and are considered management officials.

Thomas F. Clark, Lyle E. Gast, Charles L. Mehlretter, 3/
Michael J. Wolf, 4/ and Miss Virginia M. Thomas, who cast ballots in professional group, are supervisors.

With respect to Schaeffer, Hubbard and Davison, the parties further stipulated that as assistants to the director they are in the director's inner council and their duties and interests are more closely aligned with those who formulate policy rather than those who carry out resultant policy. 5/

With respect to Clark, Gast, Mehlretter, Wolf and Thomas, the parties stipulated further that their duties meet some of the criteria for supervisors set forth in Section 2(c) of the Order. Thus it was stipulated that they responsibly direct the work of other employees, evaluate their performance, discipline employees, etc., and that the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Inasmuch as Section 10(b)(1) of the Order provides that no unit shall be established if it includes any management official or supervisor, I will recommend, in view of the above stipulations, that the challenges to the ballots cast in the professional group by Schaeffer, Hubbard, Davison, Clark, Gast, Mehlretter, Wolf and Thomas be sustained. Also, as Stein was not an employee of the Activity and Chapman was not on the rolls of the Activity as of the eligibility period for participating in the election, I will recommend that the challenges to their ballots cast in the nonprofessional group be sustained.

3/ Charles L. Mehlretter is incorrectly listed on the Acting Regional Administrator's report, A/S Exhibit 1A, as C. Q. Thethrella.

4/ Michael J. Wolf is incorrectly listed on the Acting Regional Administrator's report as J. J. Wolf.

5/ The Assistant Secretary requires in order for an individual to be considered a "management official" within the meaning of Section 10(b)(1) of the Order that his interests be more closely aligned with those who formulate, determine and oversee policy rather than those who carry out resultant policy. See e.g. Veterans Administration, Regional Office, Newark, New Jersey, A/SILMR No. 38; Virginia National Guard, Headquarters, 4th Battalion, 111th Artillery, A/SILMR No. 69.

B. Roy A. Anderson

Anderson, who cast a challenged ballot in the professional group, was challenged by the Activity on the ground that he is a supervisor within the meaning of the Order. Anderson is a chemical engineer, GS-13, over the Cereal Conversion group in the Engineering and Development Laboratory. Cereal conversion consists of research in the modification, processing and the changing of the cereal grain to a useful product which can be used for either food and feed or industrial application. Anderson leads a group consisting of one chemical engineer, GS-13, two chemical engineers, GS-12, a food technologist, GS-12, and two chemical engineering technicians, GS-5 and GS-7. Anderson generally assigns the projects to his people, and outlines the objectives. He sees that they perform the work expeditiously. Any manuscript work done by his people is checked by Anderson, and must be approved by him before it is submitted to higher authority. Anderson attends staff meetings with the laboratory chiefs.

With respect to annual leave, if the time requested for annual leave by one of his people will interfere with the work, Anderson will recommend to the laboratory chief that the leave be denied. The laboratory chief will normally follow Anderson's recommendations.

Anderson prepares three types of written evaluations of his employees. First, he prepares a within-grade pay increase certification, in which he certifies that the employee meets the acceptable level of competence for a within-grade increase on the due date. Second, he prepares an annual performance rating form in which he rates an employee either satisfactory or outstanding. He has not had the occasion to rate an employee as being unsatisfactory, but if he desired to do so there is a set procedure to follow provided by the Department of Agriculture. Third, simultaneous with the performance rating form he must complete a Career Service Evaluation of Employee for Merit Promotion Plan form for each employee. This form contains 16 evaluation elements, such as maintaining quantity of work, maintaining quality of work, following policies and procedures, accepting responsibilities and initiating action, assuming leadership, getting along with co-workers, supervising others, etc. He must evaluate each applicable element on a five level scale, either below minimum, marginal-meets minimum, average, above average, or outstanding. In addition, he rates the employee on his attitude toward career growth

and development, competence for a technical assignment at the next higher level, competence for a supervisory or managerial assignment at the next higher level, and capacity and potential for continued growth-future performance at two levels higher (in next three to five years). In fact, according to Anderson, it is unlikely that a man in his group would be promoted unless he recommended it.

In view of the above record evidence, all parties stipulated that he is a supervisor within the meaning of Section 2(c) of the Order. I agree that Anderson's duties meet certain of the criteria listed in Section 2(c) and will recommend that the challenge to his ballot be sustained.

C. Allene R. Jeanes

Allene R. Jeanes, who voted a challenged ballot in the professional group, was challenged by the Activity on the ground that she is a supervisor within the meaning of the Order. All the parties stipulated at the hearing that if Jeanes were to testify, her testimony would be substantially the same as that of Anderson's with respect to supervisory duties over other employees. Accordingly, they stipulated that Jeanes is a supervisor within the meaning of the Order. In view of these stipulations, I will recommend that the challenge to her ballot be sustained.

D. Leonard T. Black

Black, who voted under challenge in the professional group, was challenged by the Activity on the ground that he is a supervisor within the meaning of the Order. Black, who is a chemist in engineering, GS-12, heads an investigations group engaged in analyses of vegetable oil products. Included in the group with Black are a chemist, GS-11, a chemist, GS-9, a physical science technician, GS-7, and 2 physical science technicians, GS-5. Black assigns the work to his group, and in doing so must assess the qualifications of his people to perform the specific task assigned. He directs the work of his people on a day to day basis. He approves or denies leave requests. He recommends awards, promotions, or disciplinary action. For example, he testified that he recommended an extra meritorious in-grade award to one of his people and the recommendation was accepted with no question. He prepares the three evaluation forms on each of his people described above in my discussion of the duties of Roy Anderson, and Black testified that considerable thought and judgment goes into the preparation of these evaluations.

Subsequent to Black's testimony, the parties stipulated that Black's duties meet the criteria for a supervisor under Section 2(c) of the Order, and that his ballot should not be counted. I agree that

the evidence indicates that Black performs duties which fit the definition in Section 2(c) of the Order, and in the performance of those duties he exercises independent judgment. Accordingly, I will recommend that the challenge to his ballot be sustained.

E. Additional Supervisory Employees
as Stipulated by the Parties

The following employees were also challenged by the Activity on the ground that they are supervisors within the meaning of the Order. All but one, Cecil Harris, who voted in the nonprofessional group, voted in the professional group.

R. A. Buchanan
James F. Cavins (incorrectly listed as Cavens
on the Acting Regional Administrator's Report)
Arthur C. Eldridge
John J. Ellis
George F. Fanta
Edwin N. Frankel
John P. Friedrich
Cecil C. Harris
William C. Haynes
Alberta I. Herman
K. L. Mikolajczak
Richard G. Powell
Joseph F. Raykis
W. K. Rohwedder (incorrectly listed as Rohredder on
the Acting Regional Administrator's Report)
Oedette L. Shotwell
Karl L. Smiley
Herbert E. Smith
Harvey A. Tookey
Hwa L. Wang

The parties stipulated at the hearing that if these employees were called to testify they would testify substantially the same with respect to their supervisory functions as Leonard T. Black (discussed above). The parties further stipulated that these employees are supervisors within the meaning of the Order. In view of this stipulation, and my conclusion above that Leonard T. Black is a supervisor within the meaning of the Order, I will recommend that the challenges to the ballots of the 19 employees listed above be sustained.

F. Curtis A. Glass

Glass is the current president of the petitioner. His ballot cast in the professional group was also challenged by the Activity on supervisory grounds. His is the only challenge which the parties did not resolve by stipulation.

Glass is a research chemist, GS-12, performing research work in the Cereal Properties Laboratory on Nuclear Magnetic Resource (NMR) of oilseed components. Working with him is another chemist, GS-7, L. W. Tjarks.

While job descriptions are indicative of an individual's duties, they are not necessarily accurate or sufficiently detailed to give a picture of the day to day activities of the incumbent. Accordingly, in discussing Glass's duties, I will depend principally on his testimony. Glass was the only witness presented with reference to his supervisory status.

According to Glass, NMR is a broadly applied research technique. He and Tjarks work individually with chemists in another research program in the Cereal Properties laboratory, helping to solve problems related to research being conducted in the particular program. It follows, according to Glass, that he does not generally supervise the work of Tjarks, but works together with Tjarks and the other chemists in the laboratory. Any written work performed by Tjarks is checked by the chemist he is assisting. Glass has not had the occasion to check Tjarks manuscript work because to the time of the hearing Glass and Tjarks had not performed on what Glass would consider to be their own project.

According to Glass, Tjarks might discuss personnel problems with him and ask him to take them up with the laboratory chief or the personnel officer. On technical problems, Tjarks might discuss them with Glass or any other chemist with whom Tjarks might be working.

Tjarks had first worked with Glass as a summer employee. Later when Tjarks was assigned to work full time with Glass, Tjarks was a subprofessional requiring a certain amount of training on NMR work from Glass. However, he subsequently finished his college course for a bachelor's degree, and was given professional status. According to Glass, he recommended to the next higher level at the appropriate time that Tjarks be converted from subprofessional to professional which put Tjarks on a higher step level in the GS-7 classification.

Glass also prepares the three evaluation forms described above in my discussion of Roy Anderson for Tjarks. Tjarks is aware that Glass prepares these forms because of necessary consultation between the preparer of the forms and the subject.

From Glass' testimony it appears that the work direction by Glass for Tjarks is more that of a more experienced employee to a less experienced employee than a supervisor to subordinate. However, the evaluation function would appear to meet one of the criteria of Section 2(c) of the Order. Thus, Section 2(c) provides "'Supervisor' means any employee having authority, in the interest of an agency, to . . . , or to evaluate their performance, . . . , if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;". Since the various elements of supervision set forth in Section 2(c) are written in the disjunctive, if an employee's authority includes any one of the elements, he would be a supervisor. The Assistant Secretary has so interpreted Section 2(c) by implication in that in various cases he has found that employees are supervisors where their authority included some, but not all, the elements listed in that section. 6/

Of course, for an employee to be considered a supervisor within the meaning of the Order based on his evaluation of performance of other employees, he must use independent judgment. With respect to two of the evaluation forms, the within grade pay increase form where Glass certified that Tjarks met the acceptable level of competence for a periodic within grade pay increase, and the notice of performance rating where Glass certified that Tjarks' performance was satisfactory, they do not appear to require much independent judgment. Such ratings appear to be standard in the Agency, and Glass testified it was a routine matter. In fact, if an employee was to be rated less than satisfactory, this appraisal form is not used, and another procedure would have to be followed. The Assistant Secretary has held that preparation of such forms, where "satisfactory" is the normal rating

6/ E.g., Virginia National Guard, Headquarters, 4th Battalion, 111th Artillery, A/SIMR No. 69; District of New Jersey, Delaware and Maryland, Farmers Home Administration, A/SIMR No. 50.

given as a matter of course, is not a sufficient reason for excluding an employee from a unit on the basis of supervisory status, see Virginia National Guard, Headquarters, 4th Battalion, 111th Artillery, supra, fn. 7; Federal Aviation Administration, Bureau of National Capital Airports, A/SIMR No. 91. However, the third evaluation form, "Career Service Evaluation of Research Scientist for Merit Promotion Plan," which Glass prepares on Tjarks is another matter. On that form covering the rating period from June 1970 through October 1970, Glass rated Tjarks on a scale of below minimum, marginal, average, above average, or outstanding in 13 elements. These elements included the following: progress on completion of assignments; quality of work completed; applying scientific research principles and methods; planning and applying specialized knowledge to research problems; communicating orally; communicating in writing; assuming responsibility for and initiating action on his research; involvement in and expending effort on research; recognizing the need for and adopting to changes in his research; showing capacity to do original and creative research; analyzing, interpreting, and evaluating research findings; getting along with co-workers; and dealing with persons or groups outside own agency. In addition, Glass rated Tjarks on career potential and included a narrative statement on Tjarks' potential. The form was signed by Glass, as supervisor. Such appraisal clearly requires independent judgment, and is not routine or clerical. This is especially true where that appraisal has such a great impact on the promotion potential of the employee being appraised.

While I conclude that Glass' evaluation of Tjarks meets one of the criteria of Section 2(c) of the Order, he has this authority with respect to only one employee. The argument might be made that the authorities listed in Section 2(c) must be exercised with respect to more than one employee since that section uses the plural words "employees," "them" and "their" when speaking of the recipients of the

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exercise of the authorities. ^{7/} However, it is my opinion that this verbiage is merely grammatical, and the plural includes the singular. Further, it appears that if the intent of the Order was to require supervision of more than one employee as a requisite for supervisory status, the Order would have so specified. Moreover, there is nothing in the study committee's "Report and Recommendations on Labor-Management Relations in the Federal Service, August 1969" which indicates that it was the intent of the Order to require supervision of more than one employee for an employee to be excluded from a unit as a "supervisor." The reasons for the policy of excluding supervisors is well stated by the study committee at paragraph C. titled, "Status of Supervisors":

"We view supervisors as part of management, responsible for participating in contributing to the formulation of agency policies and procedures and contributing to the negotiation of agreements with employees. Supervisors should be responsible for representing management agreements, including negotiated grievance systems, and/or expression of management viewpoints in daily communication with employees. In short, they should be and are part of agency management and should be integrated fully in that management."

The above reasons for excluding supervisors have validity whether a supervisor has authority over one employee or many employees.

^{7/} The Assistant Secretary, although not bound by decisions in the private sector, will take into account such decisions. Charleston Naval Shipyard, A/SIMR No. 1. The definition of "supervisor" in the Labor-Management Relations Act of 1947, as amended, at Sec. 2(11) defines supervisors substantially the same as Section 2(c) of the Order, including the use of the same plural terms, "employees," "them" and "their." The National Labor Relations Board has found that an employee who meets the definition of "supervisor" is a "supervisor" within the meaning of the Labor-Management Relations Act notwithstanding that he supervises only one employee. See e.g. General Electric Company, 120 NLRB 199; U.S. Gypsum Company, 116 NLRB 656, 658; Armour and Company, 119 NLRB 122; Food Haven, Inc., 126 NLRB 666, 669; Joseph A. White, 154 NLRB 1.

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In view of all the above, since Glass effectively evaluates the performance of Tjarks, I conclude that Glass is a supervisor within the meaning of the Order, and will recommend that the challenge to his ballot be sustained.

RECOMMENDATIONS

In view of my conclusions and the stipulations of the parties it is recommended that the challenges to the ballots of the following employees be sustained and that their ballots not be opened and counted.

Professional

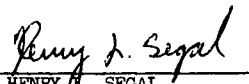
Roy Anderson
Leonard T. Black
R. A. Buchanan
James F. Cavins
Thomas F. Clark
James F. Davidson
Arthur C. Eldridge
John J. Ellis
George F. Fanta
Edwin N. Frankel
John P. Friedrich
Lyle E. Gast
Curtis A. Glass
William C. Haynes
Alberta I. Herman
Joseph E. Hubbard

Nonprofessional

Joanne E. Chapman
Cecil C. Harris
Irma Stein

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If the Assistant Secretary agrees with my recommendation that the challenged ballots cast by professionals not be opened and counted, then a majority of the votes of the professionals were cast for inclusion in the nonprofessional unit. In that event it is further recommended that in accord with the Assistant Secretary's established election procedure this matter be remanded to the Regional Administrator for the purpose of combining the professional ballots with the nonprofessional ballots for a total count and for the issuance of a tally of ballots for the single unit.


HENRY J. SEGAL
HEARING EXAMINER

Dated at Washington, D. C.,

AUGUST 26, 1971

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December 27, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION AND ORDER CLARIFYING UNITS
OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

NEW JERSEY DEPARTMENT OF DEFENSE
A/SLMR No. 121

This case involved unit clarification petitions filed by Locals of the National Army and Air Technicians Association, International Union of Electrical, Radio and Machine Workers, AFL-CIO, seeking clarification of various categories of employees located in exclusive bargaining units at McGuire Air Force Base, New Jersey and Organizational Maintenance Shops at 25 locations in New Jersey. Contrary to the view of the Petitioner, the Activity contended initially that all the disputed classifications should be excluded as supervisory.

With respect to certain of the categories of employees covered by the petitions for clarification, the Assistant Secretary noted that during the course of the hearing the parties agreed to their supervisory or nonsupervisory status. In these circumstances, he concluded that the agreement of the parties constituted, in effect, withdrawal requests of the petitions insofar as they sought clarification with respect to the agreed upon employees. In the absence of any evidence that the parties' agreement was improper, the Assistant Secretary approved the withdrawal requests.

As to the remaining disputed categories, the Assistant Secretary found that the Automatic Flight Control System Supervisor, Aircraft Pneumatics Supervisor, Aircraft Electrical Supervisor, Aircraft Instrument Supervisor, Flight Control System Supervisor, Medical Services Technician, Non-Destructive Inspection Supervisor, Quality Control Superintendent, and Organizational Maintenance Shop Chiefs were "supervisors" within the meaning of Executive Order 11491 and that such classifications, therefore, should not be included in the units. In this respect, he noted that employees in these classifications spent a substantial portion of their time directing the employees in their sections with respect to assignment of work, interpretation of directives and technical orders governing the work, monitoring the work while it is in progress and inspecting and approving the finished product. He noted additionally that most of the incumbents in these classifications were responsible to some extent for the training of their employees and the evaluation of their performances on a daily basis; that they had the authority to recommend step increases and adjust grievances on a minor level; and, that they were the initiating authorities with respect to annual and sick leave without recourse to higher authority, for final approval

in some cases. Although the Assistant Secretary found that in some instances employees in the above classifications occasionally worked along with the other employees in their sections, he observed that this was an infrequent occurrence in that it was done only in cases of absenteeism or an exceptionally heavy workload. The Assistant Secretary observed that the incumbents all effectively evaluated their subordinates by way of a yearly evaluation form, and had, in some instances, effectively recommended transfers and ordered overtime worked or tardiness made up after hours without checking with higher authority. Further, they attended supervisory meetings, independently interpreted and implemented work procedures, were solicited for suggestions by higher authority which were favorably acted upon, and were not under close supervision.

With respect to the job categories Parachute Packer and Repairman, Data Processing Superintendent, and Quality Control Supervisor, the Assistant Secretary found that they were not "supervisors" within the meaning of Executive Order 11491 and therefore, should be included in the unit. In this respect, he noted that they spent a substantial portion of their work time performing duties identical to the other employees in their unit, they had no authority to hire, transfer, suspend, layoff, recall, promote or discharge employees, and that they merely followed directives in making work assignments. Moreover, he observed that the duties in the section occupied by these employees were of a routine nature in which all functions were strictly prescribed by directives or manuals, and in which all employees knew their assignments and performed them without supervisory direction or monitoring.

The Assistant Secretary found also that the Procurement Technician, Personnel Equipment and Survival Technician and the Personnel Technician had either only one or no employees reporting to them and that they, therefore, could not be considered supervisors within the meaning of Section 2(c) of the Order. Accordingly, he included these classifications in the unit.

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NEW JERSEY DEPARTMENT OF DEFENSE 1/

Activity

and

Case No. 32-1984

LOCAL 371, NAATA, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO 2/

Petitioner

NEW JERSEY DEPARTMENT OF DEFENSE

Activity

and

Case No. 32-1985

LOCAL 372, NAATA, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO 3/

Petitioner

NEW JERSEY DEPARTMENT OF DEFENSE

Activity

and

Case No. 32-1986

LOCAL 373, NAATA, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO

Petitioner

1/ The name of the Activity appears as corrected at the hearing.

2/ The name of this Petitioner appears as corrected at the hearing.

3/ With respect to the petition filed in Case No. 32-1985, the parties agreed, during the course of the hearing, as to the status of all the classifications for which clarification was sought. There is no evidence to indicate that the parties' agreement was improper. In my view, the agreement of the parties constitutes, in effect, a withdrawal request of the petition seeking clarification of the status of certain covered classifications. In these circumstances, I approve the withdrawal request and, therefore, find it unnecessary to make a determination as to the status of any of the classifications in Case No. 32-1985.

NEW JERSEY DEPARTMENT OF DEFENSE

Activity

and

Case No. 32-1987

LOCAL 374, NAATA, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO

Petitioner

NEW JERSEY DEPARTMENT OF DEFENSE

Activity

and

Case No. 32-1988

LOCAL 375, NAATA, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO 4/

Petitioner

DECISION AND ORDER CLARIFYING UNITS

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Thomas B. Daly. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs of the parties, the Assistant Secretary finds:

1. The Petitioners, all locals affiliated with the National Army and Air Technicians Association (NAATA) and the International Union of Electrical, Radio and Machine Workers, AFL-CIO, are the exclusive representatives of certain employees of the Activity. In this proceeding, they

4/ During the hearing, this Petitioner withdrew its petition in Case No. 32-1988, and the withdrawal was approved subsequently by the Regional Administrator. Accordingly, I make no findings with respect to the job classifications included in the petition in Case No. 32-1988.

seek clarification of the status of 14 employee classifications, requesting that they be included in the exclusively recognized unit located at McGuire Air Force Base, New Jersey, and in the units in which are located 25 Organizational Maintenance Shops. 5/ The Activity contends that the employees in each of the disputed classifications are supervisors within the meaning of Section 2(c) of the Order and should be excluded from the exclusively recognized units.

The units represented by the NAATA, for which clarification is sought, cover all technicians employed by the New Jersey Air National Guard located at the 108th Tactical Fighter Group, at McGuire Air Base, New Jersey; technicians employed by and assigned to the United States Property and Fiscal Office, located at Lawrenceville, New Jersey; technicians located in the Combined Support Maintenance Shop #1, Bordentown, New Jersey and its supported organizational maintenance shops located at Cape May, Woodbridge, Phillipsburg, Red Bank, Bordentown, Trenton, Sea Girt, Camden, Burlington, Woodbury, Vineland, Atlantic City, and Long Branch, New Jersey; technicians located at Combined Support Maintenance Shop #2, West Orange, New Jersey and its supported organizational maintenance shops at Teaneck, Riverdale, West Orange, Newark, Lodi, Dover, East Orange, Elizabeth, Jersey City, Morristown, Westfield, and Orange, New Jersey.

The approximately 1660 technicians employed are distributed among the Army and the Air National Guard, with some 1040 of them in the Army National Guard and some 620 in the Air National Guard. The Air National Guard is located at the McGuire and Pomona Air Force Bases. The Army National Guard is distributed among numerous installations in the 21 counties of New Jersey. As noted above, considering the withdrawals of all or part of the petitions herein, there remains 14 job classifications that the parties dispute as to whether they belong within the exclusively recognized units. 6/

5/ The parties stipulated that certain classifications included in the petitions, and separately listed in the attached Appendix A, were supervisory. There is no evidence that such stipulations were improper. I view such stipulations in the context of a unit clarification petition, as motions to amend the respective petitions to delete and, in effect, withdraw such stipulated classifications. In the circumstances, I grant the motions to amend and therefore find it unnecessary to make a finding as to the status of the stipulated classifications.

6/ Thirteen classifications are located at the 108th Fighter Group, McGuire Air Force Base, New Jersey, A.N.G., (Case No. 32-1984) with the fourteenth being the Organizational Maintenance Shop Chiefs (Cases Nos. 32-1986 and 32-1987).

DISPUTED JOB CLASSIFICATIONS

Data Processing Superintendent, GS-9

The Data Processing Superintendent is responsible directly to the Base Comptroller. The position is located in the Data Processing Area of the Base Comptroller's office. In general, the incumbent provides support for the base accounting activities performing any data processing that has to be done by the Base. The record reveals that the activities of an employee in this classification are strictly prescribed with little room for independent judgement. Thus, within limits of various directives, the incumbent routinely assigns employees to perform their work which is repetitive and mechanical, determining priorities only in special situations. Further, he works along with the other employees and most procedures in the section are routine, periodic, and require little, if any, direction. The evidence establishes that an employee in this classification makes no written evaluations of employees, does not approve annual or sick leave requests or effectively recommend transfers or promotions, and has no authority to discipline or to adjust grievances. In these circumstances, and noting the fact that the above individual's duties are routine in nature and do not require the use of independent judgement, I find an employee in this classification is not a supervisor within the meaning of the Order. Accordingly, I find that the classification of Data Processing Superintendent should be included in the unit.

Medical Services Technician, GS-8

This position is located in the Medical Functional Area of the Air Technician Detachment. The incumbent is charged with the responsibility to plan, coordinate, organize and supervise all activities within the functional areas of the base medical services. Employees in the section involved review medical forms, attempt to locate any discrepancies on reports of physical examinations and either reschedule a physical or report such discrepancies to higher authority. In his position, the incumbent directly supervises two subordinates. In this regard, the incumbent is responsible for his subordinates training, he evaluates their performance on a day-to-day basis and by conducting personal conferences with them, he monitors their work product, and he effectively rates their work on an annual basis. The record reveals that an employee in this classification recommends step increases and maintains the record which lists all the background and current status of job qualifications of the individual technicians. Also, the incumbent has authority to discipline his subordinates and adjust grievances. Moreover, he assigns the work to his subordinates without consultation with higher authority and, on occasion, has turned down requests for annual leave without having to take up such decision with higher authority. The incumbent may authorize annual leave and has the authority to determine if overtime should be authorized, as well as who should work such overtime. The record indicates the incumbent spends almost all of his time involved with supervisory functions, checking his subordinates work for accuracy and completeness, but only rarely reviewing medical forms himself.

In addition, because the section involved is removed from the hospital area, it is visited infrequently by higher authority and, consequently, the incumbent is often called upon to exercise independent judgment with respect to the day-to-day operation of the section, as well as the direction of its personnel.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, schedule and assign work, authorize leave and overtime, and make effective recommendations as to promotions, I find that the Medical Services Technician is a supervisor within the meaning of the Order and, therefore, such classification should be excluded from the unit.

Personnel Equipment and Survival Technician, WG-12;
Personnel Technician, GS-6; and Procurement Technician, GS-8

The Personnel Equipment and Survival Technician is responsible directly to the Flying Training Instructor. The record reveals that he has one subordinate in his section, with the same job title.

The Personnel Technician is responsible directly to the Personnel Superintendent. This position is located in the Personnel Functional Area of an Air Technician Detachment. The record reveals that there is one other technician in his section.

The Procurement Technician is responsible to the Assistant Chief of Supply for the handling of all requests for any supplies or services that would be obtained through commercial sources and also possibly through other governmental agencies. The evidence establishes that he has no one reporting to him in his section.

Based on the foregoing, I find that the individuals in the above classifications are not supervisors within the meaning of the Order in that the evidence establishes that the authority they exercise is limited, at most, to one employee. 7/ I therefore shall include such classifications in the unit.

Parachute Packer and Repairman, WG-11

This position is located in the Mission Equipment Maintenance Functional Area of an Air Technician Detachment and the employee involved is responsible directly to the Field Maintenance Superintendent. The incumbent's

7/ See United States Department of Agriculture, Northern Marketing and Nutrition Research Division, Peoria, Illinois, A/SLMR No. 120.

work consists of inspection, maintenance, and repair of all type parachutes and for all fabric work required by the Air National Guard (ANG) units on the Base.

Although the Activity urges that the incumbent is a supervisor since he fills out a yearly rating form for the two other employees in his section, the record indicates that the preparation of such form is highly routine in nature, without a detailed appraisal of the respective ratee's qualities. The evidence establishes that the incumbent works alongside the other employees in his section on practically a full-time basis; he has never recommended anyone for promotion, nor refused an annual leave request; he has not recommended anyone for an award or step increase; and, he has no authority to hire, fire, adjust grievances or sign time and attendance cards. Moreover, the incumbent does not direct the work, since, by its very nature, each employee knows what is expected of him and performs his job in accordance with work directives and specific requests. The record reveals that any independence of judgment is usually confined to routine implementation of workload priority requirements which, for the most part, are established at higher levels.

Considering the above factors, I find that the authority exercised by an employee in this classification is routine in nature and does not require the exercise of independent judgment. Accordingly, I find that an employee in this classification is not a supervisor within the meaning of the Order and, therefore, the classification should be included in the unit.

Quality Control Supervisor, GS-8

The Quality Control Supervisor, who is directly responsible to the Quality Control Superintendent, has three other technicians in his section reporting to him. The position is located in the Aircraft Maintenance Functional Area of an Air Technician Detachment. The incumbent is responsible for providing functional supervision, inspection, and technical guidance to quality control management programs for material and equipment received, stored, issued, fabricated or maintained. He personally inspects every aircraft and associated equipment to assure good workmanship and that materials are being maintained in a proper and safe manner.

Although the Activity alleges that the incumbent assigns work in his section, independently directs its completion, supervises inspection work, renders opinions on employees' performance, sets up work priorities, and attends weekly supervisory meetings, the record discloses that such duties are performed infrequently and only in the absence of the Quality Control Superintendent, who, as noted above, is at a level above the Quality Control Supervisor. The record indicates that the incumbent does not interview for hiring, effectively recommend for promotions or in-grade raises, adjust grievances, administer discipline, conduct training or exercise independent judgment in the running of his section. Further, all of the work involved

is dictated by directives and is scheduled by the Quality Control Superintendent. The incumbent generally works alongside the other employees and, because the employees are fully trained, they are able to perform all the necessary checks without any guidance or direction from the incumbent. Moreover, the record indicates that the jobs assigned to the section are taken by the employees in rotating fashion, with the incumbent receiving his jobs in the same manner.

Based on the foregoing, I conclude that the Quality Control Supervisor does not have supervisory responsibilities, except on an intermittent and infrequent basis. Accordingly, I find that an employee in this classification is not a supervisor within the meaning of the Order and, therefore, this classification should be included in the unit.

Quality Control Superintendent, GS-9

The position of Quality Control Superintendent is located in the Aircraft Maintenance Functional Area of an Air Technician Detachment, and an employee in this classification reports to the Chief of Maintenance. The incumbent is responsible for five technicians in his section, all of whom are junior in grade. He is responsible for the development, installation, adaptation or revision of quality control procedures, plans, programs, or systems and the implementation of technical standards. Also, he gives advice and assistance with respect to quality control methods or requirements and the performance of inspections to assure quality of material and workmanship. The Quality Control Superintendent has the authority to settle minor grievances and he makes recommendations on major grievances, which the record shows normally are followed. He initials leave slips and recommends the scheduling of annual leave, with the majority of his recommendations being followed, and he has devised a schedule for compensatory time. The record reveals that he has interviewed a job applicant who was hired on his recommendation. Although it is contended that the incumbent works along with other employees performing functions that basically are dictated by directives from higher authority, the record indicates that the incumbent works along with other employees infrequently. The record reveals also that the incumbent, while working on inspections, independently assigns and directs the employees under him in the performance of their duties. He is also responsible for editing and putting into final form the checklist cards that his men utilize in their inspections. In this regard, he has changed these cards and corrected them occasionally, without checking with higher authority. Although the incumbent is not involved in the making of maintenance policy, the evidence establishes that his suggestions in that area have been solicited by higher authority and usually acted upon favorably. In this latter connection, he attends all staff meetings. He is responsible for the work of the Quality Control Supervisor, and in his section he makes job assignments, evaluates the completed assignments, and allocates the work to the employees. While close direction of employees is not required generally because the employees are trained and know what is expected of them, the record indicates that they are able to do this because of the standard operating procedures instituted and implemented by the incumbent.

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In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, schedule and assign work and leave, effectively recommend hiring, and adjust or recommend the adjustment of grievances, I find that the Quality Control Superintendent is a supervisor within the meaning of the Order and, therefore, this classification should be excluded from the unit.

Automatic Flight Control Systems Supervisor, WL-10

The Automatic Flight Control Systems Supervisor is responsible directly to the Fire Control Electronics Superintendent. The record reveals that the incumbent is, at present, responsible for two employees. The position is located in the Communications, Armament, and Electronics Functional Area of an Air Technician Detachment. The incumbent supervises installation, maintenance repair, overhaul and modification of automatic flight control systems and associated aerospace ground equipment. He is responsible for the maintenance of the auto-pilot component on assigned aircraft. Although the incumbent does not control maintenance priorities, he directs the work to be done and independently makes decisions as to who shall be assigned to the work, monitoring its progress, and checking and evaluating its completion. The section involved operates on a monthly schedule, and the incumbent determines the priorities in planning the schedule. The record reveals that he has assigned employees to correct any discrepancies on the flight line, and has assigned other work when things are slow. The incumbent evaluates and rates employees, recommends for promotion, and has interviewed for hiring, with his recommendations favorably acted upon. Further, the evidence establishes that he has filled out the Official Performance Rating Form for his employees. The incumbent approves sick and annual leave for his section by initialling the forms and sending them to his supervisor, who normally approves such action without comment or change. In this regard, the record reveals that he has rejected a request for annual leave and his action was upheld. Also, the record shows that the incumbent resolves grievances and may take the first step in corrective disciplinary action.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, has the power to make effective recommendations as to hiring, and is authorized to adjust grievances and approve annual and sick leave, I find that the incumbent is a supervisor within the meaning of the Order, and therefore, this classification should be excluded from the unit. 8/

8/ The parties stipulated that the incumbent's testimony with respect to his job performance, responsibilities and functions would be applicable to the following classifications: Aircraft Pneumatics Supervisor, WL-10, Aircraft Electrical Supervisor, WL-10, and Aircraft Instrument Supervisor, WL-10. Accordingly, I find also that the Aircraft Pneumatics Supervisor, WL-10, Aircraft Electrical Supervisor, WL-10, and Aircraft Instrument Supervisor, WL-10, are supervisors within the meaning of the Order and should be excluded from the unit, if they perform these supervisory functions over 2 or more employees.

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Non-Destructive Inspection Supervisor, GS-9

The Non-Destructive Inspection Supervisor is responsible directly to the Quality Control Superintendent. The incumbent is responsible for three junior employees. The position is located in the Aircraft Maintenance Functional Area of an Air Technician Detachment in support of a flying unit. The incumbent supervises and performs technical non-destructive inspection of aerospace material, parts, components, and pressurized systems, interprets and evaluates indications of the test method applied and performs maintenance of ancillary equipment. Essentially, the section involved is responsible for the x-raying of various parts of aircraft, performing inspections which could detect latent defects that other inspections might not reveal.

Although normal procedures for maintenance in this section are controlled by maintenance office directives, the record discloses that the incumbent assigns the priorities for work in his section and selects the employees for the completion of such work. He is also responsible for the monitoring of the work and for its successful and correct completion. The record reveals that the incumbent independently makes the decisions regarding the daily work assignments, and schedules overtime and compensatory time without consultation with higher authority. The record indicates also that the incumbent approves annual and sick leave; has interviewed employees for hiring and his recommendations were favorably acted upon; and prepares the vacation schedule for the employees in his section. Further, he has the authority to adjust grievances occurring in his section and to administer appropriate discipline. The incumbent normally does not work alongside his employees, and the record establishes that most of his time is spent in interpreting technical orders and specifications and making such findings known to his employees. Also, the record reveals that he has filled out an Official Performance Rating Form which is then submitted to his supervisor.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, assign work, schedule overtime and compensatory leave time, and approve annual and sick leave, I find that an employee in the classification of Non-Destructive Inspection Supervisor is a supervisor within the meaning of the Order, and such classification therefore, should be excluded from the unit.

Organizational Maintenance Shop Chief

The Organizational Maintenance Shop Chief is located at Organizational Maintenance Shop #8, East Orange, New Jersey. He is responsible to a staff Administrative Assistant for his day-to-day administrative supervision, and he, in turn, has responsibility for five other individuals in his shop. The evidence establishes that the Staff Administrative Assistant is physically situated a significant distance away from the Organizational Maintenance Shop #8, so that day-to-day supervision over the Organizational Maintenance Shop Chief is, in effect, minimal.

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The Organizational Maintenance Shop performs maintenance on automotive equipment, including removing and replacing new or rebuilt assemblies, such as voltage regulators, generators, carburetors, and fuel pumps. It repairs or replaces brake cylinders, removes and cleans or replaces fuel tanks and spark plugs, adjusts tappets, changes or adjusts distributor points, lubricates assemblies and performs work on the chassis.

The record reveals that the job description of the Organizational Maintenance Shop Chief at Shop #8, East Orange, New Jersey, does not adequately portray the incumbent's duties. Thus, contrary to the job description and as noted above, there is little or no day-to-day supervision provided the incumbent and, moreover, he interviews prospects for jobs, prepares employee efficiency reports, fills out time and attendance records, authorizes sick and annual leave without recourse to higher authority, and prepares all the schedules for periodic maintenance on the equipment, which are not subject to approval at a higher level. Further, the evidence shows that the incumbent determines the daily work schedule and assigns individuals in his shop to perform such work. Although the technical manuals and directives set forth the general guidelines as to frequency of maintenance, the shop chief independently determines how the guidelines are to be implemented in practice. Also, the incumbent has effectively recommended the transferring of an individual, and has filled out Official Performance Rating Forms for the individuals in his section. Because the incumbent is geographically separated from his immediate supervisor, who visits his shop only about four times a year, he has the final authority on such matters as leave, which he has occasionally disapproved. Although he has had no occasion to discipline employees for sick leave absences or other infractions, the record reveals that he has ordered tardy employees to make up the time for which they were late.

In view of the fact that an employee in this classification possesses independent and responsible authority to direct other employees, has the power to make effective recommendations as to work assignments, discipline, and the transferring of personnel under him, I find that the Organizational Maintenance Shop Chief at Organizational Maintenance Shop #8, East Orange, New Jersey, is a supervisor within the meaning of the Order and this classification should be excluded from the unit. 9/

9/ With respect to petitions in Cases Nos. 32-1986 and 1987, the parties were in agreement as to the status of all classifications, except the Organizational Maintenance Shop Chiefs. There is no evidence to indicate that the parties' agreement was improper. As noted above, I view such stipulations to constitute in effect, a request for withdrawal of such petitions as to all classifications except the Organizational Maintenance Shop Chiefs. The parties stipulated that the testimony as to the Organizational Maintenance Shop Chief of Organizational Maintenance Shop #8, East Orange, New Jersey, would be the same as that of 24 other shop chiefs in Cases Nos. 32-1986 and 32-1987 located at various locations in New Jersey, regardless of the unit in which they were actually employed. Accordingly, I find that the Organizational Maintenance Shop Chiefs of the Activity are supervisors within the meaning of the Order and should be excluded from their respective units if they perform their supervisory functions over two or more employees.

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ORDER

IT IS HEREBY ORDERED that the unit sought to be clarified herein, in which exclusive recognition was granted on December 23, 1969, to Local 371, NAATA, located at McGuire Air Force Base, New Jersey, be, and hereby is, clarified by including in the said unit those employee classifications set forth in Group A and by excluding those employee classifications set forth in Group B, namely:

LOCAL 371

Group A

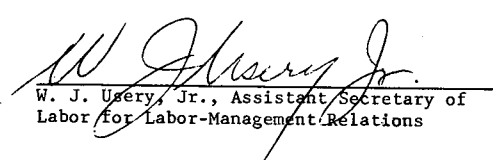
Procurement Technician, GS-8
Personnel Equipment and Survival Technician, WG-12
Parachute Packer and Repairman, WG-11
Personnel Technician, GS-6
Data Processing Superintendent, GS-9
Quality Control Supervisor, GS-8

Group B

Medical Services Technician, GS-8
Automatic Flight Control Systems Supervisor, WL-10
Aircraft Pneumatics Supervisor, WL-10
Aircraft Electrical Supervisor, WL-10
Aircraft Instrument Supervisor, WL-10
Quality Control Superintendent, GS-9
Non-Destructive Inspection Supervisor, GS-9

IT IS HEREBY FURTHER ORDERED, that the units sought to be clarified herein, in which exclusive recognition was granted on December 23, 1969, to Local 374, NAATA, and on December 19, 1969, to Local 373, NAATA, be, and they hereby are, clarified by excluding from the said units the Organizational Maintenance Shop Chiefs, WG-12, wherever located.

Dated, Washington, D.C.
December 27, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

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APPENDIX A

The parties agreed that the following classifications are supervisory and should be excluded from the exclusively recognized units:

Petition in Case No. 32-1984

Job Title

Assistant Administrator Personnel Officer
Personnel Superintendent
Maintenance Supply Supervisor
Material Facilities Supervisor
Motor Vehicle Equipment Superintendent
Maintenance Control Superintendent
Field Maintenance Superintendent
Aircraft Engine Shop Supervisor
Flight Line Superintendent
Aircraft Dock Supervisor (4)
Flight Supervisor (3)
Fire Control Electronics Superintendent
Fire Control Superintendent
Aircraft Electronics Superintendent
Munitions/Weapons Supervisor (2)
Munitions/Weapons Superintendent
Air Operations Supervisor
Administrative Superintendent
Inventory Management Supervisor
Metal Fabrications Supervisor
Periodic Maintenance Supervisor
Aerospace Ground Equipment Supervisor

Petitions in Cases Nos. 32-1986 and 32-1987

Shop Superintendent
Shop Foreman
Armament Repair Supervisor
Service Section Supervisor
Electronics Repair Supervisor
Automotive Repair Supervisor
Inspector Lead Foreman

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December 27, 1971

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SUMMARY OF DECISION, ORDER AND DIRECTION OF ELECTION
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

FEDERAL AVIATION ADMINISTRATION,
DEPARTMENT OF TRANSPORTATION
A/SLMR No. 122

The subject case involves representation petitions filed by the National Association of Air Traffic Specialists (NAATS) and the National Association of Government Employees, Local R3-22 (NAGE). The American Federation of Government Employees, AFL-CIO (AFGE) and the NAGE intervened in the petition filed by the NAATS. The NAATS sought a unit which encompassed all the Activity's flight service specialists (FSS) employed at flight service stations, whereas the NAGE petitioned for a unit which consisted of FSS employed at the Activity's flight service station located at Wilkes-Barre, Pennsylvania.

The NAGE and the AFGE contended that the petition by the NAATS was barred at each of the flight service stations covered by current negotiated agreements and at each facility where a valid election was held within the twelve-month period immediately preceding the filing of the NAATS petition. The NAGE further contended that the petition by the NAATS should be dismissed because it sought to include employees covered by agreement-bars, recognition and certification bars and was, therefore, filed untimely. The NAATS contended that negotiated agreements which covered units established prior to the effective date of Executive Order 11491 did not constitute bars to its petition and that further, it would promote labor relations stability to invalidate those bars which covered units established under Executive Order 11491 and such units should be included under the Nationwide unit sought in its petition.

The Assistant Secretary concluded that the NAATS petition was not timely filed as to those flight service stations covered by current agreements and it was, therefore, barred from including such stations. The Assistant Secretary also found that the NAATS was barred from including those flight service stations where the exclusive bargaining representative had been recognized or certified within the twelve-month period immediately preceding the time the NAATS filed its petition. The Assistant Secretary concluded that, absent unusual circumstances, such units should not be disturbed because to do so would lead to instability and uncertainty in labor relations. As to exclusively recognized units encompassed by the NAATS petition where the evidence estab-

lished the existence of a collective bargaining history, but no bar at the time the NAATS petition was filed, the Assistant Secretary determined that such employees would be entitled to a self-determination election in their respective units. However, where no collective bargaining history was established, he found that such units would be examined, and if found inappropriate, would be included properly under the NAATS petition. Regarding the election bar issue, the Assistant Secretary found that employees who had participated in a self-determination election during the twelve-month period immediately preceding the time the NAATS filed its petition were not barred from being included in the unit sought by the NAATS as the NAATS petition was neither for the same unit nor a subdivision of the unit which was involved in the election.

In all the circumstances, the Assistant Secretary found that the unit petitioned for by the NAATS, which included all the FSS employed at flight service stations, except those employed at stations where procedural bars existed, was appropriate as such employees constituted a homogeneous group with a community of interest which differed from that of the Activity's other employees. In reaching this conclusion, the Assistant Secretary noted that the training, skills, and functions of these employees were clearly distinguishable from all other occupational groups employed by the Activity, including air traffic control specialists (ATCS) employed at control towers, control centers and combined station-towers. The Assistant Secretary also rejected the contention that the unit sought by the NAATS was inappropriate because it excluded teletype operators and clericals who, in some instances, worked at the same installation and under the same supervision as the FSS. In this regard, the Assistant Secretary noted that interests of the FSS were sufficiently distinguishable from those of the clericals and teletype operators to entitle the FSS to separate representation.

The Assistant Secretary found that a Nationwide unit of the FSS at flight service stations was appropriate in that all specialists had the same basic skills and working conditions; there was transferring of FSS between flight service stations; and all significant policies affecting the FSS were promulgated at the national level. In these circumstances, the Assistant Secretary concluded that there was a sufficient community of interest between all of the FSS and that they, therefore, constituted an appropriate unit for the purpose of exclusive recognition. Accordingly, he directed an election in a Nationwide unit.

The Assistant Secretary found that the unit sought by NAGE, limited to the FSS employed at the Activity's flight service station at Wilkes-Barre, Pennsylvania, was not appropriate, noting that all major policies and actions regarding personnel and labor relations matter were determined at either the regional or national level. The Assistant Secretary further noted that the FSS at Wilkes-Barre had the same basic skills and similar terms and conditions of employment as the FSS employed at other stations, and that there was no evidence that the Wilkes-Barre employees had any interest that distinguished them from the FSS at other service stations. In dismissing the NAGE's petition, the Assistant Secretary stated that Wilkes-Barre employees would have an opportunity to vote in a more comprehensive unit as to whether or not they desired union representation.

A/SLMR No. 122

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

FEDERAL AVIATION ADMINISTRATION,
DEPARTMENT OF TRANSPORTATION 1/

Activity

and

Case No. 22-2145(RO)

NATIONAL ASSOCIATION OF AIR TRAFFIC
SPECIALISTS

Petitioner

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Intervenor

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

Intervenor 2/

FEDERAL AVIATION ADMINISTRATION,
DEPARTMENT OF TRANSPORTATION

Activity

and

Case No. 20-2414(RO)

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R3-22

Petitioner

1/ The name of the Activity appears as amended at the hearing.

2/ The name of American Federation of Government Employees, AFL-CIO, which intervened on behalf of itself and its Locals 2606, 2706, 2496, 205, 2342, 2665 and 3028, appears as amended at the hearing.

DECISION, ORDER AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 6 of Executive Order 11491, a consolidated hearing was held before Hearing Officer Earl T. Hart. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, including the briefs by all parties, the Assistant Secretary finds:

1. The labor organizations involved claim to represent certain employees of the Activity.

2. In Case No. 22-2145(RO), Petitioner, National Association of Air Traffic Specialists, herein called NAATS, seeks a Nationwide unit of all flight service specialists (FSS) employed at flight service and at international flight service stations, excluding all air traffic control specialists (ATCS) employed at centers and terminals, management officials, evaluation and proficiency specialists, teletype operators, electronic technicians, supervisory employees, employees engaged in Federal personnel work and guards. ^{3/} In Case No. 20-2414(RO), the Petitioner, National Association of Government Employees, Local R3-22, herein called NAGE, seeks a unit similar to that sought by the NAATS in Case No. 22-2145(RO) but limited to FSS assigned to the Wilkes-Barre, Pennsylvania flight service station.

The NAGE and the American Federation of Government Employees, AFL-CIO, herein called AFGE, contend that the petition filed by the NAATS improperly includes the FSS covered by current negotiated agreements and the FSS presently included in units where a bargaining representative obtained exclusive recognition and/or certification as exclusive representative within the twelve-month period preceding the filing of the NAATS petition. The NAGE and the AFGE further contend that the NAATS petition is barred from including the FSS at each location where a valid election was held within the twelve-month period preceding the filing of the petition. In these circumstances, it is urged that the NAATS petition should be dismissed. The NAATS asserts that negotiated agreements which cover units which were established

^{3/} The FSS and the ATCS are both under the GS-2152 series and are both designated formally as air traffic control specialists. However, those air traffic control specialists employed at flight service stations and at international flight service stations are commonly referred to as flight service specialists and those employed at centers and terminals are commonly referred to as air traffic control specialists.

prior to the effective date of Executive Order 11491 do not constitute a bar to the inclusion of the employees in such units in its proposed broader unit because the appropriateness of those units was determined by the Activity under Executive Order 10988 and not by the Assistant Secretary. The NAATS contends further that while it may be argued that negotiated agreements and certification and election bars preclude the inclusion of units established after the effective date of Executive Order 11491, in the circumstances of this case involving a petition for a Nationwide unit, it would promote labor relations stability to invalidate the above-mentioned bars and include such units in its proposed unit. The Activity did not take a position on the bar issues.

I. Alleged bars to the NAATS petition.

The history of collective bargaining on an exclusive basis involving the Activity's flight service stations is limited to station-wide units and, currently, the employees at 48 of the approximately 346 flight service stations are represented by exclusive bargaining representatives. The employees at 40 of these 48 facilities are represented by the NAGE and employees at the remaining 8 are represented by the AFGE. The record reveals that the Activity and the NAGE are parties to current negotiated agreements which cover employees employed at the 4 facilities located at Boston, Massachusetts; Buffalo, New York; Morgantown, West Virginia; and Windsor Locks, Connecticut. In addition, the Activity has current negotiated agreements with the AFGE which cover employees at the 2 facilities located at Fort Worth, Texas and Deming, New Mexico. The evidence establishes that the NAATS petition herein was not timely filed within the meaning of Section 202.3(c) of the Assistant Secretary's Regulations,^{4/} insofar as it encompassed employees included in the above-noted units covered by negotiated agreements, with the exception of the unit at Windsor Locks, Connecticut, where the agreement was executed subsequent to the filing of the petition.

^{4/} Section 202.3(c) provides, in pertinent part, "When there is a signed agreement covering a claimed unit, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period within which that agreement is in force...unless (1) a petition is filed not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of such agreement, or two (2) years, whichever is earlier, or (2) unusual circumstances exist which will substantially affect the unit or the majority representation."

Based upon a review of the negotiated agreements, I find that those negotiated agreements which were in existence at the time the NAATS filed its petition in Case No. 22-2145(RO) constitute bars to an election in the units they cover. Thus, where, as here, a petition for a broad unit seeks to include employees who are already represented exclusively in an existing, less comprehensive unit and who are covered by an existing negotiated agreement, absent unusual circumstances not present here, I will not permit the existing unit to be disturbed based on the agreement bar principle set forth in Section 202.3(c) of the Assistant Secretary's Regulations. ^{5/} Accordingly, I conclude that those exclusive employee bargaining units which were covered by negotiated agreements at the time the NAATS filed its petition herein may not be included in the unit sought by the NAATS. ^{6/}

The evidence establishes that at the Activity's facilities in Windsor Locks, Connecticut; Springfield, Missouri; Chicago, Illinois; La Crosse, Wisconsin; New Orleans, Louisiana; and Wichita Falls, Texas, the exclusive bargaining representative involved obtained exclusive recognition within the twelve-month period immediately preceding the filing of the NAATS petition in the subject case. In these circumstances, I find that in accordance with Section 202.3(b) of the Assistant Secretary's Regulations, the NAATS petition was untimely filed with respect to the above-noted facilities. ^{7/} Thus, to disturb

^{5/} In this connection, I reject the contention by the NAATS that agreements should not constitute bars where the units covered by such agreements were established prior to the effective date of Executive Order 11491. In my view, the date on which exclusive recognition was obtained is irrelevant to the question of the application of the agreement bar principle.

^{6/} In view of my findings below that the flight service station at Wichita Falls, Texas is barred from being included in the unit sought by the NAATS by virtue of a recognition or certification bar, I find it unnecessary to determine if the negotiated agreement between the NAGE and the Activity, covering that facility, which was awaiting approval at a higher management level at the time of the hearing in this matter, may also constitute a bar.

^{7/} Section 202.3(b) provides, in pertinent part, "When there is a recognized or certified exclusive representative of the employees, a petition will not be considered timely if filed within twelve (12) months after the grant of exclusive recognition or certification as exclusive representative of employees in an appropriate unit..."

exclusive recognition status that has been in existence for less than one year would create, in my view, unwarranted instability and uncertainty in labor relations and, therefore, would be inconsistent with the purposes and policies of the Executive Order.

With respect to the remaining facilities of the Activity covered by exclusive recognition and included within the NAATS petition, there is no evidence that the employee bargaining units at these facilities were covered by negotiated agreements at the time the NAATS filed its petition in Case No. 22-2145(RO). Moreover, it appears that exclusive recognition at these locations had been in existence for a period in excess of twelve months prior to the filing of the NAATS petition. ^{8/} Under these circumstances, I find the following policy is applicable in order to effectuate the purposes and policies of the Executive Order:

1. With respect to those exclusively recognized units in which the evidence establishes the existence of a collective bargaining history -- i.e., such units have been covered by negotiated agreements which either still exist or have recently expired -- and establishes further that the NAATS petition was timely filed either in the "open period" of an existing agreement or subsequent to its recent termination, I am persuaded that employees in such units should have the opportunity to vote in a self-determination election. Thus, the employees in such existing units would vote whether or not they desire to continue to be represented in their unit by their current exclusive bargaining representative. If a majority indicate such a desire, their existing unit would remain intact. However, if a majority of these employees do not vote for the labor organization which represents them currently, their ballots would then be pooled with those of the employees voting in any unit found appropriate as a result of the NAATS petition herein. ^{9/}

^{8/} None of the parties contended that the exclusive recognitions which had been in existence for more than 12 months at the time the NAATS filed its petition and for which there were no negotiated agreements, constituted a bar to the inclusion of the employees in such units within the unit sought by the NAATS, or that these employees were entitled to a self-determination election.

^{9/} The above rationale would be inapplicable as to any previously recognized units which included employees in addition to those in the air traffic control specialist GS-2152 series. Thus, I will not permit the NAATS to sever the FSS from existing units in the absence of evidence that the incumbent labor organization has failed to represent such employees in a fair and effective manner. See United States Naval Construction Battalion Center, A/SLMR No. 8.

2. With respect to those exclusively recognized units in which the evidence does not establish the existence of a collective bargaining history -- i.e., such units have not been covered by a negotiated agreement or a recently expired negotiated agreement -- I am of the view that the appropriateness of such a unit for the purpose of exclusive recognition under the Executive Order may be considered, without regard to a prior grant of exclusive recognition upon the filing of a petition encompassing that unit. Thus, if such exclusively recognized units are deemed to be inappropriate, the employees in these units would be included properly under the NAATS petition and, accordingly, would vote in any election conducted pursuant to that petition, without regard to their prior inclusion in less comprehensive exclusively recognized units.

An additional "bar issue" herein involves the Activity's flight service station at Kansas City, Missouri where the record reveals that the employees voted against union representation in an election held in a station-wide unit subsequent to the time the NAATS filed its petition in this matter. The NAGE and the AFGE contend that Section 202.3(a) of the Assistant Secretary's Regulations bars the inclusion of the Kansas City employees in the unit sought by the NAATS. ^{10/} While the Regulations bar the holding of an election in a unit or a subdivision of a unit where an election has been held within the twelve-month period immediately preceding the filing of a new representation petition, they do not prohibit an election where the unit sought is not the same unit or a subdivision of the unit in which the election was held. ^{11/} Accordingly, because the unit sought by the NAATS is not the same unit or a subdivision of the unit in which an election was held at the Kansas City flight service station, and as the election did not result in any labor organization gaining exclusive recognition, I find that such election, although held after the filing of the NAATS petition, does not constitute a bar to the inclusion of the employees at that facility in the unit sought by the NAATS.

II. Appropriate Unit.

The Activity contends that the appropriate unit herein should include all of the FSS at flight service stations and international flight service stations, as petitioned for by the NAATS, as such

^{10/} Section 202.3(a) provides in pertinent part, "...a petition will be considered timely filed provided there has been no valid election within the preceding twelve (12) month period and provided further that the claimed unit is not a subdivision of a unit in which a valid election has been held within such period."

^{11/} See Department of Interior, Bureau of Indian Affairs, Navajo Area, Gallup, New Mexico, A/SLMR No. 99.

employees share a clear and identifiable community of interest and their inclusion in a single Nationwide unit would promote effective dealings and efficiency of operations. The NAGE and the AFGE contend that there is a clear and identifiable community of interest among the FSS at the station-wide level and that the Nationwide unit sought by the NAATS is inappropriate. They further contend that the unit sought by the NAATS is inappropriate because it excludes teletype operators. Additionally, the NAGE argues that a unit which includes all the FSS at flight service stations also should include the ATCS employed at combined station-towers and the AFGE contends that any Nationwide unit of the FSS should include ATCS, as well as all clericals and evaluation and proficiency specialists. In this latter regard, the Activity and the NAATS contend that the evaluation and proficiency specialists should be excluded from any unit found appropriate as managerial employees. Finally, the AFGE states that the unit sought by the NAATS is based upon its extent of organization as shown by the fact that it includes only the FSS and that the NAATS limits its membership to such employees.

The Federal Aviation Administration is engaged in providing for the safe and expeditious flow of air traffic. Its operations are divided into several operating divisions, including the Air Traffic Division, the division involved in this proceeding, which is responsible for supervising air traffic control towers, air traffic control centers, flight service stations and combined station-towers. Control towers are located near airports and the ATCS employed therein are responsible for controlling the movement of air traffic within the immediate vicinity of the airports. Control centers are located along airway routes, and the ATCS employed therein are responsible for controlling the movement of air traffic between airports and over certain oceanic routes. Flight service stations, which employ approximately 3,312 FSS, are located from about 50 to 100 miles apart along airway routes, at landing areas and similar locations, and are engaged in providing helpful information to the flying public on such matters as weather, favorable flight altitudes and visual flight aids along flight routes. The service stations also contact the proper authorities in cases of actual or potential accidents, and initiate search and rescue missions for lost aircraft. In addition, these facilities receive flight plans for both visual and instrument flights and transmit them to the appropriate air traffic facilities. ^{12/} There are also combined station-towers which perform the functions of both control towers and flight service stations. The evidence reveals that the

^{12/} Instrument flight plans are transmitted to the control tower at the airport where the flight originates, and visual plans are transmitted to the flight service station at the planned destination.

approximately 45 combined station-towers are considered to be air traffic control facilities, as are the towers and centers, and that the specialists at these facilities are considered to be ATCS. The record indicates that while these employees spend about half of their time performing duties which are flight service in nature, the remainder is spent performing air controller functions for which only the ATCS are qualified.

The Air Traffic Division, which is headquartered in Washington, D.C., is divided into 11 Regions, each of which is headed by a Regional Division Chief. Each Division Chief is responsible for the operation of the control towers, control centers and combined station-towers as well as the flight service stations located in his Region. The Division Chief reports to a Regional Director, who is responsible for all of the Activity's operating division in a particular Region and who reports to the Federal Aviation Administrator at the national headquarters. Immediately beneath the Division Chiefs are the Facility Chiefs who supervise the day-to-day operations of the individual facilities. The Facility Chiefs may be aided by assistant chiefs, watch supervisors, and other supervisory personnel depending on the size of the work force. The record reveals that the flight service Facility Chiefs have the authority to make recommendations on employee personnel actions such as transfers, promotions, and demotions, but the final authority for such actions is vested at the Regional level.

The Activity's personnel, labor relations and operating policies are determined at the national headquarters. The personnel policy is the same for all flight service stations and any differences that exist with respect to such matters as work shifts or vacation scheduling result from the demands of local conditions. The Activity's personnel policy includes a national merit promotion plan for all employees, and although the Regions have authority to develop guidelines for merit promotions, such guidelines are required to conform to the national policy. In addition, the Activity has a national policy on working hours, and holiday and overtime pay, and while the application of the policy may differ from one facility to another, the evidence establishes that such differences are not permitted to deviate from the national policy.

The Activity's national labor office is responsible for the Activity's overall labor-relations program and it provides guidelines and instructions for the labor-relations offices which exist in each Regional office. The national office aids the Regions in resolving labor-relations problems, and participates in all collective bargaining negotiations along with representatives from the Regions and facilities involved. While a national representative may or may not act as the spokesman during negotiations, all negotiated agreements, whether negotiated at the regional or facility level, are subject to approval by the national office.

As noted above, the FSS and the ATCS are classified as air traffic control specialists and are included in the same Civil Service classification series. Recruiting is carried out on a national basis and all recruits are hired at the same grade level and are required to attend the Activity's training academy where the first three weeks of training is the same for all employees regardless of their ultimate assignment. Thereafter, the training is specialized for each of the two groups. The journeyman level for the ATCS is GS-13, whereas the journeyman level for the FSS at the service stations is either GS-9, 10, or 11, depending on the skills required at the particular facility.

There are substantial differences in the duties and skills of the FSS and the ATCS. Thus, the primary function of the FSS is informational and they are not "true" controllers as they do not control or separate aircraft as do the ATCS employed at the centers, towers, and combined station-towers. The FSS provide pre-flight information to pilots on flight conditions along their planned flight routes and they may provide information and advice to pilots in flight which may prove helpful in guiding them to a safe destination. However, any instructions they provide are strictly advisory.^{13/} On the other hand, the ATCS employed at the towers, centers, and combined station-towers have the authority to control aircraft in flight and pilots operating under instrument flight plans are required to obey their instructions except in emergency situations. Further, the ATCS are required to be able to separate and direct the flight of aircraft through the use of radar, whereas the FSS are trained only in the use of weather radar.

The evidence establishes that the area of consideration for filling vacancies in the work force at a flight service station of the Activity is generally at the facility level. However, the record reveals that there is a substantial amount of transfers of the FSS between flight service stations, most of which are occasioned by employees from stations with the lower journeyman grades transferring to those with a higher grade structure. There is also a certain amount of transfers between flight service stations and controller facilities because of a greater opportunity for advancement at those facilities than at the service stations. In this latter regard, the evidence established that the FSS who

^{13/} The FSS deal mostly with pilots operating under visual flight plans and do not have any normal contact with pilots operating under instrument flight plans while the pilots are in flight.

transfer from flight service stations to controller facilities may require as much as 20 months of training in controlling and separating aircraft through the use of radar and other electronic equipment before qualifying as ATCS, while any ATCS who transfer from control facilities to flight service stations require from 6 to 9 months of training, depending on prior experience, before qualifying as FSS. The Activity treats the FSS who seek to transfer between stations in the same manner as it does any other job applicants and those who transfer are required to achieve an area rating at their new duty station prior to their becoming fully accredited specialists. Those who transfer between flight service stations may achieve an area rating after a comparatively short period of from one to ninety days, during which time they become familiar with the terrain, landmarks, rivers, and other visual flight aids in the vicinity of their new duty station as well as equipment which did not exist at the former duty station.

The Activity provides manuals for the FSS which differ from those provided the ATCS. It also provides for stricter and more frequent physical examinations for the ATCS than for the FSS. Further, in this regard, all of the Activity's operating manuals, which set forth in detail the function of the Activity's various air traffic facilities and the duties and responsibilities of the various employee classifications, are prepared and distributed from the national office. Moreover, the Activity's program for training nonsupervisory employees, as well as supervisors, is determined at the national level.

The record shows that the work force at most of the Activity's flight service stations is restricted to the FSS and supervisors. However, 33 of the stations employ evaluation and proficiency specialists, while an indeterminate number of stations employ teletype operators and clericals. ^{14/} Also, electronic technicians work at the stations. The evaluation and proficiency specialists are assigned to the larger flight service stations and are charged with training, rating and certifying the competence of the rank and file FSS. They make determinations as to the skills and competence of the FSS and make recommendations to the respective Facility Chiefs as to whether the employees evaluated should be trained, promoted, demoted, transferred or dismissed. Also, they may serve as Facility Chief in his absence. The evidence established that the functions of the evaluation and proficiency specialists are performed by the Facility Chiefs at those stations which do not

^{14/} The record reveals that clericals and teletype operators have in the past been included with the FSS in certain of the station-wide exclusive bargaining units.

have such specialists.

Generally the teletype operators are employed only at the flight service stations which have more than 14 professional employees. They work in the same area and under the same supervision as the FSS. ^{15/} They are classified as clericals and neither give any pre-flight assistance to the flying public, nor perform any of the other duties performed by the FSS. The duties of the teletype operators, which consist mostly of sending and receiving messages with teletype equipment, are performed by the FSS at stations which do not have such operators. The Activity employs also an unspecified number of clericals at some of the flight service stations. They perform such functions as typing and filing. While these clericals work along with the FSS and under the same supervision, they neither give pre-flight assistance to the public nor do they perform any of the other functions of the FSS.

The Activity employs also approximately 8,000 electronic technicians, who are responsible for maintaining the equipment at flight service and controller facilities. While some of these technicians perform their duties in areas normally occupied by the FSS and the ATCS, their supervision and duties differ from that of the FSS and the ATCS, and they do not perform any of the informational services performed by the FSS, or control functions performed by the ATCS. Moreover, electronic technicians are not in the same division of the Activity as the FSS and the ATCS.

Based on all of the foregoing circumstances and noting the limitations discussed above with respect to agreement bar, certification bar, and recognition bar, I find that a unit comprised solely of the FSS at flight service stations is appropriate for the purpose of exclusive recognition. Thus, the record establishes that the FSS employed at flight service stations have skills which differ substantially from the skills possessed by all other occupational groups, including the ATCS, employed by the Activity. Moreover, while the record reveals that the FSS have certain interests in common with other occupational groups which may be employed at flight service stations, such as teletype operators and clericals, it demonstrates that the FSS have overall interests which are separate and distinct from such employees. Thus, while teletype operators and clericals may per-

^{15/} The record did not reflect the number of teletype operators nor the identity of the stations at which they are employed.

form some of the non-technical functions which the FSS might perform in the absence of teletype operators and clericals, the evidence establishes that the recruitment and training of the FSS and the basic work they perform is distinct and different from that of the teletype operators and clerical employees. In addition, while the clericals and teletype operators may share the same supervision as the FSS, their grade structure and opportunities for advancement differ and follow different progressions. With respect to the electronic technicians, while the FSS in some instances work at the same physical location as these technicians, the record shows that by training, background, and job progression, the two groups do not share such a community of interest as to require their inclusion in the same unit. With respect to the 33 evaluation and proficiency specialists, I find that the record establishes that these employees effectively evaluate the job performance of the FSS and that their duties place their interests more closely with personnel who formulate, determine, and oversee policy than with personnel in the proposed unit who carry out the policy. In these circumstances, I find that they are supervisory and/or managerial employees and, therefore, I shall exclude them from the unit found appropriate.

Finally, with respect to the ATCS, while there is some similarity in the training and skills of the FSS at flight service stations with that of the ATCS at the controller facilities, it is clear that their skills are not interchangeable. Thus, neither the FSS nor the ATCS can transfer between their two respective different types of facilities without a substantial amount of training. On the other hand, it is clear that the FSS may transfer between flight service stations with only a minimum amount of training. Further, the record establishes that the basic duties of the two groups differ substantially. Thus, the ATCS control and separate aircraft, whereas the FSS perform what is essentially an informational service for the flying public.

With respect to the question of the appropriateness of a Nationwide unit, the record establishes that all of the FSS are recruited nationally, have similar skills, training, functions, and interests, and perform essentially the same kind of work on a day-to-day basis. Also, the skills of these employees at different service stations are interchangeable and the evidence reveals that a substantial number of FSS transfer between flight service stations. Moreover, there is one central training facility for all specialists and the program is established at the national level. In addition, the labor relations and personnel policies

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for the FSS are established at the national level. In this connection, although there may be variations in labor relations and personnel policies to conform to regional or local conditions, it is clear that variations are subject to approval by the national office. Significantly, the Activity's labor relations policy provides that negotiated agreements, whether negotiated at the regional or station level, are subject to national approval.

In these circumstances, I conclude that the employees sought by the NAATS have a clear and identifiable community of interest and that such a unit will promote effective dealings and efficiency of agency operations. Accordingly, with the exception of those units of FSS in which the NAATS petition was filed untimely, or in which, as discussed above, separate self-determination elections are warranted, I find that the following employees constitute a unit appropriate for the purpose of exclusive recognition under Executive Order 11491:

All air traffic control specialists, GS-2152 series, employed at flight service stations and at international flight service stations; excluding GS-2152 series personnel employed at centers, terminals and combined station-towers, GS-2152 series employees employed in flight service stations at Boston, Massachusetts; Buffalo, New York; Morgantown, West Virginia; Windsor Locks, Connecticut; Fort Worth, Texas; Deming, New Mexico; New Orleans, Louisiana, Springfield, Missouri; Chicago, Illinois; La Crosse, Wisconsin; and Wichita Falls, Texas; teletype operators, clericals, electronic technicians, evaluation and proficiency specialists, employees engaged in Federal personnel work in other than a purely clerical capacity, other management officials and supervisors, and guards as defined in the Order.

I also find that the unit sought by the NAGE in Case No. 20-2414(RO) consisting of all air traffic control specialists employed at the Wilkes-Barre, Pennsylvania flight service station is not appropriate. Thus, as noted above, the record establishes that the policies and regulations which effect the employees at Wilkes-Barre are established above the station level. Further, it is clear that the final authority for personnel and labor relations decisions, which affect the employees' terms and conditions of employment, is vested at a higher level of management. In addition, there is no history of collective bargaining at the Activity's Wilkes-Barre facility and no evidence that employees at the facility have an interest different from that of other FSS of the Activity

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in the unit I have found appropriate. In these circumstances, I find that the establishment of a unit on a station-wide basis would not promote effective dealings and efficiency agency of operations. Accordingly, and considering also the fact that the FSS in Wilkes-Barre will have the opportunity to vote in a more comprehensive unit, I find that the unit sought by the NAGE is not appropriate, and I shall order that its petition be dismissed. In connection with this latter unit determination, I find also that in the circumstances described above, exclusively recognized units of FSS encompassed by the NAATS petition, where there is no evidence of a collective bargaining history, similarly would be inappropriate.^{16/}

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 20-2414(RO) be, and it hereby is, dismissed.

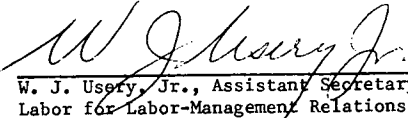
DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible, but not later than 45 days from the date below. The appropriate Area Administrator shall supervise the election, subject to the Assistant Secretary's Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill or on vacation or on furlough, including those in the military service who appear in person at the polls. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the National Association of Air Traffic Specialists; the National

^{16/} As I have indicated with respect to the units covered by certifications or other bars to the petition of the NAATS, my decision should not be construed to mean that where exclusive recognition has been granted for individual flight service stations and there is a history of collective bargaining as reflected by existing or recently expired bargaining agreements, such individual stations are necessarily inappropriate units.

Association of Government Employees; the American Federation of Government Employees, AFL-CIO; or none.

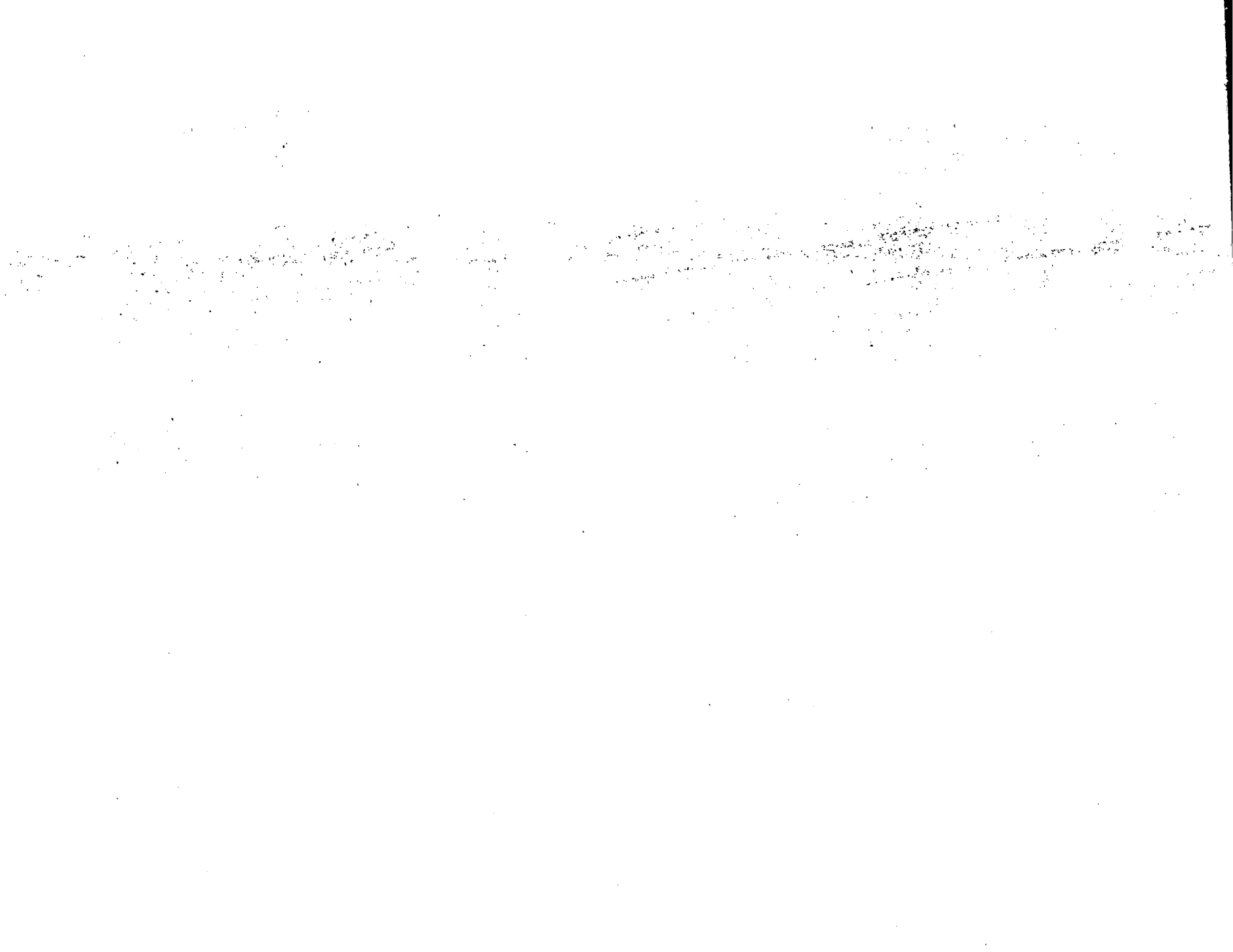
Dated, Washington, D.C.
December 27, 1971


W. J. Usery, Jr., Assistant Secretary of
Labor for Labor-Management Relations

REPORTS ON RULINGS
OF THE
ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

Nos. 1 - 43

January 1, 1970, through December 31, 1971



February 13, 1970

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

Report Number 1.

Problem

Timely objections were made to the conduct of an election held in December 1969. The objections were overruled by the activity head and were subsequently appealed to the agency headquarters sometime after January 1, 1970. The question was raised by the agency as to whether it should review the appeal and make a final agency decision, or should it forego such decision and transmit the matter to the jurisdiction of the Assistant Secretary of Labor for review and disposition.

Decision

The agency was advised that on appeals initiated under Executive Order 10988 the appeal procedure established by an agency under Executive Order 10988 should be exhausted through the final decision stage within the agency. The agency should notify the parties of its final decision and at the same time advise them of their appeal rights to the Assistant Secretary of Labor, through the appropriate Area Administrator, within 15 days of receipt of the agency's decision.

February 13, 1970

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

Report Number 2.

Problem

Timely objections were made to the conduct of an election held in December 1969. The activity investigated the objections. Prior to issuing its decision, the question was raised by agency headquarters as to whether (1) the activity should issue its findings and decision, or (2) turn over the results of its investigation to the Area Administrator for processing under the regulations of the Assistant Secretary.

Decision

The agency was advised that the local activity should issue its findings and decision and notify the parties of their appeal rights to the head of the agency for final decision. Upon issuance of the agency's final decision, the parties should be advised of their appeal rights to the Assistant Secretary, through the appropriate Area Administrator, within 15 days after receipt of the agency's final decision.

February 13, 1970

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

Report Number 3.

Problem

The question was raised as to whether there is an appeal to the Assistant Secretary under Executive Order 11491 in a situation where a unit advisory opinion was rendered pursuant to Section 11 proceedings under Executive Order 10988 but is rejected by (a) the agency, or (b) the labor organization.

Decision

In the situation described, the advisory decision was rendered pursuant to Section 11 of Executive Order 10988. Under Executive Order 10988 no appeal was provided to the Secretary of Labor regarding the acceptance or rejection of a Section 11 advisory opinion. Therefore, there is no appeal from Executive Order 10988 advisory decisions to the Assistant Secretary under Executive Order 11491.

February 13, 1970

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

Report Number 4.

Problem

The question was raised as to whether exclusive recognition can be granted after December 31, 1969 without an election, where the labor organization had presented a majority showing of interest in the unit sought, and the arbitrator's advisory decision, pursuant to Section 11 of Executive Order 10988, found the unit sought by the labor organization to be appropriate.

Decision

Executive Order 11491 requires, effective January 1, 1970, that exclusive recognition can be accorded a labor organization only after a secret ballot election has been conducted. Accordingly, exclusive recognition cannot be granted without an election.

February 13, 1970

March 2, 1970

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

Report Number 5.

Problem

The question was raised as to whether a labor organization filing a petition for exclusive recognition must resubmit its showing of interest even though the agency had already checked such showing under Executive Order 10988 and found it adequate and valid.

Decision

Section 202.2(a)(9) of the regulations of the Assistant Secretary of Labor requires that a petition for exclusive recognition shall be accompanied by a showing of interest of not less than 30% of the employees in the unit claimed to be appropriate. Thus, an interest showing must be submitted which accords with this requirement.

Report Number 6.

Problem

The question was raised as to whether a new posting by an agency was required by Section 202.4 of the regulations of the Assistant Secretary under Executive Order 11491 in those cases where exclusive recognition was requested under Executive Order 10988, and a notice to employees had been posted by the agency advising employee organizations that if they wished to seek any portion of the unit requested, they must file a request for exclusive recognition for such unit by a fixed date.

Decision

The notice posted pursuant to the Secretary of Labor's Rules for the Nomination of Arbitrators under Executive Order 10988 was for the purpose of providing an opportunity to non-petitioning employee organizations to claim any portion of the unit sought by the petitioning employee organization. No such request having been made, and the requirements of Section 202.5(b) of the regulations under Executive Order 11491 having been met, no new posting for that purpose is required.

However, the Secretary of Labor's Rules promulgated under Executive Order 10988 provided that an employee organization had the right to intervene for the purpose of appearing on an election ballot covering the petitioned for unit, if a request to that effect was made in writing within five (5) days after an agency posted notice of its intention to conduct an election or more than ten (10) days before the date of election. The notice now required by Section 202.4 precludes such intervention after ten (10) days from the date of posting, which would reduce the time for such intervention and, in fact, cut it off in the present proceeding. Therefore, to protect the rights of possible intervening labor organizations, the notice required by Section 202.4 must be posted only for the purpose of allowing a labor organization the right to intervene within the time limit and pursuant to the requirements of Section 202.5(a).

There will be a limited number of situations where an agency has posted a notice to employees between January 1, 1970 and February 4, 1970, the publication date of the regulations of the Assistant Secretary, concerning the filing of a request for exclusive recognition. A new notice will not be required to be posted provided (1) the notice posted by the agency substantially follows the requirements of Section 202.4 (c) and (d) and (2) labor organizations were advised of their rights and obligations as set forth in Section 202.5 (a), (c) and (d). This limited exception to the posting requirement of the regulations does not extend to the requirement that a petition must be filed on Form LMSA-60.7

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Report Number 7.

Problem

The question was raised as to whether upon timely intervention by a labor organization submitting a 10% showing of interest pursuant to Section 202.5(a) of the Regulations, the other parties are entitled to challenge the validity of the intervenor's showing of interest and status as a labor organization as provided for with respect to petitioning labor organizations under Section 202.2(f) and (g). This question arises in view of the language of subsections (f) and (g) which, if interpreted strictly, would limit all challenges to a ten day period following the initial date of posting of a notice of petition. Consequently, this would be insufficient time for parties to file challenges against a union intervening near the end of the initial posting period.

Decision

With respect to a labor organization intervening under Section 202.5(a), parties should be entitled to a ten day period to challenge the intervenor's showing of interest or status. Such challenges must be filed with the Area Administrator within ten (10) days after the receipt by a party of a copy of the request for intervention. Such requests for intervention shall be served simultaneously on all other parties and a written statement of such service shall be furnished to the Area Administrator. Challenges as to showing of interest or status as a labor organization shall in all other respects meet the requirements and be processed in the manner prescribed in Section 202.2(f) and (g).

August 14, 1970

October 27, 1970

UNITED STATES DEPARTMENT OF LABOR
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Report Number 8.

Problem

The question was raised as to whether an aggrieved party, under Section 202.6(d) of the Rules and Regulations, has a right to request review of a Regional Administrator's refusal to dismiss a representation petition.

Decision

No provision is made for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition. Accordingly, henceforth, no such request for review will be considered by the Assistant Secretary.

Report Number 9.

Problem

A request for review was filed with the Assistant Secretary seeking the reversal of a dismissal by a Regional Administrator of a challenge to the status of a labor organization under Section 202.2(g) of the regulations of the Assistant Secretary.

The challenge by the incumbent labor organization alleged that the petitioning labor organization was not in compliance with the Executive Order since it was not "free from corrupt influences opposed to basic democratic principles" within the meaning of Section 18 of the Order.

Decision

Section 202.2(g) of the regulations, which provides for challenges to the status of a labor organization in the course of representation proceedings, does not contemplate challenges based on alleged violations of the Standards of Conduct.

The procedures for enforcing the Standards of Conduct are set forth in Part 204 of the regulations. Complaints of alleged violations of the Bill of Rights of members of labor organizations (Section 204.2) and the provisions relating to the election of officers (Section 204.29) may be brought only by a member of the labor organization. Alleged violations of the other provisions of the regulations (Part 204) implementing the Standards of Conduct should be presented in accordance with Section 204.53. The processing of representation cases, however, will not be delayed pending investigation and resolution of complaints alleging violations of Part 204.

Accordingly, the request for the reversal of the Regional Administrator's dismissal of the challenge to the status of a labor organization under Section 202.2(g) was denied.

October 27, 1970

October 27, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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Report Number 10.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a dismissal by a Regional Administrator of a decertification petition.

The issue raised by the request for review is whether an election should be held where (1) the incumbent exclusive representative expressly stated that it no longer claims to represent the employees in the unit covered by the decertification petition and does not desire to participate in an election or have its name placed on the ballot; and (2) such "disclaimer" of interest is accompanied by certain action which the petitioner claims is inconsistent with the disclaimer.

The petitioner contended that an election should be held because the incumbent labor organization continued to exhibit a clear interest in the employees covered by the petition based upon its concurrent organizational efforts in a larger installation-wide unit of unrepresented employees.

Decision

It was concluded that the statement of the incumbent labor organization that it no longer claimed to represent the employees covered by the petition was clear and unequivocal. Such a disclaimer of interest necessarily must be held to extend only to the bargaining unit currently represented by the incumbent union. Hence, the organizational campaign among a larger and different composition of employees did not constitute conduct inconsistent with the disclaimer, notwithstanding the fact that the organization has indicated its intention to include the employees in question as part of a larger, future contemplated unit.

Accordingly, the request for the reversal of the Regional Administrator's dismissal of the decertification petition was denied.

Report Number 11.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's action in denying as untimely a request to intervene in a representation proceeding.

The representation petition filed with the Area Administrator did not list any labor organization as a recognized or certified representative and did not list any union as having claimed to represent any of the employees in the unit set forth in the petition.

Eleven days after the close of the posting period, a request to intervene was filed. The potential intervenor contended that he had not seen the notice to employees or known that a petition had been filed.

Decision

It was concluded that the appeal failed to show good cause for extending the ten (10) day intervention period set forth in Section 202.5 of the regulations or raised any material issue which would warrant reversal of the Regional Administrator's action.

Accordingly, the request for the reversal of the Regional Administrator's action in denying the request to intervene was denied.

October 28, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A DECISION OF THE ASSISTANT SECRETARY
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Report Number 12.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's overruling objections to an election.

The objections to the election were based solely on the alleged improper intervention by a labor organization in the election proceedings.

The evidence reveals that a labor organization was permitted to intervene in the proceedings more than ten days after the initial date of posting of the notice of petition by an Area Administrator who extended the time for intervention. Thereafter, all parties, including the intervenor, signed a consent agreement for an election. Since none of the choices on the ballot received a majority of the valid ballots cast, a runoff was scheduled. No objections were filed to the initial election. The parties to the runoff election were the objecting organization and the intervenor. The intervenor won the runoff election.

Decision

It was noted that Section 202.5(c) of the regulations of the Assistant Secretary provides that the period for intervention may be extended. Further, the evidence established that at no time prior to either election did the objecting organization challenge or object to the intervenor's standing as a party despite the fact that it had knowledge that intervention had been permitted. Accordingly, the objecting organization had, in effect, waived any right of challenge by entering into an election agreement to which the intervenor was also a party. In view of the foregoing circumstances, the objection with respect to the intervenor, which could have been raised prior to the holding of the consent elections, was considered untimely.

Accordingly, the request for the reversal of the Regional Administrator's action overruling of the objections to the election was denied and the Regional Administrator was directed to have an appropriate certification of representative issued.

October 28, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A DECISION OF THE ASSISTANT SECRETARY
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Report Number 13.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal as untimely of a challenge to the validity of the petitioner's showing of interest.

After the ten day posting period had expired the incumbent labor organization requested that the petition be dismissed based on the allegation that the petitioner was improperly obtaining authorization cards.

Decision

Under Section 202.2(f) of the regulations, "Any party challenging the validity of showing of interest must file his challenge with the Area Administrator within ten (10) days after the initial date of posting of the notice of petition as provided in Section 202.4(b) and support his challenge with evidence."

Since the challenge did not comply with the ten day requirement, the request for the reversal of the Regional Administrator's action was denied.

October 29, 1970

October 30, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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Report Number 14.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal of objections to an election.

Objections to an election were filed with an Area Administrator alleging that certain conduct engaged in by the petitioner affected the election results and warranted the holding of a new election. The objections were received in the Area Office without an accompanying statement of service upon the other parties to the election. In the subsequent investigation, the Area Administrator determined that the objecting party had not, in fact, served the objections on the other parties to the election. Based on these findings, the Regional Administrator dismissed the objections on the grounds that the objecting party did not comply with Section 202.20 or the election agreement. Thereafter, a request for review was filed with the Assistant Secretary without service of the request on the Regional Administrator or the other parties.

Decision

Under Section 202.20 of the regulations of the Assistant Secretary, a party filing objections to an election must serve copies of such objections "simultaneously" on the other parties and make a statement of service. Also, Section 202.6(d) of the regulations, which is made applicable to situations involving requests for review of findings by a Regional Administrator with respect to objections to an election provides, in part, that "Copies of the requested review shall be served on the Regional Administrator and other parties, and statement of service shall be filed with the request for review."

Accordingly, since the objections to the election and the subsequent request for review did not comply with the service requirements contained in the regulations, the request for the reversal of the Regional Administrator's dismissal of the objections to the election was denied.

Report Number 15.

Problem

The Assistant Secretary was requested to render an advisory opinion as to whether he would assert jurisdiction under Executive Order 11491 over an organization which, since prior to the effective date of Executive Order 10988, had represented employees of a Government corporation created by a public law enacted by the Congress.

Decision

The Assistant Secretary will not render advisory opinions. Decisions on issues such as those raised in the request for an advisory opinion will be made only when raised in cases pending before the Assistant Secretary under the Order and the Regulations issued pursuant thereto.

November 9, 1970

November 16, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A DECISION OF THE ASSISTANT SECRETARY
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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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Report Number 16.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal of a complaint alleging violations of the unfair labor practice provisions of the Executive Order.

The complaint had been filed with the Assistant Secretary without a charge having first been filed with the respondent in accordance with Section 203.2 of the Regulations of the Assistant Secretary.

Decision

Under Section 203.2 of the Regulations a charge must be filed directly with the party or parties against whom the charge is directed prior to filing a complaint with the Assistant Secretary. Further, Section 203.2 requires that the alleged unfair labor practice shall be investigated by the parties involved in informal attempts to resolve the matter shall be made by the parties. There was no evidence in this case that such settlement attempts had been made prior to the filing of the complaint. Accordingly, the request for the reversal of the Regional Administrator's dismissal of the complaint was denied.

Report Number 17.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's refusal to set aside a runoff election based on objections to conduct of the election filed by a union (hereinafter referred to as Union A) whose name was eliminated from the runoff election by the results of the earlier election.

The first election provided employees with a choice from among three competing unions (hereinafter referred to as Unions A, B, and C) and none. The two choices receiving the largest and second largest number of votes were "none" and Union B. Neither received a majority of the valid ballots cast and therefore, pursuant to Section 202.21 of the Regulations a runoff election was held in which the ballots provided employees with a choice for or against representation by Union B.

Decision

Section 202.21 of the Regulations clearly provides that the ballot in a runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes. Union A did not contend that it was eligible to appear on the ballot in the runoff election nor had it filed objections to the conduct of the election which resulted in its name being eliminated from the runoff ballot. Neither the Activity nor Union B, whose name appeared on the runoff ballot, filed objections to the runoff election.

Section 202.20(a) of the Regulations provides "...any party may file...objections to the conduct of the election or conduct affecting the results of the objections..." No provision is made for the filing of objections by parties other than those involved in the particular election.

Since the name of Union A did not appear on the ballot in the runoff election, it had no standing to file objections to the conduct of the election. Accordingly, its request for reversal of the Regional Administrator's action was denied.

November 18, 1970

November 17, 1970

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A DECISION OF THE ASSISTANT SECRETARY
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UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
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Report Number 19.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's refusal to set aside and rerun an election which had resulted in a tie vote.

The election provided employees with a choice as to whether or not they desired exclusive representation by the petitioning union. The balloting resulted in six votes cast for and six votes against exclusive representation out of a total of about twenty eligible voters. One eligible voter arrived at the polling place ten minutes after the polls had closed and thus was unable to cast a ballot.

The union asserted that the election should be set aside and rerun since the appearance of the late eligible voter at the polls indicated that a new election would result in a positive election decision, i.e., in a majority of votes being cast for one of the choices on the ballot. No contention was raised that any eligible voter failed to cast a ballot in the election because of improper conduct by any of the parties.

Decision

Section 202.17(c) of the Regulations provides that "...An exclusive representative shall be chosen by a majority of the valid ballots cast." Only one union was involved in the election and therefore the provisions of Sections 202.21 and 202.22 of the Regulations with respect to possible "tie vote" situations do not apply.

Accordingly, in the absence of objections to the election alleging improper conduct affecting the conduct or the results of the election and because the union was not chosen as the exclusive representative by a majority of the valid ballots cast as required by Section 202.17(c) of the Regulations, the request for the reversal of the action of the Regional Administrator was denied.

Report Number 18.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal of a representation petition.

The issue raised by the request for review was whether or not a decision by an agency head to exclude certain segments of his organization from the coverage of the Order, under authority granted to him in Section 3(b)(4), is subject to review by the Assistant Secretary under Section 6 of the Order.

Decision

It was concluded that a decision by an agency head under the authority granted in Section 3(b)(4) is not subject to review by the Assistant Secretary. Accordingly, the request for the reversal of the Regional Administrator's dismissal of the petition was denied.

December 8, 1970

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

Report Number 20.

Problem

A request for review was filed by a union seeking reversal of a Regional Administrator's refusal to set aside an election based on objections to conduct affecting the results of the election alleging that a rival union had breached an agreement governing the unions' pre-election campaign activities.

Decision

The facts disclosed that the parties had executed an Agreement for Consent or Directed Election (LMSA Form 1103) and also a side agreement which provided, in part, that the unions would not post campaign literature containing derogatory remarks about the activity. The objecting union asserted that the side agreement also intended that such derogatory literature would not be distributed to employees. Subsequent to the execution of the side agreement, the rival union distributed a campaign leaflet criticizing the activity's budget and staffing.

Parties engaged in pre-election campaigns occasionally distribute literature expounding their own virtues and criticizing the alleged shortcomings of rival unions or the activity. Such conduct is generally permissible unless the distributed literature constituted improper conduct affecting the results of the election. While the parties may desire to make side agreements of the above nature, the Assistant Secretary will not undertake to police such agreements and the breach thereof, absent evidence that the conduct constituting such breach had an independent improper effect on the conduct of the election or the results of the election.

Accordingly, upon concluding that the leaflet was easily recognizable as self-serving propaganda and not of a nature which could improperly affect the results of an election, the request that the election be set aside was denied.

January 14, 1971

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Report Number 21.

Problem

The question was raised as to whether an aggrieved party, under Section 202.6(d) of the Regulations, has a right to request review of a Regional Administrator's dismissal of a challenge to the validity of showing of interest.

Decision

No provision is made for the filing of a request for review of a Regional Administrator's action dismissing a challenge to validity of showing of interest. Accordingly, henceforth, no such request for review will be entertained by the Assistant Secretary.

January 15, 1971

February 3, 1971

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Report Number 22.

Problem

Objections alleging conduct affecting the results of an election, timely filed with the Area Administrator, were dismissed by the Regional Administrator. The request for review additionally alleged as objectionable other conduct unrelated to that which was alleged in the objections filed with the Area Administrator.

Decision

Section 202.20(a) of the Regulations provides that "Within five (5) days after the tally of ballots has been furnished, any party may file with the Area Administrator.... objections to the conduct of the election or conduct affecting the results of the election, supported by a short statement of the reasons therefor...."

Allegations of conduct affecting the results of an election contained in a request for review and not contained previously in the objections filed pursuant to Section 202.20(a) are untimely and will not be considered by the Assistant Secretary.

Report Number 23.

Problem

A request for review was filed seeking reversal of the Regional Administrator's dismissal of a complaint alleging violations of the unfair labor practice provisions of the Executive Order. A union had charged an activity with improper restrictions on electioneering in that it had refused to consider working areas where some employees ate their lunches to be "authorized lunch locations" for purposes of electioneering by nonemployee union representatives. The evidence disclosed that the restrictions on electioneering activity had been imposed equally upon each of the three unions involved.

Decision

It was concluded that the activity was under no obligation to allow nonemployees to enter work areas for the purposes of electioneering.

Accordingly, having found the allegations to be without merit, the request that the Regional Administrator's action be reversed was denied.

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Report Number 24.

Problem

A request for review was filed seeking reversal of the Regional Administrator's dismissal of a complaint alleging violations of the unfair labor practice provisions of the Executive Order. Subsequent to filing the complaint, the complainant repeatedly requested that the Area Office conduct an independent investigation of the allegations contained in the complaint, including the interviewing of witnesses whose names the complainant would furnish. The Area Administrator declined to comply with this request and eventually the Regional Administrator dismissed the complaint, primarily on the basis of the failure of the complainant to submit a timely report of investigation as required by the Regulations.

Decision

It was concluded that the Area Administrator was under no obligation to conduct the type of independent investigation requested by the complainant. The investigation of complaints by Area Administrators is limited essentially to consideration of the report of investigation by the parties which must be filed with the complaint. The requirement under Section 203.2 of the Regulations that any charge alleging unfair labor practices must be filed with the respondent before a complaint can be filed with the Area Administrator is designed to encourage informal resolution of such disputes by the parties involved. The further requirement under the Regulations that a report of investigation of such charge accompany the complaint points up the fact that the charging party and the respondent are expected to have conducted an investigation of the alleged unfair labor practices, have exchanged all relevant evidence in support of their respective positions, and have attempted to resolve the

matter informally. Accordingly, Area Administrators should not undertake to contact witnesses for complainants because the procurement of evidence from witnesses is a part of the burden of proof which the complaining party bears throughout all phases of the case -- from the filing of the complaint through the holding of the formal hearing, if any.

The Assistant Secretary does not at any time assume the role of an advocate in unfair labor practice cases. The burden of proof always remains with the complainant.

March 1, 1971

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Report Number 25.

Problem

A request for review was filed seeking reversal of the Regional Administrator's dismissal of a complaint alleging violation of Section 19(a)(1), (2), and (4) of the Executive Order. Relying on the particular allegations made, and the fact that the parties had an established grievance procedure, the agency alleged the Assistant Secretary had no jurisdiction of the case under Section 19(d) of the Executive Order.

Decision

The Assistant Secretary will not proceed in a case when the issue is an alleged violation of Section 19(a)(1), (2), or (4) of the Executive Order, when it is determined an established grievance or appeals procedure covers the complaint, and the agency alleges a lack of jurisdiction under Section 19(d) of the Executive Order.

Accordingly, the request for the reversal of the Regional Administrator's dismissal of the complaint was denied.

March 18, 1971

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Report Number 26.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal of a complaint alleging violation of Section 19(a) (6) of the Executive Order.

The issue raised by the request for review is whether or not a labor organization can utilize the unfair labor practice provision set forth in Section 19(a)(6) of the Executive Order as a means for resolving negotiability disputes in lieu of the procedures set forth in Section 11 of the Order.

Decision

It was concluded that the intent of Section 19(a)(6) is to provide a labor organization an opportunity to file a complaint when it believes that management has been arbitrary or in error in excluding a matter from negotiation which has already been determined to be negotiable through the procedures set forth in Section 11(c) of the Order.

Accordingly, the request for the reversal of the action of the Regional Administrator was denied.

March 19, 1971

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Report Number 27.

Problem

A request for review was filed with the Assistant Secretary seeking reversal of a Regional Administrator's dismissal of a representation petition.

The issue raised by the request for review was whether or not a decision by an agency head to exclude certain employees of his organization from the coverage of the Order, under authority granted to him in Section 3(b)(3), is subject to review by the Assistant Secretary under Section 6 of the Order.

Decision

It was concluded that a decision by an agency head under the authority granted in Section 3(b)(3) is not subject to review by the Assistant Secretary. Accordingly, the request for reversal of the Regional Administrator's dismissal of the petition was denied.

April 23, 1971

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Report Number 28.

Problem

The question was raised as to whether an aggrieved party, under Section 202.6(d) of the Regulations, has a right to request review of a Regional Administrator's dismissal of a challenge to the status of a labor organization.

Ruling

No provision is made for the filing of a request for review of a Regional Administrator's action dismissing a challenge to status of a labor organization. Accordingly, henceforth, no such request for review will be entertained by the Assistant Secretary.

May 10, 1971

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Report Number 29

Problem

The Activity refused to post a notice of petition in accordance with Section 202.4 of the Regulations based on the view that it had no obligation to post such a notice where, in its view, the employees covered by the petition are not Federal employees and therefore are not subject to Executive Order 11491.

Ruling

The Assistant Secretary's Regulations pertaining to posting of the notice of petition were intended to provide a means whereby potential intervening parties would be placed on notice that a petition had been filed. Such posting was not intended in any way to act as an admission by the Activity either as to the appropriateness of the unit sought or as to the coverage of the Executive Order over the employees covered in the petition. Accordingly, since the permitting of activities to pick and choose when they will and when they will not post a notice of petition was deemed to be inconsistent with the Assistant Secretary's effective implementation of his responsibilities delegated to him by the President of the United States in Executive Order 11491, the Activity was directed to post the notice of petition in accordance with Section 202.4 of the Regulations.

May 27, 1971

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Report Number 30

Problem

The question was raised as to whether an aggrieved party, under Section 202.6(d) of the Regulations, has a right to request review of a Regional Administrator's dismissal of a petition based on his determination that the showing of interest was inadequate.

Ruling

No provision is made for the filing of a request for review of a Regional Administrator's action dismissing a petition on the basis of an inadequate showing of interest. Accordingly, no such request for review will be entertained by the Assistant Secretary.

June 14, 1971

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Report Number 31.

Problem

The question was raised whether a respondent activity's refusal to comply with the complainant union's request that negotiations take place during off-duty hours constituted a violation of Section 19(a)(6). The respondent rejected the request but offered to meet four days each week during duty hours from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m.

Ruling

While Section 20 of the Executive Order would not prohibit the respondent from agreeing voluntarily to complainant's preferred hours for negotiation, there was no evidence that respondent acted in bad faith or refused to comply with the requirement of meeting at "reasonable times" as referred to in Section 11 of the Order by offering to meet as described above. Such conduct, therefore, was not viewed as being inconsistent with Section 19(a)(6) of the Order.

Accordingly, the request for the reversal of the Regional Administrator's action dismissing the complaint was denied.

June 14, 1971

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Report Number 32.

Problem

The question was raised whether an activity engaged in objectionable conduct affecting the results of an election by approving the distribution of anti-union literature by employees. The literature was not beyond proper bounds in its content and was not sponsored or endorsed by the activity.

Ruling

As stated in Section 1(a) of the Executive Order, employees of the executive branch of the Federal Government have the right to engage in, or refrain from, activity on behalf of a labor organization. Having the right to express their views freely in an election campaign, employees may not be prohibited from distributing literature based solely on the fact that it is unfavorable to a particular labor organization.

Accordingly, the request that the election be set aside was denied.

June 15, 1971

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Report Number 33.

Problem

The question was raised as to whether a charge filed under Section 203.2 of the Regulations must be in writing, and if in writing what content is required to set forth properly the alleged unfair labor practice.

Ruling

The charge must be in writing and should contain a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts, in order that the parties may be in a position to resolve informally the alleged unfair labor practice.

June 16, 1971

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Report Number 34.

Problem

The question was raised as to the Assistant Secretary's policy with respect to permitting compliance officers or other Labor-Management Services Administration (LMSA) personnel to appear as witnesses in representation or unfair labor practice proceedings being conducted pursuant to provisions of the Regulations and also with respect to the production of LMSA documents at such proceedings.

Ruling

Any party who desires to call an LMSA agent as its witness, or who seeks production of LMSA documents in a proceeding must address such a request, with supportive reasons, in writing, to the Assistant Secretary. LMSA personnel will not testify nor will documents be produced unless authorized by the Assistant Secretary. LMSA personnel will be permitted to testify and documents will be permitted to be produced in representation and unfair labor practice proceedings under Executive Order 11491 only in such circumstances where the Assistant Secretary determines such evidence will effectuate the purposes of the Executive Order.

July 22, 1971

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Report Number 35

Problem

A request for review was filed seeking reversal of the Regional Administrator's dismissal of a complaint alleging violations of the Bill of Rights provisions of the Standards of Conduct, CFR 204.2.

A member who was also a paid national representative of the union complained that his membership rights were violated by union rulings, constitutional provisions and the collective bargaining agreement which prohibited him from being a candidate for national office, a delegate to national conventions, in attendance at elections of national officers, or from politicking for or against candidates or resolutions coming before the convention. The Regional Administrator concluded that while the rights of the complainant and others similarly situated had been substantially curtailed, the complaint should be dismissed. He evaluated the arguments advanced by both sides and decided that the restrictions were reasonable.

Ruling

Section 204.58 of the Regulations provides that the Regional Administrator may dismiss a complaint as to Section 204.2 if he "determines that a reasonable basis for the complaint has not been established or that a satisfactory offer of settlement has been made. . ." In this case, however, the Regional Administrator dismissed the complaint on the basis of his assessment of the merits of the case.

The Assistant Secretary decided that in the absence of a clear precedent in similar cases under the LMRDA, a conclusion cannot be reached that there is no reasonable basis for the complaint in this case. Accordingly, he reversed the decision of the Regional Administrator and remanded the case for hearing.

July 23, 1971

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Report Number 36

Problem

A request for review was filed seeking reversal of the Regional Administrator's dismissal of a complaint alleging violations of Executive Order 11491. The complainant was an official of a unit within a local union which has members employed in the Legislative and the Executive Branches. He complained that he had been improperly removed from his position with the union in a dispute over grievance handling and internal union fiscal matters. The Regional Administrator dismissed the complaint on the ground that the Government Printing Office, where the complainant works, is an arm of the Legislative Branch, and therefore not subject to the Order.

Ruling

It was decided that although the Order does not apply to other than Executive agencies, jurisdiction will be asserted over unions which represent persons employed at such installations if they also represent employees of the Executive Branch. Thus the rights of a member of a union subject to the Order are protected by Part 204 although the member is not employed by an Executive agency. Accordingly, the Regional Administrator was instructed to reinstate the complaint.

August 16, 1971

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Report Number 37

Problem

The question was raised whether dismissal of the intervention of a labor organization in representation proceedings was proper where the intervening labor organization declined to sign a consent election agreement solely on the basis that placement on the ballot of the three choices could not be agreed upon and the intervenor would not agree to allow the Area Administrator to determine the ballot position of the choices involved.

Ruling

Dismissal of the intervention was proper under these circumstances since the authority of the Area Administrator to determine the ballot position, absent agreement by the parties in interest, is clear and unambiguous under Section 202.7(c) of the Assistant Secretary's Regulations and Section 4(f) of the Procedural Guide for the Conduct of Elections under supervision of the Assistant Secretary pursuant to Executive Order 11491.

August 24, 1971

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Report Number 38

Problem

The question was raised whether, for the purpose of determining the timeliness of a petition seeking exclusive recognition of employees covered by an existing negotiated agreement, the last day of the agreement should be included in counting back to compute the 60th day of the 90-60 day "open" period for the filing of the petition pursuant to Section 202.3(c) of the Regulations.

Ruling

For future guidance, the Assistant Secretary announced that in computing the "open" period of "not more than ninety (90) days and not less than sixty (60) days prior to the terminal date" of an agreement for the filing of a petition pursuant to Section 202.3(c) of the Regulations, the following guidelines will apply:

1. When an agreement is in effect "through" a specified date, the specified date will be considered the "terminal date" of the agreement within the meaning of Section 202.3(c).
2. When an agreement is in effect "to" or "until" a specified date, the day before the specified date will be considered the "terminal date" of the agreement, unless there is specific provision to the contrary.
3. When an agreement is executed on a specified date and is to remain in effect for one or two years from the date of its execution, the terminal date in the specified year will be one

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day prior to the calendar date on which it had been executed, e.g., an agreement executed on August 21, 1969, to remain in effect for two years from the date of execution, has a terminal date of August 20, 1971.

4. In computing the "open" period prior to the terminal date of an agreement, the terminal date itself, as defined above, is not included in the count. For example, in the illustration in item 3, above, where the terminal date is August 20, 1971, in determining the 60th day prior to the terminal date, August 20 is not counted. Thus, August 19 is the first day prior to the terminal date and, counting back, June 21 is the 60th day prior to the terminal date. In the same manner, May 22 is the 90th day prior to the terminal date.
5. A petition, to be timely, must be received by the appropriate Area Administrator not later than the close of business of the 60th day prior to the terminal date of the agreement, as terminal date is defined above.
6. If the 60th day prior to the terminal date of an agreement falls on a Saturday, Sunday or Federal legal holiday, the petition, to be timely, must be received by the close of business of the last official workday preceding the 60th day.

Report Number 39

Problem

The question was raised as to whether a Regional Administrator correctly ruled under Section 202.20 of the Regulations that the objecting party has the burden of proof, during the Area Administrator's investigation, regarding all matters alleged in its objections to the election.

Decision

The burden of proof, including the submission of evidence, must be borne by the objecting party during the Area Administrator's investigation, as well as during a hearing on the objections.

October 18, 1971

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Report Number 40

Problem

A question was raised as to whether a ballot cast in a professional election should be found to be void. In filling out the two-part ballot in question the professional employee involved did not mark that portion of his ballot which provided a choice as to whether or not he desired to be included in a unit with nonprofessional employees. However, the employee did express a preference in the second portion of his ballot which provided a choice between competing labor organizations or neither. The ballot contained the following instructive language:

This ballot is to determine the unit, as well as the exclusive representative, if any, under the provisions of Executive Order 11491, for the unit which you designate.
Answer both questions below.

Ruling

To cast a valid vote in an election involving professional and nonprofessional employees, a professional employee must mark both sections of his ballot. The failure to follow the instruction contained on the ballot to answer both questions will void a professional employee's ballot.

November 19, 1971

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Report Number 41

Problem

The question was raised as to whether a Regional Administrator correctly decided that an objecting party to an election had not complied with the service requirements of Section 202.20 in that it failed to serve copies of its objections simultaneously on the other parties to the election. Although the objecting party made timely service of its objection letter upon the Area Administrator, copies of the objection letter were not served on the other parties until one week later.

Decision

Since service of the objection letter on other interested parties to the election one week after timely service upon the Area Administrator was not in compliance with the simultaneous service requirements of Section 202.20, the request for the reversal of the Regional Administrator's dismissal of the objections to the election was denied.

November 19, 1971

December 14, 1971

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Report Number 42

Problem

The question was raised as to whether an Area Administrator has authority to withdraw his approval of a consent election agreement when it develops subsequent to the approval that significant questions exist as to the scope of the unit or as to the eligibility of a significant number of potential voters.

Decision

The Area Administrator has the discretionary authority to withdraw approval of a consent election agreement and to recommend that the Assistant Secretary decide the issue based on record testimony, where it appears prior to the election that a significant dispute exists as to eligibility or unit problems.

Report Number 43

Problem

The question was raised as to whether an incumbent labor organization must under existing regulations file a notice of intervention within 10 days after the initial date of posting of a notice of a representation petition filed by another labor organization.

Decision

An incumbent labor organization, like any other intervenor, must file under Section 202.5(c) of the Regulations, a notice of intervention within 10 days after the initial date of posting of the notice of petition, and any such intervention filed thereafter, in the absence of good cause shown for extending the period, will be considered untimely.





