UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

DEPARTMENT OF DEFENSE U.S. ARMY ARMOR CENTER and FORT KNOX, FORT KNOX, KENTUCKY Respondent	
and	Case No. 4-CA-80425 4-CA-80992 4-CA-80994 4-CA-81033 4-CA-81076 4-CA-81114
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2302, AFL-CIO Charging Party	

Timothy G. Goblirsch, Esquire
Vincent Nealy, Esquire
For the Respondent

Mr. William Henry
For the Charging Party

Philip T. Roberts, Esquire
Sherrod G. Patterson, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This consolidated proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of

the United States Code, 5 U.S.C. § 7101, et seq.[1/], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns a number of issues growing out of the Government's Commercial Activities program, manpower and funding cuts, a RIF, etc., including, in essence, whether Respondent violated § 16(a)(5) and (1) of the Statute by implementing the most Efficient and Organization (MEO) piecemeal without giving the union proper notice and an opportunity to bargain; whether Respondent violated §§ 16(a)(5), (1) and (8) of the Statute by refusing to provide the Union with information and/or whether release of such information, conceded to reasonably available and necessary within the meaning of § 14(b)(4) of the Statute, was, nonetheless, prohibited by Army Regulation 5-20 for which Respondent asserts a compelling need; whether Respondent violated §§ 16(a)(5) and (1) of the Statute by engaging in dilatory tactics and bad faith bargaining concerning implementation of the MEO and by unilaterally implementing the MEO; whether Respondent was required to bargain concerning the use of troop transport vehicles other than buses which, the Complaint alleges, was pursuant to the MEO; and whether Respondent violated § 16(a)(5) by relocating the Lock Shop as part of the MEO.

Case No. 4-CA-80425 was initiated by a charge filed on February 16, 1988 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued on August 31, 1988; the hearing was set for October 25, 1988 (G.C. Exh. 1(c)); and on October 4, 1988, an Amendment to the Complaint issued (G.C. Exh. 1(e)). By Order dated October 21, 1988, the hearing was rescheduled for January 5, 1989 (G.C. Exh. 1(g)); and by Order dated December 28, 1988, the hearing was further rescheduled for March 1, 1989 (G.C. Exh. 1(h)).

The charge in Case No. 4-CA-80992 was filed on August 11, 1988 (G.C. Exh. 1(i)); the charge in Case No. 4-CA-80994 was also filed on August 11, 1988 (G.C. Exh. 1(k)); the charge in Case No. 4-CA-81033 was filed on August 22, 1988 (G.C. Exh. 1(m)); the charge in Case No. 4-CA-81076 was filed on September 12, 1988 (G.C. Exh. 1(o)); and the charge in Case No. 4-CA-81114 was filed on September 29, 1988 (G.C. Exh. 1(q)). The Order Consolidating Cases, the Consolidated

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1/ For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116(a)(5) will be referred to, simply, as "§ 16(a)(5)".

Complaint and Notice of Hearing (Case Nos. 4-CA-80425; 80992; 80994; 81033; 81076; and 81114) issued on January 20, 1989 (G.C. Exh. 1(s)) and set the hearing for March 1, 1989, at a place to be determined. By Order dated February 15, 1989, the place of hearing was fixed (G.C. Exh. 1(u)), pursuant to which a hearing was duly held on March 1, and 2, 1989, in Louisville, Kentucky, before the Undersigned.2/

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the close of the hearing, April 3, 1989, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on separate timely motions of Respondent and General Counsel, for good cause shown, to May 15, 1989; on timely motion of General Counsel, with which the other parties joined, for good cause shown, was further extended to June 19, 1989; and on timely motion of Respondent, to which the other parties did not object, for good cause shown, was still further extended to August 18, 1989.3/ Respondent and General Counsel each timely mailed an excellent brief, received on August 22, 1989, which have been carefully considered. On the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

2/ The Reporter, Heritage Reporting Corporation, failed to appear at the hearing; the hearing, scheduled for 9:00 a.m., had to be rescheduled for 1:00 p.m. and an alternate Reporter obtained. By agreement of the parties, the hearing was reported by Sergeant Gary P. La Monde, Office of the Staff Judge Advocate, Fort Knox, Kentucky, whose excellent services are both gratefully acknowledged and highly appreciated.

3/ General Counsel's Motion to Correct Transcript, with which Respondent joins, by the substitution of pages 46 through 154 inclusive of proffered "Appendix A" for the original transcript pages 46 through 154 is hereby granted and pages 46 through 154 as set forth in "Appendix A" are hereby substituted for pages 46 through 154 of the original transcript.

Findings

1. The American Federation of Government Employees, Local 2302, AFL-CIO (hereinafter referred to as the "Union") represents certain employees, of Respondent U.S. Army Armor Center and Fort Knox, as more fully set forth in the Agreement of the Parties (Res. Exh. H, Article 1), including employees of the Directorate of Engineering and Housing (hereinafter also referred to as "Eng.-Hous.") and the Directorate of Logistics (hereinafter also referred to as "Log."). Eng.-Hous. is responsible for maintaining the physical facilities at Fort Knox, including water, electricity, air conditioning, heat, housing, roads and grounds (Tr. 52). Log. is responsible for the support of Respondent's training mission, such as issuing everything to its servicemen, from rations to uniforms, as well as training servicemen and moving cargo (Tr. 52).

2. Office of Management and Budget Circular A-76 (hereinafter referred to as "Circular A-76") provides that the Federal Government may not carry on a commercial activity if the commercial sector can supply the goods or services more economically, or, conversely, government performance is authorized only if a cost comparison demonstrates that the government is operating, or can operate, the activity at a lower estimated cost than by contract (48 Fed. Reg. 37,115, Par. 8(d)(1983)).

To compare the in-house cost versus contracting-out cost, a Commerical Activities (hereinafter referred to as "CA") study is conducted. A statement of work describes the tasks an organization performs and the activity then determines the Most Efficient Organization (hereinafter referred to as the "MEO") to perform those tasks (Tr. 45-46). The MEO is the minimum number of employees to perform the work most efficiently and is the basis for the activity's "bid" to keep the work in-house. If the in-house cost "wins", the activity keeps the work and must implement the MEO (Tr. 47).

There is disagreement as to what document constitutes the MEO. General Counsel asserts that, "Apparently, there is no one document that is actually called 'the MEO.' Rather, the MEO is more of a concept . . . There are, however a number of documents which describe the MEO. These include the Performance Work Statement . . . The Table of Distribution and Allowances . . . a manpower document listing the types of positions, the number of positions and the grades within a Unit . . . Also there is the Management

Study, which contains recommendations on organization, operation procedures, facilities, materials, technology, all of which culminates in the MEO. . . ." (General Counsel's Brief, p. 3, n. 2). Respondent states, "The MEO, also known as the MEO TDA, contains the numbers and types of all positions, contractible or non-contractible (Governmental, temporary or permanent, full-time or intermittent part-time. . . .)" (Respondent's Brief, p. 4), but Ms. Joy King, Chief, Management Division, Directorate of Resource Management (Tr. 213) stated, in part, that,

> "The MEO is part of the management study. The management study contains recommendations on organization, operation procedures, facilities, materials, technology, all of which culminates into the MEO. . . ." (Tr. 216).

On the basis of the record, I conclude that for the purpose of this case, the MEO is the MEO Table of Distribution and Allowance (hereinafter referred to as "TDA" and the Management Study. Because the TDA contained the numbers and types of all positions and ". . . may be significantly changed from the current and past organization in--(a) Organizational and position structure. (b) Staffing. (c) Methods of operation. (d) Operating Costs" (Army Reg. 5-20, Res. Exh. I, Par. 4-6e (2)), it was procurement sensitive (id, Par. 4.6e). The Performance Work Statement was not shown to be procurement sensitive. Indeed, it would appear to be information which must be furnished prospective bidders (see, e.g. id Par. 4.6e (c) 1.) The Management Study, because it identifies the MEO and position structure to perform the work (id., Par. 4-18), was also procurement sensitive. Both relate to the MEO, as General Counsel asserts, and, while analogies are always dangerous because inherent differences may cause divergent results, if the MEO were likened to a roster and the team's play book, the Management Study would be the game plan. Certainly the TDA plus the Management Study would have shown the intended MEO; but, more important, the Union on June 30, 1988, requested,

> ". . . a copy of the Most Efficient Organization (MEO) structure. . . ." (G.C. Exh. 42),

which in its letter of July 28, 1988, the Union, "To preclude any confusion", further described as,

"1. The number, grades and sex of employees that will be assigned to each building, after the reorganization is implemented.

. . .

"3. All procedures that will change because of the MEO structure." (G.C. Exh. 50).

Consequently, the record shows that the Union requested information from the TDY and from the Management Study, which collectively showed the intended MEO.

3. Beginning in 1986, a number of organizational changes were made in Eng.-Hous. and in Log. and more changes were made in 1987 which made the Union suspicious that the MEO was being implemented piecemeal and that it was not being given an opportunity to negotiate over the entire MEO (Tr. 59), but when the Union asked if changes were MEO related, Respondent said they were not (Tr. 59, 169). The parties stipulated that,

> ". . . since 1986 certain changes have been made in the Directorate of Engineering and Housing and the Directorate of Logistics of respondent in accordance with the MEO and that the union was given notice and opportunity to bargain over each individually." (Tr. 11).

4. The CA studies for Log had begun in June, 1981, and the CA studies for Eng.-Hous had begun in August, 1983 (Tr. 218). The Union was briefed monthly on the status of the CA studies (Tr. 219). Initially, bid solicitations had been projected for November, 1988, but, at the instigation of Senator McConnel, was further postponed until September, 1989 (Tr. 218).

Beginning October 1, 1987, Respondent's 1988 Fiscal year budget was cut 5 percent or about 6.3 million dollars. This development, which was wholly independent of and unrelated to the CA studies, as well as possible further budget cuts under Gramm-Rudman-Hollings, posed serious civilian manpower reductions for fiscal year 1988. On October 26, 1987, the Commanding General was given a briefing and presented with recommendations, (Res. Exh. B-1), the initial result of which was a hiring freeze. On November 9, 1987, Respondent

met with some 40 stewards, chief stewards and officers of the Union to review the budget cuts and to discuss various proposed actions, including: a hiring freeze; early out; conversion to the MEO in Log. and Eng.-Hous. to the extent possible without a RIF; a RIF; cut back on overtime; and release of temporaries (Res. Exh. B-3). On November 10, 1987, the hiring freeze was announced (Res. Exh. B-1).

On December 7, 1987, Respondent in a memorandum to higher headquarters recommended, as it had discussed with the Union on November 9, 1987, that it be given authority to move toward the MEO, stating in part, that,

> "3. We feel it is contradictory to take extraordinary action to offset major cuts in civilian payroll and not move toward the MEO under Commerical Activity review. . . ." (Res. Exh. A-2).

In March, 1988, Respondent was instructed to implement the MEO, ". . . upon the Commander's Approval", cautioning, however that: (a) if RIF required to support reorganization, RIF authorization must be obtained; and (b) precautionary measures must be taken to ensure confidentiality of MEO (Res. Exh. A-3). On May 5, 1988, Respondent requested RIF authority, estimating that 150 employees would be separated (Res. Exh. A-4); the Union was advised by letter dated May 26, 1988[4/], and was further informed,

> "You will be notified prior to implementation of the Most Efficient Organization (MEO) so that you may initiate requests for impact and implementation bargaining. . . ." (G.C. Exh. 35).

Respondent, on May 27, 1988, issued a memorandum to all employees concerning the requested RIF authority (G.C. Exh. 36).

5. Respondent received the RIF authority on June 27, 1988, the same information having been provided Congress on June 27, (G.C. Exh. 40, Attachment); the Union was advised by letter dated and received June 28, 1988 (G.C. Exh. 40),

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4/ Respondent refers to Exhibits "RXA(5) and RXA(6) and RXA(7)" (Respondent's Brief, p. 2). No such documents were either identified or received as exhibits in this case.

the RIF to be effective September 30, 1988[5/]; and the number of employees to be separated was, again, estimated as 150. By letter, also dated June 28, 1988, Respondent reiterated that RIF authorization had been granted and stated, in part, as follows:

> ". . . Part of the proposed RIF is intended to bring the Directorate of Engineering and Housing and the Directorate of Logistics into the Most Efficient Organization (MEO) structure under the Commercial Activities program. This is being done in accordance with Army Regulation (AR) 5-20, paragraph 4-26c [Res. Exh. I] which provides that 'The MEO will be implemented upon the Commander's approval. This precludes continued expenditure of resources at levels higher than necessary and allows the MEO and methods improvements to be tested.'
>
> "Prior to converting to the MEO . . ., there are certain changes that must be negotiated . . . The attached proposals are provided under Article 69. . . . [Res. Exh. H, Article 69, p. 89, "Midterm-Negotiations"]
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> "Due to the reason for the changes involved in the Commerical Activities (CA) study, management may not be able to discuss or furnish all of the information concerning the proposed changes that you may want. However . . . we fully intend . . . to provide, upon request, all information not prohibited by laws, rules or regulations on CA studies." (G.C. Exh. 41).

Article 27 of the parties' Agreement (Res. Exh. H, Article 27, p. 46) governs Reduction in Force and specifically provides that, "Reduction-in-Force (RIF) will be administered in strict compliance with this article and all governing

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5/ This was the effective date requested (Res. Exh. A-4) and granted (G.C. Exh. 40, Attachment); however, Respondent's letter of June 28, 1988, to Union President Haynes states that, ". . . the effective date of the RIF is September 25, 1988. . . . "(G. C. Exh. 41).

statutory and government-wide rules and regulatory requirements." (Res. Exh. H, Article 27, Section 1a.). The June 28, 1988, notice, supra, also identified some structural changes, shop moves, and some changes of conditions of employment such as change of hours, new shifts, new duties and responsibilities which were proposed subject to negotiations under Article 69 of the parties Agreement.

6. By letter dated June 30, 1988, the Union requested,

> ". . . a copy of the Most Efficient Organization (MEO) structure and any revised job descriptions." (G.C. Exh. 42).

The Union asserted, "That by implementing and testing the MEO, any procurement sensitive requirement is compromised and becomes accessible to us." (G.C. Exh. 42).

7. On July 8, 1988, Respondent issued a memorandum to all civilian employees, re the RIF, in which it stated, in part, that

> ". . . The initial projection of the RIF impact was 150 separations and over 1,000 other personnel actions . . . Although the CPO has not finalized all the RIF placements, we do now have a revised projection of less than 50 separations. This lesser impact is projected based on a stockpile of over 150 vacancies that have been created by the hiring freeze and the 'Early Out' retirements during April and May." (G.C. Exh. 47).

8. By letter dated July 18, 1988, Respondent informed the Union that it must, pursuant to AR 5-20, Paragraph 4-6e(c) (Res. Exh. I, Par. 4-6e(c)), deny the Union's June 30 request for,". . . a copy of the MEO structure and any revised job descriptions." (G.C. Exh. 49).

9. By letter dated July 28, 1988, the Union, "To preclude any confusion", modified its June 30 request for information to read as follows:

> "1. The number, grades and sex of employees that will be assigned to each building, after the reorganization is implemented.

"2. A copy of all revised job descriptions.

"3. All procedures that will change because of the MEO structure." (G.C. Exh. 50)

10. By letter dated August 5, 1988, Respondent denied the Union's July 28, 1988, request for information because, "Release of the requested information is prohibited by Army Regulation (AR) 5-20." (G.C. Exh. 53).

11. In the meantime, the Union had asked that negotiations on Log. and Eng.-Hous. Conversion be conducted separately and Respondent on July 18, 1988 agreed (G.C. Exh. 49); Respondent provided the Union with the retention roster on July 28, 1988 (G.C. Exh. 53; Tr. 100, 101) and later, as changes occurred, the Union was provided with other retention rosters (Tr. 413); the Union provided its initial set of proposals on July 25, 1988; and the parties met to negotiate on July 26, 27 and 28, 1988 (Res. Exh. E).

12. By letter dated August 11, 1988, the Union submitted 130 proposals (G.C. Exh. 57). Because of its national convention, the Union was unable to meet August 22-31 (G.C. Exh. 56), and Respondent was unable to meet prior to August 22 (G.C. Exh. 55). As a result, the next negotiating session was set for September 1, 1988 (G.C. Exh. 58). The September 1 meeting was acrimonious and ended with the Union accusing Respondent of having "walked-out" (G.C. Exh. 61), an accusation Respondent denied, pointing out that negotiations were scheduled to resume on Wednesday, September 7, as the Union had requested (Tr. 2; G.C. Exh. 62). In any event, the parties did meet on September 7, 1988 (Res. Exh. E) and numerous times thereafter with agreement on a multitude of items (Res. Exh. D; Tr. 300). Notwithstanding that Respondent identified large numbers of the Union's original proposals which were either non-negotiable or non-responsive to the MEO implementation (Res. Exhs. N-1, N-2 and N-3), Respondent continued to bargain and by January, 1989, only six of the original 130 odd Union proposals were unresolved (Res. Exh. M; Tr. 340- 342) and at the time of the hearing [March 1 and 2, 1989] only two of those six were unresolved and neither had been implemented (Tr. 341).

The RIF was effective September 25, 1988; involved over 1200 separate personnel actions; but no full-time employee was separated (Res. Exh. J-1; Tr. 391-396). Since the RIF, the MEO has been tested and large numbers of employees have been hired, repromoted, or reassigned into MEO positions (Res. Exh. L-2).

13. Each employee received a copy of his or her new position description and the Union by letter dated November 11, 1988, was offered copies of all job descriptions (Res. Exh. K; Tr. 139-140) an offer which the Union did not accept (Tr. 140-141), i.e., the Union wanted only the revised position descriptions (Tr. 141), which request Respondent did not supply, stating:

> "A. The job descriptions would be releaseable . . . They were not procurement sensitive. We did offer to release or provide the Union access to the revised job descriptions.
> "Q. Well, it was actually to all the job descriptions, wasn't it?
> "A. The job descriptions in use after September and their response was no, they needed to see the old ones and the new ones with the changes marked.
> "Q. Did we have that to your knowledge?
> "A. I believe we have it for DEH but we do not have it for DOL or it would -- it would be very cumbersome to reconstruct it.
> "Q. So we have a portion of the request?
> "A. Well, we've -- they would have to look at both job descriptions, look at the old one and look at the new one in order to do that, we don't have anything set up where you can look at a sheet of paper and say this was changed and this wasn't. (Tr. 360- 361).

14. Respondent gave the Union notice of every change but sometimes concealed, or misrepresented,that the change was in conformance with the MEO. For example, in 1986, the Paint, Carpentry, Masonry and Sheet Metal Sections of Eng.-Hous. were combined in conformance with the MEO (G.C. Exhs. 1(s), Par. 6(b)(3); 1(t), Par. 6(b)(3)), but the Union, although it did not ask, was not told that this was MEO related (Tr. 58-59). Indeed, the notices to Union President Haynes (G.C. Exh. 65 and 66) stated that the action was pursuant to the MEO; these notices, through the Civilian Personnel Office[6/] were never received by Mr. Haynes (Tr. 125-126, 160-161); but the Civilian Personnel Office

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6/ Marked "For Official Use Only", a security designation.

substituted notices (G.C. Exhs. 67 and 68) which omitted all reference to the MEO (Tr. 165-166). In November 1987, Driver Testing was moved into the Transportation Motor Pool. Again, the Union was given notice of the change and bargained over it, but when it asked if this were part of the MEO it was told that it was not (Tr. 56); however, in June, 1988, when Respondent notified the Union that the MEO would be implemented in September, 1988, one of the MEO changes listed which "has already been negotiated" was the move of Driver Testing to the Transportation Motor Pool (Building T-160)(G.C. Exh. 41). In like manner, when the Eng.-Hous. Lock Shop was to be moved Respondent stated:

> ". . . this move will be an asset to the locksmiths by giving them more floor space and better security for tools and parts. . . . This move is not a part of the conversion to the Most Efficient Organization. . . ." (G.C. Exh. 52) (Emphasis supplied).

However, the work order authorizing this move among other stated that the ". . . changes resulted from the DEH going to the 'Most Efficient Organization' (MEO)" (G.C. Exh. 64). When the Union met to negotiate the Eng.-Hous. Lock Shop move, the Union asked if this move was related to the MEO and Respondent said "No". The Union then asked if there were any plans to combine the Eng.-Hous. and Log. Lock Shops and Respondent said "No" (Tr. 193); but when the Union confronted Respondent with the work order (G.C. Exh. 64), Respondent reacted as a child caught with his hand in the cookie jar (Tr. 193-194), admitted that the move was MEO related and that they did plan to combine the Eng.-Hous. and Log. Lock Shops (TR. 193), or that they might be planning to combine them (Tr. 194). Indeed, the agreement negotiated on the Eng.-Hous. Lock Shop move concluded,

> "7. The combining of the DEH and DOL locksmith operation will be negotiated as required by Title 5 USC." (G.C. Exh. 69).

Conclusions

1. MEO "necessary" within the meaning of § 14(b)(4)(B).

The MEO, like any reorganization plan, was as to labor relations like grist to flour; it was data crucial to the performance of the Union's representational duties. The

Union needed the MEO to know how the reorganization would impact on jobs, duties and conditions of employment and such data plainly was ". . . necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining", within the meaning of § 14(b)(4)(B) of the Statute. As the data by its very nature was necessary within the meaning of § 14(b)(4)(B), it being conceded that the MEO was reasonably available, was normally maintained and was not guidance, advice, counsel, or training provided for management officials or supervisors relating to collective bargaining, it was wholly unnecessary to examine the data and I declined to do so even though Respondent was willing to submit the data subject to a protective order acceptable to General Counsel (ALJ Exh. 1).7/

7/ Subpoena of the same data, which is the subject of the 14(b)(4) refusal to produce, giving rise to the unfair labor practice proceeding, inevitably raises myriad questions. It would be both presumptuous and inappropriate to attempt to answer such questions. Suffice it to say, a subpoena is neither a substitute for nor a means to bypass determination of the obligation to furnish data pursuant to § 14(b)(4). Enforcement of subpoenas is, of course, lodged with the United States District Courts (5 C.F.R. 2429.7(f)); nevertheless, Administrative Law Judges may, pursuant to § 2423.19 of the Regulations (5 C.F.R. § 2423.19), take action, for the failure to produce and/or furnish data upon denial of a motion to quash a subpoena, which, because such action has coercive effect, also is an indirect means of enforcement of the subpoena. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 30 FLRA 127 (1987) (hereinafter referred to as "National Weather Service"). Often, perhaps generally, in order to determine the merits of the unfair labor practice the data in question must be examined in camera and sometimes must also be available for purpose of litigation to General Counsel and other parties. National Weather Service, supra, 30 FLRA at 139.

But here there was no need to examine the MEO to determine its necessity pursuant to § 14(b)(14) of the Statute and, having determined that the MEO was necessary, whether certain changes were, or were not, MEO "related" was immaterial. The only question, or questions, which was, or were, unaffected by the content of the MEO, was whether Respondent acted in bad faith by refusing to designate, concealing or misrepresenting a change as MEO related.

Initially, Respondent had denied that the MEO was "necessary" within the meaning of § 14(b)(4(B) but later conceded it was both necessary and relevant (Tr. 265). Respondent asserted, of course, that disclosure of the MEO, notwithstanding § 14(b)(4), was prohibited by Army Regulation 5-20 (Res. Exh. I). There is no dispute that the MEO TDA is procurement sensitive and President Henry so stated (Tr. 419). Indeed, in initiating its request on June 30, 1988, the Union recognized that the MEO was procurement sensitive but asserted that ". . . by implementing and testing the MEO, any procurement sensitive requirement is compromised and becomes accessible to us" (G.C. Exh. 42). General Counsel does not assert either that Respondent compromised the confidentiality of the MEO or that the MEO became accessible because confidentiality had been compromised, but does contend that the ". . . claim that the TDA is procurement-sensitive is suspect" (General Counsel's Brief, p. 29) because Respondent gave the Union retention registers, as required by the parties' Agreement (Res. Exh. H, Art. 27), which also showed numbers, grades and series of employees, and if retention registers were not procurement sensitive then the TDA should not be procurement sensitive (id. p. 29-30). I do not agree with General Counsel's rationale. First, the assertion is, in reality, a "red herring". For reasons indicated above, the MEO was not, merely, the TDA and the Union never asked for, nor did it want, just the TDA i.e., the Union asked for the MEO, not the TDA. If it were satisfied with the retention registers, it did not alter its need for the, and/or its request for, the Management Study, which was part of the MEO (Tr. 420). Second, retention registers were not, and are not, the same as the MEO TDA, as Respondent has shown (Respondent's Brief, p. 6). Third, Army Regulations 5-20 specifically identifies "The proposed TDA for the MEO" as not releasable until the initial decision in a CA (Res. Exh. I, 4-6e). Fourth, there is no disagreement that the MEO, as defined and used herein, was procurement sensitive even if some part of it were not because disclosed in a different form.

As noted above, the Union on June 30, 1988 requested,

> ". . . a copy of the Most Efficient Organization (MEO) structure and any revised job descriptions[8/]. . . ." (G.C. Exh. 42).

8/ The request for revised and new job descriptions is discussed separately hereinafter.

After Respondent denied this request because of Army Regulation 5-20 on July 18, 1988 (G.C. Exh. 49), the Union on July 28, 1988, modified its request to read as follows:

> "1. The number, grades and sex of employees that will be assigned to each building, after the reorganization is implemented.
>
> "2. A copy of all revised and new job descriptions.
>
> "3. All procedures that will change because of the MEO structure.

Respondent denied this request on August 5, 1988, because, "Release of the requested information is prohibited by Army Regulation (AR) 5-20." (G.C. Exh. 53). Notwithstanding that the July 28 request, "To preclude any confusion", recast the request for the MEO to, "(a) the number, grades and sex of employees assigned to each building after the reorganization is implemented and (b) all procedures that will change because of the MEO structure", the Union's July 28 request was still for the MEO. General Counsel argues that the July 28 request was not for the MEO TDA because, "While this [the July 28 restatement] comes close, it is not the same thing as the TDA since that document does not specify buildings and, by definition, it does not include the sex of employees involved. . . ." (General Counsel's Brief, p. 25). It is true, of course, that subdividing the TDA by buildings and sex was different, but such subdividing scarcely veiled the TDA and the sum plainly equaled the TDA. Moreover, the TDA plus "All procedures that will change because of the MEO structure" clearly equated to the MEO as defined and used herein.

2. Disclosure of MEO barred by Regulation

General Counsel does not dispute that release of the MEO to the Union prior to the initial CA decision is prohibited by Army Regulation 5-20 (Res. Exh. I); nor could it be so contended inasmuch as the Regulation specifically provides, in part, that,

> "e. Release of information in CA cost studies
>
> (1) In carrying out CA cost studies, the confidentiality of both the in-house

cost estimate and contract price[9/] will be maintained to ensure complete independence of the two. This confidenti- ality will be maintained until the cost comparison is complete independence of the two. This confidentiality will be maintained until the cost comparison is completed and the initial decision is announced . . . The in-house cost estimate, or information from which it could readily be derived, will not be released before the initial decision to--

. . .

(c) Employee unions.

. . .

(2) The in-house cost estimate will be based on the most efficient organization. . . .

(3) The cost of operation under this proposed MEO must be protected to ensure that contractors' bids are based on the work to be performed and not on the price required to beat the in-house competition. . . .

. . .

(5) The premature disclosure of government-generated advance procurement information could significantly harm the government's commercial interests. Such information is normally considered exempt from disclosure under exemption (5), of the FOIA, 5 USC 552(b)(5), and AR-340-17. . . .

(6) The categories of CA information below are provided for guidance in

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9/ The confidentiality of proprietary information in public contract procurement, which includes, inter alia bids, proposals, cost or pricing data, is governed by statute, 41 U.S.C.A. § 423; P.L. 93-400, 88 Stat. 706 (1974), P.L. 100-679, 102 STAT. 4063 (1988); Res. Exh. O.

determining what information normally should be treated as exempt from release.

(a) Information that discloses in-house cost estimates and, therefore, is normally not releasable until the initial decision in a cost study includes --

1. The in-house cost estimate.

2. The management study that developed the MEO used for the in-house cost estimate.

3. The proposed TDA for the MEO.

. . . . "(Army Regulation 5-20; Res. Exh. I, Chapter 4-6e.).

Rather, General Counsel, principally asserts that, while Army Regulation 5-20 undeniably is an agency regulation, it is not a law and § 14(b)(4) exempts from the duty to furnish "necessary" data only when the furnishing of such data is prohibited by law. General Counsel cites and relies on the decision of Judge Naimark in Department of the Army, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina, 26 FLRA 407, 419, 433-434 (1987) (hereinafter referred to as "Fort Bragg"). Judge Naimark did, indeed, hold that,

". . . the contention that it [a regulation[10/]] is also a 'law' is not persuasive. Rules and regulations are devised to implement laws and are not themselves statutory enactments. While legislative rules often have the force and effect of law as an extension of the legislative process [footnote omitted] there is no showing such was intended in respect to the Federal Personnel Manual. Further, a distinction could be made, in any event, between a regulation which has the 'effect' of law and the law itself. Moreover, limitation of a duty to bargain

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10/ There, FPM Supplement 335-1, a government-wide rule or regulation.

> under 7117 of the Statute by Federal law or government-wide rules or regulations does not call for a conclusion that the terms are synonymous . . . While the agency may not be obligated to bargain re union proposals including FPM 335,[19/] I do not believe that,

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19/ The Authority so held in the negotiability decision, NTEU and Department of the Treasury, U.S. Customs, Washington, D.C.. . . . [11 FLRA 209 (1983)]

> a fortiorari, it is relieved from its obligation under 7114(b) of the Statute to furnish data to the Union . . . A union may have need of such information for other reasons, such as filing grievances . . . Accordingly, I conclude that FPM Supplement 335-1 does not constitute a law which prohibits Respondent from furnishing the crediting plan and related data. . . . (26 FLRA at 433-434).

The Authority did not decide whether "law" in § 14(b)(4) encompasses regulations, but stated,

> ". . . Even if the relevant portion of the FPM is a 'law' within the meaning of section 7114(b)(4), as the Agency and OPM assert, we find that it would not prohibit the release of data in the circumstances of these cases." (26 FLRA at 413).

While I agree with the result reached by my brother Naimark, I do not agree that the word "law" in § 14(b)(4) excludes regulations. To conclude that "prohibited by law" does not also mean "prohibited by regulation" is both too simplistic and inconsistent with the purpose and intent of the Statute as a whole. I am aware of Mr. Justice Scalia's admonition in Department of the Treasury, Internal Revenue Service v. Federal Labor Relations Authority, No. 88-2123, _____ U.S. _____, 58 U.S. Law Week 4447 (April 17, 1990), that,

> ". . . A statute that in one section refers to 'law, rule or regulation,' and in another section to only 'laws' cannot, unless we abandon all pretense at precise communication, be deemed to mean the same thing in both places.

Mr. Justice Scalia referred to, "in accordance with applicable laws" in § 6(a)(2) and "any law, rule, or regulation" in § 3(a)(9)(C)(ii). He also noted, the use of "applicable law, rule, or regulation" in § 14(c)(2). (See, also, "law, rule or regulation" in § 14(a)(5)(B)). Nevertheless, the phrase "to the extent not prohibited by law" in § 14(b)(4) uses the word "law" in a generic sense which includes both statutory laws and regulations. Indeed, the Authority specifically so held, in National Treasury Employees Union, Chapter 237, 32 FLRA 62 (1988), stating,

> "The duty to bargain under the Statute extends to the release and disclosure of information concerning the conditions of employment of unit employees to the extent that the release or disclosure is not contrary to law or regulation. (32 FLRA at 68) (Emphasis supplied.)

This intent is shown by the legislative history which shows as follows:

> ". . . Subsection (b)(4) requires an agency to provide to the exclusive representative, upon request and within the limits of Federal law, any normally maintained and reasonably available data necessary for the negotiations. . . ." Legislative History of the Federal Service Labor-Management Relation Statute, Title VII of the Civil Service Reform Act of 1978, Committee Print No. 96-7, 96th Cong. 1st Sess, Subcommittee on Postal Personnel and Modernization of the Committee on Post Office and Civil Service, p. 694 (H. Rep. 95-1403, p. 48, July 31, 1978) (Emphasis supplied) Hereinafter referred to as "Legislative History"

The Committee Print of H. R. 11280, July 10, 1978, had provided, ". . . to the extent not prohibited by the provisions of Federal law. . . ." Legislative History, p. 337. See, also, Section 1103(b) of P.L. 95-454, 5 U.S.C. § 1103(b).

If FPM Supplement 335 had provided that, "crediting plans may not be disclosed to Employee Unions", there could be no question that agencies would have been precluded from furnishing such data because prohibited by regulation. Of course, if the regulation in question were other than a government-wide regulation, whether a compelling need for such regulation existed would be subject to determination by the Authority.11/ But the inescapable conclusion is that where, as here, release of requested data, here the MEO, is specifically prohibited until the initial decision, the furnishing of the MEO was "prohibited by law", notwithstanding that the "law" was a regulation and not a statute passed by Congress. It is wholly unrealistic to say that a regulation which restricts the furnishing of data is of no effect because a regulation is not a "law". Agencies and activities are bound by regulation and regulations may not be ignored; but Congress, in § 17, has provided a standard, and a means, for evaluation of agency regulations, namely, whether a compelling need exists for the particular regulation. Unless, and until, the Authority, pursuant to § 17, has determined that there is no compelling need for Army Regulation 5-20, or specifically to that portion prohibiting release of CA data to employee unions prior to the initial decision, the Regulation governs the furnishing of data pursuant to § 14(b)(4). Of course, determination of compelling need may not be adjudicated in the context of an ULP proceeding. Federal Labor Relations Authority v. Aberdeen Proving Ground, Department of the Army, 485 U.S. 409 (1988).

General Counsel's other assertions have been carefully considered and found without merit. For example, General Counsel contended that the ramp MEO TDA was releasable. The short answer is that the Union never asked for the ramp TDA.

11/ It is certainly conceivable that a particular government-wide regulation, not subject to "compelling need" consideration under § 17, is valid vis-a-vis § 14(b)(4) only if its promulgation was pursuant to a congressional grant of legislative authority. See, Chrysler Corporation v. Brown, Secretary of Defense, 441 U.S. 281 (1979).

To the contrary, it first sought the MEO structure and later the number, grades and sex of employees that will be assigned to each building after the reorganization is implemented and all procedures that will change because of the MEO structure, which, as noted above, equated to the MEO as defined herein.

Accordingly, I conclude that Respondent did not violate § 16(a)(5), (8) or (1) of the Statute by failing and refusing to furnish the MEO prior to the initial Commercial Activity decision because disclosure was prohibited by Army Regulation 5-20 and there had been no determination by the Authority, pursuant to § 17, that no compelling need exists therefor, and those portions of the Consolidated Complaint (G.C. Exh. 1(s)) alleging violation of §§ 16(a)(5), (8) and (1) for failure to furnish the MEO are hereby dismissed.

3. Respondent violated §§ 16(a)(5), (8) and (1) of the Statute by failing to furnish new and revised job descriptions.

In addition to the MEO, the Union on June 30, 1988, had also requested "any revised job descriptions." (G.C. Exh. 42). Respondent denied the request on July 18, 1989 (G.C. Exh. 49); on July 28, 1988, the Union modified its request for the MEO and "2.A copy of all revised and new job descriptions." (G.C. Exh. 50), which Respondent denied on August 5, 1988 (G.C. Exh. 53). By letter dated November 11, 1989, Respondent stated,

> ". . . the agency is prepared to make available to the Union all job descriptions which are in use within bargaining unit activities covered by the reorganization. . . ." (Res. Exh. K).

The Union did not avail itself of this offer because, as President Henry testified,

> "We requested all the new revised job descriptions or new job descriptions
>
> . . .
>
> ". . . we didn't know what the changes were so we didn't know what to propose. We could not develop proposals . . . to give us a lump sum package of job descriptions doesn't tell us anything. (Tr. 140-141).

"Q. But did you ever take up management on this move for all of the job description?
"A. No, with the qualifier phrase that I wanted the revised ones.

"We were asking for only the job descriptions with changes so we could see what was negotiable. . . ." (Tr. 150)

Although President Henry testified that the Union asked only for revised and new job descriptions, Ms. Marion McAleer, Labor Relations Specialist, testified that,

". . . they [the Union] needed to see the old ones and the new ones with the changes marked

. . .

" I believe we have it for DEH but we do not have it for DOL or it would--it would be very cumbersome to reconstruct it

"Q. So we have a portion of the request?

"A. Well, we've got--they would have to look at both job descriptions, look at the old one and look at the new one in order to do that, we don't have anything set up where you can look at a sheet of paper and say this was changed and this wasn't." (Tr. 360-361).

As President Henry testified, revised and new job descriptions were necessary to know what changes had been made, to know what was negotiable, and to develop bargaining proposals. See, Veterans Administration and Veterans Administration Regional Office, Buffalo, New York, 28 FLRA 260 (1987); American Federation of Government Employees, Local 32, 22 FLRA 570 (1986).

Respondent conceded at the hearing that job descriptions were not procurement sensitive and were releasable. There is no question that the revised job descriptions are readily available and nothing in the record indicates, or even suggests, that it would be in any manner burdensome to furnish only revised or new job descriptions. Indeed, the record shows that: (a) for Eng.-Hous., Respondent already

has available the revised job descriptions with the changes marked; (b) but does not have the changes marked on the new and revised job descriptions for Log; and (c) old and revised job descriptions are readily available both for Eng.-Hous. and for Log.

Accordingly, Respondent violated §§ 16(a)(5), (8) and (1) by refusing to furnish revised and new job descriptions as such data was not procurement sensitive and was necessary within the meaning of § 14(b)(4) of the Statute.

4. Allegations of Paragraphs 7(b), (g); 10; and that portion of 13 relating to 7(b) and (g) dismissed.

Paragraphs 7(f) and (g) of the Consolidated Complaint reads,

> "(f) On or about July 20, 1988, the Union and Respondent . . . met to negotiate the implementation of the RIF and MEO. . . .
>
> "(g) At the negotiations meeting described in subparagraph 7(f) above, Respondent . . . refused to bargain . . . and unilaterally ended the negotiations session. . . ." (G.C. Exh. 1(s), Par. 7(f) and (g)).

Paragraph 10 of the Consolidated Complaint asserts that, "By the acts and conduct described in above subparagraph 7(g), Respondent has failed and refused and continues to fail and refuse to bargain in good faith . . . by engaging in delatory tactics and bad faith bargaining . . . within the meaning of Section 7116(a)(5). . . ." and Paragraph 13 of the Consolidated Complaint alleges that, "by the acts and conduct described . . . in paragraph . . . 7 . . . Respondent . . . has engaged in . . . unfair labor practices within the meaning of Section 7116(a)(1). . . ." (G.C. Exh. 1(s), Pars. 10 and 13).

There is no evidence or testimony that on, or about, July 20, 1988, Respondent refused to bargain and unilaterally ended the negotiation session as alleged in subparagraphs 7(b) and (g). (See, General Counsel's Brief, p. 10; Tr. 77-82). It would appear that the July 20, 1988, date was wrong (See, G.C. Exh. 1(o) (charge in 4-CA-81076, which places the meeting as September 1, 1988)). The record does show that the September 1, 1988, meeting, was acrimonious and ended with the Union accusing Respondent of having

"walked-out" (G.C. Exh. 01), which Respondent denied and pointed out that negotiations were scheduled to resume on September 7, as the Union had requested (G.C. Exh. 62), indeed, that the date for resumption of negotiations was fixed before the meeting of September 1 ended (Tr. 270-271). The parties did meet on September 7, 1988, and numerous times thereafter. At the time of the hearing, only two of the Union's 130 proposals were unresolved and neither of the two underlying changes had been implemented (Tr. 341). The allegations of the Consolidated Complaint are wholly without support and even if the Complaint were held to encompass the meeting of September 1, 1988, the record does not support a finding that Respondent violated §§ 16(a)(5) or (1) even if, as General Counsel states, "Respondent concocted a flimsy excuse to walk out." (General Counsel's Brief, p. 34). Resumption of negotiations was agreed upon and negotiations took place thereafter with commendable results. Even though Respondent terminated the September 1, 1988, meeting for reasons the General Counsel considers "flimsy", nevertheless, Respondent did not refuse to bargain but, rather, asserted a contract right to insist that midterm negotiations be conducted on Wednesday (Res. Exh. 14, Article 69, Section 4). Whether Respondent was correct is not the question. It was not refusing to negotiate; it agreed on a date to resume negotiations and negotiations were resumed. Accordingly, because unsupported by substantial evidence, the allegations of subparagraph 7(f), (g), Paragraph 10 and that portion of Paragraph 13 relating to subparagraphs 7(f) and (g) of the Consolidated Complaint are dismissed.

5. Respondent violated §§ 16(a)(5) and (1) by misrepresentation of MEO relation

Subparagraph 6(e) of the Consolidated Complaint alleges that, "The Respondent failed and refused to give notice to the Union that it was implementing the MEO with respect to the changes set out above in subparagraphs 6(b) and (c)." (G.C. Exh. 1(s), Par. 6(e).

As the parties stipulated, and as the record shows, Respondent gave notice of every change and the Union was afforded the opportunity to bargain over each change individually. Respondent had no obligation to inform the Union when a change was MEO related; but good faith bargaining can not countenance misrepresentation as engaged in by Respondent. I have concluded that furnishing the MEO was prohibited by Army Regulation; however, nothing in the record shows, or suggests that stating that a particular

change was MEO related would disclose the MEO or provide information from which it could readily be derived. Whether such knowledge would have been of any assistance to the Union without the MEO I can not say[12/] although the Union asserts that such information would have benefited its bargaining. But more important, when the Union asked if a change was MEO related, Respondent bargained in bad faith by misrepresenting and concealing the truth. Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Leavenworth, Kansas, 32 FLRA 855, 872 (1988). For example, as found above, when the Eng.-Hous. Lock Shop was to be moved, respondent informed the Union, "This move is not part of the conversion to the Most Efficient Organization" (G.C. Exh. 52), but the work order authorizing this move disclosed that it, in fact, resulted from Eng.-Hous going to the MEO (G.C. Exh. 64). When the Union met to negotiate the move, it asked if this move was related to the MEO and Respondent said "No". The Union then asked if there were any plans to combine the Eng.-Hous Lock Shop and the

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12/ For the most part, it was the change, e.g., consolidation of the Paint Shop and Sheet Metal Shop into the Masonry Shop and Carpentry Shop respectively, or relocation of Drivers Testing to Transportation Motor Pool, that was the significant and controlling event-not the reason for it.

Certainly, General Counsel's assertion that the Union was disadvantaged with respect to the eventual consolidation of the Lock Shops because it did not know such consolidation was contemplated when it negotiated the move of the Eng.-Hous. Lock Shop (General Counsel's Brief 18) is not supported by the record. To the contrary, the record is clear that when the Union negotiated the Eng.-Hous. Lock Shop move it well knew that consolidation was being considered (Tr. 193-194). Indeed, the agreement negotiated on the Eng.-Hous. Lock Shop move specifically provided,

> "7. The combining of the DEH and DOL locksmith operation will be negotiated. . . ." (G.C. Exh. 69).

Consequently, contrary to General Counsel's assertion (General Counsel's Brief pp. 20-21), the only impediment to negotiating the space for the consolidated shops was the Union's own inertia inasmuch as Respondent was contractually bound to negotiate the consolidation.

Log. Lock Shop and Respondent said "No"; but when confronted with the work order, Respondent, reacting like a child caught with his hand in the cookie jar (Tr. 193-194), admitted that the move was MEO related and that they did plan to combine the two Lock Shops (Tr. 193) or that they might be planning to combine them (Tr. 194).

6. Allegations of Subparagraph 6(d) and related allegations of Consolidated Complaint dismissed

Subparagraph 6(d) alleges that,

> "(d) Pursuant to the MEO . . . Respondent began requiring unit employees in its Plans, Operation and Transportation Division (POT), DOL, to drive troop transport vehicles rather than buses." (G.C. Exh. 1(s), Par. 6(d)).

Paragraph 9 alleges the above conduct violated § 16(a)(5) and Paragraph 13 alleged that the above conduct violated § 16(a)(1).

Troop Transporters (Res. Exh. R), sometimes called "cattle cars", are trailers with a rated capacity of 80 soldiers (Tr. 366), but Respondent uses them to carry only 60 to 70 depending on the equipment the troops are carrying (Tr. 367). These trailers are attached to, and pulled by, tractors driven by WG-8 tractor trailer drivers (Tr. 370) who regularly drive similar rigs (Tr. 371). Troop Transporters have been in use by the Army for at least 20 to 25 years (Tr. 366, 369-70); previously had been used by Respondent (Tr. 206, 372, 177; and are now used in the Training Command at different locations (Tr. 366). Respondent borrowed one from Fort Jackson, South Carolina, in March, 1987, for demonstration use (Tr. 367); and, as a result, in July, 1987, six were brought to Fort Knox and placed in use (Tr. 367).

Respondent has a fleet of 32 to 33 busses (Tr. 372) which are driven by WG-7 bus drivers (Tr. 210, 370). Each bus has a capacity of 44 passengers (Tr. 370). Although the initiative for the re-introduction of Troop Transporters at Fort Knox was to save on the cost of procurement of busses, reduce operating costs and use fewer drivers (Tr. 370), the record does not show that re-introduction of Troop Transporters resulted in any reduction of the number of bus

drivers; however, Chief Steward Larry Bold Mitchell (Tr. 210, stated that buses were lost during the RIF (Tr. 209).[13/]

Troop Transporters are used only in certain places and are not used in inclement weather (Tr. 367). Use of Troop Transporters was not part of, or pursuant to, the MEO (Tr. 269-270, 371).

Respondent concedes it did not give notice to the Union of the re-introduction of Troop Transporters because it did not believe it was necessary as, in its view, there was no change in working conditions (Tr. 371, 372), i.e. bus drivers continued to drive busses[14/]; tractor trailer drivers continued to drive tractor trailers, including Troop Transporters; and the tractor trailer operation is the same (Tr. 371). But the Consolidated Complaint does not allege a failure to give notice of the July, 1987, change of conditions of employment as the result of the re-introduction of Troop Transporters and if it had there might well have been a serious statute of limitations question (§ 18(a)(4)(A); see charge in Case No. 4-CA-80994, filed August 11, 1989 (G.C. Exh. 1(k)). To the contrary, Subparagraph 6(d) alleged that "Pursuant to the MEO. . . . Respondent began requiring unit employees . . . to drive troop transport vehicles. . . ." and Paragraph 9 alleges that, " . . . Respondent . . . refused to bargain . . . by unilaterally implementing changes . . . without providing the Union with the opportunity to bargain on the impact and implementation of the MEO. . . ."

The record shows that the re-introduction of Troop Transporters was neither part of the MEO nor MEO related and in his Brief General Counsel no longer asserts the Troop Transporter matter as a separate issue. Accordingly, as the allegations of the Complaint were not sustained, the

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13/ Mr. Mitchell's assessment of the number of busses in Respondent's fleet-20- (Tr. 209) is seriously at odds with Mr. Walter E. Shipley, Chief of Plans and Operations and Transportation Division, who stated, as noted above, that there were 32-33 busses. Mr. Shipley was not asked whether there had been more busses prior to September 30, 1988, the effective date of the RIF.

14/ Mr. Shipley stated, ". . . we have on occasion had WG 7 drivers drive it [Troop Transporter] on a voluntary basis (Tr. 370).

allegations of Subparagraph 6(d), and related allegations of Paragraph 9 and 13, or the Consolidated Complaint are dismissed.

7. Other Allegations

All contentions of the General Counsel, whether specifically addressed, have been carefully considered and the record considered as a whole does not support General Counsel's assertion except as specifically found above. For example, General Counsel asserts that Respondent was guilty of dilatory tactics. The meeting of September 1, 1988, when Respondent did terminate a bargaining session, has been discussed above. Otherwise, the record does not demonstrate that Respondent was guilty of dilatory tactics. It is true that there were times when each side could not meet but the record certainly does not show that Respondent was dilatory. Indeed, the record more strongly suggests that the Union engaged in dilatory tactics by waiting six weeks before submitting a list of "partial proposals"; by submitting proposals not germane to the changes; etc. The parties negotiated diligently and by March, 1989, had resolved all but 2 of the Union's proposals and neither of the two underlying changes had been implemented.

From the stand point of overall good faith, the record shows that because Congress reduced its 1988 fiscal year budget by five percent, Respondent, on, and after, October 1, 1987, faced the prospect of a reduction in force of substantial proportions. On October 26, 1987, the Commanding General was given a briefing. On November 9, 1987, Respondent met with the stewards and officers of the Union to review the budget cuts and to discuss various action, including: a hiring freeze; early out; conversion to the MEO without a RIF; a RIF; cut back on overtime; and release of temporaries. Respondent, upon receipt of RIF authority, advised the Union on June 28, 1988, that, ". . . Part of the proposed RIF is intended to bring the Directorate of Engineering and Housing and the Directorate of Logistics into the Most Efficient Organization (MEO) structure. . . ." (G.C. Exh. 41), and before converting to the MEO it proposed certain mid-term changes to be negotiated pursuant to Article 69. Respondent did not implement any of these changes until bargaining was completed, indeed, at the time of the hearing, the second shift for Maintenance and Service Division of Eng.-Hous., a lunch hour change, and the practice of inspectors obtaining family housing occupant signatures had not been implemented because negotiations were not completed (Tr. 324, 325, 342). Only the RIF, which

was governed by Article 27 of the parties' negotiated Agreement (Res. Exh. H, Article 27), was implemented prior to completion of negotiations. As the parties stipulated, the Union was given notice and opportunity to bargain over each change in Eng.-Hous. and in Log. Finally, the RIF was completed without the separation of a single full-time employee. The record does not, except as specifically found, reflect bad faith bargaining. Accordingly, all allegations of the Consolidated Compliant not specifically addressed are dismissed.

General Counsel requested, a status quo ante remedy, asserting that,

> ". . . in the circumstances of this case, to avoid rendering such a bargaining order meaningless, a status quo ante remedy is mandated." (General Counsel's Brief p. 35).

I do not agree that status quo ante remedy is either mandated or appropriate in this case. In Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington, 35 FLRA No. 18, 35 FLRA 153 (1990), the Authority stated,

> "Absent special circumstances, a status quo ante remedy is warranted where management has changed a negotiable condition of employment without fulfilling its obligation to bargain on that change." (35 FLRA at 155).15/

Here, as the parties stipulated and as the record shows, the parties negotiated over each change. Moreover, for the violations found a status quo remedy is both unnecessary and, because the RIF, required to comply with budget authorizations, was completed in September, 1988, with more than 1200 personnel actions and at considerable cost (Res. Exh. L-1), any such order would be unduly disruptive. A prospective order will fully effectuate the policies and purposes of the Statute under the circumstances of this case.

15/ There, the change involved a duty to bargain both substance and impact and implementation. See, U.S. Department of Defense, Department of the Air Force, Air Force Logistics Center, Tinker Air Force Base, Oklahoma, for status quo ante where there was a duty to bargain only impact and implementation.

Having found that Respondent violated §§ 16(a)(5), (8) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section § 18(a)(7) of the Statute, 5 U.S.C. § 7118(a)(7), and § 2423.29 of the Regulations, 5 C.F.R § 2423.29, it is hereby ordered that Department of Defense, U.S. Army Armor Center and Fort Knox, Fort Knox, Kentucky (hereinafter referred to as "Respondent"), shall:

1. Cease and desist from:

(a) Failing and refusing to furnish to the American Federation of Government Employees, Local 2302, AFL-CIO (hereinafter referred to as "Local 2302"), the exclusive representative of certain of Respondent's employees, in accordance with its request pursuant to § 14(b)(4) of the Statute, revised and new job descriptions under Respondent's Most Efficient Organization (hereinafter referred to an "MEO").

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish upon request of Local 2302 all revised and new job descriptions under Respondent's MEO. Respondent shall, in furtherance thereof, also furnish where available documents on which the changes of each revised job description are marked and in all instances shall furnish the old job descriptions.

(b) Upon request, inform Local 2302 whether a change is MEO related and Respondent will not conceal from Local 2302 or misrepresent to Local 2302 MEO relation of changes.

(C) Post at its facilities at Fort Knox, Kentucky, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding General and shall be posted and maintained for 60 consecutive days

thereafter, in conspicuous places including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to 5 C.F.R. § 2423.30, notify the Regional Director, Federal Labor Relations Authority, Region IV, Suite 736, 1371 Peachtree Street, N.E., Atlanta, Georgia 30367, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: June 22, 1990
Washington, D.C.

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish to the American Federation of Government Employees, Local 2302, AFL-CIO (hereinafter referred to as "Local 2302), upon request, all new and all revised job description under any Most Efficient Organization.

WE WILL NOT fail or refuse to inform Local 2302, upon request, whether a change is MEO related; and WE WILL NOT conceal from Local 2302, or misrepresent to Local 2302, MEO relation of any change.

WE WILL upon request, furnish to Local 2302 all revised and all new job descriptions under any MEO and, in furtherance thereof, will furnish, when available, documents on which the changes of each revised job description are marked, and in all instances will furnish the old job description.

WE WILL upon request, inform Local 2302 whether a change is MEO related and we will not conceal from Local 2302, or misrepresent to Local 2302, MEO relation of any change.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

_____
(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 questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, Georgia 30367, and whose telephone number is: (404) 347-2324.