

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

U.S. ARMY RESEARCH, DEVELOPMENT
AND ENGINEERING CENTER
PICATINNY ARSENAL, NJ

and

DEPARTMENT OF THE ARMY CIVILIAN
PERSONNEL AND EVALUATION AGENCY
ARLINGTON, VA

Respondents

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1437

Charging Party

Case No. BY-CA-20875
BN-CA-21079^{1/}

Alan W. Stadtmauer, Esquire
Daniel F. Sutton, Esquire
For the General Counsel

Stephanie D. Willson, Esquire
For the Respondent USACPEA

Raymond P. Westerdahl
For the Charging Party

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-
Management Relations Statute, Chapter 1 of Title 5 of the
U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and
Regulations issued thereunder.

^{1/} During the course of the proceedings, this case has at
times been referred to as BY-CA-21079. However, the original
charge was numbered BN-CA-21079.

Pursuant to charges filed on April 27, and June 5, 1982, by the National Federation of Federal Employees, Local 1437, (hereinafter called the Union), against U.S. Army Research, Development and Engineering Center, Picatinny Arsenal, NJ, (hereinafter called ARDEC), and Department of the Army Civilian Personnel and Evaluation Agency, Arlington, VA, (hereinafter called USACPEA), respectively, a Consolidated Complaint and Notice of Hearing was issued on August 25, 1992, by the Regional Director for the Boston Regional Office of the Federal Labor Relations Authority. The Consolidated Complaint alleges that ARDEC and USACPEA violated the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute). More specifically, Respondent ARDEC is charged with violating Sections 7116(a)(1), (5) and (8) of the Statute by refusing to furnish the Union with a copy of a "recent Department of the Army classification study at ARDEC" and Respondent USACPEA is charged with violating Sections 7116(a)(1) and (5) of the Statute by directing Respondent ARDEC to refuse to furnish the requested information to the Union and thereby interfering "with the bargaining relationship between Respondent ARDEC and the" Union.

A hearing was held in the captioned matter on November 5, 1992, in New York, New York. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and Counsel for both Respondents, i.e Stephanie Wilson Counsel for Respondent USACPEA and Joel Friedman Counsel for ARDEC, filed post-hearing briefs on December 7, 1992, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact^{2/}

The Union is the exclusive representative of a bargaining unit composed of a number of professional employees working at ARDEC and a party to a collective bargaining agreement with ARDEC covering such employees. The contract became effective September 30, 1991.

During 1991 USACPEA conducted an Army-wide position classification study. The study which was designed to assess the accuracy of position classifications throughout the Army

^{2/} The facts for the most part are not in dispute.

included, among other things, desk audits of a random sampling of employees at Army installations around the world.

Among the installations included in the aforementioned study was ARDEC, where desk audits of twelve positions were conducted.^{3/} Of the twelve positions audited, only five were bargaining unit positions.

Upon completion of the study, by the San Francisco Field Office of USACPEA, individual case listings were sent to the Civilian Personnel Office at ARDEC.^{4/} The covering memorandum accompanying the study which was sent to ARDEC's headquarters, i.e. Army Material Command, advised that a number of position descriptions had been found to be in error. ARDEC was also informed that it had 45 days to consider the enclosed findings, take corrective action to remedy the alleged errors, or, if it desired, to request reconsideration of any of the audit findings that it felt were in error. In response to the case listing, ARDEC, after reviewing the matter with its respective supervisors, submitted a rebuttal to USACPEA which at the time of the hearing was still under consideration.

In March of 1992, ARDEC and the Union were engaged in negotiations with respect to a compressed work week and alternate work schedules. During the negotiations Ms. Carol Papps, Chief of Labor/Employee Relations for ARDEC informed the Union representatives present, Raymond Westerdahl, Ed Leibowitz and Jacob Klappholz, President, Executive Vice President and Vice President for Grievances, respectively, that there had been desk audits conducted with respect to a number of bargaining unit positions and that the audits revealed that the employees were not performing the work called for in the job descriptions. Ms. Papps further informed the Union representatives that approximately 80 more positions would be audited in August, that the audit might

^{3/} A desk audit includes a review of the description of a given position, consideration of the grade, an interview with the incumbent to determine what functions the incumbent actually performs and a discussion with the incumbent's supervisor concerning the duties of the incumbent.

^{4/} A case listing contains the title of the position audited, the incumbent's name, a summary of the review conducted by USACPEA, and a finding with respect to the validity of the job description and grade assigned to the position.

lead to downgrading of unit employees and that ARDEC was not in agreement with some of the findings made by the audit.^{5/}

The Union, being concerned with the possible repercussions of the audit, on March 24, 1992 wrote a letter to Ms. Papps requesting both a copy of the audit report as it related to bargaining unit employees and ARDEC's rebuttal to the audit report. According to the Union, it needed the information to determine which unit employees were being affected and to fulfill its responsibility to the unit employees, i.e. to make certain that the employees' job descriptions were accurate.^{6/} While only five bargaining unit employees had been interviewed by USACPEA it appears that other bargaining unit employees occupied identical positions.

Based upon instructions from USACPEA, ARDEC forwarded the Union's request for a copy of the audit to USACPEA. By letter dated June 5, 1992, USACPEA denied the Union's request for a copy of the audit. The letter stated in pertinent part as follows:

USACPEA classification audits of jobs, although they may involve an interview with an incumbent employee to determine the scope of the duties performed, are related to the position not to the incumbent employee. In addition, audits of these positions are preliminary internal management working documents upon which no decision has been made. Even when a reclassification decision has been made, it is precluded from release pursuant to 5 USC 7103(a)(14)(B).

^{5/} While the witnesses differed with respect to the exact words used by Ms. Papps, they were all in agreement that Ms. Papps made it clear that the audit might well be responsible for the down-grading of a number of the positions held by unit personnel. Further, it is clear that Ms. Papps also informed the Union representatives that ARDEC did not agree with the audit findings and that it was writing a "reclama", i.e. rebuttal.

^{6/} In this connection, Article 24 of the collective bargaining agreement provides that each bargaining unit employee is entitled to an accurate job description which shall be reviewed annually. The contract further provides that any inaccuracies disclosed by the annual review shall be corrected by ARDEC.

Accordingly, your request for the audit findings of the 1991 USACPEA classification review is denied.

Since that time, according to a Stipulation of the parties, USACPEA has continued to direct ARDEC not to furnish the Union with any part of the audit.

According to the stipulation of the parties and the opening remarks of Counsel for the General Counsel, ARDEC is a subordinate activity to USACPEA.

Discussion and Conclusions

The General Counsel takes the position that the requested information is necessary in order for the Union to fulfill its representational functions and to police the provisions of the collective bargaining agreement. Accordingly, inasmuch as the requested information is within ARDEC's possession and disclosure is not prohibited by law, the General Counsel would further find, (1) that ARDEC violated Sections 7116(a)(1), (5) and (8) of the Statute by virtue of its actions in failing and refusing to make the requested information available, and (2) that USACPEA violated Section 7116(a)(1) by instructing and/or preventing ARDEC from complying with its 7114(b)(4) obligations.

Respondent USACPEA takes the position that there was no violation of the Statute since the requested information was not necessary for the Union to carry out its representational responsibilities. In this connection Respondent argues that until such time as some final action, based upon the audit, has been taken there is no need for the Union to have a copy of the audit. Additionally, it appears to be Respondent USACPEA's position that since position classifications are specifically exempted from negotiations by Section 7103(a)(14)(B) of the Statute, the Union has no use for the information.

Respondent ARDEC takes the position that inasmuch as it is a subordinate of Respondent USACPEA and was merely carrying out Respondent USACPEA's instructions when it refused to make the audit available to the Union, based upon Authority precedent, the charges against Respondent ARDEC should be dismissed.

Section 7114(b)(4) of the Statute imposes upon an agency the obligation to furnish the exclusive representative of its employees, to the extent not prohibited by law, requested data which is (A) normally maintained by the agency in the regular course of business, (B) reasonably available and necessary for

full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining and (C) does not constitute guidance, advice . . . relating to collective bargaining.

Inasmuch as it is clear, and there is no contention to the contrary, that the requested data or material, i.e. audit and rebuttal thereto, is normally maintained in the regular course of business and reasonably available, is not prohibited by law from disclosure and does not constitute guidance or advice, the only issue remaining for decision is whether under all the circumstances present herein the requested material is "necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining".

As noted above, Respondent USACPEA takes the position that material is not necessary since (1) bargaining with respect to job classifications is barred by the Statute and (2) no downgrading has taken place as a result of the audit. With respect to Respondent USACPEA's first contention, while I agree that the Statute does preclude bargaining with respect to the substance of a job or position classification it does, however, allow bargaining with respect to the impact and the manner of implementation of any change in a position classification. Cf. March Air Force Base, Riverside, California and AFGE, Local 1953, 13 FLRA 255, 259.

With respect to Respondent USACPEA's second contention and/or defense predicated upon prematurity, I find, based particularly on the circumstances prompting the request, that the Union's request for the audit and any rebuttal thereto was not premature. As I understand the procedure, following a negative audit of a position classification an agency or activity, as the case may be, if it disagrees with the audit has a right to file a rebuttal in an attempt to prevent a downgrading of the job classification.^{7/} In the instant case the Union learned of the negative audit from none other than ARDEC's Chief of Labor Relations who also told the three Union representatives present that the negative audits might lead to the downgrading of unit employees and that ARDEC was not in agreement with some of the findings. This in my view was tantamount to notice that a change in job classifications was about to come about because of the audit. The Union which was

^{7/} While the record is not clear, it appears that absent a rebuttal to a negative audit, the position classification might well be downgraded. The filing of a rebuttal does not insure that the position description will retain the grade currently assigned to it.

not a party to either the audit or the rebuttal had no knowledge, whatsoever, of the alleged deficiencies disclosed by the audit nor of the contents of the activity's rebuttal. Additionally, it had no way of knowing if all the negative audits had been rebutted by the ARDEC. Having the requested materials would allow the Union to check the validity of the audit with the affected unit employees and suggest to the ARDEC information, etc. to be included in any rebuttal. The Union would also be in a position to intelligently represent the affected unit employees with respect to any adverse impact which could be expected to flow from the negative audit and also the manner of implementation of any changes resulting from the negative audit. To hold otherwise would make a mockery of the Statute which envisions union and management as equally informed parties and equally equipped to represent their respective constituencies. Without the requested data the Union would be at a distinct disadvantage in any negotiations concerning any changes resulting from the negative audit. Accordingly, I find that the requested material is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

In view of the foregoing findings and conclusions, namely, that the Union is entitled to the requested information pursuant to the provisions of Section 7114(b)(4) of the Statute, I further find that Respondent USACPEA, by refusing, and/or directing Respondent ARDEC not, to make the requested audits and rebuttals thereto, available to the Union, unlawfully interfered with ARDEC's collective bargaining relationship with the Union in violation of Section 7116(a)(1). Finally I find that Respondent ARDEC did not violate the Statute because the actions of Respondent USACPEA prevented Respondent ARDEC from complying with its obligations under the Statute. Cf. U.S. Department of the Interior, Washington, D.C. and U.S. Department of the Interior, National Park Service, Western Regional Office, San Francisco, California, 37 FLRA 804; Headquarters, U.S. Air Force, Washington, D.C. and 375th Combat Support Group, Scott Air Force Base, Illinois, 44 FLRA 117, 126, 127. Had not Respondent ARDEC been a subordinate activity to Respondent USACPEA which directed its action, a Section 7116(a)(1), (5) and (8) violation would be in order against Respondent ARDEC. Cf. Commander Naval Air Pacific, San Diego, California and Naval Air Station Whidbey Island, Oak Harbor, Washington, 41 FLRA 662, 675.

Having concluded that Respondent ARDEC did not violate the Statute, it is recommended that the Federal Labor Relations Authority dismiss that portion of the Consolidated Complaint which names it as a Respondent.

Having concluded that Respondent USACPEA violated Section 7116(a)(1) by unlawfully interfering with the collective bargaining relationship between the Union and ARDEC it is recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes and policies of the Statute.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Army Civilian Personnel and Evaluation Agency, Arlington, VA, (USACPEA), shall:

1. Cease and desist from:

(a) Directing the U.S. Army Research, Development and Engineering Center, Picatinny Arsenal, NJ (ARDEC), not to release to the National Federation of Federal Employees, Local 1437 (NFFE), the exclusive representative of its employees, the information requested by NFFE on March 24, 1992, namely a copy of the 1991 USACPEA position study as it relates to bargaining unit employees and ARDEC's rebuttal thereto, if any.

(b) Interfering with the bargaining relationship between ARDEC and NFFE, Local 1437.

(c) In any like or related manner, interfering with, restraining, or coercing ARDEC's employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute.

(a) Direct ARDEC to furnish NFFE, Local 1437, the exclusive representative of certain of its employees, a copy of the 1991 USACPEA position study as it relates to bargaining unit employees and ARDEC's rebuttal thereto, if any.


(b) Post at all ARDEC facilities where bargaining unit employees represented by NFFE, Local 1437, are located 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 Director of USACPEA, 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.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Boston Regional Office, Federal Labor Relations Authority, 99 Summer Street, Suite 1500, Boston, MA 02110, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

The allegations in the complaint against ARDEC are hereby dismissed.

Issued, Washington, DC, April 21, 1993


BURTON S. STERNBURG
Administrative Law Judge

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 direct U.S. Army Research, Development and Engineering Center Picatinny Arsenal, NJ (ARDEC), not to release to the National Federation of Federal Employees, Local 1437, the exclusive representative of certain of its employees, a copy of the 1991 position study prepared by the Department of the Army Civilian Personnel and Evaluation Agency, Arlington, VA, as it relates to bargaining unit employees employed by ARDEC and ARDEC's rebuttal thereto, if any.

WE WILL NOT interfere with the bargaining relationship between ARDEC and the National Federation of Federal Employees, Local 1437.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce ARDEC's employees represented by the National Federation of Federal Employees, Local 1497, in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL direct ARDEC to furnish the National Federation of Federal Employees, Local 1437, the exclusive representative of a bargaining unit of certain employees employed at ARDEC, a copy of the 1991 position study prepared by the Department of the Army Civilian Personnel and Evaluation Agency, Arlington, VA, as it relates to bargaining unit employees and ARDEC's rebuttal thereto, if any.

(Activity)

Date: _____ By: _____

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 of 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, Boston Regional Office, 99 Summer Street, Suite 1500, Boston, MA 02110, and whose telephone number is: (617) 424-5730.