

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE
DEPARTMENT OF DEFENSE DEPENDENTS
SCHOOLS
ALEXANDRIA, VIRGINIA

and

OVERSEAS EDUCATION ASSOCIATION, NEA

Case No. 92 FSIP 247

FACTFINDER'S REPORT

The Department of Defense, Department of Defense Dependents Schools, Alexandria, Virginia (Employer or DODDS) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119 (Statute), between it and the Overseas Education Association, NEA (Union or OEA) (FF. Exh. 1(a)). The undersigned was designated by the Panel to conduct a factfinding hearing on the issue of competitive areas^{1/} for reductions in force (RIFs). The parties also were notified that the report of the factfinder, without recommendations for settlement, would be submitted to the Panel in accordance with the Panel's regulations, 5 C.F.R. § 2471.9(c) (FF. Exh. 1(d)). A hearing was held on December 14, 1992, at the Panel's offices in Washington, D.C.^{2/} A stenographic record was made, testimony and

^{1/} A competitive area is the geographical and organizational limit within which employees compete for job retention.

^{2/} Prior to the hearing, the Union filed a motion, pursuant to section 2471.8(a)(3) of the Panel's regulations, seeking payment, by the Employer, of the travel and per diem expenses of its overseas witnesses (FF. Exh. 1(g)). It also sought official time for these witnesses for traveling to, attendance at, and preparation for, the factfinding hearing. In accordance with the above-cited portion of the Panel's regulations, the undersigned ruled on the motion on December 8, 1992 (FF. Exh. 1(k)). The ruling was as follows:

(continued...)

arguments were presented, and documentary evidence was submitted. Following the hearing,^{3/} the parties filed posthearing briefs. The record is now closed.

BACKGROUND

The Employer's mission is to provide quality education for eligible minor dependents of military and civilian employees of the Department of Defense who are stationed overseas; in this regard, it operates approximately 224 schools in 19 countries (Emp. Br. 3). The bargaining unit consists of approximately 8,500 employees, the vast majority of whom are teachers, who work in the Atlantic, Germany, and Pacific Regions; it also includes employees of the Panama/Islands Area who are stationed at worksites outside of Panama (Emp. Br. 4, 5, 8).

Article 11, Section 1D, of the parties' current collective-bargaining agreement, which is due to expire in September 1993, sets forth the definition of a competitive area as "an area serviced by a single civilian personnel office [CPO]" (Jt. Exh. 5 at 27).^{4/} That section also provides that "[i]n the event a servicing CPO is changed during the term of this Agreement, the

^{2/}(...continued)

1. That portion of the motion requesting that the factfinding hearing begin at 10 a.m. on Monday, December 14, 1992, is granted. An Amended Notice of Hearing which reflects this change is attached.
2. With respect to that portion of the motion regarding official time for Union witnesses . . . , the motion is granted only to the extent that the Employer shall provide official time for these witnesses during the hours of December 11 and 14, 1992, when they are in attendance at impasse proceedings, provided that they would otherwise be in a duty status.
3. All other portions of the motion are denied.

^{3/} Following the close of the hearing, the Union submitted a Motion to Consider New Evidence. After consideration of the motion, and the Employer's response thereto, the undersigned issued a ruling on January 5, 1993. The motion was denied.

^{4/} DODDS does not have its own personnel offices at overseas locations, but rather has contracted with the various branches of the military for personnel services. As a result, a DODDS employee may be serviced by either an Army, Air Force, or Navy CPO, depending on where he or she is located.

[Union] will be afforded the opportunity to negotiate over any proposed change in the affected competitive area" (Jt. Exh. 5 at 27). Since that provision was implemented, the number of servicing CPOs in Germany was reduced due to a military reorganization (Emp. Br. 2-3). As a result of those changes, the parties, in accordance with the above-cited provision, began negotiations in March 1990 to redefine competitive areas (FF. Exh. 1(a)).

In October 1990, the Employer announced that by October 1993, all personnel management would be handled at the agency's headquarters in Alexandria, Virginia (FF. Exh. 1(j) at 2; Emp. Br. 3). Twenty-eight schools were closed at the end of the 1991-92 school year, but all affected employees were placed within the organization without the need for a RIF (Tr. 148-49; FF. Exh. 1(j) at 3-4; Jt. Exh. 5 at 26; Un. Exh. 6). At this point, 14 schools in England and Germany have been identified for closure at the end of the 1992-93 school year (Jt. Exh. 28; Un. Exh. 6 at 3); under this plan, approximately 60 teachers are scheduled to be separated (Tr. 134).

THE NEGOTIABILITY QUESTION

Following the Panel's assertion of jurisdiction over this dispute, the Employer appeared to raise allegations that the Union's proposal is outside the duty to bargain (Tr. 10-11; FF. Exh. 1(i) at 1-2).

a. The Employer's Position

The Employer maintains that the negotiability of competitive areas is an unsettled question, and, therefore, the Panel should not be guided by Federal Labor Relations Authority (FLRA or Authority) case law which may ultimately be reversed (FF. Exh. 1(i) at 2). In support of this position, the Employer cites the United States Court of Appeals for the District of Columbia Circuit's decision in United States Department of the Navy, Naval Aviation Depot, Cherry Point, North Carolina v. FLRA, 952 F.2d 1434 (D.C. Cir. 1992) (Cherry Point). In that case, the court held, inter alia, that the "vitally affects" test -- which is used to define the limited circumstances under which subjects not normally within the scope of mandatory bargaining may become mandatory subjects due to their effect on bargaining-unit employees -- does not apply in circumstances where a union seeks to regulate, through collective bargaining, the conditions of employment of management personnel who are excluded, by the Statute, from bargaining units. The Employer acknowledges that the Authority has examined the issue of competitive areas in light of the court's reasoning in Cherry Point and concedes that the issue was found to be negotiable in National Weather Service Employees Organization and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 44 FLRA 18

(1992) (National Weather Service).^{5/} It maintains, however, that because a Petition for Review of the Authority's Order in National Weather Service has been filed with the D.C. Circuit on behalf of the agency,^{6/} the question of whether the Authority correctly applied the vitally affects test to the issue of competitive areas is still unresolved. Given these circumstances, the Employer urges the Panel to disregard National Weather Service and to be guided only by case law^{7/} and regulations^{8/} which establish principles consistent with the Employer's proposal (FF. Exh. 1(i) at 2).

b. The Union's Position

The Union asserts that its proposal is negotiable and urges the Panel to exercise its mandate as set forth in Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA 620 (1988) (Carswell) and decide the duty-to-bargain question in its favor (Tr. 12). It

^{5/} In National Weather Service, the Authority stated:

[T]he fact that the competitive areas defined by the provision and the proposal encompass management personnel as well as bargaining-unit employees does not indicate that the union is seeking to regulate the conditions of employment of the management personnel. Rather it represents an effort to draft a proposal directly affecting the competitive areas of bargaining-unit employees that meets the regulatory requirements governing the definition of competitive areas. Therefore, we conclude, that the Union does not, through the provision and the proposal, purport or seek to regulate the terms and conditions of employment of management personnel. 44 FLRA at 28.

^{6/} The Petition for Review was filed on April 17, 1992. The Authority filed a Cross-Application for Enforcement on June 8, 1992.

^{7/} The Employer refers to U.S. Merit Systems Protection Board v. FLRA, 913 F.2d 976 (D.C. Cir. 1990), in which the court reversed an Authority decision which found a union proposal, calling for extension of secondary assignment rights for bargaining-unit employees in the event of a RIF, to be negotiable.

^{8/} The Employer also points to the language of 5 C.F.R. § 351.402(b) which requires that a competitive area be defined "in terms of an agency's organizational unit(s) and geographical location, and must include all employees within the competitive area so defined."

urges the Panel to apply the reasoning of National Weather Service to the facts of this case; as noted above, in that case, the Authority applied the vitally affects test and found the issue of competitive areas to be within the duty to bargain (Tr. 13-14). Although the Union concedes that a Petition for Review of the Authority's Order in National Weather Service has been filed with the D.C. Circuit, it maintains, nevertheless, that the Authority's decision still "stands as established legal precedent," and therefore, ought to be applied by the Panel to resolve the negotiability issue (Tr. 14).

THE ISSUE AT IMPASSE

The parties disagree over what the definition of competitive areas should be for reductions in force (FF. Exh. 1(e)).

a. The Employer's Position

The Employer's proposal is as follows:

Each school, District Superintendent Office [DSO], Regional Office, the Office of Dependents Schools shall be in a separate competitive area, except when more than one school is tenant on a military installation or sub-installation (Tr. 9; FF. Exh. 1(i) at 1).

The Employer contends that establishing each school, DSO, and Regional Office as a separate competitive area is the most efficient way for DODDS to respond to continuing worldwide military drawdowns (Emp. Br. 2). It believes that this proposal would maintain the integrity of its educational programs, thereby continuing to serve the needs of military dependents, while at the same time minimizing the impact of a RIF on communities not directly affected by either a drawdown or a RIF (Emp. Br. 2). It maintains that its proposal is the most workable option, given the state of the organization's personnel management program; moreover, the proposal's ease of administration would reduce significantly the possibility of error during a RIF situation (Tr. 68). Adoption of the Employer's plan would minimize the impact on special employment programs and would allow the organization to continue its efforts towards workforce diversity (Emp. Br. 2). In addition, establishing each school as a separate competitive area would dramatically reduce the Employer's overall relocation expenses, which is critical during this period of fiscal austerity (Emp. Br. 2). Finally, the Employer argues that the circumstances of this case are similar to those in Department of the Army, Headquarters, U.S. Army Garrison, Presidio of San Francisco, California and Local 1457, American Federation of Government Employees, AFL-CIO, Case No. 91 FSIP 230 (February 13, 1992), Panel Release No. 325,

(Presidio) and urges the Panel to adopt the same reasoning here as it did in that case.^{9/}

The record reveals that DODDS is headquartered in Alexandria, Virginia, and consists of four regions (Atlantic, Pacific, Germany, and Mediterranean^{10/}) and one Area (Panama/Islands Area) (Tr. 42). The regions (including the Panama/Islands Area) are currently divided into 15 districts, with each district being responsible for the oversight of individual schools; the number of schools in a district ranges from 6 to 22 (Emp. Br. 5). The breakdown of regions by districts and schools is as follows: (1) the Germany Region has 7 districts with a total of 116 schools; (2) the Pacific Region has 3 districts containing 34 schools; (3) the Atlantic Region has 3 districts responsible for 32 schools; and (4) the Islands Area of the Panama/Islands Area contains 5 schools (Emp. Br. 5).^{11/} The record also reveals that plans for an ongoing reorganization have been announced by the Employer and that by Fiscal Year 1996, the organization plans to consolidate into 2 regions and 10 districts (Tr. 73, 156; Un. Exh. 6); stated another way, the impact of military drawdowns on DODDS will result in "at least a one-third reduction in the size of the school system" (Tr. 105).

The Chief of Staffing for DODDS testified that a competitive area must include all employees within the area and cannot be limited only to members of the bargaining unit (Tr. 53-54). He acknowledged that the prior contract provision, Article 11, Section 1D, defined a competitive area as the area serviced by a CPO (Tr. 94). Under the current personnel management system, a CPO operated

^{9/} In that case, where a complete shutdown of the installation is due to occur by Fiscal Year 1994, the Panel refused to combine the 11 existing activities at the installation into a single competitive area. The Panel concluded:

[a] competitive area of such magnitude would be torturous to administer, given the large number of RIFs which are likely to occur before the Presidio shuts down. Maintaining the current competitive areas, on the other hand, would permit the Employer to proceed with its plans in an orderly manner. This should minimize disruptions both in the missions of the activities and the lives of the employees involved, and lower the risk of procedural error in the process.

^{10/} Since employees of the Mediterranean Region are represented by another union, they are not affected by this dispute.

^{11/} It is unclear from the record whether the Islands Area of the Panama/Islands Area is considered a separate district.

by one branch of the military may provide personnel services to DODDS employees assigned to schools located at installations operated by other branches of the military (Tr. 55). The witness stated that an essential element of conducting a RIF is access to the affected employees' Official Personnel Folders (OPFs) and that OPFs continue to be physically located at the servicing CPOs (Tr. 54-55, 159-160). He explained that under the current system, each branch of the military has separate rules and regulations governing civilian personnel management, and each assigns different codes to occupations for purposes of determining competitive levels (Tr. 57, 141, 159-160).^{12/} Thus, even under the competitive area arrangement described in Article 11, Section 1D, conducting a RIF would have been administratively cumbersome because of the difficulty in building a retention register^{13/} (Tr. 58, 93). On cross-examination, the witness acknowledged that in the Pacific Region, CPOs operated by one branch of the military can, in fact, provide personnel services to employees of other branches of the military (Tr. 91) and were a RIF of DODDS employees to occur at this time, "they [the CPOs] would be the ones that would be responsible for it" (Tr. 99). He noted that in his personal experience he had worked in an Army CPO and had "serviced multiple schools that were on Air Force facilities" and had done this by "using Army rules and regulations" (Tr. 91).

In this witness' view, establishment of competitive areas which would include more than one existing servicing CPO would compound the difficulties described above because it would be impossible for more than one CPO to run a RIF in a single competitive area (Tr. 56). Were such a system to be established, it would require an immediate change in the way in which DODDS operates its personnel management function (Tr. 56). Although he noted that personnel management will be centralized at DODDS headquarters by October 1, 1993, (Tr. 89, 154) he stated that currently, "personnel management authority for maintenance of OPFs and establishment of competitive levels" still remains with the

^{12/} Competitive levels are groups of occupations within a competitive area which contain interchangeable positions. Competitive levels are determined by examining similarity of grade, duties, qualifications, and working conditions. The record reveals that within DODDS, competitive levels are established based upon an individual teacher's current position, as opposed to his or her overall qualifications (Tr. 49, 147).

^{13/} A retention register is a document which establishes a ranking of employees for RIF purposes. It is created by applying retention factors to a competitive level. The retention factors which establish an employee's standing on the register include type of appointment, veteran's preference, length of service, and performance.

CPOs (Tr. 159-160). He testified that once the personnel function is centralized at the Alexandria headquarters, and even though the specific plans are still under discussion, "there will be a small personnel advisory staff at the regional headquarters" and most likely "a personnel specialist advisor . . . located at each district superintendent's office" (Tr. 97).

The witness also testified regarding what he believes are deficiencies in the Union's proposal. Under the Union's plan, a competitive area would be created which would include all employees in the Pacific Region, the Atlantic Region, and the Germany Region (Tr. 10; Un. Br. 2). He stated that DODDS routinely hires temporary employees to supplement its permanent workforce and that should a RIF occur under the Union's proposal, all temporary employees in the competitive area would have to be terminated before any permanent employees could be separated (Tr. 59). He also testified that even if region-wide or country-wide competitive areas were created, options which in his view are less extreme than the Union's proposal, significant disruption to schools and communities not involved in a drawdown would still occur (Tr. 61-62, 107-108). In addition, since the separate branches of the military generally do not have prior knowledge of one another's drawdown strategies, overlapping RIFs involving DODDS employees at different locations throughout the proposed competitive area are likely to occur (Tr. 79-81). He mentioned that the Union's proposal would likely have a negative impact on the agency's ability to retain minorities, as many are recent recruits (Tr. 75-76). Also, the Union's proposal would be inconsistent with the competitive areas established at schools operated by (1) the Department of Defense Stateside Dependents Schools and (2) the Bureau of Indian Affairs, where each school has been designated as a separate competitive area (Tr. 84). Finally, should a combined competitive area be implemented, it could result in lower graded clerical employees, many of whom are military spouses, becoming eligible for a complete package of relocation benefits (Tr. 65-66, 104-105). This could occur if the employee's military sponsor (his or her spouse) is displaced due to a military drawdown, with the DODDS employee, who was formerly a dependent, becoming the new overseas sponsor (Tr. 104-105).

With respect to placement of employees affected by a RIF, the witness emphasized that there is no requirement that an employee be guaranteed an opportunity to compete for job retention. He explained that once a teacher has received a specific notice of a RIF, and the individual cannot be placed through RIF procedures, the agency must, in accordance with Article 11, Section 6, of the collective-bargaining agreement, establish a roster of those individuals and give them priority consideration for vacancies (for which they are qualified) within DODDS, before recruiting from the Continental United States (CONUS) (Tr. 111). The record reveals that should a teacher be placed in an existing vacancy pursuant to Article 11, Section 6, the teacher, his or her dependents, and the

family's possessions would be relocated to the new duty station at Government expense (Tr. 197-200; Jt. Exh. 7 at 4-39,40). The witness also explained that under Article 11, Section 7, of the contract, once a teacher is separated from DODDS, the individual is placed on a reemployment priority list, for any vacancy within DODDS, for a period of 2 years (Tr. 111-112). In this regard, it was noted that whenever a teacher is separated pursuant to a RIF, the teacher, his or her dependents, and the family's possessions are transported to the United States at Government expense (Tr. 112). Although the record reveals that separated employees who are rehired within 1 year are entitled to certain relocation expenses, it is unclear what benefits might accrue to an employee who has been separated for more than 1 year, but less than 2 (Jt. Exh. 7 at 4-40).

The Foreign Language and Social Studies Coordinator at DODDS testified that in his view, the Union's proposal would be disruptive to the educational programs which have been established in particular schools (Tr. 167-171). He emphasized that many children form emotional attachments to their teachers and that some students may have difficulty adjusting to "one teacher leaving and another one coming in" (Tr. 167). He noted that many schools utilize a "team teaching" concept and that some teachers may not adapt well to this type of teaching environment (Tr. 168-170). He also stated that some teachers may not adapt well to the cultural differences of a new country (Tr. 170-171).

The Chief of Employment Policy at DODDS testified as to the entitlements which an employee receives in the event of a permanent change of station (PCS)^{14/} related to a RIF (Tr. 178). She stated that the Government pays the travel expenses of the employee and his or her dependents, as well as the cost of transporting the family's household goods, from the old duty station to the new duty station, whenever a PCS occurs (Tr. 178). She clarified that for the employee to receive these benefits, the following criteria must be met: (1) the move must be in the interest of the Government;^{15/} (2) the new duty station must be at least 10 miles from the old duty station; (3) the transfer cannot be primarily for the convenience or benefit of the employee; and (4) there has to be relocation, incident to the transfer, of the employee's revenue

^{14/} A permanent change of station occurs when an individual, through management's directed action, is moved from one duty station to another, and that relocation requires the individual to travel farther from his or her home of record to his or her duty station (Tr. 72; Jt. Exh. 7 at 4-39).

^{15/} The witness noted that "moves that are made from one area to another as a result of reduction in force or transfer functions are considered to be within the interest of the Government" (Tr. 178).

(Tr. 179). In addition to the benefits described above, the witness stated that an employee would be entitled to reimbursement for mileage if he or she drives a personal vehicle to the new duty station and would receive a per diem and miscellaneous expenses allowance for the trip (Tr. 179). If, however, it was determined that it was in the interest of the Government, the Government would pay for the shipment of the privately-owned vehicle (Tr. 179). She also testified that "local hires" would be eligible for benefits associated with a PCS (Tr. 180). If the local hire is reassigned within the same country, then he or she would receive all of the relocation expenses associated with a PCS (Tr. 180). If, however, the local hire is reassigned to a different country, the individual would be entitled not only to the PCS allowances, but to separation travel^{16/} and renewal agreement travel^{17/} as well (Tr. 180, 183, 203).

This witness also testified that the average cost to the Government of a PCS is approximately \$10,000 (Tr. 181). The record reveals that the average cost to the Government of an inter-regional PCS is \$12,604, and the average cost of an intra-regional PCS is \$7,563 (Emp. Exh. 1). She emphasized that should a combined competitive area be implemented, it could result in lower graded clerical employees, many of whom are local hires, becoming eligible for a complete package of relocation benefits, which could exceed the employee's annual salary (Tr. 184-187). She concurred with a previous Employer witness that such a situation may occur with increased frequency as DODDS employees, who were formerly overseas dependents, become sponsors due to the displacement of their military spouses (Tr. 187).

On cross-examination, she testified regarding the benefits to which a teacher is entitled under the Transfer Program, which is described in Article 9 of the current collective-bargaining agreement (Tr. 187-189). Under the Transfer Program, a teacher who is serving under a transportation agreement can volunteer to transfer to a vacant position at a different geographical location within the organization (Tr. 197; Jt. Exh. 5 at 21-25). The program is operated on a point system that determines which employees will be given priority in placement (Tr. 197; Jt. Exh. 5 at 21-25). She noted that the program was not operated by the agency during School Year 1992-93 (Tr. 200). She stated, however,

^{16/} This term refers to the Government's payment of an individual's travel and relocation expenses, including the shipment of household goods, back to their home country at the time the individual is separated from DODDS (Jt. Exh. 7 at 4-69).

^{17/} This term refers to the Government's payment of an employee's travel expenses for the purpose of returning home to take leave between tours of duty overseas (Jt. Exh. 7 at 4-53).

that in previous years, when the program was operational, a transfer was considered to be a PCS, and the transferred teacher received a full package of travel and relocation expenses (Tr. 199-200). The witness clarified that prior to 1991, local hires were not eligible to participate in the Transfer Program; she noted, however, that in 1991, the parties executed an agreement which provides that local hires can, in fact, participate fully in, and receive the benefits associated with, the Transfer Program (Tr. 188-89).

b. The Union's Position

The Union's proposal is as follows:

The Pacific region, the Atlantic region, and the Germany region shall be one competitive area for reduction in force for the employees in those geographical areas (Tr. 10; FF. Exh. 1(j) at 6; Un. Br. 2).

The Union maintains that its proposal is more equitable since during a RIF, it "would allow those teachers with more expertise and skill" to be retained over "newer, less-experienced teachers" (Un. Br. 23). Under its plan, the only teachers who would be adversely affected by a RIF this year would be temporary hires (Un. Br. 6). While the Union concedes that "there usually is some degree of negative impact" associated with the movement of teachers, it avers that such movement has occurred routinely over the years, and, therefore, a combined competitive area would not have a disruptive effect on the educational process (Un. Br. 8, 18). The Union emphasizes that Paragraph IV.D.8.a. of Department of Defense Directive 1400.13, (July 8, 1976), requires that "[c]ompetitive areas for RIF . . . be large enough to permit adequate competition among educators" (Jt. Exh. 17 at 13) and that the Employer's proposal, which would establish each school as a separate competitive area, is inconsistent with this directive (Tr. 236-237; Un. Br. 22). Moreover, since the payment of travel and relocation expenses is a necessary cost of operating an organization such as DODDS, the Employer's argument that the Union's proposal would increase relocation costs is "factually incorrect and without merit" (Un. Br. 6). In fact, the Union believes that its proposal may be less costly than the Employer's since transferring an employee from one overseas position to another may be less expensive than moving an employee twice -- once to the United States following a RIF, and then to a new overseas location in connection with a placement under the reemployment priority provisions of the collective-bargaining agreement (Un. Br. 20). Regardless, the Union believes that its proposal is affordable and points to the fact that the Employer has budgeted over \$55 million for PCS costs for Fiscal Year 1992-93, a 62 percent increase over the amount budgeted during the previous fiscal year (Tr. 208-209; Un. Exh. 3; Un. Br. 7). The Union denies that its proposal is unworkable because of the existing personnel

management structure and emphasizes that since the agency has already begun to centralize its personnel management function, a consolidated competitive area would be to both parties' advantage (Un. Br. 10-13). With respect to the impact on special programs, the Union concludes that "minority teachers who are not currently temporary hires will not be adversely affected" (Un. Br. 9). Finally, the Union argues that the Panel's decision in Presidio has no application here, as the facts and circumstances of this case are significantly different.^{18/}

The Union president testified that the Employer has budgeted over \$55 million for PCS relocations during Fiscal Year 1993 (Tr. 208; Un. Exh. 3). Based on the prior testimony of the Chief of Employment Policy that the average cost to the Government of a PCS is approximately \$10,000, he concluded that the Employer had budgeted for approximately 5,500 PCS relocations during the current fiscal year (Tr. 209). He also testified that "at the end of last year," approximately 35 percent of the workforce was temporary employees (Tr. 223). In this same vein, he noted that approximately 1,800 new teachers had been hired stateside during the past 3-year period (Tr. 224); this group, which is referred to as career-conditional, constitutes approximately 20 percent of the workforce (Tr. 224). He testified that the two groups, temporary employees and career-conditionals, total approximately 55 percent of the DODDS workforce (Tr. 224). He explained that temporary employees, career-conditional employees, and career employees (those with more than 3 years of service) each fall into a different tenure group for purposes of establishing a retention register (Tr. 220-221) and that under Office of Personnel Management RIF regulations, temporaries and career-conditionals are separated before career employees (Tr. 220-221; Un. Br. 6). Given these facts, adoption of the Union's proposed competitive area would result in very few career teachers being separated should a RIF become necessary (Un. Br. 6).

The witness also testified that in his capacity as Union president, he has visited approximately 260 DODDS schools (Tr. 225). He stated that approximately 50 schools have 50 or fewer teachers on staff (Tr. 226) and opined that in small schools such as these, the Employer's proposal would not allow for adequate competition among teachers in the event of a RIF (Tr. 236-237). He

^{18/} In this regard, the Union maintains that in Presidio, where a complete closure had been announced, the Panel refused to combine existing competitive areas because the administrative burden to the employer would outweigh the short-term benefits to the employees. The Union distinguishes the instant case by noting that no full-scale closure of DODDS is contemplated and that this case involves the establishment of a competitive area "over the lifetime of the [DODDS] program" (Un. Br. 14-15).

described the demographics of the workforce as being more than 80 percent female, with an average age of 47 (Tr. 226). He explained that under the terms of the Transfer Program, as described in Article 9 of the collective-bargaining agreement, teachers who have been issued a written notice of RIF (either general or specific), are given priority placement through the Transfer Program, which is centrally administered by DODDS headquarters (Tr. 230). He also confirmed the testimony of the Chief of Staffing that Article 11, Section 6, and Article 11, Section 7, of the collective-bargaining agreement are centrally administered by DODDS headquarters (Tr. 111-112, 231-232). In this same vein, the witness testified that the movement of teachers from the Philippines -- following the eruption of Mount Pinatubo in 1991 and the closure of Subic Bay in 1992 -- was centrally coordinated through DODDS headquarters, and all relocation expenses connected with those reassignments were paid by the Government (Tr. 232-233). Finally, he confirmed that to his knowledge, the Employer has determined to centralize its personnel management function at the agency's headquarters in Alexandria, Virginia (Tr. 234).

A media specialist and OEA vice-president who is stationed at Okinawa, Japan, testified that within DODDS, competitive levels are established based on a teacher's current position, as opposed to the individual's overall qualifications (Tr. 254). In her view, since most of the DODDS schools have fewer than 50 employees (Tr. 262), the Employer's proposal would not provide any competition for employees who hold "unique positions" such as media specialist, speech therapist, nurse, or english as a second language teacher (Tr. 261-262). She also testified that for 6 years, she has been a member of the Advisory Council to Dependents Education (ACDE), an appointment which was made jointly by the Secretaries of Defense and Education (Tr. 247). She stated that as a member of that committee, she has learned that there is a Department of Defense policy against closing schools during the middle of the school year (Tr. 259). This being the case, establishment of the Union's proposed competitive area would have little or no disruptive effect on the educational process, since the relocation of teachers would take place over the summer months (Tr. 258-259).

A teacher of handicapped preschool children and the OEA chief spokesperson for the Germany Region, testified that the majority of bargaining-unit employees (approximately 4,400) are stationed at schools in Germany (Tr. 274). She testified that 7 schools in Germany have been identified for closure at the end of the 1992-93 school year and that these closings will affect 153 teachers (Tr. 276). She noted that approximately 1,300 bargaining-unit positions were eliminated in Germany last year but that all of the affected employees were placed without the need for a RIF (Tr. 277). As a result of that experience, a Memorandum of Understanding was entered into between OEA and the Germany Region which establishes procedures governing drawdowns and school closures (Tr. 277; Un. Exh. 12). According to this witness, the agreement sets forth a

process for determining "who is excess first of all schools that are drawing down and how . . . management is going to place excess employees" (Tr. 277). She explained that "employees that are determined to be excess will be placed first within the district [to] which they are currently assigned" (Tr. 277; Un. Exh. 12). She continued that if employees cannot be placed within the district, "then they will be forwarded to the regional office[;] there will be a committee of superintendents and myself [which] will be then doing placements regionally and those people who cannot be placed regionally will be sent to Washington for worldwide placement" (Tr. 277-278). The witness opined that the placement agreement for the Germany Region is consistent with Article 11, Section 6, of the collective-bargaining agreement (Tr. 278). She emphasized that under the terms of this agreement, which attempts to place teachers prior to a RIF, placements are made based on the individual teacher's qualifications, rather than on his or her position within the organization (Tr. 279). She noted that all of the relocation expenses associated with these pre-RIF placements were paid by the Employer (Tr. 279-280).

The witness testified that she had been at a conference in Frankfurt, Germany, in October 1992, where an Assistant Secretary of Defense stated the Defense Department's policy "that there would not be any reductions at the semester or during the school year, that they would be doing them at the end of the school year" (Tr. 281). With respect to the testimony as to the disruptive impact that the Union's proposed competitive area might have on the educational process, she stated that she disagreed with the Employer's witness' assessment of how existing programs would be affected (Tr. 284). In this regard, she noted that "we fit programs to kids' needs[;] we do not fit kids into program needs" (Tr. 284). She explained further that teachers "have a repertoire of teaching methods" which can be drawn upon when they are assigned to a new school or whenever "kids rotate [and] things change" (Tr. 284-285). Finally, the witness agreed with the prior testimony of Union witnesses that adoption of the Employer's plan would not provide adequate competition for employees, especially art, music, and physical education teachers; guidance counselors; and media specialists (Tr. 290).

CONCLUSIONS

The above report, which summarizes the transcripts, exhibits, and posthearing briefs of the parties, is respectfully submitted to the Panel.


Harry E. Jones
Factfinder

March 5, 1993
Washington, D.C.