



UNDER SECRETARY OF THE ARMY
WASHINGTON

22 MAR 2000



CHALLENGE Number 2000-0039

[REDACTED]

President
American Federation of Government Employees
Local 1647
Tobyhanna Army Depot
Tobyhanna, Pennsylvania 18466-5035

Dear [REDACTED]

This responds to your appeal of the February 23, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 9, 2000.

Civilian Personnel, Contracting Support Functions

Activity Challenged. You are appealing the decision that the FAIR Act inventory properly includes civilian personnel and contracting support functions, as performed at Tobyhanna Army Depot.

Decision. I have reviewed the Assistant Secretary's decision, which is incorporated herein by reference, in light of your appeal. Based upon this review, I have determined that the selected activities included in your appeal are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list.

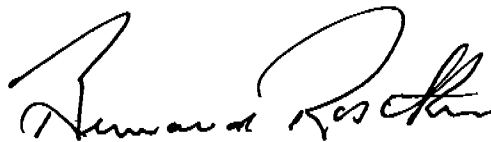
Rationale. Your appeal suggests that civilian personnel advisory services and the administrative support of the labor negotiations function is inherently Governmental. The Assistant Secretary properly concluded that these functions, with one exception, were not inherently Governmental because the provision of advice on personnel matters below the level of a management headquarters does not require the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government within the meaning of the FAIR Act. As to the exception, your appeal provides no basis for overturning the presumption that substantial discretion in the civilian personnel function is limited to personnel assigned to grades GS-11 and higher within occupational series 233 to the extent that such personnel bind the Army in labor negotiations or third party adversary proceedings. The basis of that presumption is not the rendering of management advisory services but the fact that such personnel bind the Government when acting on behalf of the commander.



Your appeal provides various administrative corrections to reason codes and function codes involving Function Codes H99, S731, W999, Y200, Y510 and J999. The FAIR Act challenge and appeal process is limited to determining whether an activity or function is to be added or deleted from the list, that is whether a function is inherently Governmental or not. That determination is not dependent on the accuracy of any given list identifying specific positions with particular functions. Similarly, application of Office of Management and Budget Reason Codes (e.g. A-exempt, B-comparable) is not relevant to the Governmental nature determination. The compilation of the FAIR Act list is a labor intensive, iterative process. The inventory under appeal at the present time is a snapshot in time and reflects the first attempt to compile such an inventory. The inventory under appeal was submitted to the Department of Defense on June 15, 1999, and has since been updated and corrected in the latest submission to the Department of Defense on February 28, 2000.

Your appeal requests removal of purchasing agent positions included in the FAIR list. However, the FAIR Act requires consideration of the nature of functions, not of individual jobs or positions. The Assistant Secretary's decision to exclude the contracting functions performed by occupational series 1102 positions from the FAIR Act list of non-inherently Governmental functions was based on the substantial discretion exercised within that function in the awarding, administering, and terminating of contracts and the binding nature of decisions made by employees performing that function. His decision was not based on individual jobs or positions or the classification of those jobs within the position classification standards at Tobyhanna, none of which is relevant to FAIR Act determinations.

Please note that the Army's FAIR Act determinations are only one step in pursuing a larger objective. The larger objective is to ensure that Army functions and activities are performed in a manner that is both cost-effective and in the best interests of the taxpayers. In this connection, the Army FAIR Act inventory will be reviewed in conjunction with the Army's larger, ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention efforts. As the Assistant Secretary indicated, these reviews may lead to decisions to keep performance of some activities in-house based on risk assessment, national security considerations, or enlightened human resources management.

A handwritten signature in black ink, appearing to read "Bernard Rostker". The signature is fluid and cursive, with a large initial "B" and "R".

Bernard Rostker