



UNDER SECRETARY OF THE ARMY  
WASHINGTON



9 0 MAR 2000

CHALLENGE Number 2000-0043

[REDACTED]  
President  
American Federation of Government Employees  
Local 2004  
New Cumberland, Pennsylvania 17070

Dear [REDACTED]

This responds to your appeal of the February 24, 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 17, 2000.

**Foreign Military Sales Case Management and Support Functions**

**Activity Challenged.** You are appealing the decision that the foreign military sales case management and support functions included in Function Codes R600, S731, W999, Y200, Y530, and Y999 were properly included on the list.


**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 under the above Function Codes pertaining to foreign military sales case management and support functions are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list.

**Rationale.** The Foreign Military Sales mission is concerned with the sale of military equipment, services, and training to foreign governments. The Assistant Secretary's decision reflects his determination that performance of the work required to accomplish this mission involves the exercise of substantial discretion in applying Governmental authority only by policy makers in positions graded GS-13 and above within a management headquarters. Accordingly, his decision reflects his determination that personnel in lower-graded positions are not performing work that must be considered inherently Governmental in nature. Your appeal disagrees on behalf of employees at the U.S. Army Security Assistance Command Field Office (USASAC FO), New Cumberland, Pennsylvania. Your letter indicates that these employees, particularly GS-11 central case managers, must take daily recurring managerial actions that require the exercise of considerable discretion and latitude.

I fully recognize the important contributions made by USASAC employees at every organizational and grade level toward meeting the governments foreign policy

objectives and commitments through the security assistance program. This certainly includes all those employees helping to accomplish the twelve security assistance subfunctions listed in your appeal letter. However, I agree with the Assistant Secretary's decision that substantial discretion in the administration of foreign military sales cases does not reside below the level of the country program managers, as reflected in his presumption that only senior positions within the management headquarters are inherently Governmental. The scope of discretion available for exercise by case managers and other personnel in lower-grade positions is substantially circumscribed by numerous laws, executive orders and regulatory guidance. Examples include DoD Manual 5105.38- M and AR 12-1. Therefore I would not agree with a contention that these employees are performing policy-making functions.

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 Army's larger, ongoing review of all functions for possible reengineering, 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