



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON DC 20310-0111



February 23, 2000

REPLY TO
ATTENTION OF

CHALLENGE Number 2000-0039

[REDACTED]
President
American Federation of Government Employees
Local 1647
Tobyhanna Army Depot
Tobyhanna, Pennsylvania 18466-7789

Dear [REDACTED]

This responds to your challenges to the Army's 1999 FAIR Act inventory. Your challenges concern three activities. I will address each, in turn.

Standing. As head of a labor organization within the meaning of 5 U.S.C. 7103(a)(4), you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list. Other issues raised in your challenge are not relevant to FAIR Act determinations.

Date of Receipt. I received your Challenge on January 27, 2000.

Function Code Y530, Civilian Personnel Functions

Activity Challenged. You have challenged the inclusion on the list of civilian personnel work performed under the Function Code Y530, "Personnel, Community Activities and Manpower Program Management." This work includes the Civilian Personnel Operations Centers, Civilian Personnel Advisory Centers and other civilian personnel management functions included within Function Code Y530 for "Personnel, Community Activities and Manpower Program Management," as defined in the functional definition at the Army web site, <http://www.asamra.army.pentagon.mil/fair>, which is hyperlinked to the DOD FAIRNET website at <http://gravity.lmi.org/DODFAIR>.

Decision. I have determined that the activities included under Function Codes Y530 pertaining to the civilian personnel function are, for the most part, not inherently Governmental. However, some activities listed under Function Code Y530 are improperly included in the Army's FAIR Act list and will be deleted from the list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not Inherently Governmental. An Inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value



judgments in making decisions for the Government. The Army FAIR Act list presumes that substantial discretion in the civilian personnel function is exercised by personnel who are assigned to grades GS-13 and above within a management headquarters. However, most of the work involved in performing these functions is performed by personnel at lower grades within Civilian Personnel Operations Centers and Civilian Personnel Advisory Centers. This presumption is based in part on the degree to which the exercise of discretion within this function is substantially circumscribed by law, rule and regulation. Another consideration is that the personnel function is performed in the private sector. As an exception to the above general presumptions, the corrected FAIR Act list will also presume that substantial discretion is exercised by personnel performing the labor relations function and assigned to grades GS-11 and higher within occupational series 233 to the extent such personnel bind the Army in labor negotiations or represent the Army in third party adversary proceedings.

Function Code H999, Other Health Services

Activity Challenged. You have challenged the inclusion of "Other Health Services," Function Code H999, on the list. This function is defined to include services such as HIV testing, administering physical examinations and performing evaluations of medical suitability, providing support to medical centers, hospitals, laboratories, alcohol abuse residential treatment, operation of pharmacies, pathology and blood bank functions, and numerous other health care services listed in the functional definition at the Army web site, <http://www.asamra.army.pentagon.mil/fair>, which is hyperlinked to the DOD FAIRNET website at <http://gravity.lmi.org/DODFAIR>.

Decision. I have determined that the activities included under Function Code H999 are not inherently Governmental. Therefore, they are properly included in the Army's FAIR Act list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the health services functions and activities listed above is to provide care to patients; none suggest an application of Governmental authority or making value judgments for the Government. Another consideration is that these health services are commonly available in the private sector.

Function Code Y600, Contracting

Activity Challenged. You have challenged the inclusion on the list of work performed under the Function Code Y600, "Contracting." This work includes work performed by occupational series GS 1102, Contracting, and other activities listed in the functional

definition at the Army web site, <http://www.asamra.army.pentagon.mil/fair>, which is hyperlinked to the DOD FAIRNET website at <http://gravity.lmi.org/DODFAIR>.


Decision. I have determined that the activities included under Function Code Y600 are, for the most part inherently Governmental. However, some activities listed under Function Code Y600 are improperly included in the Army's FAIR Act list and will be deleted from the list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the functions and activities listed above is to contract for supplies and services for the installation and assigned customers. The corrected FAIR Act list presumes that all personnel assigned within occupational series GS 1102 within Army contracting offices directly involved in the awarding, administering, and terminating of contracts are performing inherently Governmental functions. All other work performed within Army contracting offices is presumed to be not inherently Governmental, including the largely ministerial duties performed by personnel assigned within occupational series GS 1105.

Significance. The significance of a non-inherently Governmental designation for an activity is discussed at the Army web site hyperlinked to the DOD FAIRNET at <http://www.asamra.army.pentagon.mil/fair>. In some cases there may be legal impediments to contracting activities designated as non-inherently Governmental, as reflected in statutes, international agreements, and restrictions on contracting for personal services. In other cases, the Army may consider it imprudent to contract activities designated as non-inherently Governmental based on risk assessment and national security considerations, or enlightened human resources management. Such a determination has been made at the present time in the case of some of the activities included within this challenge.

Scope. The Army's functions are defined by its unique roles and missions. Therefore, the Army's FAIR Act decisions may not be extended to other agencies with different missions based solely on function code titles. The Army FAIR Act Inventory included civilian positions performing functions within the Army infrastructure and within Civil Works. The FAIR Act Inventory excluded all contractor positions and all military positions, as well as all personnel performing functions in the following mission areas within the Army: Major Theater of War, Smaller Scale Contingency, Base Engagement Force, Strategic Reserve, Domestic Support, or Homeland Defense.

Appeal Rights. You have the right to appeal my decision since it is adverse to your Challenge. The specific procedures for submitting an appeal are set forth at the enclosure to this decision.



Patrick T. Henry
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

Appeal Rights

Appeals must be in writing and transmitted by United States mail, express mail delivery or other similar service, or facsimile transmission, or may be delivered in person only if the person making the delivery is authorized access to the Pentagon. (To assist in processing, appellants may mark "FAIR Appeal" on the envelope.) Appeals must be submitted to the office listed below within 10 working days of the date on which the challenger received the decision denying or rejecting the challenge:

Department of the Army
Office of the Assistant Secretary
Manpower and Reserve Affairs
ATTN: SAMR-FMMR-FAIR
111 Army Pentagon
Washington, D.C. 20310-0111
Fax: 703-614-6833