

# **Rulings on Requests for Review of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended**

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Volume 1  
January 1, 1970 through June 30, 1975

This Volume includes Assistant Secretary Rulings on Requests  
for Review Nos. 1-533

U.S. Department of Labor  
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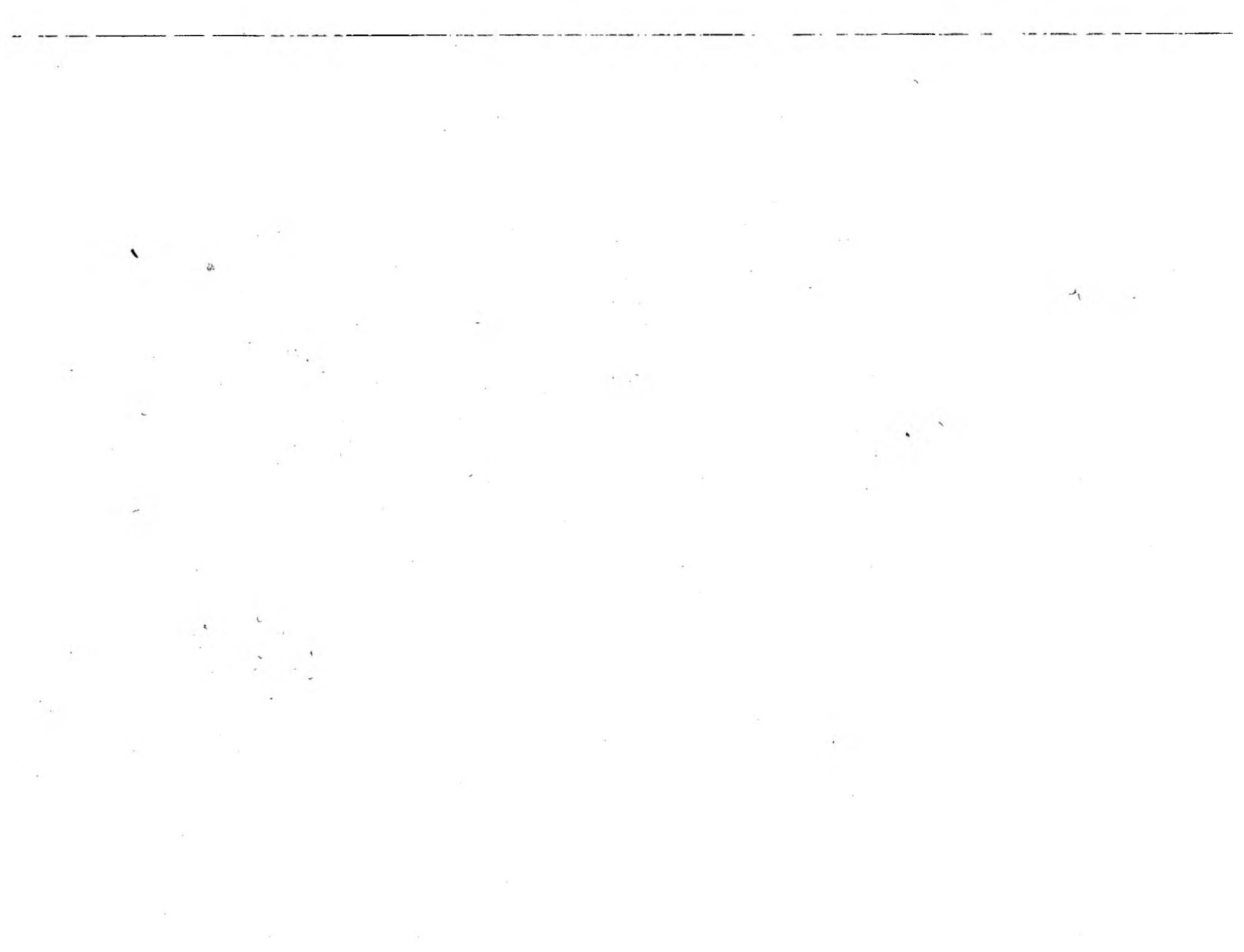
## PREFACE

This Volume of Rulings on Requests for Review of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended, covers the period from January 1, 1970, through June 30, 1975. It is comprised of letters containing the Rulings by the Assistant Secretary in consideration of Requests for Review of actions by Assistant Regional Directors.



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NUMERICAL TABLE OF RULINGS ON REQUESTS FOR REVIEW OF THE ASSISTANT SECRETARY  
SHOWING DATE ISSUED, AREA OFFICE CASE NUMBER(S), TYPE OF CASE AND ACTION

<u>R/R. No.</u>	<u>CASE NAME</u>	<u>DATE ISSUED</u>	<u>AREA OFFICE CASE NO(S).</u>	<u>TYPE OF CASE */</u>	<u>ACTION **/</u>	<u>PAGE</u>
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2	Veterans Administration Hospital Chicago, Illinois	6-30-70	50-4383	RO	Remanded for Hearing	67
3	Department of the Army U.S. Military Academy West Point, New York	6-30-70	30-2547	RO	Request Denied	68
4	U.S. Army Electronics Command Atmospheric Sciences Laboratory Fort Monmouth Red Bank, New Jersey	7-8-70	32-1506	ULP	Request Denied	68
5	U.S. Treasury Department Bureau of Customs Region V, New Orleans, Louisiana	8-20-70	64-1098	RO	Request Denied	69
	U.S. Treasury Department Internal Revenue Service New Orleans District New Orleans, Louisiana	8-12-70	64-1099			
6	Long Beach Naval Station Long Beach, California	8-24-70	72-1480	Obj	Request Denied	70

<u>*/</u>	<u>TYPE OF CASE</u>
AC	= Amendment of Recognition
CHALL	= Challenged Ballots Resolution
CU	= Clarification of Unit
DR	= Decertification of Exclusive Representative
GA	= Grievability or Arbitrability (previously referred to as an AP case)
MISC	= Miscellaneous
OBJ	= Objections to Election
RA	= Certification of Representative (Activity Petition)
RO	= Certification of Representative (Labor Organization Petition)
S	= Standards of Conduct
ULP	= Unfair Labor Practice

\*\* The position of Assistant Regional Director (ARD) previously carried the title of Regional Administrator.

<u>R/R No.</u>	<u>CASE NAME</u>	<u>DATE ISSUED</u>	<u>AREA OFFICE CASE NO(S).</u>	<u>TYPE OF CASE</u>	<u>ACTION</u>	<u>PAGE</u>
7	Social Security Administration District Office Albany, New York	8-21-70	35-1254	DR	Remanded for Hearing	70
8	Pueblo Army Depot Pueblo, Colorado	8-24-70	61-1049	RO	Request Denied	71
9	General Services Administration Federal Supply Service Raritan Arsenal Raritan, New Jersey	8-12-70	32-1567	RO	Remanded for Hearing	71
10	Red River Army Depot Department of the Army	9-3-70	63-2044	Obj	Request Denied	72
11	Keesler Technical Training Center Biloxi, Mississippi	9-21-70	41-1716	DR	Request Denied	74
12	U.S. Treasury Department Internal Revenue Service Indianapolis District Indianapolis, Indiana	9-8-70	50-4570 50-4558	RO	Request Denied	75
13	Long Beach Naval Station Fire Fighters Unit Long Beach, California	6-30-70	72-1486	RO	Request Denied	75
14	Colorado Air National Guard Denver, Colorado	9-25-70	61-1024	Obj	Request Denied	76
15	U.S. Treasury Department Bureau of Customs Region V New Orleans, Louisiana	10-14-70	64-1098 64-1132	RO	Request Denied	77
16	Charleston Naval Shipyard Charleston, South Carolina	10-16-70	40-1926	RO	Request Denied	77
17	General Services Administration Federal Supply Service Raritan Arsenal Depot Raritan, New Jersey	10-28-70	32-1567	RO	Request Denied	78



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18	National Aeronautics and Space Administration (NASA) Audit Division, (Code DU) Washington, D.C.	11-2-70	46-1848	RO	Request Denied	79
19	Department of Health, Education, and Welfare Division of Indian Health Public Health Service Intermountain Indian School Health Center Brigham City, Utah	10-21-70	61-1077	Obj	Request Denied	79
20	Arkansas National Guard North Little Rock, Arkansas	11-2-70	64-1136	ULP	Remanded to ARD	80
21	U.S. Treasury Department Internal Revenue Service San Francisco, California	10-16-70	70-1499 72-1482	RO	Request Denied	81
22	U.S. Army Weapons Command Rock Island, Illinois	11-19-70	50-4618	Obj	Request Denied	82
23	Department of the Army Tooele Army Depot Tooele, Utah	12-7-70	61-1041	Obj	Request Denied	83
24	Department of Health, Education, and Welfare Social Security Administration District Office Albany, New York	12-4-70	35-1254	Obj	Request Denied	84
25	General Services Administration Memphis, Tennessee	12-8-70	41-1736	RO	Request Denied	84
26	Veterans Administration Hospital Jamaica Plain, Massachusetts	12-7-70	31-3178	Obj	Request Denied	85
27	Veterans Administration Hospital Durham, North Carolina	12-18-70	40-1945	Obj	Request Denied	86
28	Charleston Naval Shipyard Charleston, South Carolina	1-5-71	40-1926	RO	Request Denied	87

<u>R/R No.</u>	<u>CASE NAME</u>	<u>DATE ISSUED</u>	<u>AREA OFFICE CASE NO(S).</u>	<u>TYPE OF CASE</u>	<u>ACTION</u>	<u>PAGE</u>
29	Headquarters, Army and Air Force Exchange Service Randolph Air Force Base Exchange Universal City, Texas	1-13-71	63-2015	Obj	Request Denied	87
30	Tennessee Valley Authority Engineers Association Knoxville, Tennessee	10-22-70	Undocketed	Misc	Policy Decision	88
31	Downey Veterans Administration Hospital Downey, Illinois	2-3-71	50-4634	Obj	Request Denied	89
32	Sacramento Army Depot Sacramento, California	2-3-71	70-1817	ULP	Request Denied	89
33	Veterans Administration Center Fort Harrison Helena, Montana	2-1-71	61-1180	RO	Request Denied	90
34	U.S. Army Signal Center Fort Monmouth Red Bank, New Jersey	2-22-71	32-1836	ULP	Request Denied	90
35	Post Exchange, U.S. Army Training Center Fort Jackson Columbia, South Carolina	2-22-71	40-1995	ULP	Remanded for Hearing	91
36	National Labor Relations Board (NLRB) Region 17 Kansas City, Missouri	2-26-71	60-1943	ULP	Remanded to ARD	91
37	Bureau of Customs Department of the Treasury San Juan, Puerto Rico	2-26-71	37-834	ULP	Request Denied	92
38	U.S. Post Office Department Stratford, New Jersey	2-26-71	32-1795	ULP	Request Denied	93
39	U.S. Naval Underwater Weapons and Research Engineering Section Newport, Rhode Island	3-1-71	31-3252	Obj	Request Denied	93

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40	Open Messes Clubs U.S. Naval Station	3-1-71	37-818	Obj	Request Denied	94
41	Naval Supply Center Newport, Rhode Island	3-1-71	31-3256	Obj	Request Denied	95
42	Veterans Administration Regional Office Newark, New Jersey	3-1-71	32-1498 32-1499	Obj	Request Denied	96
43	Department of Army Corps of Engineers St. Paul, Minnesota	3-10-71	51-1233	ULP	Request Denied	97
44	Defense Supply Agency Defense Personnel Support Center Philadelphia, Pennsylvania	3-10-71	20-2179	Obj	Request Denied	97
45	Frankford Arsenal Philadelphia, Pennsylvania	3-15-71	20-2144	ULP	Request Denied	98
46	Frankford Arsenal Philadelphia, Pennsylvania	3-15-71	45-1855	Obj	Request Denied	98
47	U.S. Naval Radio Station Sabana Seca, Puerto Rico	3-17-71	37-836	ULP	Request Denied	99
48	Naval Electronic Systems Command Activity Boston, Massachusetts	3-18-71	31-3371	RO	Request Denied	100
49	Consumer & Marketing Service U.S. Department of Agriculture Washington, D.C.	3-18-71	22-1913	ULP	Request Denied	100
50	U.S. Postal Service Chambersburg, Pennsylvania	3-18-71	21-2282	Misc	Request Denied	101
51	Norton Air Force Base San Bernardino, California	3-23-71	72-1512	Obj	Request Denied	101
52	Veterans Administration Hospital Butler, Pennsylvania	3-30-71	21-2205	RO	Remanded to ARD	102

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53	Veterans Administration Hospital East Orange, New Jersey	4-7-71	32-1803	RO	Request Denied	103
54	Kaiserslautern American High School APO New York	4-7-71	46-1807	ULP	Remanded for Hearing	103
55	Picatinny Arsenal Dover, New Jersey	12-21-70	32-1798	RO	Request Denied	104
56	Department of Navy, Roosevelt Roads Naval Base Ceiba, Puerto Rico	4-13-71	37-768 37-775	Obj	Request Denied	105
57	Department of Defense Department of the Army White Sands Missile Range Las Cruces, New Mexico	4-26-71	63-2273	Obj	Request Denied	106
58	Department of Interior, Bureau of Land Management Sacramento, California	4-26-71	70-1583	Obj	Request Denied	106
59	Post Office Department St. Petersburg, Florida	4-26-71	42-1203	ULP	Request Denied	107
60	Department of Transportation Federal Aviation Administration Washington, D.C.	4-22-71	22-2145	RO	Request Denied	108
61	Department of Health, Education, and Welfare (DHEW) Public Health Service Indian Hospital, Albuquerque, New Mexico	4-28-71	63-2327	Obj	Request Denied	108
62	Post Office Department Philadelphia, Pennsylvania	4-28-71	32-1781	ULP	Request Denied	109
63	Department of the Air Force Electronics System Division L.G. Hanscom Field Bedford, Massachusetts	4-28-71	31-3338	Obj	Request Denied	110

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64	U.S. Navy Autodin Switch Center U.S. Marine Corps Supply Center Albany, Georgia	4-30-71	40-2608	RO	Request Denied	111
65	U.S. Army Transportation Center Fort Eustis Newport News, Virginia	4-30-71	22-1745	Obj	Remanded for Hearing	111
66	U.S. Department of Navy Naval Communications Station Norfolk, Virginia	4-30-71	22-1928	RO	Request Denied	112
67	South Carolina Air National Guard McEntire Air Force Base Columbia, South Carolina	4-30-71	40-2277	ULP	Request Denied	112
68	Department of Transportation Federal Aviation Administration Washington, D.C.	5-10-71	22-2145	RO	Request Denied	113
69	Defense Supply Agency Tracy, California	5-10-71	70-1546	Obj	Request Denied	113
70	U.S. Department of Agriculture Soil Conservation Service Des Moines, Iowa	5-10-71	62-2309	RO	Request Denied	114
71	Federal Aviation Administration New York Air Route Traffic Control Center Ronkonkoma, New York	5-14-71	30-3213	RO	Request Denied	115
72	Aviation Supply Office Philadelphia, Pennsylvania	5-17-71	20-2071	Obj	Request Denied	116
73	National Labor Relations Board Washington, D.C.	5-20-71	22-1976	ULP	Remanded for Hearing	117
74	U.S. Post Office Charlotte, North Carolina	5-20-71	40-2598	ULP	Request Denied	120
75	U.S. Army, Patterson Hospital Fort Monmouth Red Bank, New Jersey	5-20-71	32-2030	RO	Request Denied	120

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76	U.S. Treasury Department Internal Revenue Service Washington, D.C.	5-20-71	22-1916 22-1917 22-1918	CU	Request Denied	121
77	Veterans Administration and VA Data Processing Center Fort Snelling St. Paul, Minnesota	5-20-71	51-1517	Obj	Request Denied	122
78	Virgin Island District Bureau of Customs St. Croix, Virgin Islands	5-27-71	42-1497	RO	Request Denied	123
79	Defense Contract Administration Services District Rochester, New York	5-27-71	35-1321	Obj	Request Denied	123
80	Department of Transportation Federal Aviation Administration Kansas City, Missouri	5-27-71	60-2101	Obj	Request Denied	124
81	General Services Administration Philadelphia, Pennsylvania	5-27-71	20-2246	RO	Request Denied	125
82	Department of Navy, Portsmouth Naval Shipyard Portsmouth, New Hampshire	5-27-71	31-3278	RO	Request Denied	125
83	Naval Underwater Weapons Research & Engineering Station Newport, Rhode Island	5-27-71	31-4388	RO	Request Denied	126
84	Air National Guard Concord, New Hampshire	6-4-71	31-3398	ULP	Request Denied	127
85	U.S. Air Force Headquarters Military Airlift Command Scott Air Force Base Belleville, Illinois	6-7-71	50-4432	ULP	Request Denied	128
86	Defense Supply Agency Boston, Massachusetts	6-7-71	31-4300	RO	Request Denied	128
87	Travis Air Force Base Fairfield, California	6-8-71	70-1836	Obj	Request Denied	129

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88	U.S. Post Office Atlanta, Georgia	6-8-71	40-2384	ULP	Request Denied	130
89	Department of the Army Picatinny Arsenal Dover, New Jersey	6-8-71	32-1954	ULP	Request Denied	130
90	National Labor Relations Board (NLRB), Region 17	6-18-71	60-1943	ULP	Request Denied	131
91	Red River Army Depot Texarkana, Texas	6-21-71	63-2572	RO	Request Denied	132
92	Washington Printing Pressmen's Union No. 1, IPPA Washington, D.C.	6-7-71	22-2333	ULP	Remanded to ARD	133
93	Veterans Administration Hospital Amarillo, Texas	6-21-71	63-2176	Obj	Remanded to ARD	133
94	Department of the Navy U.S. Naval Station San Juan, Puerto Rico	6-23-71	37-776 37-780	Obj	Request Denied	136
95	Veterans Administration Hospital Miami, Florida	6-23-71	42-1451	RO	Request Denied	137
96	U.S. Post Office Hammond, Indiana	6-25-71	53-3387	ULP	Request Denied	138
97	U.S. Naval Exchange U.S. Naval Station San Juan, Puerto Rico	6-25-71	37-791	Obj	Request Denied	139
98	Picatinny Arsenal Department of the Army Dover, New Jersey	6-25-71	32-1818	ULP	Request Denied	139
99	Federal Aviation Administration New York Air Route Traffic Control Center Ronkonkoma, New York	6-25-71	30-3213	RO	Request Denied	140
100	Norfolk Naval Shipyard Portsmouth, Virginia	6-28-71	22-2551	ULP	Remanded to ARD	141

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102	81st Army Command Tampa, Florida	7-2-71	42-1419	ULP	Request Denied	142
103	Internal Revenue Service Office of Regional Counsel Western Region San Francisco, California	7-12-71	70-1877	RO	Request Denied	143
104	Federal Aviation Administration National Aviation Facilities Experimental Station Atlantic City, New Jersey	7-12-71	32-1834	Obj	Request Denied	143
105	U.S. Army Electronics Command (TRI-TAC) Fort Monmouth Red Bank, New Jersey	7-16-71	32-2201	RO	Request Denied	144
106	U.S. Post Office Department Dallas Postal Region Dallas, Texas	7-23-71	63-2837	ULP	Request Denied	145
107	Federal Aviation Administration Washington, D.C.	7-27-71	22-2007 et al	ULP	Request Denied	145
108	Bureau of Customs, Region I Boston, Massachusetts	7-30-71	31-3306	Obj	Remanded for Hearing	146
109	Internal Revenue Service Jacksonville District Jacksonville, Florida	8-3-71	42-1505	ULP	Remanded for Hearing	147
110	Department of the Navy Corpus Christi Naval Air Station Corpus Christi, Texas	8-3-71	63-2657	RO	Request Denied	148
111	Department of Housing and Urban Development St. Louis Area Office St. Louis, Missouri	8-6-71	62-2363	RO	Request Denied	148



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113	U.S. Air Force Hill Air Force Base Ogden, Utah	8-10-71	61-1366	ULP	Case Reopened at Regional Level	150
114	U.S. Army Electronics Command Civilian Personnel Field Office Philadelphia, Pennsylvania	8-20-71	20-2498	RO	Request Denied	150
115	Selective Service System State of California Sacramento, California	8-20-71	70-1824	Obj	Request Denied	151
116	U.S. Naval Station Newport, Rhode Island	8-27-71	31-4387	RO	Request Denied	152
117	Department of Commerce National Weather Service San Juan, Puerto Rico	8-30-71	37-932	RO	Request Denied	153
118	Federal Aviation Administration Washington, D.C.	8-30-71	22-2651 22-2654	ULP	Request Denied	154
119	U.S. Naval War College Newport Naval Base Newport, Rhode Island	9-3-71	31-3348	Obj	Request Denied	154
120	U.S. Army Engineer Center Fort Belvoir, Virginia	9-3-71	22-2234	Obj	Request Denied	155
121	Department of the Navy Naval Air Rework Facility Naval Air Station Jacksonville, Florida	9-3-71	42-1374	Obj	Request Denied	157
122	Veterans Administration Hospital East Orange, New Jersey	9-30-71	32-2239	ULP	Request Denied	159
123	Internal Revenue Service Boston District Boston, Massachusetts	9-30-71	31-4374	Obj	Request Denied	160

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124	Department of Housing and Urban Development Unit II, Boston Area Office Boston, Massachusetts	9-30-71	31-4380	Obj	Remanded to ARD	161
125	Minot Air Force Base Minot, North Dakota	9-30-71	60-1893	ULP	Request Denied	162
126	General Services Administration Cleveland Field Office Cleveland, Ohio	9-30-71	53-3792	ULP	Remanded for Hearing	162
127	Norfolk Naval Shipyard Portsmouth, Virginia	10-21-71	22-2551	ULP	Request Denied	163
128	Navy Exchange U.S. Naval Air Station Quonset Point, Rhode Island	10-29-71	31-4623	ULP	Remanded for Hearing	164
129	Naval Air Station Commissary Stores Quonset Point, Rhode Island	11-2-71	31-3396	Obj	Request Granted	164
130	Department of the Air Force Electronics System Division Bedford, Massachusetts	11-19-71	31-3338	Obj	Request Denied	165
131	U.S. Army Electronics Command Procurement and Production Directorate, Fort Monmouth Red Bank, New Jersey	11-19-71	32-2003	RO	Request Denied	166
132	Post Office Department Weirton Post Office Weirton, West Virginia	11-19-71	21-2240	ULP	Request Denied	167
133	Department of the Army U.S. Army Electronics Command Medical Department Activities Fort Monmouth Red Bank, New Jersey	11-26-71	32-1995	Obj	Request Denied	167

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135	Charleston Naval Shipyard Charleston, South Carolina	11-30-71	40-1926	Obj	Request Denied	169
136	U.S. Information Agency Washington, D.C.	11-30-71	22-2533	RO	Request Denied	172
137	Charleston Naval Shipyard Charleston, South Carolina	12-9-71	40-3404	ULP	Request Denied	173
138	New Hampshire Air National Guard Pease Air Force Base Portsmouth, New Hampshire	12-14-71	31-4304	RO	Request Denied	173
139	Air Technician Detachment at Dobbins AFB, Georgia & Travis Field, Savannah, Georgia	12-15-71	40-3147	ULP	Remanded for Hearing	174
140	Sandia Area Exchange Kirtland Air Force Base Albuquerque, New Mexico	12-16-71	63-2614	CU	Request Denied	174
141	Department of the Army Military Ocean Terminal Bayonne, New Jersey	12-28-71	32-1704	Misc	Request Withdrawn	175
142	Federal Aviation Administration Washington, D.C.	1-14-72	22-2603	RO	Request Denied	176
143	Defense Communications Agency (DCA) Field Office Fort Monmouth Red Bank, New Jersey	1-14-72	32-2457	RO	Request Denied	176
144	U.S. Naval Shipyard Portsmouth, New Hampshire	1-14-72	31-5458	ULP	Request Denied	177

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146	Veterans Administration Center Bath, New York	1-19-72	35-1796	RO	Request Denied	178
147	Veterans Administration Center Bath, New York	1-19-72	35-1810	RO	Request Denied	179
148	Department of the Air Force Patrick Air Force Base Cocoa, Florida	1-19-72	42-1468	ULP	Request Denied	179
149	U.S. Army Corps of Engineers Little Rock District Pine Bluff Resident Office Pine Bluff, Arkansas	1-20-72	64-1318	ULP	Request Denied	180
150	Federal Aviation Administration Miami Air Route Traffic Control Center, Miami Air Route Traffic Control Tower Miami, Florida	1-24-72	42-1648 42-1759	RO	Request Denied	181
151	U. S. Air Force Hill Air Force Base Ogden, Utah	1-26-72	61-1366	ULP	Request Denied	182
152	U.S. Post Office St. Louis, Missouri	1-26-72	62-2414	ULP	Request Denied	183
153	U.S. Postal Service St. Louis Postal Service St. Louis, Missouri	1-26-72	62-2664	ULP	Request Denied	184
154	U.S. Army Ryukyu Islands	1-26-72	22-2398	CU	Request Denied	185
155	Department of the Army Headquarters Fort Campbell Hopkinsville, Kentucky	1-26-72	41-2386	ULP	Request Denied	186

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157	Federal Aviation Administration Washington, D.C.	1-31-72	22-2000 et al	ULP	Request Denied	187
158	Federal Aviation Administration Washington, D.C.	1-31-72	22-2141	ULP	Request Denied	188
159	U.S. Army Training Center Ft. Jackson Laundry Facility Ft. Jackson Columbia, South Carolina	1-31-72	40-3491	ULP	Request Denied	188
160	Department of the Air Force U.S. Air Force Academy Colorado Springs, Colorado	1-31-72	22-2694	ULP	Remanded to ARD	189
161	Federal Aviation Administration Aeronautical Center Oklahoma City, Oklahoma	1-31-72	63-2948	ULP	Request Denied	189
162	Veterans Administration Hospital Brecksville, Ohio	1-31-72	53-4156	RO	Request Denied	190
163	Bureau of Indian Affairs (BIA) Education Employees National Council of Bureau of Indian Affairs Educators (NCBIAE) National Education Association (NEA) Albuquerque, New Mexico	2-28-72	63-2691	RO	Remanded to ARD	191
164	U. S. Post Office Bettendorf, Iowa	2-28-72	62-2447	ULP	Request Denied	191
165	U.S. Army Electronics Command Army Aviation Detachment Fort Monmouth Red Bank, New Jersey	2-29-72	32-2468	RO	Request Denied	192

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167	Naval Air Rework Facility U.S.Naval Air Station Norfolk, Virginia	2-29-72	22-2568	Obj	Remanded to ARD	193
168	Tinker Air Force Base Oklahoma City, Oklahoma	3-23-72	63-3202	ULP	Request Denied	195
169	Veterans Administration Washington, D.C.	3-23-72	22-2635	RO	Request Denied	196
170	Veterans Administration Hospital East Orange, New Jersey	3-22-72	32-2463	DR	Request Denied	196
171	Headquarters, Third Army Fort McPherson Atlanta, Georgia	3-21-72	40-3036	ULP	Request Denied	197
	U.S. Army School Training Center Fort McClellan Anniston, Alabama	3-21-72	40-3048			
172	U.S. Naval Air Station Quonset Point, Rhode Island	3-21-72	31-5476	RO	Remanded for Hearing	198
173	Department of the Army U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	3-28-72	32-1843	Obj	Request Denied	199
174	Internal Revenue Service Memphis Service Center Memphis, Tennessee	4-25-72	41-2763	RO	Request Denied	200
175	2024th Communications Squadron Moody Air Force Base Valdosta, Georgia	4-25-72	40-3501	ULP	Request Denied	200
176	Federal Aviation Administration Great Lakes Region Airport Division Des Plaines, Illinois	4-25-72	50-5529	CU	Remanded for Hearing	201

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178	Corps of Engineers Philadelphia District Customs House Philadelphia, Pennsylvania	4-26-72	20-2952	CU	Request Denied	203
179	Defense Supply Agency Defense Depot Memphis, Tennessee	4-28-72	41-2672	RO	Request Denied	204
180	U.S. Army Natick Laboratories Natick, Massachusetts	4-28-72	31-5463	ULP	Request Denied	204
181	Department of Air Force Moody Air Force Base Valdosta, Georgia	4-28-72	40-3095	Obj	Request Denied	205
182	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	4-28-72	32-2473	ULP	Request Denied	207
183	Air Training Command Lowry Technical Training Center Lowry Air Force Base Denver, Colorado	4-28-72	61-1514	ULP	Request Denied	207
184	Comptroller Directorate Tooele Army Depot Tooele, Utah	4-28-72	61-1481	RO	Request Denied	208
185	U.S. Naval Air Rework Facility Quonset Point, Rhode Island	4-28-72	31-5475	RO	Remanded for Hearing	209
186	Veterans Administration Hospital Amarillo, Texas	4-28-72	63-2176	Obj	Request Denied	210
187	U.S. Army Natick Laboratories Natick, Massachusetts	5-10-72	31-5480	ULP	Request Denied	211

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189	U.S. Army Aeronautical Depot Maintenance Center Corpus Christi, Texas	5-18-72	63-2865	Obj	Request Denied	212
190	Federal Aviation Administration Atlanta Air Traffic Control Tower Atlanta, Georgia	5-31-72	40-3470	ULP	Remanded for Hearing	213
191	Dept. of Housing and Urban Development Detroit, Michigan	5-31-72	52-3582	Obj	Request Denied	214
192	Health Services and Mental Health Administration, Public Health Service Dept. of Health, Education and Welfare Marion, Illinois	5-31-72	50-5191	RO	Request Denied	215
193	Norfolk Naval Shipyard Portsmouth, Virginia	6-22-72	46-1617	Obj	Request Denied	215
194	Norfolk Naval Shipyard Portsmouth, Virginia	6-22-72	46-1617	Obj	Request Denied	217
195	U.S. Public Health Service Hospital Dept. Of Health, Education and Welfare	6-22-72	70-1803	Obj	Request Denied	218
196	Dept. of the Army, Picatinny Arsenal, Dover, New Jersey	6-22-72	32-2475	ULP	Request Denied	219
197	Defense Supply Agency Tracy, California	6-22-72	70-2418	RO	Request Denied	219
198	Dept. of the Navy Naval Ship Repair Facility Guam, Mariana Island	6-28-72	73-436	Obj	Request Denied	220
199	General Services Administration Communication Division Philadelphia, Pennsylvania	7-13-72	20-3000	ULP	Request Denied	220



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201	General Services Administration Region 3 Washington, D.C.	7-14-72	22-2616 22-2617	Obj	Request Denied	222
202	Dept. of the Navy Naval Air Rework Facility Naval Air Station Norfolk, Virginia	7-18-72	22-2568	Obj	Request Denied	223
203	Dept of the Navy Naval Supply Center Norfolk, Virginia	7-18-72	22-2949	ULP	Remanded for Hearing	225
204	Norfolk Naval Shipyard Portsmouth, Virginia	7-21-72	22-2669	ULP	Remanded for Hearing	225
205	Marine Corps Supply Center Barstow, California	7-24-72	72-2948	ULP	Request Denied	226
206	American Federation of Government Employees (AFGE) Dept. of Housing and Urban Development (HUD) - Council of Locals, Region 11 Orange, New Jersey	7-26-72	30-3754	MISC	Request Withdrawn	227
207	U.S. Dept. of Agriculture (USDA) Northern Marketing and Nutrition Research Division Agricultural Research Service Peoria, Illinois	7-26-72	50-5165	MISC	Request Withdrawn	227
208	U.S. Electronics Command Dept. of the Army Fort Monmouth Red Bank, New Jersey	7-27-72	32-2811	ULP	Request Denied	228
209	Denver Air Route Traffic Center Longmont, Colorado	7-27-72	61-1492	ULP	Request Denied	229

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211	Army and Air Force Exchange Service Fort Rucker Ozark, Alabama	7-28-72	40-4164	ULP	Request Denied	230
212	U.S. Army Natick Laboratories Natick, Massachusetts	7-31-72	31-5584	ULP	Request Denied	231
213	Dept. of Transportation Federal Aviation Administration Great Lakes Region Des Plaines, Illinois	7-31-72	53-4775 et al	CU	Request Denied	232
214	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	7-31-72	32-2565	RO	Request Denied	233
215	U.S. Army Advanced Ballistic Missile Defense Agency Huntsville Office Huntsville, Alabama	7-31-72	40-3672	Obj	Request Denied	234
216	Chicago Payment Center Social Security Administration Chicago, Illinois	7-31-72	50-8236	ULP	Request Denied	235
217	Chicago Payment Center Social Security Administration	7-31-72	50-5595	ULP	Request Denied	236
218	Federal Labor Relations Council Washington, D.C.	8-22-72	41-2792	ULP	Request Denied	236
219	Public Health Service (PHS) Indian Hospital	8-24-72	63-3347	ULP	Request Denied	237
220	Federal Aviation Administration Fort Worth Air Route Traffic Control Center Fort Worth, Texas	8-31-72	63-2991	ULP	Request Denied	237

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223	Naval Air Engineering Center U.S. Naval Air Base Philadelphia, Pennsylvania	9-29-72	20-3106	Obj	Request Denied	240
224	U.S. Naval Shipyard Portsmouth, New Hampshire	9-29-72	31-6057	ULP	Request Denied	241
225	Federal Aviation Administration Boston Air Route Traffic Center Nashua, New Hampshire	10-13-72	31-6076	RO	Request Denied	241
226	Dept. of Health, Education and Welfare, Social Security Administration Chicago Payment Center Chicago, Illinois	10-25-72	50-5986	ULP	Request Denied	242
227	Dept of the Army U.S. Army Communication Systems Fort Monmouth Red Bank, New Jersey	10-31-72	32-2580	Obj	Request Denied	243
228	Portland Area Office Dept. Of Housing and Urban Development Portland, Oregon	11-1-72	71-1770	Obj	Remanded to ARD	244
229	Human Development Corporation of Metropolitan St. Louis St. Louis, Missouri	11-1-72	62-3268	RO	Request Denied	245
230	Social Security Administration Lawton, Oklahoma	11-2-72	63-3904	DR	Request Denied	246
231	Dept. of Defense Defense Contracts Administration Services District Milwaukee, Wisconsin	11-3-72	50-8229	ULP	Request Denied	247

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233	National Aviation Facility Experimental Center, Federal Aviation Administration Dept. of Transportation	11-28-72	32-2871	ULP	Request Denied	249
234	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	11-30-72	32-2851	ULP	Remanded for Hearing	250
235	U.S. Naval Post Graduate School Monterey, California	11-30-72	70-2426	RO	Request Denied	250
236	National Atmospheric and Oceanic Administration National Weather Service Washington, D.C.	11-30-72	22-3589	RO	Request Denied	251
237	Veterans Administration Hospital Montgomery, Alabama	12-13-72	40-4280	ULP	Request Denied	252
238	Dept. of the Army Materials & Mechanics Research Center Watertown, Massachusetts	12-13-72	31-6069 31-6073	RO	Remanded to ARD	253
239	U.S. Dept. of Navy U.S. Navy Public Works Center Waukegan, Illinois	12-26-72	50-8947	ULP	Request Denied	254
240	Dept. of the Army, Military Ocean Terminal Bayonne, New Jersey	12-26-72	32-1704	Obj	Request Denied	255
241	Dept. of the Army, U.S. Army Materials & Mechanics Research Center Watertown, Massachusetts	1-10-73	31-6069 31-6073	RO	Request Denied	256
242	U.S. Dept. of Justice Immigration and Naturalization Service Washington, D.C.	1-22-73	22-3617	ULP	Request Denied	257

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245	Federal Aviation Administration National Capital Airports Fire Dept. Washington, D.C.	1-22-73	22-3711	RO	Request Denied	258
246	Oklahoma City Air Materiel Area Tinker Air Force Base Oklahoma City, Oklahoma	1-22-73	63-4047	ULP	Request Denied	260
247	Norfolk Naval Shipyard Portsmouth, Virginia	1-22-73	22-3570	ULP	Request Denied	260
248	Keesler Technical Training Center Keesler Air Force Base Biloxi, Mississippi	1-22-73	41-3137	Obj	Request Denied	261
249	U.S. Air Force Aeronautical Systems Division Wright-Patterson Air Force Base Dayton, Ohio	1-29-73	53-6147	Obj	Request Denied	262
250	Dept. of the Army Directorate, U.S. Dependent Schools European Area APO New York	2-7-73	22-3575	ULP	Request Denied	263
251	U.S. Air Force Air Force Special Weapons Center Kirtland Air Force Base Albuquerque, New Mexico	2-7-73	63-3793	AC	Remanded for Hearing	264
252	U.S. Army Combat Development Command Fort Monmouth Red Bank, New Jersey	2-9-73	32-2870 32-2877	RO	Request Denied	264

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257	Social Security Administration Regional Office New York, New York	3-9-73	30-4720	ULP	Request Denied	270
258	U.S. Army Medical Corps Tripler Army Medical Center Honolulu, Hawaii	3-14-73	73-498	Obj	Request Denied	270
259	National Park Service John F. Kennedy Center for the Performing Arts Washington, D.C.	3-14-73	22-3701	RO	Remanded for Hearing	271
260	Office of Economic Opportunity, Region V Chicago, Illinois	3-14-73	50-8232	ULP	Request Denied	272
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267	Dept. of Air Force Headquarters, 4756th Air Force Base Group Tyndall Air Force Base Panama City, Florida	4-30-73	42-2227	ULP	Request Denied	276
268	U.S. Dept. of Army St. Louis District Corps of Engineers St. Louis, Missouri	4-30-73	62-3525	ULP	Request Denied	277
269	Dept. of Air Force Keesler Technical Training Center Biloxi, Mississippi	4-30-73	41-3193	ULP	Request Denied	278
270	U.S. Dept. of Agriculture Agricultural Stabilization & Conservation Kansas City, Missouri	5-14-73	60-2151	Obj	Request Denied	279
271	Army & Air Force Exchange Service Southeast Exchange Region Warehouse Fort Bragg Fayetteville, North Carolina	5-14-73	40-4365	Obj	Remanded	279

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275	General Services Administration Region 3 Washington, D.C.	6-15-73	20-3858	RO	Remanded to ARD	282
276	U.S. Army Electronics Command Maintenance Directorate Fort Monmouth Red Bank, New Jersey	6-21-73	32-3169	ULP	Request Denied	283
277	Federal Aviation Administration, National Aviation Facilities Experimental Center Atlantic City, New Jersey	6-25-73	32-2926	ULP	Request Denied	284
278	Dept. of Interior Bureau of Indian Affairs White Shield School Fort Berthold Agency Parshall, North Dakota	6-25-73	60-3232	ULP	Request Denied	284
279	Federal Aviation Administration, National Aviation Facilities Experimental Center Atlantic City, New Jersey	6-25-73	32-2927	ULP	Remanded for Hearing	285
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285	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	7-9-73	32-3164	ULP	Request Denied	289
286	Dept. of Interior Washington, D.C.	7-9-73	22-3693	ULP	Request Denied	290
287	American Federation of Government Employees, AFL-CIO, and Local 2677, AFGE, AFL-CIO Office of Economic Opportunity Washington, D.C.	7-12-73	22-3702	ULP	Remanded to ARD	291
288	Naval Air Rework Facility Naval Air Station Pensacola, Florida	7-19-73	42-2233	ULP	Request Denied	292
289	Dept. of Health, Education and Welfare, Bureau of Retirement & Survivors Insurance Payment Center Birmingham, Alabama	7-23-73	40-4707	ULP	Request Denied	293
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291	Internal Revenue Service Newark District Office Newark, New Jersey	7-24-73	32-3213	ULP	Request Denied	294
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295	General Services Administration Region III, Automated Data Tele- communications Service (ADTS) Philadelphia, Pennsylvania	8-2-73	20-3986	ULP	Request Denied	298
296	Dept. of Health, Education and Welfare Bureau of Retirement and Survivors Insurance Payment Center Birmingham, Alabama	8-2-73	40-4708	ULP	Request Denied	299
297	Federal Aviation Administration John F. Kennedy International Airport Jamaica, New York	8-14-73	30-4984	ULP	Request Denied	299
298	Dept. of the Navy Naval Weapons Station Yorktown, Virginia	8-27-73	22-2881	Obj	Request Denied	300
299	Dept. of Transportation Federal Aviation Administration Eules, Texas	8-30-73	63-4423	ULP	Request Denied	300
300	Veterans Administration Hospital East Orange, New Jersey	9-4-73	32-3206	ULP	Request Denied	301
301	Dept. of the Navy Naval Ordnance Laboratory Silver Spring, Maryland	9-6-73	22-3986 22-4000	GA	Request Denied	302
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305	American Federation of Government Employees, AFL-CIO Social Security Administration Payment Center Birmingham, Alabama	9-12-73	40-4727	CO	Request Denied	305
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317	Dept. of Health, Education and Welfare Social Security Administration Chicago, Illinois	10-9-73	50-9708	ULP	Request Denied	315
318	Dept. of the Air Force Ellsworth Air Force Base Rapid City, South Dakota	11-14-73	60-3412	RO	Request Denied	316
319	Dept. of the Army Headquarters, Fort Hamilton Brooklyn, New York	11-16-73	30-5132	ULP	Request Denied	317
320	Puget Sound Naval Shipyard Bremerton, Washington	11-19-73	71-2507	CU	Request Denied	317
321	Dept of the Air Force Ellsworth Air Force Base Rapid City, South Dakota	11-28-73	60-3412	RO	Request Denied	318
322	Portsmouth Naval Shipyard Portsmouth, New Hampshire	11-28-73	31-6198	ULP	Request Denied	319

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324	U.S. Air Force Andrews Air Force Base Base Fire Department Washington, D.C.	12-3-73	22-3954	ULP	Request Denied	320
325	Veterans Administration Hospital Miami, Florida	12-3-73	42-2295	Obj	Request Denied	320
326	Veterans Administration Data Processing Center	12-3-73	63-4708	DR	Request Granted	321
327	National Association of Government Employees, Local R14-32 Fort Leonard Wood Waynesville, Missouri	12-3-73	62-3712	ULP	Request Denied	322
328	Bureau of Retirement & Survivors Insurance Social Security Administration New York Payment Center Flushing, New York	12-5-73	30-5138	GA	Request Denied	323
329	Dept of Commerce National Oceanic and Atmospheric Administration Pittsburgh, Pennsylvania	12-10-73	21-3825	ULP	Remanded for Hearing	324
330	National Labor Relations Board Washington, D.C.	12-19-73	50-9546	ULP	Request Denied	324
331	National Labor Relations Board Region 8 Cleveland, Ohio	12-19-73	53-7029	MISC	Request Withdrawn	325
332	Dept. of the Army Watervliet Arsenal Watervliet, New York	1-4-74	35-2885	GA	Request Denied	326

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334	Dept. of Health, Education and Welfare New York Payment Center Flushing, New York	1-16-74	30-5150	GA	Request Denied	328
335	Southeast Exchange Regional Warehouse Atlanta Army Depot Forest Park, Georgia	1-16-74	40-5173	RO	Remanded to ARD	329
336	Warner Robins Air Materiel Area Robins Air Force Base Warner Robins, Georgia	1-16-74	40-4939	GA	Request Denied	329
337	U.S. Dept. of Navy Naval Ordnance Station Louisville, Kentucky	1-16-74	41-3323	ULP	Request Denied	330
338	Dept. of the Army Watervliet Arsenal Watervliet, New York	1-16-74	35-2892	GA	Remanded to ARD	331
339	Dept. of the Navy Pacific Missile Range Point Mugu, California	1-31-74	72-4325	Obj	Request Denied	332
340	Dept. of the Navy Norfolk Naval Shipyard Portsmouth, Virginia	1-31-74	22-3834	CU	Request Denied	333
341	Dept. of the Navy Naval Air Rework Facility Jacksonville, Florida	1-31-74	42-2342	ULP	Request Denied	333
342	Naval Air Engineering Center Naval Air Systems Command Philadelphia, Pennsylvania	2-6-74	20-4275	ULP	Request Denied	334
343	West Virginia Air National Guard Charleston Air National Guard Base Kanawha Airport Charleston, West Virginia	2-26-74	21-3862	ULP	Request Denied	335

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344	Dept. of the Navy Naval Ammunition Depot Crane, Indiana	2-26-74	50-9667	GA	Request Denied	335
345	General Services Administration Region V, Communication Division	2-28-74	53-6453	RO	Remanded for Hearing	336
346	Federal Aviation Administration Washington, D.C.	2-28-74	22-4058	ULP	Request Denied	337
347	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	2-28-74	32-3317	ULP	Request Denied	338
348	Federal Aviation Administration Western Region San Francisco, California	2-28-74	70-4067	CO	Request Denied	338
349	Federal Aviation Administration Western Region San Francisco, California	2-28-74	70-4068	ULP	Request Denied	339
350	Internal Revenue Service Washington, D.C.	3-1-74	22-4056	ULP	Request Denied	339
351	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	3-4-74	32-3329	ULP	Request Denied	340
352	General Services Administration Region VIII Federal Supply Service Fort Worth, Texas	3-6-74	63-4509	ULP	Request Denied	341
353	Dept. of Health, Education and Welfare, Social Security Administration Chicago Payment Center Chicago, Illinois	3-6-74	50-9671	GA	Request Granted	342
354	Office of Economic Opportunity, Region V Chicago, Illinois	3-6-74	50-9135	ULP	Request Denied	342
355	Office of Economic Opportunity Region V Chicago, Illinois	3-13-74	50-9141	ULP	Remanded for Hearing	343

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357	Dept. of Air Force Griffiss Air Force Base Rome, New York	3-22-74	35-2929	MISC	Request Granted	345
358	Health Services Command Headquarters Fort Sam Houston San Antonio, Texas	4-3-74	63-4776	RO	Request Denied	345
359	Veterans Administration Data Processing Center Austin, Texas	4-3-74	63-4719	ULP	Remanded for Hearing	346
360	Dept. of the Interior U.S. Geological Survey Rolla, Missouri	4-3-74	62-3832	DR	Request Denied	346
361	Office of Economic Opportunity Region V Chicago, Illinois	4-3-74	50-8578	ULP	Remanded for Hearing	347
362	U.S. Army Tank-Automotive Command Warren, Michigan	4-3-74	52-4956	ULP	Request Denied	347
363	Dept. of Army, Headquarters U.S. Army Training Center Engineer and Fort Leonard Wood Waynesville, Missouri	4-3-74	62-3655	OBJ	Request Denied	348
364	Office of Economic Opportunity Region V Chicago, Illinois	4-3-74	50-8300	ULP	Remanded for Hearing	349
365	Office of Economic Opportunity Region V Chicago, Illinois	4-3-74	50-9142	ULP	Remanded for Hearing	350
366	U.S. Dept. of Justice Bureau of Prisons Washington, D.C.	4-3-74	20-4276	ULP	Request Denied	351



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368	Veterans Administration Data Processing Center Austin, Texas	4-24-74	63-4760	ULP	Remanded for Hearing	352
369	Naval Missile Center Point Mugu, California	4-30-74	72-4379	OBJ	Request Denied	352
370	National Federation of Federal Employees Washington, D.C.	4-30-74	20-4300	ULP	Request Denied	353
371	U.S. Army Aviation Systems Command St. Louis, Missouri	4-30-74	62-3092	OBJ	Remanded to ARD	353
372	Charleston Naval Shipyard Charleston, South Carolina	4-30-74	40-4978	ULP	Request Denied	354
373	Internal Revenue Service Southeast Region Chamblee, Georgia	5-14-74	40-5246	ULP	Request Denied	355
374	U.S. Marshals Service District of Columbia Washington, D.C.	5-14-74	22-5174	RO	Request Denied	356
375	Federal Aviation Administration Washington, D.C.	5-14-74	22-5142	GA	Request Denied	356
376	Airways Facility Sector Federal Aviation Administration Denver, Colorado	5-14-74	61-2274	DR	Request Denied	357
377	Veterans Administration Research Hospital Chicago, Illinois	5-31-74	50-11052	RO	Request Denied	358
378	U.S. Army Adjutant General Publications Center St. Louis, Missouri	5-31-74	62-3838	ULP	Remanded for Hearing	358

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380	American Federation of Government Employees, Local 987, AFL-CIO Warner Robins, Georgia	6-18-74	40-5215	ULP	Request Denied	360
381	Office of Economic Opportunity Washington, D.C.	6-18-74	22-5178 22-5189	GA	Request Denied	360
382	Department of Army Rock Island Arsenal Headquarters and Installation Support Activity Rock Island, Illinois	6-18-74	50-9668	OBJ	Request Denied	361
383	Defense Mapping Agency Topographic Center Providence Office West Warwick, Rhode Island	6-18-74	31-7566	GA	Request Denied	362
384	Pacific Southwest Forest and Range Experiment Station Forest Service, U.S. Department of Agriculture Berkeley, California	6-18-74	70-4033	ULP	Request Denied	363
385	Department of Army U.S. Army Training Center Port Leonard Wood Waynesville, Missouri	6-18-74	62-3831	OBJ	Request Denied	363
386	Office of Economic Opportunity Washington, D.C.	7-8-74	22-5216	GA	Request Granted	364
387	Headquarters, U.S. Air Force Tinker Air Force Base Oklahoma City, Oklahoma	7-8-74	63-4765	ULP	Request Denied	365
388	Air Engineering Center Naval Air Support Activity Philadelphia, Pennsylvania	7-8-74	20-4311	ULP	Request Denied	365

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390	Veterans Administration Center Bath, New York	7-8-74	35-3125	RO	Remanded to ARD	367
391	Department of Army Baltimore District Corps of Engineers Baltimore, Maryland	7-26-74	22-5152	ULP	Request Denied	368
392	Department of the Army Rock Island Arsenal Headquarters U.S. Army Armament Command Rock Island, Illinois	7-26-74	50-11059	OBJ	Request Denied	368
393	Department of Navy Naval Air Rework Facility Norfolk, Virginia	7-26-74	22-5272	GA	Request Denied	369
394	National Weather Service U.S. Department of Commerce Caribou, Maine	7-26-74	31-7565	GA	Request Denied	370
395	Department of Health, Education and Welfare Social Security Administration Baltimore, Maryland	8-22-74	22-5271	ULP	Remanded for Hearing	371
396	National Weather Service Pittsburgh, Pennsylvania	8-22-74	21-3997	GA	Request Denied	372
397	Department of Navy National Naval Medical Center Bethesda, Maryland	8-22-74	22-5251	GA	Request Denied	372
398	Transportation Federal Aviation Admin. Airways Facilities Sector Albuquerque, New Mexico	8-22-74	63-4904	ULP	Request Denied	373
399	Treasury Disbursing Center Austin, Texas	8-22-74	63-4816	ULP	Request Denied	374

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401	Dept of the Air Force Headquarters, Oklahoma City Air Materiel Area Tinker Air Force Base Oklahoma City, Oklahoma	8-22-74	63-4831	AC	Request Denied	375
402	Department of the Army, Headquarters U.S. Army Training Center Engineer and Fort Leonard Wood Waynesville, Missouri	8-22-74	62-3655	OBJ	Request Denied	376
403	U.S. Navy, Naval Air Station, Fifth Naval District Norfolk, Virginia	8-22-74	22-5256	ULP	Request Denied	377
404	U.S. Air Force Air Force Finance and Accounting Center Denver, Colorado	8-22-74	61-2315	ULP	Request Denied	377
405	National Guard Bureau Arkansa Air National Guard 189 Tac Recon GP (RTU) Jacksonville, Arkansas	8-22-74	64-2290	GA	Request Denied	378
406	U.S. Department of Agriculture Forest Service Ouachita National Forest Hot Springs, Arkansas	8-27-74	64-2279	OBJ	Request Denied	379
407	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	8-30-74	32-3329	ULP	Request Denied	380
408	U.S. Air Force, Billeting Fund Patrick Air Force Base Cocoa, Florida	8-30-74	42-2509	RO	Remanded for Hearing	381

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410	Department of the Navy Naval Weapons Center China Lake, California	8-30-74	72-4678	ULP	Request Denied	382
411	Department of Commerce U.S. Merchant Marine Academy Kings Point, New York	8-30-74	30-5455	ULP	Remanded for Hearing	383
412	Department of Labor Labor Management Services Administration, Dallas Area Office Dallas, Texas	8-30-74	Undocketed	MISC	Request Denied	384
413	U.S. Department of Agriculture (USDA) Forest Service Hot Springs, Arkansas	9-13-74	64-2340	ULP	Request Denied	384
414	Social Security Administration Bureau of Retirement and Survivors Insurance Mid-American Program Center Kansas City, Missouri	9-13-74	60-3623	ULP	Request Denied	385
415	U.S. Department of Army Picatinny Arsenal Dover, N.J.	9-13-74	32-3528	OBJ	Request Denied	386
416	Council of Customs Locals American Federation of Government Employees (AFGE) Locals 2652, 2768, and 2899, AFL-CIO New York, New York	9-20-74	30-5569	CO	Request Denied	386
417	U.S. Department of Agriculture Farmers Home Administration Huron, South Dakota	9-26-74	60-3700	ULP	Request Denied	387

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419	Department of the Air Force McClellan Air Force Base Sacramento, California	9-27-74	70-4232	GA	Request Granted	388
420	Federal Aviation Administration National Aviation Facilities Experimental Center Atlantic City, New Jersey	9-27-74	32-3615	ULP	Request Denied	389
421	Internal Revenue Service Greensboro District Office Greensboro, North Carolina	9-27-74	40-5314	GA	Request Granted	390
422	U.S. Army Aeronautical Depot Maintenance Center Corpus Christi, Texas	9-27-74	63-4887	ULP	Request Denied	391
423	Department of Commerce U.S. Merchant Marine Academy Kings Point, New York	10-3-74	30-5455	ULP	Request Denied	391
424	Veterans Administration Hospital LaJolla, California	10-3-74	72-4646	ULP	Request Denied	392
425	The Adjutant General State of Illinois Illinois National Guard Springfield, Illinois	10-10-74	50-9685	ULP	Remanded for Hearing	392
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426	Internal Revenue Service Chamblee Service Center Chamblee, Georgia	10-10-74	40-5335	ULP	Remanded for Hearing	393
427	Department of the Army White Sands Missile Range Las Cruces, New Mexico	10-10-74	63-4930	ULP	Request Denied	393

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429	Internal Revenue Service Austin Service Center Austin, Texas	10-15-74	63-4995	GA	Request Granted	395
430	Department of Agriculture Office of Investigation Temple, Texas	10-25-74	63-4992	RO	Request Denied	396
431	Naval Air Rework Facility Pensacola, Florida and Secretary of the Navy Washington, D.C.	10-25-74	42-2529	ULP	Remanded for Hearing	397
432	Tobacco Division Agricultural Marketing Service Glasgow, Kentucky	10-25-74	41-3686	ULP	Request Denied	398
433	Federal Aviation Administration National Aviation Facilities Experimental Center Atlantic City, New Jersey	10-25-74	32-3649	ULP	Request Denied	399
434	U.S. Army Engineer (USAE) Waterways Experiment Station Vicksburg, Mississippi	10-25-74	41-3599	RO	Remanded for Hearing	399
435	U.S. Department of Agriculture Forest Service Ozark-St. Francis National Forests Russellville, Arkansas	10-25-74	64-2268	OBJ	Request Denied	400
436	Federal Aviation Administration John F. Kennedy International Airport Jamaica, New York	10-31-74	30-5640	ULP	Request Denied	401
437	Veterans Administration Center Mountain Home, Tennessee	10-31-74	41-3624	GA	Request Denied	402
438	Keesler Technical Training Center Keesler Air Force Base Biloxi, Mississippi	10-31-74	41-3673	ULP	Request Denied	403

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440	U.S. Information Agency Broadcasting Service Voice of America (VOA) New York, New York	11-11-74	30-5579	RO	Request Denied	404
441	Office of Economic Opportunity Region IX San Francisco, California	11-11-74	70-4236	GA	Request Denied	405
442	National Aeronautics and Space Administration John F. Kennedy Space Center Kennedy Space Center, Orlando, Florida	11-11-74	42-2497	GA	Request Denied	405
443	Department of the Navy Navy Exchange U.S. Naval Air Station Alameda, California	11-25-74	70-4283	GA	Request Granted	406
444	Office of Economic Opportunity (OEO) Local 2677 National Council of OEO Locals American Federation of Government Employees, AFL-CIO Washington, D.C.	11-25-74	22-5386	GA	Request Denied	407
445	Department of the Air Force McClellan Air Force Base Sacramento, California	11-25-74	70-4329	GA	Request Denied	407
446	Securities and Exchange Commission Washington, D.C.	11-27-74	22-5371	ULP	Request Denied	408
447	Department of the Army Indiana Army Ammunition Plant Charlestown, Indiana	11-27-74	50-11018	ULP	Request Denied	409
448	Department of Health, Education, and Welfare, Social Security Administration San Francisco, California	12-13-74	70-4278	ULP	Request Denied	410
449	U.S. Army Training Aids Management Agency Newport News, Virginia	12-13-74	22-5388	RO	Request Denied	411



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451	U.S. Department of Agriculture Pacific Southwest Forest and Range Experiment Station Berkeley, California	12-13-74	70-4254	GA	Request Denied	412
452	Aberdeen Proving Ground Aberdeen, Maryland.	12-18-74	22-5400	ULP	Request Granted	413
453	Department of Transportation Federal Highway Administration Vancouver, Washington	12-19-74	71-3009	ULP	Request Denied	413
454	Bureau of the Mint U.S. Assay Office San Francisco, California	12-19-74	70-4319	ULP	Request Denied	414
455	Department of Air Force Ellsworth Air Force Base Rapid City, South Dakota	12-24-74	60-3412	RO	Remanded to ARD	415
456	General Services Administration Region 5, Federal Supply Service Quality Control Division Chicago, Illinois	12-24-74	52-5716	RO	Remanded for Hearing	416
457	U.S. Department of Commerce Domestic and International Business Administration, Phoenix District	12-24-74	72-4749	RA	Request Denied	416
458	Pearl Harbor Naval Shipyard Honolulu, Hawaii	12-24-74	73-573	ULP	Request Denied	417
459	Bureau of the Mint U.S. Assay Office San Francisco, California	12-24-74	70-4320	ULP	Request Denied	418
460	Long Beach Naval Shipyard Long Beach, California	1-3-75	72-4730	ULP	Request Denied	418
461	Department of the Army U.S. Army Materiel Command Watervliet Arsenal Watervliet, New York	1-3-75	35-3233	GA	Request Denied	419
462	Department of the Navy Pearl Harbor Naval Shipyard Honolulu, Hawaii	1-3-75	73-574	ULP	Request Denied	420

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464	Department of Health, Education, and Welfare Western Program Center Social Security Administration San Francisco, California	1-13-75	70-4291	ULP	Request Denied	421
465	Internal Revenue Service District, Columbia, South Carolina	1-23-75	40-5339	ULP	Remanded for Hearing	422
466	U.S. Civil Service Commission Appeals Review Board Washington, D.C.	1-23-75	22-5519	ULP	Request Denied	422
467	U.S. Department of the Air Force Grand Forks Air Force Base Grand Forks, North Dakota	1-23-75	60-3747	RO	Remanded for Hearing	423
468	U.S. Army Engineer Division, Pacific Ocean Fort Armstrong Honolulu, Hawaii	1-30-75	73-562	OBJ	Request Denied	424
469	Department of the Navy Naval Air Systems Command Bethpage, New York	1-30-75	30-5645	GA	Request Denied	424
470	U.S. Department of Health, Education and Welfare, Social Security Administration Grand Rapids, Michigan	1-30-75	52-5578	RO	Request Denied	425
471	Office of Economic Opportunity Washington, D.C.	1-30-75	22-5512	GA	Request Granted	426
472	U.S. Department of Army Picatinny Arsenal Dover, New Jersey	1-30-75	32-3679	ULP	Request Denied	427
473	U.S. Department of the Air Force Washington, D.C.	2-3-75	22-5574	ULP	Remanded for Hearing	428
474	Naval Air Rework Facility Naval Air Station Jacksonville, Florida	2-3-75	42-2504	OBJ	Remanded for Hearing	429

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476	Department of Health, Education and Welfare, Social Security Admin. Bureau of Data Processing Albuquerque Data Operations Center Albuquerque, New Mexico	2-7-75	63-4833	OBJ	Request Denied	430
477	Norfolk Naval Shipyard Portsmouth, Virginia	2-24-75	22-5532	ULP	Request Denied	431
478	U. S. Public Health Hospital Brighton, Massachusetts	2-24-75	31-8606	ULP	Request Denied	431
479	Internal Revenue Service Los Angeles District Los Angeles, California	2-24-75	72-4736	OBJ	Request Denied	432
480	Massachusetts Army National Guard Boston, Massachusetts	2-28-75	31-8853	RO	Request Denied	432
481	Headquarters, Army and Air Force Exchange Service Ohio Valley Exchange Region Louisville, Kentucky	2-28-75	50-11136	ULP	Request Denied	433
482	General Services Administration Region 3, Washington, D.C.	2-28-75	22-5530	GA	Request Denied	434
483	Internal Revenue Service Omaha District Office Omaha, Nebraska	2-28-75	60-3722	GA	Request Denied	435
484	Federal Aviation Administration Sector 19, Greer, South Carolina	2-28-75	40-5858	RO	Request Denied	436
485	Federal Aviation Administration Sector 31, Montgomery, Alabama	2-28-75	40-5859	RO	Request Denied	436
486	Veterans Administration Hospital Jamaica Plain, Massachusetts	3-7-75	31-8567	OBJ	Request Denied	437

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488	Defense Supply Agency Defense Construction Supply Center Columbus, Ohio	3-11-75	53-7387	GA	Request Granted	438
489	Department of the Army Rock Island Arsenal Headquarters U.S. Army Armament Command Rock Island, Illinois	3-11-75	50-11059	OBJ	Request Denied	438
490	U.S. Naval Air Station, North Island San Diego, California	3-27-75	71-3033	ULP	Request Denied	439
491	General Services Administration Region 2, New York	3-27-75	30-5109	OBJ	Request Denied	439
492	National Archives and Records Service General Services Administration Washington, D.C.	3-28-75	22-5713	GA	Request Denied	440
493	National Labor Relations Board Denver, Colorado Regional Office and National Labor Relations Board Washington, D.C.	3-28-75	61-2289	ULP	Remanded for Hearing	441
494	U.S. Department of Army U.S. Army Air Defense Center and Fort Bliss El Paso, Texas	3-28-75	63-4989	OBJ	Request Denied	442
495	St. Lawrence Seaway Development Corporation Massena, New York	3-27-75	35-3248	ULP	Request Denied	442
496	Department of the Navy Naval Ammunition Depot Crane, Indiana	4-3-75	50-9667	GA	Remanded to ARD	443

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498	U.S. Army Electronics Command Fort Monmouth Red Bank, New Jersey	4-22-75	32-3673	ULP	Remanded for Hearing	444
499	Pennsylvania Army and Air National Guard Harrisburg, Pennsylvania	4-22-75	20-4549	ULP	Request Denied	445
500	Veterans Administration Center Bath, New York	4-22-75	35-3249	ULP	Request Denied	445
501	Veterans Administration Center Bath, New York	4-22-75	35-3254	ULP	Request Denied	446
502	American Federation of Government Employees, AFL-CIO, Local 1909 Columbia, South Carolina	4-22-75	40-5755	ULP	Request Denied	446
503	Headquarters, 31st Combat Support Group Homestead Air Force Base Homestead, Florida	4-30-75	42-2575	ULP	Request Denied	447
504	U.S. Department of Agriculture National Finance Center New Orleans, Louisiana	5-7-75	64-2441	ULP	Request Denied	447
505	Department of Air Force K.I. Sawyer Air Force Base Gwinn, Michigan	5-7-75	52-5862	ULP	Request Denied	448
506	Department of the Navy Pearl Harbor Naval Shipyard Honolulu, Hawaii	5-7-75	73-587	ULP	Request Denied	448
507	U.S. Dependents School European Area (Directorate) APO New York	5-7-75	22-5571	ULP	Request Denied	449
508	Headquarters, 31st Combat Support Group, Tactical Air Command (TAC) Homestead, Florida	5-7-75	42-2573	ULP	Remanded for Hearing	449

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510	Department of Transportation Federal Aviation Administration Oakland Air Route Traffic Control Center Fremont, California	5-19-75	70-4463	ULP	Request Denied	450
511	Department of Commerce U.S. Merchant Marine Academy Kings Point, New York	5-19-75	30-5585	ULP	Request Denied	451
512	U.S. Department of the Army Army Aeronautical Depot Maintenance Center Corpus Christi, Texas	5-19-75	63-5033	GA	Request Granted	452
513	U.S. Department of the Army U.S. Army Aeronautical Depot Maintenance Center Corpus Christi, Texas	5-19-75	63-5049	GA	Request Granted	453
514	Veterans Administration Hospital New Orleans, Louisiana	5-29-75	64-2513	ULP	Request Denied	454
515	U.S. Navy Naval Air Rework Facility Naval Air Station Alameda, California	6-3-75	70-4582	RO	Request Denied	454
516	Corpus Christi Army Depot Corpus Christi, Texas	6-4-75	63-5368	ULP	Request Denied	455
517	U.S. Army Air Defense Center Fort Bliss El Paso, Texas	6-4-75	63-5355	ULP	Request Denied	455
518	Veterans Administration Data Processing Center Austin, Texas	6-4-75	63-5276 et al	ULP	Request Denied	456
519	Department of Housing and Urban Development, Detroit Area Office Detroit, Michigan	6-9-75	52-5817	ULP	Request Denied	456

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521	Veterans Administration Data Processing Center Austin, Texas	6-9-75	63-5349 63-5357	ULP	Request Denied	457
522	Internal Revenue Service Austin Service Center Austin, Texas	6-10-75	63-5065	ULP	Remanded for Hearing	458
523	General Services Administration Federal Supply Service Washington, D.C.	6-19-75	22-5725	ULP	Request Denied	458
524	Arizona National Guard Air National Guard Sky Harbor Airport Phoenix, Arizona	6-19-75	72-4777	ULP	Request Denied	459
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U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 30, 1970

Mr. E. E. Thompson  
President  
International Association of Fire Fighters  
Local F-154  
Hq. 910th TASG (AFRES)  
Youngstown Municipal Airport  
Vienna, Ohio 44473

1

Dear Mr. Thompson:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of the RO petition in U. S. Department of the Air Force, Headquarters 910th Tactical Air Support Group (AFRES), Youngstown Municipal Airport, Vienna, Ohio, Case No. 53-2973, and concluded that the appeal raises issues which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator is directed to reinstate the Appellant's petition and to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 30, 1970

Mr. John A. Coleman  
President  
General Service Employees Union  
Local No. 73, Service Employees  
International Union, AFL-CIO  
67 West Division Street  
Chicago, Illinois 60610

2

Dear Mr. Coleman:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your motion to dismiss the petition in Veterans Administration Hospital, Chicago, Illinois, Case No. 50-4383, and concluded that the appeal raises issues which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in the proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

JUN 30 1970

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. James L. Neustadt  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
400 First Street, N. W.  
Washington, D. C. 20001

3

Dear Mr. Neustadt:

The undersigned has carefully considered your Request for Review of the Regional Administrator's denial of intervenor's Motion to Dismiss Petition, in Department of the Army, U. S. Military Academy, West Point, New York, Case No. 30-2547, and concludes that the appeal failed to raise substantial material issues of irreparable injury or prejudice to intervenor's legal rights under Executive Order 11491, which would warrant reversal of the Regional Administrator's decision. Accordingly, the Regional Administrator's denial of the intervenor's Motion to Dismiss is sustained.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

July 8, 1970

Mr. Herbert Cahn  
President, Local 476,  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

4

Dear Mr. Cahn:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your unfair labor practice complaint filed in U. S. Army Electronics Command, Fort Monmouth, New Jersey, Atmospheric Sciences Laboratory, Case No. 32-1506, and concluded that a reasonable basis for the complaint has not been established. Accordingly, the Regional Administrator's dismissal of the complaint in this matter is sustained.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

August 20, 1970

Mr. Myles J. Ambrose  
Commissioner of Customs  
Bureau of Customs  
2100 K Street, NW.  
Washington, D. C. 20226

5

Re: United States Treasury Department  
Bureau of Customs  
Region V  
Case No. 64-1098 (E)

Dear Mr. Ambrose:

The undersigned has carefully considered your request for review of the Regional Administrator's denial of your motion to dismiss the petition filed by American Federation of Government Employees, Local No. 2891, in the above-captioned case, and concluded that legitimate issues exist relating to the appropriateness of the unit which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator's denial of your motion to dismiss is sustained, and the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

August 12, 1970

Mr. Joseph J. Stengel  
Chief, General Legal Branch  
Operations and Planning Division  
Office of Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D. C. 20224

Re: United States Treasury Department  
Internal Revenue Service,  
New Orleans District  
Case No. 64-1099 (E)

Dear Mr. Stengel:

The undersigned has carefully considered your request for review of the Regional Administrator's denial of your request to dismiss the petition filed by the National Federation of Federal Employees in the above-named case and concluded that legitimate issues exist relating to the appropriateness of the unit which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator's denial of your request to dismiss is sustained, and the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

August 24, 1970

August 21, 1970

Mr. Kenneth T. Lyons  
National President  
National Association of Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

6

Re: Long Beach Naval Station  
Case No. 72-1480 (RO)

Dear Mr. Lyons:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your objections to the election in the subject case.

Under the Section 202.20 of the Rules and Regulations, any party filing objections to an election must serve copies of such objections "simultaneously" on the other parties and make a statement of service. Also, Section 202.6(d) of the Rules and Regulations, which is made applicable to situations involving requests for review of findings by a Regional Administrator with respect to objections to an election provides, in part, that "Copies of the requested review shall be served on the Regional Administrator and other parties, and statement of service shall be filed with the request for review."

The evidence in the subject case established that in filing its objections to the election with the Area Administrator and its subsequent request for review with the Assistant Secretary, the appellant did not comply with the service requirements contained in the above cited Rules and Regulations. Accordingly, in view of the foregoing, your request for review based on the Regional Administrator's dismissal of your objections to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mrs. Edna L. Tamaroff  
Social Security Administration  
855 Central Avenue  
Albany, New York 12205

7

Re: Social Security Administration  
District Office, Albany, New York  
Case No. 35-1254 (EO)

Dear Mrs. Tamaroff:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of the decertification petition in the above-named case and concluded that the appeal raises issues which can best be resolved on the basis of record testimony.

Accordingly, the Regional Administrator is directed to reinstate your petition and to issue promptly a notice of hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 12, 1970

August 24, 1970

Mr. Kenneth T. Lyons  
National President  
National Association of Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

8

Re: Pueblo Army Depot  
Case No. 61-1049 (E)

Dear Mr. Lyons:

The undersigned has carefully considered your request for review of the Regional Administrator's denial of your challenge to the validity of the petitioner's showing of interest in the subject case.

Under Section 202.2(f) of the Rules and Regulations, "Any party challenging the validity of showing of interest must file his challenge with the Area Administrator within ten (10) days after the initial date of posting of the notice of petition as provided in Section 202.4(b) and support his challenge with evidence."

The evidence in the subject case established that the challenge to the validity of the petitioner's showing of interest, which was filed with the Area Administrator, did not comply with the ten day requirement contained in the above-cited section of the Regulations. Accordingly, your request for review based on the Regional Administrator's dismissal of your challenge is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Stanley Q. Lyman  
National Vice President  
National Association of Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

9

Re: General Services Administration  
Federal Supply Service,  
Raritan Arsenal  
Case No. 32-1567 (RO)

Dear Mr. Lyman:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your RO petition in the above-captioned case, and has concluded that the appeal raises issues which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator is directed to reinstate the petition and to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



-2

9/3/70

Mr. Nathan T. Wolkomir  
President  
National Federation of Federal Employees  
1737 H Street, NW.  
Washington, D. C. 20006

10

Re: Red River Army Depot  
Department of the Army  
Case No. 63-2044 (E)

Dear Mr. Wolkomir:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of all objections filed by National Federation of Federal Employees, Local 803 (NFFE) to conduct of the election or conduct affecting the results of the election held among certain employees of the Red River Army Depot on October 29, 1969. Based upon a full review of the evidence and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted for the following reasons:

Objection 1

Objection 1 contains several allegations of violations of the election and urges that such violations constitute valid grounds for setting aside the election.

The undersigned is of the opinion that the possible setting aside of an election should not be approached lightly, not only because of the added expense and inconvenience to the parties resulting from such an eventuality, but, also because it would delay the establishment of stable employee-management relations. This is especially true where the objection goes to alleged deviations from the terms of an election agreement which clearly would not improperly affect the results of the election. Accordingly, the substance of each alleged deviation must be analyzed on its own merits to determine if, in fact, the conduct improperly and materially affected the results of the election.

Objection 1(a) alleged that representatives of National Association of Government Employees (NAGE) campaigned during working hours in violation of the election agreement. NFFE presented evidence of these incidents, which occurred more than one week prior to the election, wherein NAGE representatives were seen talking with a few employees in the area of an employee cafeteria during working hours. NFFE's own evidence presented at least three different versions of the persons involved and the time consumed in the October 16, 1969, alleged campaigning incident. In any event, it is clear that not more than a few minutes and a very few employees were involved. Such conduct, in my opinion, although objectionable, would not affect the outcome of the election.

Objection 1(b) alleges that NAGE posted campaign literature in various work areas. However, evidence has not been produced to show that NAGE, in fact, did the posting. Moreover, there is no suggestion that such literature was present in or around the polling places on election day. Under these circumstances, I do not find the conduct objectionable.

Objection 1(c) alleges that two NAGE observers left their respective poll stations in violation of instructions. No supporting evidence was offered establishing that the observers engaged in electioneering or any misconduct. The investigation disclosed that the absentee ballot which NFFE contends was delivered by one of the observers, during his absence, was voided and not counted.

It should be noted that although the parties may be represented at the polls by observers, the validity of the election is not dependent upon their availing themselves of this right. In the absence of rationale reflecting how the absence of the subject observers could prejudice any party other than NAGE, it is concluded that such absences do not constitute conduct warranting the setting aside of the election.

Additionally, Objection 1(c) alleges that a NAGE member provided taxi service to the polls on election day. In the absence of evidence that such service was conditioned upon how the rider voted, the rendering of taxi service, which is a traditional and historic practice, does not constitute objectionable conduct.

It is alleged also that the NAGE employee providing the taxi service to the polls suggested to an illiterate rider that he should vote for NAGE by placing an "x" in the first block on the ballot. This allegation is unsupported by evidence; however, even if it occurred, in the absence of proof that other employees heard the statement and acted responsively, this single vote could not be said to have affected the results of the election.

Objection 1(d) suggests that the ballots cast at Polling Place No. 8 be voided, as it is a "well founded suspicion that this observer (referred to in Objection 1(c), above) left his position to campaign and urge employees to go vote." This objection is unsupported by any evidence.

Objection 1(e) alleges that NAGE officials were tardy for a pre-election conference scheduled in the election agreement. Similarly, NFFE contends that many NAGE observers did not attend designated training sessions and that such resulted in "unbecoming and inefficient" conduct at the polls on election day. No basis for a finding of objectionable conduct is established by this allegation.

Objection 2

Objection 2(a) alleges that NAGE distributed literature which deliberately misstated material facts which were within NAGE's knowledge and that the employees lacked independent knowledge to make a proper evaluation of the misstatements. NFFE made reference to statements relating to a "saving the employee's jobs" contained in a particular piece of campaign literature entitled "There is a big difference: And it means your job!", elaborating that this job security issue had been a central one in view of a pending RIF at the depot. NFFE contends that a job-security fear was instilled in voters which resulted in their casting their ballots for NAGE.

NFFE failed to state which "material facts" were deliberately misstated during the campaign, how the "saving the employee's jobs" issue was misrepresented in the supplied single piece of campaign literature, why the facts were within the peculiar knowledge of NAGE, or why NFFE could not rebut the NAGE statements, if they were false. An objecting party's obligation is not met with an unsupported allegation that certain verbal or written statements were false or otherwise objectionable, no matter how central the alleged misrepresentation was to the election campaign.

The undersigned notes that election campaigns are sometimes hotly contested and feelings may run high, as is apparent in the instant case. As a result, parties may, in their zeal, overstate their own virtues and the alleged vices of their rivals. Precision and accuracy of statement are not always attained or expected by the voters who ordinarily view such statements in the context of the election situation. In reviewing the "job-security" statements pointed to by NFFE in the aforementioned literature, it appears that employees readily could recognize the assertions as mere self-serving election propaganda. There seems to be no basis for a conclusion that the ability of employees to evaluate the election choices available to them was so impaired by the campaign statements that they were unable to vote intelligently on the issues.

Accordingly, it is concluded that the specified NAGE statements are not objectionable.

Objection 2(b) alleges that a specific piece of NAGE literature depicting NFFE's president, Mr. Nathan T. Wolkomir, in a cartoon format was libelous or scurrilous, and, since it was circulated the day prior to the election, NFFE did not have opportunity to reply.

It is the opinion of the undersigned that the complained of cartoon literature required no reply since the employees were readily able to evaluate it as campaign literature.

In the same objection, NFFE averred to other NAGE literature relating to the Wage Board Committee, which, it alleges, contained a half-truth. NFFE proffered no evidence that NFFE did not have a full opportunity to rebut the literature. In fact, NFFE's own words, indicating that NAGE "played up to the fullest," imply anything other than a last minute tactic or trick.

Objection 3

Objections 3(a), (b) and (c) allege that various NAGE representatives orally threatened various NFFE representatives and employees. However, the assertions are vague. It is not clear, even, that the alleged animosity between the NFFE representative Nigro and NAGE representative Breen was related to the context of the election campaign. Similarly, the alleged NAGE threat to a Mr. Ferguson appears to have been related to a suspected theft incident and not to the election campaign. In any event, such conduct, if it occurred, is not condoned, and there has been no evidence presented to establish that the complained of conduct materially affected the results of the election.

As for NFFE's vague suggestion that NAGE prevented Mr. Nigro from actively campaigning during a portion of his stay in the depot area, such an allegation is unsupported by specific evidence. Too, the lack of campaigning by a single individual is clearly of such limited impact as to be said to have affected the results of the election.

Objection 3(d) alleges that NAGE representative Breen interrupted a campaign speech by NFFE president Wolkomir and that such created a "climate of confusion" which had a "direct bearing" on the alleged fact that a substantial percentage of eligible employees failed to vote. This objection is unsupported by evidence.

Objection 4

Objection 4 alleges that NAGE conducted a "whisper campaign" which misled employees regarding their need or right to vote. Such objection is unsupported by evidence.



Objection 5

Objections 5(a), (b) and (c) allege that certain conduct of NAGE representatives, related to attendance or participation in pre-election meetings, was objectionable. NFFE does not specify upon what basis it makes such contention, nor does the evidence presented reflect that the alleged conduct had any affect whatever on the results of the election.

Objection 5(d) alleges that the "large number of challenged voters" proved that the depot officials did not communicate with the employees as to who were eligible to vote and that such constituted grounds for setting aside the election. No supporting evidence was furnished reflecting that a single eligible employee was not advised of his right to vote. Certainly, the fact that an ineligible employee did vote is irrelevant to a consideration of the merits of this objection. Accordingly, Objection 5(d) states no legitimate objectionable ground.

Objection 5(c) alleges that a single NAGE representative conversed with the ballot counters following the election. NFFE offered no evidence that such conversation, even if it occurred, resulted in an inaccurate count. Too, a post-election conversation cannot be said to have affected the voting. Accordingly, no basis exists for a finding that this alleged NAGE conduct constitutes grounds for setting aside the election.

Objection 5(f) relates to alleged NAGE misconduct at other depots. In the absence of specific evidence that conduct at another facility had an effect on the instant election, a suggested pattern of conduct is of no consequence in the disposition of this case.

Objection 5(g) alleges that NAGE made a statement that 2,000 campaign "stickers" had been stolen and that such left an "implication that NFFE" or another competing labor organization had "framed" NAGE. NFFE offered no supporting evidence. In the absence of specific evidence otherwise, the undersigned is not prepared to assume that such an implication necessarily flowed from any such remark, even if made.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

9/21/70

11

William J. Oberhelman, Jr., Esq.  
315 Exchange Place  
New Orleans, Louisiana 70130

Re: Keesler Technical  
Training Center  
Case No. 41-1716 (DR)

Dear Mr. Oberhelman:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your petition in the subject matter.

It has been concluded that the statement of Local 2670 that it no longer claimed to represent the unit of nurses was clear and unequivocal. Such a disclaimer of interest necessarily must be held to extend only to the bargaining unit currently represented by the incumbent union. Hence, the organizational campaign by Local 2670 among a larger and different composition of employees did not constitute conduct inconsistent with the disclaimer, notwithstanding the fact that Local 2670 has indicated its intention to include the nurses as part of the larger, future contemplated unit.

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

September 8, 1970

Mr. Robert M. Tobias.  
Suite 1100  
711 - 14th Street, N. W.  
Washington, D. C. 20005

12

Re: United States Treasury Department,  
Internal Revenue Service,  
Indianapolis District  
Case Nos. 50-4570 and 50-4558

Dear Mr. Tobias:

The undersigned has received your request for review of the Regional Administrator's denial of your "Request for Dismissal of Election Petition filed by the American Federation of Government Employees, Local 1008" in the above captioned cases.

Consistent with Report No. 8, dated August 14, 1970, a copy of which is attached hereto, announcing a decision of the undersigned, you are advised that no provision is contained in the Rules and Regulations for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition.

Accordingly, your request for review in these cases will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 30, 1970

Mr. H. C. Harmelink  
International Representative  
International Association of Fire Fighters  
5236 Rincon Street  
San Diego, California

13

Dear Mr. Harmelink:

The undersigned has carefully considered your Request for Review of the Regional Administrator's action in dismissing as untimely your petition to intervene in Long Beach Naval Station Fire Fighters Unit, Case No. 72-1486, and concluded that the appeal failed to show good cause for extending the ten (10) day intervention period, set forth in Section 202.5 of the rules and regulations or raise any material issue which would warrant reversal of the Regional Administrator's action. Accordingly, the Regional Administrator's dismissal of your petition for intervention is sustained.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 25, 1970

In view of the foregoing circumstances, your objection with respect to ACT's intervention, which could have been raised prior to the holding of the consent elections, is considered untimely. Accordingly, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Mr. Kenneth J. Bull  
National Representative  
American Federation of  
Government Employees, AFL-CIO  
5001 South Washington  
Englewood, Colorado 80110

14

Re: Colorado Air  
National Guard  
Case No. 61-1024 (E)

Sincerely,

W. J. Usery  
Assistant Secretary of Labor

Dear Mr. Bull:

The undersigned has carefully considered your request for review of the Regional Administrator's overruling of your objections to the elections in the above-named case.

Specifically, your request for review is based on the Regional Administrator's dismissal of your objection concerning the alleged improper intervention by the Association of Civilian Technicians, Inc. (ACT) in the election proceedings.

The evidence reveals that ACT was permitted to intervene in the proceedings more than ten days after the initial date of posting of the notice of petition by the Area Administrator who extended the time to ten days from the receipt of the latter's letter of March 4, 1970. It should be noted in this regard that Section 202.5(c) of the Assistant Secretary's Regulations provides that the period for intervention may be extended. Further, the evidence established that at no time prior to the consent elections of April 1 and April 15, 1970, did the American Federation of Government Employees (AFGE) challenge or object to ACT's standing as an intervenor despite the fact that it had knowledge that ACT had been permitted to intervene in the proceedings. Accordingly, AFGE had, in effect, waived any right of challenge of ACT's status by entering into the election agreement to which ACT was also a party.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

October 14, 1970

Mr. Thomas M. Gittings, Jr.  
520 Shoreham Building  
800 15th Street, N. W.  
Washington, D.C. 20005

15

Re: United States Treasury Department  
Bureau of Customs  
Region V  
Cases Nos. 64-1098(E) and  
64-1132(E)

Dear Mr. Gittings:

The undersigned has received your request for review of the Regional Administrator's denial of your motion to dismiss the petition filed by the American Federation of Government Employees, Local No. 2891, and to cancel the hearing scheduled in Case No. 64-1098(E) and order an election in Case No. 64-1132(E).

Consistent with Report No. 8, dated August 14, 1970, a copy of which is attached hereto, announcing a decision of the undersigned, you are advised that no provision is contained in the Rules and Regulations for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition.

Accordingly, your request for review in these cases will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Patrick C. O'Donoghue  
Counsel, Federal Employees  
Metal Trades Council, AFL-CIO  
1912 Sunderland Place, N. W.  
Washington, D. C. 20036

*October 16, 1970*

16

Re: Charleston Naval  
Shipyard  
Case No. 40-1926 (RO)

Dear Mr. O'Donoghue:

This refers to your August 6, 1970, letter to me in which you seek review of dismissal by the Labor-Management Services Administration's Regional Administrator of your challenge to the petitioner's status as a labor organization in Case No. 40-1926 (RO).

I have reviewed the background of this case and have determined that the Regional Administrator's action was correct. Section 202.2(g) of the Regulations implementing Executive Order 11491, which provides for challenges to the status of a labor organization in the course of representation proceedings, does not contemplate challenges based on alleged violations of the standards of conduct.

As Regional Administrator Chennault informed you, the procedures for enforcing the standards of conduct are set forth in Part 204 of the Regulations. Complaints of alleged violations of the Bill of Rights of members of labor organizations (section 204.2) and the provisions relating to the election of officers (section 204.29) may be brought only by a member of the labor organization.

If you have concrete evidence of an actual violation of the other provisions of the Regulations (Part 204) implementing the standards of conduct, you

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

should present it to an Area Administrator in accordance with section 204.53. However, the processing of representation cases will not be delayed pending investigation and resolution of complaints, filed as provided in the Regulations, alleging violations of Part 204.

October 28, 1970

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. William F. Carr  
Chief Counsel  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

17

Re: General Services Administration  
Federal Supply Service  
Raritan Arsenal Depot  
Case No. 32-1567

Dear Mr. Carr:

The undersigned has carefully considered your appeal concerning a decision rendered by the Hearing Officer and the Regional Administrator in the subject case with respect to the scope of the issues before the Hearing Officer.

Section 202.10(a) of the Assistant Secretary's Regulations provides, in part, that in connection with representation case hearings, "Motions made prior to the transfer of the case to the Assistant Secretary shall be filed with the Regional Administrator, with a copy to the Area Administrator, except that motions made during the hearing shall be filed with the Hearing Officer." Section 202.10(c) further provides that, "All motions, rulings and orders shall become a part of the record. Rulings by the Regional Administrator or by the Hearing Officer shall be considered by the Assistant Secretary when the case is transferred to him for decision." Since the representation case hearing in this matter is still in progress and there has been no transfer of the case to the Assistant Secretary, your appeal is untimely. It should be noted that in accordance with the above-mentioned Regulations, you will have an opportunity to state your position as to the scope of the issues before the Hearing Officer on the record when the hearing resumes.

Accordingly, since your appeal in this matter is untimely it must be denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

October 21, 1970

NOV 2 1970

Raymond J. Malloy, Esq.  
Associate Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

18

Re: NASA Audit Division (Code DU)  
Case No. 46-1848 (RO)

Dear Mr. Malloy:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your petition in the above named case.

The language of Section 3(b)(4) of the Executive Order clearly states that the head of an agency, in his sole judgment, may exclude certain segments of his organization from the coverage of the Order. I am of the opinion that a decision by an agency head under the authority granted in Section 3(b)(4) is not subject to review by the Assistant Secretary under Section 6 of the Order.

In view of my above stated opinion, an investigation into the merits of the NASA Administrator's determination to exclude the Audit Division from coverage of the Order does not appear to be appropriate.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Harrison C. Duff, Jr.  
Regional Coordinator  
National Federation of Federal  
Employees  
502 West Latham, Apt. 3  
Phoenix, Arizona 85003

19

Re: Department of Health, Education  
and Welfare, Division of Indian  
Health,  
Public Health Service, Intermountain  
Indiana School Health Center  
Case No. 6I-1077

Dear Mr. Duff:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of the objections filed by National Federation of Federal Employees, Local 1726 to the election held among certain employees of the Intermountain Indian School Health Center, at Brigham City, Utah, on August 21, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

The investigative facts disclosed that of a total of approximately 20 eligible voters, the balloting resulted in a tie vote, with 6 votes being cast for conclusive representation by NFFE and 6 votes against representation. No challenged ballots were cast and one employee appearing at the polling place ten (10) minutes after the polls had closed, in accordance with the terms of the agreement for consent election, was not permitted to cast a late ballot by the Area Administrator's election supervisor.

The request for review does not assert that the late employee was improperly denied the right to vote. It objects solely to the lack of a decision being made by the election supervisor or the Acting Area Administrator that the election should be set aside and rerun. It is asserted that the arrival of the late employee shows that a positive election decision would result if a new election is held.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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Based on a review of the essential facts, and after consideration of NFFE's position, I conclude in agreement with the decision of the Regional Administrator that the objections do not raise any relevant questions of fact which may have affected the results of the election. Section 202.17 (c) of the Regulations clearly provides that "an exclusive representative shall be chosen by a majority of the valid ballots cast." Additionally, the procedures set forth in Section 202.21 and 202.22 of the Regulations, governing runoff and inconclusive elections respectively, are limited in application to situations in which the ballot in the original election contains three or more choices.

In view of the foregoing, your request that the election be rerun is denied and the Regional Administrator is hereby directed to have an appropriate certification of the results of the election issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Irving I. Geller  
Director of Legal & Employee Relations  
National Federation of Federal Employees  
1737 "H" Street, N.W.  
Washington, D.C. 20006

20

Re: Arkansas National Guard  
Case No. 64-1136 (CA)

Dear Mr. Geller:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your complaint in the above-named case.

I agree with the Regional Administrator that the portions of your complaint which allege violations of Sections 19(a), (2), (3), and (6) are not properly before the Assistant Secretary. Under Section 203.2 of the Regulations a charge must be filed directly with the party or parties against whom the charge is directed prior to filing a complaint with the Assistant Secretary. Further, Section 203.2 requires that the alleged unfair labor practice shall be investigated by the parties involved and informal attempts to resolve the matter shall be made by the parties. There is no evidence that such attempts have been made regarding these allegations. Accordingly, the dismissal of those portions of the complaint by the Regional Administrator was proper. This action, however, in no way precludes your organization from attempting to resolve the matters complained of with the agency involved and, if your attempts are unsuccessful, refiling a timely complaint with the Area Administrator.

It appears that the Regional Administrator relied upon the wrong reason in dismissing the portion of the complaint involving an alleged violation of Section 19(a)(4). It is clear from the evidence, and the complaint itself, that the basis of the complaint was the March 25, 1970 posting of the statement concerning Mr. Ralph Heflin. After reviewing all the facts concerning the posting of this statement I find that such posting did not constitute a violation of Section 19(a)(4). In this connection

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



it should be noted that the term "complaint" as contained in Section 19(a)(4) means a written allegation of a violation of Section 19 of Executive Order 11491. Since Mr. Heflin obviously was not disciplined or otherwise discriminated against for filing a "complaint" or giving testimony under Section 19 of the Order, I agree with the Regional Administrator's dismissal of that portion of the complaint. However, since the Regional Administrator did not address himself to the question of whether or not the posting of the statement on March 25, 1970 constituted a violation of Section 19(a)(1) I am remanding the case to him for further investigation and consideration of that issue.

When the Regional Administrator has completed his investigation concerning the allegation of a violation of Section 19(a)(1) of the Order, you will be advised of his findings.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

10/16/70  
Robert M. Tobias, Esq.  
Staff Counsel  
National Association of Internal  
Revenue Service Employees  
Suite 1100  
711 - 14th Street, N. W.  
Washington, D. C. 20005

21

Re: United States Treasury Department,  
Internal Revenue Service  
Case Nos. 70-1499 and 72-1482

Dear Mr. Tobias:

The undersigned has carefully considered your request for review of the Regional Administrator's denial of your motion to dismiss the petition filed by American Federation of Government Employees, Local 2202, in Case No. 72-1482.

On August 14, 1970, Report No. 8 was issued by my office stating, in part, that the Regulations make no provision for filing a request for review of a Regional Administrator's denial of a motion to dismiss a petition and would not be considered. Accordingly, your request for dismissal of AFGE's petition cannot be considered. The issue of appropriateness of the unit based upon extent of organization may be raised at a representation hearing for consideration and decision.

Accordingly, your request for dismissal of the petition filed by AFGE in Case No. 72-1482 is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

NOV 19 1970

Mr. Carl W. Holt  
National Representative  
American Federation of Government  
Employees, AFL-CIO  
P. O. Box 1152  
Omaha, Nebraska 68101

22

Re: U. S. Army Weapons Command  
Rock Island, Illinois  
Case No. 50-4618

Accordingly, since the name of AFGE Local 3207 did not appear on the ballot in the runoff election having been eliminated therefrom by the earlier election to which no objections were filed, your request that the Regional Administrator's determination be overruled is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Holt:

I have considered carefully your request for review seeking reversal of the Regional Administrator's refusal to set aside a runoff election held among certain employees of the U. S. Army Weapons Command, Rock Island, Illinois. on September 24, 1970.

AFGE Local 3207 was a party to the first election conducted on September 3, 1970, which provided the employees with a choice from among AFGE Local 3207, NFFE Local 15, NAGE Local R7-35 and none. The election resulted in none and NAGE Local R7-35 receiving the largest and second largest number of votes respectively. Subsequently, pursuant to Section 202.21 of the Regulations a runoff election was scheduled providing the employees with a choice between NAGE Local R7-35 and no union.

Section 202.20(a) of the Regulations provides "...any party may file ... objections to the conduct of the election or conduct effecting the results of the election..." The Regulations make no provision for the filing of objections by parties other than those involved in the election. You are advised that a union whose name does not appear on the election ballot has no standing to file objections to the conduct of the election.



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

DEC 7 1970

Mr. Nathan T. Wolkomir  
President  
National Federation of Federal Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

23

Re: Department of The Army  
Tooele Army Depot  
Tooele, Utah  
Case No. 61-1041 (E)

Dear Mr. Wolkomir:

I have considered carefully your request for review of the Regional Administrator's dismissal of the objections filed by National Federation of Federal Employees, Local 862, to conduct affecting the results of the runoff election held among certain employees of the Tooele Army Depot, Tooele, Utah, on July 30, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

The investigative facts disclosed that balloting in a consent election involving a unit of certain employees at the Depot, held on July 16, 1970, failed to produce a majority vote for one of three choices, i.e., petitioner AFGE Local 2185, intervenor NFEE Local 862, and no-union. A runoff election providing a choice between NFEE and no-union, held on July 30th, resulted in a majority of valid votes being cast against union representation.

The basis for the objections was the content of an unsigned Letter to the Editor printed on page two of The Tooele Bulletin, a local newspaper, on July 28, 1970, two days before the runoff election.

The same issue of the paper carried a front page news item apparently based on an NFEE news release.

Both items commented on the forthcoming election, and were substantially in agreement as to the length of time NFEE had been active at the Depot and with respect to NFEE's claim to present exclusive recognitions. The news release described the election as crucial and sought the support of two other labor organizations having exclusive recognitions at the Depot. The Letter to the Editor raised questions as to NFEE's past effectiveness and conduct.

Campaign representations must be examined in terms of whether they are such that employees to whom they are directed are capable of evaluating them. Precision and accuracy of statements are not always attained or expected by the voters who ordinarily view such statements in the context of the election situation. In this case there is insufficient basis for concluding that the Letter to the Editor was of such a nature as to have impaired the ability of employees to evaluate the election choices.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed hereby to have an appropriate certification of the results of the election issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL LABOR-MANAGEMENT RELATIONS  
WASHINGTON, D.C. 20210



December 4, 1970

24

Mr. Paul K. Tamaroff  
18 Harold Avenue  
Latham, New York 12110

Re: Health, Education and Welfare  
Social Security Administration  
District Office, Albany, New York  
Case No. 35-1254 E.O.

Dear Mr. Tamaroff:

The undersigned has considered carefully your appeal concerning a ruling rendered by the Hearing Officer in the subject case sustaining an objection by the Intervenor as to the relevancy of certain evidence.

Section 202.10(a) of the Assistant Secretary's Regulations provides, in part, that in connection with representation case hearings, "Motions made prior to the transfer of the case to the Assistant Secretary shall be filed with the Regional Administrator, with a copy to the Area Administrator, except that motions made during the hearing shall be filed with the Hearing Officer." Section 202.10(c) further provides that, "All motions, rulings and orders shall become a part of the record. Rulings by the Regional Administrator or by the Hearing Officer shall be considered by the Assistant Secretary when the case is transferred to him for decision." Because the representation case hearing in this matter is still in progress and there has been no transfer of the case to the Assistant Secretary, your appeal is untimely.

Accordingly, because your appeal in this matter is untimely it must be denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

December 8, 1970

25

Mr. Stanley Q. Lyman  
National Vice President  
National Association of  
Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

Re: General Services Administration  
Memphis, Tennessee  
Case No. 41-1736

Dear Mr. Lyman:

This is in response to your request for review of the Regional Administrator's action in the above named case.

On November 22, 1970, the Regional Administrator notified the parties that he had determined to reconsider the matter and that upon further investigation and consideration of the facts in this case he would issue a report on challenges.

Accordingly, until such time as the Regional Administrator issues his report on challenges, a request for review is untimely and will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

December 7, 1970

Mr. Guy Colletti  
National Representative  
American Federation of Government  
Employees  
512 Callivan Boulevard  
Suite 2  
Dorchester, Massachusetts 02124

26

Re: Veterans Administration Hospital  
Jamaica Plain, Massachusetts  
Case No. 31-3178 (EO)

Dear Mr. Colletti:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by American Federation of Government Employees, AFL-CIO, to conduct affecting the results of the election held among certain employees of the Veterans Administration Hospital, Jamaica Plain, Massachusetts, on April 28, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

AFGE's first objection alleged in essence that NAGE violated an agreement between the parties that the unions would not distribute literature attacking the Veterans Administration. This side agreement to the Agreement for Consent or Directed Election referred only to the posting of such literature. However, AFGE asserted it was intended that such literature would not be distributed.

The investigative facts disclosed that subsequent to the election agreement, NAGE distributed a leaflet containing an article critical of the budget and staffing of Veterans Administration hospitals and asserted that the hospitals in Massachusetts were run on the equivalent of an animal hospital budget compared to State and local hospitals. Another article made an ambiguous reference to AFGE as a "conflict-of-interest" organization incapable of representing employees.

I will not undertake to police collateral election agreements which attempt to govern the conduct of the parties. Further, the breach of such agreements will not be grounds for setting aside an election absent other conduct which improperly affected the conduct or the results of the election. I have considered the contents of the leaflet and conclude that the statements contained therein readily could be recognized by the employees as mere self-serving election propaganda. Also, the leaflet was not of a nature which would have impaired the ability of the employees to evaluate the election choices available to them or to vote intelligently on the issues. Accordingly, it is concluded that the leaflet was not objectionable.

AFGE's second objection alleged in essence that NAGE's campaign material was filled with untruthful statements and gross misinterpretations which violated the spirit and intent of any election and contained malicious falsehoods which had a detrimental effect on AFGE in the election. AFGE specifically objected to four NAGE leaflets, including one entitled "The Big Lie Answered" distributed on the day prior to the election and to which AFGE asserted it had insufficient time for response.

The investigative facts disclosed that both NAGE and AFGE distributed numerous pre-election campaign leaflets to employees. Except for the leaflet "The Big Lie Answered," the evidence submitted does not establish the dates or order of distribution of the literature. No evidence was submitted in support of the contention that AFGE could not respond adequately to the leaflet distributed on the day prior to election. In any event, upon review of the campaign literature distributed by both unions, I find that "The Big Lie Answered" leaflet introduced no new issues into the campaign and that the inaccuracies and misrepresentations allegedly contained in the four NAGE leaflets had been answered or contradicted by AFGE's campaign literature. Neither party is entitled as a matter of right to the "last word" in pro-election campaigns. In the circumstances of this case I find the NAGE's leaflets could be recognized as self-serving campaign propaganda and were not of such a nature so as to deprive the employees of their ability to vote intelligently on the issues.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed hereby to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

DEC 18 1970

Helen E. Peeler, R.N.  
Executive Director  
North Carolina State Nurses'  
Association  
P. O. Box 12025  
2301 Clark Avenue  
Raleigh, North Carolina 27605

27

Re: Veterans Administration  
Hospital  
Durham, North Carolina  
Case No. 40-1945

Dear Miss Peeler:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by North Carolina State Nurses' Association, to conduct affecting the results of the election held among certain employees of the Veterans Administration Hospital, Durham, North Carolina, on June 11, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

The request for review relates to NCSNA's objection alleging, in essence, that AFGE Local 2345 was permitted to post campaign material and notices of meetings on several bulletin boards while NCSNA was restricted to the use of one bulletin board. It is asserted that the activity had thus failed to maintain a true position of neutrality by granting of special privileges to AFGE.

The facts disclosed that on March 19, 1970, AFGE Local 2345 filed a petition for an election among non-supervisory nurses at the Hospital. On April 21, 1970, NCSNA was permitted to intervene in the proceedings and participated in the election on June 11, 1970.

In 1968, the activity recognized AFGE Local 2345 as the exclusive representative of non-professional employees at the Hospital and the current contract, in part, provides "The designated bulletin board on the ground floor is the official union bulletin board. Limited space may also be provided on existing Hospital bulletin boards for posting meeting notices."

After filing its petition and subsequent to NCSNA's intervention, AFGE posted campaign material on its official bulletin board. On several occasions it posted notices of meetings scheduled for nurses on other bulletin boards. It appears that on about May 26, 1970, NCSNA requested the activity's permission to post campaign material and meeting notices. It was authorized use of the activity's ground floor bulletin board, located adjacent to AFGE's official bulletin board, and was not authorized use of other bulletin boards.

While AFGE was permitted the posting of notices of meetings on various bulletin boards pursuant to terms of its contract, it is noted that the activity promptly, upon request, made its own bulletin board available to NCSNA. It is noted also that NCSNA utilized the ground floor bulletin board for posting campaign material and no evidence was submitted establishing that NCSNA was unable to adequately communicate with employees or that the activity had expressed any preference between the unions.

While an activity has an obligation to maintain a position of neutrality in rival union campaigns and to refrain from granting special privileges which create an imbalance in the opportunities of the unions, I conclude in the circumstances of this case that the facts failed to establish that the activity's conduct created an imbalance of opportunities between the unions or constituted a breach of neutrality which warranted the setting aside of the election.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed hereby to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



January 5, 1971

Mr. Patrick O'Donoghue  
O'Donoghue & O'Donoghue  
1912 Sunderland Place, N. W.  
Washington, D. C. 20036

28

Re: Charleston Naval Shipyard  
Case No. 40-1926 (RO)

Dear Mr. O'Donoghue:

This refers to your request for an extension of time for filing a request for review of the Regional Administrator's dismissal of your challenge to the validity of the National Association of Government Employees' showing of interest in the above cited case.

On August 14, 1970, Report No. 8 (copy attached) was issued by my office. This Report states, in part, that the Regulations make no provision for filing a request for review of a Regional Administrator's denial of a motion to dismiss a petition and would not be considered. Similarly, the Regulations make no provision for filing a request for review of a Regional Administrator's decision to dismiss a challenge to the validity of a showing of interest.

Accordingly, your request for an extension of time to file a request for review is denied.

This should not be construed in any way as a reflection of my views regarding the substantive comments contained in Regional Administrator Chenmault's letter to you dated December 21, 1970.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 15 1971

Mr. Rex H. Reed  
Associate General Counsel  
Labor Relations  
Headquarters, Army and Air Force  
Exchange Service  
Dallas, Texas 75222

29

Re: Headquarters, Army and Air  
Force Exchange Service  
Randolph Air Force Base Exchange  
Case No. 63-2015(E)

Dear Mr. Reed:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to conduct affecting the results of the consent election held among certain employees at Headquarters Army and Air Force Base Exchange, Randolph Air Force Base, Texas, on June 19, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that dismissal of the objections was warranted.

The election provided a choice between representation by Local Lodge 1025, International Association of Machinists and Aerospace Workers (AFL-CIO), or no union. A majority of the valid ballots were cast for IAM. The activity and the union had agreed beforehand that electioneering would cease twenty-four hours prior to the election, that neither literature, nor buttons or badges of any kind, would be displayed on election day, and that representatives of both parties would remain away from the general area of balloting while the polls were open. The objections filed with the Area Administrator alleged that two representatives of the union breached this agreement and engaged in conduct affecting the results of the election.

My position with respect to the policing of such side agreements is set forth in my Report on Decision No. 20, issued December 8, 1970, a copy of which is attached for your information. Consistent

with my position as stated therein, the only issue for consideration in this case is whether the union representatives were present or had campaigned within the "polling area" during the conduct of the election, or had engaged in other conduct affecting the results of the election. The investigation established that locations visited by IAM representatives on the Base on the day of the election were at distances varying from one hundred (100) feet to four blocks from the polling site, the nearest being in a snack bar across the street from the building in which the election was conducted. The lots in which their automobiles, bearing union windshield and bumper stickers, were parked were located from one and one-half to three blocks from the polling site. Other than their mere presence on the Base, as described above, no facts were submitted establishing that they engaged in conduct affecting the results of the election.

It is my conclusion that the facts fail to establish that the union representatives were present or had campaigned within the "polling area," or had engaged in other conduct affecting the results of the election.

Your request for review additionally alleged as objectionable certain conduct unrelated to that alleged in the objections timely filed with the Area Administrator. It is my conclusion that objections newly raised in a request for review are untimely under Section 202.20 of the Regulations and will not be considered.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



10/22/70

Mr. Arnold G. Cohen  
Bernstein, Dougherty & Susano  
1200 Hamilton National Bank Building  
Knoxville, Tennessee 37902

30

Dear Mr. Cohen:

This is in response to your letter to Area Administrator, Homer Krog, dated September 2, 1970, which was forwarded, along with the material you enclosed, to me by Regional Administrator, J. Y. Chennault.

I have taken the position that effective administration of the Executive Order requires that I refrain from rendering advisory opinions. The questions you raise in your letter appear to be subtle and complex ones, suggesting the necessity of close analysis of certain statutory provisions and contract provisions, as well as the language and history of the Order. It is my position that these questions can be better resolved when they arise in the context of a case in controversy under the Order.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 3 1971

Mr. Kenneth T. Lyons  
National President  
National Association of  
Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

31

Re: Downey Veterans Administration  
Hospital, Downey, Illinois  
Case No. 50-4634

Dear Mr. Lyons:

The undersigned has received your request for review of the Acting Regional Administrator's decision dismissing certain of your objections to conduct affecting the results of the runoff election held on December 9, 1969 in the above named case.

The Acting Regional Administrator, in his decision December 14, 1970, served on all parties on that date, instructed that any party aggrieved by his findings may obtain a review of his decision by filing a request for review with the undersigned by the close of business December 28, 1970, and directed the attention of the parties to Sections 202.6(d) and 202.20(f) of the Regulations. Your request for review, dated and mailed December 28, 1970, was received on December 31, 1970 and therefore was untimely.

In addition to lack of timeliness in filing, your request for review was defective with respect to service on the Regional Administrator as prescribed by Section 202.6(d). Enclosed herewith is a copy of Report No. 14 which states my position with respect to the service requirements contained in the Regulations.

In view of the foregoing, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 3 1971

Mr. Carmine V. Rivera  
National Vice President  
National Association of  
Government Employees  
18670 Ventura Boulevard  
Suite F  
Tarzana, California 91356

32

Re: Sacramento Army Depot  
Sacramento, California  
Case No. 70-1817

Dear Mr. Rivera:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case.

Your request for review asserts that although the Activity agreed to some electioneering at authorized locations during lunch periods, it would not agree to consider working areas where some employees eat their lunches as "authorized lunch locations" for purposes of electioneering. I feel that while an Activity may furnish services and facilities to competing labor organizations on an impartial basis, it is under no obligation under the Order to allow non-employees to enter work areas for purposes of electioneering.

In regard to your charge of favoritism, the evidence discloses that all parties were allowed to initiate their formal election campaigns at the same time and under the same conditions. Apparently, your organization, by its own choice, declined to campaign until the unfair labor practice matter was settled.

In view of the foregoing, your request seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

FEB 22 1971

February 1, 1971

Mary D. Munger, R.N.  
Executive Director  
Montana Nurses' Association  
227 West Lyndale  
Helena, Montana 29601

33

Re: Veterans Administration Center  
Fort Harrison, Montana  
Case No. 61-1180

Dear Mrs. Munger:

The undersigned has considered carefully your request for review of the Regional Administrator's action in dismissing as untimely your request to intervene in the above-named case.

Your request for review failed to show good cause for extending the ten (10) day intervention period, set forth in Section 202.5 of the regulations or raise any material issue which would warrant reversal of the Regional Administrator's action.

Accordingly, your request is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Anton E. Sperling  
Local 1904  
American Federation of Government  
Employees, (AFL-CIO)  
P. O. Box 231  
Eatontown, New Jersey 07724

34

Re: U.S. Army Signal Center and  
School  
Fort Monmouth, New Jersey  
Case No. 32-1836 E.O.

Dear Mr. Sperling:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

The basis of the complaint was a formal reprimand issued to Mr. David Schwartz on March 31, 1970, for insubordination. The investigation disclosed that Mr. Schwartz does not deny the insubordination but contends that the order he refused to follow was illegal.

It is concluded that the evidence submitted is insufficient to establish a reasonable basis to find that the reprimand was issued by the Activity for any discriminatory reason prohibited by the Executive Order. Also it is noted that the complaint filed in this case contained allegations not previously contained in the charge filed against the Activity. Allegations newly raised in a complaint are untimely under Section 203.2 of the Regulations and will not be considered.

The investigation further disclosed no evidence that the Activity refused to consult, confer or negotiate with the union as required by the Executive Order.

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

February 22, 1971

James L. Neustadt, Esq.  
Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N.W.  
Washington, D.C. 20001

35

Re: Post Exchange, U.S. Army  
Training Center  
Fort Jackson, South Carolina  
Case No. 40-1995(CA)

Dear Mr. Neustadt:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case and have concluded that the issues presented can best be resolved on the basis of record testimony.

Accordingly, the Regional Administrator is directed to reinstate the complaint and to issue a Notice of Hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

FEB 26 1971

Mr. William M. Guerin  
2918 West 46th  
Kansas City, Kansas 66103

36

Re: Region 17, NLRB  
Case No. 60-1943 (E)

Dear Mr. Guerin:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case.

First, I would like to point out to you that investigative procedures under Executive Order 11491 are quite different from those followed by the National Labor Relations Board. For instance, Section 203.2 of the Regulations provides that a charge must first be filed directly with the party against whom it is directed. The parties themselves must investigate the alleged unfair labor practice and make informal attempts to resolve the matter. If these informal attempts are unsuccessful the parties may (1) agree to stipulate the facts to the Assistant Secretary and request a decision without a hearing or (2) a party may file a complaint requesting the Assistant Secretary to issue a decision in the matter. When a complaint is filed the charging party has the duty, among other things, to include with it a clear and concise statement of the facts constituting the alleged unfair labor practice and the entire report of the investigation by the parties.

The investigation of complaints by Area Administrators is limited, for the most part, to a consideration of the reports of investigation filed by the parties. In addition, the procedures under the Executive Order require full disclosure of all information between all parties. Once a complaint is filed, the Area Administrator determines from the parties' reports of investigation whether there is a reasonable basis for the complaint and also whether a satisfactory offer of settlement has been made. Area Administrators do not procure information from witnesses in behalf of complainants as the problem of obtaining evidence from witnesses is a part of the burden of proof which lies with the complaining party. Moreover, if and when a notice of hearing is issued, the complainant continues to have the burden of proof at the formal hearing which, of course, includes the presenting of witnesses. You can see from the above that under the Executive Order the Assistant Secretary does not at any time assume the role of an advocate. The burden of proof always remains with the charging party. Having made the above points, I now turn to a discussion of your case.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

On September 16, 1970, the Regional Administrator dismissed your complaint on the basis of his conclusion that the evidence which had been submitted by you did not substantiate the allegations contained in your complaint and that over a sustained period of time you had failed to comply with repeated requests from the Kansas City Area Office that you submit either additional evidence or a statement of position.

The file reflects that subsequent to the May 1970 filing of the complaint you submitted to the Area Office certain documentary evidence related to the allegations contained in your charge, but that you failed to submit a report of investigation as required by Sections 203.3(e) and 203.4(b) of the Regulations. The Area Office repeatedly advised you of the requirement that you submit a report of investigation and that a failure to do so might result in dismissal of your complaint. The dismissal letter was issued on September 16 after the Regional Administrator was advised by the Area Office that you had not made a submission as of 11:45 a.m. that day. The Regional Administrator's conclusions in regard to the merits of your complaint were based solely on the preliminary documentary evidence that you had previously submitted. When you attempted to tender your statement at approximately 4:20 p.m. on September 16, it was rejected on the basis that your complaint had already been dismissed.

While you were given a substantial period of time to submit your report of investigation prior to the dismissal, it appears there may have been some confusion as to whether the deadline was September 15 or 16.

Under all the circumstances, therefore, I am remanding your case to the Regional Administrator so that he may consider the matters raised by your complaint in the light of the evidence included in your submission of September 16. If you have not already done so, you should immediately furnish a copy of your submission to the Agency.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

February 26, 1971

Mr. Bruce I. Waxman  
Assistant to the Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

37

Re: Bureau of Customs  
Department of the Treasury  
San Juan, Puerto Rico  
Case No. 37-834 E.O.

Dear Mr. Waxman:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint alleges that the Respondent violated Section 19(a)(5) and (6) of the Executive Order by refusing to process the grievances of employees Manuel Barait and Francisco Velez-Trinidad.

The investigation reveals that the Respondant did consider the grievances but that there was a disagreement between the parties as to how the collective bargaining agreement should be interpreted. There was no evidence that the Respondent refused to recognize, consult, confer, or negotiate with the union. Therefore, there is no basis to find that the Respondent violated Section 19(a)(5) and (6) of the Executive Order.

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

FEB 26 1971

U. S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Melvin Feinberg  
President, Branch 4754  
National Association of  
Letter Carriers  
127 Linden Avenue  
Haddonfield, New Jersey 08033

38

Re: U. S. Post Office Department  
Stratford, New Jersey  
Case No. 32-1795

Dear Mr. Feinberg:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint alleges that the Respondent violated Section 19(a)(1), (2) and (4) of the Executive Order by refusing to process the grievance of employee Richard Torch. The investigation reveals that there has been established by the Post Office Department and the labor organizations representing Department employees on an exclusive basis a procedure for receiving grievances.

This brings the complaint within the meaning of Section 19(d) of the Executive Order which states in pertinent part: "When the issue in a complaint of an alleged violation of paragraph (a)(1), (2), or (4) of this section 19(d) is subject to an established grievance or appeals procedure, that procedure is the exclusive procedure for resolving the complaint."

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAR 1 1971

Mr. Fred R. Martin  
International Representative  
American Federation of  
Technical Engineers  
9 Fleetwood Drive  
Sandy Hook, Connecticut 06432

39

Re: U. S. Naval Underwater Weapons  
and Research Engineering  
Section  
Newport, Rhode Island  
Case No. 31-3252 E.O.

Dear Mr. Martin:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections to conduct affecting the results of the election held among certain employees of the above named activity on April 24, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that dismissal of the objections was warranted.

This case involves a transition from Executive Order 10988 to Executive Order 11491 of a request for exclusive recognition of certain employees of the activity initiated by Local R1-134, National Association of Government Employees (NAGE) under the former Order. In essence the objections timely filed by the American Federation of Technical Engineers, AFL-CIO, (AFTE) following the election on April 24, 1970, together with supplemental objections considered by the Regional Administrator, allege that procedures required by the Regulations under E. O. 11491 were not followed. The request for review seeks to support this contention. Further, the objections alleged that NAGE members were permitted to wear union lapel buttons at or near the polling sites of the election and that the timing of the consent election conference did not permit the attendance of additional AFTE representatives.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 1, 1971

The facts disclose that following NAGE's request to the Activity under Executive Order 10988 for exclusive recognition of certain employees, negotiations between NAGE, the Activity, and intervenor Local 5, AFTE, resulted in the execution by the parties on February 12, 1970, of an election agreement on the form proscribed under Executive Order 10988. The agreement was submitted to the Acting Area Administrator, Boston Area Office for approval. He responded by letter to the parties advising them that Regulations under E.O. 11491 must be complied with, including the execution of an agreement for consent election on the form proscribed by the Assistant Secretary. On April 10, 1970, representatives of the parties executed an agreement for consent election which was subsequently approved by the Acting Area Administrator.

The record reveals that the required notices were posted and that both unions satisfied requirements for showing of interest. Further, the wait agreed to on April 10, 1970, by the Vice President of AFTE Local 5 was the same unit agreed to on February 12, 1970, by the Local's President. There were no challenges as to the validity of either organization's showing of interest filed in accordance with Section 202.2(f) of the Regulations and both organizations participated in the election.

The facts establish that except for minor non-prejudicial variances in the prescribed sequence of certain procedures, the substantive procedures proscribed by the Regulations were followed. Further, the pre-election events complained of could not affect the results of the election.

It is my further conclusion that the wearing by NAGE members and election observers of union lapel buttons, not of the campaign type, at or near the polling sites at the election did not constitute improper conduct affecting the conduct or the results of the election. In this connection, it is noted that both organizations were advised that the wearing of the aforementioned union buttons was permissible.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed hereby to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Alfonso Garcia  
National Representative  
Local 2614, AFGE (AFL-CIO)  
601 De Diego Avenue  
Puerto Nuevo, Puerto Rico 00920

40

Re: Open Messes Clubs  
U.S. Naval Station  
San Juan, Puerto Rico  
Case No. 37-818(E0)

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the election held in the above-named case.

Section 202.20(a) of the Regulations provides "...any party may file...objections to the conduct of the election or conduct affecting the results of the election..." The Regulations make no provision for the filing of objections by parties other than those involved in the election. A union whose name does not appear on the election ballot has no standing to file objections to the conduct of the election.

Accordingly, your request that the dismissal of AFGE's objections be overruled is denied and the Regional Administrator is hereby directed to have issued an appropriate certification of representative.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



- 2 -

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed to have an appropriate Certification of Representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Guy Colletti  
National Representative  
American Federation of Government  
Employees  
512 Gallivan Boulevard  
Suite 2  
Dorchester, Massachusetts 02124

MAR 1 1971

41

Re: Naval Supply Center  
Newport, Rhode Island  
Case No. 31-3256 (EO)

Dear Mr. Colletti:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by the American Federation of Government Employees (AFL-CIO) to conduct affecting the results of the run-off election held among certain employees of the Naval Supply Center, Newport, Rhode Island on July 14, 1970. Based upon a full review of the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

I have taken the position that I will not undertake to police collateral election agreements which attempt to govern the conduct of the parties. In this connection, I have issued Report No. 20 (copy enclosed).

In regard to the case at hand, I agree with the Regional Administrator's finding that the distribution of free coffee on the morning of the day prior to the election did not have an independent improper affect on the conduct of the election or the results thereof sufficient to warrant setting the election aside. Accordingly, this objection is found to be without merit.

The NAGE campaign literature has been reviewed thoroughly. It appears that the question concerning the promotion of the seven Supply Center employees was thoroughly aired by all parties prior to the election and that the employees had sufficient information to enable them to make up their own minds concerning who was responsible for the promotions. The other material you complain about would not warrant the setting aside of the run-off election since the leaflets readily could be recognized as self-serving campaign propaganda and were not of such a nature as to deprive the employees of their ability to vote intelligently on the issues.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

MAR 1 1971

Mr. Bruce I. Waxman  
Assistant to the Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N.W.  
Washington, D.C. 20001

42

Re: Veterans Administration  
Regional Office  
Newark, New Jersey  
Case Nos. 32-1498(E0) and  
32-1499(E0)

Dear Mr. Waxman:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by the American Federation of Government Employees (AFGE) to conduct affecting the results of the run-off election held among certain employees of the Veterans Administration Regional Office, Newark, New Jersey on June 9, 1970. Based upon a full review of the circumstances surrounding the filing of the objections, the evidence submitted and positions offered by the parties, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

The request for review relates to AFGE's objection alleging, in essence, that the content and timing of an Activity public address announcement to all unit employees less than twenty-four hours before the opening of the polls constituted improper conduct affecting the results of the election.

The evidence discloses that sometime during the workday on June 8, the Activity's Personnel Officer read an announcement to all employees over the public address system. The content of that announcement was devoted almost entirely to the mechanics of the election scheduled for the following morning. Professional employees were reminded that they were not to vote as "Based on the election held on May 12, 1970, exclusive recognition was granted to Local 967, NFFE, establishing a separate professional unit in this office." On the evening of June 8, AFGE sent a telegram to the Regional Administrator protesting the announcement made by the Personnel Officer because, "No mention was made of (AFGE) Local 2442 protest." It appears from the file that this was a reference to the fact that subsequent to the May 21 Certification of the National

Federation of Federal Employees as the exclusive representative in a separate unit of the Activity's professional employees, AFGE had sent the Regional Administrator a telegram stating only that they wished to "raise issue" with that certification. AFGE did not file objections to the professional unit election pursuant to the provisions of Section 202.20(a) of the Regulations in that service was not made on the other parties and it did not elaborate, in writing, on its telegram "raising issue" with the Certification.

Section 202.20(a) of the Regulations provides, in pertinent part, that within five (5) days after the tally of ballots has been furnished any party may file with the Area Administrator an original and four (4) copies of objections to conduct affecting the results of the election, supported by a short statement of the reasons therefor. Copies of such objections must be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. The above-discussed June 8 telegram, which was sent prior to the opening of the polls, was AFGE's only submission regarding the June 9 election until June 29 when the Regional Administrator received from it a letter detailing its belief that the June 8 announcement improperly interfered with the election. Inasmuch as AFGE did not file objections as provided for in Section 202.20(a) the Regional Administrator should have declined to consider the contentions raised in the pre-election telegraphic protest and the subsequent letter of elaboration. In this connection, I am enclosing for your information my Report No. 14.

Accordingly, your request that the election be set aside is denied. Final disposition of the representation case must await a resolution of determinative challenged ballots which are not involved in the instant request for review.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 10, 1971

Mr. Irving I. Geller  
Director  
Legal and Employee Relations  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

43

Re: Department of Army  
Corps of Engineers  
St. Paul, Minnesota  
Case No. 51-1233

Dear Mr. Geller:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint.

I agree with the Regional Administrator that the basis for the alleged violation of Section 19(a) (4) of Executive Order 11491 has not been established. As indicated by the Regional Administrator, the term "complaint" as used in Section 19(a) (4) refers to those written allegations of violations of Section 19 of the Order. Therefore, the grievance concerning an altercation would not constitute a "complaint" within the meaning of Section 19(a) (4) of the Order.

Since Mr. Leier was not disciplined or otherwise discriminated against for filing a "complaint" or giving testimony under the Order there is no reasonable basis for the complaint.

Alleged violations of Section 19(a) (1) and (2) were not filed as a charge with the Activity as required by Section 203.2 of the Regulations and therefore have not been considered.

After considering the points and arguments contained in your request for review, I find that the Regional Administrator's dismissal of your complaint on the ground that a reasonable basis for the complaint had not been established was correct.

Accordingly, your request seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

MAR 10 1971

Mr. Kenneth T. Lyons  
National President  
National Association of  
Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

44

Re: Defense Supply Agency  
Defense Personnel Support Center  
Philadelphia, Pennsylvania  
Case No. 20-2179

Dear Mr. Lyons:

The undersigned has received your request for review of the Regional Administrator's Report on Objections to Election dismissing your objections to conduct affecting the results of the election held on November 6, 1970.

The Regional Administrator, in his Report on Objections to Election January 12, 1971, served on all parties on that date stated that any party aggrieved by his findings may obtain a review of his decision by filing a request for review with the undersigned by the close of business January 25, 1971. Further, he directed the attention of the parties to Section 202.20(f) of the Regulations which refers aggrieved parties to Section 202.6(d) of the Regulations relating to the procedure for filing such requests, including the requirement that each party be served with a copy.

Your request for review was defective because no copy was served on the Regional Administrator. Enclosed herewith is a copy of Report No. 14 which states my position with respect to the service requirements contained in the Regulations.

In view of the foregoing, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

MAR 15 1971

Mr. Royal L. Sims  
National Vice President  
American Federation of Government  
Employees  
4742 North Broad Street  
Philadelphia, Pennsylvania 19141

45

Re: Frankford Arsenal  
Philadelphia, Pennsylvania  
Case No. 20-2144

Dear Mr. Sims:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the subject case.

Section 203.7(c) of the Regulations provides that when a party files a request for review of a Regional Administrator's dismissal of a complaint it must serve simultaneously a copy of such request on the Regional Administrator and the respondent and a statement of such service shall be filed with the Assistant Secretary.

The evidence in the case established that in filing your request for review of the Regional Administrator's dismissal of the complaint you did not comply with the service requirements contained in the Regulations in that a copy of the request was not served on the Regional Administrator and the request does not contain a statement of service reflecting that such service was made.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

MAR 15 1971

Mr. Royal L. Sims  
National Vice President  
American Federation of Government  
Employees  
4742 North Broad Street  
Philadelphia, Pennsylvania 19141

46

Re: Frankford Arsenal  
Philadelphia, Pennsylvania  
Case No. 45-1855

Dear Mr. Sims:

The undersigned has considered carefully your request for review of the Regional Administrator's Report on Objections to Election dismissing your objections to conduct affecting the results of the election held in the above-named case.

Section 202.20(f) and 202.6(d) of the Regulations provide that when a party files a request for review of findings by a Regional Administrator with respect to objections to an election, "Copies of the requested review shall be served on the Regional Administrator and the other parties, and the statement of service shall be filed with the request for review."

The evidence established that in filing your request for review of the Regional Administrator's Report on Objections to Election, you did not comply with the service requirements contained in the Regulations in that a copy of the request was not served on the Regional Administrator, and further, the request does not contain a statement of service reflecting that such service was made. I have enclosed for your information a copy of my Report No. 14 dated October 29, 1970 which states my position with respect to the service requirements contained in the Regulations.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the objection to the election is denied and the certification of representative issued by the Area Administrator on December 4, 1970 is appropriate.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20110



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MAR 17 1971

Mr. Abraham E. Freedman  
Counsellor at Law and Proctor  
in Admiralty  
36 Seventh Avenue  
New York, New York 10011

47

Attention: Mr. Stanley B. Gruber

Re: U.S. Naval Radio Station  
Sebana Seca, Puerto Rico  
Case No. 37-836

Dear Mr. Gruber:

The undersigned has considered carefully your request for review on behalf of your client, Industrial, Technical and Professional Government Employees Division, National Maritime Union of America, AFL-CIO (NMU), seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case.

I agree with the Regional Administrator that a charge should have been filed with the Activity prior to the filing of a complaint. The regulations do not provide for any deviation from this procedure and I cannot agree that the filing of a charge would, as you contend, necessarily have been a futile act.

The evidence disclosed that the Activity was delinquent in notifying the Department of Labor of NMU's possible interest in the petitioned for unit. However, NMU did request, and receive, permission to campaign at the Activity. The evidence on hand indicates that NMU representatives visited the Activity several times before, during and after the posting period. In these circumstances, I cannot find that the Activity rendered improper assistance to the AFGE. Further, the notice was posted conspicuously in an appropriate number of places as required by the regulations, and contained a statement that all interested parties are to seek intervention within ten days from the date of posting. Accordingly, it was incumbent upon employee members or adherents of NMU, and not the Activity, to have notified NMU of the petition filed by AFGE. In this regard Section 202.4(e) of the Regulations does not require an activity to furnish the Area Administrator with names of organizations known to represent any of the employees in the claimed unit prior to the posting of the notice to employees.

In regard to your assertion that NMU representatives were denied access to areas where the notices were posted, the Order provides that an activity may furnish services and facilities to competing labor organizations on an impartial basis. An activity is under no obligation under the Order to allow nonemployees access to work areas for purposes of solicitation of members or the viewing of posted notices.

In view of the foregoing, your request seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
Office of the Assistant Secretary  
WASHINGTON, D.C. 20210



U.S. DEPARTMENT OF LABOR  
Office of the Assistant Secretary  
WASHINGTON

MAR 18 1971

March 18, 1971

David S. Barr, Esquire  
Bredhoff, Barr, Gottesman,  
Cohen and Peer  
1000 Connecticut Avenue, N.W.  
Washington, D. C. 20036

48

Re: Naval Electronic Systems  
Command Activity  
Boston, Massachusetts  
Case No. 31-3371 EO

Dear Mr. Barr:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of the petition in the above-named case.

I agree that the Regional Administrator's letter of November 24, 1970, in which the petition filed by your client was dismissed, should have indicated that such action was subject to review by this office.

In regard to the merits of the case, the language of Section 3 (b)(3) of the Executive Order which is the only issue involved in the request for review, clearly states that the head of an agency, in his sole judgment, may exclude certain segments of his organization from the coverage of the Order. I am of the opinion that a decision by an agency head under the authority granted in Section 3(b)(3) is not subject to review by the Assistant Secretary under Section 6 of the Order.

In view of my above-stated opinion, an investigation into the merits of Secretary of the Navy's decision to exclude certain employees of the Naval Electronic Systems Command Activity from coverage of the Order does not appear to be appropriate.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. James L. Neustadt  
Staff Counsel  
American Federation of Government Employees  
(AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

49

Re: Consumer & Marketing Service  
U. S. Department of Agriculture  
Washington, D. C.  
Case No. 22-1913(CA)

Dear Mr. Neustadt:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of your complaint alleging that the Consumer and Marketing Services' refusal to negotiate the policy of rotation of assignments is a violation of Section 19(a) (6) of the Executive Order.

I am of the opinion that the Executive Order does not intend that Section 19(a) (6) of the Order be used as a procedure for determining disputes as to negotiability. Section 11 assigns the primary responsibility for such determinations to the heads of agencies and the Federal Labor Relations Council, and not to the Assistant Secretary.

Since the negotiability of the policy concerning rotation of inspectors has not been determined under the procedures set forth in Section 11 of the Executive Order, your request for the reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAR 18 1971

Mr. Robert L. Spidell  
Secretary Branch No. 264  
National Association of Letter  
Carriers  
315 Cumberland Avenue  
Chambersburg, Pa. 17201

50

Re: U.S. Postal Service  
Chambersburg, Pa.  
Case No. 21-2282 (30)

Dear Mr. Spidell:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

In your request for review you take issue with the Regional Administrator's statement that your December 28, 1970 complaint was filed untimely under Section 203.2 of the Regulations. You point out that your complaint was filed within 30 days from the date your December 17, 1970 charge was filed with the Postmaster. Also, you make the contention that there was no reason to believe that a longer delay in filing the complaint "would cause any change in the Postmaster's attitude."

You have misread Section 203.2 of the Regulations which requires that a period of 30 days after filing of a charge must elapse before a complaint may be filed, unless a final decision has been received in the meantime by the charging party. During the 30 day period it is the intent of the Regulations that informal efforts be made to resolve the matter. The facts reveal that the Notice of Proposed Action given to you by the Postmaster stated that full consideration would be given to your reply before a decision is rendered. The Postmaster's final decision was rendered on January 5, 1971.

In view of the foregoing, your request for reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W.J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAR 23 1971

Mr. Glenn D. Rahr  
President  
American Federation of Government  
Employees, Local 1485  
P. O. Box 915  
San Bernardino, California 92402

51

Re: Norton Air Force Base  
San Bernardino, California  
Case No. 72-1512

Dear Mr. Rahr:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by American Federation of Government Employees (AFL-CIO) to conduct affecting the results of the runoff election held among certain employees of the Norton Air Force Base on July 22, 1970. Based upon a full review of the circumstances surrounding the conduct of the runoff election, the evidence submitted, and the positions offered by the parties, it is concluded that the Regional Administrator's dismissal was warranted.

Your allegation that NFFE was improperly aided by the Activity was not supported by evidence. In this connection, Section 202.20(d) of the Regulations provides that the objecting party shall bear the burden of proof regarding all matters alleged in its objections.

The evidence establishes that the complained of inaccurate press release concerning the outcome of the first election was adequately rectified prior to the balloting in the runoff election by the extensive efforts made by the Activity to publicize the corrected account of the previous election results.

Your objections regarding the eligibility of voters were all found to be without merit since representatives of all parties checked and approved the eligibility lists used in the election and provision was made for observers to challenge, for good cause, the eligibility of voters. Further, the two professional employees, Karsteter and Matsunaga, who were erroneously included on the eligibility list were each on assignment away from the Activity on the day of the election and neither cast a ballot.

In view of all the circumstances, I agree with the Regional Administrator's finding that the election should not be set aside because of the offices held by Messrs. Henke and Poupitch and Mrs. Kendall.

The publicity given to the election through the posting of Notices of Election in over 100 locations and through accounts in news media both on and off the base, I find to have been adequate. Further, allegations of improper conduct relating to the first election held on June 24, 1970 should have been filed immediately after that election as required by Section 202.20 (a) of the Regulations. They cannot be advanced now as a cause for setting aside the runoff election. Moreover, events that occurred after the runoff election could not have affected the results of the runoff election and accordingly, cannot be considered as a basis for setting the election aside.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

MAR 30 1971



Mr. Manuel Donabedian  
Executive Director  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

52

Re: Veterans Administration  
Hospital  
Butler, Pennsylvania  
Case No. 21-2205

Dear Mr. Donabedian:

I have considered carefully your request for review of the Regional Administrator's dismissal of your petition in the above-named case and have concluded that the issues presented can best be resolved on the basis of record testimony.

Accordingly, the Regional Administrator is directed to reinstate the petition and to resume the processing of the case.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 7 1971

Mr. N. T. Wolkomir  
President  
National Federation of  
Federal Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

53

Re: Veterans Administration  
Hospital  
East Orange, New Jersey  
Case No. 32-1803

Dear Mr. Wolkomir:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by NFFE Local 1154 in the above-named case. Based upon a full review of the evidence submitted and the positions offered, it is concluded that the Regional Administrator's dismissal of the petition was warranted.

With respect to the Regional Administrator's refusal to dismiss the petition of AFGE, Local 2735, I have ruled in Report No. 8, issued on August 19, 1970 (copy enclosed) that the Regulations make no provisions for the filing of a request for review of a Regional Administrator's action in refusing to dismiss a petition.

As to the dismissal of the petition for amendment of certification filed by NFFE, Local 1154, on October 30, 1970, I find such action to be appropriate since prior to NFFE's petition, AFGE had filed a petition in the same unit which raised a question concerning representation.

In regard to your allegations that the hospital management was not impartial, I find that a request for review of a Regional Administrator's action in dismissing a petition is not the appropriate proceeding in which to raise what appears to be an alleged unfair labor practice.

In view of the foregoing, and noting that your organization participated fully in the representation hearing in Case No. 32-1793, your request seeking reversal of the Regional Administrator's dismissal of the petition of Local 1154 is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 7 1971

Carl Dwight, President  
OFT, Local 1551  
Kaiserslautern Chapter  
Kaiserslautern American High School  
APO New York 09227

54

Re: Kaiserslautern American  
High School  
APO New York  
Case No. 46-1807(CA)

Dear Mr. Dwight:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case.

While your request for review was untimely filed as provided for in Section 203.7(c) of the Regulations, the file reflects that the Regional Administrator's dismissal letter was not received by you in Germany until after the deadline for filing a request for review. Your request for review was mailed by you the day after receipt of the dismissal letter. In view of these circumstances and in accord with the provisions of Section 205.7 of the Regulations, I have accepted your request for consideration.

The Regional Administrator's dismissal of your complaint was based, in essence, on a conclusion that inasmuch as representation petitions had been filed seeking elections in units which might include the facility involved herein, the Activity had no duty to bargain pending resolution of the representation issue. Your request for review asserts, in pertinent part, that the Regional Administrator had failed to take note of the fact that Local 1551 was the exclusive representative at the facility and, therefore, arguably excluded from the units involved in the representation cases, and further, that the raising of a question concerning representation does not mean that an unfair labor practice no longer exists.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 21 1970

On the basis of the allegations and the record in the case I find that there exists a reasonable basis for the complaint and there does not appear to have been any satisfactory offer of settlement. Accordingly, the Regional Administrator is directed to reinstate the complaint, and absent satisfactory offer of settlement, issue complaint in this matter.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Harold O. Clemens  
President, Local 1437  
National Federation of Federal Employees  
Mostyn Road, Mt. Fern  
Dover, New Jersey

55

Dear Mr. Clemens:

I have carefully considered your appeal of the Regional Administrator's action in dismissing as untimely your request to intervene in Picatinny Arsenal, Case No. 32-1798 E.O. and have concluded that the appeal fails to show good cause for extending the ten (10) day intervention period set forth in Section 202.5 of the Regulations nor does it raise any material issue which would warrant reversal of the Regional Administrator's action. Accordingly, the Regional Administrator's dismissal of your request to intervene is sustained.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

APR 13 1971

Mr. Victor Rosario  
President  
Armed Forces Employees in  
Puerto Rico  
Local 2614, AFGE (AFL-CIO)  
601 De Diego  
Puerto Nuevo, Puerto Rico 00920

56

Re: Department of Navy  
Roosevelt Roads Naval Base  
Case Nos. 37-768 and 37-775

Dear Mr. Rosario:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by American Federation of Government Employees, Local 2614 (AFL-CIO) to the conduct of an election held among certain employees of the Activity on July 14, 1970.

Your first ground for reversal of the Regional Administrator that a hearing was not afforded Local 2614 in order "to amplify and expound its objection to the validity of the election..." must be rejected. Hearings are not granted as a matter of right but, under Section 202.20(d) of the Assistant Secretary's regulations, are ordered where the Regional Administrator finds that the objections raise a "relevant question of fact which may have affected the results of the election..." In the circumstances of this case, a relevant question of fact was not raised and therefore no hearing is required.

Your second ground is that the Area Administrator's investigation was insufficient and that he should have disqualified himself from investigation of the case "since he was a party to the election proceedings." I find that the investigation of the Area Administrator in this case was sufficient. Moreover, no basis for disqualification exists since under the Assistant Secretary's regulations, an Area Administrator is charged with the responsibility of both supervising elections and investigating objections.

Your third ground is that the Area Administrator failed to give your local union a chance "to refute his findings before submitting his report for adjudication." As there is no requirement for the procedure you suggest, I must reject this contention.

Your fourth and final ground is that the Area Administrator's findings of fact "although incomplete, are sufficient to warrant setting aside the objected elections." From the review made of the case file, I must also reject this objection. The Regional Administrator (incorrectly referred to by you as the Area Administrator) examined the evidence submitted by you and determined that all objections were without merit. I agree with his conclusion.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is directed hereby to issue an appropriate certification of representative.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 26 1971

Mr. Kenneth T. Lyons  
National President  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

Re: Department of Defense  
Department of the Army  
White Sands Missile Range  
Case No. 63-2273

Dear Mr. Lyons:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above named case on October 28, 1970.

Section 202.6(d) of the Regulations, which is made applicable to situations involving requests for review of findings by a Regional Administrator with respect to objections to an election, provides, in part, that "Copies of the requested review shall be served on the Regional Administrator and the other parties, and statement of service shall be filed with the request for review.

The evidence establishes that the Regional Administrator was not served with a copy of your request for review. Accordingly, inasmuch as your request for review was imperfect, it is denied, and the Regional Administrator is hereby directed to proceed consistent with his Report and Findings on Objections.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 26 1971

Mr. John Garnett  
Acting Director of Personnel  
U. S. Department of Interior  
Office of the Secretary  
Washington, D.C. 20240

58.

Re: Department of Interior  
Bureau of Land Management  
Sacramento, California  
Case No. 70-1583

Dear Mr. Garnett:

The undersigned has considered carefully your request for review of the Regional Administrator's action in overruling all of the objections in the above named case.

The Regional Administrator, in his Ruling on Objections to Election, December 18, 1970, served on all parties on that date, stated that any party believing itself aggrieved by his rulings may appeal the same to the Assistant Secretary following the procedures set forth in Section 202.6(d) of the Regulations. This Section relates to procedures for filing such requests, including the requirement that copies of the requested review shall be served on the Regional Administrator and the other parties, and statement of service shall be filed with the request for review.

Your request for review was defective because no statement of service was filed with the request for review. Further, the case record reveals no indication that the Petitioner was served a copy of your request for review. Enclosed herewith is a copy of Report No. 14 which states my position with respect to the service requirements contained in the Regulations.

In view of the foregoing, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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APR 26 1971

In these circumstances, your request seeking reversal of the Regional Administrator's dismissal of your complaint is considered to be untimely and is therefore denied.

Mr. Percy A. Hull  
Administrative Aide  
St. Petersburg, Postal Union  
2706 Miriam Street South  
St. Petersburg, Florida 33711

59

Re: Post Office Department  
St. Petersburg, Florida  
Post Office  
Case No. 42-1203

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Hull:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

In his letter of dismissal of your complaint the Regional Administrator referred to Section 203.7 of the Regulations implementing Executive Order 11491, which permits the filing of a request for review within 10 days of the dismissal notice. Due to an incorrect address on the letter addressed to you which delayed delivery until November 7, 1970, the Regional Administrator, at your request, extended the time for filing a Request for Review with the undersigned to close of business on November 30, 1970.

The evidence reveals that you did not mail the Request for Review in this matter and a copy of same to the Regional Administrator until November 30, 1970 and that it was not received in the office of the undersigned until December 3, 1970. Section 205.1 of the Assistant Secretary's regulations provides, in part, that when papers are required to be filed they must be received by the Assistant Secretary before the close of business of the last day of the time limit for such filing. As noted above, your request for review in the subject case which was required to be filed by the close of business on November 30, 1970, was not received by the Assistant Secretary until December 3, 1970.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 28 1971

April 22, 1971

Mr. Gordon P. Ramsey  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

60

Re: Department of Transportation  
Federal Aviation Administration  
Washington, D. C.  
Case No. 22-2145

Dear Mr. Ramsey:

The undersigned has considered carefully your request for review of the Acting Regional Administrator's action in overruling your challenge to status of a labor organization and adequacy and validity of showing of interest.

You question the status of National Association of Air Traffic Specialists, Petitioner in the above named case, as a labor organization within the meaning of Section 2(c) of Executive Order 11491. You also challenge the adequacy and validity of the Petitioner's showing of interest.

Since the Regulations make no provision for review of a Regional Administrator's action dismissing challengers to the status of a labor organization or to the adequacy or validity of the showing of interest of a labor organization, your request for review will not be considered.

Accordingly, your request that Petitioner be declared not to be a labor organization and that its petition be dismissed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. N. T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D.C. 20006

61

Re: DHEW-Public Health Service  
Indian Hospital  
Albuquerque, New Mexico  
Case No. 63-2327

Dear Mr. Wolkomir:

The undersigned has considered carefully your request for review and supporting memorandum seeking reversal of the Regional Administrator's determination overruling an objection to the conduct of an election.

In your submission you do not question the accuracy of the tally of the ballots but you suggest that, on the basis of the tally in this case, the professional employees should be granted the right to exclusive representation in a separate unit of professionals. It is clear from an examination of the election documents in this case, including the consent election agreement, the notices posted and the ballots used, that a majority of the ten professionals who voted for union representation did so only after expressing their desire to be included in a unit with non-professional employees. Thus, their ballots were commingled with those of the non-professionals and the tally of ballots, as you concede, shows that exclusive recognition was rejected by a majority of those voting. You contend that, "if they had known that the no union vote would be ruled to prevail, it is reasonable to believe that they would have voted for a separate unit." Under the voting procedures established by the Assistant Secretary in elections involving professional and non-professional employees, when professional employees vote for inclusion in a unit with non-professional employees, their votes as to whether or not they desire union representation are pooled with those of non-professional employees. Once inclusion with non-professional employees has been voted for by the professional employees, the vote in the

combined unit of professional and non-professional employees is determinative as to union representation without regard to the separate desires of the included professional employees.

In these circumstances your request for reversal of the Regional Administrator's dismissal of your objection to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 28 1971

Mr. William J. Revak  
President, Branch 908  
National Association of Letter  
Carriers  
278 Stanford Avenue  
Wenonah, New Jersey 08090

62

Re: Post Office Department  
Philadelphia, Pa.  
Case No. 32-1781

Dear Mr. Revak:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

In your request for review you contend that you did not refuse a satisfactory settlement offer in the case contrary to the assertion made by the Regional Administrator upon dismissal of your complaint.

From a review made of the case file it appears that the Postmaster at Woodbury did withdraw the "adverse action" letter mentioned in your complaint and that he was instructed to abide by the National agreement with National Association of Letter Carriers. You concede that these steps were taken but contend that the Activity failed to meet two additional requirements: (1) that your personnel file be expunged of previous unfounded letters of warning and proposed adverse action and (2) that the Philadelphia Region of the Post Office Department be required to admit that the Postmaster at Woodbury "violated the Code of Fair Labor Practices in this matter."

I find, in agreement with the Regional Administrator, that a satisfactory settlement offer was refused by you and that the failure to meet your additional requirements does not render the offered settlement unsatisfactory.

In view of the foregoing your request for reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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foregoing, your request will not be considered, and the Regional Administrator is hereby directed to proceed consistent with his Report and Findings on Objections.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

April 28, 1971

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government  
Employees  
512 Gallivan Boulevard - Suite 2  
Dorchester, Massachusetts 02124

63

Re: Department of the Air Force  
Electronics System Division  
L. G. Hanscon Field  
Bedford, Massachusetts  
Case No. 31-3338 E.O.

Dear Mr. Kearney:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the objections filed in the above named case.

The Regional Administrator's Report and Findings on Objections, dated February 2, 1971, advised the parties as follows:

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review (emphasis added).

Section 202.20(f) of the Regulations refers aggrieved parties to Section 202.8(d) of the Regulations relating to the procedure for filing such requests, including the requirement that a copy of the request for review shall be served on the Regional Administrator.

Your request for review was defective because no copy was served on the Regional Administrator. In view of the

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 30, 1971

Mr. Dolph David Sand  
Assistant to the Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D.C. 20001

64

Re: U. S. Navy Autodin Switching Center  
U. S. Marine Corps Supply Center  
Albany, Georgia  
Case No. 40-2608 (RC)

Dear Mr. Sand:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by American Federation of Government Employees, (AFL-CIO), Local 2317.

Your request for review is based upon the single ground that the employees petitioned for were not disqualified from representation in accordance with Section 3(b)(3) of Executive Order 11491 because the notice disqualifying the employees was signed by the Assistant Secretary of the Navy rather than by the Secretary of the Navy. In these circumstances, you contend that an Assistant Secretary of the Navy is not "the head of the agency" within the meaning of Section 3(b)(3) of the Order.

I view the evidence as being insufficient to establish that the decision to exclude the employees in question from the coverage of the Order was not made by the Secretary of the Navy. In this regard, I have been advised that the decision to exclude was made by the Secretary of the Navy. Further, the notice in question, titled SECNAVNOTE 12721, was issued from the office of the Secretary of the Navy on his letterhead.

Based upon a full consideration of the facts it is my conclusion that the requirements of Section 3(b)(3) of the Executive Order have been satisfied.

Accordingly, your request that the Regional Administrator's dismissal of your petition be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL LABOR-MANAGEMENT RELATIONS  
WASHINGTON, D.C. 20210

April 30, 1971

Mr. Ronald A. Ogden  
Area Director of Organization  
American Federation of Government  
Employees  
5515 Livingston Road, Room 201  
Oxon Hill, Maryland 20021

65

Re: U. S. Army Transportation Center  
Fort Eustis, Virginia  
Case No. 22-1745 (EO)

Dear Mr. Ogden:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of objections to conduct affecting the results of the election held among certain employees of the above named Activity on August 26, 1970.

You contend in your request for review that the Regional Administrator was in error by not considering in his Report on Objections to Election a leaflet distributed by the National Association of Government Employees, and on allegation concerning an attempted bribe. The evidence is clear that these matters were not presented in a timely and proper manner as required by Sections 202.20(a) and 205.1 of the Regulations. Accordingly, the refusal of the Regional Administrator to consider these matters was warranted.

Based upon a full review of the evidence submitted and positions taken by the parties, it is concluded that the dismissal of Objections 1, 2, 3, 6, 7, 8, 9, 10, 11, and 12 by the Regional Administrator was warranted.

With respect to Objections 4 and 5, it is concluded that the appeal raises issues which can best be resolved on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 30 1977

Mr. Dolph David Sand  
Assistant to the Staff Counsel  
American Federation of Government  
Employees  
400 First Street, N. W.  
Washington, D. C. 20001

66

Re: U.S. Department of Navy  
Naval Communications Station  
Norfolk, Virginia  
Case No. 22-1928 (32)

Dear Mr. Sand:

The undersigned has considered carefully your request for review seeking reversal of the Acting Regional Administrator's decision that the appropriate unit in the above named case would exclude "employees whose position require cryptographic authority" pursuant to Section 3 (b) (3) of the Executive Order; and your Motion for Enlargement of Time.

The Acting Regional Administrator, in his decision letter dated December 18, 1970, served on all parties on that date, stated that a review of his action could be obtained pursuant to Section 202.6 (d) of the Regulations, by filing a request for review with the undersigned by the close of business December 31, 1970. Your request for review was received on February 11, 1971, together with the Motion for Enlargement of Time. The motion requests that the time for filing your request for review be extended from December 31, 1970, to February 11, 1971.

Under all the circumstances, your request for review in this matter was not considered to have been timely filed within the meaning of Section 202.6 (d) of the regulations. Accordingly, your request for review and Motion for Enlargement of Time is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 30 1977

Mr. J. Gene Raymond  
President, Local 1623  
National Federation of Federal  
Employees  
114 South Edisto Avenue  
Columbia, South Carolina 29205

67

Re: South Carolina Air National  
Guard  
McEntire AFB, South Carolina  
Case No. 40-2277. (Ca)

Dear Mr. Raymond:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint alleges that Respondent violated Section 19(a)(6) of the Executive Order in that it refuses to meet in negotiating sessions at "reasonable times" within the meaning of Section 11 of the Executive Order.

The investigation revealed that Respondent has offered to meet in negotiating sessions four days each week from 9:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m. It is concluded that while Section 20 would not prohibit the Respondent from voluntarily agreeing to the Complainant's hours for negotiation, there is no evidence that the Respondent acted in bad faith or refused to comply with the requirement of meeting at reasonable times referred to in Section 11 of the Executive Order. Such conduct, therefore, is not viewed as being inconsistent with Section 19(a)(6) of the Order.

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAY 10 1971

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Gordon P. Ramsey  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D.C. 20006

68

Re: Department of Transportation  
Federal Aviation Administration  
Case No. 22-2145 (RO)

May 10, 1971

Dear Mr. Ramsey:

This will acknowledge receipt of your motion dated April 26, 1971 asking for reconsideration of my decision of April 22, 1971, denying a request for review of the Acting Regional Administrator's decision of March 19, 1971. I must deny your motion for reconsideration.

The above named case raised the question whether a challenge to the status of a labor organization can be reviewed under Section 202.6(d) of the Regulations which relates to dismissals of representation petitions. On the other hand, Charleston Naval Shipyard Case No. 40-1926 (RO) which you cite as inconsistent, involved a challenge of a labor organization based on alleged violations of the standards of conduct. Procedures for enforcing the standards of conduct established by Section 18 of Executive Order 11491 are set forth in Part 204 of the Regulations.

For your information I enclose a copy of my letter of October 16, 1970, which points up the distinctions between the two sections of the Regulations and additionally a copy of Report No. 9 based upon the Charleston decision.

I view my decision denying a motion to strike a reply brief filed in Norfolk Naval Shipyard Case No. 46-1617 as being within my discretion under the Regulations and in no sense in conflict with my denial of the request for review in the subject case.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Elihu I. Leifer  
Sherman, Dunn & Cohen  
1200 15th Street, N. W., Suite 500  
Washington, D. C. 20005

69

Re: Defense Supply Agency  
Tracy, California  
Case No. 70-1546

Dear Mr. Leifer:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by International Brotherhood of Electrical Workers, Local 2289, AFL-CIO, (IBEW), to conduct affecting the results of the election held among certain employees of the Defense Supply Agency at Tracy, California on September 3, 1970. Based upon a full review of your objections to the election in the subject case and the evidence supplied in support thereof, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

The objections as filed set out four counts. The first three, similar in content, allege that the Activity's approval of distribution of anti-IBEW literature by certain of the Activity's employees influenced employees to vote against the IBEW and allowed a campaign against the IBEW "to exist and work to the detriment" of that labor organization. The facts disclose that the literature distributed, some by permission of the Activity, was not beyond proper bounds in its content and was not sponsored or endorsed by the Activity. Moreover, approval by the Activity of the distribution of such literature was not improper.

In this latter respect, I refer you to my decision in Charleston Naval Shipyard and Federal Employees Metal Trades Council, Metal Trades Department, AFL-CIO, A/SLMR No. 1, issued November 3, 1970. In that case I found that, absent special circumstances, a Federal agency or activity may not prohibit employee distribution of literature on behalf of a labor organization in nonwork areas during nonwork time since such a prohibition interfered with employee rights assured under Executive

Order 11491. As stated in Section 1(a) of the Order, the rights assured employees include the right to refrain from activity on behalf of a labor organization. In these circumstances, I find that employees have the right to express and disseminate their views freely in an election campaign and are not prohibited from distributing literature based solely on the fact that it is unfavorable to a particular labor organization. Further, agencies and activities should not, as a general rule, be required to censor, police or pass upon the truth or falsity of electioneering propaganda distributed by competing labor organizations or employees.

The fourth ground of the objections was that one employee could not cast her ballot because she was misinformed by a supervisor as to where she could vote. I find no merit in this objection because notices of the election amply informed eligible voters concerning the time and places of the election. Further, there was no evidence presented that the alleged misdirection by a supervisor was intentional or calculated to interfere with the election results or that the employees' vote would have affected the results of the election.

Your request for review contains certain additional allegations advanced for the first time and not found in the objections filed with the Acting Area Administrator on September 11, 1970. I have ruled previously that allegations of objectionable conduct affecting the results of an election contained in a request for review and not contained in the objections initially filed are untimely and will not be considered. For your information, I enclose a copy of Report Number 22 which relates to this point.

Accordingly, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of the results of the election issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAY 10 1971

Mr. Neal H. Fine  
Assistant to the Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

70

Re: U.S. Department of Agriculture  
Soil Conservation Service  
Case No. ~~35-1321-100~~  
62-2309 (R0)

Dear Mr. Fine:

I have considered carefully your request for review of the Regional Administrator's denial of the petition to intervene filed by American Federation of Government Employees, Local 1377 "AFGE" in the above named case.

AFGE was advised by the Regional Administrator in his letter of April 1, 1971 denying the petition to intervene that the petition was untimely because not received before the close of business on March 29, 1971 which was the last day of the 10th day time limit for filing.

In your request for review you concede that the petition was not received by the Regional Administrator until March 31, 1971 but you contend that it was nonetheless timely because it was mailed and postmarked on March 29, 1971 which was the last day of the 10th day filing period. You allege that "similar petitions to the Department of Labor postmarked on the last day of the time limit" have been accepted as timely and you attach a signed statement of a national representative of AFGE referring to a specific case where such a petition to intervene postmarked on the last day is alleged to have been accepted as timely filed by the Chicago Area Administrator. I have administratively determined that the petition referred to was actually timely filed.



Our investigation discloses that in the case referred to by the national representative of AFGE, the petition to intervene was postmarked on the 8th day of the intervention period and would have been received in the Area Office on the 9th day in normal course except that the 9th day fell on July 3, 1970 which was a federal holiday. Actual receipt on July 6, 1970 was, therefore, timely following the computation procedure found in Section 205.1 of the Regulations. However, regardless of whether instances may be found where late petitions to intervene were inadvertently or erroneously accepted as timely, it is clear in the present case that the filing was not timely under Section 202.5(c) of the Regulations.

Accordingly, your request for review seeking reversal of the Regional Administrator's decision denying the petition to intervene is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAI 14 1971

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman,  
Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

71

Re: Federal Aviation Administration  
New York Air Route Traffic  
Control Center  
Case No. 30-3213 E. O.

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's denial of PATCO, NYARTCC Chapter's request to intervene in the above-named case.

In all the circumstances, I conclude that the Regional Administrator's action was proper. Thus, in the PATCO decision, A/SLMR No. 10, I stated that,

"until such time as the Professional Air Traffic Controller's Organization, Inc., affiliated with the National Marine Engineers Beneficial Association, AFL-CIO (PATCO-MEBA) can demonstrate to my satisfaction that it has complied with my Decision and Order, and that it will comply in the future with the provisions of the Executive Order, I shall not permit it to utilize the procedures available to a labor organization within the meaning of Section 2(e) of the Executive Order." (emphasis added)

The above statement clearly indicates that to permit intervention in the subject case by a chapter of PATCO-MEBA at a time when there has been no finding by the Assistant Secretary of compliance with the Decision and Order in A/SLMR No. 10 would be

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

inconsistent with that Decision and Order. With respect to your contention that footnote 5 in A/S LMR No. 10 provides a basis for intervention in this matter, it should be noted that this footnote, which states in pertinent part that "Recognitions granted to PATCO under Executive Order 10988 are not affected by this Order....", is applicable to that portion of the body of the Decision and Order which states that pending PATCO-MEBA petitions will be dismissed. In this context, the import of footnote 5 was to indicate that the Decision and Order dismissing pending PATCO-MEBA petitions was not, of itself, intended to affect existing recognitions. On the other hand, consistent with the above-cited language of the Decision and Order denying to PATCO-MEBA the utilization of the Executive Order's procedures until such time as there has been a finding of compliance, interventions and other participation by PATCO-MEBA in any subsequently filed cases under Executive Order 11491 was clearly prohibited during the compliance period irrespective of any challenge posed to existing representative status by PATCO-MEBA.

Accordingly, your request for reversal of the Regional Administrator's dismissal of your motion to intervene in the subject case is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

May 17, 1971

Mr. Daniel B. Marable  
President, National Association  
of Government Employees, Local R3-36  
Aviation Supply Office  
700 Robbins Avenue  
Philadelphia, Pennsylvania 19111

72

Re: Aviation Supply Office  
Philadelphia, Pa.  
Case No. 20-2071

Dear Mr. Marable:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your objections to the runoff election held in the above named case on September 24, 1970.

The first objection alleges that representatives of the American Federation of Government Employees (AFGE) violated provisions of a side agreement between the parties in regard to election campaigning in that they commenced election campaigning prior to the date agreed to in the side agreement. My policy with respect to policing such side agreements is set out in Report No. 20 (copy enclosed). As it is found that this alleged conduct did not have an independent improper effect on the results of the runoff election, the action of the Regional Administrator in rejecting this objection was warranted.

The second objection alleges that AFGE distributed election campaign material believed to be violative of Executive Order 11491. This consisted of material taken from an arbitration hearing on a unit question under Executive Order 10988, and a cartoon caricaturing the President of Local R3-36, NAGE. This material was distributed on the morning of the day prior to the runoff election, and is alleged to have been slanderous and defamed the character of the local president. Also, it is alleged that the literature contained quotations which were taken out of context and thus created a false impression of the testimony given on behalf of NAGE. It is noted that there is no allegation that the quoted material was erroneous.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

The case record indicates that no evidence was submitted which would show that the campaign material gave a false impression of the testimony, or affected the results of the election. A careful review of the campaign material persuades me that it could be properly evaluated by the employees as permissible campaign propaganda, and, therefore, would not be grounds for setting aside the election. Therefore, the action of the Regional Administrator in rejecting this objection was warranted.

The request for review contained new allegations of improper conduct by AFGE representatives on the day of the runoff election. Since these allegations were not included with the timely filed objections, and in accord with Report No. 22 (copy enclosed), these allegations are found to be untimely and will not be considered.

Based on the foregoing, your request that the election be set aside is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

June 21, 1971

Mr. Nathan T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

73

Re: Veterans Administration Hospital  
Amarillo, Texas  
Case No. 63-2176

Dear Mr. Wolkomir:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by the National Federation of Federal Employees, Local 1138 (NFFE) to conduct of the election or conduct affecting the results of the election held among certain employees of the Activity on September 30, 1970.

Objection a

Objection a contains eight allegations which the NFFE claims show that the Activity was biased and prejudiced in favor of the Intervenor, the American Federation of Government Employees (AFGE).

Objection a(1) alleges that although NFFE filed a RO petition the first week of July 1970, AFGE continued to retain all the privileges of an exclusive representative, and that NFFE was denied these privileges for most of the time during the "open season." The investigation reveals that AFGE had an exclusive agreement with the Activity that began on July 8, 1966, and was due to expire on October 2, 1970. As a result of this agreement AFGE was furnished office space, allowed to use bulletin boards; and was furnished space for meetings. The evidence discloses that an election campaign agreement was signed by both unions on September 15, 1970, and amended on September 25, 1970, which provided equal opportunity for election campaigning to both unions. No evidence was submitted that shows AFGE received preferential treatment from the Activity that affected the results of the election due to its status as the exclusive representative of the employees in the unit, and no objectionable conduct is found in regard to this allegation.

Objection a(2) alleges that on September 11, 1970, a newsletter was circulated to non-duty employees by NFFE, and that subsequently the local president of NFFE was directed by letter "to cease and desist from distributing NFFE Local 1138 material on VA property." The investigation reveals that on September 10, 1970, employees of the Activity who were members of NFFE, placed newsletters in mail slots in a ward of the hospital. These newsletters were removed by management. NFFE protested this action by letter dated September 10, 1970. On September 11, 1970, the Personnel Officer of the Activity answered in writing the NFFE letter of September 10, 1970. This Activity letter contained the "cease and desist" language referred to in this objection, and will be considered in Objection a(5) where this letter is the subject of an objection.

The circulation of a newsletter to employees on September 11, 1970, by employees of the Activity who were members of NFFE is the basis for this objection. The case file reveals that local officers of NFFE were observed distributing NFFE newsletters on Activity premises on September 11, 1970. They were orally notified by the Personnel Officer that such distribution was improper and would not be permitted on hospital premises unless authorized by a campaign agreement.

A prohibition on employee electioneering on activity premises until an election agreement was established was ruled on by the undersigned in Charleston Naval Shipyard, A/SLMR No. 1. The Charleston decision was issued on November 3, 1970, and the Report and Findings on Objections by the Regional Administrator in this case was issued on December 23, 1970. As the Regional Administrator's Report does not indicate that the Charleston decision was considered in making his determination regarding this objection, I shall remand the case to him for his consideration as to what effect, if any, the Charleston decision would have on the conduct alleged in this objection.

Objection a(3) alleges the Petitioner was denied a meeting place on September 10, 1970, while at the same time AFGE had an office space with no restrictions on meetings. The investigation discloses that AFGE had been authorized business office space early in 1970, but this space was revoked on September 15, 1970, due to the fact that the Activity could not provide comparable space to NFFE as requested. The Activity noted in a letter dated September 24, 1970, to NFFE that the two meetings held by AFGE since NFFE had filed its petition, and which NFFE had protested, were regular monthly business meetings of AFGE. It is noted in the election campaign agreement dated September 15, 1970, that both unions were authorized to have one meeting and to use the same conference room on Activity property prior to the election. No objectionable conduct is found in regard to this allegation.

Objection a(4) alleges NFFE was not provided access to all employees as indicated in Exhibit No. 3. Exhibit No. 3 is a letter "To Whom Concerned" signed by a national representative of NFFE. The representative states he saw employees leaving work by an exit not covered as a distribution point for distributing election campaign literature. The parties signed the original election campaign agreement on September 15, 1970, which provided that election campaign literature could be distributed on September 24, 25, 28, and 29, 1970 at two identified locations. After a complaint about the agreement from NFFE, it was amended on September 25, 1970, adding two more places for campaign material distribution on September 28, 29, 1970. As both of these election campaign agreements were signed by the presidents of both local unions, and as both unions were afforded equal rights, no merit is found to the allegation.

Objection a(5) alleges that management failed to initiate adverse action against the person or persons who removed NFFE's news letter from mail slots as indicated in Exhibit No. 4, and that the local president of NFFE received unjust criticism as indicated by Exhibit No. 1.

The case file shows that Exhibit No. 1 is the Activity letter referred to in Objection a(2). In part, this letter states, "You are herewith directed to cease and desist from distributing NFFE Local 1138 material on VA property." This same letter made it clear that NFFE was to stop campaigning only until election campaign arrangements were agreed to by all parties at a meeting which had already been scheduled within three days of the date of the letter.

It is noted that this letter contains a broad prohibition on the distribution of NFFE material on Activity premises, even though the ban was to be effective only for a short period of time. As a result, I conclude that this conduct should be considered in light of the Charleston decision, for a determination as to what effect, if any, that decision may have on the conduct alleged in this objection.

Objection a(6) alleges that prior to a NFFE letter to the Activity dated September 21, 1970, NFFE was forced to process payroll deductions for new NFFE members by mail in conflict with the Federal Personnel Manual. The Activity categorically denied this allegation, but in any event, no relationship is found between the method of processing payroll deductions for union members and the conduct of the election. Therefore, no improper conduct affecting the results of the election is found in regard to this allegation.

Objection a(7) alleges that since NFFE filed its petition, new employees have reported to NFFE that the Personnel Division has been biased in favor of AFGE as the employees' representative. The case record reveals that the conduct relied upon in support of this objection was required to be done by the contract in effect between the Activity and AFGE, and it is further found that there was no objectionable conduct in regard to this objection that affected the results of the election.

Objection a(8) alleges that despite assurance from the Activity at the time of the election campaign agreement that all markings for AFGE on department bulletin boards would be removed, the red tape which had become a recognized portion of AFGE markings was not removed. The investigation reveals that the last sentence under paragraph 1 of the September 15, 1970 election campaign states: "AFGE Local 665 will remove their material posted on bulletin boards along with their identification." The Activity certified that all material posted by AFGE was removed, but the red tape was not removed as it served only the purpose of marking off a specific amount of space on each bulletin board. As set out in Report Number 20 (copy attached), the Assistant Secretary will not undertake to police side agreements between the parties and the breach thereof, absent evidence that the conduct constituting such breach had an independent improper effect on the conduct of the election or the results of the election. It is found that the failure to remove the red tape from the bulletin boards did not have an independent improper effect on the conduct of the election or the results of the election, and accordingly, no merit is found to this objection.

Objection b

Objection b alleges that a steward of AFGE used the nursing assistant mail slots to notify personnel of an AFGE meeting to be held on September 21, 1970 which was a clear violation of the campaign agreement. The investigation revealed that the incident happened as alleged. AFGE acknowledged the incident, but said it occurred because of a communications breakdown. The local president of AFGE was admonished by the Activity about the incident, and in the interest of equity, NFFE was advised it could use the same facilities to notify nursing assistants who were members of NFFE about an authorized meeting NFFE had scheduled for September 24, 1970. In view of the prompt action taken by the Activity to correct this situation, and as it is found this incident did not have an independent improper effect on the conduct of the election, it is concluded this objection is within the purview of Report No. 20, and the dismissal of Objection b by the Regional Administrator was warranted.

Objection c

Objection c alleges that the names of all new members of NFFE are made available to AFGE, and that the local president of AFGE threatened several new members of NFFE during duty hours, despite the fact NFFE has repeatedly asked the Activity to keep the names of new NFFE members confidential. The case file reveals that the Activity denies making the names of new members of NFFE available to AFGE, and that the local president of AFGE has denied making threats to NFFE members. In its request for review NFFE alleges it has evidence to support this allegation, which if true, may present a relevant question of fact. As it is not clear from the case file that NFFE had an adequate opportunity during the investigation to present all of its evidence with respect to this objection, the instant case will be remanded to the Regional Administrator for the purposes of having further investigation conducted regarding the allegations raised in Objection c.

Objection d

Objection d alleges that the local vice president of AFGE circulated what he called a "poll" during duty hours, soliciting employees who were eligible to vote to sign their names if they were going to vote for AFGE. The investigation reveals that the Activity denied knowledge of this alleged poll, and that the named officer of AFGE denied the allegation. Although this objection raises a question of fact, it is found it does not raise a material issue because under the circumstances alleged, a union agent's interrogation of employees as to union affiliation and voting intentions does not constitute objectionable conduct that would affect the results of the election. Accordingly, the dismissal of Objection d by the Regional Administrator was justified.

As the undersigned has agreed with the findings of the Regional Administrator that Objections a(1), a(3), a(4), a(6) a(7), a(8), b and d have no merit; and that Objection c requires additional investigation; and that Objections a(2) and a(5) should be reconsidered, it is concluded that the case should be remanded to the Regional Administrator for the purposes set forth above, and for issuing a supplementary report of his findings.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAY 20 1971

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Earl M. Cloninger  
President, Branch 545  
National Association of  
Letter Carriers  
3617 Dandridge Circle  
Matthews, North Carolina 28105

74

Re: United States Post Office  
Charlotte, North Carolina  
Case No. 40-2598 (CA)

Dear Mr. Cloninger:

The undersigned has received your request for review of the Regional Administrator's decision dismissing your complaint brought against the above named Activity.

A review of the case reveals that the Regional Administrator, in his decision March 26, 1971, served on all parties on that date, advised you of your right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned to be received by me by the close of business April 8, 1971. Your request for review dated April 5, 1971, and mailed April 7, 1971, was received on April 9, 1971, and therefore was untimely.

Accordingly, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Daniel Leff  
Attorney  
Simandl, Leff, Itzikman & Kraemer  
20 Evergreen Place  
East Orange, New Jersey 07018

75

Re: U. S. Army, Patterson  
Army Hospital  
Fort Monmouth, New Jersey  
Case No. 32-2030 E.O.

Dear Mr. Leff:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the RO petition filed in the above named case by the Licensed Practical Nurses Association of New Jersey.

I find that the Regional Administrator's action was warranted as the case record reveals that the petition was not timely filed in accordance with Section 202.5(b) of the Regulations. I further find that the telegram of February 26, 1971 which was received on March 1, 1971 did not request an extension of time for the purpose of filing a petition.

Accordingly, your request that the dismissal of the petition by the Regional Administrator be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
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WASHINGTON

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May 20, 1971

Mr. Robert M. Tobias  
Staff Counsel  
National Association of Internal  
Revenue Employees  
Suite 1100  
711-14th Street, N. W.  
Washington, D. C. 20005

76

Re: United States Treasury Department  
Internal Revenue Service  
Case Nos. 22-1916(CU)  
22-1917(CU)  
22-1918(CU)

Dear Mr. Tobias:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissals of the petitions in the above named cases and the supporting briefs filed by yourself and by counsel for the Activity.

The National Association of Internal Revenue Service Employees (NAIRE) filed three separate petitions for clarification into three virtually nation-wide units of numbers of existing units which fall into three separate categories as follows:

1. The petition in case number 22-1916 (CU) seeks clarification into one unit of fifty two existing units of nonprofessional and professional employees of District offices of the Activity who have previously, over a period of years, voted for NAIRE as their exclusive representative in each of the fifty one separate District offices and one partial District office. The approximate aggregate number of employees in the fifty two units deployed throughout the nation is 22,910.

2. The petition in case number 22-1917 (CU) seeks clarification into one unit of nine existing units of professional employees within the Activity, in nine District offices, who have previously, over a period of years, voted for NAIRE as their exclusive representative in each of the nine District offices.

The aggregate number of employees in this category is approximately 4,770.

3. The petition in case number 22-1918 (CU) seeks clarification into one unit of eight existing units of non-professional and professional employees of Service Center offices of the Activity who have previously, over a period of years, voted for NAIRE as their exclusive representative in each of the eight Service Center offices. The aggregate number of employees in this category is approximately 12,953.

Giving due regard to your contention that I have the authority under Section 6.(1) of Executive Order 11491 to merge these various local facility units into three extensive nation-wide units (with minor exclusions of local units represented by other labor organizations) without elections by the device of the CU petition provided for in Sections 202.1(c) and 202.2(c) of the Regulations, I find in agreement with the Regional Administrator that the CU petition is not the correct vehicle to use in these circumstances to achieve the results you desire. Rather, it appears that in the circumstances presented in the subject cases, a more appropriate means to achieve the result sought would be to file RO petitions which can then be considered on their merits.

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the petitions is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

May 20, 1971

Mr. Joseph J. Schmidlein  
Secretary-Treasurer  
Local 14, National Federation of  
Federal Employees  
1145 Marshall Avenue  
St. Paul, Minnesota 55119

77

Re: Veterans Administration and  
VA Data Processing Center  
Fort Snelling, Minnesota  
Case No. 51-1517

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your objections to the runoff election held in the above named case on February 11, 1971.

The first objection alleges that members of the American Federation of Government Employees (AFGE), wore campaign material such as campaign buttons and pocket protectors on the day of the runoff election. Your request for review states that this conduct violated the provisions of a preelection campaign agreement between the parties. The case file indicates that AFGE may have withdrawn from the alleged preelection agreement before the election and the Regional Administrator so found in his decision of March 23, 1971 dismissing the objections. However, regardless of what the fact may be in this regard, as set out in Report Number 20, (copy enclosed), I will not undertake to police such a side agreement, absent evidence that the conduct constituting such breach had an independent improper effect on the conduct of the election or the results of the election. It is found the wearing of this campaign material did not have an independent improper effect regarding the election, and therefore, the Regional Administrator was warranted in overruling this objection.

The second objection alleges that AFGE was granted the use of a training room by the Activity on February 8 and 9, 1971, to provide free sandwiches, cake and coffee; that this same room was used for the election on February 11; that AFGE encouraged employees in the hallways to partake of the free offering; and that the resultant noise and confusion interrupted the work

routine of employees who had to pass through the area. I agree with the Regional Administrator's conclusion that the alleged conduct in the second objection does not warrant the setting aside of the runoff election.

Accordingly, your request that the runoff election be set aside is denied, and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



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WASHINGTON, D.C. 20210



MAY 27 1971

Mr. Raymond J. Malloy  
Associate Staff Counsel  
American Federation of Government  
Employees  
400 First Street, N. W.  
Washington, D. C. 20001

78

Re: Virgin Island District  
Bureau of Customs  
St. Croix, Virgin Islands  
Case No. 42-1497 (RO)

Dear Mr. Malloy:

The undersigned has considered carefully your request for review seeking reversal of Regional Administrator's dismissal of your petition in the above named case.

Your request for review failed to show good cause for extending the ten (10) day intervention period, set forth in Section 202.5 of the regulations or to raise any material issue which would warrant reversal of the Regional Administrator's action.

Accordingly, your request is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

May 27, 1971

Mr. Harvey P. Rubien  
President  
National Federation of Federal  
Employees, Local 68  
22 Werner Park  
Rochester, New York 14620

79

Re: Defense Contract Administration  
Services District  
Rochester, New York  
Case No. 35-1321 E.O.

Dear Mr. Rubien:

I have considered carefully your request for review of the Regional Administrator's dismissal of certain objections filed by the National Federation of Government Employees, Local 68 to conduct affecting the results of the runoff election held among certain employees of the Defense Contract Administration Services, Rochester District, Rochester, New York on October 16, 1970.

The grounds upon which your short telegraphic request for review are based are unclear. However, to the extent that your reasons for disagreeing with the action of the Regional Administrator can be understood from a reading of the telegram, they seem to be based upon contentions (1) that you did not have time to publish reply leaflets to literature issued by the rival labor organization, and (2) that the rival labor organization violated a side agreement between the participating labor organizations concerning pre-election campaign activities.

The claim that you did not have enough time to publish reply leaflets is raised for the first time in your request for review and is itself untimely. See my Report on Decision No. 22, a copy of which is attached for your information. I have reviewed the campaign literature you characterize as inaccurate and agree with the Regional Administrator that it is typical campaign material which can be evaluated properly by the voter. Further, it is my position that no

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party is entitled as a matter of right to the last word in an election campaign.

With respect to your contention that the rival labor organization violated a side agreement it is my position that where parties make side agreements intended to regulate pre-election conduct and activities, such side agreements will not be policed and pre-election conduct in violation of a side agreement will be taken into account only if it is shown to have had an independent adverse effect upon the election. A copy of my Report on Decision No. 20 on this point is attached for your information. In the subject case no such showing of independent adverse effect is made.

Accordingly, your request for review seeking reversal of the Regional Administrator's Findings and Ruling on Objections is denied, and the Regional Administrator is directed hereby to have issued an appropriate certification of representative.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

May 27, 1971

Mr. Gordon P. Ramsey  
Attorney  
Gadsby & Hannah  
75 Federal Street  
Boston, Massachusetts 02110

80

Re: Department of Transportation  
Federal Aviation Administration  
Case No. 60-2101 (RO)

Dear Mr. Ramsey:

This refers to your request for review seeking reversal of the Regional Administrator's determination in his Report and Findings on Objections dated March 25, 1971, that an election held on December 4, 1970 in the above named case should be set aside and that a rerun election should be held.

The parties were advised in the Regional Administrator's Report and Findings on Objections, in part that, "The request for review must be received by the Assistant Secretary of Labor in Washington, D. C. 20210, by close of business April 7, 1971." This instruction is in accord with Sections 202.20(f) and 202.6(d) of the Regulations.

Your request for review was not received timely and accordingly, will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 20210



MAY 27 1971

Mr. Manuel Donabedian  
Executive Director  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D.C. 20005

81

Re: General Services Administration  
Philadelphia, Pa.  
Case No. 20-2246

Dear Mr. Donabedian:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by Local R3-71, National Association of Government Employees, based on his determination that the showing of interest was inadequate.

The Regulations make no provision for a review of a Regional Administrator's determination of the adequacy of showing of interest.

Accordingly, your request that the Regional Administrator's dismissal of the petition be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

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WASHINGTON

May 27, 1971

Mr. Neal H. Fine  
Assistant to the Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

82

Re: Department of the Navy  
Portsmouth Naval Shipyard  
Portsmouth, New Hampshire  
Case No. 31-3278 E.O.

Dear Mr. Fine:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by Local 2887, American Federation of Government Employees AFL-CIO, (AFGE) for exclusive recognition of certain employees employed by the above named Activity.

The unit claimed to be appropriate is described as all ungraded IV A Foremen, General Foremen I, Associate Supervisory Inspectors, and Supervisory Inspectors, excluding all ratings and titles not so described. The Regional Administrator determined the unit not appropriate and dismissed the petition.

The request for review contends that (1) the Regional Administrator's decision is based on job descriptions furnished by the Activity rather than on an independent investigation as required by the Regulations, and (2) that the employees sought to be represented perform supervisory duties only to the extent of making decisions of a routine or clerical nature. The only supporting evidence upon which the request for review is based consists of a sworn affidavit by the President, Local 2887, a Foreman, in which he states he is without authority to make final decisions beyond that of routine or clerical nature involving supervisory responsibilities described in Section 2(c) of Executive Order 11491. Apart from the self-serving nature of the statement of the President of Local 2887 who also signed

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WASHINGTON, D.C. 20210



the petition, I find significant the last sentence of his statement which reads as follows:

"The above statements regarding my duties are to the best of my knowledge applicable to a preponderance of the other members of this proposed unit." (Emphasis supplied)

This statement I regard as an admission that there are members of the claimed unit who have disqualifying supervisory authority.

No evidence was tendered by Petitioner which would tend to prove that all four categories of employees sought were eligible to be included in an appropriate unit and did not fall within the definition of supervisor as set out in Section 2(c) of the Executive Order. On the other hand the investigation of the Area Administrator and copious documentary evidence supplied by the Activity, demonstrate that the categories General Forman I and Supervisory Inspectors are clearly supervisors within the meaning of Section 2(c) of the Order and strongly suggest that the other two categories sought are also supervisory in more than a minimal sense.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAY 27 1971

Mr. William F. Carr  
Chief Counsel  
National Association of Government  
Employees  
265 Dorchester Avenue  
Boston, Massachusetts 02127

83

Re: Naval Underwater Weapons Research  
and Engineering Station  
Case No. 31-4388 E.O.

Dear Mr. Carr:

The undersigned has carefully considered your request for review of the Regional Administrator's dismissal of the petition in the above named case.

Local R1-134, National Association of Government Employees (NAGE) on February 22, 1971, filed a petition with the Boston Area Office seeking exclusive recognition of employees covered by an existing collective bargaining agreement between the Activity and the International Association of Machinists and Aerospace Workers (AFL-CIO), which would terminate on Tuesday, April 20, 1971. The Regional Administrator determined that the last day for timely filing of the petition was February 19, 1971, and dismissed the petition.

The request for review agrees that April 20, 1971, is the terminal date of the agreement, however, it contends that the terminal date, the end of the contract period, is included in determining the sixtieth (60th) day prior to the termination of the agreement. Based on that formula NAGE determined the sixtieth (60th) day to be Saturday, February 20, 1971, and therefore its petition filed on Monday, February 22, 1971, was timely.

Section 202.3(c) of the regulations prescribes in part that when there is a signed agreement covering a claimed unit, a petition for exclusive recognition will not be considered timely unless it is filed not more than ninety (90) days nor less than sixty (60) days prior to the terminal

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date of the agreement. The designated period of time here concerned with is not the period covered by the agreement, but rather the ninety (90) through sixty (60) day period prior to the terminal date of the agreement within which a petition for representation may be filed, and the terminal date of the agreement is not to be included in determining the sixtieth (60th) day prior to that event.

It is, therefore, my conclusion that the sixtieth (60th) and last day on which a petition could be timely filed was February 19, 1971.

Accordingly, your request seeking reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

June 4, 1971

Mr. Raymond P. Blanchard  
Attorney  
Law Offices of Flynn, Powell &  
McGuirk  
Folson Salter Bldg. - 95 Court Street  
Portsmouth, New Hampshire 03801

84

Re: Air National Guard  
Concord, New Hampshire  
Case No. 31-3398 E.O.

Dear Mr. Blanchard:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint filed in the above named case.

The case file reveals that no charge was filed with the Activity prior to the filing of the complaint as is required by Section 203.2 of the Regulations. My policy with respect to compliance with the requirements of this section is set out in Report No. 16 (copy enclosed).

Accordingly, your request that the Regional Administrator's dismissal of the complaint be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JUN 7 1971

85

Mr. Robert Thomas Carty  
609 No. 43rd Street  
Belleville, Illinois 62223

Re: United States Air Force  
Headquarters, Military  
Airlift Command  
Scott Air Force Base,  
Illinois 62225  
Case No. 50-4432 (CA)

Dear Mr. Carty:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint filed March 26, 1970 alleges violations of Section 19(a) (1) and (4) of Executive Order 11491. After investigation, the Regional Administrator dismissed the complaint on March 18, 1971 on the ground that no charge had been filed with the Activity as required by Section 203.2 of the Regulations. From a review of the facts disclosed by the case files it is found that no charge was filed with the Activity prior to March 26, 1970.

Accordingly, your request seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JUN 7 1971

86

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government Employees,  
AFL-CIO  
First District Headquarters  
512 Gallivan Boulevard, Suite 2  
Dorchester, Massachusetts 02124

Re: Defense Supply Agency  
Boston, Massachusetts  
Case No. 31-4300 E.O.

Dear Mr. Kearney:

On April 14, 1971, you filed with me, on behalf of Local 1906, American Federation of Government Employees, AFL-CIO, a request for review of the determination of the Regional Administrator of the New York Region overruling a challenge to the validity of the showing of interest of the Petitioner in the above named case.

The determination of the Regional Administrator was issued on January 7, 1971, and reaffirmed by him on January 20, 1971 after your National Representative had requested a reconsideration of the determination. In his determination the Regional Administrator found that NAGE had made an adequate showing of interest to sustain the petition and directed the Area Administrator to process the petition.

Your request for review concludes with a demand that "a certification of the signatures which were submitted by NAGE in Case No. 31-4300 E.O. be made in order to determine whether or not NAGE is a valid petitioner in this case." You refer to Report No. 21, but contend that in the circumstances in this case that report does not apply.

It is found that Report No. 21 does apply to the present case. The Regulations do not provide for a review by the Assistant Secretary of a determination by a Regional

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 8, 1971

Administrator dismissing a challenge to the validity of a showing of interest.

Accordingly, your request for review seeking reversal of the Regional Administrator's Determination of Showing of Interest is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Emily A. Whittemore, President  
Local 1764, American Federation of  
Government Employees, AFL-CIO  
1252 Travis Boulevard  
Fairfield, California 94533

87

Re: Travis Air Force Base  
Travis Air Force Base,  
California  
Case No. 70-1836

Dear Mrs. Whittemore:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the objection filed by Local 1764, American Federation of Government Employees, AFL-CIO (AFGE) to conduct affecting the results of the runoff election held on March 23, 1971, among certain employees employed at the above named activity.

The conduct alleged to be objectionable was the distribution by the Activity of one hundred thirty (130) page voting lists to observers representing AFGE and Local R12-75, National Association of Government Employees (NAGE), at a conference preceding the runoff election. AFGE contended this gave the observers information as to whom to contact prior to the election.

The evidence reveals that the voting lists referred to contained names identical to those on the voting lists distributed to observers attending the pre-election conference prior to the original election, and that they were identical to those on the alphabetical lists furnished to both AFGE and NAGE by the Activity several weeks before the original election. These were utilized by both labor organizations in extensive electioneering campaigns prior to both elections. The voting lists differed in format only, i.e. the eligible employees were listed numerically by social security number rather than alphabetically.

The Regional Administrator examined the evidence submitted by the parties and determined that the objection is without merit. I agree with his conclusion.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the objection is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 8, 1971

Mr. P. Harris  
President  
Mailhandlers' Local 75  
Mailhandlers' Division of the Laborers'  
International Union of North America  
(AFL-CIO)  
3764 Rockport Place, S. W.  
Atlanta, Georgia 30331

88

Re: United States Post Office  
Atlanta, Georgia  
Case No. 40-2384 CA)

Dear Mr. Harris:

The undersigned has received your request for review of the Regional Administrator's dismissal of your complaint in the above named case.

The Regional Administrator, in his letter of March 23, 1971, advised you of your right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned to be received by me by the close of business April 3, 1971. It was later determined that service on you of that letter was not accomplished until after a request for review could be timely filed. Accordingly, the Regional Administrator, by letter dated April 19, 1971, extended the filing period until the close of business May 3, 1971, and receipt of this extension of time was acknowledged by you on April 20, 1971.

Your request for review dated May 2, 1971, was mailed at Atlanta, Georgia postmarked May 3, 1971, the date it was required to be received in my office. It was received in my office at a later date.

Accordingly, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 8, 1971

Mr. Irving I. Geller  
Director  
Legal & Employee Relations  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

89

Re: Department of the Army  
Picatinny Arsenal  
Dover, New Jersey  
Case No. 32-1954 E.O.

Dear Mr. Geller:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint filed by National Federation of Government Employees (NFFE), alleges that Respondent violated Sections 19(a) (1) and (3) of the Executive Order essentially by:

(1) Harassing a NFFE Local 1437 Vice President in his employee representational efforts for the past ten months.

(2) Issuing a reprimand against an NFFE Local 1437 Treasurer, because of his union activities.

(3) Permitting AFGE to have on display, a copy of their newspaper in news stands, in areas of the Activity for which they do not have exclusive recognition.

With respect to (1), the investigation revealed that the first part of the complained of interference occurred in March 1970, more than six months prior to the filing of a charge on December 3, 1970 against the Agency and would be untimely under Section 203.2 of the Regulations. Concerning those acts which could have occurred within the six month period, the investigation disclosed that although initially told by a supervisor in July 1970, that he could not represent an employee because of exclusive AFGE representation, your Local Vice-President's complaint to the Personnel Chief led to a reversal of this decision.

With respect to (2), the Regional Administrator's finding was not questioned by you in your request for review.



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WASHINGTON

With respect to (3), the investigation showed NFFE has been afforded an equal opportunity to distribute literature. The investigation did not reveal that NFFE was ever denied newspaper display opportunities which have been afforded AFGE.

June 18, 1971

Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Mr. Stanford C. Madden  
Attorney  
6225 Brookside Boulevard,  
Room 215  
Kansas City, Missouri 64113

90

W. J. Usery, Jr.  
Assistant Secretary of Labor

Re: Region 17, NLRB  
Case No. 60-1943

Dear Mr. Madden:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the complaint filed by William M. Guerin in the above case alleging violation of Section 19(a)(1), (2), and (4) of the Executive Order together with all supporting evidence.

In agreement with the Regional Administrator, I am of the opinion that the evidence fails to establish that the Agency's refusal to promote William M. Guerin to Grade GS-13 was based upon unlawful considerations. Accordingly, and absent any other probative evidence of violation, your request for reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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Accordingly, your request for reversal of the Regional Administrator's action is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

JUN 21 1971

Mrs. Sarah B. Buettner  
President, Local Union 803  
National Federation of Federal Employees  
P. O. Box 3947  
Texarkana, Texas 75501

91

Re: Red River Army Depot  
Texarkana, Texas  
Case No. 63-2572 (CO)

Dear Mrs. Buettner:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The case file indicates that the complaint dismissed in the above named case by the Regional Administrator on March 11, 1971, was in fact, not intended to be a complaint as contemplated by Part 203 of the Regulations, but rather was intended to be a challenge to the validity of showing of interest filed by Local Union No. R14-52, National Association of Government Employees (NAGE) in Case No. 63-2534 (RO). According to your letter dated March 4, 1971, addressed to the Dallas, Texas, Area Administrator, which was attached to your request for review, complaint form LMSA 62 was used to challenge the validity of showing of interest of NAGE, based on information received by you from the Area Office.

Notwithstanding the incorrect form used, your challenge was fully considered and dismissed on the merits by the Regional Administrator in his Dismissal of Challenges to Showing of Interest dated April 23, 1971, of which I take administrative notice. I have previously ruled that a Regional Administrator's dismissal of a challenge to the validity of showing of interest will not be reviewed by the Assistant Secretary because the Regulations make no provision for such procedure. Enclosed for your information is a copy of Report No. 21 which relates to this point.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 7, 1971

Mr. Joseph E. Welch, Jr.  
2911 Mosby Street  
Alexandria, Virginia 22305

Re: Joseph E. Welch, Jr. Complainant  
Washington Printing Pressmen's  
Union No. 1, IPPA, Respondent  
Case No. 22-2333

Dear Mr. Welch:

This is in reply to your request for review of the decision of the Regional Administrator in Philadelphia dismissing your complaint in the above-named case.

I have reviewed all the pertinent information and have concluded that the complaint should not have been dismissed for lack of jurisdiction, since Local 1 is subject to Executive Order 11491. I have accordingly directed the Regional Administrator to consider the complaint in accordance with existing procedures.

Sincerely, yours,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

6/21/71

Mr. Nathan T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

93

Re: Veterans Administration Hospital  
Amarillo, Texas  
Case No. 63-2176

Dear Mr. Wolkomir:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by the National Federation of Federal Employees, Local 1138 (NFFE) to conduct of the election or conduct affecting the results of the election held among certain employees of the Activity on September 30, 1970.

Objection a

Objection a contains eight allegations which the NFFE claims show that the Activity was biased and prejudiced in favor of the Intervenor, the American Federation of Government Employees (AFGE).

Objection a(1) alleges that although NFFE filed a RO petition the first week of July 1970, AFGE continued to retain all the privileges of an exclusive representative, and that NFFE was denied these privileges for most of the time during the "open season." The investigation reveals that AFGE had an exclusive agreement with the Activity that began on July 8, 1966, and was due to expire on October 2, 1970. As a result of this agreement AFGE was furnished office space; allowed to use bulletin boards; and was furnished space for meetings. The evidence discloses that an election campaign agreement was signed by both unions on September 15, 1970, and amended on September 25, 1970, which provided equal opportunity for election campaigning to both unions. No evidence was submitted that shows AFGE received preferential treatment from the Activity that affected the results of the election due to its status as the exclusive representative of the employees in the unit, and no objectionable conduct is found in regard to this allegation.

Objection a(2) alleges that on September 11, 1970, a newsletter was circulated to non-duty employees by NFFE, and that subsequently the local president of NFFE was directed by letter "to cease and desist from distributing NFFE Local 1138 material on VA property." The investigation reveals that on September 10, 1970, employees of the Activity who were members of NFFE, placed newsletters in mail slots in a ward of the hospital. These newsletters were removed by management. NFFE protested this action by letter dated September 10, 1970. On September 11, 1970, the Personnel Officer of the Activity answered in writing the NFFE letter of September 10, 1970. This Activity letter contained the "cease and desist" language referred to in this objection, and will be considered in Objection a(5) where this letter is the subject of an objection.

The circulation of a newsletter to employees on September 11, 1970, by employees of the Activity who were members of NFFE is the basis for this objection. The case file reveals that local officers of NFFE were observed distributing NFFE newsletters on Activity premises on September 11, 1970. They were orally notified by the Personnel Officer that such distribution was improper and would not be permitted on hospital premises unless authorized by a campaign agreement.

A prohibition on employee electioneering on activity premises until an election agreement was established was ruled on by the undersigned in Charleston Naval Shipyard, A/SIMR No. 1. The Charleston decision was issued on November 3, 1970, and the Report and Findings on Objections by the Regional Administrator in this case was issued on December 23, 1970. As the Regional Administrator's Report does not indicate that the Charleston decision was considered in making his determination regarding this objection, I shall remand the case to him for his consideration as to what effect, if any, the Charleston decision would have on the conduct alleged in this objection.

Objection a(3) alleges the Petitioner was denied a meeting place on September 10, 1970, while at the same time AFGE had an office space with no restrictions on meetings. The investigation discloses that AFGE had been authorized business office space early in 1970, but this space was revoked on September 15, 1970, due to the fact that the Activity could not provide comparable space to NFFE as requested. The Activity noted in a letter dated September 24, 1970, to NFFE that the two meetings held by AFGE since NFFE had filed its petition, and which NFFE had protested, were regular monthly business meetings of AFGE. It is noted in the election campaign agreement dated September 15, 1970, that both unions were authorized to have one meeting and to use the same conference room on Activity property prior to the election. No objectionable conduct is found in regard to this allegation.

Objection a(4) alleges NFFE was not provided access to all employees as indicated in Exhibit No. 3. Exhibit No. 3 is a letter "To Whom Concerned" signed by a national representative of NFFE. The representative states he saw employees leaving work by an exit not covered as a distribution point for distributing election campaign literature. The parties signed the original election campaign agreement on September 15, 1970, which provided that election campaign literature could be distributed on September 24, 25, 28, and 29, 1970 at two identified locations. After a complaint about the agreement from NFFE, it was amended on September 25, 1970, adding two more places for campaign material distribution on September 28, 29, 1970. As both of these election campaign agreements were signed by the presidents of both local unions, and as both unions were afforded equal rights, no merit is found to the allegation.

Objection a(5) alleges that management failed to initiate adverse action against the person or persons who removed NFFE's news letter from mail slots as indicated in Exhibit No. 4, and that the local president of NFFE received unjust criticism as indicated by Exhibit No. 1.

The case file shows that Exhibit No. 1 is the Activity letter referred to in Objection a(2). In part, this letter states, "You are herewith directed to cease and desist from distributing NFFE Local 1138 material on VA property." This same letter made it clear that NFFE was to stop campaigning only until election campaign arrangements were agreed to by all parties at a meeting which had already been scheduled within three days of the date of the letter.

It is noted that this letter contains a broad prohibition on the distribution of NFFE material on Activity premises, even though the ban was to be effective only for a short period of time. As a result, I conclude that this conduct should be considered in light of the Charleston decision, for a determination as to what effect, if any, that decision may have on the conduct alleged in this objection.

Objection a(6) alleges that prior to a NFFE letter to the Activity dated September 21, 1970, NFFE was forced to process payroll deductions for new NFFE members by mail in conflict with the Federal Personnel Manual. The Activity categorically denied this allegation, but in any event, no relationship is found between the method of processing payroll deductions for union members and the conduct of the election. Therefore, no improper conduct affecting the results of the election is found in regard to this allegation.

Objection a(7) alleges that since NFFE filed its petition, now employees have reported to NFFE that the Personnel Division has been biased in favor of AFGE as the employees' representative. The case record reveals that the conduct relied upon in support of this objection was required to be done by the contract in effect between the Activity and AFGE, and it is further found that there was no objectionable conduct in regard to this objection that affected the results of the election.

Objection a(8) alleges that despite assurance from the Activity at the time of the election campaign agreement that all markings for AFGE on department bulletin boards would be removed, the red tape which had become a recognized portion of AFGE markings was not removed. The investigation reveals that the last sentence under paragraph 1 of the September 15, 1970 election campaign states: "AFGE Local 665 will remove their material posted on bulletin boards along with their identification." The Activity certified that all material posted by AFGE was removed, but the red tape was not removed as it served only the purpose of marking off a specific amount of space on each bulletin board. As set out in Report Number 20 (copy attached), the Assistant Secretary will not undertake to police side agreements between the parties and the breach thereof; absent evidence that the conduct constituting such breach had an independent improper effect on the conduct of the election or the results of the election. It is found that the failure to remove the red tape from the bulletin boards did not have an independent improper effect on the conduct of the election or the results of the election, and accordingly, no merit is found to this objection.

Objection b

Objection b alleges that a steward of AFGE used the nursing assistant mail slots to notify personnel of an AFGE meeting to be held on September 21, 1970 which was a clear violation of the campaign agreement. The investigation revealed that the incident happened as alleged. AFGE acknowledged the incident, but said it occurred because of a communications breakdown. The local president of AFGE was admonished by the Activity about the incident, and in the interest of equity, NFFE was advised it could use the same facilities to notify nursing assistants who were members of NFFE about an authorized meeting NFFE had scheduled for September 24, 1970. In view of the prompt action taken by the Activity to correct this situation, and as it is found this incident did not have an independent improper effect on the conduct of the election, it is concluded this objection is within the purview of Report No. 20, and the dismissal of Objection b by the Regional Administrator was warranted.

Objection c

Objection c alleges that the names of all new members of NFFE are made available to AFGE, and that the local president of AFGE threatened several new members of NFFE during duty hours despite the fact NFFE has repeatedly asked the Activity to keep the names of new NFFE members confidential. The case file reveals that the Activity denies making the names of new members of NFFE available to AFGE, and that the local president of AFGE has denied making threats to NFFE members. In its request for review NFFE alleges it has evidence to support this allegation, which if true, may present a relevant question of fact. As it is not clear from the case file that NFFE had an adequate opportunity during the investigation to present all of its evidence with respect to this objection, the instant case will be remanded to the Regional Administrator for the purposes of having further investigation conducted, regarding the allegations raised in Objection c.

Objection d

Objection d alleges that the local vice president of AFGE circulated what he called a "poll" during duty hours, soliciting employees who were eligible to vote to sign their names if they were going to vote for AFGE. The investigation reveals that the Activity denied knowledge of this alleged poll, and that the named officer of AFGE denied the allegation. Although this objection raises a question of fact, it is found it does not raise a material issue because under the circumstances alleged, a union agent's interrogation of employees as to union affiliation and voting intentions does not constitute objectionable conduct that would affect the results of the election. Accordingly, the dismissal of Objection d by the Regional Administrator was justified.

As the undersigned has agreed with the findings of the Regional Administrator that Objections a(1), a(3), a(4), a(6), a(7), a(8), b and d have no merit; and that Objection c requires additional investigation; and that Objections a(2) and a(5) should be reconsidered, it is concluded that the case should be remanded to the Regional Administrator for the purposes set forth above, and for issuing a supplementary report of his findings.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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JUN 23 1971

Mr. E. Quinones  
Director  
ITPGE, National Maritime Union  
608 Calle Monserrate, Pda 15½  
Santurce, Puerto Rico 00908

94

Re: Department of the Navy  
U.S. Naval Station  
San Juan, Puerto Rico  
Case Nos. 37-776 & 37-780

Dear Mr. Quinones:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by National Maritime Union of America AFL-CIO, (NMU) to the conduct of an election held among certain employees of the Activity on October 28, 1970. Based upon a full review of your objections to the election in the subject case and the evidence supplied in support thereof, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

Your first ground for reversal of the Regional Administrator referred to but not discussed in your request for review was that your request to intervene submitted on June 22, 1970 was held for 30 days before the Area Administrator advised you that an amendment was required, which delay improperly gave Local 2614, American Federation of Government Employees, AFL-CIO (AFGE), additional time to campaign, must be rejected. The thrust of your objection appears to concern the 30 days between the time of NMU's request to intervene on June 22nd and the letter from the Area Administrator on July 22nd advising that all parties could now proceed to discuss the possibility of a consent agreement. Considering the facts that an intervenor does not normally amend its petition, the problem of definition of the appropriate unit as well as the wide disparity in the number of employees alleged to be in the unit in

AFGE's and NMU's petitions, which presumably was supposed to be identical and given the posting requirement, the 30 days consumed does not appear to be an excessive expenditure of time.

Your second ground for reversal which was discussed in your request for review basically reiterates what was stated in the objection with respect to the alleged slow processing of NMU's request to intervene by the Area Administrator, resulting in a 5 month delay from the filing of the petition to the election. Additionally, the complaint is that "AFGE's brazen refusal to refuse to consider an election date at the meeting of August 20, 1970 was grounds for an immediate dismissal of their petition", since by so doing it flouted Labor Department procedure, gained additional campaigning time, and should not have been on the ballot at all. I find that no undue delay was caused by the Area Administrator in this matter. Further, regardless of these alleged facts, the parties did meet and execute a consent election agreement and NMU participated in the election.

Your third ground for reversal, referred to but not discussed in your request for review, alleged that "AFGE representatives including Mr. Benjamin, visited the Base during times labor organization representatives were not permitted to go on the Base", thus allowing AFGE to make employee contact "during unauthorized periods" despite NMU protests to the Agency. I find no merit in this objection, since at least two of the four incidents which investigation revealed formed the basis for this objection (unauthorized electioneering), took place among employees not in the voting unit. With respect to the two other alleged incidents, investigation disclosed that one concerned several minutes of additional campaigning by AFGE, because of poor synchronization of watches, and the second which occurred nearly two months prior to the election, concerned granting permission to AFGE to campaign on the Base while NMU was so engaged, despite an earlier Activity refusal to NMU to campaign while AFGE was so engaged. All of the incidents appear to be isolated in nature, and insignificant in view of the wide-spread electioneering by NMU, which did take place and the lack of any evidence to indicate any intentional discriminatory treatment of NMU by the Activity.

In these circumstances your request for reversal of the Regional Administrator's dismissal of your objections to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 23, 1971

Mr. Raymond J. Malloy  
Associate Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

95

Re: Veterans Administration Hospital  
Miami, Florida  
Case No. 42-1451

Dear Mr. Malloy:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by American Federation of Government Employees, (AFL-CIO), Local 1283 (AFGE).

The request for review lists six reasons for reversal of the Regional Administrator's action which break down to two general alternative positions, first, that by a correct application of the Regulations the petition was filed timely, and second, that if the conclusion is that the petition was filed untimely by one day it should be accepted as timely under the facts and circumstances presented.

Your first point is that the calculation of the open period of the agreement found to be a bar to your petition should be made by taking March 29, 1971 as the terminal date of the agreement. You state that such a date would result in January 28 being the last timely date for filing the petition. Taking Section 205.1 of the Regulations as authority for the correctness of this calculation you state:

"In calculating the period of time for all legal purposes, e.g., time to respond to service of complaints and charges, and all periods of time set forth in the Rules and Regulations, the day of service or the first effective day is never counted in determining the number of days in which response or action is required. The Assistant Secretary can take judicial notice that this is the manner in which his own Rules and Regulations are applied and is the traditional manner of computing time."

I disagree with this analysis and point out to you that Section 202.3(c) is the controlling section for the determination of the time boundaries of the open period and not Section 205.1 which has only pros-

pective application. Applying Section 202.3(c), I find that January 27, 1971 was the last day for the filing of a timely petition.

The additional five points made in the request for review are intended to support the position that, conceding for the purpose of argument that the filing was late, the petition should be accepted as timely in view of alleged facts and circumstances. I have considered these points and find them to be without merit.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JUN 25 1971

Mr. Louis J. Tulino  
National Field Director  
National Association of Letter Carriers  
P. O. Box 159  
Ashtabula, Ohio 44004

96

Re: U. S. Post Office  
Hammond, Indiana  
Case No. 53-3387

Dear Mr. Tulino:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case alleging violation of Section 19 (a) (1) and (6) of the Executive Order.

In agreement with the Regional Administrator, I find that the evidence fails to establish that the Agency's action implementing a change in the workweek schedule of letter carriers at the Hammond, Indiana postal facility violated the Executive Order. The evidence does establish that the Agency consulted with you on several occasions and offered to reinstate half of the Monday to Friday schedules it first announced would be changed, as a compromise adjustment of your grievance. Further, it appears that the action taken by the Agency was necessary to enable it to carry out its mission properly.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JUN 25 1971

Mr. Victor Rosario  
President  
American Federation of Government  
Employees, Local 2614  
601 De Diego Avenue  
Puerto Nuevo, Puerto Rico 00920

97

Re: U.S. Naval Exchange  
U.S. Naval Station  
San Juan, Puerto Rico  
Case No. 37-791 E.O.

Dear Mr. Rosario:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's decision dismissing your objections to conduct affecting the results of the election held on February 25, 1971 in the above named case.

The Regional Administrator, in his May 19, 1971 decision, served on all parties on that date, advised that any party aggrieved by his findings could obtain review of his decision by filing a request for review with the undersigned to be received by the close of business June 1, 1971, and directed the parties' attention to Section 202.20(f) of the Regulations. Your request for review, dated May 28, 1971 but not post-marked until June 1, 1971, was received after that date and, therefore, was untimely.

In view of the foregoing, your request for review will not be considered on its merits, and is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 25, 1971

Mr. John E. Doss, Jr.  
President  
Federal Employees Council No. 270  
P. O. Box 270  
Hackettstown, New Jersey 07840

98

Re: Picatinny Arsenal  
Department of the Army  
Dover, New Jersey  
Case No. 32-1818 E. O.

Dear Mr. Doss:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint filed by Federal Employees Council No. 270 (FEC) alleges that Respondent violated Section 19(a)(6) of Executive Order 11491 for the reason that it refused to consult, confer or negotiate concerning a jurisdictional question arising as a result of Respondent's assigning work of Wage Board employees, represented exclusively by another labor organization, to be performed by uniformed guards, Classification Act employees, represented exclusively by FEC. The assigned work is that of changing tires and putting chains on tires on police vehicles when necessary during the midnight shift, Saturdays, Sundays and holidays when garage (Wage Board) employees are off duty.

Initially, FEC invoked established grievances procedures to resolve the issue, and those procedures were followed through a hearing before a Grievance Examiner. The Examiner found that the circumstances under which the work is to be performed are those of emergency under which the Civil Service Commission permits assignment of incidental duties inappropriate to an employee's position. Subsequent to the Examiner's finding FEC withdrew from the grievance procedure and submitted the issue directly to Respondent for discussion as a question concerning work jurisdiction. Respondent's decision was that

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WASHINGTON

the assignment was within its authority under Section 12 of the Executive Order and that a jurisdictional question was not involved. FEC then filed a complaint under Executive Order 11491. The Regional Administrator subsequently dismissed FEC's complaint based on his finding that no reasonable basis for the complaint had been established.

For the past seven years or more the fact is that the changing of tires and the putting on of tire chains by uniformed guards during the midnight shifts on Saturdays, Sundays and holidays have been an established term and condition of employment of the uniformed guards working these shifts. This being the case the Activity was under no obligation to bargain during the term of the agreement about the continuance of this established practice.

In view of the above disposition of the case by the Regional Administrator I find it unnecessary to decide whether, as found by the Regional Administrator, the election of the grievance procedures by FEC before the filing of the unfair labor practice charge had the effect of removing my jurisdiction to review the dismissal of the complaint.

Accordingly, your request seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

June 25, 1971

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman, Cohen  
and Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

99

Re: Federal Aviation Administration  
New York Air Route Traffic Control  
Center  
Case No. 30-3213 E.O.

Dear Mr. Peer:

The undersigned has considered carefully your Motion for Stay of Election and Request for Review of the Regional Administrator's dismissal on June 15, 1971 of your Motion to Intervene, Motion to Consolidate and Motion to Dismiss the Petition in the above named case.

The Regional Administrator relying on Section 202.5(c) of the Regulations denied your Motion to Intervene on the basis that since Professional Air Traffic Controllers Organization, New York Air Route Traffic Control Center Chapter was not eligible to intervene during the ten day posting period starting March 11, 1971 it did not achieve status as a party to this proceeding. I agree with his ruling on the Motion to Intervene for the same reason.

Accordingly, your Motion for Stay of Election and your request for reversal of the Regional Administrator's denial of your motion to intervene are denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 28, 1971

Mr. Gordon P. Ramsey  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

**100**

Re: Norfolk Naval Shipyard  
Case No. 22-2551 (CA)

Dear Mr. Ramsey:

The undersigned has considered carefully your request for review seeking to reverse the Regional Administrator's dismissal of the complaint brought against the above named Activity on May 14, 1971, by the National Association of Government Employees (NAGE) which also requested the stay of the election scheduled at that Activity for May 24, 1971, pending resolution of the request for review.

Under date of May 20, 1971, the parties were advised of my action directing the Regional Administrator to proceed to supervise the election on May 24, 1971, and to impound the ballots upon conclusion of the election.

In agreement with the Regional Administrator, I find that the complaints of May 5 and 10, 1971 were untimely filed.

With respect to the complaint of May 14, 1971, it is my conclusion that the allegation that Mr. Al Washington and Mr. T. J. Smith, International Representatives of the Metal Trades Council were electioneering and campaigning and soliciting employees in the shipyard was timely filed, based on the April 13, 1971 charge letter to the Activity.

Accordingly, the case is remanded to the Regional Administrator with the direction to reinstate the complaint solely for the purpose of considering the evidence submitted by the parties in respect to this allegation.

During the pendency of the complaint proceeding the ballots shall continue to be impounded.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D. C. 20210



JUN 30 1971

William B. Peer, Esquire  
Bredhoff, Barr, Gottesman, Cohen & Peer  
1000 Connecticut Avenue, N.W.  
Washington, D. C. 20036

**101**

Re: Federal Aviation Administration  
Case Nos. 22-1990, 1991, 1993  
1994, 1995, 1996, 1998, 1999  
2002, 2003, 2004, 2005, 2008  
2009, 2010, 2011, 2012, 2013  
2016, 2017

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissals of the complaints filed in the referenced cases alleging violations of Section 19(a)(1) and (2) of the Executive Order.

In agreement with the Regional Administrator, I am of the opinion that my Report No. 25 dated March 1, 1971, is applicable to the circumstances of these cases. The evidence shows that the complaints herein are subject to an established grievance and appeals procedure. Accordingly, your request for the reversal of the Regional Administrator's dismissal of the complaints is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

July 2, 1971

102

Mr. Anthony Cafaro  
600 - 61st Avenue  
St. Petersburg, Florida 33705

Re: 81st Army Command  
Case No. 42-1419

Dear Mr. Cafaro:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The complaint alleges that the Activity violated Sections 19(a)(1), (2), (4), and (5) of Executive Order 11491 by withholding a promotion from you, by assigning heavy work to you and by anti-union remarks made by your supervisor to employees.

Investigation of the complaint showed that the supervisor did make anti-union remarks and that when this was brought to the notice of the Activity prompt steps were taken to bring a stop to such supervisory remarks by the posting of appropriate notices. The Activity also agreed to post a formal notice submitted by the Area Office of the Department of Labor as an acceptable settlement of the 19(a) (1) allegation of the complaint.

The Regional Administrator dismissed the 19(a) (1) allegation on the basis that the offer of the 60 day posting of the formal LMSA notice was a satisfactory offer of settlement under the Regulations of the Assistant Secretary of that part of the case. He dismissed the 19(a) (2), (4) and (5) allegations on the grounds that no reasonable basis for the 19(a) (2) allegation had been established and that no evidence was furnished to establish a reasonable basis for the 19(a) (4) and (5) allegations.

I agree with the Regional Administrator's conclusions as to these allegations. The facts disclosed by the case file show that your grievances and difficulties with your supervisor have nothing to do with anti-union statements by him.

In your request for review you complain that the Area Office did not come to your area to examine evidence you say you have in proof of every charge. The case file indicated that adequate information was obtained to support fully the conclusions reached.

However, I wish to advise you that Section 203.2 of the Regulations places the responsibility upon the parties to investigate alleged unfair labor practices and to make informal attempts to resolve them. Enclosed is a copy of Report No. 24 which gives a detailed explanation of this point.

Accordingly, based on the foregoing, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 12, 1971

Mr. Joseph J. Stengel  
Chief, General Legal Branch  
Operations and Planning Division  
Office of Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, N. W.  
Washington, D. C. 20224

103

Re: Internal Revenue Service  
Office of Regional Counsel  
Western Region  
Case No. 70-1877

Dear Mr. Stengel:

The undersigned has considered carefully your request for review of the Regional Administrator's action in dismissing your challenge to the adequacy and validity of petitioner's showing of interest in the above named case.

You are advised that no provision is contained in the Rules and Regulations for review of a Regional Administrator's action dismissing a challenge to the adequacy or to the validity of the showing of interest of a labor organization. Enclosed are copies of Reports Nos. 21 and 30 relating to these points.

Further, your request for review seeks to raise issues concerning the inclusion of attorneys within a bargaining unit which are premature at this time and will be entertained by the undersigned only after a record is made in a representation proceeding.

Accordingly, your request for review is denied and the Regional Administrator is directed to continue processing the case.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D. C. 20210



JUL 12 1971

Mr. Gene A. Gerri  
President  
American Federation of Government  
Employees, AFL-CIO, Local 2335  
114 North Main Street  
Pleasantville, New Jersey 08232

104

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Station  
Case No. 32-1834 E.O.

Dear Mr. Gerri:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your objections to the runoff election held in the above named case on February 18, 1971.

With respect to Objections Nos. 1 and 2, I am in agreement with the findings of the Regional Administrator. I conclude that these two objections lack merit.

In regard to Objection No. 3, which alleged that two employees were misinformed as to their voting times and rights by their supervisor, it is noted that Local 2335, American Federation of Government Employees, AFL-CIO (AFGE), was a party to an agreement signed February 12, 1971, which provided for special arrangements for the employees involved to vote on working time on the day prior to the election held on February 18, 1971. Moreover, the investigation reveals that both of these employees were members of AFGE, and that one of them had been a member of AFGE for eight years. In these circumstances, it is concluded that AFGE shared in the responsibility to inform these employees of the "special" arrangements made for them to vote on working time. Therefore, based on the foregoing, it is concluded that Objection No. 3 does not have merit.

Also, with respect to Objection No. 3, you contend for the first time in your request for review, that the Notice of Election posted in Building 301 gave an incorrect date for the date of the election held on February 18, 1971. As this allegation was not contained in the original objections, it

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WASHINGTON

is untimely, in accordance with Report No. 22 (copy enclosed), and will not be considered by the undersigned.

Accordingly, your request for review seeking reversal of the Regional Administrator's action in dismissing AFGE's objections to the runoff election conducted on February 18, 1971 is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

July 16, 1971

Mr. Edward Harvey  
President  
Local 1904, American Federation  
of Government Employees, AFL-CIO  
P. O. Box 231  
Eatontown, New Jersey 07724

105

Re: U. S. Army Electronics Command  
(TRI-TAC)  
Fort Monmouth, New Jersey  
Case No. 32-2201

Dear Mr. Harvey:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your request to intervene in the above named case.

It is found, in agreement with the Regional Administrator, that your request to intervene was untimely filed. Further, your request for review fails to show good cause for extending the ten day intervention period set forth in Section 202.5 of the Regulations or to raise any material issue which would warrant reversal of the Regional Administrator's action.

Accordingly, your request for reversal of the Regional Administrator's dismissal of your request to intervene is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
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WASHINGTON

July 23, 1971

Mr. W. H. Bell  
Branch President  
Padre Island Branch 1259  
National Association of Letter  
Carriers  
6317 Trixie Drive  
Corpus Christi, Texas 78412

106

Re: U. S. Post Office Department  
Dallas Postal Region  
Dallas, Texas  
Case No. 63-2837 (CA)

Dear Mr. Bell:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging violation of Section 19(a)(3) of Executive Order 11491.

I find, in agreement with the Regional Administrator, that there is no evidence that the application of the Local President of the National Postal Union, Corpus Christi, was solicited for a position as ad hoc Hearing Officer-Investigator in any manner other than through the posting of the notice soliciting applicants, nor is there evidence that anyone was denied the right to apply or that other than equal consideration was given to all who did apply for that position.

Further, I find that neither the method of training applicants for the position, nor the terms and conditions under which the training is given, are objectionable or inconsistent with the policies of the Order.

My position with respect to the investigation of complaints alleging violations of the unfair labor practice provisions of the Order is set forth in my Report on Decision No. 24, a copy of which is attached for your information.

Accordingly, your request for review seeking reversal of the dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 10210



JUL 27 1971

107

Mr. William B. Peer  
Bredhoff, Barr, Gottesman, Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D.C. 20036

Re: Federal Aviation Administration  
Case Nos. 22-2007, 22-2014, 22-2018,  
22-2021, 22-2022, 22-2023, 22-2025,  
22-2026, 22-2027, 22-2028, 22-2029,  
22-2031, 22-2032, 22-2034, 22-2036,  
22-2037, 22-2038, 22-2039, 22-2040,  
22-2041, 22-2042, 22-2043, 22-2045,  
22-2046, 22-2047, 22-2094, 22-2095,  
22-2096, 22-2412, 22-2413, 22-2415.

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissals of the complaints filed in the above numbered cases alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

As I informed you in my letter of June 30, 1971, in Cases Nos. 22-1990, 1991, 1993, 1994, 1995, 1996, 1998, 1999, 2002, 2003, 2004, 2005, 2008, 2009, 2010, 2011, 2012, 2013, 2016, 2017, dealing with the identical issues presented herein, I am of the opinion that my Report No. 25 dated March 1, 1971, is applicable to the circumstances of the above numbered cases. Your request for review in the instant cases contains no allegations which would lead me to alter this opinion. The evidence shows that the complaints herein are subject to an established grievance and appeals procedure. I agree with the determination of the Regional Administrator that he had no jurisdiction in these matters.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

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WASHINGTON

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mailing services to employees at their duty stations. It is concluded that these questions can best be resolved on the basis of record testimony.

Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

JUL 30 1971

Mr. Edward F. Rains  
Acting Commissioner of Customs  
Bureau of Customs  
The Department of the Treasury  
Washington, D. C. 20226

Thomas M. Gittings, Jr., Esq.  
Suite 520, Shoreham Building  
800 Fifteenth Street, N. W.  
Washington, D. C. 20005

108

Re: Bureau of Customs  
Region I  
Boston, Massachusetts  
Case No. 31-3306 R.O.

Gentlemen:

The undersigned has considered carefully your separate requests for review and supporting statements seeking reversal of the Regional Administrator's determination finding merit to certain objections filed by American Federation of Government Employees Customs Council-Region I, and ordering that the election be set aside and that a new election be held.

Section 202.19 of the Regulations provides that "Upon the conclusion of the election, the Area Administrator shall cause to be furnished to the parties a tally of ballots." Section 202.20(a) of the Regulations provides a five day period for the filing of objections to an election. The investigative file in this matter raises a question as to when a tally of ballots was furnished to the parties.

In addition to the procedural issue which goes to timeliness of the objections, the requests for review raise major policy issues under Executive Order 11491 including the right of non-employee organizers to conduct an election campaign on the Activity's premises and the Activity's duty to provide



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WASHINGTON, D.C. 20210



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basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

AUG 3 1971

Mr. Robert M. Tobias  
Staff Counsel  
National Association of Internal  
Revenue Employees  
Suite 1100-711 Fourteenth Street, N. W.  
Washington, D.C. 20005

109

Re: Internal Revenue Service  
Jacksonville District  
Jacksonville, Florida  
Case No. 42-1505 (CA)

Dear Mr. Tobias:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Internal Revenue Service refused to furnish the home addresses of unit employees in violation of Section 19(a)(6) of the Executive Order.

While the request for review was under consideration (by the undersigned) a request for dismissal of the request for review was received on July 23, 1971 from Mr. Robert J. Wilson, Labor Relations Specialist, Internal Revenue Service on the ground that the request for review was not filed within the 10 day period following the dismissal of the complaint on May 20, 1971 as required by the Regulations, Section 203.7(c). However, a request for review was filed on May 26, 1971, coupled with a request for an extension of time to July 7, 1971 "to file a statement setting forth facts and reasons upon which the request for review is based." An extension of time for the stated purpose was granted to close of business on June 21, 1971 and a copy of the letter of May 28, 1971 granting the extension was sent to Mr. A. J. O'Donnell, Jr., District Director, Internal Revenue Service in Jacksonville, Florida. Thereafter, an expanded request for review was timely filed on June 21, 1971. Accordingly, the request to dismiss the request for review as untimely is denied.

I am of the opinion that the request for review raises major policy issues which can be resolved best on the

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WASHINGTON

May 14, 1971

AUG 3 1971

Mr. Geoffrey D. Spinks  
Labor Relations Advisor  
Labor & Employee Relations Division  
Office of Civilian Manpower Management  
Department of the Navy  
Washington, D.C. 20390

110

Re: Department of the Navy  
Corpus Christi Naval Air Station  
Case No. 63-2657 (RO)

Dear Mr. Spinks:

Your request for review seeking reversal of the Regional Administrator's action in denying a Motion to Dismiss Petition in the above named case has been considered carefully.

The Regulations make no provision for a review of a Regional Administrator's action in denying a motion to dismiss a petition. My views on this subject are set forth in Report No. 8 (copy enclosed). Accordingly, your request that the Regional Administrator's action in denying a Motion to Dismiss Petition be reversed is denied.

The Regional Administrator stated his intention in his Denial of Motion to Dismiss Petition, dated April 11, 1971, to issue a Notice of Hearing in this proceeding. I am in accord with this course of action because it will provide an adequate opportunity for all interested parties to express fully their positions on all relevant matters. As a matter of procedure, the Activity is herewith directed to post promptly the Notice to Employees, LMSA 1102, based upon the petition filed on March 4, 1971 by the International Association of Firefighters, AFL-CIO in the above named case.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman,  
Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

111

Re: Federal Aviation Administration  
New York Air Route Traffic  
Control Center  
Case No. 30-3213 E. O.

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's denial of PATCO, NYARTCC Chapter's request to intervene in the above-named case.

In all the circumstances, I conclude that the Regional Administrator's action was proper. Thus, in the PATCO decision, A/SLMR No. 10, I stated that,

"until such time as the Professional Air Traffic Controller's Organization, Inc., affiliated with the National Marine Engineers Beneficial Association, AFL-CIO (PATCO-MEBA) can demonstrate to my satisfaction that it has complied with my Decision and Order, and that it will comply in the future with the provisions of the Executive Order, I shall not permit it to utilize the procedures available to a labor organization within the meaning of Section 2(e) of the Executive Order." (emphasis added)

The above statement clearly indicates that to permit intervention in the subject case by a chapter of PATCO-MEBA at a time when there has been no finding by the Assistant Secretary of compliance with the Decision and Order in A/SLMR No. 10 would be inconsistent with that Decision and Order. With respect to your contention that footnote 5 in A/SLMR No. 10 provides a basis for intervention in this matter, it should be noted that this footnote,

which states in pertinent part that "Recognitions granted to PATCO under Executive Order 10988 are not affected by this Order...", is applicable to that portion of the body of the Decision and Order which states that pending PATCO-MEBA petitions will be dismissed. In this context, the import of footnote 5 was to indicate that the Decision and Order dismissing pending PATCO-MEBA petitions was not, of itself, intended to affect existing recognitions. On the other hand, consistent with the above-cited language of the Decision and Order denying to PATCO-MEBA the utilization of the Executive Order's procedures until such time as there has been a finding of compliance, interventions and other participation by PATCO-MEBA in any subsequently filed cases under Executive Order 11491 was clearly prohibited during the compliance period irrespective of any challenge posed to existing representative status by PATCO-MEBA.

Accordingly, your request for reversal of the Regional Administrator's dismissal of your motion to intervene in the subject case is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20110



AUG 6 1971

Mr. DeWitt M. Kelley  
Personnel Officer  
Pacific Coast Region  
U. S. Geological Survey  
345 Middlefield Road  
Menlo Park, California 94025

112

Re: U. S. Geological Survey  
Pacific Coast Center  
Case No. 70-1829

Dear Mr. Kelley:

The undersigned has considered carefully your request for review of the Regional Administrator's rulings sustaining Objections Nos. 1, 2 and 5 filed by National Federation of Federal Employees, Local 1549 and ordering a rerun election.

In view of the importance of the issues presented to the interpretation and administration of Executive Order 11491 and further, because various findings of fact of the Regional Administrator are disputed, it is concluded that such issues, and the facts relevant thereto, can be best adduced at a hearing at which evidence both testimonial and documentary can be presented.

American Federation of Government Employees Lodge 2120, because its activities are alleged to have improperly affected the election, shall be served with notice and permitted to participate in the hearing.

Accordingly, your request for review seeking a hearing on Objections 1, 2 and 5 is granted, and the Regional Administrator is directed to cause to be issued a notice of hearing for this purpose.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

AUG 10 1971

113

Mr. Clair D. Olsen  
1048 Kingswood Road  
Kaysville, Utah 84037

Re: U. S. Air Force  
Hill Air Force Base  
Ogden, Utah  
Case No. 61-1366 (CA)

Dear Mr. Olsen:

After receipt in this office of your request for review of the Regional Administrator's decision in the above case, the Regional Administrator issued a withdrawal of that decision in the light of new factors in the case. The case was then reopened at the Regional level.

In view of this fact no review has been made, nor any action taken by this office on your Request for Review. The matter is being closed in our files.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

AUG 20 1971

114

Mr. Robert H. Schmidt  
President  
Civilian Personnel Association  
225 South 18th Street  
Philadelphia, Pa. 19103

Re: U. S. Army Electronics Command  
Civilian Personnel Field Office  
Philadelphia, Pennsylvania  
Case No. 20-2498

Dear Mr. Schmidt:

The undersigned has considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your petition in the above named case.

It is concluded that your petition was dismissed properly by the Acting Regional Administrator. The evidence reveals that included within the unit sought are categories of employees who clearly are engaged in Federal Personnel work in other than a purely clerical capacity, a fact which you admit in your request for review. Section 10(b)(2) of the Executive Order 11491 states, in pertinent part, that a unit shall not be established if it includes an employee engaged in Federal personnel work in other than a purely clerical capacity.

In these circumstances, your request for reversal of the Acting Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
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WASHINGTON

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August 20, 1971

Mr. Carlos C. Ogden  
State Director  
California Selective Service  
System  
Federal Building  
801 I Street  
Sacramento, California 95814

115

Re: Selective Service System  
State of California  
Sacramento, California  
Case No. 70-1824

Dear Mr. Ogden:

The undersigned has considered carefully your request for review of the Regional Administrator's Report and Findings on Objections, finding merit to certain objections filed by the National Federation of Federal Employees (NFFE) to a mail ballot election completed on January 28, 1971 and directing a rerun election. Based upon a full review of the circumstances surrounding the conduct of the election, the evidence submitted and the positions offered by the parties, it is concluded that the Regional Administrator's decision was warranted.

I reject your first contention that insufficient evidence was presented to support the finding of the Regional Administrator with regard to alleged improper surveillance by a supervisor at Los Angeles Group Board "E" conference room. I agree with the Regional Administrator that the unexplained presence of the supervisor in the room set aside for the use of a union representative to confer with employees tended to inhibit employees from conferring with the representative, and thus interfered with their rights under Executive Order 11491. Accordingly, I conclude that the Regional Administrator was correct in his decision as to that portion of objection 1 (c).

Your second contention that the notice posted by supervisors at Los Angeles Group Board "E" and at San Jose, urging employees to vote because failure to do so would constitute a "yes" vote for the union, could not have affected the results of the election, based on the statistical data, also must be rejected. In agreement with the Regional Administrator, I am of the opinion that such notices could well have discouraged employees disposed to vote for the union from casting ballots, since the clear impression given by the notices was that failure to vote would be equivalent to a "yes" vote. Your statistical analysis is conjecture and is considered to be inapplicable to the situation. I agree with the decision of the Regional Administrator in this regard.

Accordingly, your request that the Regional Administrator's Report and Findings on Objections be reversed is denied and the Regional Administrator is directed to proceed with the processing of the case as set forth in his Report and Findings on Objections.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

AUG 27 1971

Mr. Phillip E. Rosen  
Brown, Rosen, Gentile & Rodgers  
170 Westminister Street  
Providence, Rhode Island 02903

116

Re: U. S. Naval Station  
Newport, Rhode Island  
Case No. 31-4387 E.O.

Dear Mr. Rosen:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the RO petition filed by the Fraternal Order of Police, Lodge No. 29 (FOP).

The petition filed by FOP on February 10, 1971 was dismissed by the Regional Administrator based on his determination that it was not timely filed since at the time of the filing there was in existence a written agreement executed on February 4, 1971, covering the claimed employees which barred the processing of FOP's petition.

The evidence establishes that employees in the unit claimed by FOP are guards within the meaning of Executive Order 11491. Previously, they were included with nonguard employees in a unit covered by an agreement executed under Executive Order 10988 between the Activity and Local 190, American Federation of Government Employees, AFL-CIO (AFGE). That agreement expired in August 1968 and did not contain an automatic renewal clause. At AFGE's request in early December, 1970, the parties, in January 1971, initiated negotiations for a new agreement covering the same unit and an agreement was signed on February 4, 1971. It was approved at a higher management level on March 19, 1971.

Your request for review states that the employees FOP seeks to represent are guards, and contends that the agreement signed by the parties on February 4, 1971, should not bar the filing of the petition herein as the employees covered by that agreement include guards and nonguards. In these

circumstances, you contend that in view of the Executive Order 11491 prohibition against such a combined unit of employees, the agreement bar principle should not be applied. Moreover, you assert that the Activity had knowledge of FOP's petition at the time it entered into the agreement with AFGE.

Although recognizing the fact that Section 10 (b)(3) of the Order states that a unit shall not be established if it includes any guard together with other employees, I find that in the particular circumstances of this case, the February 4, 1971, negotiated agreement between the Activity and AFGE constituted a bar to the processing of FOP's petition, which was filed in the LMSA Area Office on February 10, 1971. Thus, the "legislative history" of Executive Order 11491 contained in the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, dated August, 1969, indicated clearly that the requirements that guards be represented in separate units by organizations which do not admit to membership and are not affiliated directly or indirectly with organizations which admit to membership, employees other than guards, would not affect existing units or representation but would be applied in all unit and representation determinations under the new Order. Based on this clear "legislative history," it is my view that where, as here, a unit containing guards and nonguards has been in existence for several years and is covered by a negotiated agreement, a petition filed during the term of such agreement will be barred unless filed in accordance with the requirements set forth in Section 202.3(c) of the Assistant Secretary's Regulations.

With respect to your contention that the Activity entered into the agreement with AFGE at a time when it had knowledge of FOP's petition, I do not consider such a contention to be relevant where, as here, the evidence established that the petition had not been filed with the Labor-Management Services Administration's Area Office until after the signing of the February 4, 1971 agreement.

Accordingly, your request for review seeking reversal of the Regional Administrator's action is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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ardless of their membership or affiliation in AFGE, I find that the agreement bars an election at this time.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the petition is denied.

August 30, 1971

Sincerely,

Roger P. Kaplan, Esquire  
Assistant General Counsel  
National Association of Government Employees  
Suite 512, 1341 G Street, N. W.  
Washington, D. C. 20005

117

W. J. Usery, Jr.  
Assistant Secretary of Labor

Re: Department of Commerce  
National Weather Service  
Case No. 37-932 E.O.

Dear Mr. Kaplan:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the petition for an election filed in the above case on March 8, 1971 by National Association of Government Employees (NAGE).

The evidence establishes that the parent organization, American Federation of Government Employees (AFGE), in behalf of its Local 2613, has bargained with the Activity since 1970; the parties executed a multi-unit negotiated agreement which currently covers employees in the requested NAGE unit; AFGE has intervened in the subject case, seeking dismissal of the petition; and the AFGE, as signatory to the multi-unit agreement, has stated that it is the currently recognized exclusive representative for all employees in the Weather Forecast Office, San Juan, Puerto Rico and that it wishes to retain its status as exclusive representative for those employees covered under its exclusive recognition. In this regard no evidence has been presented that AFGE is either unwilling or unable to represent the employees or to administer the existing agreement.

In these circumstances, and noting that the negotiated agreement herein, which does not terminate by its terms until August 24, 1972, covers all unit employees of the Activity re-

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



MSG 3 0 1971

Mr. William B. Peer  
Bredhoff, Barr, Gottesman,  
Cohen and Peer  
1000 Connecticut Avenue, N.W.  
Washington, D. C. 20006

118

Re: Federal Aviation Administration  
Cases Number 22-2651 (CA)  
22-2654 (CA)

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Acting Regional Administrator's dismissals of the complaints filed in the above numbered cases alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

As I informed you in my letters of June 30, 1971 and July 27, 1971 relating to a number of cases dealing with the identical issue presented herein, I am of the opinion that my Report No. 25 dated March 1, 1971, is applicable to the circumstances of the above numbered cases. Your request for review in the instant cases contains no allegations which would lead me to alter this opinion. The evidence shows that the complaints herein are subject to an established grievance and appeals procedure. I agree with the determination of the Acting Regional Administrator that he had no jurisdiction in these matters.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

September 3, 1971

Mr. Guy Colletti  
National Representative  
American Federation of Government Employees  
512 Gallivan Boulevard, Suite 2  
Dorchester, Massachusetts 02124

119

Re: U. S. Naval War College  
Newport Naval Base  
Newport, Rhode Island  
Case No. 31-3348 E.O.

Dear Mr. Colletti:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of certain of your objections to the runoff election held in the above named case on December 3, 1970.

You object that National Association of Government Employees (NAGE), by offering free accidental death and dismemberment insurance and free legal services, made false and misleading statements in a leaflet which it distributed to employees prior to the runoff election. You contend that such statements served as an economic inducement to employees and thereby interfered with the election.

The investigation revealed that accidental death and dismemberment insurance and legal services were offered by your organization as well as by NAGE as an incident of membership, and that it became a hotly-contested campaign issue as to which of the policies and services offered were the better. Examination of the leaflet to which you object discloses that it contained nothing more than legitimate campaign propaganda. Moreover, I agree with the Regional Administrator that, in the absence of evidence that NAGE offered or promised employees free insurance or that its insurance was contingent upon the results of the election, this case is distinguishable from Norfolk Naval Shipyard A/SLMR No. 31. In this respect I note particularly that NAGE explained to employees during the campaign the exact manner in



which its insurance plan was financed.

Your objection to the reference in another NAGE leaflet to the expiration date of your insurance is that it created such confusion among employees that the atmosphere for a free election was destroyed. I do not agree. The Regional Administrator concluded correctly that the employees had before them all the necessary information to evaluate fairly the claims made by NAGE. Thus, his finding no merit to this objection was warranted.

Your final objection is directed primarily to the fact that you were unable to respond to a leaflet also containing a reference to the expiration date of your insurance policy. Your request for review argues that, contrary to the finding by the Regional Administrator, you had no opportunity to make an effective reply and that, because of the close results of the rerun election it could reasonably be found that, like Army Materiel Command, Army Tank Automotive Command, Warren, Michigan, A/SLMR No. 56, the leaflet here had an impact upon the election results. Your argument fails to recognize that in the present case, NAGE's leaflet contained no statements which had not previously been made, and to which you had opportunity to reply. Indeed, in your request for review you acknowledge this fact when you state, "The insurance of both organizations had been an issue in this campaign."

Accordingly, your request that the runoff election be set aside is denied, and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



SEP 3 1971

Mr. N. T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D. C. 20006

120

Re: U. S. Army Engineer Center  
Fort Belvoir, Virginia  
Case No. 22-2234

Dear Mr. Wolkomir:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the objections filed by the National Federation of Federal Employees, Local 1522 (NFFE) to the runoff election held in the above named case on February 9, 1971.

The first seven objections were directed toward three pieces of campaign literature distributed by the National Association of Government Employees (NAGE). Essentially, the Regional Administrator found that NFFE had ample time in each case to respond to the alleged misrepresentations made by NAGE, and further, that none of the alleged objectionable material affected the results of the election. The Regional Administrator noted that in some instances NFFE did reply to the alleged objectionable material. After an examination of the Regional Administrator's findings, and the campaign literature in question, I find that the dismissal of these objections by the Regional Administrator was warranted.

I noted your contention that the Regional Administrator's decision does not stop the use of campaign literature which you believe is objectionable and inaccurate.

I certainly do not condone the use of misrepresentations or untruths in representation election campaigning. However, it should be obvious that election campaign conduct cannot be controlled in advance. I am a strong believer in the principle that in the long run in elections truth is the best weapon against misrepresentations and untruths. Where conditions warrant it, objectionable conduct will result in elections being set aside. It is considered to be unreasonable to try and state in advance a general rule that will encompass all "objectionable conduct" sufficient to set aside an election.

You will recall that in my rulings in the requests for review of cases of Red River Army Depot, Department of the Army, Case No. 63-2044(E), and Department of Army, Toole Army Depot, Case No. 61-1041(E), which were addressed to you, I said the following, "Precision and accuracy of statements are not always attained or expected by the voters who ordinarily view such statements in the context of the election situation." I regard the foregoing statement as being applicable to the three pieces of NAGE campaign literature which were the subject of NFPE's first seven objections in this case.

The request for review poses an additional question with respect to Objection 4. In dismissing this objection, which was concerned with one of the pieces of literature mentioned above, the Regional Administrator found that no evidence was introduced to show how it affected the results of the election. The request for review asserts, "No type of pre-election conduct would ever be declared to have affected an election if the party filing a complaint was required to prove to the satisfaction of a Regional Administrator that the conduct definitely affected the results!" This statement requires consideration of two points. First, if the alleged objectionable conduct cannot be shown to have affected the conduct of the election or affected the results of the election, then it would not be a sufficient reason to set aside an election. Secondly, Section 202.20 of the Regulations states: "The objecting party shall bear the burden of proof regarding all matters alleged in its objections to conduct affecting the results of the election."

Objection 8 alleges that a NAGE local union official had provoked two NFPE representatives, while they were assembling NFPE literature, and shoved some literature to the floor which nearly caused a fight. The Regional Administrator found that NFPE did not indicate when, where and under what circumstances the alleged incident occurred or show how the action affected the results of the election, and he rejected the objection.

The request for review does not deny the omission of details, but states, "we assume that such omissions would not render proper (this obviously improper) electioneering conduct by NAGE personnel." I conclude that Objection 8, as well as the request for review, presents a conclusion unsupported by evidence, and I agree with the Regional Administrator that this objection should be rejected.

Objection 9 alleges that a NAGE local union officer wore a NAGE badge during working hours on the day of the election. The Regional Administrator found NFPE did not charge the NAGE representative with electioneering in or near the polling area, or introduce any evidence that he had, in fact, electioneered around the polls, or that the wearing of the badge affected the outcome of the election. The request for review did not question the Regional Administrator's determination that this objection did not have merit and I agree with this finding of the Regional Administrator.

Based upon a full review of the evidence submitted and positions taken by the parties, it is concluded that the dismissal of all the objections filed by NFPE in this case by the Regional Administrator was warranted. Accordingly, the request for review seeking the reversal of the Regional Administrator's dismissal of the objections is denied.

Sincerely,

W.J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 3, 1971

Mr. H. C. Summers  
Grand Lodge Representative  
International Association of Machinists  
and Aerospace Workers, AFL-CIO  
504 Glenn Building  
102 Marietta Street, N. W.  
Atlanta, Georgia 30303

121

Re: Department of the Navy  
Naval Air Rework Facility  
Naval Air Station  
Jacksonville, Florida  
Case No. 42-1374(RO)

Dear Mr. Summers:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by Naval Air Lodge No. 1630, International Association of Machinists and Aerospace Workers, AFL-CIO, (IAM) to the conduct of an election held among certain employees of the Activity on December 17, 1970. Based upon a full review of the objections to the election in the subject case and the evidence supplied in support thereof, it is concluded that the Regional Administrator's dismissal of the objections was warranted.

Your first ground for reversal of the Regional Administrator relates to his dismissal of Objection 1 and 2(a) and (b), and complains of the Regional Administrator's refusal to find that the National Association of Government Employees, Local R5-82, (NAGE), in allegedly violating a consent election "side" agreement between NAGE and IAM by engaging in solicitation of signatures on petitions for an election, and by requesting employees to join NAGE and assist it by distributing literature, engaged in conduct which required the setting aside of the election. In support of your contention you allege that agreements setting forth an orderly procedure for electioneering is just as much a part of the consent election agreement as the time, date and place for holding the election and any violation of such an agreement should result in the election being set aside and a new election being ordered. I refer you to Report on a Decision, No. 20, which states that although "side" agreements are not prohibited, the Assistant Secretary will not undertake to police such agreements and any breach thereof, absent evidence that the conduct

constituting such breach had an independent improper effect on the conduct or results of the election. I find that no evidence has been submitted showing that the alleged breach of the parties' side agreement had an independent improper effect on the conduct of the election and, accordingly, agree with the Regional Administrator's dismissal of Objection 1 and 2(a) and (b).

Your second ground complains of the findings with respect to Objections 4 and 5, which allege, respectively, polling place violations by a NAGE election observer by his wearing of a NAGE insignia in the vicinity of the polling place, and the wearing of a NAGE insignia by a NAGE representative on three separate occasions in the vicinity of a polling area. You complain essentially that the Regional Administrator's finding with respect to Objection 4, that at most such conduct was inconsequential, was incorrect since such conduct was inconsistent with election observer responsibilities, and was violative of the Instructions to Election Observers. With respect to Objection No. 5, you allege, contrary to the Regional Administrator's finding, that such conduct interfered with the employees' free choice and was grounds for setting aside the election. I find, in agreement with the Regional Administrator that with respect to Objection 4, that there was no evidence to indicate that the insignia was worn by the Observer while on duty, that he engaged in any campaigning during the time the polls were open, or that the incident was ever reported to the Labor Department representatives. With respect to Objection 5, I find that the individual mentioned therein was not an agent or representative of NAGE, but merely a rank and file adherent. Moreover, the fact that such person may have lingered near the polls for a limited period of time was not controlling, particularly in the absence of evidence that he distributed literature or engaged in other campaigning. In these circumstances, I agree with the Regional Administrator's dismissal of Objections 4 and 5.

Your third ground for reversal deals with the Regional Administrator's dismissal of Objection 6, concerning the alleged misrepresentation of NAGE with regard to statements in its literature which were circulated at the Activity stating that "free" accidental death and dismemberment insurance would accompany membership. You complain that this literature was a gross misrepresentation and in your request for review stated that some of the material distributed by NAGE attested to the fact that such insurance was paid out of union dues and therefore was not "free" as advertised by NAGE. Your request for review relies in part on my decision in Norfolk Naval Shipyard, A/SLMR No. 31, which treated a related issue and sets aside the election therein. It appears the apparent representation of free insurance was made in context with other campaign propoganda contained in distributed NAGE literature. The IAM had ample opportunity prior to

the election to rebut and rectify any false, inaccurate or misleading statements contained in such literature and appears to have done so with regard to free insurance on a number of occasions. Moreover, noting as you admit that NAGE has distributed material denoting that "insurance is paid for out of union dues" and NAGE's newspaper advertisement of December 16 where the union admitted not giving free insurance, it appears that NAGE was seeking to clarify for the employees any misunderstanding on this subject. In all the circumstances, I find that the employees were provided with a sufficient basis for making an independent evaluation of NAGE's alleged misrepresentation regarding its offer of free insurance. As stated in Norfolk Naval Shipyard, A/SLMR No. 31, I view that such a situation is handled best through the election campaign process and accordingly agree with the Regional Administrator's conclusion to dismiss Objection 6.

Your fourth ground for reversal referring to Objection 7, deals with violation of the "side" agreement made between the unions prior to the election, by virtue of a full page advertisement by NAGE in the Base's newspaper. There is no allegation that the content of the advertisement is improper. I find therefore, as noted in the foregoing discussion with respect to Objections 1 and 2, absent evidence that conduct constituting a breach of a "side" agreement had an independent improper effect on the conduct or result of the election, I will not undertake to police such agreements.

Your fifth and last ground for reversal refers to Objection 8, and alleges disparity of treatment by the Activity, as to checking in and out of the Activity's Security Department, and the designation of areas used for electioneering purposes. You complain that the Regional Administrator improperly dismissed the objection on the ground of failure to proffer evidence in support thereof. In support of this objection you offer merely conclusory language covering the objection in extremely general terms in your letter to the Area Office in response to its request for supporting evidence. At no time did you come forward with details.

Investigation revealed that the Activity was strictly neutral in its treatment of both unions. It disclosed that election arrangements were made with the Activity's Commanding Officer at a meeting attended by all parties, that channels of communications between each labor organization and employees were unimpeded, and that the Intervenor's status as the incumbent labor organization did not adversely affect its ability to gain access to employees. The objecting party bears the burden of proof regarding all matters alleged in its objection as set

forth in Section 202.20(d) of the Regulations. The Intervenor's offer to have its staff members testify in regard to this objection but without any more by way of evidence, does not satisfy the burden.

Based upon a full review of the evidence submitted and positions taken by the parties, it is concluded that the dismissal of Objections 1, 2, 3, 4, 5, 6, 7 and 8 by the Regional Administrator was warranted.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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SEP 30 1971

Mr. Joseph Trush  
President, American Federation  
of Government Employees Local 2735  
300 Main Street  
Orange, New Jersey 07059

122

Re: Veterans Administration Hospital  
East Orange, New Jersey  
Case No. 32-2239

Dear Mr. Trush:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

The Regional Administrator advised you that your complaint was untimely because it was not received by June 21, 1971, which was the last day of the 30th day time limit for filing pursuant to Section 203.2 of the Regulations and that further proceedings, therefore, were unwarranted.

In your request for review you do not deny that the complaint was filed untimely but contend that its dismissal by the Regional Administrator "on purely procedural grounds would not be in accord with the spirit and purpose of Executive Order but only within the strict and literal interpretation of the Rules and Regulations." You refer to Section 205.7 of the Regulations and in effect contend that the rules should be liberally construed so as to permit acceptance of your complaint, even though filed one day late.

From a review of the facts disclosed by the case file, it is found that your complaint was postmarked on the 21st day of June and received by the Area Office in Newark, New Jersey on June 22, 1971. It is clear, therefore, that the filing was not within the 30 day period allowed for filing from the date (May 22, 1971) the final decision by the Activity was received by you.

Further, in the circumstances, I do not view the provisions of Section 205.7 of the Regulations to be applicable in this case as there was no evidence presented requiring a "liberal" construction of the Regulations. Thus, the evidence did not establish that strict application of the timeliness provision of Section 203.2 of the Regulations "will work surprise or injustice or interfere with the proper effectuation of the Order."

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

SEP 30 1971

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Mr. Rexford T. Brown  
Mr. Gordon P. Ramsey  
Gadsby and Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D.C. 20006

123

Re: Internal Revenue Service  
Boston District  
Case No. 31-4374 E.O.

Gentlemen:

I have considered carefully your request for review of the Regional Administrator's dismissal of objections filed by National Association of Government Employees Local R1-30 (NAGE) to conduct affecting the results of the election held among certain employees of the Activity on April 22, 23, and 26, 1971.

Based upon a full review of the evidence submitted and the positions offered by the parties, it is concluded that the Regional Administrator's dismissal was warranted.

I must reject your contention that the Regional Administrator failed to interpret properly Section 202.20 of the Regulations. In cases involving objections to conduct of the election or conduct affecting the results of the election the objecting party bears the burden of proof regarding all matters alleged in the objections, including the submission of evidence to the Area Administrator, as well as during a formal hearing on the matter.

The file reveals that NAGE was given a full and complete opportunity to present evidence in support of its objections. The evidence in the file did not reveal that any employees of the Activity had received bulletins containing alleged misstatements concerning NAGE's dues, or that more than two copies of such bulletins were in existence. In these circumstances, it is concluded that the evidence submitted by the objecting party was insufficient to raise a relevant question of fact which may have affected the results of the election.

Accordingly, your request that the election be set aside or that a notice of hearing be issued is denied, and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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SEP 30 1971

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government Employees  
512 Gallivan Boulevard, Suite 2  
Dorchester, Massachusetts 02124

124

Re: Department of Housing  
and Urban Development  
Unit II, Boston Area Office  
Boston, Massachusetts  
Case No. 31-4380 E.O.

Dear Mr. Kearney:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your oral protest of the tally of the ballots in the above named case.

It is found, in agreement with the Regional Administrator, that the oral protest was timely and met the requirements of Section 202.20(a) of the Regulations in view of the advice received at the election from the LMSA representative that the oral protest would be ruled upon by the Area Administrator at a later date.

Your oral protest of the tally was based upon your challenge of one ballot which you contend should have been tallied as a void ballot by the LMSA representative. A ruling that the ballot was valid gave a majority of the valid ballots counted to National Association of Government Employees (NAGE), whereas a ruling that the ballot was void would have required a run-off election between NAGE and your organization.

The ballot in question was one affording professional employees two choices, (1) whether the voter desired to be included with the non-professional employees for the purpose of exclusive recognition and (2), whether the voter desired to be represented by NAGE, American Federation of Government Employees, (AFGE) or neither of these organizations for the purpose of exclusive recognition. The voter who cast the questioned ballot did not mark the first section of the ballot and voted for NAGE in the second section of the ballot. The ballot contained, in pertinent part, the following language:

"This ballot is to determine the unit, as well as the exclusive representative, if any, under the

provisions of Executive Order 11491, for the unit which you designate.

Answer both questions below."

The Regional Administrator found that the ballot in question was a valid ballot despite the fact that the voter did not answer the first question. I disagree with his conclusion in this respect. The voter was instructed by the language on the ballot to answer both questions. It is found that his failure to do so voided his ballot, thus necessitating a revised tally of the ballots.

Accordingly, your request is granted and the Regional Administrator is hereby directed to cause a revised tally of the ballots to be issued consistent with this ruling, and thereafter, to cause a runoff election between NAGE and AFGE to be conducted.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

SEP 30 1971

Mr. Irving I. Geller  
Director  
Legal & Employee Relations  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

125

Re: Minot Air Force Base  
North Dakota  
Case No. 60-1893 (E)

Dear Mr. Geller:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging violation of Section 19(a)(6) of Executive Order 11491.

In agreement with the Regional Administrator, I find that the evidence establishes that the Activity has been willing to negotiate supplements to the existing agreement at reasonable times, and further, that in meetings with NFFE Local 1041 during working hours it has discussed issues within the categories listed in the agenda submitted originally for negotiation. In these circumstances, I find that the Activity has not refused to consult, confer, or negotiate within the meaning of Section 19(a)(6) of the Executive Order.

With respect to your request that additional investigation be made in the case, my position is that the complainant and the respondent have the responsibility of investigating the alleged unfair labor practices and the complainant bears the burden of proof throughout all phases of the case. This is more fully explained in Report No. 24, a copy of which is enclosed.

Based on the foregoing, your request for the reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D. C. 20210



SEP 30 1971

Mr. Earl Ricketson  
National Representative  
American Federation of Government  
Employees, AFL-CIO  
1910 Highview Avenue  
Akron, Ohio 44301

126

Re: General Services Administration  
Cleveland Field Office  
Cleveland, Ohio  
Case No. 53-3792

Dear Mr. Ricketson:

The undersigned has considered carefully your request for review of the Regional Administrator's partial dismissal of the complaint in the above named case alleging violations of Section 19(a)(5) and (6) of Executive Order 11491 and has concluded that the issues presented can be resolved best on the basis of record testimony.

Accordingly, the Regional Administrator is directed to reinstate that portion of the complaint dismissed, which alleged the improper handling of a grievance filed by Mr. Robert A. Krueger, and to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U. S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

OCT 21 1971

127

Mr. Gordon P. Ramsey  
Mr. Rexford T. Brown  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

Re: Norfolk Naval Shipyard  
Case No. 22-2551 (CA)

Dear Sirs:

The undersigned has considered carefully your Request for Review seeking to reverse the Regional Administrator's dismissal of the complaint brought against the above named Activity on May 14, 1971, by the National Association of Government Employees (NAGE) which alleged electioneering and campaigning, and soliciting of employees on the Activity's premises during working hours by Messrs. Washington and Smith, International Representatives of the Metal Trades Council (MTC).

In agreement with the Regional Administrator, I am of the opinion that the evidence submitted failed to establish that Messrs. Washington and Smith electioneered and campaigned, and solicited employees on the Activity's premises during working hours, or that the Activity was aware of and condoned any such alleged action in violation of Section 19(a)(1) and (3) of Executive Order 11491. It appears that the Activity took immediate and appropriate action to correct any "breach of shipyard rules" by representatives of the MTC when the breach was brought to its attention. The specific breach by MTC mentioned by the Activity in its letter of May 12, 1971 pertained to the unauthorized presence of the representatives in the area in which they were observed, and nothing more.

Accordingly, your Request for Review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

In your Request for Review, you have asked as part of an appropriate remedy that the election held on May 24, 1971, be set aside. Your attention is directed to Section 202.19 of the Regulations which provides that "Upon the conclusion of the election, the Area Administrator shall cause to be furnished to the parties a tally of ballots," Section 202.20(a) of the Regulations provides a five-day period for filing of objections to an election.

As a determination upholding the Regional Administrator's dismissal of the complaint has been made with respect to your Request for Review, I shall direct the Regional Administrator to select the appropriate Area Administrator to open and count the ballots and to furnish the parties with a tally of ballots.

Sincerely,

W. J. Usery, Jr.,  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



OCT 29 1971

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government  
Employees  
512 Gallivan Boulevard  
Dorchester, Massachusetts 02124

128

Re: Navy Exchange  
U.S. Naval Air Station  
Quonset Point, Rhode Island  
Case No. 31-4623 E.O.

Dear Mr. Kearney:

The undersigned has considered carefully your Request for Review of the Acting Regional Administrator's dismissal of the complaint filed in the above-named case.

The issue for consideration is the dismissal of the Section 19(a)(6) portion of the complaint which alleged that the Activity had refused to consult with the American Federation of Government Employees, Local 767, with respect to wage survey procedures.

It is concluded that the Section 19(a)(6) allegation raises issues which can be resolved best on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



NOV 12 1971

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government  
Employees, AFL-CIO  
512 Gallivan Boulevard, Suite 2  
Dorchester, Massachusetts 02124

129

Re: Naval Air Station Commissary  
Stores  
Quonset Point, Rhode Island  
Case No. 31-3396 E.O.

Dear Mr. Kearney:

The undersigned has considered carefully your request for review of the Regional Administrator's action setting aside the runoff election conducted among certain employees of the Activity, on March 25, 1971, in the above named case.

The Regional Administrator overruled two of the three objections filed but determined that the runoff election should be set aside on the basis of his finding merit to Objection No. 2. The National Association of Government Employees, Local RI-7(NAGE), alleged in Objection 2 that:

"The American Federation of Government Employees (AFGE) willfully and wickedly distributed...on March 23, 1971, a flyer stating "NAGE raids in Treasury. NAGE President junkets high in the sky-in newly bought 'Lear Jet' - local union demands 'money' and representation."

On the basis of the information before him, the Regional Administrator determined that the flyer contained a deliberate misstatement of fact, and that NAGE did not have an adequate opportunity to reply to the flyer. As a result, the Regional Administrator found that the flyer impaired the ability of the voters to exercise intelligently their franchise. Finding merit to this objection, the Regional Administrator set aside the election which had been won by AFGE by a 26-18 margin.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

NOV 19 1971

A review of the investigative facts does not support the Regional Administrator's findings on either of the points referred to. Thus, no evidence was presented that American Federation of Government Employees (AFGE) campaigners at the Activity prior to the election had knowledge on March 23 or 24 of the Report and Recommendations of the Hearing Examiner, which was issued on February 26, 1971 in the matter of Army Materiel Command, A/SLMR No. 56 in which he found the allegation that NAGE owned a Lear Jet to be untrue. Further, although the Regional Administrator asserted as a fact that the flyer was distributed on March 24, giving only a day for a reply correcting the untrue allegation contained therein, the weight of the evidence appears to establish that the flyer in question was circulated on March 23, two days before the election. In this regard it was noted that the quotation above, from NAGE's Objection 2, states that the flyer was distributed on March 23 and AFGE similarly asserts that it was distributed on the morning of March 23.

Mr. Irving I. Geller  
Director  
Legal and Employee Relations  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

130

Re: Department of the Air Force  
Electronics System Division  
Case No. 31-3338

Elections will be set aside where deception occurs that constitutes campaign trickery involving a substantial misrepresentation of fact which impairs the employees' ability to vote intelligently on the issues, and there is not time for the offended party to make an effective reply. See the Army Materiel Command case, cited above, which discusses the identical campaign flyer involved in this case.

Dear Mr. Geller:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your objections to the election in the instant matter.

It is found, consistent with that decision, that the flyer in question was readily recognizable by the voters as self-serving campaign propaganda and was not of such a nature as to deprive the employees of their ability to vote intelligently on the issues. Further, it is found that the evidence fails to establish either that AFGE circulated the flyer with knowledge of its untruthful character or that NAGE had insufficient time to make an effective reply, particularly in view of the number of eligible voters (54) to be reached.

I have concluded, in agreement with the Acting Regional Administrator, that in filing its objections with the Area Administrator, NFFE did not comply with the service requirements of Section 202.20 of the Regulations in that it failed to serve copies of such objections simultaneously on the other parties. The evidence reveals that although NFFE made timely service of its objections upon the Area Administrator, it failed to make simultaneous service on the other parties to the proceeding although NFFE's representative stated in the objection letter that it was filed in accordance with Section 202.20 and further certified that all interested parties had been served copies of the objections. As stated in your request for review, copies of the objections were not served upon the other parties until July 15, 1971, approximately one week later.

Accordingly, the determination of the Regional Administrator that the runoff election be set aside is overruled and the Regional Administrator is directed to cause an appropriate certification of representative to be issued.

In view of the foregoing, and in accordance with my ruling in Report No. 14 (copy enclosed), your request for review based on the Acting Regional Administrator's dismissal of your objections to the election is denied.

Sincerely,

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

November 19, 1971

Accordingly, because your request for review may not be considered,  
it is denied.

Mr. Irving I. Geller  
General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

131

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Re: U.S. Army Electronics Command  
Procurement and Production  
Directorate  
Case No. 32-2003

Dear Mr. Geller:

I have considered carefully your request for review seeking to reverse the decision of the Area Administrator to withdraw approval of the consent agreement and to cancel the scheduled election until after a hearing on the matters in issue.

I have concluded that the Area Administrator's action in withdrawing his approval of the consent election agreement was not arbitrary or capricious but rather was within his discretionary authority. In view of the numerous shifts in positions of the parties, especially the petitioner, culminating in a serious disagreement among the parties on August 13 as to eligibility of a sizeable number of employees, it appears that the parties were not in accord as to terms previously agreed upon when the supplement to the consent election agreement was executed. Accordingly, while the challenged ballot procedure may be used under some circumstances to deal with eligibility questions, where it becomes apparent that a sizeable group of employees may be challenged, it is appropriate that the issues involved be developed at a representation hearing. The Area Administrator's action was necessitated by the repeated shifting of positions by the parties, which cannot be countenanced in these matters. I have enunciated previously this policy in White Sands Missile Range, A/SLMR No. 25, which decision permitted the issuance of a notice of hearing despite an agreement by the parties on the unit issue. Moreover, it is noted that no provision exists in the Regulations for the filing of a request for review of an Area Administrator's withdrawal of approval of a consent election agreement or of a Regional Administrator's decision to issue a notice of hearing.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



NOV 19 1971

Raymond A. Hinerman, Counsel  
Local 3677, National Association  
of Letter Carriers  
Pinsky, Mahan, Barnes, Watson,  
Cuomo and Hinerman  
320 Penco Road  
Weirton, West Virginia 26062

132

Re: Post Office Department  
Weirton Post Office  
Weirton, West Virginia  
Case No. 21-2240

Dear Mr. Hinerman:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case alleging violation of Section 19(a)(1) and (6) of Executive Order 11491.

From a review of the facts I am in agreement with the Regional Administrator, that the evidence fails to establish that the Activity's action in postponing its answer to agenda items submitted by Local 3677, National Association of Letter Carriers, on the day of the October 26, 1970, labor-management meeting constituted a refusal to bargain in violation of Section 19(a)(1) and (6) of Executive Order 11491. The provisions of the National agreement and the long standing practice establish that written agenda items were to be submitted at least one working day prior to the scheduled meeting. The evidence establishes that the Activity answered the agenda items on November 10, 1970, which was prior to the next quarterly labor-management meeting of January 18, 1971.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

NOV 26 1971

Mr. Herbert Cahn  
President, Local 476  
National Federation of Federal  
Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

133

Re: Department of the Army  
U.S. Army Electronics Command  
Medical Department Activities  
Fort Monmouth, New Jersey  
Case No. 32-1995(RO)

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's report and findings on objections and challenged ballots in the above-captioned matter.

Based upon a full review of the evidence submitted and the positions offered by the parties, it is concluded that the Regional Administrator's dismissal as to the objections was warranted. With respect to your contentions concerning the submission of evidence, you were advised by letter of June 10, 1971, that the burden of proof, including the procurement of evidence, lies with the objecting party during the Area Administrator's investigation. You have presented no evidence in support of any of your objections during the investigation or in your request for review. Nor have you made any contentions in your request for review that you are in possession of or are aware of any evidence relating to your objections which the Regional Administrator has not considered. In these circumstances, I have concluded that your allegations of unequal opportunity to campaign and alleged misrepresentations by AFGE were unsupported by evidence and the Regional Administrator acted correctly in dismissing them.

Your assertion that the deadline date for filing objections should have been July 30 is erroneous. When served by mail, the date a decision is mailed is considered the date of service, and not as you contend, when the decision is physically received. In addition, it should be noted that under Section 205.1 of the Regulations, "the day of the act, event, or default after which the designated period of time begins to run, shall not be included." Therefore, in accordance with Sections 202.20(f) and

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



205.2 of the Regulations, you had 10 days from the date of service and an additional three days because service was made by mail, to file a request for review. Thus, in the subject case, the 13 day period allowed to file a request for review ran from July 17 to July 29.

I also have concluded that the Public Information Act (5 USC 552) would not compel the disclosure of the Area Administrator's report because it would fall under exemption (b)(5) of the Act which exempts, among other things, the disclosure of intra-agency memorandums to the public. The American Mail Line case was considered distinguishable on the facts because the agency in that case "based its final decision on an inter-office memorandum and gave no other reasons or basis for its action." (Emphasis added) In the instant matter, the Regional Administrator has given a detailed explanation for each of his conclusions.

With respect to the agreement of all parties to the election prior to the tally, to count the mail ballot, and absent any indication that the ballot was invalid in any respect except for its late arrival, I have concluded that the Area's representative at the tally had the discretionary authority to give effect to the oral agreement and to count the ballot.

As to the challenged ballots, the file reveals that all parties to the election had agreed prior to the election that the two employees in question were ineligible to vote, all parties challenged these employees at the election, and all parties retained the position that these two employees were ineligible to vote prior to the tally of ballots. Therefore, the Compliance Officer was in error where he listed the two ineligible voters as "challenges" on the Tally of Ballots. Rather, these two ballots should have been considered invalid and should not have appeared on the Tally of Ballots. In the circumstances, your change of position regarding the two ballots after the tally was improper.

Accordingly, your request for review regarding the objections is denied. Moreover, as I have found herein that there were no challenges, the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

NOV 30 1971

Mr. Ronald A. Ogden  
Area Director of Organization  
American Federation of Government  
Employees, AFL-CIO  
5515 Livingston Road  
Oxon Hill, Maryland 20021

134

Re: U. S. Department of the Army  
U. S. Army Signal Center  
and School  
Fort Monmouth, New Jersey  
Case No. 32-2004 E.O.

Dear Mr. Ogden:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of Objection Number three to the run-off election held in the above named case on June 3, 1971. No consideration was given objections one and two because your request did not direct itself to the Acting Regional Administrator's findings as to these objections.

Section 202.20 of the Regulations states that the objecting party shall bear the burden of proof regarding all matters alleged in its objections to conduct affecting the results of the election. This requirement was made clear in the Area Administrator's letter of June 10, 1971 acknowledging your objections. My policy regarding the burden of proof during the Area Administrator's investigation is set forth in Report No. 39, a copy of which is enclosed.

Because you have presented no evidence to support your allegation that the Activity had furnished NFFE with the unlisted telephone numbers of employees, I find, in agreement with the Acting Regional Administrator that objection number three has no merit.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Accordingly, your request seeking to reverse the Acting Regional Administrator's dismissal is denied, and the Regional Administrator is hereby directed to have an appropriate certificate of representative issued.

Sincerely,

W. J. Useery, Jr.  
Assistant Secretary of Labor

Mr. Gordon P. Ramsey  
Attorney at Law  
Gadsby and Hannah  
75 Federal Street  
Boston, Massachusetts 02110

135

Re: Charleston Naval Shipyard  
Charleston, South Carolina  
Case No. 40-1926 (RO)

Dear Mr. Ramsey:

I have considered carefully your request for review of the Regional Administrator's dismissal of all objections filed by the National Association of Government Employees, Local R5-103 (NAGE) to conduct affecting the results of the runoff election held among certain employees of the Activity on March 18, 1971.

In Objection No. 1, NAGE alleged that the Federal Employees Metal Trades Council of Charleston, Metal Trades Department, AFL-CIO (MTC), was guilty of having published a material misrepresentation of a material fact at a time which prevented NAGE from making an effective reply.

The investigation reveals that on March 16, 1971, NAGE distributed a "News Flash" campaign flyer stating that the USS Fulton was scheduled to arrive at the Charleston Naval Shipyard soon, and that the job of tank cleaning "has been contracted out to a Private Contractor." A copy of an Activity job order regarding the USS Fulton was printed on the back of the flyer. Upon discovering that a Charleston Naval Shipyard Job order had been made a part of a NAGE election flyer, MTC campaigners became concerned and asked for a meeting with the Shipyard Commander to ascertain whether the use of official Naval documents had been authorized. As a result of this request, a meeting was held on March 16, 1971 between the Commander and the Executive Council of MTC. The MTC representatives were told that the Activity had not authorized NAGE to use the Job Order in campaign literature, and further, that work on the USS Fulton had not been contracted out. After the meeting, the Shipyard Commander issued what purports to be a summation of the matters discussed in the meeting in the form of a memorandum to MTC, with a copy to NAGE. Also, on this same date, the Shipyard Commander issued another memorandum addressed to NAGE, in which he pointed out that the Job Order reproduced on NAGE's flyer had not been obtained through normal official procedures, and that he considered its use irregular and questionable, and further, that the Activity officially protested NAGE's use of the document without official clearance of the Activity.

On March 17, 1971 MTC distributed a campaign flyer, in answer to NAGE's "News Flash" of March 16, 1971. Titled "Once a Liar," it referred to NAGE's flyer, and included a partial reproduction of the Shipyard Commander's memorandum which stated that a contract had not been let in regard to cleaning the tanks of the USS Fulton. There is no allegation that the partial reproduction of the Shipyard Commander's memorandum was not accurate. NAGE alleged this MTC campaign flyer contained a material misrepresentation concerning the letting of the contract, was the result of collusion between the Activity and MTC, and left no time for NAGE to reply.

In order for a misrepresentation to constitute a sufficient basis for setting aside an election, it must be shown that a gross misrepresentation of a material fact has been made that could reasonably be expected to affect the outcome of the election, at a time when no reply can be made. Based upon the facts as set out above, it is concluded that the MTC campaign flyer in question did not contain a gross misrepresentation of a material fact that would require the setting aside of the runoff election. As no gross misrepresentation of a material fact has been found, the question of whether or not NAGE had sufficient time in which to reply to MTC's campaign flyer is of no relevance. Further, in agreement with the Regional Administrator, it is found the meeting on March 16, 1971 between the Activity and MTC was not improper, particularly in view of MTC's prior incumbent status and the provision in the negotiated agreement providing for consultation prior to contracting out of work.

Two additional contentions are raised in the request for review concerning Objection No. 1 that merit attention. One is that the refusal of the Regional Administrator to consider as a valid objection, NAGE's allegation, first made on May 4, 1971, that the Activity's extension, continuation and implementation of the Shipyard-Metal Trades Council agreement (which expired in March 1970) through 1970 and through the election campaign, constituted exclusive recognition of MTC, and is a sufficient reason for setting aside the runoff election to be considered timely this objection would of had to be filed by March 25, 1971. As this additional objection was not timely filed in accordance with Section 202.20 of the Regulations, it is found the refusal of the Regional Administrator to consider this additional objection was justified.

The second contention is that the Area Administrator did not make a full investigation of Objection No. 1. This contention is based on information supplied to the Area Administrator by NAGE, which purports to show that the Job Order, which was the subject of NAGE's "News Flash" campaign

flyer, had been "cancelled" on April 12, 1971. In the first place, this information, if true, would not dispute the finding of the Regional Administrator that MTC had not made a gross misrepresentation of a material fact in its "Once a Liar" campaign flyer distributed on March 17, 1971. This is so because MTC had accurately reproduced a portion of the Commander's memorandum of March 16, 1971. The main issue was whether or not MTC had made a gross misrepresentation of a material fact in its campaign literature, and not whether or not the Activity had in fact let a contract to an outside contractor for work to be done on the USS Fulton. Further, in regard to NAGE's allegation that the Area Administrator did not make a complete investigation of Objection No. 1, under Section 202.20(d) of the Regulations, the burden of proof regarding all matters alleged in its objections to conduct affecting the results of the election lies with the objecting party.

In sum, it is found in agreement with the Regional Administrator that the allegations of NAGE in its Objection No. 1 that MTC engaged in improper conduct affecting the results of the election are without merit.

NAGE's second objection alleges that the Activity transferred approximately 70 employees from the Charleston Naval Shipyard to the Norfolk Naval Shipyard shortly before the runoff election. NAGE further alleges that almost all of the transferred employees were open and active supporters of NAGE, and that this action of the Activity denied the transferred employees their right to vote in the runoff election, and was effected in order to favor and assist MTC.

Although NAGE alleged in this objection that the transfer of these employees was in direct contradiction of representations made by the Activity that no temporary transfers of employees were contemplated prior to the election, NAGE acknowledged in its letter of position that there was no express agreement that temporary transfers were to be precluded before the election.

The Regional Administrator found there was no evidence that the transfers were not in accord with Activity needs, or that a disproportionate number of the transferees were NAGE adherents. Moreover, he found that even if all 70 transferees were NAGE supporters, and would have voted for NAGE in the election, their vote could not have affected the election results. Because NAGE failed to establish that the transferees were denied the right of their franchise solely because they were NAGE supporters or potential voters for NAGE, the Regional Administrator found the temporary transfer of these employees during the week of the election did not constitute improper conduct, and he found Objection No. 2 did not have merit.



As there is no evidence that NAGE adherents were selected out of proportion for transfer, or that the transfers were unnecessary, it is found, in agreement with the Regional Administrator, that Objection No. 2 does not have merit.

Objection No. 3 concerns a campaign flyer distributed by MTC on March 17, 1971 with a heading, "NAGE LIARS BOOTED BY FEDERAL COURTS IN CHARLESTON." NAGE objects to the distribution of this flyer on the day before the election because NAGE did not have the opportunity "to rebut the falsehood and the outright lies" of the campaign flyer.

The Regional Administrator concluded that the MTC flyer in question did not contain a misrepresentation of a material fact, and after examination of all the pertinent material relating to this objection in the case file, I agree with the conclusion of the Regional Administrator. For example, court documents relied upon by MTC in issuing the flyer in question indicate that a complaint was filed in the United States District Court for the District of South Carolina, Charleston, Division on January 13, 1970 on behalf of certain employee welders of the Charleston Naval Shipyard. Allegation XXIV of that complaint states:

THAT THE PLAINTIFFS HAVE EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES AFFORDED THEM BY THE REGULATIONS OF THE UNITED STATES CIVIL SERVICE COMMISSION AND THE DEPARTMENT OF THE NAVY.

The Court issued an Order in that case on January 23, 1970. The Court noted that on January 21, 1970, it had issued a temporary restraining order upon the verified complaint which had alleged that all administrative remedies had been exhausted. However, on page 2 of the Order, the Court pointed out, "At a hearing on said Motion counsel for plaintiffs stated to the court that no steps had been taken by any of the plaintiffs to exercise their right of appeal to the Civil Service Commission." Because administrative remedies had not been invoked by the plaintiffs, the Court ordered that the temporary restraining order be dismissed and that a motion for preliminary injunction be denied. Based on the foregoing, it is found that MTC did not make a gross misrepresentation of a material fact. Rather, it is found that this campaign material is of the type that could be evaluated by employees as campaign propaganda, and would not constitute grounds for setting aside the runoff election. As to NAGE's complaint that it did not have the opportunity to rebut the MTC flyer in question, because no gross misrepresentation of a material fact has been found, there is no basis for requiring an opportunity to reply.

NAGE further contended in regard to Objection No. 3 that the Regional Administrator failed to consider that MTC's false claims that NAGE was a liar in its Court action in support of Charleston welders was calculated to

aid and assist the flyer, distributed the same day, that NAGE had lied about the Shop order." The fact that two alleged misrepresentations were made on the same day would not alter the conclusion the neither of the two alleged objectionable pieces of campaign literature constituted improper conduct, whether considered individually or together.

As it has been found, in agreement with the Regional Administrator, that none of NAGE's objections have merit, your request seeking reversal of the Regional Administrator's dismissal of the objections is denied and the Regional Administrator is hereby directed to have an appropriate certification of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

Mr. Irving I. Geller  
General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

136

Re: United States Information Agency  
Case No. 22-2533

Dear Mr. Geller:

I have considered carefully your request for review seeking to reverse the Acting Regional Administrator's dismissal of the instant National Federation of Federal Employees (NFFE) petition and furthermore to revoke the Certification of Representative issued on July 20, 1970 to the American Federation of Government Employees (AFGE) for a nationwide unit in Case No. 22-2350.

I note that NFFE in its dismissed petition in Case No. 22-2533 was seeking a portion of the nationwide unit previously petitioned for by AFGE in Case No. 22-2350. The posting period for AFGE's nationwide unit ended on April 9. Therefore, because no good cause was shown for extending the filing period, NFFE's petition under Sections 202.5(b) and 202.5(c) of the Regulations was untimely filed on April 19 and should have been dismissed at that time. Additionally noted was the fact that NFFE earlier had filed a timely motion to intervene in the nationwide unit petitioned for by AFGE in Case No. 22-2350. In these circumstances, I consider that the Area Administrator's telegram to the NFFE on April 22, giving it the option to join as an intervenor in the consent agreement in Case No. 22-2350 or to state in writing its reason for not joining in the consent agreement, to be fair and reasonable, and in no way coercive. Moreover, the NFFE did, in fact, elect to sign the consent agreement for the nationwide unit, participate in the election and even file objections to that election which were subsequently dismissed.

Considering the untimeliness of the NFFE petition and noting moreover its full participation as an intervenor in the broad nationwide election, I find that the Acting Regional Administrator's dismissal of the NFFE petition in Case No. 22-2533 was warranted.

Furthermore, noting that the Acting Regional Administrator served on all parties on July 6, 1971 his corrected Report and Findings on Objections in Case No. 22-2350 and that NFFE did not file a timely request for review of these findings, I find no reason to revoke the Acting Regional Administrator's certification of AFGE in that case.

Accordingly, your request seeking to reverse the Acting Regional Administrator's dismissal of your petition and to revoke the AFGE's certification in Case No. 22-2350 is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 9 1971

137

Mrs. Lillian L. Grogen  
131 Lambert Street  
North Charleston, South Carolina 29406

Re: Charleston Naval Shipyard  
Charleston, South Carolina  
Case No. 40-3404 (CA 26)

Dear Mrs. Grogen:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

A review of the case file reveals that the Regional Administrator, in his letter of dismissal of your complaint dated September 28, 1971, served on all parties on that date, advised you of your right, under Section 203.7(c) of the Assistant Secretary's Regulations, to obtain a review of his action by filing a request for review with the undersigned to be received by me by the close of business October 12, 1971. Your request for review dated October 12, 1971, and postmarked October 17, 1971, was received on October 19, 1971, and therefore was untimely.

Accordingly, I must deny your request for review because of its untimeliness.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



DEC 14 1971

138

Mr. Vincent J. Paterno  
President  
Association of Civilian Technicians, Inc.  
916 College Parkway  
Rockville, Maryland 20850

Re: New Hampshire Air National Guard  
Pease Air Force Base  
Portsmouth, New Hampshire  
Case No. 31-4304 E.O.

Dear Mr. Paterno:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your request to intervene in the above named case.

It is found in agreement with the Acting Regional Administrator, that your request to intervene was untimely filed pursuant to Section 202.5(c) of the Regulations. Whereas your letter of intervention was received on August 5, 1971 in the Boston Area Office, it should have been received no later than the close of business on August 2, 1971.

Accordingly, your request for reversal of the Acting Regional Administrator's dismissal of your request to intervene is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 15 1971

Henry E. Bagley, President  
Aaron B. Roberts Chapter  
Act, Inc., 116th Mawg  
Dobbins AFB, Georgia 30060

139

Re: Air Technician Detachment at  
Dobbins AFB, Georgia and  
Travis Field, Savannah, Georgia  
Case No. 40-3147 (CA)

Dear Mr. Bagley:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case alleging a violation of Section 19(a)(6) of Executive Order 11491 and conclude that the issues raised by the complaint can be resolved best on the basis of record testimony. Thus, the Activity's alleged refusal to discuss a grievance with its employees' exclusive bargaining representative pertaining to the wearing of uniforms and its unilateral institution of a policy with respect to this subject are considered to raise a reasonable basis for the complaint herein which warrants the issuance of a notice of hearing.

Accordingly, the Regional Administrator is being directed to reinstate the dismissed complaint and to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 16 1971

Mr. Glen J. Peterson  
Area Director of Organization  
American Federation of Government  
Employees  
St. Louis Area Office  
P. O. Box 5699  
St. Louis, Missouri 63121

140

Re: Sandia Area Exchange  
Kirtland Air Force Base  
Case No. 63-2614 (CU)

Dear Mr. Peterson:

I have considered carefully your request for review dated July 19, 1971; of the Acting Regional Administrator's dismissal of the petition filed by Local 2346, American Federation of Government Employees (AFGE) in the above-named case, based on his determination that proceeding on the CU petition would not provide the employees of the Kirtland Air Force Base with the opportunity of expressing their desires regarding the question of union representation of their group.

In your Request for Review you contend that the employees at Kirtland Air Force Base should be added to the existing Sandia Base unit without an election because the two bases have been combined into a single installation, and also because the AFGE local representing the Sandia group and the AFGE local seeking to represent the Kirtland group now have been combined as a single local.

After consideration of these contention and the submitted facts in support of these contentions, I am of the opinion that the evidence is insufficient to establish that an integration of the two groups of employees has occurred so as to cause the employees in the Kirtland Air Force Base group to lose their identity as a single unit.

Under these circumstances, I am of the opinion that the employees at Kirtland Air Force Base are entitled to an opportunity of expressing their desires regarding the question of union representation of their group. Furthermore, in view of the fact that the Kirtland Air Force Base

was in existence and its employees unrepresented at the time recognition was sought and granted for the Sandia Base, I find that a petition for exclusive recognition seeking to add the employees to the existing exclusive unit rather than a petition for unit clarification is the appropriate vehicle to use in this situation. Accordingly, your request that the Acting Regional Administrator's dismissal of the petition in the above-named case be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



DEC 28 1971

Mr. N. T. Wolkomir  
President  
National Federation of Federal Employees  
1737 H Street, N.W.  
Washington, D. C. 20006

141

Re: Department of the Army  
Military Ocean Terminal  
Case No. 32-1704

Dear Mr. Wolkomir:

Your telegraphic requests of December 16 and 23, 1971 to withdraw the request for review of the Regional Administrator's decision of December 3, 1971 in the above named case have been received and considered.

Your request to withdraw, made on behalf of NFFE Local 1550 and national headquarters, is hereby granted and the case is being returned to the Regional Administrator for appropriate action.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 14 1972

Mr. Roger P. Kaplan  
General Counsel  
National Association of Government  
Employees  
1341 G Street, N.W.  
Washington, D. C. 20005

142

Re: Federal Aviation Administration  
Washington, D. C.  
Case No. 22-2603

Dear Mr. Kaplan:

The undersigned has considered carefully your request for review of the Acting Regional Administrator's denial of your request to consolidate the above-named case with Case Nos. 41-2427 (CO 26), 41-2426 (CA 26), 42-1672 (CA 26) and 42-1673 (CO 26).

Under all the circumstances, including the fact that four days of hearing have already been held in the above-named representation case, and because there are different procedural and evidentiary requirements applicable to representation and unfair labor practice cases, it was concluded that consolidation of the unfair labor practice cases with the representation case would be inappropriate.

Accordingly, your request for reversal of the Acting Regional Administrator's refusal to consolidate is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 14 1972

Mr. Herbert Cahn  
President, Local 476  
National Federation of Federal  
Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

143

Re: DCA Field Office  
Ft. Monmouth, New Jersey  
Case No. 32-2457 (25) E.O.

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of your petition seeking certification as exclusive representative of a unit consisting of a single employee.

Section 10 of Executive Order 11491, which deals with exclusive recognition, refers throughout to units of "employees" and all other references to units in the Order, and in the regulations implementing the Order, are couched in plural terms. I find that a unit consisting of a single employee is not an appropriate unit for purposes of collective bargaining within the meaning of Executive Order 11491, as amended.

Accordingly, your request to reverse the Regional Administrator's dismissal of your petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

JAN 14 1972

Mr. William H. Layman  
Grand Lodge Representative  
Federal Employees Metal Trades  
Council  
AFL-CIO Hall, P. O. Box 125  
Kittery, Maine 03904

144

Re: U.S. Naval Shipyard, Portsmouth,  
New Hampshire  
Case No. 31-5458

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Layman:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging violations of Executive Order 11491, Section 19(a) (1), (2), (4), (5) and (6).

I agree with the Regional Administrator that your complaint was untimely filed. The original form which you submitted to the Area Office on July 30, 1971 did not constitute a valid complaint, because it was not signed as required by Section 203.3(f) of the Regulations. Therefore, the date of filing of your complaint was September 8, 1971, when for the first time you signed the complaint form and handed it to an Area Office representative.

Under Section 203.2 of the Regulations, a complaint of unfair labor practices must be filed within 30 days of receipt by the charging party of the final decision. Since the final decision in this case was given by the Activity in a letter dated July 19, 1971, it is clear that your complaint was filed more than thirty days after receipt of the letter. The complaint was therefore untimely.

I note further that the original form submitted by you was not a valid complaint in that it did not contain a clear and concise statement of the facts constituting the alleged unfair labor practice, which is required by Section 203.3(c). The statement on the form originally submitted, "see attached correspondence" did not satisfy this requirement.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 18 1972

Mr. Donald W. Jones  
President  
American Federation of Government  
Employees  
Social Security Local No. 1395  
165 North Canal Street  
Chicago, Illinois 60606

145

Re: Social Security Administration  
Chicago Payment Center  
Case No. 50-5557 (26)

Dear Mr. Jones:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint filed in the above named case.

I agree with the Regional Administrator that the complaint was filed untimely. It is true, as you contend, that the letter containing the final decision of the agency was directed to the President of the National Council of Social Security Payment Center Locals American Federation of Government Employees, rather than to yourself. However, a copy of that letter was forwarded to you and you admit receiving it on May 27, 1971.

Because you thus received the final decision on that date, the complaint, in order to have been timely, should have been filed no later than June 26, 1971 in accordance with Section 203.2 of the Regulations. The complaint actually was filed on August 24, 1971. It was therefore untimely.

Accordingly your request seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 19 1972

Mr. Ronald D. King  
National Representative  
American Federation of Government  
Employees, AFL-CIO  
206 Richmond Avenue  
Batavia, New York 14020

146

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-1796

Dear Mr. King:

I have considered carefully your request for review of the Regional Administrator's dismissal of your petition for election in the instant case.

I have concluded, in agreement with the Regional Administrator, that copies of the petition were not served simultaneously upon all interested parties as required by Section 202.2(e)(3) of the Regulations.

The evidence reveals that the AFGE, stated in its letter which accompanied the petition that a copy had been mailed to the National Federation of Federal Employees (NFFE), exclusive representative of the employees here involved. In fact, however, such copy was not served on the NFFE until at least a week after filing of the petition. The difficulty of ascertaining the private address of the NFFE representative, as claimed by the Petitioner, does not warrant waiving of the requirements of Section 202.2(e)(3).

Accordingly, in view of the AFGE's failure to serve copies of its representation petition simultaneously on all interested parties, your request for review seeking reversal of the Regional Administrator's decision to dismiss the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 19 1972

Miss Sandra E. Bentley  
Assistant Director  
Economic Security Program  
New York State Nurses Association  
11 West 42nd Street  
New York, New York 10036

147

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-1810

Dear Miss Bentley:

I have considered carefully your request for review of the Regional Administrator's dismissal of the New York State Nurses Association's (NYSNA) petition in the above-named case.

I find, as did the Regional Administrator, but for different reasons, that the petition was filed untimely. Prior to the filing of the NYSNA's petition in this case, the American Federation of Government Employees, AFL-CIO, filed two different petitions for bargaining units, both of which include the employees sought by NYSNA. The first (Case No. 22-2635), dated June 25, 1971, seeks a unit of all eligible Veterans Administration employees on a nationwide basis. The second (Case No. 35-1796), dated August 6, 1971, seeks an activity-wide unit at the Bath VA facility. With respect to the NYSNA's petition of August 30, 1971, I conclude that it was filed untimely pursuant to Section 202.5(b) of the Regulations. For compliance with the requirements of Section 202.5(b) of the Regulations, the NYSNA should have filed its petition during the initial ten days of the posting period, (July 26 to August 5, 1971) because the unit it sought was a segment of the AFGE nationwide unit for which a notice had been posted.

Accordingly, your request to reverse the Regional Administrator's dismissal action must be denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

January 19, 1972

Mr. Dennis Garrison  
National Vice President  
Fifth District  
American Federation of Government  
Employees, AFL-CIO  
West Clinton Building, Room 314  
2109 Clinton Avenue, West  
Huntsville, Alabama 35805

148

Re: Department of the Air Force  
Patrick Air Force Base, Florida  
Case No. 42-1468(CA)

Dear Mr. Garrison:

I have received your request for review of the Regional Administrator's dismissal of your complaint in the above-named case.

The Regional Administrator, in his letter of July 26, 1971, advised you of your right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned. He further advised that the request must be received by me in Washington, D. C. by the close of business August 9, 1971. On August 3, 1971, Mr. J. L. Neustadt, Staff Counsel of AFGE, asked for an extension of time in which to file a request for review and I extended the filing period until the close of business August 20, 1971.

Your request for review, dated August 20, 1971, was mailed at Huntsville, Alabama, and postmarked August 20, 1971, the date it was required to be received in Washington. It arrived in my office on August 23, 1971.

Accordingly, your request for review, which is procedurally defective, cannot be considered on its merits.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

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Mr. Nathan T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

JAN 20 1972

149

Re: U. S. Army Corps of Engineers  
Little Rock District  
Pine Bluff Resident Office  
Pine Bluff, Arkansas  
Case No. 64-1318 (CA)

Dear Mr. Wolkomir:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint alleging multiple violations of Executive Order 11491, Sections 19(a)(1) and (2).

I agree with the Acting Regional Administrator that your complaint was defective in that it did not contain essential, basic information required by Section 203.3(c) of the Regulations. This Section states that a complaint shall contain "A clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts...." All of the allegations contained in your complaint, save one, failed to state times of occurrence. This information was necessary to determine whether your complaint was timely.

Moreover, I note your subsequent lack of cooperation in supplying this information even after having been requested to do so. On three separate occasions during the processing of this case you were requested to furnish such information; by the Area Administrator on February 8 and June 23, 1971, and then by the Acting Regional Administrator on August 4, 1971. Your only response to the requests was on March 12, 1971, to the February 8th query. With your letter you enclosed statements supporting your complaint from two Local 1679 members. Only one of the incidents related in these statements bore a date, that of June 5, 1970. This particular incident could not be considered, since it occurred more than six months prior to filing of the unfair labor practice charge with the Agency on December 10, 1970.

In Brockton, Massachusetts VA Hospital, A/SLMR No. 21, I enunciated the policy that it would best effectuate the purposes of the Executive Order and would promote the prompt handling of cases to dismiss where a petitioner refused to cooperate in the processing of his petition. This policy applies equally well to a similar lack of cooperation by a complainant in an unfair labor practice case such as this.

I note that although you had adequate opportunity to furnish the requested times of occurrence prior to the issuance of the Acting Regional Administrator's dismissal, you chose to submit this necessary information for the first time in your request for review. I will not consider evidence furnished for the first time in a request for review where a complainant has had adequate opportunity to furnish such information during the investigation period, provided for in Section 203.5 of the Regulations, and prior to the issuance of the Regional Administrator's decision. This is consistent with my decision in Charleston, South Carolina VA Hospital, A/SLMR No. 87, wherein I stated that, "The establishment of time limitations for such procedural contentions /i.e., no pre-complaint charges being filed/ is necessary for the orderly processing of unfair labor practice complaints. Where, as here, the Respondent had an adequate opportunity to raise such issue prior to the hearing, I find that it would not effectuate the purposes of the Order to permit this matter to be raised, for the first time, either during hearing or in a post-hearing brief."

I note further that in response to the Acting Regional Administrator's August 4th letter again seeking information as to dates of the alleged unfair labor practices you replied in a letter accusing him of pro-management bias. I have examined the circumstances surrounding this case and am unable to find any basis in fact for this accusation.

In the request for review, you ask that the case be returned to the Area Administrator for a thorough investigation of the charges. This request must be denied. The burden of proof, including the submission of evidence, always remains with the complainant. In this connection see Section 203.14 of the Regulations and also my Report on Ruling No. 24, a copy of which is enclosed.

Because of the lack of necessary dates in the complaint and your subsequent failure to furnish this information to the Area and Regional offices, none of the allegations in the complaint can be considered except for the single incident for which you supplied the approximate date of August 1970. In respect to this incident, having to do with the work assignment given to Mr. Riggan, President of Local 1679, in August 1970, I am in agreement with the Acting Regional Administrator's dismissal thereof on the ground that the evidence submitted at that time does not support the allegation of anti-union bias on the part of the Activity.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 24 1972

Mr. Stanley Q. Lyman  
National Vice-President  
Federal Aviation Science and  
Technological Association  
1341 G Street, N. W.  
Washington, D. C. 20005

150

Re: FAA, Miami Air Route Traffic  
Control Center  
Case No. 42-1648 (RO 25)

FAA, Miami Air Route Traffic  
Control Tower  
Case No. 42-1759

Dear Mr. Lyman:

Your request for review of a ruling by the Acting Regional Administrator has been received.

The ruling which you seek to have reviewed is the denial of your motion to dismiss petitions filed in the above named cases by Professional Air Traffic Controllers Organization.

Section 202.6(d) of the Regulations makes no provision for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition. See Report Number 8, a copy of which is enclosed.

Accordingly, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 26 1972

Mr. Clair D. Olsen  
1048 Kingswood Road  
Keyesville, Utah 84037

151

Re: U. S. Air Force  
Hill Air Force Base  
Ogden, Utah  
Case No. 61-1366 (CA)

Dear Mr. Olsen:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint in the above-named case alleging a violation of Section 19(a)(4) of Executive Order 11491.

In agreement with the Acting Regional Administrator, I find that Section 19(a)(4) of the Executive Order does not apply in these circumstances. As stated in the Executive Order, this Section applies to complaints filed or testimony given under the Order. It does not apply to intra-agency grievances filed pursuant to the agency's grievance procedures. In this case, the discrimination which you allege to have occurred as a result of the intra-agency proceeding, took place prior to your filing of the complaint under the Executive Order and therefore could not have been caused by such filing.

Furthermore, in agreement with the Acting Regional Administrator, and as contended by the Activity, I find that the alleged violations are subject to an established grievance and appeal procedure which, under Section 19(d) of the Order is the exclusive procedure for resolving the complaint. See Report No. 25, a copy of which is attached. Therefore, these matters are not properly before me. Moreover, I find the Activity's consideration of only those events alleged in the December 11, 1971 grievance which had occurred within the 6 months preceding the filing date of the grievance to be a fair and reasonable position.

In your request for review you have questioned the failure of the Acting Regional Administrator to address himself to the second portion of your complaint; that the Activity failed to respond to your charge filed on February 11, 1971. Under the Assistant Secretary's Regulations (a copy of which is attached), when the Respondent fails to respond to an

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unfair labor practice charge, the Complainant has the recourse to file a complaint on that charge at the end of 30 days, which you in fact did on May 3, 1971.

Accordingly, your request for review seeking reversal of the dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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JUN 16 1972

Mr. Frederick D. Hogan  
President, Local 912  
National Alliance of Postal  
and Federal Employees  
4627 Moraine Avenue  
St. Louis, Missouri 63115

152

Re: U. S. Post Office  
St. Louis, Missouri  
Case No. 62-2414 (CA)

Dear Mr. Hogan:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint in the above-named case.

The complaint, filed June 2, 1971, alleges violations of Sections 19 (a)(1), (2), (4), (5) and (6) of Executive Order 11491. The entire complaint was dismissed by the Acting Regional Administrator and I concur with his findings.

The National Alliance of Postal and Federal Employees did not have exclusive recognition at the St. Louis Post Office at the time the alleged violations occurred. Therefore, Sections 19(a)(5) and (6) do not apply to any of three incidents referred to in the attachments to the complaint. Nor does it appear that the alleged discrimination occurred because you had filed a complaint or given testimony under the Order, thus also removing Section 19(a)(4) from consideration. The complaint was filed by you subsequent to the three incidents referred to.

In respect to the incident in which you were sent a letter of warning for having left your work station and allegedly having disturbed a fellow employee, there is a lack of proof that the disciplinary action taken against you was for the purpose of encouraging or discouraging membership in a labor organization. Thus, no violation of Section 19(a)(2) can be found.

In regard to the section of the complaint relating to the representation of Mr. Bennett in an adverse action proceeding, I find, in agreement with the Acting Regional Administrator, that the complaint was filed untimely. Under Section 203.2 of the Regulations, thirty days must elapse after filing a charge with the Agency before a complaint may be filed unless a final decision has been rendered by the Agency, which was not the case here. The charge was filed with the Post Office on May 19, 1971 and the complaint was filed on June 2, 1971, less than thirty days thereafter. For this reason the complaint, in respect to this incident, was prematurely filed.

In respect to the allegation in the complaint that your nonselection for the position of Postal Source Data Technician was a violation of the Executive Order, there is no showing that this action was taken to encourage or discourage membership in a labor organization. Nor was there any evidence that it was done for the purpose of interfering with, restraining, or coercing you in the exercise of your rights under the Executive Order. In agreement with the Acting Regional Administrator, I find that the selection of qualified individuals is a function of management and, absent any specific proof that the selection process abrogated a right assured by the Executive Order or encouraged or discouraged membership in a labor organization, I am unable to find any violation of the Order.

In your request for review, you ask that a hearing be conducted so that you will have an opportunity to prove your case. You imply that the investigation of the complaint was one-sided, in that witnesses to support your case were not interviewed by Area Office representatives.

Under the Executive Order, the investigation of complaints by Area Administrators is confined, except in unusual circumstances, to a careful consideration of information and materials submitted by the parties. The burden of proving the allegations of the complaint is the responsibility of the party filing the complaint. See my Report on Ruling No. 24, a copy of which is enclosed herewith.

In respect to your request for a hearing, I am unable to find sufficient evidence of violations of the Order in this case to justify the issuance of a Notice of Hearing.

In view of the above, your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

January 26, 1972

Mr. Michael Wheeler  
Vice President, National Alliance  
Of Postal & Federal Employees  
Local 912  
4121 West Kossuth  
St. Louis, Missouri 63115

153

\*Re: U. S. Postal Service  
St. Louis Postal Service  
St. Louis, Missouri  
Case No. 62-2664 (CA)

Dear Mr. Wheeler:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case.

Your request for review contains a charge that you were given misleading instructions in the St. Louis Area Office on the procedures to be used in filing a complaint. The case file reveals that you and a member of your labor organization spent several hours on or about July 23, 1971 in the St. Louis Area Office discussing the possibility of filing an unfair labor practice complaint against the St. Louis Postal Service. During such an extended discussion, I can see both the possibility of erroneous information being given and the possibility of the giving of correct information which was not clearly understood.

The Regulations of the Assistant Secretary set out the correct procedures for a labor organization to follow in filing a complaint, and serve as an authoritative guide to the public in such matters. I understand that you were furnished a copy of the Regulations during your visit to the St. Louis Area Office and that the language of Section 203.2 which relates to the timeliness of complaints was read and explained to you.

In these circumstances, the requirements of the Regulations are clear and must be followed. Accordingly, your complaint was not filed timely pursuant to Section 203.2 of the Regulations, in that it was filed more than thirty days

after you received the final decision of the Post Office on the matter.

Accordingly, your request seeking reversal of the Regional Administrator's dismissal of your complaint must be denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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JAN 26 1972

Mr. Raymond J. Malloy  
Associate Staff Counsel  
American Federation of Government  
Employees (AFL-CIO)  
400 First Street, N. W.  
Washington, D. C. 20001

154

Re: United States Army  
Ryukyu Islands  
Case No. 22-2398 (CU)

issue of the supervision of foreign nationals, it is my opinion that an RO petition would be the appropriate vehicle to resolve the issues here present.

In these circumstances, your request for reversal of the Regional Administrator's dismissal of the CU petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Malloy:

I have considered carefully your request for review of the Regional Administrator's dismissal of the CU petition filed by Local 1678, American Federation of Government Employees (AFGE) in the above-named case, based on his determination that the unit for which Local 1678 is seeking clarification is inappropriate under Executive Order 11491, and that the petition therefore, is also inappropriate.

In your request for review you contend that the unit for which Local 1678 is seeking clarification is primarily a non-supervisory unit and that the Assistant Secretary, therefore, should make a determination as to which employees are supervisors and as such would be excluded from the unit. You contend further that the question of whether employees who supervise only foreign nationals are supervisors within the meaning of the Executive Order constitutes a major policy issue which requires a hearing to establish a full record upon which I can make a final determination.

I am in agreement with the Regional Administrator that your petition was dismissed properly. The facts reveal that the existing unit is a supervisory unit which in accordance with Section 24(d) ceased to exist as an exclusive recognized unit as of December 31, 1970. It further appears from the petition that your organization is attempting to convert the former unit to a non-supervisory unit, which would be expanded to include all presently unrepresented non-supervisory employees on the Islands. In view of these circumstances, including the

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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JAN 26 1972

Mr. Forest B. Wooten  
President, Local 2022  
American Federation of Government  
Employees  
P. O. Box 3  
Fort Campbell, Kentucky 42223

155

Re: Department of the Army  
Headquarters  
Fort Campbell, Kentucky  
Case No. 41-2386 (CA 26)

Dear Mr. Wooten:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint. It is found for the reasons outlined below, that the complaint against the Department of the Army, Fort Campbell, Kentucky, should be dismissed.

Section 203.2 of the Regulations requires that a thirty-day period following the filing of a charge be set aside for the parties to meet informally in an attempt to resolve the issues raised by the charge. The date of filing has been determined to be the date on which the Respondent receives the charge. To be considered timely, the complaint should have been filed no sooner than July 8, 1971, the thirty-first day following the filing of the charge. In this case, the charge was filed on June 7, 1971, and the complaint dated July 2, was received by the Department on July 6, 1971, which was premature.

Section 203.2 also requires a charge to be filed within six months of the occurrence of the alleged unfair labor practice. The basis of the charge in this case was the issuance of a memorandum on April 28, 1970, instituting the 75 percent/25 percent schedule, allocating the time you were permitted to devote to your regular work and to union matters. The charge filed on June 7, 1971 was clearly outside the six month time limit and untimely for this additional reason.

Furthermore, the issues presented by the charge and complaint had gone through the prescribed grievance and arbitration procedures. Since both parties mutually agreed to arbitration in accordance with the contract, the Activity did not violate Section 19(a)(6) of the Executive Order by refusing to consult, confer, or negotiate with a labor organization.

Accordingly, and absent any evidence of other violations, your request for a reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Rex H. Reed  
Associate General Counsel  
Labor Relations  
Department of the Army and Air Force  
Headquarters, Army and Air Force  
Exchange Service  
Dallas, Texas 75222

JAN 27 1972

156

Re: Army and Air Force Exchange Service  
MacDill Consolidated Exchange  
MacDill Air Force Base, Florida  
Case No. 42-1169 (RO 25)

Dear Mr. Reed:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above named case. It is concluded that the Regional Administrator's dismissal of the objections was warranted.

Your first objection is that the American Federation of Government Employees (AFGE) made statements to the effect that employees would receive various benefits if the AFGE won the election. I find, in agreement with the Regional Administrator that the statements referred to were clearly recognizable as campaign propaganda and reasonably could not be expected to have an improper impact upon the election.

In regard to the second objection, in which you allege that the AFGE engaged in misrepresentation of a material fact in respect to the transfer of a store manager, I am unable to find that such misrepresentation actually occurred. In any event, I agree with the Regional Administrator that there was not gross misrepresentation such as to warrant setting aside the election. Contrary to the assertion in your request for review this finding does not constitute an "endorsement by the Department of Labor of untruthful misrepresentations," but merely recognizes the realities of election campaigning.

Under all the circumstances, I find no basis for granting your request for a hearing on the objections. Accordingly, the request for review seeking reversal of the Regional Administrator's dismissal of the objections is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman,  
Cohen and Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

JAN 31 1972

157

Re: Federal Aviation Administration  
Case Nos. 22-2000, 2001, 2019,  
2024, 2030, 2033 and 2044

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissals of the complaints filed in the above-numbered cases alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

The evidence revealed that in all of the above cases, with the exception of the case involving Complainant Sommer (Case No. 22-2000), the alleged unfair labor practices regarding denial of leave and constructive discharge occurred prior to the effective date of the Executive Order, January 1, 1970, and therefore any charges pertaining thereto are not within my jurisdiction. (In this connection, see Section 203.2 of the Regulations.)

Regarding the Sommer case, although his alleged constructive discharge occurred after January 1, 1970, the complainant did not file a charge with the Activity within six months from the date of the alleged unfair labor practice as required by Section 203.2 of the Regulations and therefore was untimely.

With respect to your additional allegation that the Agency's refusal to rehire complainants violated the Executive Order, this contention was not alleged in either the charges or complaints filed in these cases, and therefore, as required by Section 203.2 of the Regulations, cannot be considered.

Accordingly, your request for reversal of the Regional Administrator's dismissals of the complaints is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 31 1972

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman,  
Cohen and Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

158

Re: Federal Aviation Administration  
Case No. 22-2141

Dear Mr. Peer:

The undersigned has considered carefully your request for review of the Regional Administrator's dismissal of the complaint filed in the above-numbered case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

The evidence fails to establish that the Agency refused to rehire James E. Hays because of unlawful considerations. Particularly noted in this regard was the fact that Mr. Hays held the position of President of the Professional Air Traffic Controllers Organization and was functioning actively in such position at the time that Organization called or condoned an illegal work stoppage of Air Traffic Controllers (See A/SLMR No. 10).

Moreover, I am of the opinion that, as distinguished from my Report No. 35 referred to in your request for review, the facts do not present a novel issue warranting a hearing.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 31 1972

Mr. Dolph David Sand  
Assistant to the Staff Counsel  
American Federation of Government  
Employees  
400 First Street, N. W.  
Washington, D. C. 20001

159

Re: U. S. Army Training Center  
Ft. Jackson Laundry Facility  
Ft. Jackson, South Carolina  
Case No. 40-3491 (CA)

Dear Mr. Sand:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint filed in the above named case.

Your contention that American Federation of Government Employees, AFL-CIO, Local 1909, should have been allowed an additional three days to file its complaint under Section 205.2 of the Regulations is misplaced. Section 205.2 is meant to cover service requirements and specifically mentions "after service of a notice or paper." (Emphasis added).

The applicable portion of the Regulations with respect to this case is Section 203.2 which requires, in pertinent part, that a complaint, in order to be timely, must be filed "within thirty (30) days of the receipt by the charging party of the final decision." (Emphasis added). The final decision was received by the Complainant on October 4, 1971. A timely complaint under Section 203.2 must have been filed on or before November 3, 1971. The complaint was not filed until November 4, 1971, and was therefore untimely.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 31 1972

Mr. Neal H. Fine  
Assistant to the Staff Counsel  
American Federation of Government  
Employees  
400 First Street, N.W.  
Washington, D. C. 20001

160

Re: Department of the Air Force  
U. S. Air Force Academy  
Case No. 22-2694 (CA)

Dear Mr. Fine:

I have considered carefully your Request for Review of the Regional Administrator's dismissal of the complaint filed in the above named case.

The file in this case reveals that the American Federation of Government Employees (AFGE) has in part, alleged that the Department of the Air Force has violated Section 19(a)(1) and (6) of the Executive Order by undue delays in approving a memorandum of agreement signed between AFGE and the United States Air Force Academy. I find that the case file does not contain a full investigation of these allegations, and does not reflect the position of the Department of the Air Force concerning them.

Accordingly, the case is remanded to the Regional Administrator for the purposes of reinstating the complaint, causing additional investigation to be made regarding the above allegations, and taking appropriate action as set forth in Section 203.6 of the Regulations.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Stanley Q. Lyman  
National Vice President  
Federal Aviation Science and  
Technological Association  
1341 G Street, N. W.  
Washington, D. C. 20005

JAN 31 1972  
161

Re: Federal Aviation Administration  
Aeronautical Center  
Oklahoma City, Oklahoma  
Case No. 63-2948 (CA)

Dear Mr. Lyman:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint alleging that the Activity violated Section 19(a)(1), (2) and (3) of the Executive Order.

Apart from other considerations, including the settlement of the allegation in regard to the use of Activity facilities and the absence in the formal complaint of a Section 19(a)(6) allegation, it was concluded that, under all the circumstances, the Acting Regional Administrator's dismissal of your complaint was warranted. In this respect, I find that your allegation regarding the number of stewards which the Activity is required to recognize under the collective bargaining agreement essentially reflects a disagreement over the interpretation of the existing agreement, and that the agreement provides a procedure for resolving such disputes. In view of the above, I do not believe that the purposes of the Executive Order would be served by my deciding the proper interpretation to be given to the language in your agreement.

Accordingly, your request for reversal of the Acting Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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JAN 31 1972

Accordingly, since ANA did not have an adequate showing of interest on April 22, 1971, the date on which the supervisory participation occurred, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your petition is denied.

Sincerely,

Mr. Patrick E. Zembower  
American Nurses Association  
476 Executive Building  
1030 15th Street, N. W.  
Washington, D. C. 20005

162

Re: Veterans Administration Hospital  
Brecksville, Ohio  
Case No. 53-4156

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Zembower:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your RO petition because of supervisory participation in gathering signatures for the supporting showing of interest.

The showing of interest of American Nurses Association (ANA) was challenged by American Federation of Government Employees which alleged that there was supervisory participation in solicitation of signatures for ANA on April 22, 1971.

The investigative file indicates that a supervisor did obtain the signatures of three or four nurses during coffee breaks at the Seventh Annual Clinical Nursing Conference on April 22, 1971. In agreement with the Acting Regional Administrator, I find that the supervisor's activities did impair ANA's showing of interest. Section 10(b)(1) of Executive Order 11491 specifies that management officials and supervisors shall not be included in units of exclusive recognition with rank-and-file employees. Supervisors shall not act as representatives of a labor organization as provided by Section 1(b) of the Order. Furthermore, in accordance with Section 19(a)(3), management (of which supervisors are a part) shall not sponsor, control, or otherwise assist a labor organization.

It is my opinion that a showing of interest in support of a petition for an election is invalid to the extent it is obtained at and after the point in time when supervisors or management officials participate in the securing of the showing.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 28 1972

Mr. Stephen K. Smith  
Field Representative  
National Council of Bureau of  
Indian Affairs Educators  
Box 535  
Many Farms, Arizona 86503

163

Re: BIA Education Employees  
NCBIAE - NEA  
Albuquerque, New Mexico  
Case No. 63-2691 (RO)

Dear Mr. Smith:

I have considered carefully your request for review of the Regional Administrator's dismissal of your RO petition and have decided that the reinstatement of your petition is warranted.

It appears that the Regional Administrator considered that your letter of August 7, 1971, in effect rescinded the understanding that the subject case would be held in abeyance pending the issuance of a decision by the Assistant Secretary in a related case. I recognize the Regional Administrator's right to dismiss petitions in cases where it is found that a petitioner has engaged in dilatory tactics resulting in unnecessary delay in the processing of its petition. However, in the instant case it does not appear that you were advised clearly that your petition would be dismissed unless you promptly withdrew or amended it as suggested in the Area Administrator's letter of August 17, 1971.

In these circumstances, I conclude that the petition in the subject case should be reinstated for further processing. Accordingly, the request for reversal of the Regional Administrator's dismissal of the petition is granted and the Regional Administrator is directed to reinstate and process the petition.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

FEB 28 1972

Mr. John Dettmering  
Secretary, Branch 3811  
National Association of Letter  
Carriers, AFL-CIO  
914 Hillside Drive  
Bettendorf, Iowa 52722

164

Re: U. S. Post Office  
Bettendorf, Iowa  
Case No. 62-2447 (CA)

Dear Mr. Dettmering:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging violation of Section 19(a)(6) of Executive Order 11491 in the above-named case.

Under Section 203.2 of the Assistant Secretary's Regulations, a complaint of unfair labor practices must be filed within 30 days of receipt by the charging party of the Respondent's final decision. Since the final decision in this case was given by the Activity in a letter dated April 30, 1971, and your complaint was filed June 14, 1971, it is clear that your complaint was filed more than thirty days after receipt of the letter. Your second letter to the Activity dated May 11, 1971, and its reply dated May 24, 1971 do not change this conclusion inasmuch as these letters merely reiterate your initial position and the Activity's previous rejection of the charge. Therefore your complaint was filed untimely.

Inasmuch as the complaint was filed untimely, I find it unnecessary to deal with the merits of the complaint. In addition, no consideration has been given to the allegations of violations of Section 19(a)(4) contained in your request for review, since no charge alleging such violations was filed with the Activity as required by Section 203.2 of the Regulations.

In view of the foregoing, your request to reverse the Regional Administrator's dismissal action must be denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON

FEB 29 1972

Mr. Herbert Cahn  
President  
National Federation of Federal  
Employees, Local 476  
P. O. Box 204  
Little Silver, New Jersey 07739

165

Re: U. S. Army Electronics Command  
Army Aviation Detachment  
Fort Monmouth, New Jersey  
Case No. 32-2468

Dear Mr. Cahn:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your challenge to the validity of the American Federation of Government Employees AFL-CIO, Local 1904 (AFGE) showing of interest in the above cited case.

I am unable to consider your request for review because the Regulations make no provision for filing of a request for review of a Regional Administrator's action in dismissing a challenge to the validity of a showing of interest. See Report No. 21, a copy of which is attached. Moreover, I note that your challenge was filed untimely.

In respect to your contention that the time limits set forth in the Regulations should not be observed in situations involving fraud, I note that neither your original challenge nor your request for review cited any evidence of fraud. Your December 22, 1971 letter to the Area Administrator challenging the showing of interest suggests that AFGE obtained its authorization cards at an improper time but alleges no misrepresentation or fraud in the procurement of these cards.

Accordingly, your request for review of the Acting Regional Administrator's dismissal of your challenge to the validity of AFGE's showing of interest is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

FEB 29 1972

Mr. Dennis Garrison  
National Vice President, American Federation of  
Government Employees  
Fifth District  
2109 Clinton Avenue, West  
Huntsville, Alabama 35805

166

Re: John F. Kennedy Space Center  
Kennedy Space Center, Florida  
Case No. 42-1762 (CA 26)

Dear Mr. Garrison:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case which alleged a refusal to negotiate in violation of Section 19(a)(6) of the Order.

I am of the opinion that the request for review raises issues which can be resolved best on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



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WASHINGTON

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FEB 29 1972

Mr. Alan J. Whitney  
National Executive Director  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

167

Re: Naval Air Rework Facility  
U. S. Naval Air Station  
Norfolk, Virginia  
Case No. 22-2568

Dear Mr. Whitney:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your five objections to conduct allegedly affecting the results of the runoff election held on August 26, 1971, between the National Association of Government Employees Local R4-72 (NAGE) and the International Association of Machinists and Aerospace Workers, AFL-CIO, (IAM) Local 39.

Objection No. 1

In this objection you contend that the election should be set aside because on July 22, 1971, in the cafeteria of the Activity T. J. Smith, Grand Lodge Representative of IAM "viciously and without provocation, attacked NAGE National representative, John Wiseman, in the presence of numerous members of the bargaining unit."

I have concluded that because you filed no objection to the first election, this objection, based upon an incident which occurred prior to the first election, cannot now be considered. The critical period preceding a runoff election during which conduct of one party may be used as grounds for setting aside the election begins running from the date of the first election. Conduct occurring prior to the first election, and not urged as objections to that election, may not be considered as grounds for setting aside the runoff election.

Moreover, despite your argument that the incident had a continuing effect that affected the runoff election, I note only NAGE had made an issue of this event in its campaign literature preceding the runoff.

Objection No. 2

In this objection your organization contends that the IAM "elected to ratify, confirm, and approve the beating administered to Mr. Wiseman" by Mr. T. J. Smith, IAM Grand Lodge Representative, by featuring the latter as "the chief spokesman for IAM" on prime television time on August 25, 1971, the eve of the runoff election.

On the contrary, I agree with the Acting Regional Administrator that a review of the text of the program furnished by NAGE does not support its contention that Mr. Smith who had appeared only briefly during the half hour program, had been featured as the chief spokesman for IAM. Moreover, there is no evidence that any reference had been made by Mr. Smith at any time during this program to the altercation of July 22, 1971. I agree that his appearance on this television program cannot be considered a basis for a valid objection.

In your request for review you assert that Mr. Smith did not have to refer to the incident in order for it to be remembered, because "...his mere presence was a continuing reminder of the assault, which was a matter of common knowledge among employees in the unit." Again, I note that only NAGE made an issue in its campaign literature of the altercation during the critical period preceding the runoff election. Further, my conclusion that an incident occurring prior to the critical period preceding the runoff election cannot be used as grounds for setting aside the election is not changed by the subsequent conviction of Mr. Smith of the assault which took place before the first election.

Objection No. 3

In this objection the NAGE alleges violation of Section 19(a)(1) and (3) of the Executive Order by the extension of IAM's collective bargaining agreement with the Activity during the pendency of NAGE's representation petition. You assert that by this act the Navy illegally sponsored, aided, and assisted IAM thereby making impossible the conduct of a fair and valid election.

Upon a careful review of the Report and Findings on the Objections and the material in the case file, I conclude that there is insufficient evidence available to me in order to rule on the issue raised. Accordingly, the case will be remanded to the Acting Regional Administrator for the purpose of developing by investigation the facts and circumstances surrounding the execution of the extension agreement.

Objection No. 4

In this objection NAGE alleges that IAM had received an unfair advantage by using the provisions of its "illegally" extended collective bargaining agreement as important campaign propaganda.

It is contended that IAM had informed employees falsely that if NAGE were the victor in the election, all employee records relating to seniority, job performance, and other personnel matters would be destroyed by the Navy and that employees would be subject immediately to both the loss of employee rights and disciplinary actions by the Navy. Further, it is asserted that IAM attempted to convince employees deceitfully that it had the continuing power to confer benefits relating to their hours of work and working conditions. You contend that by these alleged misrepresentations, which were of a material nature to the voters and published at a time when it had no opportunity to reply, IAM destroyed the conditions necessary for a fair and valid election.

I have concluded that because of the close relationship of this objection to Objection No. 3, dealing with the extension of the IAM contract, ruling on this objection should be withheld until additional investigation is conducted by the Regional Administrator.

Objection No. 5

Objection No. 5 is concerned with an IAM sponsored election-eve television program which featured the then State Senator Henry Howell of Norfolk, Virginia. The principal thrust of this objection by NAGE was that the appearance of Senator Howell on the program left the impression that the U. S. Government favored the election of IAM.

The Acting Regional Administrator found that the fact that IAM was able to persuade a prominent Virginia political figure to appear on television in favor of IAM was not, standing alone, a violation of any known Federal statute. However, in your request for review, you question whether or not the Acting Regional Administrator considered what you believe to be a pertinent aspect of this objection, that is, "...whether and how many employees working within the bargaining unit are aware of the distinction between a U. S. Senator and a State Senator."

After careful review of the transcript of the program, and the circumstances under which it was conducted, it is my opinion that the program contained only campaign propaganda which could have been evaluated intelligently by the voters. Further, I do not regard possible confusion in the minds of prospective voters between a state and U. S. Senator as grounds for setting aside the election. Therefore, I find this objection to be without merit.

In conclusion, I agree with the finding of the Acting Regional Administrator that Objections No. 1, No. 2, and No. 5 are

without merit. However, the case will be remanded to the Regional Administrator for further investigation of Objections No. 3 and 4, as outlined above and for his issuance of a supplementary report on his findings on these two objections.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



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Further, in view of this conclusion, I find it unnecessary to consider the merits of the complaint.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAR 23 1972

James L. Neustadt, Esq.  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
400 First Street, N.W.  
Washington, D. C. 20001

168

Re: Tinker Air Force Base  
Oklahoma City, Oklahoma  
Case No. 63-3202 (CA)

Dear Mr. Neustadt:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint filed by the American Federation of Government Employees, AFL-CIO, Local 916 (AFGE) in the above-named case.

The pre-complaint charge in this matter was served on the Commanding General of the Activity on August 13, 1971. Thereafter, the final decision by the Activity in response to the charge was contained in a letter dated September 10, 1971, from the Base Commander of the Activity addressed to AFGE and received by AFGE on September 10, 1971. The complaint, which alleged 19(a)(1) and (6) violations of Executive Order 11491 based on an alleged unilateral change in policy by the Activity concerning weekend hours of work, was filed November 9, 1971. Because Section 203.2 of the Assistant Secretary's Regulations requires that a complaint must be filed within thirty days after receipt by the charging party of the final decision, it is clear that the complaint herein was filed untimely.

In your request for review, you do not deny that the complaint in the subject case was filed more than thirty days after receipt by AFGE of the Activity's final decision but your contention is that the thirty day limitation period applies only to complaints based on charges filed during the sixth month following the commission of the alleged violations. I find no justification for such an interpretation and agree with the Regional Administrator that the complaint was filed untimely.

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WASHINGTON

MAR 23 1972

169

Stuart Rothman, Esq.  
Royall, Koegel & Wells  
1730 K Street, N. W.  
Washington, D. C. 20006

Re: Veterans Administration  
Washington, D. C.  
Case No. 22-2635 (RO)

Dear Mr. Rothman:

I have considered carefully your request for review of the Regional Administrator's denial of the request to intervene of the National Federation of Licensed Practical Nurses, in the above named case.

The Regional Administrator based his denial of the requested intervention on two grounds, (1) that the showing of interest necessary for intervention under Section 202.5(a) of the Assistant Secretary's Regulations was not submitted and (2) that the request to intervene was filed untimely pursuant to Section 202.5(c).

In Report Number 30 (copy enclosed) I stated that a request for review will not be entertained based upon a Regional Administrator's action dismissing a petition because of an inadequate showing of interest because no provision is made in the Regulations for such a request for review. Similarly, the Regulations make no provision for the filing of a request for review of the denial of intervention by a Regional Administrator based upon an inadequate showing of interest.

Accordingly, your request for review will not be entertained. In view of this disposition, I find it unnecessary to consider the Regional Administrator's additional basis for dismissal of the intervention request in this matter.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON

MAR 22 1972

170

Mr. Linton B. Salmon  
Ad Hoc Committee for Free Elections  
P. O. Box 2012, Central Station  
East Orange, New Jersey 07012

Re: Veterans Administration Hospital  
East Orange, New Jersey  
Case No. 32-2463 E.O.

Dear Mr. Salmon:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your petition to decertify National Federation of Federal Employees, Local 1154 (NFFE) as the exclusive representative of all regular work force and part-time employees of the Activity.

The evidence establishes that the Acting Regional Administrator dismissed your petition because, as required by Section 202.2(b)(2) of the Assistant Secretary's Regulations, it was not accompanied by a showing of interest of thirty (30%) percent of the employees in the unit indicating that the employees no longer desire to be represented for the purpose of exclusive recognition by the currently recognized or certified labor organization. In fact on its face your petition states that it is not supported by thirty (30%) percent or more of the employees in the unit. In these circumstances and noting also that it is my stated policy not to entertain requests for review of dismissal actions based on an inadequate showing of interest (see enclosed Report on a Ruling of the Assistant Secretary, Report No. 30), your request for reversal of the Acting Regional Administrator's dismissal of your petition in the subject case is denied.

Your request for review does contain allegations which relate to Section 18 of Executive Order 11491 as amended, entitled "Standards of Conduct for Labor Organizations." These allegations assert that "NFFE Local 1154 does not meet the requirements of democratic labor union" in the following respects (quoting from the request for review):

"There is evidence that there was no lawful election conducted by Local 1154 NFFE at this hospital.

Elections in 1968 and 1969 were conducted under the auspices of the National N.F.F.E. office. The election for 1970 was not held. When its President became ineligible to hold office all its officers were moved to the next higher position without voting."

I am forwarding copies of this letter and of your request for review to the Director, Office of Labor-Management and Welfare Pension Reports of the Labor-Management Services Administration. His office will contact you with respect to the aforementioned matters relating to Section 18 of the Executive Order.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Dennis Garrison  
National Vice President  
Fifth District  
American Federation of Government  
Employees, AFL-CIO  
2109 Clinton Avenue, West  
Huntsville, Alabama 35805

MAR 21 1972

171

Re: Headquarters, Third Army  
Fort McPherson, Georgia  
Case No. 40-3036 (CA 26)

United States Army School  
Training Center  
Fort McClellan, Alabama  
Case No. 40-3048 (CA 26)

Dear Mr. Garrison:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaints in the above-named cases alleging violations of Section 19(a)(1), (2), (5), and (6) of Executive Order 11492, and I concur with his dismissal.

I find, in agreement with the Regional Administrator, that a reasonable basis for the 19(a)(1) and (6) allegations of the complaints has not been established inasmuch as the Federal Labor Relations Council terminated all formal recognition on July 1, 1971, and, thereafter, dues could be withheld only for a labor organization having exclusive recognition status. Thus, in the instant case, subsequent to July 1, 1971, the Activities would have had the right to terminate the dues withholding of those supervisors who had been covered previously by formal recognition. While it can be argued that the Activities were obligated to consult with regard to the termination of the dues checkoff covering the period March, 1971 to July 1, 1971, I consider that further proceedings in this regard are unwarranted because no "make whole" remedy would be available. Thus, payment of membership dues is an obligation of membership in a labor organization and is the primary responsibility of the members themselves and not of the employing Agency or Activity.

In addition, I concur with the Regional Administrator's finding that there is no evidence of any violation of Section 19(a)(2), and that the allegation of violation of Section 19(a)(5) of

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the Order is inapplicable to the facts of the case, because this latter section relates to matters concerning the according of appropriate recognition rather than to the conduct of the bargaining relationship.

It should be noted that my decision in this matter would not preclude an appeal through the Department of the Army's Grievance and Appeal Procedures regarding the savings provision of the FPM Supplement 990-1, Part 550-310(b), which provision is outside the scope of the Executive Order.

Based on the foregoing, your request seeking reversal of the Regional Administrator's dismissal of the complaint in the subject cases is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

MAR 21 1972

Mr. David S. Barr  
Bredhoff, Barr, Gottesman, Cohen  
& Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

172

Re: U. S. Naval Air Station  
Quonset Point, Rhode Island  
Case No. 31-5476 (25) E.O.

Dear Mr. Barr:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed in the above named case.

I have concluded that the request for review raises issues which can be resolved best on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



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Mr. Herbert Cahn  
President, Local 475  
National Federation of Federal  
Employees  
P. O. Box 294  
Little Silver, New Jersey 07739

MAR 28 1972

173

Re: Department of the Army  
U.S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-1843

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above-named case on September 2, 1971.

The first two objections concern the election date and the manner in which it was selected. Section 202.7(c) of the Regulations states that if the parties to an election are unable to agree upon election procedures "the Area Administrator, acting on behalf of the Assistant Secretary, shall decide these matters." In the present case, the parties to the election were given ample opportunity to set the election procedures. I find that when no agreement was reached by the parties, the Area Administrator, correctly and without prejudice, set the election procedures including the election date.

The third objection accused the Area Administrator of failing to act on the contents of an additional statement inscribed by the NFFE on the parties' election agreement. The enclosed Assistant Secretary's Report No. 20 explains my policy regarding such "side agreements." Because no evidence was furnished to indicate how any of the objections made regarding the "side agreement" had an adverse effect on the election, I will not undertake to police such agreement. In these circumstances, I affirm the Regional Administrator's finding that the third objection is without merit.

The fourth objection claims that the Activity failed to post election notices until August 24, 1971, five days after the final day for submitting applications for absentee ballots. The evidence establishes that the removal of the notices on August 19, 1971 and the reposting of the notices on August 24, 1971, in no way invalidated the original posting from August 16 to August 19, 1971, because the notices were changed only to reflect the new location of one polling place. In the circumstances, because the alteration involved nothing more than a change of polling place location with no change in the mail ballot procedure, I find that the removal and reposting of the notice had no effect on any individual's right to request a mail ballot and, therefore, affirm the Regional Administrator's finding in this respect.

The fifth objection stated that mail ballots were denied improperly to employees on "all kinds of leave" and that employees in the military were required to appear in person to vote. The Decision and Direction of Election in the instant case stated specifically that military personnel eligible to vote in the election were required to appear at the polls. With respect to employees on leave status, it is my stated policy to require such employees to appear at the polls in order to vote (See the Procedural Guide for Conduct of Elections, Appendix 1, page 1, paragraph 3). Accordingly, the Regional Administrator's action in authorizing that mail ballots be made available only to employees assigned temporarily to other worksites for official business was appropriate.

The final objection accused the agency management's personnel office of giving special assistance to the Petitioner. In agreement with the Regional Administrator, I find that because NFFE did not present any evidence in support of this allegation, it did not satisfy its obligation to bear the burden of proof as required under Section 202.20(d) of the Regulations. Accordingly, the Regional Administrator correctly dismissed this objection.

In view of the foregoing conclusions, I find that no further investigation is warranted with respect to the challenged ballots in this matter as they were not sufficient in number to affect the results of the election. Under all of the foregoing circumstances, your request for reversal of the Regional Administrator's dismissal of your objections to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
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WASHINGTON

APR 25 1972

Mr. T. Lamar Noblitt  
National Representative  
American Federation of Government  
Employees  
Box 115  
Mulberry, Tennessee 37359

174

Re: IRS, Memphis Service Center  
Memphis, Tennessee  
Case No. 41-2763 (RO 25)

Dear Mr. Noblitt:

I have considered carefully your request for review of the Regional Administrator's denial of the American Federation of Government Employees request to intervene in the above named case.

It is found that your request is procedurally defective in two respects. First, the request for review was untimely because it was not received in my office by the date specified in the Regional Administrator's dismissal letter. Second, contrary to the requirements of Section 202.6(d), a copy of the request for review was not served on the Regional Administrator.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

APR 25 1972

175

Mrs. Mildred H. Spradley  
1618 North Central Avenue  
Tifton, Georgia 31794

Re: 2024th Communications Squadron  
Moody Air Force Base, Ga.  
Case No. 40-3501 (CA 26)

Dear Mrs. Spradley:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint filed in the above named case alleging violations of Section 19(a) (1), (2) and (4) of Executive Order 11491.

In agreement with the Acting Regional Administrator, I find that Report No. 25 which was enclosed in the dismissal Letter dated January 19, 1972, applies to the present case. Report No. 25 was based upon a ruling that the Assistant Secretary will not proceed in a case when the issue is an alleged violation of Section 19(a)(1), (2) or (4) of the Executive Order when an established grievance or appeals procedure covers the complaint and the Agency alleges a lack of jurisdiction under Section 19(d) of the Order. The Activity asserted as a defense to your complaint that the grievances which constituted the basis for your complaint should be processed under established Activity grievance procedure and that such procedure is the exclusive means for resolving the complaint in accordance with Section 19(d) of Executive Order 11491.

The evidence supports the Activity's position in this regard. At the time the events occurred which gave rise to your complaint and, in fact, at the time your complaint was filed on November 17, 1971, the amendment of Section 19(d) resulting from Executive Order 11616 was not yet effective, becoming so on November 24, 1971. Thus, the provisions of Section 19(d) prior to its amendment were still controlling, having the effect in the circumstances of this case of removing the coverage of the Executive Order with respect to your complaint.

With respect to your reference in your request for review to advice given you on September 30, 1971, by the Director of the Office of Federal Labor-Management Relations indicating that you

might file a complaint alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, such advice was given because the Activity's position regarding Section 19(d) had not been mentioned in your request for information. However, subsequently, when the Activity asserted Section 19(d) as a defense to your complaint involving matters which occurred prior to November 24, 1971, dismissal under Section 19(d) of the complaint in the subject case became warranted.

Accordingly, your request for reversal of the Acting Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 25 1972

Mr. Robert J. Gorman  
Chairman, Chicago Council  
National Federation of Federal Employees  
860 North State Street, #4 N  
Chicago, Illinois 60610

176

Re: Federal Aviation Administration  
Great Lakes Region  
Airport Division  
Case No. 50-5529 (25)

Dear Mr. Gorman:

I have considered carefully your request for review of the Regional Administrator's dismissal of your CU petition and have decided that the question regarding the nature of the Activity's reorganization and its effect upon the employees in your exclusively recognized unit can be resolved best on the basis of record testimony.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the petition is granted and the Regional Administrator is directed to issue a notice of hearing consolidating this matter with the RA petition filed by the Activity in Case No. 50-5522 (25) which involves closely related issues.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

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WASHINGTON

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Accordingly, because the proposed clarification in effect seeks to establish a new unit which would include guards together with non-guards, your request to reverse the Acting Regional Administrator's dismissal of your petition is denied.

Sincerely,

APR 25 1972

Mr. James McCord  
National Representative  
National Federation of Federal Employees  
40 Lincoln Street  
East Orange, New Jersey 07017

177

Re: General Services Administration  
Region 2, Trenton, New Jersey  
Case No. 32-2426 EO

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. McCord:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your petition seeking a unit clarification in the above-named case.

The proscription in Section 10(b)(3) of the Order against establishing a unit under Executive Order 11491 which includes both guards and other employees is applicable to your petition. The recognition language in the negotiated agreement between the National Federation of Federal Employees, Local 1557 and the General Services Administration, Region 2, defines the unit in clear and unambiguous terms, namely, "...all Public Building Service wage grade employees..." It appears, therefore, that Class Act (GS) employees, including guards, were to be excluded from the unit. Moreover, the roster of employees which the Activity utilized in making its determination regarding the granting of exclusive recognition reveals that employees working as guards were in the GS classification.

For purposes of ascertaining the intent of the parties regarding the scope of the unit, it was considered to be immaterial that a guard had been a charter member of the labor organization seeking exclusive recognition. Further, the remaining arguments you presented both in your letter to the Regional Administrator and in your request for review were not considered to vary the expressed written intent of the parties, i.e., to accord exclusive recognition to a unit of "all Public Building Service wage grade employees."



APR 26 1972

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Stanley B. Gruber, Esq.  
Abraham E. Freedman, Esq.  
36 Seventh Avenue  
New York, N. Y. 10011

178

Re: Corps of Engineers  
Philadelphia District  
Customs House  
Case No. 20-2952 (CU)

Dear Sirs:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your clarification of unit (CU) petition in the above-named case and concur with the dismissal.

I find that your attempt to consolidate two established units by means of a CU petition is inconsistent with the intent of Sections 202.1(c) and 202.2(c) of the Regulations of the Assistant Secretary which concern CU and amendment of certification (AC) petitions. Basically, the intent of a CU petition is to provide a vehicle for determining the correct unit placement of disputed classifications of employees. On the other hand, the proper vehicle for the consolidation of two established units is an RO petition which would provide the employees involved with an opportunity to express their desires regarding inclusion in a broadened unit on the basis of a self-determination election. The fact that the Acting Regional Administrator's dismissal letter was inaccurate factually in that it indicated the size of the Essayon unit to be double that of the Comber-Goethals unit when, in fact, it approximates only about 60 percent of the certified unit, was not considered to require a contrary result.

It should be noted that my decision herein does not preclude the parties from engaging in joint negotiations covering any combination of units at any level of the agency where the parties are in agreement that

such an arrangement would provide for more meaningful negotiations. This approach has been suggested in Recommendation E, 3 in the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service, August 1969, the "legislative history" of Executive Order 11491.

Based on the foregoing, your request that the Acting Regional Administrator's dismissal be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 28, 1972

Mr. Roger P. Kaplan  
General Counsel  
National Association of  
Government Employees  
1341 G. Street, N. W.  
Washington, D. C. 20005

179

Re: Defense Supply Agency  
Defense Depot  
Memphis, Tenn.  
Case No. 41-2672 (RO 25)

Dear Mr. Kaplan:

I have received your request for review of the Regional Administrator's dismissal of the petition filed by Local R5-66, National Association of Government Employees (NAGE) in the above-named case.

The Regional Administrator, in his letter dismissing the petition, directed attention to the requirement under Section 202.6(d) of the Regulations that copies of a request for review must be served on him and each of the parties to the proceeding. I am advised that the Regional Administrator was not served with a copy of the request. This is confirmed by the statement of service filed with the original of the request. The statement of service further indicates that you failed to serve the Activity where the employees claimed in the petition are employed.

My position with respect to the service requirement under Section 202.6(d) of the Regulations is stated in Report No. 14 (copy enclosed).

In view of the foregoing, your request for review has not been considered and is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 28, 1972

Mr. Thomas D. Miles  
President  
National Association of Government  
Employees, Local R1-34  
79A Broadmeadow Road  
Marlboro, Mass. 01752

180

Re: U. S. Army Natick Laboratories  
Natick, Mass.  
Case No. 31-5463 (CA) EO

Dear Mr. Miles:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case.

I find it unnecessary to make any determination regarding the merits of the case as the request for review is procedurally defective. The telegraphic request for review dated February 28, 1972 contained no facts or reasons supporting it, contrary to the provisions of Section 203.7(c) of the Regulations, which requires that a request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. This deficiency in your request for review was not remedied by your letter of March 20, 1972 addressed to the Director, Office of Federal Labor-Management Relations which set forth facts and reasons intended to support the request for review, because it was submitted three weeks late.

Accordingly, your request for review of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

Mrs. Mildred Spradley  
Financial Secretary  
International Brotherhood of  
Firemen and Oilers, AFL-CIO  
Local 312  
1618 North Central Avenue  
Tifton, Georgia 31794

APR 28 1972

181

Re: Department of the Air Force  
Moody Air Force Base, Georgia  
Case No. 40-3095 (RO 25)

Dear Mrs. Spradley:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above named case. I have concluded that the Regional Administrator's dismissal of the objections was warranted.

Objection No. 1

In this objection you contend that certain employees feared reprisal or were given additional work loads by the Activity because of their union participation. In support of this objection you submitted a single affidavit by an employee in the petitioned-for unit who alleges that she had been harassed, intimidated, and subjected to reprisals, such as a reprimand being placed in her file, because she submitted grievances. The Activity denied all of the foregoing allegations except the above noted reprimand which it stated was precipitated by the performance of the employee's duties and her use of leave and was not based on union considerations.

I find, in agreement with the Regional Administrator, that the evidence submitted was insufficient to establish that the Activity engaged in any conduct that reasonably could result in employees fearing reprisals or additional work if they engaged in union activities. Therefore, no merit is found to this objection.

Objection No. 2

In this objection it is your contention that personnel actions were taken which changed employees' duties and supervisors. In support of this allegation you have submitted your job description in which you allege that several changes had been made in retaliation for your activities on behalf of Local 312, including the processing of grievances.

I agree with the Regional Administrator's conclusion, that no evidence has been furnished which shows that the changes in your job description were motivated by any anti-union considerations or that the changes were not in accordance with the Activity's statement that a squadron-wide reorganization was in process. The allegation that your position is the only in the squadron being reorganized, has not been substantiated by evidence. The second allegation made in the request for review, that the timing of the changes in the job description, the day before the election should be significant, was considered to be insufficient, standing alone, to warrant setting aside the election. Therefore, I find no merit to this objection.

Objection No. 3

In this objection it is contended that threats of increased hours and work were made just prior to the election by the Activity. In support of this assertion you refer to the change in hours of approximately 9 unit employees at the Commissary on May 19, 1971.

The Regional Administrator concluded that, since the change in hours occurred approximately one month before the petition was filed and as there was no evidence that the change in hours either prevented employees from voting or was due to anti-union considerations, you had not borne the burden of proof as required by Section 202.20 (d) of the Assistant Secretary's Regulations. In your request for review you contend that the change in hours imposed a hardship on the employees and that the Activity was aware of the union membership drive at the time of the schedule change for the Commissary employees.

I find no evidence that the alleged hardship imposed by the change in hours affected the employees' exercise of their right to vote. Nor do I find any evidence to support your assertion that the Activity was aware of the union membership drive at the time the change of hours was instituted. Therefore, I find no merit to this objection.

Objection No. 4

In this objection you allege that the Activity disregarded "employees welfare in certain sections." The employees referred to are the 9 employees whose schedule was changed in the Commissary and 4 telephone operators who have been scheduled to work alone from 11:00 P.M. to 7:00 A.M. and allegedly have been furnished poor lighting.

I find, in agreement with the Regional Administrator, that no evidence has been submitted to connect the alleged disregard for employee welfare with the election in this matter. Moreover, there

is a similar lack of evidence with respect to the allegation that the alleged disregard for employee welfare created a "safety hazard." Therefore, no merit is found to this objection.

Objection No. 5

With respect to this objection, it is contended that the employees feared and were reluctant to vote because the management observers were members of the personnel staff. However, the Activity contended that neither of the observers had anything to do with personnel actions such as ranking or selecting employees.

I have concluded that the Regional Administrator ruled correctly when he found no merit to this objection because there was no opposition by you prior to the election to the Activity's choice of observers and no evidence was produced as to how these observers caused fear.

You have alleged in the request for review that management actions against certain employees whom they knew to be union members gave the employees good cause to fear reprisals from the Activity if they voted. However, you have not specified any particular management actions, nor have you provided evidence to support your allegation as required by the Assistant Secretary's Regulations. Therefore, I find no merit to this objection.

Objection No. 6

It is contended in this objection that since 50 percent of the unit employees signed authorization cards, IBFO should be made the exclusive representative on that basis alone. Supporting this contention you have submitted three petitions signed by 23 employees which urged, among other things, that the IBFO be granted exclusive recognition notwithstanding the results of the election.

In agreement with the Regional Administrator and noting also that the Executive Order requires an election as a condition precedent to obtaining recognition, I find no merit to this objection.

Objection No. 7

You have asserted regarding this objection that even though a majority of votes cast were against exclusive recognition, the percentage was not sufficient to be representative of the unit.

Because no evidence has been furnished that eligible voters were prevented from exercising their voting rights, I uphold the Regional Administrator's determination that there is no merit to this objection.

Objection No. 8

In this objection you contend that because only 80 out of 214 eligible employees voted in the election, the Activity must have interfered with the election by threats or other coercive actions.

You have submitted no evidence to support this allegation. The allegations in this objection and in the request for review are comprised solely of speculation and unsupported opinion. I find, therefore, in agreement with the Regional Administrator, that there is no merit to this objection.

Accordingly, your request that the Regional Administrator's dismissal of the objections be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 28, 1972

Mr. Herbert Cahn  
President, Local 476  
National Federation of Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

182

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-2473 CA

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above-named case.

The Regional Administrator's dismissal letter of March 17, 1972, addressed to you, set forth the manner in which his action could be reviewed. The letter pointed out that Section 203.7 of the Regulations was applicable to such a review, and included the following information, "Such request shall contain a complete statement setting forth the facts and reasons upon which it is based." Notwithstanding these directions, your telegraphic request for review did not contain such a statement, and no further material was submitted. Accordingly, your request for review is denied.

Sincerely,

W. J. Usery Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

APR 28 1972

Mr. Edgar E. Burbridge  
Former President.  
Local 1497  
National Federation of Federal  
Employees, Ind.  
5445 East Kentucky Avenue  
Denver, Colorado 80222

183

Re: Air Training Command  
Lowry Technical Training Center  
Lowry Air Force Base  
Denver, Colorado  
Case No. 61-1514 (CA)

Dear Mr. Burbridge:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above-named case alleging a violation of Section 19(a)(6) of Executive Order 11491.

From a review of the facts, I am in agreement with the Regional Administrator that the complaint was not filed timely pursuant to Section 203.2 of the Regulations. In your request for review you argue that you did not consider the letter of September 15, 1971 to be a final answer because you felt the two parties were still trying to settle the matter informally and because the Civilian Personnel Officer was not authorized to sign "For the Commander." I agree with the Regional Administrator that the Activity's letter dated September 15, 1971, was a final decision as evidenced by the fact the subsequent conversations conducted between you and the representatives of the Activity did not pertain to the final decision set forth in the letter. As to your contention that the Civilian Personnel Officer lacked authority to sign for the Commander, Air Force Regulations 40-102 provide that the Civilian Personnel Officer has that authority.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Mike Gerondakis  
National Representative  
National Federation of Federal  
Employees  
5419 Blueridge Court  
Orangeville, California 95662

APR 28 1972

184

Re: Comptroller Directorate  
Tooele Army Depot  
Tooele, Utah  
Case No. 61-1481 (RO)

Dear Mr. Gerondakis:

I have considered carefully your request for review of the Regional Administrator's denial of your request to intervene in representation proceedings at the Comptroller Directorate, Tooele Army Depot, Tooele, Utah.

You are correct in your assertion that, as exclusive representative of the petitioned for unit, the NFFE was not required to submit a ten (10%) percent showing of interest to intervene in the representation proceedings initiated by the American Federation of Government Employees at the Comptroller Directorate. However, as I stated in my Report No. 43, a copy of which is enclosed, "an incumbent labor organization, like any other intervenor, must file under Section 202.5(c) of the Regulations, a notice of intervention within 10 days after the initial date of posting of the notice of petition..." In the present case the notice of petition was posted November 15, 1971 through November 26, 1971, while your request to intervene was not received until January 13, 1972.

Despite receipt on January 13, 1972 by the Area Administrator of a carbon copy of a letter allegedly mailed on November 15, 1971, in which the NFFE expressed its desire to intervene in the proceedings, the Regional Administrator concluded that Section 202.5(c) had not been complied with and therefore denied as untimely the request for intervention.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Under these circumstances, and after consideration of your request for review, I find that insufficient evidence was submitted to alter the Regional Administrator's action.

Accordingly, your request for review seeking reversal of the Regional Administrator's denial of your request to intervene is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

APR 28 1972

Mr. Vincent G. O'Brien  
President  
Operations Analysis Association #011  
Quonset Point Naval Air Station  
Quonset Point, Rhode Island 02819

185

Re: U. S. Naval Air Rework Facility  
Quonset Point, Rhode Island  
Case No. 31-5475

Dear Mr. O'Brien:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed in the above named case.

I have concluded that the request for review raises issues which can be resolved best on the basis of record testimony. Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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April 28, 1972

Mr. Dolph David Sand  
Assistant to the Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
400 First Street, N. W.  
Washington, D. C. 20001

186

Re: Veterans Administration Hospital  
Amarillo, Texas  
Case No. 63-2176 (R0)

Dear Mr. Sand:

I have considered carefully your request for review of the Regional Administrator's Supplemental Report and Findings on Objections wherein he directed a rerun election, having found merit to certain objections filed by the National Federation of Federal Employees, Local 1138, Ind. (NFFE) to an election conducted on September 30, 1970.

In its objections NFFE alleged that the Activity failed to initiate action against the (unknown) individual who removed NFFE literature from employee mail slots in one of the wards on September 10, 1970, and that its local employee president received unjust criticism in a letter from the Activity, on September 11, 1970, which letter also improperly ordered NFFE to cease and desist distributing material on VA property.

On September 10, 1970, the employee president of NFFE's local union wrote a letter to the VA Hospital Director complaining about the removal of NFFE's newsletters from employee mail slots on one of the wards and requested that the Activity initiate steps to prevent a recurrence. On the morning of the following day, September 11, 1970, the same employee and two other officers of the local union distributed the NFFE newsletter in a non-work hallway of the hospital during non-work time, and were verbally advised by the Activity's personnel officer to stop such distribution. On that same date, a letter was sent by the personnel officer to the employee president of the local union, advising him, in response to his letter of September 10, 1970, that the employee mail slots on the wards were for internal use only, and also ordered him to cease and desist the distribution of NFFE material on VA property. Additionally, the letter set forth arrangements for a meeting of the parties on September 14, 1970, for the purpose of developing a campaign, or side agreement, which agreement was eventually consummated on September 15, 1970.

The Activity took the position that the employee mail slots were for internal use only and that the placing of the material therein by NFFE was not authorized. Additionally, it stated the intent of the cease and desist "order" of September 11, 1970 was to advise NFFE of the pertinent facts and to direct NFFE to act only within the limits to be established by a campaign agreement. The Activity acknowledges that its letter was issued with reliance on those guidelines set forth in FPM Letter No. 711-6.

The Regional Administrator stated that the absolute prohibition on the distribution of campaign literature constituted a deprivation of the rights guaranteed employees under Section 1 of the order and that in light of the decision in Charleston Naval Shipyard A/SLMR No. 1, the broad restraints placed on NFFE by the Activity, even for a short period of time, clearly was prohibited.

In your request for review in behalf of AFGE, you assert that the Activity's action in removing NFFE material from the mail slots was designed to protect all parties and give all parties an equal opportunity. You further assert that the cease and desist order was issued "after the fact" and had no detrimental effect, but that even assuming that the order was issued improperly, it could have no effect, since NFFE's newsletter had already been distributed.

I am well aware that the Charleston case evolved from an unfair labor practice complaint, whereas the subject case arose from a representation proceeding. However, I find, in agreement with the Regional Administrator, that the findings in Charleston are applicable to the present case. In Charleston I held that reliance upon the subject FPM Letter for implementation of an invalid no-distribution rule is no defense to a violation of Executive Order 11491. In the present case the Activity relied upon the FPM Letter in issuing the cease and desist order to NFFE on September 11, 1970. Although the content of the order possibly was modified by the subsequent execution of the side campaign agreement on September 15, 1970, it was never revoked by the Activity and remained in effect for a period of almost three weeks before the election. In such circumstances, I agree with the Regional Administrator that the issuance of the cease and desist order herein placed an improper prohibition on the distribution of campaign literature by NFFE and interfered with employee rights guaranteed under Section 1(a) of the Order. In view of this conclusion, I find it unnecessary to decide whether the Activity acted properly in restricting the use of employee mail slots in the wards to internal use.

Accordingly, your request for review of the Regional Administrator's supplemental Report and Findings on Objections is denied, and the Regional Administrator is directed to proceed to a rerun election.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

MAY 10 1972

Mr. Thomas D. Miles  
President  
Local RL-34  
National Association of Government  
Employees  
79A Broadmeadow Road  
Marlboro, Massachusetts 01752

187

Re: U.S. Army Natick Laboratories  
Natick, Massachusetts  
Case No. 31-5480 E.O.

Dear Mr. Miles:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint on January 4, 1972 in the above named case.

I find it unnecessary to make any determination regarding the merits of the case as the request for review is procedurally defective. The telegraphic request for review dated January 17, 1972 contained no facts or reasons upon which it was based, contrary to the provisions of Section 203.7(c) of the Regulations, which require that a request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. By letter dated March 7, 1972, the Respondent called attention to the fact that the request for review did not meet the requirements of Section 203.7(c), and requested denial of the request on that ground. The deficiency in your request for review was not remedied by the National Association of Government Employees' letter dated April 13, 1972, some three months later, which set forth facts and reasons intended to support the request for review.

Accordingly, your request for review of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

MAY 10 1972

Mr. Gerardo Vasquez  
American Federation of Government  
Employees, Local 2968  
calle 14 #1067  
Villa Nevarez, P. R. 00927

188

Re: U. S. Department of Agriculture  
Agricultural Quarantine Inspection  
Division  
San Juan, Puerto Rico  
Case No. 37-1015 E. O.

Dear Mr. Vasquez:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your petition in the above named case.

I am in accord with the Acting Regional Administrator's determination that the American Federation of Government Employees, AFL-CIO (AFGE) petition was not timely filed. This is so because the Basic Agreement between the Federal Plant Quarantine Inspectors National Association and the Department of Agriculture was in effect at the time of the filing of AFGE's petition, and AFGE's petition was not filed timely, i.e. "not more than ninety (90) days and not less than sixty (60) days prior to the terminal date (October 1) of such agreement" as required by Section 202.3(c) of the Regulations.

As the petition was not timely filed, I find it unnecessary to consider the Acting Regional Administrator's additional reason for dismissing the petition on the ground that the unit sought was inappropriate for the purpose of exclusive recognition. Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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Accordingly, your request that the Regional Administrator's Report and Findings on Objections be reversed is denied and the Regional Administrator is directed to proceed with the processing of the case as set forth in his Report and Findings on Objections.

Colonel John T. Stanfield  
Deputy Commander  
U. S. Army Aeronautical Depot  
Maintenance Center  
Department of the Army  
Corpus Christi, Texas 78419

MAY 18 1972

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Sincerely,

Re: U. S. Army Aeronautical Depot  
Maintenance Center  
Corpus Christi, Texas  
Case No. 63-2865 (RO)

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Colonel Stanfield:

I have considered carefully your request for review of the Regional Administrator's Report and Findings on Objections, finding merit to certain objections filed by the American Federation of Government Employees (AFGE) to an election held August 5, 1971, and directing a rerun election. Based upon a full review of the circumstances surrounding the conduct of the election, the evidence submitted and the positions offered by the parties, it is concluded that the Regional Administrator's decision was warranted.

In your request for review you contest the Regional Administrator's action in upholding objections 6, 7, 8, 9, 10 and 11. You acknowledge the omission of the word "not" from the Official Notice of Election but contend that the distribution to employees of the 1500 correct notices of election enabled the eligible voters to cast informed ballots. The effect of the omission of the word "not" was to describe the ineligible categories of employees as eligible voters. The Official Notice of Election is a basic document essential to any election procedure because it describes the voting unit, among other things, and therefore, must be correct.

I find, in agreement with the Regional Administrator, that the error in describing the unit in the posted notices of election warrants the setting aside of the election.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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May 31, 1972

William B. Peer, Esq.  
Bradhoff, Barr, Gottesman, Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20035

190

Re: Federal Aviation Administration  
Atlanta Air Traffic Control Tower  
Case No. 40-3470 (CA 26)

Dear Mr. Peer:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint in the above named case alleging violations of Section 19(a)(1) and (3) of Executive Order 11491.

I am of the opinion that the request for review raises issues which can be resolved best on the basis of record testimony. Evidence should be presented both as to the alleged labor organization status of ATCA as related to the Section 19(a)(3) allegation, and as to whether the Activity may have violated Section 19(a)(1) of the Order by the granting of permission for the posting of certain ATCA literature, the contents of which may have had the effect of interfering with, restraining or coercing employees of the Activity.

Specifically, the following issues should be explored at the hearing:

1. The extent to which an activity or agency may deal with a professional association without encroaching upon subjects within the scope of bargaining negotiations with an exclusive representative.

2. The line of functional demarcation to be drawn between labor organizations and professional associations as these terms are defined or used in the Executive Order.

3. The conflict, on the one hand, between evidence submitted by the Complainant purporting to prove that ATCA has been acting as a labor organization, together with my finding in A/SLMR No. 10 that ATCA is a labor organization and, on the other hand, evidence of disclaimers by ATCA that it is or intends to be, a labor organization.

4. What responsibility, if any, does an activity or agency have to monitor or censor the content of bulletins or other publications of

professional associations prior to posting or internal distribution of such material on activity or agency premises where there is an exclusive representative.

Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



-2-

5-31-72

Mr. Glen J. Peterson  
Area Director of Organization  
American Federation of Government Employees  
St. Louis Area Office  
P. O. Box 5699  
St. Louis, Missouri 63121

191

re. Department of Housing and  
Urban Development  
Detroit, Michigan  
Case No. 52-3582 (25)

Dear Mr. Peterson:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above-named case on December 10, 1971.

Your objections to the election stem from alleged misrepresentations in the campaign literature distributed by the National Federation of Federal Employees (NFFE) on the day prior to the election. The literature described a previous election at the HUD St. Louis Area Office and bore the caption, "NFFE Victor Over AFGE in 'Sore Loser' Election." The Regional Administrator dismissed the objections, stating that he did not view the statements contained in the campaign literature as being so untrue or misleading that they impaired the ability of the voters to judge the facts fairly.

I have previously ruled that elections will be set aside where deception occurs that constitutes campaign trickery involving a substantial misrepresentation of fact which impairs the employees' ability to vote intelligently on the issues, and there is not time for the offended party to make an effective reply (see A/SLMR No. 31). Consistent with the Regional Administrator's decision, I find that the campaign literature in question was readily recognizable by the voters as self-serving campaign propaganda, that it contained no gross

misrepresentation of a material fact and was not of such a nature as to deprive the employees of their ability to vote intelligently on the issues. I find further that in view of the nature of the NFFE literature, no time for reply was necessary.

Accordingly, your request for reversal of the Regional Administrator's dismissal of the objections is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

May 31, 1972

Mr. Ralph C. Reeder  
Director, Office of Personnel  
Health Services and Mental Health  
Administration of the Public Health  
Service, HEW  
Rockville, Maryland 20852

192

Re: Health Services and Mental Health  
Administration Public Health Service,  
HEW  
Case No. 50-5191 (25)

Dear Mr. Reeder:

I have considered carefully your request seeking reversal of the Acting Regional Administrator's denial of your request to revoke the certification accorded to Local 2343, American Federation of Government Employees, AFL-CIO (AFGE) in the above named case.

I have concluded, in agreement with the Acting Regional Administrator, that the Area Office acted properly with respect to the handling of this case and that no action should be taken to revoke the certification. In my opinion, the Warden had apparent authority from Health Services and Mental Health Administration of the Public Health Service, HEW, (HSMHA) to act for it, by virtue of his position and because of the fact that the Executive Officer, Office of the Medical Director, Bureau of Prisons, had advised the Area Office on April 28, 1971 to serve a copy of the petition on the Warden. Thereafter, the Area Office did not act unreasonably in assuming that the Warden had authority to sign the consent agreement for HSMHA. Furthermore, I note that no inquiries or complaints were received from HEW or the Hospital Administrator prior to the certification despite the fact that the notice of petition and the notice of election, both of which contained the description of the unit involved, were posted at the Penitentiary Hospital.

Accordingly, your request seeking reversal of the Regional Administrator's refusal to revoke the certification is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 22, 1972

Gordon P. Ramsey, Esq.  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

193

Re: Norfolk Naval Shipyard  
Portsmouth, Va.  
Case No. 46-1617 (RO)

Dear Mr. Ramsey:

I have considered carefully your request for review of the Regional Administrator's dismissal of all your Class I and II objections (except a portion of Objection No. 4 under Class II), relating to conduct allegedly affecting results of the second election in the subject case held on May 24, 1971 and find as follows:

Objection No. 1 (Class I)

In this objection you contend that the Assistant Secretary was without jurisdiction under Executive Order 11491 to rule on any matters relating to the first election in this matter conducted on December 4, 1969, by the Department of the Navy under the provisions of Executive Order 10988. You cite the December 14, 1971, decision of the Federal Labor Relations Council in FLRC Nos. 71A-33, 71A-44, and 71A-53 as controlling on this question. It is my opinion that the rationale supporting the denial of retroactivity of an amendment modifying Executive Order 11491 is not analogous to the instant case. Thus, Executive Order 10988 provided the right to third-party review of disputes involving majority representation. This right was continued without interruption under Executive Order 11491. The facts in this case show that MTC filed a timely appeal from the Activity's dismissal of its objections to the first election with the Assistant Secretary pursuant to Executive Order 11491, after Executive Order 10988 was revoked and Executive Order 11491 became effective. In these circumstances, I reaffirm my conclusion in A/SLMR No. 31 that Executive Order 11491 established the requisite authority for me to assert jurisdiction in this matter. Accordingly, NAGE cannot be certified as the exclusive representative of its claimed unit on the basis of the December 4, 1969, election conducted by the Department of the Navy under the provisions of Executive Order 10988.

Objections Nos. 2 and 3 (Class I)

In objections Nos. 2 and 3 you state that "...the decision and direction of a second election was invalid, as a matter of law, by reason of the refusal of the Assistant Secretary to disqualify himself..." As I stated in A/SLMR No. 31 I am mindful of my oath of office under which I assumed the obligation to carry out my assigned duties and responsibilities with full regard for the public interest. Since effectuation of such duties includes the requirement to administer and implement certain provisions of Executive Order 11491, I shall retain jurisdiction over this proceeding.

Objection No. 4 (Class I)

In this objection you state that "...the direction of a second election [the election of May 24, 1971] was arbitrary and capricious and in complete violation of law." You cite my Report No. 50 as basis for review and reconsideration of my direction of the second election. Report No. 50 states that "conduct occurring prior to the first election, and not urged as objections to that election, may not be considered as grounds for setting aside the runoff election, except in unusual circumstances." I cannot accept your interpretation of Report No. 50 as being germane to this case. In A/SLMR No. 31 I found that NAGE's offer of immediate free insurance warranted the setting aside of the first election. Consequently, I find no merit in this objection.

Objection No. 1 (Class II)

In this objection you contend that the Activity favored MTC by its indefinite extension of the collective bargaining agreement up to and subsequent to the second election of May 24, 1971. I find that the agreement, on its face is not improper. As to the extension itself, I found in Naval Air Rework Facility, Jacksonville, Florida, A/SLMR No. 155, that continuity and stability in a collective bargaining relationship is desirable and I considered it to be reasonable and proper that parties be permitted to extend, in writing, an agreement while awaiting resolution of a question concerning representation, if granting of the extension occurs during the term of the agreement. As the agreement is not improper on its face, it does not constitute a continuing violation of Section 19 of the Order. Therefore, its effectiveness prior to the second election does not constitute objectionable conduct. In regard to the fact that the execution of the extension agreement occurred prior to the first election, I previously indicated in Report

No. 50 that such conduct cannot be alleged as objections to a second election, even assuming that the extension was improper under the aforementioned decision. Accordingly, I find objection No. 1 (Class II) to be without merit.

Objections No. 2 and 3 (Class II)

In these objections you allege that during the period from the date of the first election December 4, 1969, through and including May 24, 1971, the date of the second election, the following occurred: (1) MTC national representatives Al Washington and T. J. Smith electioneered, campaigned, and solicited employees of the Activity during the employees' duty time in work areas; and (2) the Activity, by its unwillingness or failure to prohibit electioneering, open and notorious campaigning, and soliciting activities by MTC, has sponsored, controlled or otherwise assisted MTC. I agree with the Regional Administrator that the evidence you have submitted has failed to establish that the conduct NAGE objects to is of sufficient import to have affected the results of the second election. The presence of MTC national representatives in the Shipyard, consistent with the contractual rights, without more, in my opinion, is not improper conduct. Moreover, from the evidence available, I conclude that the Activity did take immediate and appropriate action to correct any breach of Shipyard rules by MTC representatives when such breach was brought to its attention. Although Washington's and Smith's actions inside the Shipyard might have been considered to be unfair by employees favorable to NAGE, I find no evidence that their conduct affected the results of the second election.

Objection No. 4 (Class II)

In this objection you contend, in part, that the Activity took no action against MTC representatives who passed out MTC literature in work areas during duty time or against an acting supervisor who also distributed MTC literature in working areas during duty time. I agree with the Regional Administrator that the evidence submitted failed to establish that the incidents complained of adversely affected the results of the second election in light of the fact that the Activity, when it became aware of the improper conduct, took prompt corrective action which prevented any recurrences. In the remaining portion of Objection No. 4, you allege that certain of the Activity's supervisors did, approximately a month before the second election, threaten, coerce, and interfere with the rights of an employee machinist who at the time was also the President of the Local NAGE Council of Lodges. I find, in agreement with the Regional Administrator, that the circumstances sur-

rounding the alleged threat by Activity supervisors against the President of Local NAGE Council of Lodges, including the possible impact of such alleged threat on other unit employees, raise reasonable questions of fact which warrant the issuance of a notice of hearing.

Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing in this proceeding limited to the aforementioned portion of Objection No. 4. I am mindful of the total elapsed period of time in this case. Therefore, I am requesting all parties to expedite all phases of the hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

JUN 27 1972

194

Douglas L. Leslie, Esq.  
O'Donoghue & O'Donoghue  
1912 Sunderland Place, N. W.  
Washington, D. C. 20036

Re: Norfolk Naval Shipyard  
Portsmouth, Virginia  
Case No. 46-1617 (RO)

Dear Mr. Leslie:

I have considered carefully your request for review of the Regional Administrator's decision to issue a notice of hearing on an objection raised by the National Association of Government Employees (NAGE) relating to conduct allegedly affecting the results of the second election in the subject case held on May 24, 1971.

Your request for review is concerned exclusively with a portion of Objection No. 4 of NAGE's Class II Objections. In the portion of Objection No. 4 at issue, NAGE contends that certain of the Activity's supervisors did, approximately a month before the second election, threaten, coerce, and interfere with the rights of an employee machinist who at the time was also the President of the Local NAGE Council of Lodges.

After due consideration of your request for review, I find, in agreement with the Regional Administrator, that the circumstances surrounding the alleged threat by Activity supervisors against the President of the Local NAGE Council of Lodges, including the possible impact of such alleged threat on other unit employees, raise reasonable questions of fact which warrant the issuance of a notice of hearing.

Accordingly, the Regional Administrator is directed to issue promptly a notice of hearing on this portion of Objection No. 4 of NAGE's Class II Objections. I am mindful of the total elapsed period of time in this case. Therefore, I am requesting all parties to expedite all phases of the hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

Mr. John Victor Tilly  
Jennings, Gartland & Tilly  
352 World Trade Center  
San Francisco, California 96111

195

~~SEP 22~~ 22 1972

Re: U. S. Public Health Service Hospital  
Department of Health, Education and  
Welfare  
San Francisco, California  
Case No. 70-1803

Dear Mr. Tilly:

I have considered carefully your request for review filed on behalf of Clerical, Office and Technical Workers Union, Division of the Military Sea Transport Union, affiliated with Seafarers International Union of North America, AFL-CIO, of the Regional Administrator's dismissal of Objection No. 1 to the election held in the above named case on August 31, 1971. I have not given consideration to Objections Nos. 2, 3 and 4 because your request did not question the Regional Administrator's findings as to those objections.

In your request for review you contend that the election should be set aside because it was not the "effective" choice of a majority of employees in the unit. You argue, in effect, that Section 202.17(c) of the Regulations, which states that an exclusive representative shall be chosen by a majority of the valid votes cast should not apply when a "representative number" of eligible employees do not vote in the election.

Contrary to your contention, I am of the opinion that Section 202.17(c) must be applied literally, in the absence of a showing that the election was not properly publicized or that unusual circumstances were present. You do not contend that either of these situations in fact existed.

Further, I note, in agreement with the Regional Administrator, that the election was well publicized. The Notice of Election, which was posted in five separate locations (which were agreed to in advance by the parties) clearly reads: "An exclusive representative shall be chosen by a majority of the valid ballots cast." Moreover, the upcoming election received notice in the Activity newsletter on two occasions within a month of the election.

As the investigative file reveals no showing that the election was not properly publicized or that other unusual circumstances were present, Section 202.17(c) must be applied literally.

Accordingly, your request seeking to reverse the Regional Administrator's overruling of Objection No. 1 is denied and the Regional Administrator is directed to have an appropriate certificate of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JUN 28 1972

Mr. Joseph Girlando  
National Representative  
American Federation of  
Government Employees, AFL-CIO  
300 Main Street  
Orange, New Jersey 07050

196

Re: Department of the Army  
Picatinny Arsenal  
Dover, New Jersey  
Case No. 32-2475 E.O.

Dear Mr. Girlando:

The undersigned has received your request for review of the Regional Administrator's dismissal of a complaint against the above named Activity filed by Local 225, American Federation of Government Employees, AFL-CIO (AFGE).

A review of the case reveals that the Regional Administrator advised Local 225, AFGE, of its right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned to be received by me by the close of business on April 25, 1972. Your request for review dated and mailed April 24, 1972, was received on April 27, 1972, and therefore was untimely.

Accordingly, your request for review will not be considered.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Captain George O. Fowler, SC, USN  
Defense Supply Agency  
Defense Depot Tracy  
Tracy, California 95376

197

JUN 28 1972

Re: Defense Supply Agency  
Tracy, California  
Case No. 70-2418

Dear Captain Fowler:

I have considered carefully your request for review of the Regional Administrator's action ordering a rerun election and requesting that the parties to the January 19, 1972, representation election in the above-named case enter into a new Consent Election Agreement precedent to the conduct of the rerun election.

Based upon a full review of the circumstances surrounding the conduct of the election and the positions offered by the parties, it is concluded that the Regional Administrator's decision was warranted. The theft of the ballots and other election materials from the automobile belonging to the Compliance Officer who supervised the election precluded the eventual resolution of the 37 challenged ballots. It is conceivable that these ballots could have determined the outcome of the election, and to disregard those ballots on the supposition that the individuals who cast the challenged ballots were management officials and, therefore, ineligible voters, would constitute too great a departure from acceptable election procedures to be permissible.

Accordingly, your request for reversal of the Regional Administrator's action is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 28, 1972

Mr. Geoffrey D. Spinks  
Labor Relations Advisor  
Disputes & Appeals Section  
Labor & Employee Relations Division  
Office of Civilian Manpower Management  
Department of the Navy  
Washington, D. C. 20390

198

Re: Department of the Navy  
Naval Ship Repair Facility  
Guam, Mariana Islands  
Case No. 73-436

Dear Mr. Spinks:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objection to the election held in the above-named case on January 19, 1972.

Your contention that the small percentage of employees who cast ballots resulted in an unrepresentative election has been noted along with your suggestion that Section 202.17(c) be amended to set forth a minimum of 30 percent election participation rule. While it is true that a large percentage of the eligible voters did not vote in the election, I find that in the absence of a showing that the election was not properly publicized or that other unusual circumstances were present, Section 202.17(c) must be applied literally. Further, I cannot accept your recommendation that a specific percentage rule be set up by regulation to determine the representative character of an election.

Accordingly, the request that the Regional Administrator's dismissal be reversed is denied, and the Regional Administrator is directed to have an appropriate certificate of representative issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7/13/72

199

Mrs. Beatrice E. Smith  
1425 Conlyn Street  
Philadelphia, Pa. 19141

Re: General Services Administration  
Communications Division  
Philadelphia, Pa.  
Case No. 20-3000 (CA)

Dear Mrs. Smith:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint in the above named case.

The evidence in the case file is confined to the issue raised in your formal racial discrimination complaint filed with the General Services Administration (GSA). I note that in your letter to GSA, January 25, 1972, you stated that the violation of Section 19(a)(1) of the Order was "the agency delay in answering my correspondence and/or no response and agency failure to reply to my request for a hearing." There is no evidence that this was as a result of your engaging in any activity on behalf of a labor organization or refraining from such activity, which are the rights assured by Executive Order 11491. Therefore, I find in agreement with the Acting Regional Administrator that the allegation raised in your complaint does not constitute an unfair labor practice within the meaning of Section 19(a)(1) of the Order. In view of this finding it is not necessary to consider the possible application of Section 19(d) raised as a defense by the Activity.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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7-14-72

Mr. Joseph D. Gleason  
National Vice President  
American Federation of Government  
Employees  
300 Main Street  
Orange, New Jersey 07050

200

Re: Internal Revenue Service  
Manhattan District  
New York, New York  
Case No. 30-4099

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Gleason:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint filed February 29, 1972 alleging that the Internal Revenue Service, Manhattan District (Activity) violated Section 19(a)(1) and (3) of the Executive Order.

With respect to the letter of December 23, 1971 in which the Activity accused Local 15 of the AFGE of infringing "--upon the spirit if not the substance of the regulations and decisions dealing with exclusive recognition, ---," I have concluded that it does not constitute a violation of the Executive Order. The letter was not served on any party other than Local 15, and contained no threats of penalty or reprisal which might have impeded future activity by Local 15, nor did the letter interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Order.

With regard to the request for bulletin board space I have concluded that the refusal to comply was not in violation of the Executive Order. During the course of the campaign the Activity offered equal access to its employees to both labor organizations. The Activity refused bulletin board privileges for electioneering purposes to both labor organizations and there was no evidence submitted indicating that the NAIRE, the incumbent, had, in fact, used the bulletin boards for this purpose following the expiration of its agreement with the Activity on November 26, 1971.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

July 14, 1972

Mr. Irving I. Geller  
General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

201

Re: General Services Administration  
Region 3, Washington, D. C.  
Case Nos. 22-2616 (RO) and 22-2617 (RO)

Dear Mr. Geller:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the election held in the above named case.

The first objection was that the General Services Administration (GSA) was unnecessarily restrictive toward the National Federation of Federal Employees (NFFE) by refusing to give permission to the NFFE to electioneer until election notices had been posted, and by refusing to honor verbal requests made by the NFFE to hold meetings with eligible employees during non-duty time. Regarding the first part of this objection there was no evidence presented by the NFFE to support its contention. The second part of this objection relates to an incident which occurred on December 6, 1971, one day before the election. The NFFE had been promised that on December 6, 1971, it would hold three meetings with employees during off-duty hours for the day and evening shifts. While one of the meetings did proceed as scheduled, two did not. At one meeting it appeared that the National Alliance of Postal and Federal Employees (NAPFE) was preparing to hold a meeting at the same time and place with the result that the NFFE refused to hold this meeting. With respect to the other meeting which did not proceed as planned, the Coast Guard was using the proposed meeting room and when a new room was eventually found, the NFFE was left with only ten minutes in which to conduct its program. The Activity did not grant the NAPFE permission to hold a meeting nor was there any evidence that the NAPFE had, in fact, held a meeting. Because, in the first instance there was no evidence submitted, and in the second instance there was a misunderstanding between the GSA and the NFFE with no evidence to indicate any preferential treatment accorded to the NAPFE by the Activity, or a lack of good faith on the part of the Activity, I find that the first objection has no merit.

The second objection contended that the Activity gave aid to the NAPFE by not curbing the on-the-job activities of the President of Local 202 of the NAPFE and of a woman alleged to be a NAPFE vice-president. The case file revealed that the NAPFE president is not employed by the GSA and that the woman is not an official of the NAPFE. This objection was not supported by evidence and, therefore, cannot be sustained.

The third objection asserted that the Activity had not fulfilled its duty to inform fully all eligible employees of the election by failing to post a notice of election in the Appraisers Store in Baltimore and by making no effort to explain verbally the purpose of the election to eligible employees. Notices of the election were posted in places where notices are usually posted and which were specified in the election agreement. It is not incumbent upon the Activity to inform its employees individually of the election details since the notice of election are designed to serve this purpose. The participating labor organizations are presumed also, to share in the responsibility of informing eligible voters of the election details. Consequently, the third objection has no merit.

The fourth objection states that adverse weather conditions and the unsafe location of the Appraisers Store and the Customs House prevented some employees from exercising their voting rights. The parties to the election executed the consent agreement, which included provisions for the date of the election and the location of the polling places. Further, the evidence did not indicate that the weather conditions were so unusual or severe that the election was in any way disrupted. Accordingly, I find that the fourth objection has no merit.

The fifth objection avers that a NAPFE vice-president acting as an observer at the Woodlawn polling site engaged in lengthy discussions with eligible voters and gave the impression of electioneering at the polling place. The evidence supplied by the NFFE does not indicate any conduct on the part of the NAPFE observer which would have affected improperly the results of the election. Furthermore, the case file showed that the observer was not, in fact, a vice-president of the NAPFE. Therefore, the fifth objection is found to have no merit.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7-18-72

On December 28, you filed an additional objection regarding election materials distributed by the NAPFE. This objection, filed more than five days after the conduct of the election, was untimely and the Regional Administrator properly declined to consider it.

In view of the above, your request for review based on the Regional Administrator's dismissal of your objections to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Gordon P. Ramsey, Esq.  
Rexford T. Brown, Esq.  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

202

Re: Department of Navy  
Naval Air Rework Facility  
Naval Air Station  
Norfolk, Virginia  
Case No. 22-2568 (RO)

Dear Sirs:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of Objections Nos. 3 and 4 in the above named case, which were remanded earlier to the Regional Administrator for further investigation and the issuance of a supplementary report on his findings. The pertinent issue in Objections Nos. 3 and 4 is the extension of the Lodge 39, International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) collective bargaining agreement with the Activity during the pendency of a representation petition filed by the National Association of Government Employees, Local R4-74 (NAGE).

You contend that the Acting Regional Administrator did not undertake a thorough investigation of the impact of the extension of the collective bargaining agreement on the election. You also argue that other factors, such as the terms of the agreement, should be taken into consideration.

As an additional contention you alleged that by extending the collective bargaining agreement with IAM, the Navy did not give NAGE the "equivalent treatment" which Executive Order 11491, as amended, demands. The "equivalent treatment" subject was considered in the case you cite in your request for review, U. S. Department of the Interior, Pacific Coast Region, Geological Survey Center, Menlo Park, California, A/SLMR No. 143.

Subsequent to the Assistant Regional Administrator's Supplemental Report and Findings on Objections, dated April 10, 1972, I had occasion to consider in another case the extension of a negotiated agreement between an activity and an incumbent labor organization when a valid question concerning representation was pending.

(Department of the Navy, Naval Air Rework Facility, Jacksonville, Florida, A/SLMR No. 155, dated May 8, 1972). In that decision I stated that I did not view the extension of an existing negotiated agreement between an incumbent labor organization and an agency, prior to a resolution of a rival claim, to constitute improper assistance to the incumbent or to encroach upon the rights of the employees, if such extension were agreed upon in writing during the term of the parties' existing agreement.

Turning to the facts of the instant case, the investigative file shows that IAM requested extension of its collective bargaining agreement prior to its expiration date of July 23, 1971. The Activity agreed with the request, and on June 10 the office of Civilian Manpower Management approved a 30 day extension until August 22, 1971. Prior to August 22, another extension of 30 days was agreed to by IAM and the Activity, and the Office of Civilian Manpower Management approved the additional extension until September 22, 1971. Several more extensions were entered into, but these extensions are not material to the issue at hand, because they post-date the time for valid objections to the election held on August 26, 1971.

In my view, the issues in this case are controlled by my decision in the Department of Navy, Air Rework Facility case cited above. Therefore, in regard to your first contention, I find that extension of the agreement in this case did not constitute interference with the election.

Your second contention relates to the applicability of my decision in the U. S. Department of the Interior case regarding "equivalent treatment." That case dealt with a petitioning union, and another union which had failed to intervene timely in the proceedings. On that basis, I found those two labor organizations could not be considered to have equivalent status. However, A/SLMR No. 143 is clearly distinguishable from the subject case. Whereas at issue in A/SLMR No. 143 was the furnishing of customary and routine services and facilities (to labor organizations), the issue in the present case is whether the extension of the agreement between the Activity and the IAM constituted objectionable conduct affecting the election. Further, in regard to "equivalent treatment," I pointed out in A/SLMR No. 155, that while an agency is required to maintain its neutrality, it must at the same time permit the incumbent exclusive representative to administer its negotiated agreement while a representative question is pending.

Considering the above, I find the extension of the negotiated agreement between the Activity and the IAM during the pendency of a valid question concerning representation to be within the purview

of my decision in A/SLMR 155 and to be proper, since the parties did agree in writing during the terms of their existing agreement to extend the agreement. Therefore, I find in agreement with the Acting Regional Administrator, that the allegations in Objections Nos. 3 and 4 lack substance, and they are hereby overruled.

Accordingly, your request seeking reversal of the Acting Regional Administrator's dismissal of Objections Nos. 3 and 4 is denied and the Regional Administrator is hereby directed to have issued an appropriate certification of representative.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 18, 1972

Mr. Bruce I. Waxman  
Assistant to the Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
400 First Street, N. W.  
Washington, D. C. 20001

203

Re: Department of the Navy  
Naval Supply Center  
Norfolk, Virginia  
Case No. 22-2949 (CA)

Dear Mr. Waxman:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491.

I am of the opinion that the request for review raises issues which can be resolved best on the basis of record testimony. As I stated in Long Beach Naval Shipyard, A/SLMR No. 154, an arbitration provision in negotiated agreement constitutes an invaluable tool for promoting labor relations harmony in the Federal service. If such arrangements are to be effective, however, they must be honored by the parties to the fullest extent possible. In the instant case there exists a reasonable basis for the complaint, in view of the Activity's refusal to take the matter to arbitration under Article XXV, Sections 1 and 2 of the agreement between the parties.

Accordingly, the Regional Administrator is directed to reinstate the dismissed complaint and to issue promptly a notice of hearing in this proceeding.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 21, 1972

Gordon P. Ramsey, Esq.  
Gadsby & Hannah  
1700 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

204

Re: Norfolk Naval Shipyard  
Portsmouth, Virginia  
Case No. 22-2669 (CA)

Dear Mr. Ramsey:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of portions of your complaint in the subject case alleging violations of Section 19(a)(1) and (3) of Executive Order 11491.

I find, in agreement with the Acting Regional Administrator, that the facts relating to your "B" and "C" allegations do not form a reasonable basis for complaint. In my opinion, there is no evidence in the file to show that the Activity assisted, encouraged, or condoned any improper conduct, breach of Shipyard rules, or other actions in violation of Section 19(a)(3) of Executive Order 11491. It is my conclusion that the Activity, when it became aware that Metal Trades Council (MTC) national representatives and an acting supervisor were passing out MTC literature in work areas during duty time, took all corrective actions that reasonably could have been expected of it.

However, in agreement with the Acting Regional Administrator, I find that allegation "A" of your complaint, which alleges that a supervisor threatened, coerced, and interfered with the rights of an employee representative of NAGE, raises a material issue of fact under Section 19(a)(1) of the Order which can be resolved best on the basis of record testimony.

I have previously directed a hearing in Case No. 46-1617 (RO) on that portion of your Objection No. 4 (Class II) which relates to the same subject matter as allegation "A" of your present complaint. In view of these circumstances and the fact that the same interested parties are involved in both the objection and complaint cases, the Regional Administrator is directed to consolidate the present case with Case No. 46-1617 (RO) for purposes of the hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



-2-

7-24-72

Neal H. Fine, Esq.  
Assistant to the Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
400 First Street, N.W.

205

Re: Marine Corps Supply Center  
Barstow, California  
Case No. 72-2948(CA)

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Fine:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Sections 19(a)(1) and (6) of Executive Order 11491.

I am in agreement with the Regional Administrator that the complaint was filed untimely under the Rules and Regulations of the Assistant Secretary and must be dismissed for that reason. A review of the investigative file reveals that the unfair labor practice charge was filed on September 9, 1971; that the final decision by the Activity on the charge was received by the President of Local 1482, American Federation of Government Employees, AFL-CIO (AFGE) on October 22, 1971, and that the complaint was filed on November 24, 1971.

The Regional Administrator dismissed the complaint as untimely filed by letter dated May 10, 1972, and a timely request for review was filed on June 9, 1972, after an extension of time had been granted.

Section 203.2 of the Regulations provides, in pertinent part, "---That a complaint to the Assistant Secretary shall not be considered timely unless filed---within thirty (30) days of the receipt by the charging party of the final decision,---. Thus, under the facts herein, since November 21, 1971, fell on a Sunday the complaint must have been filed no later than November 22, 1972. In view of the clear requirement of this section, your contention that Section 205.2 of the Regulations would apply to compel the addition of 3 days to the 30 days provided by Section 203.2 because the final decision of the Activity was transmitted to the President of the AFGE Local through the intra-base mail service, is rejected as being without merit.



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 26, 1972

Mr. Joseph F. Girlando  
National Representative  
American Federation of Federal Employees  
300 Main Street  
Orange, New Jersey 07050

206

Re: AFGE, AFL-CIO, District II of HUD  
Council of Locals  
HUD, Region II  
Case No. 30-3754

Dear Mr. Girlando:

Your letter of July 11, 1972, addressed to Mr. Hicks  
is acknowledged and your request to withdraw your request for review  
in the subject case has been considered and is hereby granted.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 26, 1972

Mr. S. B. Pranger  
Director of Personnel  
U. S. Department of Agriculture  
Office of the Secretary  
Washington, D. C. 20205

207

Re: USDA, Northern Marketing and Nutrition  
Research Division  
Agricultural Research Service  
Peoria, Illinois  
Case No. 50-5165 (RO)

Dear Mr. Pranger:

Your letter of June 29, 1972, is acknowledged and your  
request to withdraw your request for review in the subject case is  
hereby granted.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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July 27, 1972

Mr. Herbert Cahn  
President  
Local 476  
National Federation of Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

208

Re: U. S. Electronics Command  
Department of the Army  
Ft. Monmouth, New Jersey  
Case No. 32-2811 EO

Dear Mr. Cahn:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint filed by Local 476, National Federation of Federal Employees (NFFE) in the above named case.

The complaint alleges violations of Sections 19(a)(1), (2) and (6) of the Executive Order, in that a communication directed to employee Floyd B. Smith, dated August 24, 1971, the Activity improperly advised Smith that certain advice rendered Smith by NFFE was erroneous, refused to accept Smith's appeal with regard to a proposed adverse action, and directed Smith to contact the Activity for further information as to his rights in the matter. The complaint further alleges that the letter discouraged Smith from seeking further assistance from NFFE, that the Activity deliberately failed to serve NFFE with a copy of the letter, and thus failed to confer with NFFE and provide NFFE with an opportunity to respond to the Activity's contentions, and that the Activity deliberately confused the employee as to his rights in the matter.

Although the basis for the allegations of unfair labor practices is contained in the August 24, 1971 letter, the precomplaint charge was not filed with the Activity until on, or after, March 20, 1972. Because Section 203.2 of the Regulations requires that a pre-complaint charge be filed with the party or parties against whom the charge is directed within six (6) months of the occurrence of the alleged unfair labor practice, the precomplaint charge herein was untimely filed.

In your request for review, you do not deny that the pre-complaint charge was filed more than six months subsequent to the occurrence of the alleged unfair labor practice. Your contention is that your failure to file the charge within the six month period is attributable to the deliberate failure of the Activity to serve you with a copy of the August 24, 1971 letter, and that the charge was filed promptly after you became aware of the letter and its contents. Under these circumstances, you contend that Section 203.2 should be so construed as to mean that the six month period should not commence running until the charging party has knowledge of the alleged unfair labor practice, and thus, in this case should result in a finding that NFFE filed timely its precomplaint charge with the Activity.

I must reject this contention, and, in accord with the Regional Administrator's decision, find that the precomplaint charge was untimely filed. The pertinent language of Section 203.2 does not provide any reasonable basis to support the interpretation you urge in your request for review; to the contrary, the provisions of the Section clearly require that the precomplaint charge must be filed within six months of the occurrence of the alleged unfair labor practice. Further, in view of the fact that NFFE is not the certified bargaining agent for a unit of employees including Mr. Smith, and in the absence of official notification to the Activity that NFFE was representing Mr. Smith in his grievance with the Activity, there exists no obligation on the part of the Activity to negotiate with NFFE, or to inform NFFE of any communication between Mr. Smith and the Activity regarding the disposition of the grievance.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7-27-72

Mr. Mark Flowers  
President, Denver Center Chapter  
Professional Air Traffic Controllers  
Marine Engineers Beneficial Association  
AFL-CIO  
Route 1, Box 125A  
Longmont, Colorado 80501

209

Re: Denver Air Route Traffic Control Center  
Longmont, Colorado  
Case No. 61-1492 (CA)

Dear Mr. Flowers:

I have considered carefully your request for review of the Regional Administrator's dismissal of part of the complaint filed in the above named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

In agreement with the Regional Administrator, I find that Section 19(d) of the Executive Order, prior to its amendment by the dismissal letter dated March 29, 1972, apply to the present case. Section 19(d) provided, at the times material herein, that when the issue in a complaint of an alleged violation of Section 19(a)(1), (2) or (4) is subject to an established grievance or appeal procedure, that procedure is the exclusive procedure for resolving the complaint. Report No. 25 in part, provides that the Assistant Secretary will not proceed in a case when the Activity alleges a lack of jurisdiction under Section 19(d) of the Order. In the present case, the Activity asserted Section 19(d) as a defense to your complaint.

In view of the above conclusion, I do not find it necessary to consider any other arguments contained in your request for review.

Accordingly, your request for reversal of the Regional Administrator's dismissal of part of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



7-27-72

Mr. N.T. Wolkomir  
President  
National Federation of Federal  
Employees  
1737 H Street N.W.  
Washington, D.C. 20006

210

Re: Department of the Army  
Vint Hill Farms Station  
Warrenton, Virginia  
Case No. 22-2973 (CA)

Dear Mr. Wolkomir:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the subject case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

I find that your complaint was not filed timely with the Area Office. This finding follows from my conclusion that the Activity's September 21, 1971, letter to you was its final answer to your charges. In the letter, the respondent stated in pertinent part that, "...this command is exempt from union activities..... Provisions do exist, however, to validate and accommodate a grievance from any of our employees." These statements by the respondent foreclosed any further prospects of an informal settlement under Executive Order 11491.

In accordance with Section 203.2 of the Regulations, you had within thirty (30) days of receipt of the respondent's final decision to file your complaint. You did not file your complaint in the subject case until January 24, 1972, thereby failing to meet the requirements of Section 203.2. In view of the foregoing, I find it unnecessary to consider the merits of the case or the alternative ground upon which the Regional Administrator based his dismissal.

Moreover, assuming that the Activity's letter of September 21, 1971, was not to be considered as its final decision, the approval by the VHFS Commander on October 21, 1971, of the Assistant Inspector General's Report would have been the final decision. Taking either date the complaint was untimely, having been filed not within 30 days but more than three months after either September 21, 1971, or October 21, 1971.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7-28-72

Mr. Marvin C. Watson  
Business Manager  
Laborer's International Union  
of North America  
Public Service - Industrial Workers  
Local 1054  
P. O. Box 365  
Daleville, Alabama 36322

211

Re: Army and Air Force Exchange Service  
Fort Rucker, Alabama  
Case No. 40-4164 (CA)

Dear Mr. Watson:

I have considered carefully your request for review of the Regional Administrator's dismissal of your application for a decision on grievability and arbitrability in the instant case.

The question before me is whether your complaint filed on April 5, 1972, was intended to be filed as an unfair labor practice under Section 19 of the Order, or as an application for a decision on grievability and arbitrability pursuant to Section 13 of the amended Order. I have concluded that you intended the latter because you so stated both in the complaint filed on April 5, 1972, and in your April 20, 1972, letter to the Compliance Officer. Moreover, the case file reveals you desired that the issue in question be resolved through the use of the contractual grievance procedure. This emphasizes further your intent to file for a decision on grievability and arbitrability pursuant to Section 13 of the Order.

Section 13(e) of Executive Order 11616 states that, "...this section is not applicable to agreements entered into before the effective date of this Order." Executive Order 11616 became effective on November 26, 1971, while your agreement was entered into on July 1, 1971.

Because the Acting Area Administrator in his letter of April 14, 1972, called your attention to the timeliness question raised by Section 13(e) of the amended Order, I cannot agree

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

with the contention in your request for review that you were not informed of the problem.

Accordingly, the request that the Regional Administrator's dismissal be reversed is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

July 31, 1972

Mr. Thomas D. Miles  
President  
National Association of Government  
Employees, Local R 1-34  
79A Broadmeadow Road  
Marlboro, Massachusetts 01752

212

Re: U. S. Army Natick Laboratories  
Natick, Massachusetts  
Case No. 31-5584 E.O.

Dear Mr. Miles:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint filed in the above named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

With respect to the issue of delay in issuing a decision on the grievance involved, which you allege is the responsibility of the Activity, I find, in agreement with the Regional Administrator, that there is no merit to this allegation. I note, in this connection, that the Activity made reasonable efforts to expedite the completion of the transcript which was the major cause of the delay. Contrary to your contention in the request for review, I believe that the fact that the assigned steno-typist was also the local union secretary does have a bearing on the issue. For this reason it appears that your organization was aware of and acquiesced in the delay, but made no protest until after receiving an unfavorable decision on the grievance from the Commanding Officer.

With respect to the second issue, you contend in your request for review that the Regional Administrator ruled on the wrong issue when he referred to the issue of leave without pay rather than the issue of an alleged "falsified" Grievance Examiner's Report in dismissing that part of your complaint. In my view the basis for this allegation is ambiguous. It is not clear to me whether the unfair labor practice alleged was the manner in which the grievance was processed, or whether it was the matter of denial of annual leave that was grieved.

If the issue complained of is based directly on the grievance which was filed on July 30, 1971, then under Section 19(d) of Executive

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7-31-72

Order 11491 prior to its amendment by Executive Order 11616, which did not become effective until November 24, 1971, the negotiated grievance procedure is the exclusive procedure for resolving the issue when, as here, the agency alleges a lack of jurisdiction under Section 19(d), according to my Report Number 25, a copy of which I have enclosed.

On the other hand, if the basis for the complaint was intended to be the substance of the grievance which was processed (i.e., the Grievance Examiner's conclusion was not justified by the facts of the case), then no reasonable basis for the complaint exists. It is noted that the testimony of witnesses at the grievance hearing was both conflicting and inconclusive. Moreover, I note that there was no evidence presented by your organization to show either interference or discrimination by the Activity in the handling of the grievance. Therefore, as neither of these two possible approaches would establish a reasonable basis for the complaint, the dismissal of the complaint was correct.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. E. V. Curran  
Director of Labor Relations, LR-1  
Federal Aviation Administration  
800 Independence Avenue, S. W.  
Washington, D. C. 20591

213

Re: Department of Transportation  
Federal Aviation Administration  
Great Lakes Region  
Case Nos. 53-4775  
53-4779  
53-4780

Dear Mr. Curran:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the three CU petitions filed by the Great Lakes Regional Office, Federal Aviation Administration (FAA), in the above named cases, and I concur with his dismissal.

It is clear that FAA's position is that a major reorganization of its regional field structure has changed substantially, subsequent to certification, the character and scope of the present unit so as to render the unit inappropriate. FAA's CU petitions, by seeking to achieve a redetermination of the unit, raise a question concerning representation with respect to the character and scope of the unit.

I have ruled recently in the matter of Headquarters, U. S. Army Aviation Systems Command, A/SLM No. 160, that under the Assistant Secretary's Regulations, the sole procedure available to an agency or activity to enable it to raise a question concerning representation is an RA petition pursuant to Section 202.2(b) of the Regulations. An agency or activity may file an RA petition under either of the following circumstances: it has a good faith doubt of the appropriateness of the established unit because of organizational changes or it has a good faith doubt that the currently recognized or certified labor organization represents a majority in the unit. Such a petition must be filed in accordance with the usual timeliness rules unless the petitioner can establish, pursuant to Section 202.3(c), that unusual circumstances exist which will substantially affect the unit or the majority representation. Thereafter, in appropriate circumstances, and absent a disclaimer of interest by the incumbent labor organization, the agency or activity may obtain an election to ascertain the employees' desire for representation in an appropriate unit.

A CU petition, as I ruled in A/SLMR No. 160, is a vehicle by which parties may seek to illuminate and clarify, consistent with their intent, unit inclusions and exclusions after the basic question of representation has been resolved; it is not the proper vehicle to question the appropriateness of an employee bargaining unit.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the CU petitions is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 31, 1972

Mr. N. T. Wolkomir, President  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

214

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-2565 (RO)

Dear Mr. Wolkomir:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by Mr. Irving I. Geller on behalf of Local 476, National Federation of Federal Employees. (NFFE)

The Regional Administrator's dismissal dated May 9, 1972, was based on the ground that the showing of interest submitted in support of the petition "was of questionable authenticity." My review of the investigative file leads me to conclude that the dismissal action was correct. Among other facts disclosed by the investigation which cause me to agree with the Regional Administrator that the showing of interest was questionable, are the following:

1. Officers of Local 476 obtained signatures of a substantial number of employees to petitions with confusing headings which caused many employees to believe that they were signing receipts for copies of a publication known as Federal Employees Almanac, rather than authorizing NFFE to represent them.
2. Purported signatures of a number of employees appeared on petition forms which were not the signatures of the named individuals.

Without counting names of questionable authenticity in the showing of interest submitted by NFFE, the showing was not sufficient to meet the 30% requirement specified by Section 202.2(a)(9) of the Regulations.

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

I regard the technique here used of obtaining signatures to petitions with unrelated subject headings to be inherently confusing and the resultant signatures, therefore, to be unreliable and unacceptable as evidence of interest.

July 31, 1972

In your request for review letter dated May 24, 1972, you state that the Regulations do not provide for an appeal in this matter but you urge that a review be granted "in light of our previous and continuous charge of bias on the part of the New York Area and Regional Offices, ..." You further characterize the action of the Regional Administrator in this matter as "arbitrary and capricious and retaliatory."

Mr. Dennis Garrison  
National Vice President  
Fifth District  
American Federation of Government  
Employees, AFL-CIO  
2109 Clinton Avenue West  
Huntsville, Alabama 35805

215

In a recent letter addressed to you dated June 19, 1972, I considered the various items which had been alleged by NFFE to support the charges of favoritism to AFGE by the New York and Newark offices of IMSA and of bias against NFFE by those offices and my own. I found those charges were not substantiated and that they were unwarranted in the light of the facts disclosed by a careful investigation.

Re: U. S. Army Advanced Ballistic  
Missile Defense Agency  
Huntsville Office  
Huntsville, Alabama  
Case No. 40-3672 (RO)

In the present case nothing appears in the investigative file and nothing has been presented by you in the request for review letters of May 24, 1972, and June 7, 1972, or otherwise, which in my opinion, would support, or tend to support, your serious charge that the Regional Administrator's action herein was "arbitrary and capricious and retaliatory." To the contrary, I find that his action was fully warranted in the light of the facts developed in the investigation of the showing of interest submitted by NFFE.

Dear Mr. Garrison:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the objection to election filed by Local 1858, American Federation of Government Employees, AFL-CIO (AFGE) in the above named case.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the petition is denied.

In the election, held on April 26, 1972, in a unit consisting of the non-professional employees of the Huntsville Office of the Activity, the following results were revealed by the official tally of ballots signed by the representative of the Area Administrator and by official observers of the Activity and AFGE:

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Approximate number of eligible voters	37
Void ballots	0
Votes cast for AFGE, Local 1858	14
Votes cast against exclusive recognition	19
Valid votes counted	33
Challenged ballots	0
Challenges are not sufficient in number to affect the results of the election.	
A majority of the valid votes counted plus challenged ballots has not been cast for AFGE, LOCAL 1858, AFL-CIO.	

On May 1, 1972, AFGE filed a document with the Area office which it labeled as a "protest" to the election based upon a contention that employees classification under the job title Program Analyst (Series 0345) were permitted to vote as "non-management." Correspondent with the Area Office disclosed that AFGE was, in fact, challenging the eligibility to vote of seven employees, classified as Program Analysts and Program Analyst



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WASHINGTON

7-31-72

Officers. The employees whose eligibility was questioned by the "protest" filed May 1, voted in the election and their names were checked off the eligibility list, without challenge, by the observers for both parties.

Under the circumstances as above set out, I agree with conclusion of the Acting Regional Administrator that the objections had no merit. He found that the objections raised under Section 202.20 of the Regulations were challenges which cannot be entertained through the objections to election procedure. I also agree with this conclusion on his part in the absence of any evidence that there was improper conduct which affected the results of the election from the use of the agreed eligibility list. I note further that no evidence was submitted by AFGE which would support its untimely challenge to the eligibility of the seven employees referred to above although the Area Office made a painstaking investigation of the "protest" of the election, going beyond the necessities of the case.

In your request for review you concede in effect that the "Objections" filed were not objections but were in fact, a challenge when you say that "it is felt that the challenge to the eligibility of seven program analysts as voters in the above election is valid and timely." In the very nature of the election process it is necessary that a valid challenge be made at the time of the election and before the ballot is cast and commingled with the ballots of eligible voters. After the ballot is cast unchallenged, the privilege of challenging it is lost and cannot be revived, regardless of the merits of afterthoughts which may occur to the parties.

On June 9, 1972, you addressed a letter to me supplementing your request for review of June 6, 1972. Enclosed therewith were copies of several official documents of the Activity alleged to have been signed by one of the seven untimely challenged Program Analysts as "Acting Chief" of the Program Management Office of the Activity's Huntsville Office. Without regard to whether this was, or was not, probative evidence of the supervisory or ineligible status of the single employee involved, I point out to you that this evidence is untimely, not only because no challenge was voiced at the polls, but also because of my policy announced in Report No. 22 (copy enclosed) that new evidence in support of objections will not be considered when presented for the first time in a request for review.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your objections to the election is denied and the Regional Administrator is directed to cause a Certification of Results of Election to be issued by the Area Administrator.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Donald W. Jones  
President, Local 1395  
American Federation of Government  
Employees, AFL-CIO  
162 N. Clinton Street, Room 403  
Chicago, Illinois 60606

216

Re: Chicago Payment Center  
Social Security Administration  
Chicago, Illinois  
Case No. 50-8236

Dear Mr. Jones:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

I find it unnecessary to make any determination regarding the merits of the case as the request for review is procedurally defective. In his dismissal letter dated July 3, 1972, the Regional Administrator stated that pursuant to Section 203.7(c) of the Regulations, a review of his decision could be had by filing a request for review which must be received by the Assistant Secretary by the close of business July 17, 1972.

Your request for review was dated and postmarked July 17, 1972, in Chicago, Illinois and was not received in my office until July 19, 1972. Therefore, it was filed untimely.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.,  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

7-31-72

Mr. Donald W. Jones  
President, Local 1395  
American Federation of Government  
Employees, AFL-CIO  
162 N. Clinton Street, Room 403  
Chicago, Illinois 60606

217

Re: Chicago Payment Center  
Social Security Administration  
Chicago, Illinois  
Case No. 50-5595

Dear Mr. Jones:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case alleging violations of Section 19(a)(1) of Executive Order 11491.

I find it unnecessary to make any determination regarding the merits of the case as the request for review is procedurally defective. In his dismissal letter dated July 3, 1972, the Regional Administrator stated that pursuant to Section 203.7(c) of the Regulations, a review of his decision could be had by filing a request for review which must be received by the Assistant Secretary by the close of business July 17, 1972.

Your request for review was post-marked July 18, 1972, in Chicago, Illinois and was not received in my office until July 20, 1972. Therefore, it was filed untimely.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

August 22, 1972

Mr. Hal Barrett, Jr.  
Grand Lodge Representative  
IAM and Aerospace Workers, AFL-CIO  
5330 S. Third Street, Room 132  
Louisville, Kentucky 40214

218

Re: Federal Labor Relations Council  
Case No. 41-2792 (CA-26)

Dear Mr. Barrett:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case filed on behalf of Lodge 830, IAM and AW, alleging violations of Section 19(a)(6) of Executive Order 11491.

The Regional Administrator found that Section 19(a)(6) is not applicable to the Federal Labor Relations Council, the named Respondent, but is applicable only to an activity or agency in which a labor organization holds exclusive recognition for a unit of employees of the activity or agency and that under the circumstances here presented, the Respondent had no duty to consult, confer, or negotiate with the Complainant.

I agree with the determination of the Regional Administrator. A reading of the Executive Order as a whole, and particularly Sections 10 and 11, makes it clear that the unfair labor practice defined in Section 19(a)(6) can apply only to an agency management which is obligated to consult, confer or negotiate with an exclusive representative of employees of the agency in an appropriate unit.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

8-24-72

Mrs. Marianna Tarter  
President, Local 40  
National Federation of Federal Employees  
2323 Kathryn, S. E. #195  
Albuquerque, New Mexico 87106

219

Re: PMS Indian Hospital  
Albuquerque, New Mexico  
Case No. 63-2347 (CA)

Dear Mrs. Tarter:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint in the above named case.

The Acting Regional Administrator, in his letter of June 26, 1972, advised you of your right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned. He further advised that the request must be received by me in Washington, D. C. by the close of business July 10, 1972.

Your request for review, dated July 7, 1972, was mailed at Albuquerque, New Mexico, postmarked July 9, 1972. It arrived in my office subsequent to the July 10, 1972 due date and therefore, was filed untimely.

Accordingly, your request for review cannot be considered on its merits and is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

8-31-72

Mr. William B. Peer  
Bredhoff, Barr, Gottesman, Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

220

Re: Federal Aviation Administration  
Fort Worth Air Route  
Traffic Control Center  
Case No. 63-2991(CA)

Dear Mr. Peer:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Sections 19(a)(1) and (3) of Executive Order 11491.

I agree with the Regional Administrator's dismissal. My recent decision in the matter of Federal Aviation Administration, Jacksonville Air Route Traffic Control Center, A/SLMR No. 194, based on similar facts, is controlling in this case. In adopting the findings, conclusions and recommendations of the Chief Hearing Examiner in that case I noted that a contrary result would not be required because a petition signed by a majority of unit employees was submitted to the Activity after a negotiated agreement had been signed by the Activity and the Respondent union, but before its approval at a higher agency level. The present case presents an even more compelling reason for dismissal in that the petition signed by 129 employees asserting that they had not authorized NAGE/FASTA to represent them represented substantially less than a majority of the unit employees.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Under these circumstances I must adhere to my original decision  
to uphold the dismissal of the Acting Regional Administrator.

Sincerely,

September 12, 1972

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. N. T. Wolkemir  
President  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

221

Re: PHS Indian Hospital  
Albuquerque, New Mexico  
Case No. 63-3347 (CA)

Dear Mr. Wolkemir:

Your letter of August 31, 1972, regarding the above named case has been received and considered carefully. You ask that I reconsider my ruling of August 24, 1972, in which I sustained the dismissal of the case by the Acting Regional Administrator. In my ruling I declined to review the dismissal on the merits because the request for review was received untimely.

Regarding the timeliness provisions of the regulations, it has been my consistent policy to require uniform compliance with those requirements by all parties and I consider that I am bound by these requirements no less than are the parties. You propose that Section 205.7, which provides that time limits may be altered by the Assistant Secretary where strict adherence will work surprise, injustice or interference with the proper effectuation of Executive Order, be applied so as to provide an exception to the timeliness requirements in this particular case.

However, Section 205.7 does not apply to cases like the present one. It applies only to unusual or exceptional instances where strict application of the timeliness provisions would result in surprise, injustice or interference with proper implementation of the Order. The facts which were before me in this matter do not fall into the exceptional category contemplated by Section 205.7. Here, Mrs. Tarter simply posted her request for review too late to assure receipt by me before the deadline defined in the regulations and specified by the Acting Regional Administrator in his dismissal letter.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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SEP 29 1972

Mr. Charles W. Huffaker  
President, Local 665  
American Federation of Government  
Employees, AFL-CIO  
Veterans Administration Hospital  
Amarillo, Texas 79106

222

Re: Veterans Administration Hospital  
Amarillo, Texas  
Case No. 63-2176 RO

Dear Mr. Huffaker:

I have considered carefully your request for review of the Regional Administrator's dismissal of the objections to the rerun election in this case filed by Local 665, American Federation of Government Employees, AFL-CIO (AFGE).

Your objections characterized by you as a "formal protest" were as follows:

- "1. Due the fact that we were unable to cast absentee ballots we feel that we lost at least ten (10) votes.
  - "2. Section 10, para. d of E.O. 11491 states that all elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or 'No union.'
- "Therefore, it is our conviction that not all members or employees were afforded the proper opportunity to vote because of the lack of absentee balloting."

Investigation of the objections disclosed that the election conducted on June 21, 1972, was a rerun of an earlier election conducted on September 30, 1970, which has been set aside because of objections to that election found to be meritorious. The Consent Election Agreement which preceded the September 30, 1970, election provided for an absentee ballot procedure which was too broad in its

scope. Accordingly, pursuant to the direction for a rerun election, the Area Administrator directed that a new Consent Election be negotiated. In a letter dated May 9, 1972, asking the parties to meet and negotiate an agreement for the rerun election, the Area Administrator properly instructed the parties that the absentee ballot procedure should be only utilized for those employees who, on the date of the election are on travel status away from the home station and for those employees whose work is at a distant work station. This instruction was consistent with the absentee ballot procedure contained in The Procedural Guide for Conduct of Elections, paragraph 4.E.

At the conference between the parties, the Activity reported that there were no eligible voters who were assigned to a distant work station, and that it did not anticipate that any eligible voters would be in travel status on the date of the election. Consequently, the Consent Election Agreement signed by all the parties, and approved by the Area Administrator on May 30, 1972, did not provide for the use of an absentee ballot. Further, the Official Notice to employees made no mention of absentee ballots. I note that all parties were aware of the fact that the absentee ballot procedure was not to be available for the rerun election, and that no eligible voters were misled concerning the availability of absentee ballots. Therefore, I find that the absence of an absentee ballot procedure in the rerun election was not improper.

Under the circumstances disclosed, I conclude, in agreement with the Regional Administrator that the objections are without merit.

In your request for review, you also assert, for the first time, that your organization was prejudiced by the fact that the rerun election was held in the face of a petition seeking a nationwide unit of employees of the Veterans Administration Hospitals. I do not consider allegations raised for the first time in a request for review. Therefore, I cannot consider this new allegation.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the rerun election is denied, and the Regional Administrator is directed to cause an appropriate Certification of Representative to be issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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SEP 29 1972

Accordingly, your request for review seeking reversal of the Area Administrator's action denying your request to rescind the Certification of Representative is denied.

Mr. N. T. Wolkomir  
President  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

223

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Re: Naval Air Engineering Center  
U. S. Naval Air Base  
Philadelphia, Pa.  
Case No. 20-3106

Dear Mr. Wolkomir:

I have considered carefully your request to review the action of the Area Administrator denying your request to withdraw the Certification of Representative issued to the Metal Trades Council of Philadelphia in the above named case.

Your request is based on the fact that objections to the conduct of the election in this case were filed by the National Office of the National Federation of Federal Employees (NFFE) and, therefore, that the President of Local 772 of NFFE had no authority to request the Regional Administrator to withdraw the objections. You also state that the NFFE National Office was not served a copy of the Regional Administrator's approval of the withdrawal request.

The Petitioner herein was Local 772 of NFFE, which was so listed and identified on the petition form itself. The President of Local 772, Mr. Ralph Barbieri, represented the Petitioner at the pre-election conference and signed the consent election agreement. When objections to the election were submitted by an attorney in your National Office it was logical for the Area Administrator to conclude, and I so find, that the objections were filed on behalf of Local 772. Therefore, it was reasonable for the Area Administrator to make contact with the Local President concerning the objections. When the Regional Administrator approved the request to withdraw the objections filed by the Local President, service of a copy of the letter of approval on the Local President, under the circumstances described above, constituted notice to NFFE.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

September 29, 1972

Mr. Arthur Knowles  
President  
Federal Employees Metal Trades Council  
Portsmouth Naval Shipyard  
Portsmouth, New Hampshire 03801

224

Re: U. S. Naval Shipyard  
Portsmouth, New Hampshire  
Case No. 31-6057 E.O.

Dear Mr. Knowles:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491.

The basis of your complaint appears to be that the Activity violated Sections 19(a)(1) and (2) by assigning employees temporary duty at the U. S. Naval Shipyard, Charleston, South Carolina. However, the investigation failed to disclose any basis for a finding that the action of the Activity was for the purpose of encouraging or discouraging membership in your organization, or any other labor organization. Further, there is no basis for a finding that selection of employees for such assignment was predicated upon their union membership, or lack thereof, or for any other unlawful consideration. Accordingly, I agree with the Regional Administrator's dismissal of the complaint.

You allege that the action of the Activity in assigning temporary duty to personnel against their wishes is in violation of the collective bargaining agreement between the Activity and your organization. Differences over interpretation of the existing agreement should be referred to the grievance-arbitration provisions of the agreement. Articles XXXVI and XXXVII of the agreement provide the machinery for resolution of such difference.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D. C. 20330

OCT 13 1972

225

William B. Peer, Esq.  
Bredhoff, Barr, Gottesman, Cohen & Peer  
1000 Connecticut Avenue, N. W.  
Washington, D. C. 20036

Re: Federal Aviation Administration  
Boston Air Route Traffic Control  
Center  
Nashua, New Hampshire  
Case No. 31-6076

Dear Mr. Peer:

I have considered carefully your Motion to Compel Processing of Representation Petition in the above-named case.

I have been advised administratively by the New York Regional Administrator that he instructed the Boston Area Administrator to defer processing of the representation petition in the subject case pending resolution of the issues in Case No. 31-5570 involving an unfair labor practice complaint filed against the Activity by Local R1-71, National Association of Government Employees (NAGE). Further, I am advised administratively that the unfair labor practice complaint alleges that the Activity violated Sections 19(a)(1), (3), (5) and (6) of the Order and that a hearing is scheduled to commence on October 25, 1972.

As you correctly point out in your Motion, I have had occasion recently in Federal Aviation Administration, Department of Transportation, A/SLMR No. 173, to pass upon whether a negotiated agreement between the Activity and the NAGE was in existence at the Boston Air Route Traffic Control Center at the time of the filing of the Professional Air Traffic Controllers Organization's (PATCO) petition for a nationwide unit of Air Traffic Control Specialists. I found that under the circumstances, the negotiated agreement between the Activity and the NAGE had expired prior to the filing of the PATCO's nationwide petition and that, therefore, no agreement bar existed. On the basis of this finding, you contend that the issues underlying the NAGE's complaint in Case No. 31-5570 have been litigated and adjudicated and that deferral of the representation case pending the outcome of the unfair labor practice proceeding is unwarranted. Under the circumstances herein, I disagree.

Thus, as noted above, the NAGE's unfair labor practice complaint alleges violations of Sections 19(a)(1), (3), (5) and (6) of the Order. I am advised administratively that the issues presented involve, among other things, questions related to alleged improper assistance to the PATCO by the Activity, alleged improper limitations by the Activity on campaigning, and an alleged improper withdrawal of recognition. These issues do not appear to have been rendered moot by the decision in A/SLMR No. 173. In view of the existence of such questions in Case No. 31-5570, I find, in agreement with the Regional Administrator, that sound administrative practice compels the withholding of the processing of the representation petition in the subject case until final disposition of the unfair labor practice case is accomplished.

Accordingly, your Motion to Compel Processing of Representation Petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

OCT 25 1972

Mr. Jack Walker  
Vice President  
Social Security Local No. 1395  
American Federation of Government  
Employees  
165 N. Canal Street  
Chicago, Illinois 60606

226

Re: Department of Health, Education  
and Welfare  
Social Security Administration  
Chicago Payment Center  
Case No. 50-5986

Dear Mr. Walker:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case.

The Regional Administrator's decision, dated September 21, 1972, advised the Complainant of the right, under Section 203.7(c) of the Regulations, to obtain a review of his action by filing a request for review with the undersigned. He further advised that the request must be received by me in Washington, D. C. by the close of business October 4, 1972.

Your letter requesting a review of the Regional Administrator's decision, dated October 2, 1972, was mailed at Chicago, Illinois, postmarked October 3, 1972. It arrived in my office subsequent to the October 4, 1972 due date and therefore, was filed untimely.

Accordingly, your request for review cannot be considered on its merits, and it is hereby denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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OCT 31 1972

Mr. Herbert Cahn  
President  
Local 476  
National Federation of Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

227

Re: Department of the Army  
U. S. Army Communications  
Systems  
Fort Monmouth, New Jersey  
Case No. 32-2580 (RO)

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to the runoff election held in the above-named case on June 1, 1972.

Your request for review asserts that the Regional Administrator's decision was arbitrary and capricious for the following stated reasons:

1. That the decision "emasculated" the record by failing to mention two-thirds of the supporting evidence;
2. That references are made to material received from the Intervenor (AFGE) but which was not served on NFFE;
3. That NFFE's motion to refer the matter to a Hearing Examiner was not ruled on;
4. That no contact with NFFE was made by LMSA during the investigation of the objections;
5. That NFFE was denied due process because the deadline date for appeal to the Assistant Secretary was set at August 24, 1972, although the President of the NFFE Local was incapacitated by recent surgery;
6. That the issue of forgery by AFGE in Case No. 32-2572 raised by Objection No. 10 was avoided by the Regional Administrator in his decision.

An examination of the case leads me to conclude that the decision of the Regional Administrator was neither arbitrary nor capricious as you allege. I reach this result for the following reasons:

1. Although you contend that the Regional Administrator's decision did not mention "two thirds of the supporting evidence", your claim is ambiguous in that you failed to specify what evidence was ignored. In this connection, the mere fact that a part of the material supplied was not referred to in the decision does not mean that it was not given full consideration.
2. Your contention that documents submitted by AFGE, but not served on NFFE, were considered by the Regional Administrator in reaching his decision is rejected. You have failed to identify such documents, and have not shown their relevance, if any, to this matter.
3. Your complaint that the Regional Administrator did not rule on your motion to refer the case to a Hearing Examiner is rejected. In overruling the objections in their entirety the Regional Administrator, in effect, denied your motion. The failure to rule specifically on the motion was, therefore, not prejudicial to NFFE.
4. Your contention that the Regional Administrator should be reversed because the objecting party was not interviewed during the investigation is rejected because no showing was made that such an interview or interviews would have been necessary to a proper evaluation of the evidence.
5. Your statement that an "unreasonable" limitation was placed on the right to appeal to the Assistant Secretary because of the Local President's incapacitation also is rejected, as the file shows that no request for an extension of time was requested for filing of the appeal.
6. Your contention that the Regional Administrator should be overruled because he "avoided the issue of forgery by AFGE" in Case No. 32-2572 is rejected. In A/SLMR No. 216, speaking of this issue, I said as follows:

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



11-1-72

"I am both shocked and deeply concerned by the discreditable conduct and apparent disregard of the purposes and policies of the Executive Order displayed by both the AFGE and the NFFE at Fort Monmouth in connection with their respective attempts to establish an adequate showing of interest. The National Office officials of both labor organizations should take immediate steps to ensure that such improper conduct will not be repeated in future cases. Further, if this situation is repeated, I will not hesitate to make the procedures of the Assistant Secretary unavailable to the parties concerned."

In summary, I conclude that the disposition made by the Regional Administrator of the case was proper. Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the runoff election is denied and the Regional Administrator is directed to cause a Certification of Representative to be issued.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Robert C. Nogler  
National Representative  
Eleventh District  
American Federation of Government  
Employees  
610 Southwest Broadway  
Portland, Oregon 97205

228

Re: Portland Area Office, HUD  
Portland, Oregon  
Case No. 71-1770

Dear Mr. Nogler:

I have considered carefully your request for review of the Regional Administrator's Report and Ruling on Objections to Runoff Election in the above named case.

The request for review raises facts which, it appears, the Regional Administrator was not cognizant of at the time he issued his Report and Ruling in the matter.

Accordingly, I am remanding the case to the Regional Administrator for further consideration.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

11-1-72



- 2 -

Mr. Robert Williams  
Secretary-Treasurer  
The Social Service and Poverty  
Workers' Union of the Greater St. Louis  
Area  
3333 North Union Boulevard  
St. Louis, Missouri 63115

229

Re: Human Development Corporation  
of Metropolitan St. Louis  
Case No. 62-3268 (RO)

Dear Mr. Williams:

I have considered carefully your request for review of the Regional Administrator's dismissal of your petition in the above named case for certain employees of the Human Development Corporation of Metropolitan St. Louis (Corporation).

In agreement with the findings of the Regional Administrator, I find that employees of the Corporation are not "employees" as defined in Executive Order 11491, as amended. The evidence establishes that the Corporation is a non-profit enterprise organized under the laws of the State of Missouri, and empowered to act only within its borders. The main objective of the Corporation is the assistance and relief of poor people within the metropolitan area of St. Louis. In furtherance of this objective, the Corporation receives grants of Federal funds from various Federal Agencies. The only Federal control exercised over the activities of the Corporation is in connection with the disbursement and utilization of these funds.

While the Corporation receives Federal funds which are utilized in the operation of the various programs instituted and operated by the Corporation, it is clear that the Corporation is free to solicit funds, and presently receives funds, from other sources for the operation of its programs. With regard to the operations of the Corporation which are funded from sources other than the Federal Government, the Federal Government exercises no control whatever.

Under these circumstances, contrary to the arguments contained in your request for review, I conclude that the Corporation is neither a government corporation, nor a government controlled corporation and, therefore, does not meet the definition of "Agency" as set forth in Section 2(a) of the Executive Order. I further find that under these circumstances employees of the Corporation are not "employees" within the meaning of that term set forth in Section 2(b) of the Executive Order.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

NOV 2 1972

Mr. Stuart H. Clarke  
Deputy Assistant Secretary for  
Personnel and Training  
Office of Personnel and Training  
Department of Health, Education and Welfare  
330 Independence Avenue, S. W.  
Washington, D. C. 20201

230

Re: Social Security Administration  
Lawton, Oklahoma  
Case No. 63-3904 (DR)

Dear Mr. Clarke:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by Miss Dana B. Gilbreath in the above named case, seeking decertification of National Federation of Federal Employees, Local 273, as the exclusive bargaining representative of certain employees of the Activity.

I find it unnecessary to make any determination regarding the merits of the case as the request for review is procedurally defective. In his dismissal letter dated August 10, 1972, the Regional Administrator stated that a review of his decision could be had by filing a request for review with the Assistant Secretary by the close of business, August 23, 1972. I note that in addition to serving the Activity in Lawton, Oklahoma, the Regional Administrator also served copies of the dismissal letter on the Agency Regional Office in Dallas, Texas, and, on August 14, 1972, upon the Office of the Secretary, Department of Health, Education and Welfare. However, your telegram seeking additional time within which to file your request for review was dated August 29, 1972, and your request for review was dated August 31, 1972, both of which were received in my Office simultaneously on August 31, 1972. Therefore, both the request for additional time, and the request for review were filed untimely.

Moreover, Section 202.6(d) of the Assistant Secretary's Regulations, governing the filing of requests for review of a Regional Administrator's dismissal of a petition, does not contemplate the filing of a request for review by any party other than the

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petitioner. Thus, the Section reads, in pertinent part: "The petitioner may obtain a review of such action by filing a request for review with the Assistant Secretary within ten (10) days of service of the notice of dismissal." (emphasis added) In this instance, therefore, the request for review could have been filed only by Miss Gilbreath or an agent designated by her and not by the Activity nor by the Agency.

In view of the foregoing, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

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NOV 3 1972

Mr. Gary B. Landsman  
Assistant to Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

231

Re: Department of Defense  
Defense Contracts Administration  
Services District  
Milwaukee, Wisconsin  
Case No. 50-8229

Dear Mr. Landsman:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging violations of Sections 19(a)(1), (5) and (6) of the Executive Order, as amended, in the above named case.

Your complaint alleges that the Activity violated the Executive Order, in that by letter dated November 16, 1971, and at a meeting on December 2, 1971, the Activity informed the AFGE that effective immediately certain individuals previously included in the bargaining unit for which the American Federation of Government Employees (AFGE), was the recognized bargaining agent, would be excluded from the unit, by reason of their managerial or confidential duties. Under all the circumstances disclosed by the investigation herein, I conclude, in agreement with the Regional Administrator, that there is insufficient basis upon which to issue a notice of hearing.

With regard to the 19(a) (5) and (6) allegations, while the Activity, prior to consulting with the union, did advise the AFGE in its November 16, 1971, letter that the individuals in question were being excluded from the unit, it thereafter met and conferred several times with the union regarding the matter. In this respect, the Activity made substantial concessions from its original position. Under these circumstances, I believe the Activity did not fail to accord appropriate recognition, and that it met its obligation to consult, confer and negotiate with the exclusive representative.

Regarding the 19(a)(1) allegation, the file fails to disclose evidence of any action by the Activity which could be construed as interfering with, restraining or coercing employees in the exercise of their rights under the Order.

Finally, I wish to point out to both parties that the proper vehicle for resolving disputes of this nature is the processing of a petition for clarification of the unit, rather than the filing of an unfair labor practice charge and complaint. Such a petition, which may be filed by either party, provides an effective and expeditious way of resolving such disputes.

Accordingly, your request for review of the Regional Administrator's dismissal is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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NOV 23 1972

Mr. F. R. Brown  
Acting Director  
Department of the Army  
Waterways Experiment Station  
Corps of Engineers  
P. O. Box 631  
Vicksburg, Mississippi 39180

232

Re: Department of the Army  
Waterways Experiment Station  
Vicksburg, Mississippi  
Case No. 41-2788 (RO)

Dear Mr. Brown:

Your request for review of the Regional Administrator's action in setting aside the runoff election conducted on June 22, 1972, has been considered carefully.

In agreement with the Regional Administrator, I am of the opinion that the events which occurred under the so-called "side agreement" between the parties providing for the "absentee ballot" procedure were improper. There was an agreement between the parties which provided, among other arrangements, that the runoff election would be conducted on June 22. This agreement was approved by the Area Administrator. The subsequent agreement between the parties, providing for limited voting on June 21, had the effect of materially altering the date, time and place specified by the original agreement.

The official notice of election was not altered to conform with this second agreement, nor were other eligible employees given an opportunity to vote on June 21. I am concerned also that the 17 employees who voted under this procedure did so without the usual safeguards required to maintain secrecy of the ballot. No representatives of the Area Administrator or any election observers were present.

It is expected that in the future any such material changes in the basic agreement under which an election is conducted will be put into effect only after written approval of the Area Administrator has been given and after appropriate notice is given to all eligible employees.

Further, I do not accept the argument in the Request for Review that I lack the power to look into events which bring into question the propriety of elections conducted under my supervision.

Because the 17 employees voting on June 21 did so contrary to the officially approved election agreement between the parties and the official notice of election, I have concluded that their ballots should not be counted. However, these 17 votes cannot affect the results of the election. In view of this, I have decided to overrule the Regional Administrator's action setting aside the election.

Accordingly, the Regional Administrator is hereby directed to issue an appropriate Certification of Results of the election.

Sincerely yours,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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NOV 25 1972

233

Mr. Michael J. Massimino  
President, Local 1340  
National Federation of Federal Employees  
P. O. Box 86  
Pomona, New Jersey 08240

Re: National Aviation Facility  
Experimental Center  
Federal Aviation Administration  
Department of Transportation  
Case No. 32-2871

Dear Mr. Massimino:

The undersigned has considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint filed in the above named case alleging violations of Section 19(a)(5) and (6) of Executive Order 11491.

The case file reveals that the charge filed with the Activity pursuant to Section 203.2 of the Regulations of the Assistant Secretary on May 14, 1972, referred to three (3) specific incidents which the union considered to be examples of violations of the provisions of Executive Order 11491. These were described as formal discussions with certain identified employees concerning grievance actions, personnel policies and practices or other matters affecting general working conditions. The violations alleged were charged to be that "NFFE Local 1340 was not given the opportunity to be represented at these or many other formal discussions." After informal discussion with the union of each of these incidents failed to resolve these matters, the Activity sent three individual letters, dated June 9, 1972, to the union responding to each of the incidents set forth in the charging letter. The Regional Administrator viewed these letters as the final decision of the Activity on the charge and I agree with his conclusion. Because the complaint was not filed until July 21, 1972, the Regional Administrator dismissed the complaint as untimely under Section 203.2 which states, in part, that a complaint shall not be considered timely unless filed within 30 days of the receipt by the charging party of a final decision.

In your request for review, you allege that the Activity did not respond to your "specific charges, only to examples illustrating the charges." There is no evidence that any matters other than the three incidents specified in the charging letter of May 14, 1972, were specifically brought to the attention of the Activity as required by Section 203.2. My policy with respect to compliance with the requirements of Section 203.2 is set out in Report No. 33 (copy enclosed) which states that the charge should contain a clear and concise statement of the facts, including the time and place of occurrence of particular acts, in order that the parties may be in a position to resolve informally the alleged unfair labor practice.

Under all the circumstances, I agree with the Regional Administrator's dismissal of the complaint in this case as being untimely filed, and therefore, find it unnecessary to consider the merits of the case.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



11-30-72

Mr. Herbert Cahn  
President, Local 476  
National Federation of Federal  
Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

234

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-2851

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging a violation of Section 19(a)(1) of the Executive Order.

I have concluded that a reasonable basis for the complaint exists and, accordingly, it should be reinstated and a notice of hearing should be issued by the Regional Administrator.

Among the issues which should be explored at the hearing are the following:

1. Do the facts and circumstances disclosed constitute a violation of Section 19(a)(1) of the Executive Order?
2. What is the correct application of the holding in A/SLMR No. 139 to the facts of the present case?

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Nov. 30, 1972

Mr. Richard C. Wells  
Labor Relations Advisor  
Regional Office of Civilian  
Manpower Management  
Department of the Navy  
760 Market Street, Suite 836  
San Francisco, California 94102

235

Re: U. S. Naval Postgraduate School  
Monterey, California  
Case No. 70-2426

Dear Mr. Wells:

I have considered carefully your request for review of the Regional Administrator's Report and Ruling on Challenged Ballots in the above named case.

The evidence in the investigative file does not support your contention that the unique role performed by fire captains at the Naval Postgraduate School distinguishes these positions from other such positions which I have considered previously. The distinguishing characteristics are alleged to be (1) that no intermediate level of supervision between the fire captains and the fire chief (i.e., Assistant Chief) exists, and (2) that the fire captains function as shift supervisors and one is designated each calendar quarter to assume the duties of Acting Chief in the absence of the Chief.

While the evidence indicates that the fire captains have functions and responsibilities that set them apart from other firefighters, I view the authority vested in the captains to be of a routine or clerical nature not requiring the use of independent judgment. The contention that there is no level of supervision between the chief and the captains is immaterial where the captains do not in fact have supervisory duties and responsibilities. Further, the contention that one fire captain is designated each calendar quarter to assume the duties of Acting Chief in the absence of the



U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



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Chief is rebutted by other evidence which indicates that only the senior fire captain serves in that position. In any event, the responsibilities assumed by the Acting Chief are largely ministerial since the Chief is required to answer every alarm even when he is off duty.

Accordingly, in agreement with the Regional Administrator, I find that the employees classified as fire captains do not possess the indicia of supervisory status as provided in Section 2(c) of the Executive Order and, therefore, they should be included in any unit found appropriate for the purpose of exclusive recognition.

Your request that the Regional Administrator's decision be overruled and the challenged ballot in question not be opened and counted, is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Raymond J. Malloy  
Associate Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

236

Re: National Atmospheric and  
Oceanic Administration  
National Weather Service  
Washington, D. C.  
Case No. 22-3589 (RO)

Dear Mr. Malloy:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the intervention of American Federation of Government Employees, AFL-CIO (AFGE) in the above named case.

The Acting Regional Administrator based his dismissal on the ground that the request to intervene was supported by a showing of interest from employees not included in the unit sought by the Petitioner, the National Association of Government Employees (NAGE).

Your request for review was received timely by the undersigned on October 11, 1972. Three days earlier, on October 8, 1972, NAGE filed a request to withdraw its petition in the subject case. This request was approved by the Regional Administrator on October 19, 1972, and the case was closed on October 20, 1972. Your request for review of the dismissal of your intervention thus became moot.

Accordingly, your request for review of the Acting Regional Administrator's dismissal of your intervention is hereby denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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December 13, 1972

Mr. Dennis Garrison  
National Vice President  
American Federation of Government  
Employees, AFL-CIO  
2109 West Clinton Avenue  
Room 314  
Huntsville, Alabama 35805

237

Re: Veterans Administration Hospital  
Montgomery, Alabama  
Case No. 40-4280 (CA)

Dear Mr. Garrison:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint against the Activity alleging violation of Section 19(a)(6) of the Executive Order.

In the request for review, you contend that the Activity's conduct in "first agreeing to the contents of two proposed contractual articles and initialing and dating those articles ... and then at a later date deciding they were not acceptable is clearly an example of bad faith bargaining." In addition, you state that this was a violation of a pre-negotiation Memorandum of Understanding which provided that "Upon reaching agreement of each point or subpoint, the Chief Negotiators shall signify such agreement by initialing and dating the agreed upon item. This shall signify the agreement is firm, subject to both approvals required in Sec. II 2 below." The request for review is based upon the action of the Activity in changing its position on the two provisions of the agreement being negotiated, on the ground that the subject matter of the two proposed contractual articles in question was non-negotiable.

No evidence has been presented which would indicate that such reversal of position was in bad faith for the purpose of frustrating collective bargaining, even though it may have been in violation of the parties' pre-negotiation agreement. For this reason, I agree with the Regional Administrator's decision that further proceedings under 19(a)(6) are unwarranted based on the Activity's change of position on the two provisions.

In reaching this conclusion, I make no finding with respect to whether the two provisions in question are non-negotiable. The Order requires that negotiability questions are to be handled pursuant to the procedures set forth in Section 11(c), which provides, subject to certain conditions, that such questions may be referred by either party to the agency head for determination and thereafter by the labor organization to the Federal Labor Relations Council for decision if it disagrees with that determination.

Accordingly, your request for review of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

December 13, 1972

Mr. Stanley Q. Lyman  
National Vice President  
National Association of  
Government Employees  
385 Dorchester Avenue  
Boston, Massachusetts 02127

238

Re: Department of the Army  
U. S. Army Materials & Mechanics  
Research Center  
Watertown, Mass.  
Case No. 31-6069 E. O.  
31-6073 E. O.

Dear Mr. Lyman:

I have considered carefully your request for review of the Regional Administrator's dismissal of the intervention of the National Association of Government Employees (NAGE) in the above cases.

The facts show that the NAGE intervened in Case No. 31-6073 E.O., and filed a timely challenge to the labor organization status of the Petitioner in that case, Government Employees Assistance Council, Inc. (GEAC), in the form of a Motion to Dismiss. It further appears that on September 7, 1972, all parties in the above cases participated in a pre-election conference, which resulted in agreement of the parties on the details of a consent election agreement. However, when presented with the Consent Election Agreement, the NAGE representative present refused to sign it. On several occasions thereafter, the latest of which was on September 18, 1972, the NAGE was again asked to sign the Agreement, but refused to do so.

It is not clear whether on these occasions that NAGE was told that failure to sign would result in the election being conducted without NAGE appearing on the ballot. In view of this, I shall remand the subject case to the Regional Administrator for further action as set forth below:

1. The Regional Administrator should ascertain whether the NAGE is now willing to execute a consent election agreement covering the unit sought by the GEAC.

2. If the NAGE indicates a willingness to execute a consent election agreement, a new agreement should be executed by all parties providing for a new election to be conducted as soon as possible among the employees in the same bargaining unit involved in the election of September 21, 1972. In this event, the impounded ballots cast in the prior election should be destroyed.

3. If the NAGE indicates an unwillingness to execute a consent election agreement under the present circumstances, the Regional Administrator may cause to be opened the ballots cast in the September 21, 1972 election, which, as noted above, have been impounded, and furnish a tally of the ballots to the parties who participated in the election.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

December 26, 1972

Roger P. Kaplan, Esq.  
General Counsel  
National Association of  
Government Employees  
1341 G Street, N. W.  
Suite 512  
Washington, D. C. 20005

239

Re: United States Department of  
the Navy  
U. S. Navy Public Works Center  
Great Lakes, Illinois  
Case No. 50-8947

Dear Mr. Kaplan:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Sections 19(a)(1), (2) and (3) of Executive Order 11491.

Your request for review deals with three of the five allegations of the dismissed complaint alleging separate violations of the Order, and my consideration will be limited to these three allegations.

1. The activities of employees Howard, Gauthier and Fleming.

The investigation disclosed that these employees at various times in February 1972, during working time, solicited other employees to join and support the Government Employees Assistance Council (GEAC), and distributed literature in support of the GEAC.

You allege that by this conduct the Activity violated the Order. However, no claim is made and no evidence is found that these employees were supervisory or managerial. The theory of a violation would be based, therefore, upon a showing either that the Activity initiated, supported or condoned the work time union activities of the employees or that the Activity deliberately failed to enforce rules prohibiting such activities during working hours.

The investigative file discloses no evidence, and you point to none, which would support any theory of Activity responsibility for these activities. On the other hand, the investigation does dis-

-2-

close that, when apprised of the activities of the named employees, the Activity took measures designed to stop infractions of its rules prohibiting union activity during working time as follows:

- a. All supervisors were informed of the no solicitation rules and the necessity to enforce them;
- b. The GEAC was informed of the rules and cautioned about infractions of them;
- c. The rules were published in an Activity publication and distributed to employees; and
- d. The named employees who engaged in the activities were cautioned about the rules and their disregard thereof.

In the light of the above, I disagree with your assertion that the action taken by the Activity was "meager" and ineffective and agree with the Regional Administrator's conclusion that this allegation of the complaint is not supported by evidence and that the Activity apparently took all reasonable measures to enforce its rules against union activity during working hours.

2. Solicitation of employee Christenson by employee Otis Whyte to sign a petition for American Federation of Government Employees, AFL-CIO (AFGE).

The complaint alleged that Otis Whyte, a designated Equal Opportunity Counselor, solicited signatures for AFGE and specifically solicited a signature from employee Christenson at a time when Mr. Whyte was supposedly conducting E.E.O. business.

The investigation disclosed that Mr. Whyte, a journeyman electrician with the Activity, had been appointed as an Equal Employment Opportunity Counselor by the Activity. This is the basis upon which both the complaint and request for review suggest that Mr. Whyte may be a management official. However, no evidence was presented by the Complainant, or was disclosed by the investigation, which would establish that Mr. Whyte is a management official.

I find, with regard to this issue, that the NACE failed to meet its burden of proof regarding Mr. Whyte's alleged management official status and concur with the dismissal of this phase of the case. Further, it is my view that even though it were to be established that Mr. Whyte was a management official, the isolated character of the one item of evidence that he solicited one employee would not provide an adequate basis for the complaint.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 26 1972

3. The third allegation of the complaint pursued in the request for review, relates to the action of the Activity in locking and securing the office of the NAGE located on the Activity premises. The contention in the request for review in this regard is that the Activity had no real or apparent authority to take such action at a time when the Activity knew who was the authorized NAGE representative and, therefore, the action was in violation of Section 19(a)(1), (2) and (3) of the Order.

I disagree with this contention and agree with the dismissal of this allegation of the complaint. The facts are that the Activity had been informed sometime in February 1972, that due to a schism in the internal organization of Local R7-51 of the NAGE, the National Office of the NAGE was placing the Local in trusteeship and that one William Staben would be the new "on base" representative of the NAGE. It is alleged by the Activity that, based on past experience and consistent with its responsibilities for the security of property within its control, the Activity believed that it was necessary to safeguard the office and its contents until the newly designated representative of the NAGE came forward to take possession. Consequently, the Activity changed the locks on the NAGE office and took other measures to secure the office and property therein. Thereafter, on or about March 21, 1972, the authorized NAGE representative, for the first time, asked for the keys to the office and they were given to him.

In view of the foregoing, I conclude that the Activity's action with regard to the locks and security of the NAGE office and property, was not unreasonable and was not in violation of the Order.

Under all of the circumstances set out above, I agree with the Regional Administrator that the evidence is insufficient to establish a basis for any of the violations alleged in the complaint and the request for review.

Accordingly, the request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. David Jay Markman  
Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

240

Re: Department of the Army  
Military Ocean Terminal  
Bayonne, New Jersey  
Case No. 32-1704 (RO)

Dear Mr. Markman:

I have considered carefully your request for review of the Regional Administrator's Report and Findings on Objections in the above-captioned matter.

Based upon a full review of the evidence submitted, I find, in agreement with the Regional Administrator, that the objection lacks merit. The objection, filed by Local 1550, National Federation of Federal Employees (NFFE), charges the American Federation of Government Employees (AFGE), Local 2835, with electioneering at the polling place. It is based on the allegation of an observer for the NFFE that a forklift operator was riding around one polling area in his vehicle with an AFGE sticker attached to the side of the vehicle. The objecting party was advised by letter dated October 2, 1972, from the Area Administrator that the burden of proof, including the procurement of evidence from witnesses, lies with the objecting party. However, no evidence in support of the objection was presented to show that any voters saw the vehicle or the sticker.

With regard to the contention in your request for review that the alleged incidents constitute electioneering at the polling place which is prohibited by the Procedural Guide for Conduct of Elections Under Supervision of the Assistant Secretary Pursuant to Executive Order 11491, I have stated previously in U. S. Army Transportation Center, Fort Eustis, Virginia, A/SLMR No. 157, that the language of the Guide reflects a policy designed to provide the proper conditions which would enable employees to register a free and untrammelled choice for or against a collective bargaining representative. However, as I also stated in that case, such policy must be applied on a case by case basis in accordance with the evidence presented. As noted above, no evidence was presented to show that any voter saw the vehicle or the sticker.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 10 1973

Finally, the cases cited in your request for review to support your contention that the policy in the private sector of forbidding electioneering at the polls should be adopted by the Assistant Secretary are distinguishable from the present case. Thus, the cases you cite are concerned with electioneering through conversations between parties and voters in the polling place. The present case does not involve conversations with voters but rather the display of a small sticker on the side of a forklift truck which was in the vicinity of the polling area one or more times.

Under these circumstances, I am of the opinion that the objection lacks merit.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the objection to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Daniel J. Kearney  
National Vice President  
American Federation of Government  
Employees, AFL-CIO  
512 Gallivan Blvd. Suite 2  
Dorchester, Massachusetts 02124

241

Re: Department of the Army  
U. S. Army Materials and  
Mechanics Research Center  
Watertown, Mass.  
Case Nos. 31-6069 E.O.  
31-6073 E.O.

Dear Mr. Kearney:

I have considered carefully your Motion to Reconsider my ruling of December 13, 1972, in the above named cases.

I should like to take this opportunity to comment on your apparent misunderstanding of the service requirements of the Regulations. The Regulations require that service of a request for review be made on the organization which is a party to the case. A check of the case file herein reveals that service was made by NAGE on the President of Local 3404 of AFGE and that Mr. Louis S. Wallerstein, Director of the Office of Federal Labor-Management Relations, sent a copy of his letter of acknowledgment of the request for review to the Local President.

While I can appreciate your desire to be fully informed of all developments in AFGE cases, I believe that this can be largely achieved if you will take steps to have your local officials keep you informed of official notifications.

Under all the circumstances, I find that your Motion does not raise additional facts which would warrant reconsideration of this matter. Accordingly, your Motion is hereby denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 22 1973

Neal H. Fine, Esq.  
Assistant to the Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

242

Re: U. S. Department of Justice  
Immigration and Naturalization  
Service  
Washington, D. C.  
Case No. 22-3617 (CA)

Dear Mr. Fine:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging a violation of Sections 19(a)(1) and (6) of the Executive Order.

I find, in agreement with your contention, that Section 19(d) of the Executive Order, as amended, is not controlling in this case. Thus, the complaint clearly is based on what you contend is a "unilateral cancellation" of the arbitration proceedings and is not an attempt to raise the issues with respect to the merits of the grievance under the complaint procedure. However, I find that further proceedings in this matter are not warranted.

Although you contend that the case of Long Beach Naval Shipyard, A/SLMR No. 154, is controlling in this matter, I believe that the circumstances in that case clearly are distinguishable from the facts in this case. In the Long Beach case, the Activity cancelled the scheduled arbitration hearing and, as a result, the grievance was not arbitrated. In the present case, the Activity made an appearance at the arbitration hearing and there announced that it was not participating in the hearing. However, the arbitration proceeding took place, an observer for the Activity was present until the conclusion of the proceeding, and the arbitrator's subsequent decision, which was favorable to the Complainant, was appealed by the Activity to the Federal Labor Relations Council where the appeal is pending at present.

In view of all of the above circumstances, your request for review of the Regional Administrator's dismissal is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 22 1973

Mr. William J. Foland  
Civilian Personnel Officer  
Department of the Army  
Aberdeen Proving Ground  
Aberdeen Proving Ground, Maryland 21005

243

Re: Department of the Army  
Aberdeen Proving Ground Command  
Aberdeen Proving Ground, Md.  
Case No. 22-3519 (RA)

Dear Mr. Foland:

I have considered carefully your request for review of the Regional Administrator's dismissal of your RA petition, which petition was based on a "good faith doubt" that the American Federation of Government Employees represents a majority of the nonsupervisory guards under the Aberdeen Proving Ground Command.

I have concluded that the circumstances herein present issues which can be resolved best on the basis of record testimony. Therefore, the case is remanded to the Regional Administrator for reinstatement of the petition and the issuance of a notice of hearing.

In order that an adequate record be made at the hearing, evidence should be adduced concerning the question whether the Edgewood personnel constitute an addition or accretion to the unit at Aberdeen Proving Ground, and as to whether the character and scope of the original units, prior to the consolidation, have changed so that they may no longer be appropriate. In this regard, the decisions in United States Department of the Air Force, 434th S.O.W., Air Force Reserve, Grissom Air Force Base, Peru, Indiana, A/SLMR No. 149 and Headquarters, U. S. Army Aviation Systems Command, St. Louis, Missouri, A/SLMR No. 160 should be examined for guidance concerning the type of evidence which should be elicited at the hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 22 1973

Mr. Stanley Q. Lyman  
National Vice President  
National Association of  
Government Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

244

Re: Defense Supply Agency  
Defense Contract Administrative  
Services Region  
Case No. 31-6092 E.O.

Dear Mr. Lyman:

The undersigned has considered carefully your request for review of the Regional Administrator's action in the above named case.

I have concluded that the current position of the Activity as well as the position taken by the NAGE that the two established units represented by the NAGE as the incumbent labor organization now constitute a single appropriate unit, raises issues that can best be resolved on the basis of record testimony. I am, therefore, remanding the case to the Regional Administrator for the issuance of a notice of hearing.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

JAN 22 1973

Mr. William E. Fredenberger, Jr.  
Mulholland, Hickey & Lyman  
Suite 620, Tower Building  
Washington, D. C. 20005

245

Re: Federal Aviation Administration  
National Capital Airports  
Fire Departments  
Case No. 22-3711 (RO)

Dear Mr. Fredenberger:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the petition filed by International Association of Fire Fighters (IAFF) in the above named case.

Two days prior to the filing of the petition herein, on September 28, 1972, an agreement was signed by the incumbent labor organization, National Federation of Federal Employees, Local 1709 (NFFE), and Federal Aviation Administration, National Capital Airports (Activity). This agreement was awaiting approval by higher agency authority on the date the petition in the subject case was filed and its duration was to be one year from the date of approval by "the Administrator or his designee."

The Acting Regional Administrator dismissed the petition on the ground that it was barred by the negotiated agreement and I agree with his decision for the reasons explained hereinafter.

In the request for review, you cite two grounds to support your contention that the agreement should not constitute a bar under the circumstances here presented. First, you contend that the date of termination cannot be determined from a reading of the "Duration" article of the agreement alone without regard to some other outside point of reference -- in this case, the date of approval by higher authority. From this you argue that the agreement cannot be a bar, citing language taken from Treasury Department, United States Mint, Philadelphia, Pa., A/SLMR No. 45, where I stated as follows:



In my view, in order for an agreement to constitute a bar to the processing of a petition it should contain a clearly enunciated fixed term or duration from which employees and labor organizations can ascertain, without the necessity of relying on other factors, the appropriate time for the filing of representation petitions.

A/SLMR No. 45, however, did not involve circumstances where the uncertainty of an agreement's duration stemmed from an approval date by higher authority not yet determined at the time the petition was filed. An exception was made to the broad language of the above quotation by the provision of Section 202.3(c) of the Regulations, which was in effect at all times material herein, to the effect that a signed agreement is a bar to a petition during the period that the agreement is in effect or awaiting approval at a higher management level. It should be noted that under the current regulations, the agreement bar period begins to run from the date of execution of the agreement by the Activity and the incumbent exclusive representative.

My policy with respect to agreements awaiting approval at a higher management level was correctly stated by the Acting Regional Administrator to be that such an agreement will be treated as a bar. I so found in Federal Aviation Administration and Professional Air Traffic Controllers Organization (PATCO), A/SLMR No. 173. The PATCO case, which illustrates the exception established in "awaiting approval" cases to the broad application of the language quoted above from A/SLMR No. 45, involved facts similar to those here involved. In PATCO a number of separate agreements were awaiting approval at a higher management level and the duration of the agreements could not be determined until approvals had been given. I held in that case that these agreements constituted bars to elections in the units covered by such agreements, and I so find in the present case.

Your second contention is that the facts here present "unusual circumstances" within the meaning of Section 202.3(c) of the Assistant Secretary's Regulations "which will substantially affect . . . the majority representation." I also reject this contention. The language relied on in this Section of the Regulations does not apply, and is not meant to apply, to situations where questions are raised by a rival labor organization as to the majority status of an incumbent labor organization during the course of the latter's certification year or during the term (not to exceed two years) of a valid negotiated agreement which would otherwise bar a petition by a rival labor organization. To hold to the contrary would undermine the salutary purpose of the agreement bar principle and would encourage raiding by rival labor organizations during the agreement bar periods of valid negotiated agreements.

The term "unusual circumstances" in Section 202.3(c) has been held to apply in a case of defunctness of an incumbent labor organization. (See discussion of defunctness in PATCO.) It also may apply to schism cases and to cases where a major reorganization has taken place during the period of an existing agreement which would have an obvious impact upon the established bargaining unit, and upon the majority status of the labor organization which is a party to the agreement in such cases, and to other possible situations.

Accordingly, your request for review of the Acting Regional Administrator's dismissal of the petition is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 22 1973

246

Mr. Benjamin G. White  
3008 S. E. 22nd Circle  
Del City, Oklahoma 73115

Re: Oklahoma City Air Materiel Area  
Tinker Air Force Base, Oklahoma  
Case No. 63-4047 (CA)

Dear Mr. White:

I have considered carefully your request for review of the Regional Administrator's dismissal of your amended complaint in the above named case alleging violation of Section 19(a)(1) of Executive Order 11491.

I agree with the Regional Administrator, who dismissed the amended complaint on the grounds that it was not timely filed in accordance with Section 203.2 of the Regulations of the Assistant Secretary and also that the amended complaint and report of investigation were not served simultaneously on the Oklahoma City Air Materiel Area (OCAMA) as required by Section 203.4(b) of the Regulations. While you maintain that the violation of Section 19(a)(1) is a continuing violation which extends to the present, you failed to specify any particular acts alleged to be unfair labor practices which occurred within six months prior to the filing of the charge letter with OCAMA or within nine months preceding the filing of the amended complaint with the LMSA Area Office.

Further, I note that you failed to serve a copy of the amended complaint, and those materials comprising your report of investigation, on OCAMA even after having been advised on several occasions by the Dallas Area Administrator that such service was required by Section 203.4(b) of the Regulations of the Assistant Secretary.

Under these circumstances, your request for review seeking reversal of the Regional Administrator's dismissal of your amended complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

January 22, 1973

Mr. Gilbert G. Bateman  
IBEW Representative  
Tidewater Virginia Federal Employees  
Metal Trades Council, AFL-CIO  
Building 236  
Norfolk Naval Shipyard  
Portsmouth, Virginia 23709

247

Re: Norfolk Naval Shipyard  
Portsmouth, Virginia  
Case No. 22-3570 (CA)

Dear Mr. Bateman:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint alleging that Norfolk Naval Shipyard (Activity) violated Section 19(a)(1) of Executive Order 11491.

The complaint alleges that the Activity harassed, interfered with and restrained stewards of the Tidewater Virginia Federal Employees Metal Trades Council, AFL-CIO (MTC) in the performance of their responsibilities. The interference and restrictions alleged are that (1) before granting time allowed to conduct union-employer business, stewards are interrogated about the nature and handling of such business and are denied the "time allowed" if, in the unilateral determination of the supervisors, the answers are not satisfactory; (2) the Activity has notified MTC and its stewards that "time allowed" will not be granted for the purpose of preparing or writing grievances using the procedures outlined in the agreement between the parties; and (3) stewards have been notified by the Activity that they may not visit the MTC office in the Shipyard during working hours or other offices or areas within the Shipyard except those offices in the respective shops of the stewards unless the steward is attending a scheduled hearing as an employee representative.

There is a collective bargaining agreement between the parties in this case which has provisions governing the permissible activities of stewards during working hours. The Activity has taken the position in a memorandum in support of its Motion to Dismiss filed with the Regional Administrator, that the above listed actions of the Activity, which it admits were taken, were in harmony with the ground rules and procedures set forth in the agreement.

Your complaint does not allege that there has been a violation of the agreement or that there is any disagreement between MTC and the

Activity concerning the interpretation or application of any provision of the agreement.

In your request for review, you do not specifically contend that there has been a violation of the agreement or that there is a dispute over the interpretation of the agreement. You do contend that the "complaint encompasses more than an alleged violation, or a dispute over the interpretation of the Negotiated Agreement and that ... Report No. 49 should not apply in this matter." You do contend in the request for review that the Activity changed its practice of allowing stewards more freedom in the use of official time for their activities to a more restrictive practice limiting their use of official time and sometimes denied requests for use of official time. This contention of a change in practice during the life of the agreement was not made in the complaint and you point to no evidence submitted with the complaint concerning the alleged change in practice or to any independent evidence of violations of Section 19(a)(1). Further, I note that you do not contend that the alleged change of practice by the Activity after four years under the agreement was in violation of the provisions of the agreement setting out the "ground rules" for the permissible official time activities of stewards.

While I agree with your contention that A/S Report No. 49 does not apply to the facts of this case as no question of contract interpretation is involved herein and that, therefore, reliance on that report by the Acting Regional Administrator in support of the dismissal was inappropriate, nevertheless, based on the foregoing circumstances I conclude that further proceedings on your complaint are unwarranted. Thus, use of official time for the conduct of certain business of a labor organization is prohibited by Section 20 of the Executive Order, and that Section also provides, subject to limitations, that official time may be authorized for the conduct of negotiations of an agreement as agreed by the parties. Otherwise use of official time for union business not specifically prohibited by the Order, is not a matter of right, but is purely a matter of agreement between the parties.

Under these circumstances, I agree with the dismissal of the complaint in this matter.

Accordingly, your request for review is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JAN 22 1973

Mr. Dale M. Titler  
Secretary, Local 943  
National Federation of  
Federal Employees  
P. O. Box 7361  
Mississippi City Station  
Gulfport, Mississippi 39501

248

Re: Keesler Technical Training  
Center  
Keesler Air Force Base, Miss.  
Case No. 41-3137 (CA)

Dear Mr. Titler:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint filed September 21, 1972, in the above named case alleging violations of Section 19(a)(1), (4) and (6) of Executive Order 11491 by Keesler Technical Training Center (Activity).

I agree with the finding of the Regional Administrator that your complaint was not filed timely as required by Section 203.2 of the Regulations of the Assistant Secretary. That Section, which was in effect at the time the complaint was filed, provides in pertinent part, that "a complaint to the Assistant Secretary shall not be considered timely unless filed . . . within thirty (30) days of the receipt by the charging party of the final decision, . . ."

In this case, the charge was received by the Activity on July 12, 1972. The Activity's final decision on the charge was given on July 14, 1972. In your complaint, which was not filed until September 21, 1972, it is acknowledged that the Activity's response of July 14, 1972, was accepted "as final and the charging party commenced preparation of a formal charge complaint."

In view of the foregoing, I find it unnecessary to consider the merits of the case or the alternative grounds upon which the Regional Administrator based his dismissal.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

JAN 29 1973

Mr. Henry Webb  
President, Local 1138  
American Federation of Government  
Employees, AFL-CIO  
P. O. Box 617  
Fairborn, Ohio 45324

249

Re: United States Air Force  
Aeronautical Systems Division  
Wright-Patterson AFB, Ohio  
Case No. 53-6147

Dear Mr. Webb:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to conduct allegedly affecting the results of the election held on November 1, 1972.

The Regional Administrator, in his Report and Findings dated December 7, 1972, advised you of your right, under Section 202.20(f) of the Regulations of the Assistant Secretary, to obtain a review of his action by filing a request for review with the undersigned. He further advised that the request must be received by me in Washington, D. C. by the close of business December 20, 1972.

Your request for review, dated December 18, 1972, was mailed from Wright-Patterson Air Force Base and postmarked December 19, 1972. It arrived in my office subsequent to the December 20, 1972, due date and, therefore, was filed untimely.

Accordingly, your request for review cannot be considered on its merits, and it is hereby denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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2-7-73

Mr. Edward J. Hattam  
President  
Upper Heyford Federation of Teachers  
Local 2148, Box 1256  
APO New York, New York 09194

250

Re: Department of the Army  
Directorate, U. S. Dependent Schools  
European Area  
Case No. 22-3575 (CA)

Administrator that these are reasonable alternatives for communicating with unit employees.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Dear Mr. Hattam:

I have considered carefully your Request for Review of the Acting Regional Administrator's dismissal of your complaint alleging violations of Section 19(a)(1) and (2) of the Executive Order, as amended, in the above named case.

Your complaint alleges that the Activity violated the Executive Order in that it refused to permit your organization, the Upper Heyford Federation of Teachers, Local 2148, the use of such facilities as teachers' mailboxes and school bulletin boards, while the Overseas Education Association, which is the recognized collective bargaining agent for the unit, is allowed the use of such facilities.

Under all the circumstances disclosed by the investigation herein, I conclude, in agreement with the Acting Regional Administrator, that the complaint should be dismissed. With regard to the substance of the 19(a)(1) and (2) allegations, I agree with the Acting Regional Administrator's rejection of your argument that your organization should have rights equal to that of a certified or recognized union in communicating with unit personnel. Privileges accrue to an incumbent labor organization which are not necessarily available to a rival union.

In fact, adequate and reasonable means of communication were shown to be available to your organization. In his dismissal letter, the Acting Regional Administrator noted the availability to your organization of such means of communication as handouts on work sites, posting of notices on bulletin boards and use of meeting rooms in common areas on the military installation, and the use of local American or British mail systems. I agree with the Acting Regional

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

2-7-73

Mr. Louis B. Montenegro  
President, Local 2263  
American Federation of Government  
Employees, AFL-CIO  
1615 Carlisle Blvd., S. E.  
Albuquerque, New Mexico 87106

251

Re: United States Air Force  
Air Force Special Weapons Center  
Kirtland Air Force Base  
New Mexico  
Case No. 63-3793 (AC)

Dear Mr. Montenegro:

I have considered carefully your request for review of the Regional Administrator's Report and Findings on a Petition for Amendment of Certification in the above named case.

The request for review raises facts concerning which the Regional Administrator was apparently unaware at the time he issued his Report and Findings.

Accordingly, I am remanding the case to the Regional Administrator for further consideration and the issuance of a notice of hearing or a supplemental report and findings as may be appropriate.

Further investigation or hearing should go into the matter whether or not the amendment to the certification sought by the Air Force Special Weapons Center would have the effect of excluding from the unit some of the employees recently transferred to Kirtland East. In addition, further investigation or hearing, should determine, among other things, the facts relating to the personnel office or offices serving the employees in the expanded unit and the proper designation of the Activity.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210

2-9-73

Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

252

Re: U. S. Army Combat Development  
Command  
Ft. Monmouth, New Jersey  
Case No. 32-2870 E.O.  
Case No. 32-2877 E.O.

Dear Mr. Cahn:

I have considered carefully your request for review of the Regional Administrator's dismissal of your petition in Case No. 32-2877 and his denial of your alleged status as an intervenor in Case No. 32-2870.

I find, in agreement with the Regional Administrator, that your petition, as amended at the hearing in the subject cases, encompasses the unit petitioned for by Local 1904, American Federation of Government Employees (AFGE) and that, therefore, you were required, pursuant to Section 202.5(b) of the Regulations, to file your petition during the 10 day posting period with respect to AFGE's petition and to support it with the prescribed showing of interest. As you did not comply with these requirements, your petition was untimely filed. See Bethel Agency, Bureau of Indian Affairs, U. S. Department of Interior, Bethel, Alaska, A/SLMR No. 200. Your contention that the amendment to your petition should be found untimely and the original petition be allowed to stand is without merit. As your representative amended the petition at the hearing on the record, your contention that the amendment should not have been accepted because it was not on the proper forms, or filed in accordance with the regulations, is also without merit.

Further, in agreement with the Regional Administrator, I find that you cannot be regarded as an intervenor in Case No. 32-2870. The evidence is clear that you challenged the intervenor status mistakenly assigned you and specifically requested the status of a petitioner.



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



When it was determined that your showing of interest was sufficient to qualify you as a petitioner, in accordance with your request, you were advised that your organization would be regarded as a petitioner rather than an intervenor. Thus your petition was given a separate case number and a new Notice to Employees was posted. I find no evidence that at any time material thereafter you sought any change in this status.

You also assert that AFGE is in violation of Section 18(a) of Executive Order 11491, as amended, "in that it forged signatures to petitions" in two other cases. You evidently believe that this matter should be resolved before further proceedings herein are undertaken. I have determined previously in Report No. 9 (copy enclosed) that the processing of representation cases will not be delayed pending investigation and resolution of such matters. Accordingly, I reject your assertion in this regard.

Finally, you contend that the unfair labor practice complaint you filed against the Combat Development Command and AFGE just prior to the opening of the hearing in these cases supersedes and takes precedence over a unit determination hearing and related proceedings. Under all the circumstances, I find that no party's rights were prejudiced by proceeding with the hearing in this matter. However, the violations alleged in your unfair labor practice complaint, insofar as they pertain to the petition in Case No. 32-2870, will be investigated and resolved by the Regional Administrator before proceeding to election.

In accordance with the above, your request for review seeking reversal of the Regional Administrator's dismissal of your petition in Case No. 32-2877 and his determination that NFFE did not qualify as an intervenor in Case No. 32-2870, is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

2-12-73

Mr. Howard T. O'Brien  
P. O. Box 513  
Troy, New York 12181

253

Re: Social Security Administration  
Regional Office  
New York, New York  
Case No. 30-4720

Dear Mr. O'Brien:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Social Security Administration (Agency) violated Section 19(a)(1) of the Executive Order.

In your complaint, you assert that the Agency has interfered with, coerced and restrained you in the exercise of your rights granted under Sections 7(d)(3) and 7(e) of the Order, by failing and refusing to grant an "Official Relationship" to the Region II Association of Social Insurance Administrators, (Association), in which organization you are a member.

While I do not necessarily agree with the Regional Administrator's finding that supervisors are not "employees" within the meaning of the Order, nevertheless, I agree with the dismissal of your complaint in this matter based on a distinction which must be made between the types of rights granted by the Order and the enforcement mechanisms provided for their vindication. The Order grants certain "individual rights" and other rights which may be referred to as "collective rights." An illustration of this distinction is shown by a comparison of Section 19(a)(1) of the Order, which is an enforcement mechanism for "individual rights", with Sections 19(a)(5) and (6) which are enforcement mechanisms for the "collective rights" of qualified labor organizations. In this connection, an individual employee would not have standing to assert a violation of Section 19(a)(5) or (6) because the rights to recognition or collective bargaining are "collective rights" which can be exercised only by a labor organization as defined in Section 2(e) of the Order.

In your request for review you cite my decision in Social Security Administration, Bureau of Hearings and Appeals, A/SLMR No. 142, fn. 5, where it is stated that Sections 7 and 21(b) of the Order grant "certain status and certain rights and privileges in dealing with agencies [to] supervisors or associations of supervisors." However, it should be noted that neither in the Social Security Administration case, cited above, nor in any other decision, have I determined that such rights and privileges are protected under Section 19 of the Order.

You have not expressly defined the right claimed to have been violated by the Agency but it seems clear from my reconstruction of the facts of the case and the positions of the parties, together with the arguments you make in support of the complaint, that you are contending that the right allegedly violated is the alleged right of the Association to be accorded "Official Relationship" status by the Agency under Section 7(e) of the Order.

As explained above, the right which you assert under your 19(a)(1) complaint is, in fact, a collective right and not an individual right. I find that such a right cannot be enforced through a complaint action filed by you as an individual under Section 19(a)(1). You are aware that the Association could not assert this right under Section 19(a)(5) or (6) because it is not a labor organization as defined in Section 2(e) of the Order. Thus, by filing individually under Section 19(a)(1) it appears that you are attempting to do indirectly that which cannot be done directly.

In concluding, as I do, that your complaint under Section 19(a)(1) is inappropriate, I am not suggesting that all avenues for relief under the Order are necessarily closed to your Association. I note your contention that it is not logical that the Executive Order would have provided rights without remedies available in proper cases to organizations such as the Association. In his dismissal letter, the Regional Administrator referred you to Section 4(c)(4) of the Order, the provision conferring jurisdiction upon the Federal Labor Relations Council to consider "matters it deems appropriate to assure the effectuation of the purposes of this Order." In this connection, I agree with the Regional Administrator that if, in fact, Section 7(e) confers rights upon the Association in this case which have been violated, the Council would be the appropriate forum in which to seek a remedy.

Under the foregoing circumstances, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor



2/22/73

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Henry A. Webb  
President, Local 1138  
American Federation of Government  
Employees, AFL-CIO  
P. O. Box 617  
Fairborn, Ohio 45324

254

Re: United States Air Force Aeronautical  
Systems Division  
Wright-Patterson, AFB, Ohio  
Case No. 53-6147

Dear Mr. Webb:

I have considered carefully your request dated February 10, 1973, that I reconsider my ruling of January 29, 1973, denying your request for review of the Regional Administrator's dismissal of your objections to an election held on November 1, 1972. My denial was based on the fact that your request for review was received late.

Your present request contains no facts that were not before me when my ruling of January 29, 1973, was made. You are misreading the requirement of Section 202.6(d) of the Regulations with respect to the time requirement for filing a request for review. The controlling date is the date of receipt of the request for review by the Assistant Secretary and not the date of mailing by the party filing the request for review.

This was made clear in the final sentence of the Regional Administrator's Report and Findings sent to you on December 7, 1972, in which he advised that a request for review must be received by the Assistant Secretary "by close of business December 20, 1972." As I stated in my ruling of January 29, 1973, your request for review arrived in my office after December 20, 1972, and therefore was filed untimely.

Accordingly, your request for reconsideration of my ruling of January 29, 1973, is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Andrew J. Ondrof  
Personnel Officer  
Bureau of Land Management  
U. S. Department of the Interior  
Washington, D. C. 20240

2-28-73 255

Re: Riverside District and Land Office  
Bureau of Land Management  
Case No. 72-2763

Dear Mr. Ondrof:

I have considered carefully your request for a review of the Regional Administrator's decision overruling the Activity's objections to the election in the above captioned case.

You contend that the Regional Administrator erred in his finding that the Activity agreed to an election eligibility list which included six temporary employees whose right to vote was contested in one of the Activity's objections to the election. I find no evidence which would indicate that the Activity filed any protest with the Area Administrator concerning the eligibility of temporary or casual employees prior to the election. The fact is that the Activity's District Manager did sign separate lists of employees designated as "eligible" and "ineligible." This act was not binding upon the Activity in the sense that its right to challenge voters on the "eligible" list was thereby waived. The "agreement" of the parties to a list of eligible voters, evidenced by their initials or signatures, is tentative only, and does not restrict the right to challenge for good cause any voter whose name appears thereon. The right to challenge is not restricted to would be voters whose names do not appear on the eligible list.

The Regional Administrator made it clear in his decision that the issue with respect to the six temporary employees was one of eligibility, and not one of unit makeup, and that such issues are to be resolved through the challenged ballot procedures. I agree with his finding in this regard.

Further, you assert that the Activity was not informed concerning the challenged ballot procedure. Both the Election Agreement and the Notice of Election clearly indicate the right of an observer to challenge voters, and the latter specifically states

that a challenge must be made before the ballot in question is deposited in the ballot box. Further, in 1970, I issued a Procedural Guide for Conduct of Elections under Executive Order 11491. This publication, which was widely distributed to agencies and labor organizations, specifically states, among other things, that observers may challenge the eligibility of temporary employees. The Procedural Guide further states the intalling of an eligibility list is not to be construed as a waiver of the right to challenge. Under all the circumstances, I find your assertion lacks merit.

You contend that the Regional Administrator erred in his finding that the Assistant Secretary's decision directing the election related only to unit makeup and not eligibility. The Assistant Secretary's decision in A/SLMR No. 170 sets forth in specific detail the unit found to be appropriate. The unit description neither includes nor excludes temporary employees as such and no mention of temporary employees is found in the Assistant Secretary's decision. Thus, it is clear that the Assistant Secretary made no decision concerning the eligibility of such employees. As the Regional Administrator indicated, the question of whether these individuals were eligible to vote was a separate matter depending on the nature of their employment, i.e., whether or not they are eligible because of the temporary nature of their employment. Under the circumstances, I find that your contention in this regard is lacking merit.

Finally you contend that the Regional Administrator erred in overruling the objections raised by the Activity concerning the Assistant Secretary's determination that certain employees of the Activity were not professional employees and therefore were included improperly in the unit found appropriate and ruled eligible to vote in the election. You argue that the Regional Administrator's finding was premature in the light of your appeal to the Federal Labor Relations Council (which was later dismissed as untimely by the Council: See FLRC 72A-31) concerning the criteria adopted by the Assistant Secretary in this regard. I note that your appeal did not seek, nor did the Council order, a stay of the election directed by the Assistant Secretary in this matter. I find, in agreement with the Regional Administrator, that when the Assistant Secretary issues a decision specifically describing a unit which he has determined to be appropriate for purposes of exclusive recognition, his decision is binding on the agents of the Assistant Secretary, notwithstanding any appeal to the Council. Therefore, I reject your contention in this regard.

Accordingly, your request for review seeking reversal of the Regional Administrator's decision overruling the Activity's

objections to the election is denied, and the Regional Administrator is directed to cause a Certification of Representative to be issued by the Area Administrator.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



- 2 -

3-2-73

Mr. Orvil L. Robinson  
U. S. Department of Commerce  
NOAA, National Weather Service  
6795 Convair Road  
El Paso, Texas 79925

256

Re: U. S. Department of Commerce  
National Oceanic and Atmospheric  
Administration, National  
Weather Service  
El Paso, Texas  
Case No. 63-4028 (G & A)

Dear Mr. Robinson:

I have considered carefully your request for review of the Regional Administrator's dismissal of the Application For Decision On Grievability Or Arbitrability in the instant case.

The question before me is whether your grievance filed with the Agency on July 13, 1972, is subject to the negotiated grievance procedure in the multi-unit agreement between the Director, National Weather Service and the National Association of Government Employees.

The Regional Administrator's dismissal letter stated in part: "It appears that the Activity's June 5, 1972, letter to Mr. Robinson was to afford him the required 60-day notice that he was not performing at an acceptable level of competence. As this letter was, in fact, the initial step in the agency's within-grade determination procedure, I conclude that any allegedly improper statements contained in the letter would be subject to review under the statutory appeals procedures existing for within-grade denials."

You contend in your request for review "that the Regional Administrator's decision is in technical error because the agency has ruled against my allegation of impropriety and since my within-grade increase was granted, I have no statutory right of appeal."

I find the issues raised in your request for review were rendered moot by the fact that although your within-grade increase was denied, the denial was reversed and the within-grade increase was made retroactive to its original due date. Moreover, the Agency official who granted retroactively your within-grade increase stated that "the original denial of a WGI was not a reprisal against you for your union

activities." In my opinion these final actions by the Agency served to withdraw and nullify, for all practical purposes, the June 5, 1972, cautionary letter by which you are aggrieved.

I find that the Regional Administrator was correct in dismissing the instant application. It was appropriate for the cautionary letter of June 5, 1972, to be included as a part of the file of the statutory appeals procedure and to be considered under that procedure rather than as an independent grievance. Therefore, I conclude, in agreement with the Regional Administrator, that because a statutory appeals procedure exists to resolve the subject matter of the present grievance, the Assistant Secretary has no jurisdiction to make a determination in this matter, as indicated in Section 13(a) of Executive Order 11491.

Accordingly, your request that the Regional Administrator's dismissal of the application be reversed, is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

3/9/73



Mr. Howard T. O'Brien  
P. O. Box 513  
Troy, New York 12181

257

Re: Social Security Administration  
Regional Office  
New York, N. Y.  
Case No. 30-4720

Dear Mr. O'Brien:

I have considered carefully your request dated March 2, 1973, that I reconsider my ruling of February 12, 1973, denying your request for review of the Regional Administrator's dismissal of your complaint in the above named case alleging that the Social Security Administration violated Section 19(a)(1) of Executive Order 11491.

Your request for reconsideration contains no facts and raises no points that were not before me and considered in my denial of your request for review on February 12, 1973. As I indicated in that ruling, if there have been rights violated in this matter, the Federal Labor Relations Council would be the appropriate forum in which to seek a remedy. In this regard it should be noted that under Section 2411.13 of the Council's rules any party aggrieved by a final decision of the Assistant Secretary may petition the Council for review. The time limit for filing is 20 days from the date the decision was served on the party seeking review.

Based on the foregoing, your request for reconsideration of my ruling of February 12, 1973, is denied.

Sincerely,

W. J. Uscry, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 14, 1973

Carl W. Hughes, M. D.  
Major General, MC  
Commanding Officer  
Tripler Army Medical Center  
U. S. Army Medical Corps  
Honolulu, Hawaii 96438

258

Re: U. S. Army Medical Corps  
Tripler Army Medical Center  
Honolulu, Hawaii  
Case No. 73-498

Dear General Hughes:

I have considered carefully your request for review of the Regional Administrator's Report and Ruling on Objection to Runoff Election in the above named case.

I find, in agreement with the Regional Administrator, that your objection should be overruled. You have alleged in your objection that three potential voters were denied use of the challenged ballot procedure, and that if these potential voters had voted under challenge, their ballots could have been determinative of the results of the election. You concede in your objection that had the three employees voted under challenge, the parties to the representation proceeding would have agreed that they were ineligible. However, you misinterpret the Procedural Guide for Conduct of Elections when you contend that an investigation automatically would be made despite your position that the employees were ineligible to vote.

Challenged ballots of employees whom the parties agree are ineligible after the election and before the tally, are discarded as nullities if the parties' agreement is concurred in by the agent of the Assistant Secretary and, under these circumstances are not included in the tally. Having been resolved as ineligible ballots, challenged ballots could not be determinative of the results of the election.

It is first mentioned in your request for review, that a fourth employee also was denied a challenged ballot. I find it unnecessary to consider this contention, which should have been raised initially with the Area Administrator.

With regard to the other contentions raised in your request for review, the investigation reveals that the three employees in question were on the excludable list; all three were given explanations

U.S. DEPARTMENT OF LABOR  
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WASHINGTON, D.C. 20210



3-14-73

by the official observers and the Department of Labor representative as to why they were on the list; two of the three appear from their affidavits to have accepted the explanations given at the polls and the third employee apparently accepted the explanation after talking with her supervisor as she did not return to the polls to vote a challenged ballot. Contrary to your contention, I see no impropriety in the action of the Department of Labor representative in referring the presumed ineligible voters to the Activity official for further explanation of their ineligible status.

You have conceded in your objection that the parties to the election would have agreed at the tally that the employees in question were ineligible if they had voted challenged ballots. The effect of such agreement would have been to remove the challenged ballots from the tally and no further investigation or ruling regarding them would have been necessary.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the objection to the election is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

Mr. Elihu I. Leifer  
Attorney  
Sherman, Dunn, Cohen & Leifer  
1125 Fifteenth Street, N.W.  
Suite 801  
Washington, D. C. 20005

259

Re: National Park Service  
John F. Kennedy Center for  
the Performing Arts  
Case No. 22-3701 (RO)

Dear Mr. Leifer:

I have considered carefully your request for review of the Regional Administrator's dismissal of the RO petition filed by Local Union No. 27, International Brotherhood of Electrical Workers, in the above named case.

I have concluded that the circumstances herein present accretion issues which can be resolved best on the basis of record testimony. Therefore, the case is remanded to the Regional Administrator for reinstatement of the petition and the issuance of a notice of hearing.

In order that an adequate record be made at the hearing, evidence should be adduced concerning, but not limited to, the following matters:

1. The proper designation of the Activity.
2. The specific duties of the employees in the unit petitioned for and their relationship and job contacts, if any, with employees in the existing National Capital Parks unit.
3. The specific duties of those National Capital Parks employees providing services to the John F. Kennedy Center for the Performing Arts who are not included in the claimed unit.

4. The supervisory structure with respect to the employees in the claimed unit and the relationship of that structure with the supervisory structure in the existing Activity-wide unit.
5. Previous bargaining history with respect to employees in the claimed unit, if any.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 14, 1973

Mr. Wayne Kennedy  
Chief Steward  
Local 2816, American Federation of  
Government Employees, AFL-CIO  
4139 Rose  
Western Springs, Illinois 60558

260

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-8232 (CA)

Dear Mr. Kennedy:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that Region V of the Office of Economic Opportunity (Activity) violated Section 19(a)(6) of Executive Order 11491, as amended.

I find that further proceedings in this matter are unwarranted. Thus, in the circumstances of the case, I find that at all times material the Activity was not obligated to meet and confer with Local 2816 as the latter ceased to be the exclusive representative of the unit employees when its parent organization was certified on April 28, 1971, for a nationwide unit of all Office of Economic Opportunity employees including those represented by Local 2816.

In a recent decision dealing with the same parties and essentially the same factual situation, Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 251, I stated that "In my view, when a labor organization acquires exclusive recognition in a nationwide unit that encompasses previously recognized, less comprehensive exclusive bargaining units, such less comprehensive units cease to exist." Thus, from the date that your parent labor organization received certification for a nationwide unit any bargaining obligation herein was owed solely to your parent organization. Further, there is no evidence that, prior to the filing of the complaint in this matter, Local 2816 was designated by your parent organization to act as an agent for bargaining at the local level. Under these circumstances, I find no basis to conclude that the Activity improperly refused to negotiate with Local 2816.

With regard to your reference to the Assistant Secretary's Report No. 48, it is clear from his decision that the Regional Adminis-

trator ruled on the merits of the case in dismissing your complaint and did not rely on Report No. 48.

Under all of the circumstances, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

3-14-73



Mr. Henry A. Webb  
President, Local 1138  
American Federation of Government  
Employees, AFL-CIO  
P. O. Box 617  
Fairborn, Ohio 45324

261

Re: United States Air Force Aeronautical  
Systems Division  
Wright-Patterson, AFB, Ohio  
Case No. 53-6147

Dear Mr. Webb:

I have considered carefully your request dated March 8, 1973, that I reconsider my ruling of January 29, 1973, which I declined to reconsider in my response dated February 22, 1973, to your request of February 22, 1972.

It is always painful, I am sure, for appellants to accept procedural dismissals of cases and I can appreciate your feelings.

However, in the present case I am bound by the Regulations, Section 202.6(d) as I interpret it and have interpreted it in other cases. Your present request for reconsideration raises no point respecting the interpretation of Section 202.6(d), as applied to this case, which I have not previously considered and rejected.

Accordingly, your March 8, 1973, request for reconsideration of my ruling of January 29, 1973, is denied.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

3-27-73



Mr. James L. Neustadt  
Staff Counsel  
American Federation of  
Government Employees  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

262

Re: U. S. Air Force  
804th Combat Support Group  
Grand Forks AFB, North Dakota  
Case No. 60-3219 (RO)

Dear Mr. Neustadt:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition filed by Local 3379, American Federation of Government Employees, AFL-CIO (AFGE), in the above named case.

I have concluded that in the circumstances herein present, there are issues which can be resolved best on the basis of record testimony. Therefore, I am remanding the case to the Regional Administrator for reinstatement of the petition and the issuance of a notice of hearing.

In order that an adequate record be made at the hearing, evidence should be adduced as to the exact hour and date that Messrs. Alkire, Mohr and Rakowski, and the Base Commander individually signed the agreement; and as to their respective authority to bind the parties to the agreement. Also, evidence should be adduced as to whether the parties to the agreement had knowledge of the AFGE's filing of, or intent to file, its petition before the agreement was executed. Finally, evidence should be obtained as to the timeliness of the petition in the subject case in connection with the Activity's contention that the 90 day bar period provided by Section 202.3(d) of the Assistant Secretary's Regulations may be extended for certain additional periods of time pursuant to Sections 206.1 and 2 of the Regulations.

Sincerely,

W. J. Usery, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
LABOR-MANAGEMENT SERVICES ADMINISTRATION

Office of Federal Labor-Management Relations  
WASHINGTON, D.C. 20210

4-2-73



Mr. Joseph Girlando  
National Representative  
American Federation of Government  
Employees, AFL-CIO  
2nd District Office  
300 Main Street  
Orange, New Jersey 07050

263

Re: Army and Air Force Exchange Service  
Fort Monmouth, N. J.  
Case No. 32-3172 E.O.

Dear Mr. Girlando:

Receipt is acknowledged of your letter dated March 26, 1973, in which you request review of the New York Regional Administrator's decision in the above named case.

On March 15, 1973, in a letter addressed to the President of Local 1904, AFGE, the Regional Administrator denied a motion by the latter that the petition filed by National Federation of Federal Employees, Local 476 in the subject case be dismissed.

Under the circumstances, your request for review of the Regional Administrator's action in the matter is denied. Thus, as stated by the Assistant Secretary in Report on a Decision Number 8 (copy enclosed), no provision is made for filing a request for review of a Regional Administrator's refusal to dismiss a petition. Accordingly, your request in this matter is denied.

Sincerely,

Louis S. Wallerstein  
Director



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 27 1973

Mr. George Tilton  
Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

264

Re: Department of the Army  
U. S. Army Signal Center and  
School  
Fort Monmouth, New Jersey  
Case No. 32-2861

Dear Mr. Tilton:

This is in connection with your request for review of the Regional Administrator's dismissal of the complaint in the above named case.

It is found that the request for review in this matter is procedurally defective in that, contrary to the requirement of Section 202.6(d) of the Regulations of the Assistant Secretary, a copy of the request for review was not served on the Regional Administrator.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 27 1973

Mr. George Tilton  
Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

265

Re: Department of the Army  
United States Army Satellite  
Communications Agency  
Fort Monmouth, N. J.  
Case No. 32-2862

Dear Mr. Tilton:

This is in connection with your request for review of the Regional Administrator's dismissal of the complaint in the above named case.

It is found that the request for review in this matter is procedurally defective in that, contrary to the requirement of Section 202.6(d) of the Regulations of the Assistant Secretary, a copy of the request for review was not served on the Regional Administrator.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 27 1973

266

Mr. Gabriel P. Cardiello  
123 Gordon Street  
Ridgefield Park, New Jersey 07660

Re: Military Ocean Terminal  
Bayonne, New Jersey  
Case No. 32-3101

Dear Mr. Cardiello:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the above named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491.

The Regional Administrator's dismissal of the subject complaint, which was docketed by the Area Office on January 3, 1973, was based on the view that such complaint did not meet the requirements of Section 203.2 of the Regulations of the Assistant Secretary in that it was not filed within nine months of the occurrence of the alleged unfair labor practice.

The evidence discloses that an earlier version of your complaint was submitted to the Area Office on November 13, 1972, which would have been timely under the Regulations. However, the November 13, 1972, complaint was not docketed by the Area Administrator because, in his opinion, it did not meet the standards required for a properly filed complaint under Section 203.3(a)(3) of the Regulations.

I conclude that under all the circumstances the complaint you attempted to file on November 13, 1972, although inartistically worded, meets the standards specified by the Regulations and, therefore, should have been docketed on November 13, 1972. Accordingly, the Regional Administrator is directed to cause the November 13, 1972, complaint to be docketed and considered by the Area Office as of that date.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



APR 30 1973

267

Mr. Dolph David Sand  
Assistant to the Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

Re: Department of the Air Force  
Headquarters, 4756th Air Force  
Base Group  
Tyndall Air Force Base, Florida  
Case No. 42-2227 (CA)

Dear Mr. Sand:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that Department of the Air Force Headquarters, 4756th Air Force Group (Activity) violated Section 19(a)(1) and (2) of Executive Order 11491, as amended.

I find, in agreement with the Regional Administrator, that further proceedings in this matter are unwarranted. The evidence establishes that the pre-complaint charge in the instant case is identical to the pre-complaint charge filed on June 6, 1972, which was settled informally on June 29, 1972, as a result of negotiations between the Local Union and the Activity, and which subsequently was withdrawn.

It is your contention that the charge was not settled properly because the Local Union lacked the authority to enter into a settlement with the Activity. However, the evidence establishes that the AFGE's instructions which accompanied the charge specified the Local Union as the party with which the Activity should negotiate any informal settlement. Moreover, the letter dated June 29, 1972, from Local Union President Moore advising the Respondent that the findings and recommendations of the joint fact finding panel were satisfactory to the AFGE appeared to meet the conditions set forth in National

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Representative De Lisle's statement of June 14, 1972, regarding clearance through National Vice-President Garrison. Accordingly, there appears to be no merit to this contention.

Regarding your further contention that the withdrawal of the charge was made subject to the implementation of the settlement agreement and that such agreement was not implemented, thereby rendering the withdrawal invalid, such contention is unsupported by any evidence.

Under all of the circumstances, therefore, it appears that the alleged violations of the Order contained in the instant complaint have been resolved informally. Moreover, in my view, a reversal of the Regional Administrator's decision in this matter would contravene the policy of the Assistant Secretary, as expressed in Section 203.2 of the Regulations, to encourage parties to an unfair labor practice charge to resolve the matter informally, by creating uncertainty as to the finality of any settlement which they might reach. Thus, informal settlement efforts would be discouraged, and not encouraged, as intended.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

APR 30 1973

Mr. James P. Farrar  
Box 398  
Town Hall Road, R. R. 3  
Belleville, Illinois 62221

268

Re: U. S. Department of the Army  
St. Louis District  
Corps of Engineers  
Case No. 62-3525 (CA)

Dear Mr. Farrar:

This is in connection with your request for review of the Regional Administrator's dismissal of your complaint in the above named case.

It is found that the request for review in this matter is procedurally defective. Contrary to the requirements of Section 202.6(d) of the Regulations of the Assistant Secretary, (1) the request for review was not received by the Assistant Secretary until after April 4, 1973, which was the last date upon which it could be received timely, as you were advised by the Regional Administrator, and (2) the request for review did not contain a statement of facts or reasons upon which it was based.

Under these circumstances, the merits of the case have not been considered and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



- 2 -

APR 30 1973

Mr. Richard O. Shave  
President, Local 943  
National Federation of  
Federal Employees  
706 Augustine Drive  
Handsboro Station  
Gulfport, Mississippi 39501

269

Re: Department of the Air Force  
Keesler Technical Training Center  
Case No. 41-3193 (CA)

Dear Mr. Shave:

I have considered carefully your request for review of the Regional Administrator's dismissal of the unfair labor practice complaint in the above named case alleging violations of Section 19(a)(1), (4) and (6).

I am in agreement with the Regional Administrator that certain aspects of the unfair labor practice charge and the complaint in this matter were filed untimely under the Rules and Regulations of the Assistant Secretary and must be dismissed for that reason. Thus, a review of the evidence reveals that certain of the alleged unfair labor practices herein occurred on October 31, 1971, that the unfair labor practice charge in this regard was filed on or about December 1, 1972, and that the complaint was filed on January 12, 1973.

Section 203.2 of the Regulations provides, in pertinent part that, "The charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice", and that, "A complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice . . ." Under the facts herein, neither of these timeliness requirements has been met as to those aspects of your complaint relating to the Activity's conduct on October 31, 1971. Moreover, in agreement with the Regional Administrator, I find that the Activity's conduct on November 22, 1972, in providing you with a new position description without consulting with the exclusive bargaining representative, did not provide a reasonable basis for the complaint.

With respect to the 19(a)(4) aspect of your complaint, I am in agreement with the Regional Administrator that there is no evidence to support the allegation that you were disciplined or discriminated against because you filed a complaint or gave testimony under the Order. Accordingly, this aspect of the complaint also must be dismissed.

Under the foregoing circumstances, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



5/14/73

David J. Markman, Esq.  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

270

Re: U. S. Department of Agriculture  
Agricultural Stabilization and  
Conservation Service  
Kansas City, Missouri  
Case No. 60-2151 (RO)

Dear Mr. Markman:

I have considered carefully your request for review of the Report and Findings On Objections issued by the Regional Administrator in connection with the rerun election conducted in the above entitled matter. In your request for review you seek to reverse the Regional Administrator's findings and recommendations on thirteen of the fifteen objections filed with the Area Administrator.

Section 202.20(b) of the Regulations of the Assistant Secretary provides, in pertinent part, that "The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections."

I conclude, in agreement with the Regional Administrator, that National Federation of Federal Employees, Local 1633, failed to meet its prescribed burden of proof in support of the objections filed and that your request for review points to no facts which would require a different conclusion.

Accordingly, your request for review seeking reversal of the Regional Administrator's Report and Findings On Objections is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



5/14/73

Mr. Alan J. Whitney  
National Executive Director  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

271

Re: Army and Air Force Exchange Service  
Southeast Exchange Region Warehouse  
Fort Bragg, North Carolina  
Case No. 40-4365

Dear Mr. Whitney:

I have considered carefully your request for review of the Regional Administrator's dismissal of your objections to conduct allegedly affecting the results of the election held on November 1, 1972.

I have given no consideration to Objection No. 1 as you have not questioned the Regional Administrator's dismissal of that Objection. The Regional Administrator's dismissal of your second objection was based on his conclusion that the radio spot announcement in question, sponsored by the American Federation of Government Employees (AFGE), contained a distortion of a fact which was too insubstantial to constitute campaign trickery warranting the setting aside of the election. I disagree with this conclusion. Where there is an allegation which may constitute a material misrepresentation of the truth made at a time which prevents the other party from replying effectively it is reasonable to infer that such conduct could have a significant impact on the election. In the instant case, it is reasonable to assume that the eleventh-hour assertion in the radio announcements that the President of the National Association of Government Employees, Kenneth Lyons, was accused by columnist Jack Anderson of having Mafia contacts could have had a significant impact on this election.

The AFGE compounded the situation by stating, in the same announcement, "Now that you know the truth . . . vote for honesty, and integrity . . . vote AFGE - AFL-CIO." The effect of this line, the "punch line" of the spot announcement, was to affix the imprimatur of truth on the unsupported allegations in the article linking Mr. Lyons with the Mafia. The foregoing circumstances require that I send the case back to the Regional Administrator for a rerun election.

U.S. DEPARTMENT OF LABOR

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WASHINGTON

5-17-73

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the runoff election is granted and the Regional Administrator is directed to cause a rerun election to be conducted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary, of Labor

Mr. Henry A. Webb  
President, Local 1138  
American Federation of Government  
Employees, AFL-CIO  
Suite 203, 408 W. Main Street  
P. O. Box 617  
Fairborn, Ohio 45324

272

Re: United States Air Force  
Aeronautical Systems Division  
Wright-Patterson AFB, Ohio  
Case No. 53-6147

Dear Mr. Webb:

I have considered carefully your request for review of the Regional Administrator's Report and Findings overruling your objection to the election in the above-named case.

In agreement with the Regional Administrator, I find no merit in your objection which is based upon the fact that the American Federation of Government Employees, AFL-CIO (AFGE), was not supplied with a copy of a payroll list of September 19, 1972, which the Activity supplied to the Area Office at the latter's request. The facts show that a copy of this list was not requested by AFGE although it was made aware that the list had been requested by the Area Office. Moreover, the Activity provided AFGE with a payroll list as of July 21, 1972, which list was used in the calculation of its showing of interest. The evidence establishes also that the list of September 19, 1972, was not, as intimated in your request for review, the eligibility list which was used in the election. Thus, the list used in the election and approved by all of the parties was the payroll list of October 1, 1972.

As you have presented no evidence that AFGE was in any way prejudiced by its failure to receive a copy of the September 19 payroll list, or that the Activity was at fault in this respect, I find no merit in this objection.

Accordingly, your request for review seeking reversal of the Regional Administrator's Report and Findings overruling your objection to the election is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

6/7/73

Mr. Donald G. Jolly  
C/o Payment Center  
2225 North 3rd Avenue  
Birmingham, Alabama 35203

273

Re: Department of Health, Education  
and Welfare  
Social Security Administration,  
Bureau of Retirement and Survivors  
Insurance Payment Center  
Birmingham, Alabama  
Case No. 40-4647 (CA)

Dear Mr. Jolly:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Bureau of Retirement and Survivors Insurance Payment Center at Birmingham, Alabama violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

Upon review of all of the evidence, I find that further proceedings in this matter are unwarranted. Thus, in the circumstances of this case, it is found that the Activity's dealings with Ernest Jackson, who had been designated as trustee by the American Federation of Government Employees, AFL-CIO (AFGE) to conduct the affairs of AFGE Local 2206, from August 18, 1972, through August 30, 1972, were not improper. In this connection, the evidence did not establish any attempt by the Activity either to control the internal affairs of Local 2206 or to avoid any bargaining obligations under the Order.

Accordingly, and noting also that at all times material herein, the National AFGE (National Council of Social Security Payment Center Locals) was the exclusive bargaining representative of the Activity's employees, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

6-7-73



Mr. George Tilton  
Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

274

Re: Department of the Army  
United States Army Signal Center and  
School  
Fort Monmouth, N. J.  
Case No. 32-2861

Department of the Army  
United States Army Satellite Communications  
Agency  
Fort Monmouth, N. J.  
Case No. 32-2862

Dear Mr. Tilton:

I have considered carefully your request to reconsider the Assistant Secretary's rulings of April 27, 1973, denying your request for review of the Regional Administrator's dismissal of the complaints in the above named cases.

As previously indicated, Section 202.6(d) of the Regulations of the Assistant Secretary requires, among other things, that "Copies of the request for review shall be served on the Regional Administrator and the other parties, ---" (emphasis added). Further, Section 202.6(d) provides that "a statement of service shall be filed with the request for review." In my view, your request for reconsideration in the subject cases raises no facts or issues which would warrant a departure from the foregoing requirements.

Accordingly, and noting that your labor organization was notified specifically of the service requirements of the Assistant Secretary's Regulations in the Regional Administrator's dismissal letters in these matters, your request for reconsideration of the Assistant Secretary's rulings of April 27, 1973, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 15, 1973

Mr. Royal L. Sims  
National Vice President  
American Federation of Government  
Employees, AFL-CIO  
4742 North Broad Street  
Philadelphia, Pennsylvania 19141

275

Re: General Services Administration  
Region 3  
Washington, D. C.  
Case No. 20-3858 (RO)

Dear Mr. Sims:

I have considered carefully your request for review of the Regional Administrator's denial of the intervention of American Federation of Government Employees, AFL-CIO (AFGE) in the above named case.

The Regional Administrator based his denial of your request to intervene upon his conclusion that this result was required by an application of the decision in U. S. Mint, Philadelphia, Pa., A/SLMR No. 45 to the facts of the instant case. I disagree.

In A/SLMR No. 45, an incumbent non-guard labor organization (AFGE) was not permitted to appear on the ballot in a situation where a guard labor organization sought to "carve out" a unit of guards from the existing mixed unit of guards and non-guards for which AFGE had been accorded exclusive recognition in 1966 under Executive Order 10988. The Assistant Secretary also determined in A/SLMR No. 45 that an appropriate unit of guards may be "carved out" of a mixed unit of guards and non-guards granted exclusive recognition under E. O. 10988. There was no indication in that case that an inappropriate unit of guards may be "carved out" of a mixed unit of guards and non-guards. In the instant case, the AFGE has raised issues regarding the appropriateness of the guard unit sought by International Federation of Federal Police, the Petitioner herein. Under these circumstances, it is concluded that issues as to the appropriateness of the unit sought herein properly could be raised by AFGE which had timely intervened in this matter.



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Accordingly, the request for review is granted and the case is remanded to the Regional Administrator who is directed to grant the request for intervention by AFGE.

6/21/73

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Anton E. Sperling  
Chairman  
Litigation Committee  
American Federation of Government  
Employees  
AFL-CIO, Local 1904  
Box 231  
Eatontown, New Jersey 07724

276

Re: U. S. Army Electronics Command  
Maintenance Directorate  
Ft. Monmouth, N. J.  
Case No. 32-3169 E.O.

Dear Mr. Sperling:

This is in connection with your request for review of the Regional Administrator's dismissal of your complaint in the above named case.

It is found that the request for review in this matter is procedurally defective. Contrary to the requirement of Section 203.7(c) and 202.6(d) of the Regulations of the Assistant Secretary, the request for review was not received by the Assistant Secretary, until after May 22, 1973, which was the last date on which it could have been received timely, as you were advised by the Regional Administrator. The telegram dated May 22, 1973, by which you attempted to establish timeliness of the request for review, was, likewise, not received until after May 22, 1973.

Under these circumstances, the merits of the case have not been considered and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

2/25/73

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Michael J. Massimino  
President, Local 1340  
National Federation of  
Federal Employees  
P. O. Box 86  
Pomona, New Jersey 08240

277

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, N. J.  
Case No. 32-2926 E.O.

Dear Mr. Massimino:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint in the above named case alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings on the instant 19(a)(6) complaint are unwarranted. Thus, for the reasons cited by the Acting Regional Administrator, I find that the Activity herein was not obligated to consult, confer, or negotiate with the NFFE regarding the showing to its managers on May 18, 19 and 22, 1972, of a video tape concerning drug abuse. Nor do I consider a contrary result required by the fact that the video tape ultimately was shown to employees.

Further, for the reasons cited by the Acting Regional Administrator, I find that the Activity's failure to invite NFFE's participation in the Equal Employment Opportunity Film Festival sponsored by the Federal Executive Association on Equal Employment Opportunity did not violate Section 19(a)(6) of the Order.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

2/25/73

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. George Tilton  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

278

Re: Department of Interior  
Bureau of Indian Affairs  
White Shield School  
Ft. Berthold Agency, N. D.  
Case No. 60-3232 (CA)

Dear Mr. Tilton:

I have considered carefully your request for review of the Regional Administrator's dismissal of your amended complaint alleging violations of Section 19(a)(1), (2) and (5) of Executive Order 11491, as amended.

In dismissing the complaint, the Regional Administrator found that the Complainant had failed to fulfill the burden of proving that the reassignment of Mr. K. W. Simons from the White Shield School to another location by the Area Office of the Bureau of Indian Affairs (Activity) was illegally or improperly motivated.

In your request for review, you state that "essentially" the dismissal was based on the grounds that Complainant failed to provide sufficient evidence to sustain the complaint. From this you proceed to the conclusion that the Regional Administrator was thereby stating a requirement that the Complainant must "plead and prove evidence in his complaint." In this respect, you misread the decision of the Regional Administrator.

Contrary to the position you take in the request for review, it was not the province of the Area Administrator to detail the nature and amount of evidence which would have been required to support the complaint and to formulate a prima facie case. Early in the administration of Executive Order 11491, the Assistant Secretary described the investigatory functions of the Area Administrators in Report No. 24 (copy enclosed). In substance, Report No. 24 states that "the investigation of complaints by Area Administrators is limited essentially to consideration of the report of investigation by the parties which must be filed with the complaint."

U.S. DEPARTMENT OF LABOR

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WASHINGTON

6/25/73

As pointed out by the Regional Administrator, the burden of proof rests at all stages of the proceeding with the Complainant. I agree with his conclusion that under all the circumstances the Complainant herein failed to sustain the burden of proving, at this stage of the proceedings, that a reasonable basis for the complaint exists which warrants the issuance of a notice of hearing.

Accordingly, as no reasonable basis for the complaint was provided, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Michael J. Massimino  
President, Local 1340  
National Federation of  
Federal Employees  
P. O. Box 86  
Pomona, New Jersey 08240

279

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, N. J.  
Case No. 32-2927

Dear Mr. Massimino:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint in the subject case alleging a violation of Section 19(a)(6) of the Executive Order.

I have concluded that a reasonable basis for the complaint exists. Accordingly, the Regional Administrator is directed to reinstate the complaint and issue a notice of hearing.

Among the issues which should be explored at the hearing are the following:

1. Did the Activity herein have an obligation to meet and confer in good faith with its employees' exclusive representatives concerning the formulation and implementation of the "NAFEC Position Management and Average Grade Control Plan of Action July 1972"?
2. If there were an obligation to meet and confer in this matter, did the Activity fulfill its obligation on July 26, 1972, based on its meeting with its employees' exclusive representatives?
3. Did the Activity's subsequent offer on August 22, 1972, to meet and confer with its employees' exclusive representatives concerning the Plan, cure any possible violation of Section 19(a)(6) in this matter?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



6/28/73

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



5/25/73  
Mr. Michael J. Massimino  
President, Local 1340  
National Federation of  
Federal Employees  
P. O. Box 86  
Pomona, New Jersey 08240

280

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, N. J.  
Case No. 32-3012

Dear Mr. Massimino:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint in the above named case alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings on the instant 19(a)(6) complaint are unwarranted. Thus, for the reasons cited by the Acting Regional Administrator, I find that the Activity herein was not obligated to continue negotiations during the pendency of an RA petition which raised a question concerning representation. Moreover, it was noted that subsequent to the dismissal of the RA petition, the evidence establishes that negotiations were resumed and an agreement reached.

Under these circumstances, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Michael J. Massimino  
President, Local 1340  
National Federation of Federal  
Employees  
P. O. Box 86  
Pomona, New Jersey 08240

281

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, New Jersey  
Case No. 32-3071 E. O.

Dear Mr. Massimino:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of your complaint in the above named case alleging violations of Section 19(a)(1), (5) and (6) of Executive Order 11491.

Under all of the circumstances, I have concluded that a reasonable basis for the complaint exists and, accordingly, the case is remanded to the Regional Administrator for reinstatement of the complaint and the issuance of a notice of hearing.

Among the issues which should be explored at the hearing are the following:

1. Were the discussions of August 17 and 23, 1972, between Mrs. Jones and the Activity's supervisory and management officials "formal discussions" within the meaning of Section 10(e) of the Order?
2. Is the Assistant Secretary's decision in U. S. Army Headquarters, Fort Jackson Laundry Facility, A/SLMR No. 242 controlling in the subject case?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



- 2 -

6/18/73

Mr. Gerald I. Sommer  
Staff Counsel  
American Federation of  
Government Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

282

Re: U. S. Naval Station  
Newport, Rhode Island  
Case No. 31-6127 E.O.

Dear Mr. Sommer:

I have considered carefully your request for review of the Regional Administrator's dismissal of the intervention of American Federation of Government Employees, AFL-CIO (AFGE) in the above named case.

The Regional Administrator based his dismissal of your intervention request upon his conclusion that such result was required by an application of the Assistant Secretary's decision in U. S. Mint, Philadelphia, Pa., A/SLMR No. 45, to the facts of the subject case. I disagree.

In A/SLMR No. 45, an incumbent non-guard labor organization was not permitted to appear on the ballot in a situation where a guard labor organization sought to "carve out" a unit of guards from the existing mixed unit of guards and non-guards, for which the non-guard labor organization had been accorded exclusive recognition under Executive Order 10988. However, the decision in that case did not deal with the question of the representative status of the guards in the event that they should vote against exclusive representation by the guard labor organization. In the instant proceeding, the AFGE has specifically raised this issue among others. It is concluded that this question could properly be raised by the AFGE, which had filed a timely request for intervention in this matter, and that the matter can best be developed through a hearing or an appropriate stipulation of facts by the parties to be submitted to the Assistant Secretary for his determination.

Under the foregoing circumstances, the request for review is granted and the case is remanded to the Regional Administrator who is directed to grant the AFGE's request for intervention and to issue a notice of hearing or obtain an appropriate stipulation by the parties for submission to the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 5, 1973

Mr. Joseph Girlando  
National Representative  
American Federation of Government  
Employees, AFL-CIO, Local 1904  
300 Main Street  
Orange, New Jersey 07050

283

Re: Army and Air Force Exchange Service  
Fort Monmouth, New Jersey  
Case No. 32-3172 (RO)

Dear Mr. Girlando:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the intervention of American Federation of Government Employees, AFL-CIO, Local 1904 (AFGE) in the above-named case.

In agreement with the Acting Regional Administrator and based on his reasoning, I find that dismissal of the AFGE's intervention in this matter was warranted in view of its failure to submit an adequate showing of interest within ten (10) days after the posting of the Notice of Petition as required by Section 202.5(c) of the Assistant Secretary's Regulations. Moreover, no circumstances were considered to be present which would warrant granting the AFGE's untimely request for an extension of time in which to file an adequate showing of interest. Thus, the evidence reveals that AFGE submitted a showing of interest during the posting period, and although it was advised by the Area Office before the end of the posting period that such showing of interest was inadequate, it did not request an extension of time to submit an additional showing until after the posting period had expired and after it had been advised that its intervention would be dismissed unless withdrawn.

Accordingly, under all the circumstances, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your intervention is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JUL 9 1973 284

Mr. Earl Roland Brees  
10103 Towhee Avenue  
Adephi, Maryland 20783

Re: Office of Economic Opportunity  
Washington, D. C.  
Case No. 22-3703 (CA)

Dear Mr. Brees:

Your request for review of the Regional Administrator's dismissal of your complaint alleging violations of Sections 19(a)(1) and (4) against the Office of Economic Opportunity (Agency) in the above-entitled matter has been considered carefully.

In agreement with the Regional Administrator, I conclude that the issuance of a Notice of Hearing in this matter is not appropriate under the circumstances present herein. Thus, your complaint does not comply with the requirements of Section 203.2 of the Assistant Secretary's Regulations which provides:

"A complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a respondent's written final decision on the charging party, whichever is the shorter period of time."

In this regard, your complaint was filed on September 6, 1972. The last action taken by the Agency against you occurred on November 12, 1971, when it refused to allow you to withdraw your resignation. I find therefore that your complaint was filed more than nine months subsequent to the action of the Agency and thereby failed to satisfy the timeliness requirements of Section 203.2(b)(3) of the Regulations.

Further, it appears that Section 19(d) of the Order precludes my taking jurisdiction over this matter. Thus, Section 19(d) states, in pertinent part:

"Issues which can properly be raised under an appeals procedure may not be raised under this section."

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



By your own admission, the subject matter of your complaint against the Agency has been the basis of several appeals filed by you with the Civil Service Commission. Under these circumstances, I find that Section 19(d) precludes me from asserting jurisdiction in this case.

Finally, even assuming that jurisdiction would be asserted in this matter, it appears that you have failed to sustain your burden of establishing a reasonable basis for the instant 19(a)(1) and (4) complaint. Section 203.5(c) of the Regulations provides that the complainant shall bear the burden of proof at all stages of the proceedings regarding matters alleged in the complaint. In my view, the evidence submitted by you during the investigation herein failed to establish that any action by the Agency against you was predicated upon your exercise of rights granted in Section 1(a) of the Order or was predicated upon your having filed a complaint or given testimony under the Order.

As to your contention that the Agency did not supply you with copies of its documents submitted to the Area Office, the Regional Administrator will provide you with a list of the Agency's submissions in this matter.

Accordingly, under all of the circumstances, your request for review seeking reversal of the Regional Administrator's dismissal of your complaint alleging violations of Section 19(a)(1) and (4) of the Order is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

JUL 9 1973

Mr. Irving I. Geller  
General Counsel  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

285

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3164 E.O.

Dear Mr. Geller:

I have considered carefully your request for review of the Regional Administrator's dismissal of the unfair labor practice complaint in the above-named case, alleging violation of Section 19(a)(1), (2), (3), (4) and (6) of Executive Order 11491.

In agreement with the Regional Administrator, I find that further proceedings on the instant complaint are unwarranted based on the rationale of the Assistant Secretary in A/SLMR Nos. 139 and 256. Those cases explicate the policy that official time must be accorded to a necessary union witness testifying in a formal unit determination hearing, but need not be accorded to employee union representatives present at such hearings in other capacities. In this regard, it is conceded that the employee involved herein did not appear as a witness in the unit determination hearing in Case No. 32-2468(RO). Further, no evidence was presented which would provide a basis for the other violations of Section 19(a) alleged in the complaint.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint alleging violation of Section 19(a)(1), (2), (3), (4) and (6) of Executive Order 11491 is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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Mr. George Tilton  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

JUL 9 1973

286

Re: Department of Interior  
Washington, D. C.  
Case No. 22-3693 (CA)

Dear Mr. Tilton:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Department of Interior (Agency) violated Sections 19(a)(2) and (6) of Executive Order 11491, as amended.

You allege that the Agency violated the Executive Order by: (1) revealing bad faith in meeting its obligation to consult and confer with the NFFE by not providing a written copy of the final proposal for expanding the Indian preference policy prior to the June 21, 1972, meeting, requested by the Agency, at which time the changes were discussed with the NFFE; (2) approving the proposed policy on June 22, 1972, thereby allegedly denying the NFFE the opportunity to make written comment on suggested changes in the proposed policy; and (3) informing, via telegram, Bureau of Indian Affairs personnel of the policy change without prior consultation, the content of such telegram allegedly implying also the NFFE's approval of the change. Under all the circumstances herein, I conclude, in agreement with the Regional Administrator, that further proceedings on the instant complaint are unwarranted.

With regard to the 19(a)(2) allegation, the evidence establishes that the subject policy change applied uniformly to all Bureau of Indian Affairs personnel, the membership of the NFFE was shown to have been comprised of both Indians and non-Indians, and the questioned language in the subject telegram was a factual statement, neither implying nor stating that the NFFE agreed with or consented to the policy change. Under these circumstances, I find an absence of evidence of any Agency action which could be construed as encouraging or discouraging membership in the NFFE by discrimination in regard to hiring, tenure, promotion, or other conditions of employment.

With respect to the 19(a)(6) allegation, I find that the NFFE was notified of the proposed change in policy through at least one earlier meeting with the Agency in December 1971, and that the Agency requested to, and did, consult with the NFFE on June 21, 1972. In addition, the file fails to disclose evidence that the Agency, at any time, refused to consult on the proposed policy pursuant to an express request by the NFFE. Moreover, there is no evidence that at the June 21, 1972, meeting the NFFE indicated that it needed, or requested specifically, more time to examine the document or to submit its views in writing prior to the implementation of the proposed policy. On the basis of the above, I find that the NFFE failed to sustain its burden of proof in supporting its 19(a)(6) allegation.

Accordingly, your request for review of the Regional Administrator's dismissal is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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7/12/73

287

Mr. Earl Roland Brees  
10103 Towhee Avenue  
Adelphi, Maryland 20783

Re: American Federation of Government  
Employees, AFL-CIO, and  
Local 2677, AFGE, AFL-CIO  
(Office of Economic Opportunity)  
Case No. 22-3702 (GO)

Dear Mr. Brees:

Your request for review of the Regional Administrator's partial dismissal of your complaint alleging violations of Sections 19(b)(1), (2), (5), and 19(c) of Executive Order 11491, as amended, by American Federation of Government Employees, AFL-CIO (AFGE) and its Local 2677 (Local) in the above-entitled matter has been considered carefully.

In his letter of March 23, 1973, the Regional Administrator found that there was a reasonable basis for the complaint that the Local had engaged in conduct violative of Section 19(b)(1) and 19(c) and, accordingly, he informed you of his intention to issue a Notice of Hearing with regard to those allegations, absent a settlement of the matter. However, you also were informed that because of a lack of evidence, the Regional Administrator was dismissing the Section 19(b)(2) and 19(b)(5) allegations of the complaint against the Local, and, further, based on procedural deficiencies, he was dismissing all allegations of your complaint against the AFGE.

With regard to the Section 19(b)(2) and 19(b)(5) allegations against the Local, under all the circumstances disclosed herein, I agree with the action of the Regional Administrator. In essence, you are asserting that the Local induced, or attempted to induce, the Office of Economic Opportunity (Agency) to coerce you in the exercise of your rights under the Order; that in doing so, the Local conspired with the Agency to discharge you in violation of Sections 19(a)(1) and 19(a)(2). You further assert that the Local discriminated against you with regard to the terms or conditions of membership based upon your race. However, during the investigation, you failed to submit any evidence to support these assertions beyond the bare facts that the Agency attempted to discharge you, and that, thereafter, the Local refused to admit you to membership, or to assist you in your appeals from the adverse action of the Agency. In my view, these facts alone, do not constitute sufficient evidence to establish a reasonable basis for the complaint within the

meaning of Section 203.8 of the Assistant Secretary's Regulations. Section 203.5(c) of the Assistant Secretary's Regulations provides that the complainant bears the burden of proof at all stages of the proceedings regarding matters alleged in its complaint. I find that you have failed to sustain your burden of proof with regard to the 19(b)(2) and 19(b)(5) allegations of your complaint and that, therefore, such allegations must be dismissed.

In dismissing your complaint against the AFGE, the Regional Administrator based his action on a finding that you failed to comply with the provisions of Section 203.2(a)(1) of the Assistant Secretary's Regulations which provides that any party desiring to file a complaint of unfair labor practices under Section 19 of the Order must first file a charge alleging the unfair labor practice with the party against whom the charge is directed. He found also that you had failed to comply with the provisions of Section 203.2(b)(1), which provides that such charge must be filed at least thirty days prior to the filing of a complaint. In reaching his findings in this regard, the Regional Administrator noted that by letter dated May 16, 1972, addressed to the Washington Area Administrator, you alleged certain facts concerning the failure of the Local and the AFGE to admit you to membership, and their failure to represent you in further proceedings against the Agency. The Regional Administrator found that there was no evidence that this letter was ever served upon the Local or the AFGE and, therefore, that such letter could not satisfy the requirements of Section 203.2 of the Regulations. The Regional Administrator further found that by letter dated July 24, 1972, you perfected service of a charge against the Local, but that prior to the amendment to the complaint naming the AFGE as a party respondent, you had failed to serve the AFGE with a charge.

I find that you did submit a statement of service of the May 16, 1972, letter, showing that you served both the Local and the AFGE with copies thereof. Moreover, in submissions to the Area Office by the AFGE, it was admitted that a copy of this letter was received. Further, I found that, although your letter of May 16, 1972, failed to specify the sections of the Order alleged to have been violated, the allegations were of such specificity that all parties were put on notice as to their nature. Thus, contrary to the findings of the Regional Administrator, I find that you did comply with the requirements of Section 203.2 of the Regulations. As the Regional Administrator did not pass upon whether a reasonable basis for the complaint existed against the AFGE, I shall remand that portion of the complaint to the Regional Administrator for further consideration and appropriate action.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Accordingly, your request for review of the Regional Administrator's partial dismissal of your complaint in the above-entitled matter is granted in part, and denied in part, and the case is remanded to the Regional Administrator with the directions to reinstate the complaint against AFGE and, after further consideration take appropriate action.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

July 19, 1973

Mr. Gerald I. Sommer  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Ave., N. W.  
Washington, D. C. 20005

288

Re: Naval Air Rework Facility  
Naval Air Station  
Pensacola, Florida  
Case No. 42-2233 (CA)

Dear Mr. Sommer:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint of the American Federation of Government Employees, AFL-CIO, Local 1960 (AFGE) in the instant case alleging that the Naval Air Rework Facility, Naval Air Station at Pensacola, Florida violated Sections 19(a)(1) and (6) of the Executive Order, as amended.

The evidence establishes that the AFGE was afforded the opportunity to serve on the Environmental Pay Review Committee which was directed by the Activity to conduct a study on the propriety of continuing environmental pay for the electroplaters and that it initially participated in the deliberations which led the Committee to recommend the discontinuance of such environmental pay. The evidence further establishes that the AFGE voluntarily terminated its participation on the Committee and, although it was aware of the Committee's report and recommendations for some six weeks prior to the time the Activity implemented the recommendations, it failed to request the Activity to bargain on the propriety of continuing the environmental pay. Under these circumstances, and noting also that questions of contract interpretation (see, in this regard, Report on a Ruling of the Assistant Secretary, Report No. 49, copy attached), I find, in agreement with the Regional Administrator, that further proceedings are unwarranted.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7/23/73

289

Ms. Elizabeth A. Davis  
Route 1, Box 123  
Quinton, Alabama 35285

Re: Department of Health, Education and  
Welfare  
Bureau of Retirement and Survivors  
Insurance Payment Center  
Birmingham, Alabama  
Case No. 40-4707 (CA)

Dear Ms. Davis:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Bureau of Retirement and Survivors Payment Center at Birmingham, Alabama (Activity) violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. Thus, it is concluded that the Activity's actions in granting the American Federation of Government Employees, AFL-CIO, Local 2206 (AFGE), the right to have an observer present during the informal stages of its grievance procedure was not inconsistent with the provisions of the Executive Order. In this connection, it is noted that Section 13(a) of the Order, among other things, affords an exclusive bargaining representative the opportunity to be present at the adjustment of grievances raised by employees under a negotiated grievance procedure. There is nothing in the Order which prohibits an Activity from according a similar opportunity to an exclusive bargaining representative in the processing of grievances under an agency grievance procedure.

Accordingly, and as there is no evidence that the Activity engaged in any independent acts which constituted either interference with your rights under the Order or improper assistance to the AFGE within the meaning of Section 19(a)(3) of the Order, and no evidence to support your contention that the Regional Administrator decided the merits of the case without fully and fairly considering all relevant evidence, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7/24/73

290

Mr. Benjamin C. White  
3008 S. E. 22nd Circle  
Del City, Oklahoma 73115

Re: Oklahoma City Air Materiel Area  
Tinker Air Force Base, Oklahoma  
Case No. 63-4363 (CA)

Dear Mr. White:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your amended complaint in the above named case alleging violation of Section 19(a)(1) of Executive Order 11491.

I concur with the Regional Administrator's finding that no proper basis for the complaint has been established in that the facts presented by you do not indicate violations of Section 19(a)(1) of the Executive Order within the period prescribed in Section 203.2(b)(3) of the Assistant Secretary's Regulations. You have therefore failed to sustain your burden of proof of the allegations of your complaint as required by Section 203.5(c) of the Regulations.

Although you have expressed dissatisfaction over the manner in which your complaint was handled by personnel of the Dallas Area Office and have implied that attempts were made to give preferential consideration to the Activity, I am unable to find evidence of any improper conduct on the part of the personnel assigned to your case or of any other irregularities with respect to the processing of your complaint.

Accordingly, and noting also that you failed to make service of your request for review on the Regional Administrator and the Activity as required by Section 203.7(c) and 202.6(d) of the Regulations, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

7-24-73



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Accordingly, and noting the absence of any procedural irregularities in the processing of the complaint which would warrant a contrary result, I find that the Acting Regional Administrator's dismissal of the subject complaint was correct and, consequently, your request for review seeking reversal of such action must be denied.

Sincerely,

Paul J. Fassek, Jr.  
Assistant Secretary of Labor

Mr. George Tilton  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

291

Re: Internal Revenue Service  
Newark District Office  
Case No. 32-3213 E.O.

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint in the above named case alleging violation of Section 19(a)(1) of Executive Order 11491.

Under all of the circumstances, I find that his dismissal of the complaint in this matter, alleging violation of Section 19(a)(1) of Executive Order 11491, was correct and in accordance with the interpretation given by the Federal Labor Relations Council (FLRC) to the applicable provisions of the Order.

As may be noted from Question No. 8 of the enclosed copy of the Information Announcement of the FLRC dated March 22, 1972, Section 13(a) of Executive Order 11491 has been interpreted by the Council as prohibiting an employee from choosing a representative other than the exclusive representative when presenting a grievance over the interpretation and application of the agreement unless the agreement makes a provision for other representation. Since the negotiated agreement in the subject case between the Activity and the National Association of Internal Revenue Employees (NAIRE) does not provide for other representation, and Mr. Lipton's grievance involved the interpretation or application of the agreement, it is evident that Mr. Lipton did not have the right to have his own attorney represent him in the processing of his grievance under the negotiated agreement.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 1, 1975

292

Mr. Anton E. Sperling  
70 Reeds Road  
New Shrewsbury, New Jersey 07724

Re: Secretary of the Army  
Washington, D. C.  
Case No. 22-3767 (CA)

Dear Mr. Sperling:

I have considered carefully your request for review of the Acting Regional Administrator's dismissal of the complaint in the above named case alleging violation of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings on your complaint are unwarranted. Thus, for the reasons cited by the Acting Regional Administrator, I find that a reasonable basis for the complaint was not established in that there was no evidence that the Agency interfered with your rights assured by the Executive Order or discriminated against you based on union membership considerations or because you filed a complaint or gave testimony under the Order.

Under these circumstances, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 2, 1973

293

Louis P. Poulton, Esquire  
Associate General Counsel  
International Association of Machinists  
and Aerospace Workers, AFL-CIO  
1300 Connecticut Avenue  
Washington, D. C. 20036

Re: Department of the Navy  
Naval Weapons Station  
Yorktown, Virginia  
Case No. 22-2881 (RO)

Dear Mr. Poulton:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's action setting aside the runoff election in the subject case.

The Acting Regional Administrator concluded that the runoff election held on February 23, 1973, should be set aside based on an objection filed by Local R4-1, National Association of Government Employees (NAGE). In its objection, the NAGE alleged that:

"On Thursday, February 22, 1973, the IAM distributed a campaign flyer entitled EDITORIAL. This document alleges that the NAGE raised \$38,000 to erect a memorial to 258 persons who died on the U. S. S. Thresher. The document goes on to accuse the NAGE of spending the money for 'administrative purposes' and hiring a New York City firm to bilk Navy Department employees."

The NAGE stated that these allegations were totally false and that at no time had the NAGE raised \$38,000 to build a memorial. It contends that fund raising efforts were initiated by a Navy Officer in conjunction with the New York firm and that, ultimately, it was the NAGE which discovered the fraudulent nature of the firms' activities and which revealed that fact to the Department of the Navy.

The Acting Regional Administrator determined that the campaign flyer at issue which was actually distributed on February 21, 1973, did not contain material which could be recognized by the employees as puffing or exaggeration; that there was no evidence of the truth of the contents of

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

the flyer, and that the NAGE did not have an adequate opportunity to reply to the allegations contained in the flyer.

8-2-73

Under all of the circumstances, I agree with the conclusion of the Acting Regional Administrator. Thus, the evidence does not establish that the eligible voters at the facility involved herein had any independent knowledge with respect to the subject matter of the flyer in question which would have enabled them adequately to evaluate independently the assertions contained in the flyer. Further, the evidence does not establish that the NAGE was afforded a reasonable opportunity to reply to the assertions contained in the flyer prior to the election. Particularly noted in this regard were the facts that the distribution of the flyer in question commenced only two days prior to the holding of the runoff election and that there were 1,080 eligible voters working on three shifts at the facility involved herein.

The fact that the identical campaign flyer allegedly was utilized in other prior elections involving the NAGE was not considered to require a contrary result. Thus, the other prior elections referred to by the IAM were not conducted at the instant facility and did not involve the same NAGE local and local officials as were involved in the subject case.

Accordingly, based on the foregoing, your request for review seeking reversal of the Acting Regional Administrator's report and findings is denied and the Regional Administrator is directed to cause a rerun election to be conducted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Raymond J. Malloy, Esquire  
Associate Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N.W.  
Washington, D.C. 20005

294

Re: Department of the Army  
United States Army Base Command  
USARBCO, Okinawa  
Case No. 22-3840 (CA)

Dear Mr. Malloy:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint alleging that the United States Army Base Command (Activity) violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

Based upon a full review of the evidence submitted, I find, in agreement with the Regional Administrator that, absent withdrawal, the complaint should be dismissed. Viewing the complaint as consisting of two parts, the first would involve those events which occurred during the period from January to May 15, 1972. In this regard, you allege in your complaint and in your request for review that the Activity failed to notify Local 1678, AFGE, timely of the impending changes in requirements for marine personnel and equipment which occurred both prior and subsequent to the May 15, 1972, reversion of control of the Island of Okinawa from the United States to Japan. In bargaining over the impact on unit employees of the subject changes, i.e., replacement of civilian employee crews on two tugboats with military personnel and contracting out of work in Naha Port, which had been performed previously by civilian employees, to Japanese private firms. It appears from the evidence that prior to May 15, 1972, the Activity was having a difficult time in its attempts to learn the details of what the Government of Japan and the City of Naha's requirements would be upon reversion and, thus, the Activity could not make firm post-reversion plans for its personnel and equipment. However, it is undisputed that the Activity informed individual union members concerning the "unofficial" information which it had received regarding the impending reversion and there is no evidence

that at any given point in time did the Activity withhold available information. In these circumstances and absent the presentation of sufficient evidence by you which would support the above allegations, I agree with the Regional Administrator's dismissal of this portion of your complaint.

With respect to the second portion of the complaint which covers events occurring during the period May 15, 1972, to January 5, 1973, when the complaint was filed, you allege that your sole concern during that period could only have been bargaining over the impact of the changes of May 1 and May 15, 1972, on unit employees. In addition, you allege that the Activity failed and refused to bargain during this period over such impact, bargaining would have involved specifically the Activity's concept plan for cutting back and phasing down marine personnel and equipment requirements. In this connection, the following facts were noted: (1) that reduction in force notices were not issued to any employees in the unit until August 4, 1972; (2) that approximately six weeks prior to the actual implementation of changes which affected unit employees, *i.e.*, the August 4, 1972, reduction in force notices, the Activity invited Local 1678, AFGE's representatives to consult and to make comments on its concept plan; and (3) that Local 1678's letter of June 24, 1972, to the Activity's Commanding General constituted a refusal to comment on the concept plan as requested.

In your request for review, you contend that the Regional Administrator's reliance on U. S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261, as support for his dismissal was in error in that the Norton case is "clearly inapposite and distinguishable." In agreement with the Regional Administrator, I find that the Norton case is generally applicable to the facts in your case in that actual implementation of the Activity's concept plan did not occur until approximately six weeks after Local 1678, AFGE's representatives received a copy of the concept plan and were invited to comment upon it. In this regard, no evidence was presented to show that Local 1678, AFGE made a clearcut request to bargain over impact at any time. For these reasons, I agree with the Regional Administrator's decision that further proceedings under Section 19(a)(6) of the Order are unwarranted with respect to this portion of your complaint.

Finally, you contend in your request for review that the Regional Administrator overlooked a portion of the subject complaint which alleged that the Activity violated the terms of the parties' negotiated agreement with respect to Local 1678, AFGE's right under the agreement to at least 45 days notice prior to any contracting out which displaces U.S. citizen

employees. The evidence establishes that the contract clause in question provides for 45 days notice "unless prevented by mitigating or emergency considerations . . ." In this connection, it should be noted that in Report on a Ruling of the Assistant Secretary No. 49 (copy enclosed) the Assistant Secretary stated that ". . . where a complaint alleges as an unfair labor practice, a disagreement over the interpretation of an existing collective bargaining agreement which provides a procedure for resolving the disagreement, he will not consider the problem in the context of an unfair labor practice but will leave the parties to their remedies under their collective bargaining agreement." Under the circumstances of this case I find that the rationale contained in this Report is applicable to your contention that the Activity's conduct herein violated such agreement.

Based on the foregoing, I agree with the Regional Administrator that the evidence is insufficient to establish a reasonable basis for the complaint. Accordingly, the request for review seeking reversal of the Regional Administrator's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

8-2-73

Miss Elsie M. Clifford  
5217 Horrocks Street  
Philadelphia, Pa. 19124

Mrs. Margaret M. Seitzinger  
709 Park Avenue  
Lindenwold, N.J. 08021

295

Re: GSA, Region III, ADTS  
Philadelphia, Pa.  
Case No. 20-3986 (CA)

Dear Miss Clifford and Mrs. Seitzinger:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case alleging violation of Section 19(a)(4) of Executive Order 11491.

Under all of the circumstances, I am in agreement with the Regional Administrator that the evidence you supplied failed to establish a reasonable basis for the complaint.

Your complaint, as amended, alleges that the GSA, Region III, ADTS (Activity) violated Section 19(a)(4) of the Order, which prohibits discrimination against an employee because such employee filed a complaint, or gave testimony under the Order. The basis for your complaint appears to be that the Activity discriminated against you by refusing your applications for annual leave because other employees, junior to you in seniority, had previously been granted annual leave for the same time period you were seeking. You allege that this conduct was contrary to a past practice followed by the Activity under which employees were given the right to select their vacation periods in the order of their seniority.

The evidence does not establish that either of you filed a complaint or gave testimony under the Order prior to the filing of the instant complaint. Therefore, it is clear that the denial of your leave requests by the Activity was not for the purpose of discriminating against you because you gave testimony in proceedings under the Order, or had recourse to the procedures under the Order. Thus, I

find that there is no reasonable basis for the complaint under Section 19(a)(4) of the Order. Moreover, there is no evidence that the Activity's conduct herein was based on union membership considerations. Therefore, there was no basis to conclude that the Activity had, in any way, interfered with your rights under the Executive Order.

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

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U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

8/2/73

296

Ms. Mary T. Waldrop  
Post Office Box 5761  
Birmingham, Alabama 35209

Re: Department of Health, Education  
and Welfare  
Bureau of Retirement and Survivors  
Insurance Payment Center  
Birmingham, Alabama  
Case No. 40-4708 (CA)

Dear Ms. Waldrop:

I have considered carefully your request for review of the Regional Administrator's dismissal of your complaint alleging that the Bureau of Retirement and Survivors Payment Center at Birmingham, Alabama (Activity) violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. Thus, it is concluded that the Activity's action in granting the American Federation of Government Employees, AFL-CIO, Local 2206 (AFGE), the right to have an observer present during the informal stages of its grievance procedure was not inconsistent with the provisions of the Executive Order. In this connection, it is noted that Section 13(a) of the Order, among other things, affords an exclusive bargaining representative the opportunity to be present at the adjustment of grievances raised by employees under a negotiated grievance procedure. There is nothing in the Order which prohibits an Activity from according a similar opportunity to an exclusive bargaining representative in the processing of grievances under an agency grievance procedure.

Accordingly, and as there is no evidence that the Activity engaged in any independent acts which constituted either interference with your rights under the Order or improper assistance to the AFGE within the meaning of Section 19(a)(3) of the Order, and no evidence to support your contention that the Regional Administrator decided the merits of the case without fully and fairly considering all relevant evidence, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210

8-14-73

297

Mr. Joel L. Frank  
32 Seneca Drive  
Commack, New York 11725

Re: Federal Aviation Administration  
JFK International Airport  
Jamaica, New York  
Case No. 30-4984 E.O.

Dear Mr. Frank:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above named case alleging violation of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings on your complaint are unwarranted. Thus, as found by the Regional Administrator, I find that as you elected to pursue your complaint under the Activity's grievance procedure, I am precluded from exercising jurisdiction in this matter pursuant to Section 19(d) of the Executive Order. It should be noted also that the "directive" referred to in your request for review would not, standing alone, constitute an unfair labor practice. Rather, such matter was viewed as evidence related to your suspension which occurred more than nine months prior to the filing of the complaint in the instant case. See, in this latter regard, Section 203.2(b)(3) of the Assistant Secretary's Regulations (copy enclosed).

Under these circumstances your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210



AUG 27 1973

Louis P. Poulton, Esq.  
Associate General Counsel  
International Association of  
Machinists  
1300 Connecticut Avenue, N. W.  
Washington, D. C. 20036

298

Re: Department of the Navy  
Naval Weapons Station  
Yorktown, Virginia  
Case No. 22-2881 (RO)

Dear Mr. Poulton:

This is in response to your telegram regarding the subject case. I find that the action of the Regional Administrator in selecting a recent eligibility date for the rerun election in this matter was not arbitrary and capricious nor inconsistent with my ruling of August 2, 1973.

The period for eligibility used in the original election (held September 13, 1972) was in the month of July 1972; the runoff election took place February 23, 1973, using the same July 1972, eligibility period. In my opinion, and in agreement with the Regional Administrator, use of the original eligibility date for the rerun election would have the likely effect of disenfranchizing a considerable number of employees now in the unit due to turnover of employees in the unit since July 1972. It is clear that use of a current eligibility period such as that designated by the Regional Administrator (August 4, 1973) will provide a more representative vote for unit employees, in keeping with the purposes and policies of Executive Order 11491, as amended.

Accordingly, your request that I overrule the Regional Administrator's choice of a recent eligibility period for purposes of the rerun election, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

August 30, 1973

Mr. Roger P. Kaplan  
General Counsel  
National Association of  
Government Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

299

Re: Department of Transportation  
Federal Aviation Administration  
ARTCC, Euless, Texas  
Case No. 63-4423 (CA)

Dear Mr. Kaplan:

I have considered carefully your request for review seeking the setting aside of the Regional Administrator's approval of the settlement agreement in the above-named case.

I find that denial of your request for review is warranted. Thus, I find that the Settlement Agreement approved by the Regional Administrator was appropriate under the circumstances of this case and that the Regional Administrator had the authority pursuant to Section 203.7(a) of the Assistant Secretary's Regulations to approve such Agreement despite the refusal of the Complainant to be a signatory. In this regard, Section 203.7(a) of the Assistant Secretary's Regulations provides, in part, that "If the Regional Administrator determines that ... a satisfactory written ... offer of settlement by the respondent has been made ... he may request the complainant to withdraw the complaint and in the absence of such withdrawal within a reasonable time he may dismiss the complaint." Under the circumstances, I view the Settlement Agreement executed by the Respondent on June 29, 1973, to constitute "a satisfactory written offer of settlement" by the Respondent within the meaning of the foregoing Regulation.

Although you have expressed dissatisfaction over the manner in which your case was handled by personnel of the Dallas Area Office and have implied that undue pressure was placed upon officials of the Complainant to sign the proposed Settlement Agreement, I am unable to find evidence of improper conduct on the part of the personnel assigned to your case or of any other irregularities with respect to the processing of your complaint which would warrant a contrary result in this matter.



Accordingly, your request for review, seeking the setting aside of the Regional Administrator's approval of the Settlement Agreement in this matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

SEP 4 1973

Mr. Joseph Girlando  
National Representative  
American Federation of  
Government Employees, AFL-CIO  
300 Main Street  
Orange, New Jersey 07050

300

Re: Veterans Administration Hospital  
East Orange, New Jersey  
Case No. 32-3206 E.O.

Dear Mr. Girlando:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Section 19(a)(1)(3) and (4) of Executive Order 11491.

In his dismissal letter dated July 31, 1973, the Regional Administrator advised that pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary an appeal of his action could be had by filing a request for review which must be received by the Assistant Secretary not later than the close of business August 13, 1973.

Your request for review was postmarked August 13, 1973, in Orange, New Jersey and was not received in my office until August 16, 1973. Therefore, it was filed untimely. You ask that the request for review be considered timely inasmuch as you did not receive the Regional Administrator's decision until you returned to your office on August 8, 1973, after your vacation. I am unable to grant this latter request under all the circumstances including the timeliness requirements of the Regulations, the notice given you in that regard by the Regional Administrator, and the fact that no extension of time was requested.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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SEP 6 1973

Mr. Stuart M. Foss  
Labor Relations Advisor  
Labor Disputes and Appeals Section  
Department of the Navy  
Naval Ordnance Laboratory  
Silver Spring, Maryland 20910

301

Re: Department of the Navy  
Naval Ordnance Laboratory  
Silver Spring, Maryland  
Case Nos. 22-3986 (AP)  
22-4000 (AP)

Dear Mr. Foss:

I have considered carefully your request for review of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability in the above named cases.

In your request for review, you allege that the grievances involved in the above-cited cases are, in fact, job grading appeals. In this connection, you state that such matters have been delegated by statute to the Civil Service Commission and that an administrative appellate procedure has been created as the exclusive method for handling them. You contend that because the grievances are job grading appeals and are subject to a statutory appeals procedure, they are precluded from consideration by an arbitrator under the terms of the collective bargaining agreement between the Naval Ordnance Laboratory and the Washington Area Metal Trades Council, AFL-CIO, (Council) and by the provisions of Section 13(a) of Executive Order 11491, as amended.

Under all of the circumstances, I agree with the conclusion of the Acting Regional Administrator that the unresolved issues herein involve the interpretation and application of the negotiated agreement and, thus, are arbitrable pursuant to the terms of that agreement.

Contrary to your contention that the grievances involved herein are in fact job grading appeals, I find that the unresolved issues in these cases are those of work jurisdiction rather than ones involving job classification and, as such, fall under Article XX (Jurisdictional Disputes) of the negotiated agreement and, thus, are subject to arbitration under the terms of Article XXIX of the agreement.

With regard to your allegations that the Acting Regional Administrator's decision is not consistent with Section 6(a)(5) of the Order in view of the fact that he has referred the arbitrability question to an arbitrator, I find that the content of the Acting Regional Administrator's Report and Findings in this matter requires a conclusion to the contrary. In this connection, the Acting Regional Administrator concluded, and I concur, that the unresolved questions in this case involve the interpretation and application of the negotiated agreement and are arbitrable under the terms of the agreement. Thus, he made an assessment of the nature of the dispute as contemplated by Section 6(a)(5) of the Order. On the basis of the above, I find, in agreement with the Acting Regional Administrator, that the issues raised by the Council may be considered by an arbitrator pursuant to the parties' negotiated agreement.

Accordingly, and as there is no evidence to support your contention that the Acting Regional Administrator decided the merits of the case without fully and fairly considering all relevant evidence, your request for review, seeking the setting aside of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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SEP 6 1973

Ms. Alice L. Smith  
President, Local 40  
National Federation of  
Federal Employees  
1004 Parkland Place S.E.  
Albuquerque, New Mexico 87008

302

Re: Bureau of Indian Affairs  
Southwestern Indian Polytechnic  
Institute  
Albuquerque, New Mexico  
Case No. 63-4406 (RO)

Under the foregoing circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Dear Ms. Smith:

I have considered carefully your request for review of the Regional Administrator's dismissal of your RO petition in the subject case seeking a unit of all nonsupervisory employees at the Southwestern Indian Polytechnic Institute, including employees in the 1710 series classification who were covered by a negotiated agreement between the Activity and the National Council of Bureau of Indian Affairs Educators (NCBIAE) at the time the petition was filed.

I find, in agreement with the Regional Administrator, that dismissal of the petition in this matter is warranted. Thus, the evidence established that the instant petition was not filed within the 60 to 90 days period prior to the expiration of the negotiated agreement between the Activity and the NCBIAE and that, consequently, the petition is barred under Section 202.3(c) of the Assistant Secretary's Regulations. Moreover, even in the absence of an agreement bar, the subject petition would be viewed as untimely under Section 202.3(b) of the Assistant Secretary's Regulations as it was filed within 12 months after the certification of the NCBIAE as exclusive representative of the employees involved.

Regarding your request for permission to amend the petition to exclude the employees covered by the procedural bars, it was noted that your labor organization had previously refused to so amend the petition when given the opportunity by the Regional Administrator and that dismissal of the petition herein would not preclude your labor organization from filing a new petition to represent eligible employees of the Southwestern Indian Polytechnic Institute who are not covered by procedural bars.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

9-6-73

Ms. Alice L. Smith  
President, Local 40  
National Federation of  
Federal Employees  
1004 Parkland Place S.E.  
Albuquerque, New Mexico 87008

303

Re: Bureau of Indian Affairs  
Southwestern Indian Polytechnic  
Institute  
Albuquerque, New Mexico  
Case No. 63-4407 (DR)

Dear Ms. Smith

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition in the subject case filed by Ms. Vera Cushman, an individual, seeking to decertify the National Council of Bureau of Indian Affairs Educators (NCBIAE) insofar as it represents certain employees at the Southwestern Indian Polytechnic Institute.

Under all of the circumstances, I find, in agreement with the Regional Administrator, that dismissal of the petition in this matter is warranted. Thus, the evidence established that the instant petition was not filed within the 60 to 90 days period prior to the expiration of the negotiated agreement between the Activity and the NCBIAE covering the employees in issue and that, consequently, the petition is barred under Section 202.3(c) of the Assistant Secretary's Regulations. Moreover, even in the absence of an agreement bar, the subject petition would be viewed as untimely under Section 202.3(b) of the Assistant Secretary's Regulations as it was filed within 12 months after the certification of the NCBIAE as exclusive representative of the employees involved.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



SEP 6 1973

Ms. Alice L. Smith  
President, Local 40  
National Federation of  
Federal Employees  
1004 Parkland Place S.E.  
Albuquerque, New Mexico 87008

304

Re: Bureau of Indian Affairs  
Southwestern Indian Polytechnic  
Institute  
Albuquerque, New Mexico  
Case No. 63-4408 (CU)

Dear Ms. Smith:

I have considered carefully your request for review of the Regional Administrator's dismissal of the petition for clarification of unit (CU) in the subject case seeking to clarify a unit of the Activity's employees who currently are represented on an exclusive basis by the National Council of Bureau of Indian Affairs Educators.

As the Petitioner herein, the National Federation of Federal Employees, Local Union 40, Independent (NFFE), is not currently recognized as the exclusive representative of the unit sought to be clarified, I find, in agreement with the Regional Administrator, that, pursuant to Section 202.1(c) of the Assistant Secretary's Regulations, the NFFE is precluded from seeking clarification of the unit in this matter.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the subject petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 12, 1973

305

Mr. Walter E. Shoemaker  
1501 Glenwood Street, N. W.  
Birmingham, Alabama 35215

Re: American Federation of Government  
Employees, AFL-CIO (Social Security  
Administration, Birmingham Payment  
Center)  
Case No. 40-4727 (CO)

Accordingly, and as there is no evidence to support your contention that the Regional Administrator reached his decision without fully and fairly considering all relevant evidence, and no evidence that the Area Administrator abused his discretion under Section 203.5(a) of the Assistant Secretary's Regulations in extending the time for AFGE to respond to the complaint, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Dear Mr. Shoemaker:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint alleging that the American Federation of Government Employees, AFL-CIO (AFGE) violated Section 19(b)(1) and (3) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The evidence reveals that the alleged violations herein resulted from a dispute between certain members of AFGE Local 2206 and the AFGE concerning the composition of the Local's investigating committee (set up to investigate intra-union charges). In this regard, after the Local elected the members to serve on the committee, the AFGE took the position that certain of those elected were ineligible under its constitution to serve on the committee allegedly because they were involved directly or indirectly in the matters they were charged with investigating. Accordingly, the Local was directed to elect a new committee which did not include members with a direct or indirect interest in the matters they were obligated to investigate. It is your contention that the AFGE, in attempting to force the membership of Local 2206 to replace certain members of the investigating committee, including yourself, violated rights assured under the Order.

It is concluded that the alleged improper conduct did not establish a reasonable basis for the complaint under Section 19(b)(1) and (3) of the Order. Rather, it appears that the allegations relate to the rights of individual members of Local 2206 under the Standards of Conduct prescribed for labor organizations in Section 18 of the Order, as implemented by Section 204 of the Assistant Secretary's Regulations.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

September 12, 1973

Mr. Carl B. Chamblee  
2230 North Third Avenue  
Birmingham, Alabama 35203

306

Re: American Federation of Government  
Employees, AFL-CIO  
(Social Security Administration  
Birmingham Payment Center)  
Birmingham, Alabama  
Case No. 40-4717 (CO)

Dear Mr. Chamblee:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint alleging that the American Federation of Government Employees, AFL-CIO (AFGE) violated Section 19(b)(1) and (3) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. Thus, the record reveals that the alleged improper conduct herein occurred at a meeting conducted by the AFGE between representatives of two factions of Local 2206 for the purpose of resolving conflicts existing between them. The alleged improper conduct consisted of the failure of the AFGE (1) to equalize the number of persons representing the factions; (2) to oust alleged unauthorized persons; and (3) to surrender a tape recording of the meeting until one of its officials was threatened with arrest. You also allege that the AFGE had conspired with certain members of the Local 2206 AFGE to place the Local under trusteeship, but offered no evidence to support such allegation.

It is concluded that the alleged improper conduct did not establish a reasonable basis for the complaint under Section 19(b)(1) and (3) of the Order. Rather, it appeared that the allegations involved the rights of individual members of Local 2206 and the Standards of Conduct prescribed for labor organizations under Section 18 of the Order, as implemented by Section 204 of the Assistant Secretary's Regulations.

Accordingly, and as there is no evidence that the Area Administrator abused his discretion under Section 203.5(a) of the Assistant Secretary's Regulations in extending the time for the AFGE to respond to the complaint, and no evidence to support your contention that the Regional Administrator

reached his decision without fully and fairly considering all relevant evidence, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 12, 1973

307

Mr. Donald G. Jolly  
Post Office Box 5816  
Birmingham, Alabama 35209

Re: Department of Health, Education  
and Welfare  
Social Security Administration  
Bureau of Retirement and Survivors  
Insurance Payment Center  
Birmingham, Alabama  
Case No. 40-4747 (CA)

Dear Mr. Jolly:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint alleging that the Bureau of Retirement and Survivors Insurance Payment Center at Birmingham, Alabama (Activity) violated Section 19(a)(1), (2), and (4) of Executive Order 11491, as amended.

Upon review of all the evidence, I find that further proceedings in this matter are unwarranted. With respect to your allegation that the Activity restricted your personal phone calls and visitors during working hours, the evidence failed to establish that these restrictions were motivated in whole or in part by discriminatory considerations. Rather, it appears that the Activity's conduct in this regard was based on the legitimate needs of its operations. As to your allegation that the Activity denied you an overtime assignment on Saturday, October 21, 1972, because of your union activities, the evidence established that you were refused overtime because the volume of work available which you were qualified to perform did not warrant overtime and not because of anti-union considerations. Regarding your contention that you were impeded in processing your grievance by your group leader yelling at your personal representative and by the Activity's failure to grant your personal representative administrative leave for the purpose of assisting you in processing your grievance, the evidence failed to support either of these allegations. Noted particularly in this latter regard was the fact that the Activity promptly granted your personal representative administrative leave when it realized that he was entitled to it. Finally, it is found that no evidence was presented to establish a basis for the Section 19(a)(4) allegation of your complaint.

Accordingly, and noting the absence of any evidence to support your contention that the Acting Regional Administrator decided the merits of the case without fully and fairly considering all relevant evidence, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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Accordingly, and noting the absence of any evidence to support your contention that the Acting Regional Administrator did not give adequate consideration to the evidence and issues presented in the case and the absence of any evidence to support the 19(b)(4) allegation, the request for review, seeking reversal of the dismissal of the complaint by the Acting Regional Administrator, is denied.

September 12, 1973

308

Ms. Ella S. Porter  
1616 - 30th Street, West  
Birmingham, Alabama 35208

Sincerely,

Re: American Federation of Government  
Employees, AFL-CIO  
(Social Security Administration,  
Birmingham Payment Center)  
Case No. 40-4917 (CO)

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Dear Ms. Porter:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of your complaint alleging that the American Federation of Government Employees, AFL-CIO (AFGE) violated Section 19(b)(1) and (4) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The record reveals that the alleged improper conduct consists of matters which involve the internal affairs of the AFGE and its Local 2206 which is currently under trusteeship. Thus, it is your contention that the AFGE violated the Order by selecting a member of Local 2206 to serve as Treasurer during the trusteeship of Local 2206 who had charges pending against him filed by certain members of the Local for allegedly mishandling of the Local's funds when he served previously as Treasurer; by failing to give timely and comprehensible financial and membership reports; and by expending the Locals funds without prior authorization from its membership.

It is concluded that the alleged improper conduct does not establish a reasonable basis for the complaint under Section 19(b)(1) and (4) of the Order. Rather, it appears that the allegations involved the rights of the Individual members of Local 2206 under the Standards of Conduct prescribed for labor organizations embodied in Section 18 of the Order as implemented in Section 204 of the Assistant Secretary's Regulations.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 12, 1973

309

Ms. Mary T. Waldrop  
P. O. Box 5761  
Birmingham, Alabama 35209

Re: American Federation of Government  
Employees, AFL-CIO  
(Social Security Administration,  
Birmingham Payment Center)  
Case No. 40-4742 (CO)

Dear Ms. Waldrop:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint alleging that the American Federation of Government Employees, AFL-CIO (AFGE) violated Section 19(b)(1) and (3) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The record reveals that the alleged violations herein occurred in connection with the AFGE's attempts to mediate and resolve the conflicts and dissension existing among the officers and members of AFGE Local 2206, and its subsequent action in placing the Local in trusteeship. In this regard, it is your contention that the AFGE violated Section 19(b)(1) and (3) of the Order by failing to observe fair and democratic procedures in placing and continuing the Local in trusteeship.

It is concluded that the alleged improper conduct did not establish a reasonable basis for the complaint under Section 19(b)(1) and (3) of the Order. Rather, it appears that the allegations herein involve rights of individual members of Local 2206 which stem from the participation in the internal affairs of the AFGE and Local 2206. Such allegations are not appropriately raised under Section 19 of the Order but appear to be applicable to the Standards of Conduct prescribed for labor organizations in Section 18 of the Order, as implemented by Part 204 of the Assistant Secretary's Regulations.

Accordingly, and as there is no evidence that the Area Administrator abused his discretion under Section 203.5(a) of the Assistant Secretary's Regulations in extending the time for the AFGE to respond to the complaint, and no evidence to support your contention that the Regional Administrator reached his decision without fully and fairly considering all relevant evidence, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

9/25/73



Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

310

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3289 E.O.

Dear Mr. Cahn:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above named case, alleging violations of Section 19(a) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings on your complaint are unwarranted. For the reasons cited by the Regional Administrator, I find that a reasonable basis for the complaint was not established in that none of the employees involved in the reorganization of July 1, 1973, were represented by the NFFE. Under these circumstances, the Activity was not under any obligation to consult with your organization concerning any alleged changes brought about by the reorganization. Moreover, there was no evidence to support your allegation that the reorganization would soon affect employees represented by the NFFE.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

9/25/73



Mr. Gabriel P. Cardiello  
123 Gordon Street  
Ridgefield Park, New Jersey 07660

311

Re: Military Ocean Terminal  
Bayonne, New Jersey  
Case No. 32-3101

Dear Mr. Cardiello:

I have considered carefully your request for review in which you seek reversal of the Acting Regional Administrator's dismissal of your complaint in the above-named case, alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings on your complaint are unwarranted. Thus, for the reasons cited by the Acting Regional Administrator, I find that you have not established a reasonable basis for your complaint that the Activity interfered with your rights assured by the Executive Order and discriminated against you because of your union activities.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

9-28-73

Gordon P. Ramsey, Esq.  
Colson & Shapiro, Esqs.  
One Boston Place  
Boston, Massachusetts 02108

312

Re: Federal Aviation Administration  
Boston Air Route Traffic Control  
Center  
Case No. 31-6076 E.O.

Dear Mr. Ramsey:

I have considered carefully your request for review of the Regional Administrator's refusal to hold a hearing or otherwise to permit litigation on the issues raised by the Federal Aviation Science and Technological Association (FASTA), a division of the National Association of Government Employees (NAGE) in the above case.

In your request for review, you contend that the Regional Administrator refused to apply the provisions of Executive Order 11491, as amended, to the Professional Air Traffic Controllers Organization (PATCO) by declining to hold a hearing or otherwise to permit litigation concerning certain alleged disabilities of the PATCO to serve as the collective bargaining representative of some 20 teletype operators included in the unit petitioned for by the PATCO. In this regard, you maintain that the PATCO, under its current Constitution, denies all membership rights to any employee of the Federal Government unless such employee is a qualified Air Traffic Controller or one who is studying or in training for that vocation. In such circumstances, you allege that under the provisions of the Order, the PATCO cannot represent the teletype operators as it would allegedly be impossible for such employees to enjoy full membership rights in the PATCO.

Under all the circumstances disclosed herein, I agree with the action of the Regional Administrator. In essence, you are asserting that Section 19(c) of the Order has been violated by the PATCO and hence, its petition should be dismissed. Section 19(c) of Executive Order 11491, as amended, provides:

"A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

I note that the provisions of Section 19(c) provide standards which limit the right of labor organizations to deny membership to employees after the grant of exclusive recognition. Thus, your contentions with respect to the PATCO's disability to represent teletype operators are speculative and are premature at best as no election has yet been held and the PATCO has not been certified as the exclusive bargaining agent. Moreover, the evidence you present fails to show that, if certified, the PATCO will deny membership to the teletype operators. In these circumstances, I find, in agreement with the Regional Administrator, that the issues you raise are not litigable within the context of the instant representation proceeding.

Accordingly, your request for review, seeking reversal of the Regional Administrator's refusal to hold a hearing or otherwise to permit litigation on the above issues, is denied.

In its pursuit of a final resolution of the issues involved herein, FASTA-NAGE chose not to sign the consent election agreement in the subject representation proceeding. Under the circumstances, I am of the view that FASTA-NAGE should be afforded another opportunity to participate in the election to be conducted at the Federal Aviation Administration's Boston Air Route Traffic Control Center (Activity). In this connection, I shall remand the subject case to the Regional Administrator for further action as set forth below:

1. The Regional Administrator should ascertain whether the FASTA-NAGE is now willing to sign the Consent Election Agreement as executed by the other parties on July 27, 1973, covering the unit sought by the PATCO.
2. If the FASTA-NAGE indicates a willingness to sign the Consent Election Agreement, the FASTA-NAGE shall be given an opportunity to do so, and to participate in the election to be conducted pursuant to that agreement.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



3. If the FASTA-NAGE is not willing to sign the Consent Election Agreement, the Regional Administrator is instructed to dismiss the intervention by the FASTA-NAGE in the subject representation proceeding and to proceed to an election in the unit sought by the PATCO, with FASTA-NAGE excluded from the ballot.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

9/28/73  
Mr. Robert J. Gorman  
President, Illinois Federation  
National Federation of Federal  
Employees  
8 East Delaware Place, Apt. 3R  
Chicago, Illinois 60611

313

Re: Federal Aviation Administration  
Great Lakes Region, Airports  
Division  
Des Plaines, Illinois  
Case No. 50-5522

Dear Mr. Gorman:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of objections to the election filed by Local 1300, National Federation of Federal Employees (NFFE) in the above named case.

I agree with the reasons given by the Regional Administrator, in his Report and Findings on Objections, for his dismissal of Objections 2, 3, 4, and 5 and find, moreover, that the signing of the Agreement for Consent or Directed Election by the parties, including the NFFE, was dispositive of the above numbered objections.

The sole area of disagreement indicated on the election agreement was the change in the hours of election from a two hour period to one of thirty minutes. This was the basis for Objection No. 1 in which you protested the Area Administrator's specifying a thirty minute period for the election.

I find that the Area Administrator acted within his authority under Section 202.7(d) of the Assistant Secretary's Regulations when he changed the hours of election subsequent to the parties signing of the consent agreement on April 3, 1973. In this connection, particularly noted was the Regional Administrator's conclusion that a thirty minute period was sufficient for an election involving only ten eligible voters and the fact that the NFFE was not prejudiced by the change in hours because, in fact, all eligible voters were present and did vote.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Accordingly, the request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections, is denied, and the Regional Administrator is directed to cause a Certification of Results of Election to be issued.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

9/28/73  
William R. Tait, Jr., Esq.  
McNerney, Page, Vanderlin & Hall  
433 Market Street  
Williamsport, Pennsylvania 17701

314

Re: Department of Justice  
U. S. Bureau of Prisons  
U. S. Penitentiary  
Lewisburg, Pennsylvania  
Case No. 20-4035 (AP)

Dear Mr. Tait:

This will acknowledge receipt of your letter, dated September 14, 1973, addressed to Mr. Louis S. Wallerstein, Director, Office of Federal Labor-Management Relations, in which you move for reconsideration of his denial of your request for a ten day extension of time in which to file a request for review in the above named case. This request for an extension of time was dated and received on September 4, 1973, which was the date on which the request for review was due.

As Mr. Wallerstein stated in his letter to you of September 6, 1973, Section 202.6(d) of the Regulations of the Assistant Secretary provides, in pertinent part, that requests for extension of time must be received not later than three days prior to the date the request for review is due. Considerations of uniform and expeditious handling of cases compel my adherence to the timeliness requirements of the Regulations in this respect. Therefore, I must deny your motion for reconsideration.

Your request for review, seeking reversal of the Regional Administrator's decision, was received on September 14, 1973, although you were advised by the Regional Administrator that it must be received by the Assistant Secretary not later than the close of business on September 4, 1973. It was, therefore, filed untimely and will not be considered.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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September 28, 1973

Michael A. Forscey, Esq.  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

315

Re: Veterans Administration Hospital  
Fort Meade, South Dakota  
Case Nos. 60-2847 (RO)  
60-3309 (RO)

Dear Mr. Forscey:

I have considered carefully your request for review seeking reversal, in part, of the Report and Findings on Objections issued by the Regional Administrator in connection with the runoff and the consent elections conducted in the above captioned cases.

In your request for review you seek reversal of the Regional Administrator's findings and recommendations concerning two of five objections filed with the Area Administrator on the ground that the Regional Administrator erred by refusing to consider evidence offered to substantiate the two, objections on which review was requested.

This evidence was received in the Area Office on April 30, 1973. You had been advised by letter dated April 17, 1973, from the Area Administrator that the supporting evidence must be received no later than April 27. Your contention is that by a proper application of Section 206.2 of the Regulations of the Assistant Secretary, the NFFE had a period of time, up to and including April 30, to submit its supporting evidence. You have misread the import of Section 206.2 and have failed to take into account the application of Section 202.20 (b) of the Regulations to the instant cases.

Section 206.2 provides that

"Whenever a party has the right or is required to do some act pursuant to these regulations within a proscribed period after service of a notice or other paper upon him and the notice or paper is served on him by mail, three (3) days shall be added to the proscribed period, provided, however, three (3) days shall not be added if any extension of time may have been granted."

In my view, the communication from the Area Administrator acknowledging receipt of objections and setting a deadline date before which evidence in support of the objections must be submitted was not subject to the requirement of Section 206.2. Rather, such communication was viewed merely as an acknowledgement of receipt of the objections and a reminder to the objecting party that evidence must be submitted as of a date certain. Thus, Section 206.2 did not afford an additional "grace" period of three days for the furnishing of the evidence in the subject cases.

Based on the foregoing circumstances, I conclude, in agreement with the Regional Administrator, that the National Federation of Federal Employees, Local 814, failed timely to meet its burden of proof prescribed by Section 202.20(b) of the Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

314



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

OCT 9 1973

Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 294  
Little Silver, New Jersey 07739

316

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3285 E.O.

Dear Mr. Cahn:

This will acknowledge your telegraphic request for review dated and received on September 20, 1973, seeking reversal of the Regional Administrator's dismissal of your complaint in the above named case, alleging violation of Section 19(a)(1), (2), (3), (4), (5), and (6) of Executive Order 11491, as amended.

Your request for review, filed pursuant to Section 203.7(c) of the Assistant Secretary's Regulations, cannot be considered as it is procedurally defective in that it does not comply with the following requirements set forth in Section 202.6(d) of the Regulations which are applicable in this situation:

1. No statement of service was filed with the request for review.
2. The request for review did not contain a complete statement setting forth facts and reasons upon which the request is based.

I note that your telegram requests an "extension of time to file a complete statement." In effect, you are requesting an extension of time to file an appropriate request for review. Viewed as such, this request is untimely under the aforementioned Section of the Regulations which requires that "Requests for an extension of time shall be . . . received by the Assistant Secretary not later than three (3) days before the date the request for review is due." Your extension request was received on the day the request for review was received, which was the last day the request for review could be received timely, as you were advised by the Regional Administrator. Therefore, the extension request cannot be granted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



10-9-73

Ms. Pearl M. Scaggs  
2305 Devonshire Drive  
Lawrenceville, Illinois 62439

317

Re: Department of Health, Education  
and Welfare  
Social Security Administration  
Chicago, Illinois  
Case No. 50-9708 (CA)

Dear Ms. Scaggs:

This will acknowledge your request for review postmarked September 24, 1973, and received on September 27, 1973, seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case alleging violation of Section 19(a)(1) of Executive Order 11491, as amended.

Your request for review, filed pursuant to Section 203.7(c) of the Assistant Secretary's Regulations, cannot be considered as it is procedurally defective in that it does not comply with the following requirements set forth in Section 202.6(d) of the Regulations which are applicable in this situation:

1. No statement of service was filed with the request for review.
2. The request for review did not contain a complete statement setting forth facts and reasons upon which the request is based.
3. The request for review was received untimely by the Assistant Secretary.

In his decision dated September 10, 1973, the Regional Administrator notified you that you had the right to file a request for review and that it must be received by the Assistant Secretary no later than the close of business on September 24, 1973. As stated above, the request for review was, in fact, received by the Assistant Secretary on September 27, 1973.

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WASHINGTON, D.C. 20210



Accordingly, for the reasons outlined above, your request for review cannot be considered.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

11-14-73

Mr. Andrew Jorgenson  
President, Local 179  
National Federation of  
Federal Employees  
4519 South Canyon Road  
Rapid City, South Dakota 57701

Robert M. Ross, Esq.  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

318

Re: Department of the Air Force  
Ellsworth Air Force Base  
South Dakota  
Case No. 60-3412 (RO)

Gentlemen:

I have considered carefully your respective requests for review of the Assistant Regional Director's decision in the above-named case.

Under all of the circumstances, I agree with the Assistant Regional Director that Local 179, NFFE's failure to serve simultaneously on all interested parties its request to intervene warrants denial of the intervention request. In this regard, your requests for review fail to show good cause for the NFFE's failure to comply with Section 202.5(c) of the Regulations of the Assistant Secretary or to raise any material issue which would warrant reversal of the Assistant Regional Director's action. It is significant to note that the simultaneous service requirement for intervention is clearly set forth in the Notice to Employees (LMSA 1102) which was posted by the Activity herein on June 13, 1973.

Accordingly, your requests for review, seeking reversal of the Assistant Regional Director's denial of the NFFE's request to intervene, are denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



NOV 16 1973

Mr. Ciro A. Poggioreale  
President, Local 2204  
American Federation of  
Government Employees, AFL-CIO  
Building 129  
Fort Hamilton  
Brooklyn, New York 11252

319

Re: Department of the Army  
Headquarters, Fort Hamilton,  
New York  
Case No. 30-5132(CA)

Dear Mr. Poggioreale:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the subject case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491.

I find that the request for review is procedurally defective in the following respects:

1. It was filed untimely with the Assistant Secretary. The Assistant Regional Director issued his decision in this matter on September 18, 1973, and, as you were advised therein, a request for review of that decision must have been received by the Assistant Secretary no later than October 1, 1973. It was, in fact, received on November 8, 1973.

2. Contrary to the requirements of Section 202.6(d) of the Regulations of the Assistant Secretary, no statement of service of the request for review on the Assistant Regional Director and the other parties was filed with the request for review.

Under these circumstances, the merits of the case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 20210



NOV 19 1973

Mr. David F. Osgood  
President, Local 12  
American Federation of  
Technical Engineers  
P. O. Box 287  
Bremerton, Washington 98310

320

Re: Puget Sound Naval Shipyard  
Bremerton, Washington  
Case No. 71-2507

Dear Mr. Osgood:

This is in connection with your request for review of the Regional Administrator's Report and Findings on a Petition for Clarification of Unit filed by the Bremerton Metal Trades Council, AFL-CIO, in the above named case.

Under the circumstances, I find that your organization is not a party in the subject case with standing to file a request for review. Thus, the evidence establishes that at no time did your organization notify the Area Administrator of its desire to intervene in this matter in accordance with Section 202.5(c) of the Assistant Secretary's Regulations. In this regard, your letter of January 24, 1973, addressed to the Area Administrator, did not request intervention and did not meet the additional requirements for intervention as set forth in Section 202.5(c) including simultaneous service on all known interested parties.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

NOV 28 1973

- 2 -

Mr. N. T. Wolkomir  
President  
National Federation of  
Federal Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

321

Re: Department of the Air Force  
Ellsworth Air Force Base  
South Dakota  
Case No. 60-3412 (RC)

Dear Mr. Wolkomir:

I have considered carefully your telegraphic request that I reconsider my ruling of November 14, 1973, denying the requests for review of the Assistant Regional Director's decision in the above named case.

Your telegram, which apparently was not served on the other interested parties in this matter, raises no points not previously considered. Thus, it has been consistently held that, absent unusual circumstances, the simultaneous service requirements of the Regulations of the Assistant Secretary must be observed by the parties. See, in this regard, Report Nos. 41 and 45 (copies attached). In this matter, the same principle was considered to apply to requests for intervention in a representation proceeding. As pointed out in my ruling of November 14, 1973, good cause was not shown in this case for the failure to comply with Section 202.5(c) of the Regulations which would warrant reversal of the Assistant Regional Director's action.

Accordingly, your request for reconsideration of my ruling of November 14, 1973, is denied.

With respect to your request for a meeting concerning the subject case, under the circumstances I consider it inappropriate to meet

separately with one of the parties in a pending case. However, I would be happy to meet with you at any convenient time to discuss generally any matters you may wish to raise concerning the overall administration of Executive Order 11491.

Sincerely yours,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

11-23-73



Mr. Raymond Hall  
President, Federal Employees  
Metal Trades Council  
P. O. Box 2052  
Portsmouth Naval Shipyard  
Portsmouth, N. H. 03801

322

Re: Portsmouth Naval Shipyard  
Portsmouth, N. H.  
Case No. 31-6198 E. O.

Dear Mr. Hall:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case, alleging violation of Section 19(a)(1), (2), (3) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director I find that further proceedings on your complaint are unwarranted. Thus, I find that a reasonable basis for the complaint has not been established in that the evidence does not reveal that the Activity herein has acted in derogation of any rights assured by the Executive Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

11-30-73



Mr. Leopold J. Gunston  
P. O. Box 29  
Alameda, California 94501

323

Re: American Federation of Government  
Employees, Local 1122, AFL-CIO  
(Social Security Administration  
San Francisco Payment Center)  
Case No. 70-4021

Dear Mr. Gunston:

I have considered carefully your request for review, in which you seek reversal of the Assistant Regional Director's dismissal of your complaint in the above named case alleging violation of Section 19(b)(1) and (5) of Executive Order 11491, by Local 1122, American Federation of Government Employees, AFL-CIO.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are unwarranted. Thus, for the reasons given by the Assistant Regional Director, I find that your complaint was not filed timely in accordance with Section 203.2(b)(2) of the Rules and Regulations of the Assistant Secretary. Moreover, no evidence was presented which would supply a reasonable basis for the complaint, even assuming that it had been filed timely.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



412-73

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

324

Re: U. S. Air Force  
Andrews Air Force Base  
Base Fire Department  
Case No. 22-3954(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above named case, alleging violations of Section 19(a)(1), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. In this regard, I have noted your contention that the complaint is not subject to Section 19(d) of the Order because it was filed after a second implementation of the alleged change in working conditions, rather than after the first implementation, which had been the subject of a grievance. However, this contention must be rejected because it was raised for the first time in your request for review and it is not supported by the evidence presented to the Assistant Regional Director. Therefore, I find, in agreement with the Assistant Regional Director, that your complaint cannot be processed based on Section 19(d) of the Order as it is clear that the issues herein were raised previously under a grievance procedure. Under these circumstances, I find it unnecessary to consider your contentions regarding the Assistant Regional Director's findings on the substantive aspects of your complaint.

Accordingly, for the reasons outlined above, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

December 3, 1973

Eric B. Meyers, Esq.  
Shutts & Bowen  
Tenth Floor  
First National Bank Building  
Miami, Florida 33131

325

Re: Veterans Administration Hospital  
Miami, Florida  
Case No. 42-2295 (R0)

Dear Mr. Meyers:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's Report and Findings on Objections in the above named case.

The Assistant Regional Director found merit in one of the objections filed by the National Federation of Federal Employees, Local 1453, set aside the election held in this matter on August 21, 1973, and ordered a rerun election.

The objection which was sustained complained that the observer representing the Florida Nurses Association (FNA) in said election was not eligible to serve as an observer. The Assistant Regional Director found that this objection was meritorious, warranting the setting aside of the election on the basis that the observer in question was not an employee of the Federal Government.

I agree. The observer who represented the FNA was not a Federal employee as specified in paragraph 4 of the Agreement for Consent or Directed Election signed by the parties on August 1, 1973, and as further specified in the Procedural Guide for Conduct of Elections issued by the Assistant Secretary on February 9, 1970. Moreover, the observer specifically was advised by the Compliance Office and authorized to serve as an observer because she was a non-Federal employee. Nevertheless, she declined to leave the area of the polls on the day of the election and insisted on acting as an observer, ostensibly upon advice of counsel.

In your request for review, you contend that the provisions in the Consent Election Agreement and in the procedural Guide restricting the selection of observers to non-supervisory employees of the Federal government, conflict with paragraph 202.17(f) of the Regulations of



12/3/73

the Assistant Secretary which reads as follows:

"(f) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the Area Administrator may prescribe." (Emphasis added)

Your argument in this regard is that no limitations or guidelines concerning the qualifications of observers were prescribed by the Area Administrator as contemplated by paragraph 202.17(f) and, therefore, the FNA was free to designate a non-Federal employee as its observer. Further, you contend that paragraph 202.7(f) was adopted "nearly two years and seven months after the promulgation of the Procedural Guide --- by the former Assistant Secretary of Labor and not the Area Administrator" and that "it is questionable whether the Procedural Guide, which became effective before the amendment --- has any application to the conduct of elections held under Executive Order 11616."

These contentions are rejected. You are in error in your statement that paragraph 202.17(f) was adopted more than two years after the issuance of the Procedural Guide. The same paragraph, designated paragraph 202.17(e), was contained in the initial regulations promulgated under Executive Order 11491 on February 4, 1970. With respect to your argument that the Area Administrator issued no guidelines or limitations disqualifying non-Federal employees as observers, the official consent agreement form signed by all parties, and approved by the Area Administrator, contained the provision, referred to above, limiting observers to "nonsupervisory employees of the Federal government." Such an approval of a consent election agreement by an Area Administrator means, in effect, that the Assistant Secretary will supervise an election pursuant to all of the terms and conditions set forth in the agreement. This official consent agreement form was approved by the Assistant Secretary for use by his agents in the Area Offices of the Labor-Management Services Administration and, together with the Procedural Guide, established the Assistant Secretary's policy in this respect which was, in no sense, in conflict with the Regulations implementing E. O. 11491. Finally, it is pointed out that E.O. 11616 merely amended, and did not supplant, E.O. 11491 and in no way revised the aforementioned policy of the Assistant Secretary regarding the disqualification of non-Federal employee observers.

Accordingly, for the reasons outlined above, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings upholding one objection to the election and directing a rerun election, is denied, and the Assistant Regional Director is directed to cause a rerun election to be conducted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

326

Re: Veterans Administration Data  
Processing Center  
Austin, Texas  
Case No. 63-4708(DR)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's denial of your request for intervention in the above named case.

Under the particular circumstances of this case, I find that the National Federation of Federal Employees, Local 1745, (NFFE) should be permitted to intervene in the subject proceedings. Thus, considering the special characteristics of a decertification case, where absent an express disclaimer of interest, the incumbent labor organization (NFFE in this instance) must appear on the ballot (see Section 202.17(e) of the Assistant Secretary's Regulations), as well as the mitigating circumstances surrounding the NFFE's efforts to intervene timely in this matter, it was concluded that the NFFE should be considered as a party to the election in the subject case. In this regard, it was noted that the rights accorded to the NFFE herein would include the privileges normally accorded a timely intervenor with the qualification that the NFFE must sign the consent election agreement preceding the election. In my view, under the circumstances herein, a refusal by the NFFE to sign the consent election agreement would be tantamount to a disclaimer of interest.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's decision is granted, and the Assistant Regional Director is directed to grant the request to intervene under the circumstances outlined above, and to cause an election to be

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WASHINGTON

conducted when and if all blocking unfair labor practice complaints, which I understand the NFFE has filed against the Activity, relating to the unit involved herein have been disposed of finally, or proper requests to proceed have been filed.

December 3, 1973

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Ms. Janet Cooper  
Attorney  
Local 738  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

327

Re: National Association of Government  
Employees, Local R14-32  
(Fort Leonard Wood)  
Fort Leonard Wood, Missouri  
Case No. 62-3712 (CO)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, as found by the Regional Administrator, I find that the National Association of Government Employees Local R14-32, did not violate 19(b)(1) of the Order by allegedly soliciting employee signatures during the duty hours of the employees involved to support a petition for exclusive recognition as there is no evidence that such conduct interfered with, restrained, or coerced such employees in the exercise of their rights under Section 1(a) of the Order. In this connection, it was noted that while the Order does not give either a labor organization or its employee supporters the right to engage in union activities during duty hours, the Order does not necessarily prescribe such activities, absent evidence of discrimination on the basis of union membership considerations.

Under those circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



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WASHINGTON, D.C. 20210

12/5/73



- 2 -

Accordingly, and noting that there is no evidence to support your contention that the Regional Administrator acted arbitrarily or failed in any way to give adequate consideration to all the evidence relevant to the case, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Mr. William F. Kuntz  
Director of Management  
New York Payment Center  
Social Security Administration  
96-05 Horace Harding Expressway  
Flushing, New York 11368

328

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Re: Bureau of Retirement and Survivors  
Insurance  
Social Security Administration,  
HEW  
New York Payment Center  
Case No. 30-5138(GP)

Dear Mr. Kuntz:

I have considered carefully your request for review of the Regional Administrator's Report and Findings on Grievability and Arbitrability in the above named case.

In your request for review, which was expressly limited to the findings of the Regional Administrator with respect to the application and interpretation of Article 8, Section (a) of the negotiated agreement, you state that the basis of management's grievance of February 22, 1973, was the distribution by AFGE Local 1760 of union literature on government property. You contend that the Local's unauthorized desk to desk distribution of its February 1973 issue of the newsletter, "Spirit of 1760" constituted a violation of Article 8, Section (a) of the parties' Master Agreement.

Under all of the circumstances, I agree with the conclusion of the Regional Administrator that Article 8, Section (a) of the negotiated agreement is unambiguous in that it clearly relates exclusively to materials posted by the Local on bulletin boards. Thus, I find that the dispute herein, over the Local's desk to desk distribution of the union newsletter, did not concern a matter subject to the negotiated grievance procedure because the restrictions described in Article 8, Section (a) do not apply to any method of distributing union literature other than that involving the use of bulletin boards.

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

12-10-73



Mr. David Jay Markman  
Assistant General Counsel  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D. C.

329

Re: Department of Commerce  
National Oceanic & Atmospheric Adm.  
National Weather Service  
Pittsburgh, Pa.  
Case No. 21-3825 (CA)

Dear Mr. Markman:

I have considered carefully your request for review of the Regional Administrator's dismissal of the complaint in the above named case alleging violations of Section 19(a)(1) of Executive Order 11491, as amended.

Under all of the circumstances, I have concluded that a reasonable basis for the complaint exists within the meaning of Section 203.8 of the Assistant Secretary's Regulations. Accordingly, and noting that the issues raised herein can best be resolved on the basis of evidence adduced at a hearing, the case is remanded to the Assistant Regional Director for reinstatement of the complaint and the issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



DEC 19 1973

330

Mr. Amedeo Greco  
5310 Fairway Drive  
Madison, Wisconsin 53711

Re: National Labor Relations Board  
Washington, D. C.  
Case No. 50-9546

Dear Mr. Greco:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above named case, alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

You contend that the time lag between your request for, and the Agency's submission of a corrected copy of, Assistant General Counsel Levine's report dealing with your grievance violated your rights under the Order. However, the evidence does not support this contention. Thus, the evidence shows that the alleged unreasonable delay in the presentation of the Levine report to you did not prejudice you in any respect in the further processing of your grievance or in the subsequent prosecution of your unfair labor practice charge and complaint.

With respect to your objection that you were prejudiced in the exercise of your rights under the Order by reason of the alleged restriction on your alleged right to disseminate broadly the Levine report, I agree with the disposition by the Regional Administrator that further proceedings in this regard are unwarranted. As stated in his ruling, "The blanket use of any and all types of personnel information is not a right guaranteed by the Order." The use of such information must be related to reasonable need for its employment in aid of the exercise of rights conferred by the Order. In the circumstances of this case, there was no evidence to indicate that widespread dissemination of the Levine report, which you apparently contemplated, was a necessary incident to a full exercise of your rights. Moreover, it seems apparent that the temporary restriction on dissemination of the Levine report placed on you by the De Sio letter of February 8, 1973, was, in effect, removed by the March 9, 1973, letter from General Counsel Nash.

U.S. DEPARTMENT OF LABOR  
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WASHINGTON, D.C. 20210



Further, you assert that "Section 19(a)(1) of Executive Order 11491 accords Federal workers as individuals /the right/ to engage in protected concerted activity" and that this alleged right was violated by the actions of the Agency which discouraged or interfered with the rights of other bargaining unit employees to participate with and assist you in the processing of your grievance. Your assertion is inaccurate. The rights assured by the Order to employees, as set forth in Section 1(a), define the protected activity of an employee as "the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, . . . ." You note that "concerted activity" is not included as a protected right in the language of Section 1(a) of the Order. Nor does the evidence presented in the instant case show that the Agency interfered with or discouraged the filing or prosecution of your grievance in any manner that would constitute interference or discouragement which could be described as inherently destructive of rights specified in Section 1(a). See National Labor Relations Board Region 17, and National Labor Relations Board, A/SLMR No. 295, fn. 3. Thus, the evidence discloses that your grievance was filed and prosecuted through all the steps necessary to arrive at an ultimate disposition and that, following the Agency's final decision in the matter, an extension of time was granted by the Agency to the National Labor Relations Board Union in order that it might have sufficient time to decide whether to proceed to arbitration. While it is arguable that the Agency might have processed the grievance more promptly, it is my view that nothing done by the Agency in the course of processing the grievance can be said to have been inherently destructive of Section 1(a) rights as discussed in A/SLMR No. 295.

Based on all of the foregoing and in agreement with the Regional Administrator, I find that further proceedings on your complaint are unwarranted. Accordingly, and noting that the evidence reveals that all the facts submitted by you, including those alleged in your letter of May 21, 1973, were considered by the Regional Administrator in connection with his decision, your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

DEC 19 1973

Mr. Stephen F. Copeland  
District II Vice President  
National Labor Relations Board Union  
c/o National Labor Relations Board  
1536 Federal Office Building  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222

331

Re: National Labor Relations Board  
Region 8  
Case No. 53-7029

Dear Mr. Copeland:

This will acknowledge receipt of your letter dated December 3, 1973 which was received on December 5, 1973, regarding the refusal of the Area Administrator, Cleveland Area Office, to approve the Agreement for Consent or Directed Election executed by the parties on November 19, 1973.

I have been administratively advised that the parties have executed a new consent agreement which has been approved by the Area Administrator.

I am pleased that the matter has been resolved.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

January 4, 1974

Mr. Ben B. Beeson  
Director of Civilian Personnel  
Department of the Army  
Office of the Deputy Chief of  
Staff for Personnel  
Washington, D. C. 20310

332

Re: Department of the Army  
Watervliet Arsenal  
Watervliet, N. Y.  
Case No. 35-2885 (GP)

Dear Mr. Beeson:

I have considered carefully your request for review of the Regional Administrator's Report and Findings on Grievability and Arbitrability in the above named case.

The essence of your position is that the Regional Administrator's action would permit Local 2352, American Federation of Government Employees, AFL-CIO, (AFGE), to process all grievances under the negotiated grievance procedure set forth in the negotiated agreement between Watervliet Arsenal and the AFGE, whether or not they are related to any negotiated provision of the agreement, and would thereby violate Section 13 of Executive Order 11491. Specifically, you contend that for the reason that there are no contractual provisions in the negotiated agreement specifically dealing with the Watervliet Arsenal local regulation concerning the wearing of headgear or its local directive concerning machine affixed production record cards, a grievance over enforcement of either directive may not be processed under the negotiated grievance procedure. In support of this contention, you rely on Article XII-Existing Practices and Relationships in the negotiated agreement as evidence of the parties' intent to exclude grievances, not derived from provisions of the agreement, from the negotiated grievance procedure.

In my view, the grievances in this case do not raise issues as to whether the grievant violated an Arsenal regulation and rule, which would be processed under available administrative procedures, but rather the issues herein involve questions as to whether the Arsenal is enforcing the regulation and rule on an equitable basis, an obligation the Arsenal agreed to assume under the terms of Article XXXIX-Enforcement of Directives in the negotiated agreement. Moreover,

under the terms of that Article, the parties agree that grievances alleging misapplication of a contractual provision contained in the agreement are subject to the negotiated grievance procedure. It is my further view that the provisions of Article XXXIX must be read together with the provisions of Article XII. So read, I find that it is in no way inconsistent with Section 13 of the Order to conclude that the subject matter of the grievances involved herein falls within the ambit of the negotiated agreement. Thus, under all of these circumstances, I find that the issues herein involve interpretation and application of Article XXXIX of the agreement, and are subject to the negotiated grievance procedure in that agreement.

Accordingly, your request for review, seeking to set aside the Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

January 4, 1974

Mr. George Hardy  
International President  
Service Employees' International  
Union, AFL-CIO  
900 - 17th Street, Suite 714  
Washington, D. C. 20005

333

Re: Veterans Administration Hospital  
Butler, Pa.  
Case No. 21-3923 (RO)

Dear Mr. Hardy:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's denial of the request for intervention in the above named case by Service Employees' International Union, Local No. 227 (SEIU).

In agreement with the Assistant Regional Director I find that the request to intervene filed on October 25, 1973 was untimely and must be denied for that reason. Thus, the evidence is that the official Assistant Secretary's Notice to Employees of the petition filed by Local R3-74, National Association of Government Employees (NAGE) was posted by the Activity on September 20, 1973. This notice, consistent with the requirements of Section 202.5 of the Regulations of the Assistant Secretary, reads in part as follows:

"---that in accordance with the Regulations of the Assistant Secretary, any labor organization, including any incumbent labor organization, having an interest in representing the employees being sought and desiring to intervene in this proceeding MUST submit to the Area Administrator, within 10 days from the date of the posting of this notice /evidence of interest/ ---." (Emphasis added)

Although the posted Notice to Employees was adequate notice to SEIU, the evidence indicates that SEIU was also put upon notice of the filing of NAGE petition in other ways, including receipt of a copy of the NAGE petition which, was filed on September 7, 1973, by one D. Prozik on behalf of SEIU at Buffalo, N. Y. on September 7, 1973. Further, a copy of a letter dated September 14, 1973, addressed to Mr. Paul A. Kennedy, Director of the Veterans Administration Hospital at Butler, Pa. from the Pittsburgh Area Administrator was sent to

SEIU. This letter gave notice to the Activity that the NAGE petition had been filed and requested that certain information be supplied in connection with the processing of the petition. On the issue of actual notice it is noted that in a telephone conversation on October 25, 1973, between Mr. James Lindsay, President of the SEIU Local and the Area Administrator, Mr. Lindsay stated that the only knowledge he had of the petition came when one of his supporters called him to report that a petition had been filed and that he told the caller not to do anything as "the Labor Department hasn't contacted us."

In addition, although the point was not mentioned in the dismissal letter of the Assistant Regional Director, it is noted that the letter requesting intervention dated October 25, 1973, was apparently not served on the other interested parties, thus, indicating a failure to comply with the simultaneous service requirement of Section 202.5(c) of the Regulations.

Under all of the circumstances I must conclude that SEIU had actual, as well as constructive notice of the filing of the NAGE petition by the Activity's posting of the notice of petition. My policy with respect to intervention by incumbent intervenors is well settled. See Section 202.5 of the Regulations and Report No. 43 dated December 14, 1971. (Copy enclosed) Incumbent intervenors, as well as other intervenors, must comply with the intervention requirements detailed by the Regulations.

Accordingly, and as good cause has not been shown for extending the period allowed for timely intervention, your request for review seeking reversal of the Assistant Regional Director's denial of intervention, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

1-16-74



- 2 -

Accordingly, your request for review, seeking to set aside the Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Herbert Collender  
President  
Social Security Local 1760  
American Federation of  
Government Employees  
P. O. Box 626  
Corona Elmhurst, New York 11373

334

Re: Department of Health, Education  
and Welfare  
Social Security Administration  
New York Payment Center  
Flushing, New York  
Case No. 30-5150(GP)

Dear Mr. Collender:

I have considered carefully your request for review seeking to set aside the Regional Administrator's Report and Findings on Grievability and Arbitrability in the above named case.

In your request for review, you contend that the Regional Administrator's findings are erroneous as he based his findings on the premise that an "employee", as the term is used in Article 3, Section (b)(2) of the existing agreement, also includes a "supervisor." Basically, it is your position that the term "employee" includes only nonsupervisory employees and, thus, that the aforementioned Article of the negotiated grievance procedure would be inapplicable to a dispute involving a "supervisor."

Under all of the circumstances, I agree with the Regional Administrator's conclusion that the matter in dispute is subject to the grievance procedure in the existing agreement and, thus, is grievable under such agreement. In my view, the conduct complained of herein by the Activity, i.e., the Local's alleged interference with the Activity's right to discipline supervisors, is a matter which comes within the scope of Article 4, Section (a) of the parties' existing agreement as well as Article 1 and Article 3, Section (b)(2) of such agreement.

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WASHINGTON, D.C. 20210



1-16-74

Mr. Wesley Young  
Vice President  
National Alliance of Postal  
and Federal Employees  
1644 11th Street, N. W.  
Washington, D. C. 20001

335

Re: Southeast Exchange Region Warehouse  
Atlanta Army Depot  
Forest Park, Georgia  
Case No. 40-5173(RO)

Dear Mr. Young:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your RO petition in the above named case.

The Assistant Regional Director's dismissal of your petition was based on the view that such petition did not meet the requirements of Section 202.5 of the Regulations of the Assistant Secretary in that it was filed untimely, after the ten (10) day posting period had expired with respect to a petition covering the same employees filed by Local 554, Atlanta Federal and City Service Employees, Service Employees International Union, AFL-CIO, in Case No. 40-4968(RO).

In my judgment, your request for review raises issues as to whether there was a posting, or a proper posting, of the Notice to Employees in Case No. 40-4968(RO). Accordingly, I am remanding the case to the Assistant Regional Director for further investigation and consideration of the issues which you raise and for issuance of a supplemental ruling to the parties.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



1-16-74

Mr. Patrick R. Sullivan  
Labor Relations Officer  
Civilian Personnel Branch  
Headquarters  
Warner Robins Air Materiel Area  
Robins Air Force Base, Georgia 31098

336

Re: Warner Robins Air Materiel Area  
Robins Air Force Base, Georgia  
Case No. 40-4939 (GA)

Dear Mr. Sullivan:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above named case.

In your request for review, you contend that the Application filed in the instant case, requesting a decision as to whether certain grievances are subject to arbitration under the arbitration provisions of the parties' negotiated agreement, should be dismissed because, allegedly, the agreement was not in effect at the time the grievances were initiated. In this connection, you allege that ~~the~~ December 15, 1971, Memorandum of Understanding by which the parties sought to extend the negotiated agreement is invalid because such Memorandum was never approved by the Activity's headquarters and, also, the arbitration provisions in the agreement do not comply with the requirements of Section 13(a) of the Executive Order. You further contend that, even assuming that the agreement was in effect at the time the instant grievances were initiated, the Assistant Regional Director is barred from asserting jurisdiction in the matter by Section 13(e) of the Order and Section 205.2(b) of the Assistant Secretary's Regulations because the negotiated agreement herein became effective prior to November 24, 1971, the effective date of the amended Executive Order. Finally, you contend that the Application should be dismissed because there has been no determination by the parties that the matters herein are subject to arbitration under the negotiated agreement.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that the Assistant Secretary has jurisdiction in this matter and that the grievances involved are subject to arbitration under the terms of the parties' negotiated agreement.

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1-16-74

Thus, the evidence establishes that it was the intent of the parties in signing the Memorandum of Understanding to extend the terms of the agreement until such time as the parties entered into a new agreement. Also, by its terms, the Memorandum became effective on the date it was executed and there is no evidence that such Memorandum was subject to the approval of the Activity's headquarters. Indeed, the evidence establishes that the parties applied the terms of the Memorandum on and after December 15, 1971, without any question being raised as to its validity. Further, when the parties signed the Memorandum of Understanding I find that they, in effect, terminated their existing agreement and entered into a new agreement dating from December 15, 1971. Accordingly, it is concluded that the instant application is not barred by Section 13(e) of the Order and Section 205.2(b) of the Assistant Secretary's Regulations.

With respect to the contention that the provisions of the agreement do not comply with the requirements of Section 13(a) of the Order and that, therefore, further proceedings herein are unwarranted, I find in agreement with the Assistant Regional Director, that there is no indication in the Order that the Assistant Secretary's responsibility under Section 13(d) of the Order is, in any way, conditioned upon whether the grievance-arbitration provision of the agreement involved meets the criteria of Section 13(a). Moreover, there is a substantial doubt as to whether a party to an agreement has standing to question the propriety of its own agreement. See, in this regard, General Services Administration Region 9, San Francisco, California, A/SLMR No. 333.

Finally, under all the circumstances, your contention that the Application herein should be dismissed because there has been no determination by the parties that the grievances are subject to arbitration under the agreement was rejected, noting particularly the fact that previously the Activity had consented to arbitrate the matter and that such contention was not raised prior to the filing of the instant request for review.

Accordingly, and as there is no evidence that the Assistant Regional Director acted arbitrarily or failed to give adequate consideration to all evidence and arguments presented in the subject case, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Harold F. Barrett, Jr.  
Grand Lodge Representative  
Local Lodge 830  
International Association of Machinists  
and Aerospace Workers  
3133 Braddock Street  
Kettering, Ohio 45429

337

Re: U. S. Department of the Navy  
Naval Ordnance Station  
Louisville, Kentucky  
Case No. 41-3323(CA)

Dear Mr. Barrett:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of your complaint alleging violations of Section 19(a)(1), (2), (4), and (6) of the Executive Order, as amended.

I agree with the Acting Assistant Regional Director's dismissal of your complaint. In this regard, I view the Federal Labor Relations Council's decision on review of A/SLMR No. 139, dated August 8, 1973, as dispositive of the issues in this case. See Department of the Navy and the U. S. Naval Weapons Station, Yorktown, Virginia, FLRC No. 72A-20. In that decision, the Council set aside the Assistant Secretary's decision, and found that the Order does not require agencies to grant official time to union witnesses at formal unit determination hearings. As explained in its decision, the Council's rationale applied to the Assistant Secretary's authority under Section 6(a) of the Order, although A/SLMR No. 139 was concerned only with the denial of official time to witnesses at unit determination hearings. The Council found further that the denial of official time to witnesses was not a violation of a right conferred by Section 1(a) of the Order, a necessary corollary of a Section 19 violation.

However, the Council also found that it would not be inconsistent with the Order for the Assistant Secretary to promulgate requirements by regulation dealing with the issue of the reimbursement of witnesses. Thus, the Council found that ". . . where the Assistant Secretary determines, based upon his experience, that, in order to administer



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those aspects of his functions which require a formal hearing under Section 6(a)(1), (2), (3), (4), and (5) of the Order, there is an established need for necessary witness [sic] to be on official time for the period of their participation at such formal hearings, we would view it as consistent with the Order for the Assistant Secretary to promulgate an appropriate regulation pursuant to his authority under Section 6(d) of the Order."

Following the Council's decision on November 8, 1973, I issued amendments to the Assistant Secretary's Regulations to provide that, among other things, necessary employee witnesses who appear at unfair labor practice hearings shall be granted official time, necessary transportation and per diem expenses by the employing agency or activity. Such amendments necessarily were prospective and not retroactive and, thus, would not apply to the instant case.

In view of all of the foregoing, and noting most particularly the Council's rationale that a denial of official time is not an unfair labor practice under the Order, I conclude that further proceedings on the instant complaint are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of your complaint in the above cited case, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Ben B. Beeson  
Director of Civilian Personnel  
Department of the Army  
Office of the Deputy Chief of  
Staff for Personnel  
Washington, D. C. 20310

338

Re: Department of the Army  
Watervliet Arsenal  
Watervliet, New York  
Case No. 35-2892 (AP)

Dear Mr. Beeson:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability and Arbitrability in the above named case.

The essence of your position is that the Department of the Army's Civilian Personnel Regulation 300-Merit Promotion and Related Placement Program, implementing Federal Personnel Manual Chapter 335, is the controlling document for the administration of that Agency's plans for merit promotion and related placement. Thus, you contend that the provision in Federal Personnel Manual 335, 3-3e(3) (which permits the exercise of local discretion as to whether or not concurrent consideration is to be given to potentially available candidates outside the Agency before selection from a register of one highly qualified available candidate produced in the minimum area of consideration) is superseded by Civilian Personnel Regulation 300, 335.3-3d(2) 1, making it mandatory that concurrent consideration be given to candidates outside the Agency before such a selection can be made.

It is your further position that Article XXIX-Promotions, in the negotiated agreement, defines clearly grievances acceptable under the negotiated grievance procedure. And, you contend, under the above-mentioned Civilian Personnel Regulation, that the grievance in this case is not subject to the negotiated procedure.

Under the circumstances of this case, it appears that the Agency's Civilian Personnel Regulation 300 may be controlling. It was noted, however, that Civilian Personnel Regulation provisions implementing Federal Personnel Manual Chapter 335 are undated, while the Federal Personnel Manual provisions bear dates of issuance indicating they were in effect at the time the promotion plan to fill the vacancy for the job of Crater was initiated. These

circumstances preclude a dispositive ruling at this time.

Accordingly, I am remanding this case to the Assistant Regional Director for appropriate investigation to determine whether Civilian Personnel Regulation 300, 335.3-3d(2)(d) 1, was in effect on the date the promotion plan to fill the vacancy for the Crater position was initiated. Further, he is directed to issue an appropriate supplemental Report and Findings.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 20210

1-31-74



Mr. Homer R. Hoisington  
Regional Business Agent  
National Federation of  
Federal Employees  
P. O. Box 870  
Rialto, California 92370

339

Re: Department of the Navy  
Pacific Missile Range  
Point Mugu, California  
Case No. 72-4325

Dear Mr. Hoisington:

I have considered carefully your request for review of the Assistant Regional Director's Report and Findings on Objection wherein he set aside the October 4, 1973, election and ordered that a rerun election be conducted in the above named case.

The Assistant Regional Director's Report and Findings on Objection, dated November 8, 1973, stated that pursuant to Section 202.6(d) of the Assistant Secretary's Regulations, an aggrieved party could obtain a review of his action by filing a request for review with the Assistant Secretary. It stated also that the request must be received by the Assistant Secretary not later than the close of business on November 21, 1973.

Your letter requesting review of the Assistant Regional Director's Report and Findings on Objection, dated November 19, 1973, was mailed at Rialto, California, and postmarked November 20, 1973. It arrived in my office subsequent to the November 21, 1973, due date and therefore, it was viewed as having been filed untimely.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's Report and Findings cannot be considered on its merits, and it is hereby denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 20210



1-31-74

David S. Barr, Esq.  
Barr and Peer  
Suite 1002  
1101 Seventeenth Street, N. W.  
Washington, D. C. 20036

340

Re: U. S. Department of the Navy  
Norfolk Naval Shipyard  
Portsmouth, Virginia  
Case No. 22-3834(CU)

Dear Mr. Barr:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's decision in the above named case.

I am in agreement with the Assistant Regional Director that the failure of the International Federation of Professional and Technical Engineers, Local No. 1 (IFPTE) to serve copies of its request for intervention simultaneously on all interested parties, as required by Section 202.5(c) of the Regulations of the Assistant Secretary, warrants the denial of the intervention request. In this regard, your request for review fails to show good cause for the IFPTE's failure to comply with the prescribed procedural requirements or to raise any material issue which would warrant reversal of the Assistant Regional Director's action.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's denial of the IFPTE's request to intervene in the unit clarification proceeding, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



1-31-74

Mr. Paul J. Hayes  
NAGE Representative of Record  
National Association of Government  
Employees  
9 Edison Avenue  
Albany, New York 12208

341

Re: Department of the Navy  
Naval Air Rework Facility  
Jacksonville, Florida  
Case No. 42-2342

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by the National Association of Government Employees, Local R5-82 (NAGE) alleging that the Department of the Navy, Naval Air Rework Facility, Jacksonville, Florida (Activity) violated Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The evidence reveals that under the terms of the current negotiated agreement between the Activity and NAGE, which is scheduled to expire on or about July 9, 1974, only the appropriate stewards and the chief steward may represent the NAGE and employee grievants during the processing of grievances under the negotiated grievance procedure and that the Activity has refused NAGE's request to reopen the agreement for, among other things, the proposed modification of the above noted provision. It is your contention that the Activity, by refusing to agree to reopen the agreement and by insisting on adhering strictly to the agreement provisions in issue, is violating the rights of the NAGE and rights of the employees to be represented by representatives of their own choosing. You also contend that the Assistant Regional Director in allegedly defining the issue in the case as whether the Activity was acting within its rights when it refused to consent to reopen the agreement, defined the issue too narrowly and, therefore, reached an incorrect decision. In this connection, you contend the Assistant Regional Director failed to note the alleged fact that the Activity was obligated to reopen the agreement because certain provisions therein conflict with Section 13(a) of the Order.

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WASHINGTON, D.C. 20210

L-6-74



It is concluded that the Activity's conduct in the subject case did not establish a reasonable basis for the complaint under Section 19(a)(1) and (6) of the Order. Thus, in my view, it was under no obligation to agree to reopen the agreement to renegotiate the provisions in question. Nor is there anything inherently improper in a labor organization agreeing, contractually, to restrict itself and those employees it represents concerning which of its representatives may be selected to assist in the processing of grievances under a negotiated grievance procedure. Your contention that the Activity was obligated to reopen the agreement because certain of its provisions allegedly conflict with Section 13(a) of the Order was rejected. In this connection, it was noted that the provisions referred to do not relate to the specific issue raised herein and that, further, there was no evidence that such alleged conflicting provisions were raised with the Assistant Regional Director prior to the filing of the instant request for review.

Accordingly, and noting the absence of any evidence that the Assistant Regional Director failed to give adequate consideration to the evidence and issues presented in the subject case, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Robert C. Sinclair  
President, Unit #2  
National Association of  
Government Inspectors  
3310 Gurley Road  
Philadelphia, Pennsylvania 19154

342

Re: Naval Air Engineering Center  
Naval Air Systems Command  
Philadelphia, Pennsylvania  
Case No. 20-4275(CA)

Dear Mr. Sinclair:

This is in connection with your request for review of the Acting Assistant Regional Director's dismissal of the complaint in the above named case.

It is found that the request for review in this matter is procedurally defective in that, contrary to the requirement of Section 202.6(d) of the Regulations of the Assistant Secretary, a copy of the request for review was not served on the Acting Assistant Regional Director, although you were advised to do so in the dismissal letter.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON

FEB 26 1974

February 26, 1974

Roger P. Kaplan, Esq.  
General Counsel  
National Association of  
Government Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

343

Re: West Virginia Air National Guard  
Charleston ANG Base  
Kanawha Airport  
Case No. 21-3862(CA)

Dear Mr. Kaplan:

I have considered carefully your request for review seeking the setting aside of the Acting Assistant Regional Director's approval of the Settlement Agreement in the above-named case.

You contend that the subject Settlement Agreement would serve to resolve satisfactorily your unfair labor practice complaint in this matter alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended, only if: (1) Colonel Leonard Hash's name were to be mentioned specifically in certain specified paragraphs in the body of said Agreement, and (2) Colonel Leonard Hash were to affix his signature in the space on said Agreement designated for the signature of the Respondent.

Under all of the circumstances, I conclude that the Acting Assistant Regional Director's approval of the Settlement Agreement in the subject case was appropriate. In this regard, I am of the view that under the Order it is appropriate that the head of the particular respondent agency or activity sign any settlement reached as distinguished from a particular supervisor who may have been directly involved in the violative conduct. Moreover, I agree with the Acting Assistant Regional Director's conclusion that the naming, in the body of the Settlement Agreement, of the particular individual alleged to have committed the unfair labor practice is not necessary to effect an appropriate remedy.

Accordingly, your request for review, seeking the setting aside of the Acting Assistant Regional Director's approval of the Settlement Agreement in this matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Geoffrey D. Spinks  
Labor Relations Advisor  
Labor Disputes & Appeals Section  
Office of Civilian Manpower Management  
Department of the Navy  
Washington, D. C. 20390

344

Re: Department of the Navy  
Naval Ammunition Depot  
Crane, Indiana  
Case No. 50-9667

Dear Mr. Spinks:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability in the above named case.

The essence of your position is that the evidence overall established that the termination of probationary employees, and the circumstances surrounding such termination, are not covered by the terms of the current agreement between the Activity and Local 1415, American Federation of Government Employees, AFL-CIO (AFGE) and that, consequently, Richard L. Shultz, a probationary employee, has no right to process a grievance in connection with his termination through the negotiated grievance procedure.

In my view, there is sufficient evidence upon which one may reasonably conclude, as contended by the AFGE, that probationary employees are protected from improper termination by Article XX (Acceptable Level of Competence) of the negotiated agreement, and have a right under such agreement to process grievances concerning their terminations through the negotiated grievance procedure.

I, therefore, conclude that, in circumstances such as these, where the matters in dispute involve the interpretation and application of certain provisions of the parties' negotiated agreement, and the agreement provides a means by which such dispute may be resolved, it will effectuate the purposes of the Order to direct the parties to resolve the dispute through their negotiated grievance procedure. Thus, it is concluded that the issue as to whether Shultz' termination is covered by the terms of the instant agreement as well as the issue as to whether the Activity violated such agreement in its treatment of Shultz, should be resolved through the negotiated grievance procedure.

Accordingly, and noting the absence of any evidence which would support your contentions that the Acting Assistant Regional Director acted arbitrarily or failed in any way to give adequate consideration to all the evidence and arguments presented in the case, your request for review, seeking to set aside the Acting Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210

2/28/74



Mr. Frank E. Anderson  
President, Local 128  
American Federation of Government  
Employees, AFL-CIO  
Post Office Box 401  
Cincinnati, Ohio 45201

345

Re: General Services Administration  
Region V, Communications Division  
Cincinnati, Ohio  
Case No. 53-6453

Dear Mr. Anderson:

I have considered carefully your request for review of the Assistant Regional Director's dismissal of the subject petition filed by Local 128, American Federation of Government Employees, AFL-CIO.

In my view, your request for review raises material issues of fact which can best be resolved on the basis of record testimony.

Accordingly, I am remanding the case to the Assistant Regional Director for the issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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FEB 28 1974

William B. Peer, Esq.  
Barr & Peer  
Suite 1002  
1101 Seventeenth Street, N. W.  
Washington, D. C. 20036

346

Re: Federal Aviation Administration  
Washington, D. C.  
Case No. 22-4058(CA)

Dear Mr. Peer:

I have considered carefully your request for review of the Acting Assistant Regional Director's dismissal of your complaint alleging that the Federal Aviation Administration (Agency) violated Section 19(a)(5) and (6) of Executive Order 11491, as amended.

You allege that the Agency violated the Executive Order by failing to designate the Professional Air Traffic Controllers Organization (PATCO), affiliated with the Marine Engineers Beneficial Association, AFL-CIO, as a participant in the functioning of a Microwave Landing System Advisory Committee. In view of the PATCO's capacity as the exclusive representative of the Agency's Air Traffic Controllers, you contend that the PATCO has a right to participate in the subject Microwave Committee in that the work of the Microwave Committee ". . . and the concepts with which the Committee is working, all impact or have a propensity to impact the job of the controller, the work load, his work assignments, his tenure, his very employment, and possibly his unemployment." In this regard, you contend further that the Acting Assistant Regional Director's determination in this matter is, among other things, erroneous and in direct conflict with the Report of the Assistant Secretary, No. 35, in that his determination was allegedly based upon his assessment of the merits of your complaint and that such findings and conclusions were ones which should not have been rendered without a hearing.

Under all of the circumstances, I conclude, in agreement with the Acting Assistant Regional Director, that there is insufficient basis upon which to issue a notice of hearing and that, therefore, the instant complaint was dismissed properly. I reject your contention that the decision of the Acting Assistant Regional Director was in direct conflict with the Report of the Assistant Secretary, No. 35,

and find, in agreement with the Acting Assistant Regional Director, that the evidence establishes that the work of the Microwave Committee is of a technical nature in that it will be involved solely in advising the Agency and others of the various technical and conceptual problems in the establishment of a new navigational landing system. From the evidence submitted, I am satisfied that the Microwave Committee will not be determining personnel policies, practices, or other matters affecting employee working conditions as they relate to the proposed establishment of the microwave landing system. In view of the purely "technical" focus of the Microwave Committee, I have determined that the Agency's establishment of the Microwave Committee and its decision as to who would be the participating members on the Subject Committee are rights reserved to agency management under Section 11(b) of the Executive Order, which states, in part, that ". . . the obligation to meet and confer does not include matters with respect to . . . the technology of performing . . . /an Agency's/work . . ." Accordingly, I conclude, in agreement with the Acting Assistant Regional Director, that there is no reasonable basis upon which to issue a notice of hearing in this matter.

It should be noted, however, upon the actual determination by the Agency that the subject navigational system will be established, there is nothing to preclude the PATCO, as the exclusive representative of the Agency's Air Traffic Controllers, from seeking to meet and confer with the Agency with respect to the impact of any technological change on unit employees or with respect to the procedures management will observe in effectuating any technological change. Cf. Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31; Naval Public Works Center, Norfolk, Virginia, FLRC No. 71A-56; United States Department of Navy, Bureau of Medicine and Surgery, Great Lakes Naval Hospital, Illinois, A/SLMR No. 289; Federal Aviation Administration, National Aviation Facilities Experimental Center, Atlantic City, New Jersey, A/SLMR No. 329; and U. S. Department of Interior, Bureau of Indian Affairs, Indian Affairs Data Center, Albuquerque, New Mexico, A/SLMR No. 341.

On the basis of the above findings I find, in agreement with the Acting Assistant Regional Director, that a reasonable basis for the instant complaint has not been established. Accordingly, your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of your complaint in the instant case is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 28 1974

Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

347

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3317 E.O.

Dear Mr. Cahn:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint filed by National Federation of Federal Employees, Local 476 (NFFE) in the above named case, alleging violations of Section 19(a)(6) of Executive Order 11491, as amended.

Under all the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. It is your contention that the Activity violated Section 19(a)(6) of the Order when it made certain revisions in its Career Appraisal procedures without first consulting with the NFFE, the exclusive representative of certain of the Activity's employees. In this connection, the evidence establishes that the subject revisions originated at higher headquarters and that such revisions were made applicable uniformly to a number of subordinate activities.

Under all of the circumstances, and consistent with the principles set forth in Department of Defense, Air Force Defense Language Institute, English Language Branch, Lackland Air Force Base, Texas, A/SLMR No. 322, which holds that higher level published policies and regulations which are applicable uniformly to more than one Activity may properly limit the scope of negotiations, I find that the Activity was not required to bargain with the NFFE concerning the issuance of the above-noted revised procedures.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 28 1974

Mr. Frederick Benedict  
2351 Olive Avenue  
Fremont, California 94538

348

Re: Federal Aviation Administration  
Western Region  
San Francisco, California  
Case No. 70-4067

Dear Mr. Benedict:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above named case.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. In this regard, I have noted your contention that the remark by Mr. Frank Dailey, FAA Supervisor to Mr. Darrell Reazin, Regional Vice President of the Professional Air Traffic Controllers Organization (PATCO) that "Dr. Raymond had a strong case against Benedict" discouraged PATCO from representing you. In my view, such statement, standing alone, does not establish a reasonable basis for the complaint. As indicated in the Assistant Regional Director's letter of dismissal, Section 203.5(c) of the Assistant Secretary's Regulations provides that the Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint.

Accordingly, as a reasonable basis for the complaint has not been established in this matter, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



FEB 28 1974

Mr. Frederick Benedict  
2351 Olive Avenue  
Fremont, California 94538

349

Re: Federal Aviation Administration  
Western Region  
San Francisco, California  
Case No. 70-4068

Dear Mr. Benedict:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above named case.

In essence, it is your contention that the prescribed nine-month period for the filing of an unfair labor practice complaint after the occurrence of the alleged unfair labor practice should be waived in the subject case because of the fact that you did not have knowledge of certain written communications (which constituted the basis of the alleged violations) until sometime after the expiration of the prescribed filing period. It is your further contention that, under the aforementioned circumstances, a waiver of such filing requirements is justified under the theory of "discovery."

In agreement with the Assistant Regional Director, I find that further proceedings with respect to the instant complaint are unwarranted. As indicated in the Assistant Regional Director's letter of dismissal, Section 203.2(b)(3) of the Assistant Secretary's Regulations requires, among other things, that a complaint be filed within nine months of the occurrence of the alleged unfair labor practice. Under the circumstances of this case, I find that no basis exists for the granting of a "waiver" of the timeliness requirement.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAR -1 1974

Mr. Robert M. Tobias  
Counsel  
National Treasury Employees  
Union  
1730 K Street, N. W.  
Suite 1101  
Washington, D. C. 20006

350

Re: Internal Revenue Service  
Washington, D. C.  
Case No. 22-4056(CA)

Dear Mr. Tobias:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by National Association of Internal Revenue Employees and Chapter No. 071 (name changed to National Treasury Employees Union, (NTEU)), alleging that the Internal Revenue Service (Activity) violated Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I agree with the action of the Assistant Regional Director and find that further proceedings in this matter are unwarranted.

In your request for review, you contend that the Activity violated Section 19(a)(1) and (6) of the Order by refusing to permit an employee to be accompanied by a representative of your labor organization at an interrogation of the employee by an Activity inspector concerning the employee's tax return. You assert that there are "certain undisputed facts in this case" but that a hearing would be required to bring out "many additional facts . . . ." If you possess additional relevant facts which would have provided a basis for the complaint, these must have been supplied during the investigation of the complaint. As provided by Section 203.14 of the Assistant Secretary's Regulations, the burden of proof of allegations of a complaint lies with the Complainant. (See Assistant Secretary Report No. 24.)

The fact disclosed by the investigation, and the respective positions of the parties, is that the investigative interview of the employee involved herein was conducted by the Inspection Service of the Activity in order to bring out facts relating to the employee's

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAR 4 1974

personal income tax return. Under all of the circumstances, I find that such interview did not constitute a formal discussion within the meaning of Section 10(e) of the Order and that, therefore, NTEU was not required to have been afforded the opportunity to be represented at the interview. In this regard, it was noted that the interview, at issue, did not concern a grievance nor did the matters discussed at the session involve personnel policies and practices or other general working conditions of unit employees. Rather, the interview related to a single IRS employee's obligation to file timely a proper Federal tax return.

In my view, the recent holding in Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLMR No. 336, is controlling herein. That case raised the question whether certain "counselling" sessions between an employee and a superior officer, relating to the employee's alleged wearing of improper clothing and his engaging in alleged verbal abuse, constituted "formal discussions within the meaning of Section 10(e) of the Order." It was found that the sessions involved did not relate to grievance processing, or general working conditions or work performance but rather related solely to an individual employee's alleged misconduct and his failure to adhere to an established rule. The instant case was considered to fall within the rationale of A/SLMR No. 336. Compare U. S. Department of the Army, Transportation Motor Pool, Fort Wainwright, Alaska, A/SLMR No. 278, in which it was established that the resolution of the grievance involved therein would have a general impact on all the employees in the unit. Under such circumstances, it was concluded that the Respondent's failure to afford the Complainant the opportunity to be represented at the formal discussion involved therein violated Section 19(a)(6) of the Order. Moreover, it was found that Section 19(a)(1) was violated where the Respondent denied an employee's request for representation during the formal discussion.

Accordingly, and noting that your request for review raised no issue with respect to the Assistant Regional Director's dismissal of the Section 19(a)(2) allegation, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

351

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3329(CA)

Dear Mr. Cahn:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the subject case alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

I find that the request for review is procedurally defective in that it was filed untimely with the Assistant Secretary. The Assistant Regional Director issued his decision in this matter on January 25, 1974, and, as you were advised therein, a request for review of that decision must have been received by the Assistant Secretary no later than the close of business February 7, 1974. Your request for review was, in fact, received in my office subsequent to the February 7, 1974, due date and, therefore, it was viewed as having been filed untimely.

Under these circumstances, the merits of the case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



- 2 -

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

MAR 6 1974

352

Mrs. Marcella M. Kilpatrick  
5500 Pennis Avenue  
Fort Worth, Texas 76114

Re: General Services Administration  
Region VII  
Federal Supply Service  
Fort Worth, Texas  
Case No. 63-4509(CA)

Dear Mrs. Kilpatrick:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case, alleging violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on the subject complaint are unwarranted. For the reasons cited by the Assistant Regional Director, I find that the allegations that the Activity (1) failed to promote you because of your union affiliation and participation in union activities, and (2) denied your right to representation at a meeting called to discuss a grievance which you attempted to file concerning the allegedly discriminatory non-selection for promotion were not timely under Section 203.2(a)(2) of the Assistant Secretary's Regulations which requires that a "charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice." I find further that, in regard to the alleged refusal of the Activity to grant access to its established grievance procedure, a reasonable basis for the complaint was not established in that you have offered no evidence to indicate a link between the denial of access to the grievance procedure and your labor organization membership or related activity. Also, with reference to the 19(a)(4) allegation of the complaint, I find that no evidence was presented that you were disciplined or otherwise discriminated against because you filed a complaint or gave testimony under Executive Order 11491, as amended.

The allegation raised for the first time in your request for review that you were discriminated against by reason of an "across-the-board promotion" in your work area cannot be considered. It is established policy that evidence or information furnished for the first time in a request for review will not be considered by the Assistant Secretary. See Report Number 46 (copy enclosed).

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 6, 1974

Mr. Julius Berman  
Social Security Administration  
Chicago Payment Center  
165 North Canal Street  
Chicago, Illinois 60608

353

Re: Department of Health, Education  
and Welfare, Social Security  
Administration, Chicago Payment  
Center  
Case No. 50-9671

Dear Mr. Berman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case wherein he found that the issue raised in the application was not grievable under the terms of the negotiated agreement.

In your request for review you assert that the unresolved question requiring determination is "whether or not the grievance was grievable under the negotiated agreement" rather than "whether the employee's rights were denied under the Federal Personnel Manual 771-1," as stated in the subject application. In support of your position you cite Article 17, covering overtime and related requirements and Article 19, pertaining to leave. In addition, Article 28, Section c is cited, which provides that the negotiated grievance procedure "shall be the exclusive procedure available to employees in the unit for resolving grievances over the interpretation or application of this agreement."

I find, in agreement with the position taken in your request for review, that the grievance regarding the granting of one hour annual leave and two hours overtime is on a matter subject to the grievance procedure under the negotiated agreement. Accordingly and noting that under Section 13(a), where a negotiated grievance procedure is applicable, it is the exclusive procedure available to the parties and unit employees for resolving the grievance involved, your request for review is granted and the Assistant Regional Director's finding to the contrary is hereby set aside.

Sincerely,

348A  
Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 6, 1974

Charles Barnhill, Jr., Esq.  
Davis, Miner, Barnhill & Bronner  
22 East Huron Street  
Chicago, Illinois 60611

354

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-9135

Dear Mr. Barnhill:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by the OEO Local 2816, American Federation of Government Employees, AFL-CIO (AFGE), alleging that Office of Economic Opportunity, Region V, Chicago, Illinois (Activity) violated Section 19(a)(6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The evidence reveals that on March 8, 1972, the AFGE sent a memorandum to the Activity seeking information with regard to its position on an alleged backlog in processing grantee audits. The AFGE memorandum stated that the alleged failure reflected adversely on the employees represented by the AFGE, on the AFGE itself and on the mission and reputation of the Activity. The Activity denied the AFGE's request on the ground that it failed to conform with guidelines recently established by the Activity for dealing with labor relations matters. On August 11, 1972, the AFGE filed an unfair labor practice charge with the Activity alleging a failure to consult on the issue of audit review policy as required by Section 19(a)(6) of the Order. Representatives of both parties met on September 20, 1972, but the AFGE took the position that a meeting on that date did not cure the Activity's earlier refusal to consult. The AFGE took the position that it would consult regarding the issue of audit review policy only if the Activity acceded to certain demands which were outside the realm of either its original request or its unfair labor practice charge. The Activity rejected the demands and the AFGE refused to consult regarding the audit review policy. You contend that the Assistant Regional Director erred in concluding that the Activity, by its meeting of September 20, 1972, offered to consult regarding audit review policy, as you feel that a policy that consultation on an issue five months after a request for same was made could be destructive to labor organizations.

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U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

MAR 13 1974



It is concluded that a reasonable basis for the complaint under Section 19(a)(6) of the Order was not established. A violation of Section 19(a)(6) of the Order occurs when an activity refuses to consult, confer, or negotiate as required by the Order. Agencies and exclusive representatives are obliged by Section 11(a) of the Order to meet and confer in good faith with respect to personnel policies and practices and matters affecting working conditions. Section 11(b) of the Order excludes from this obligation matters with respect to the mission of an agency, its budget, its organization, the number of employees and the number, types, and grades of positions of employees assigned to an organizational unit, work project or tour of duty, the technology of performing its work and its internal security practices. The request by the AFGE, the denial of which constituted the basis for the complaint in this matter, concerned information regarding the audit review practices of the Activity, subject matter which I find to be within the exclusionary language of Section 11(b) of the Order, as such subject matter involved the technology of performing the Activity's work. As the information sought does not fall within the mandate of Section 11(a) of the Order, the Activity was not obliged to meet and confer with the AFGE regarding such subject matter and, therefore, its failure to do so was not violative of Section 19(a)(6) of the Order.

Accordingly, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Charles Barnhill, Jr., Esq.  
Davis, Miner, Barnhill & Bronner  
22 East Huron Street  
Chicago, Illinois 60611

355

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-9141

Dear Mr. Barnhill:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's partial dismissal of the subject complaint filed by the OEO Employees Local 2816, American Federation of Government Employees, AFL-CIO (AFGE), alleging violations of Section 19(a)(1), (2), (3), (4), (5) and (6) of Executive Order 11491, as amended, by the Office of Economic Opportunity, Region V, Chicago, Illinois (Activity).

In his letter of November 30, 1973, the Assistant Regional Director found, among other things, that the Activity's agreeing to meet with AFGE representative Wayne Kennedy on June 22, 1972, had effectively cured its earlier refusal to meet with Kennedy as expressed in its memorandum of April 14, 1972, and that, therefore, dismissal of the allegations in the complaint with respect to that refusal was warranted. You were further informed that because of a lack of evidence constituting a reasonable basis for the 19(a)(2), (3), (4), (5) and (6) allegations of the complaint, the Assistant Regional Director was dismissing those allegations. Finally, you were advised that a reasonable basis existed for the 19(a)(1) allegation in the subject complaint with regard to the action of the Activity in restricting the use of agency time and prohibiting the use of the AFGE's office for the purpose of preparing unfair labor practice complaints.

Under all of the circumstances, I find that a reasonable basis for the complaint exists with respect to the allegation that the Activity's April 14, 1972, refusal to meet with a representative designated by the AFGE to handle certain unfair labor practice charges was violative of Section 19(a)(1) and (6) of the Order. Accordingly, that portion of the complaint is remanded to the Assistant Regional Director for reinstatement of the 19(a)(1) and (6) allegations of the complaint and the issuance of a Notice of Hearing.

With respect to the Section 19(a)(2), (3), (4) and (5) allegations, I find, in agreement with the Assistant Regional Director, that you have failed to present evidence which would establish a reasonable basis for the complaint and that, therefore, such allegations must be dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

MAR 15 1974

Mr. Kermit L. Tull  
National Vice President  
District 9, American Federation of  
Government Employees, AFL-CIO  
3214 Tinker Diagonal  
Suite E  
Del City, Oklahoma 73115

356

Re: Defense-Air Force Headquarters,  
U. S. Air Force  
Tinker Air Force Base, Oklahoma  
Case No. 63-4577 (CA)

Dear Mr Tull:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint filed in the above-named case.

It is concluded that under all of the circumstances a reasonable basis for the instant 19(a)(1) and (6) complaint was established. Accordingly, your request for review seeking reversal of the dismissal of your complaint is granted and the Assistant Regional Director is directed to reinstate the complaint and to issue a notice of hearing, absent settlement.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAR 22 1974

Mr. Dolph David Sand  
Staff Counsel  
American Federation of  
Government Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

357

Re: Department of Air Force  
Griffiss Air Force Base  
Rome, New York  
Case No. 35-2929 E.O.

Dear Mr. Sand:

Your letter of March 18, 1974, is acknowledged and  
your request to withdraw your request for review in the  
subject case is hereby granted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 3, 1974

Mr. Thomas E. Swain  
National Vice President  
American Federation of Government  
Employees, Tenth District  
4347 South Hampton Road  
Suite 125  
Dallas, Texas 75232

358

Re: Health Services Command  
Headquarters, Fort Sam Houston,  
Texas  
Case No. 63-4776 (R0)

Dear Mr. Swain:

I have considered carefully your request for review seeking  
reversal of the Assistant Regional Director's denial of your request  
for intervention in the above-entitled matter.

It is concluded that the Assistant Regional Director's action  
was warranted inasmuch as the request for intervention was not  
supported by a showing of interest of ten percent or more of the  
employees in the unit involved as required by Section 202.5(a) of the  
Assistant Secretary's Regulations. In addition, no evidence was  
submitted to support your claim that any of the employees now employed  
at the Health Services Command were formerly included in any unit  
which was represented by either AFGE Local 2154 or AFGE Local 2169 or  
that your intervention request was made on behalf of either of these  
locals.

Accordingly, your request for review, seeking reversal of  
the denial of your request for intervention by the Assistant Regional  
Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-3-74



Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

359

Re: Veterans Administration  
Data Processing Center  
Austin, Texas  
Case No. 63-4719(CA)

Dear Ms. Cooper:

I have considered carefully your request for review in which you seek either reversal of the Assistant Regional Director's dismissal of the complaint in the above named case, alleging violation of Section 19(a)(2) and (3) of Executive Order 11491, as amended, or, in the alternative, that the Section 19(a)(1) violation "inherent in this complaint" be recognized and that the case go to hearing on that basis.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint under Section 19(a)(2) and (3) of the Order has not been established. However, I find that a reasonable basis for your complaint under Section 19(a)(1) of the Order has been established. With respect to the fact that Section 19(a)(1) was not specifically alleged to have been violated in the instant complaint, see U. S. Department of the Air Force, Air Force Communications Service (AFCS), 2024th Communications Squadron, Moody Air Force Base, Georgia, A/SLMR No. 248, in which the Assistant Secretary adopted an Administrative Law Judge's recommendation to treat a complaint as charging a violation of a particular section of the Order (numerically omitted) where "the body of the complaint charges conduct that would be a violation of that subsection . . . ."

As I am persuaded that sufficient evidence has been presented in the instant case to establish a reasonable basis for the complaint under 19(a)(1), your request for review is granted and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint, and, upon appropriate amendment by the Complainant, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 3, 1974

Mr. Irvin J. Hawkins  
U. S. Geological Survey  
Department of the Interior  
P. O. Box 133  
Rolla, Missouri 65401

360

Re: Department of the Interior  
U. S. Geological Survey  
Rolla, Missouri  
Case No. 62-3832 (DR)

Dear Mr. Hawkins:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your challenge to the intervention by Local 934, National Federation of Federal Employees (NFFE) in the subject case.

Under the particular circumstances of this case, I agree with the Assistant Regional Director's finding that the NFFE's intervention request met the requirements of Section 202.5(c) of the Assistant Secretary's Regulations. Thus, the NFFE's intervention request, which you indicate was received by you on November 26, 1973, was timely filed within the meaning of Section 206.1 of the Assistant Secretary's Regulations in that the tenth day of posting, November 24, 1973, was a Saturday. With respect to the NFFE's alleged failure to serve simultaneously its intervention request on all parties, I find that the service of identical handwritten letters on both you and the Department of Interior's U. S. Geological Survey, Rolla, Missouri (Activity) on November 26, 1973, giving notice of the intervention request, constituted compliance with the requirements of Section 202.5(c) of the Regulations although not worded in identical language to the request for intervention.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's decision dismissing your challenge to the intervention request of the NFFE, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-3-74



Charles Barnhill, Jr., Esq.  
Davis, Miner, Barnhill & Bronner  
22 East Huron Street  
Chicago, Illinois 60611

361

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-8578

Dear Mr. Barnhill:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the subject case alleging violations of Section 19(a)(1), (2), (3), (4), (5), and (6) of the Executive Order.

I have concluded that no reasonable basis was supplied for the 19(a)(2), (3), (4), and (5) portions of the complaint but that a reasonable basis exists for the 19(a)(1) and (6) allegations. Accordingly, the Assistant Regional Director is directed to reinstate the complaint as to the 19(a)(1) and (6) allegations and to issue a notice of hearing.

Among the issues which should be explored at the hearing are the following:

1. Did the Respondent violate Sections 19(a)(1) and (6) of the Order by its memorandum of February 1, 1972?
2. Did the settlement by the parties of a U. S. District Court suit alleging that the Respondent's memorandum of February 1, 1972, violated the rights of the Complainant also resolve the instant unfair labor practice complaint?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

4-3-74

Mr. Gary B. Landsman  
Staff Counsel  
American Federation of  
Government Employees  
1325 Massachusetts Avenue, N.W.  
Washington, D.C. 20005

362

Re: U.S. Army Tank-Automotive Command  
Warren, Michigan  
Case No. 52-4956

Dear Mr. Landsman:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's refusal to approve a bilateral settlement agreement entered into after a hearing began before an Administrative Law Judge on alleged violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

Under Section 203.7(a) of the Regulations of the Assistant Secretary, an Assistant Regional Director has the authority, among other things, to determine whether a satisfactory written settlement agreement has been entered into. In this case, the Acting Assistant Regional Director determined that a satisfactory written settlement agreement had not been executed by the parties and that, therefore, dismissal of the subject complaint was not warranted. The Regulations make no provision for the review by the Assistant Secretary of a refusal by an Assistant Regional Director to approve proposed settlements of unfair labor practice complaints under Section 19 of the Order.

Therefore, unless a new settlement agreement is submitted to the Assistant Regional Director which is acceptable to him, or alternatively, unless the Complainant unconditionally requests withdrawal of its complaint in this matter and such withdrawal request is approved, the Assistant Regional Director is directed to issue a notice to the parties rescheduling the hearing in this matter which was opened on December 4, 1973, and adjourned.

Accordingly, the request for review, seeking reversal of the Acting Assistant Regional Director's refusal to approve the proposed bilateral settlement of the complaint herein, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-3-74



- 2 -

Mr. Alan J. Whitney  
Executive Director  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

363

Re: Department of Army, Headquarters  
U. S. Army Training Center  
Engineer and Fort Leonard Wood,  
Missouri  
Case No. 62-3655 (RO)

Dear Mr. Whitney:

I have considered carefully your request for review seeking reversal of the dismissal by the Assistant Regional Director of three objections to an election held on January 15, 1974.

The deadline for the filing of the objections in question was before the close of business on January 22, 1974. In fact, the objections in question were mailed from Washington, D. C., to the St. Louis Area Office on the afternoon of January 21, 1974, and were received after the deadline date. The Assistant Regional Director dismissed the objections as untimely filed under Section 202.20(b) of the Regulations of the Assistant Secretary, noting also that the requirement of Section 202.20(b), that an original and two copies of the objections be filed with the Area Administrator, was not met. Further, he noted that service upon the Area Administrator in Washington, D. C., did not meet the requirements for timely filing set forth in Section 202.20(b).

In your request for review you urge that service on the Washington Area Office should "satisfy the timeliness requirement in the event mail delivery to the St. Louis Area Administrator was delayed" .... and that "a liberal construction be placed on the requirement of Section 202.20(b)" on the basis that because of uncertain mail deliveries "the five-day time limit for filing of objections, particularly where mail delivery over relatively long distances is involved, is neither realistic nor fair to the objecting party."

I find, in agreement with the Assistant Regional Director, that dismissal of the objections in question on the basis of untimeliness was warranted. Thus, as outlined above, the evidence establishes that objections in this matter were required to be filed before the close of business on January 22, 1974, that they were mailed from Washington, D. C. to the St. Louis Area Office on the afternoon of January 21, 1974, and that they were received untimely. Under these circumstances I find that no basis exists for extending the time period prescribed in Section 202.20(b) of the Assistant Secretary's Regulations. I find, further, that service of the objections upon the Washington, D. C. Area Administrator did not satisfy the requirement for timely service upon the St. Louis Area Administrator in whose geographical area the election was conducted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-3-74



- 2 -

Charles Barnhill, Jr., Esq.  
Davis, Miner, Barnhill & Bronner  
22 East Huron Street  
Chicago, Illinois 60611

364

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-8300

Dear Mr. Barnhill:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's partial dismissal of the complainant in the above named case alleging violations of Section 19(a)(1), (2) and (3) of Executive Order 11491.

In dismissing the allegations that Lorelei Rockwell had been "(1) denied short term training, (2) detailed out of a permanent job, (3) denied long term training, and (4) denied recognition as elected Federal Women's Program Coordinator" because of her union activities, the Assistant Regional Director concluded that no reasonable basis existed to show that the Respondent discriminated against Rockwell based on her membership in and activities on behalf of Local 2816, AFGE. In addition, he found that no evidence was submitted to support the allegation that the Respondent improperly sponsored, controlled, or otherwise assisted a labor organization. Based on the foregoing, the Assistant Regional Director dismissed the allegations regarding violations of Section 19(a)(2) and (3) of the Order. However, the Assistant Regional Director found, with respect to the alleged interrogation of Rockwell by the Respondent regarding the authorship of a union leaflet, that such alleged interrogation interfered with, restrained and coerced her in the exercise of her rights assured by the Order and, therefore, that a reasonable basis existed for this alleged violation of Section 19(a)(1) of the Order. He further found that the allegation that the Activity refused to meet with Rockwell's representative required the filing of a new charge as a basis for the filing of a complaint alleging that such conduct was violative of the Order.

In your request for review you state essentially that there is a substantial credibility issue here involved as to the dismissed portions of the complaint and that the evidence submitted, standing

alone, constitutes a prima facie case of unfair labor practices by the Respondent. You further state, with respect to the dismissal of that portion of the complaint dealing with the Respondent's alleged refusal to meet with Rockwell's representative, that the Assistant Regional Director's reasoning that a pre-complaint charge was necessary to support this allegation, in effect, precludes an "amendatory procedure with respect to unfair labor practice complaints."

With respect to the allegation that Rockwell was denied short term training for discriminatory reasons, I find that there is insufficient evidence to establish a reasonable basis for the complaint that the denial of short term training was based on union membership or union activity considerations. Accordingly, your request for reversal of the Assistant Regional Director's dismissal of the complaint with respect to this allegation is denied.

As to the allegation that the Respondent improperly refused to meet with Rockwell's representative, it was noted that this allegation was not previously contained in the pre-complaint charge filed with the Respondent. It is established policy that allegations raised for the first time in a complaint are inappropriate in that such allegations have not been subject to the pre-complaint charge procedure set forth in Section 203.2(a) of the Assistant Secretary's Regulations. See, in this regard, Assistant Secretary Report No. 16. Accordingly, your request for reversal of the Assistant Regional Director's dismissal with respect to the allegation in the complaint that the Respondent refused to meet with Rockwell's representative is denied. Moreover, I find, in agreement with the Assistant Regional Director, that no evidence was submitted to support a violation of Section 19(a)(3) of the Order.

With respect to remaining portions of the complaint dismissed by the Assistant Regional Director, I find that, under all of the circumstances, a reasonable basis for the complaint exists, and, accordingly, the subject case is remanded to the Assistant Regional Director for reinstatement of those portions of the complaint and the issuance of a notice of hearing. In this regard, in addition to the issue of the alleged improper interrogation of Rockwell by the Respondent regarding the authorship of a union leaflet, issues which should be explored at the hearing should include the following:

1. Did the Respondent detail Rockwell out of her permanent job because of her union membership or union activities?
2. Did the Respondent deny long term training to Rockwell because of her union membership or activities?

3. Did the Respondent deny Rockwell recognition as the elected Federal Women's Program Coordinator because of her union membership or activities?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-3-74



Charles Barnhill, Jr., Esq.  
Davis, Miner, Barnhill & Bronner  
22 East Huron Street  
Chicago, Illinois 60611

365

Re: Office of Economic Opportunity  
Region V  
Chicago, Illinois  
Case No. 50-9142

Dear Mr. Barnhill:

I have considered your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the subject case alleging violations of Section 19(a)(1), (2), (3), and (5) of the Executive Order.

Under all of the circumstances, I find that no reasonable basis was established for the 19(a)(2), (3) and (5) portions of the complaint but that a reasonable basis exists for the 19(a)(1) allegation. Accordingly, the Assistant Regional Director is directed to reinstate the complaint as to the 19(a)(1) allegation and issue a notice of hearing.

Among the issues which should be explored at the hearing are the following:

1. Did the Respondent violate Section 19(a)(1) of the Order by its memorandum dated March 14, 1972, to the President of OEO Employees Union, Local 2816, American Federation of Government Employees, AFL-CIO?
2. Did the settlement by the parties of a U. S. District Court suit alleging violations of constitutional rights of the Complainant also resolve the instant unfair labor practice complaint?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 3, 1974

William R. Tait, Jr., Esq.  
McNerney, Page, Vanderlin & Hall  
433 Market Street  
Williamsport, PA 17701

366

Re: U. S. Department of Justice  
Bureau of Prisons  
Washington, D. C.  
Case No. 20-4276 (CA)

Dear Mr. Tait:

I have considered carefully your request for review in which you seek reversal of the Acting Assistant Regional Director's dismissal of the complaint, as amended, in the above-named case, alleging violation of Section 19(a)(1), (2), (4), and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that under all of the circumstances further proceedings on the subject complaint are unwarranted. Thus, I find that you have not established a reasonable basis for the complaint that the Activity interfered with Mr. Medford's rights assured by the Order and discriminated against him because of his union membership or activities. Nor does the evidence establish a reasonable basis for the complaint on any other ground. In the request for review, additional evidence is offered regarding Mr. Medford's attendance at a meeting of the incentive awards committee in his capacity as union representative, and events occurring at that meeting. This matter is raised for the first time in the request for review. As there is no allegation that this evidence is new discovered, was previously unavailable, or that other unusual circumstances exist, it cannot be considered, being raised for the first time in the request for review. See, in this regard, Report on a Ruling of the Assistant Secretary No. 46. (Copy enclosed).

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

APR 23 1974

Mr. George Hardy  
International President  
Service Employees International  
Union, AFL-CIO  
900 17th Street, N. W.  
Washington, D. C. 20006

367

Re: Veterans Administration Hospital  
Butler, Pennsylvania  
Case No. 21-3923(RO)

Dear Mr. Hardy:

This is in connection with your request for review seeking reversal of the Report and Findings on Objections of the Acting Assistant Regional Director, which sustained certain objections filed by the National Association of Government Employees, Local R3-74, the Petitioner in the subject case, to an election held on February 27, 1974, and ordered a rerun election.

It was concluded that your request for review cannot be considered as your organization is not a party to the subject case, having failed to intervene timely pursuant to the Assistant Secretary's Regulations as previously ruled by the Assistant Regional Director on November 5, 1973, which ruling was sustained by the Assistant Secretary on January 4, 1974.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



4-24-74

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

368

Re: Veterans Administration  
Data Processing Center  
Austin, Texas  
Case No. 63-4760(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings under Section 19(a)(2) are unwarranted in that a reasonable basis has not been established with respect to the allegation that management encouraged or discouraged membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment. However, I find that a reasonable basis for a 19(a)(1) complaint has been established based on the alleged disparaging statements concerning a union officer, made in the presence of other employees, by an alleged representative of the Activity.

As I am persuaded that sufficient evidence has been presented in the instant case to establish a reasonable basis for the complaint under Section 19(a)(1), your request for review is granted, in part, and the case is remanded to the Assistant Regional Director who is directed to reinstate that portion of the complaint alleging a violation of 19(a)(1) and to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



4-30-74

Mr. George Tilton  
Associate General Counsel  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

369

Re: Naval Missile Center  
Point Mugu, California  
Case No. 72-4379

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Objections in the above named case.

It is found that the request for review in this matter is procedurally defective in that, contrary to the requirement of Section 202.6(d) of the Regulations of the Assistant Secretary, a copy of the request for review was not served on the Assistant Regional Director, although you were advised to do so in the decision of the Assistant Regional Director.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4-30-74

370



Mr. Joseph J. Chickillo  
3922 Pechin Street  
Philadelphia, Pa. 19128

Re: National Federation of  
Federal Employees  
Washington, D.C.  
Case No. 20-4300 (CO)

Dear Mr. Chickillo:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violations of Section 19(b)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, as found by the Assistant Regional Director, I find that the National Federation of Federal Employees (NFFE) did not violate Section 19(b)(1), (2) and (6) of the Order by refusing to provide you with legal counsel at a hearing pertaining to "Discrimination and Equal Employment Opportunity" complaints filed against the Naval Air Engineering Center as there is no evidence that the failure or refusal to provide such legal counsel was based on invidious or discriminatory reasons. Moreover, I note that a NFFE representative was designated to act as your representative at the hearing involved.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 30, 1974

Mr. George Tilton  
Assistant General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

371

Re: U. S. Army Aviation Systems  
Command  
St. Louis, Missouri  
Case No. 62-3092(RO)

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal, based on procedural grounds, of your objections to the conduct of the runoff election in the above captioned case.

Under the particular circumstances of this case, it was concluded that your request for review should be granted. Thus, the evidence established that subsequent to a runoff election held on January 17, 1974, timely objections were filed by the National Federation of Federal Employees (NFFE) on January 23, 1974. Thereafter, the evidence demonstrates that, within the prescribed ten day period subsequent to the filing of its objections, the NFFE attempted to file supporting evidence with the appropriate Area Administrator but such evidence was not received by the latter because it was returned to the NFFE on January 31, 1974, by the St. Louis Central Postal Station for insufficient postage. Subsequently, the NFFE resubmitted the supporting evidence which was received by the appropriate Area Administrator on February 5, 1974.

Based on the foregoing, it was found that in view of the demonstrated good faith attempt by the NFFE to submit supporting evidence in the subject case within the prescribed time period, it would be inappropriate to dismiss the NFFE's objections herein on

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

the basis of untimeliness. See; in this regard, Section 206.8(b) of the Assistant Secretary's Regulations. Accordingly, it was concluded that the subject case should be remanded to the Assistant Regional Director for reinstatement of the dismissed objections and for consideration of such objections on their merits.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

April 30, 1974

David G. Jennings, Esq.  
Goodstein and Jennings  
2124 Dorchester Road  
North Charleston, South Carolina 29405

372

Re: Charleston Naval Shipyard  
Charleston, South Carolina  
Case No. 40-4978(CA)

Dear Mr. Jennings:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by Mr. J. A. Crayson, an individual, alleging that Charleston Naval Shipyard, Charleston, South Carolina (Activity) violated Sections 19(a)(1) and (4) of Executive Order 11491, as amended.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. The evidence reveals that Mr. Grayson is a chief Steward for the Federal Employees Metal Trades Council of Charleston (MTC). Under the provisions of the negotiated agreement between MTC and the Activity, Council Chief Stewards are allotted up to twelve hours official time each week for the purpose of representing unit employees. The agreement also provides that time spent in consultation with the Activity will not be charged against the weekly allotment. On two occasions, April 13 and May 25, 1973, Mr. Grayson requested official time, which requests were rejected by his supervisors in the belief that Mr. Grayson had used the time available time in those weeks. In both instances, Mr. Grayson immediately asked for annual leave to pursue his request with the Industrial Relations Office of the Activity and subsequent investigation by that office showed that he did have time available, which time he subsequently was allowed to use. Mr. Grayson filed grievances, pursuant to the negotiated agreement, to have reinstated the annual leave he had used to correct what were later shown to be mistakes on the part of his supervisors. In each case, his grievance prevailed and his annual leave was reinstated. Official passes which MTC representatives must have approved by their supervisors, prior to their using official time, state the places a representative may go in pursuance of his function. On May 21, 1973, Mr. Grayson was reprimanded for having been in an unauthorized location on April 25, 1973, while using official time for union representation duties.



Under all of the circumstances, I find that the evidence fails to establish a reasonable basis for the subject complaint. Rather, the evidence established that the denials of official time herein were based on a misunderstanding as to whether time already spent on union business should be charged to the twelve hour allotment for representation or to the apparently unlimited time allotted for consultation. Further, I find that there was insufficient evidence to establish a reasonable basis for the complaint that the reprimand by the Activity was discriminatorily motivated. Finally, it is found that no evidence was presented to establish a reasonable basis for the Section 19(a)(4) allegation of the complaint.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

5-14-74



Mr. Stephen D. Poor  
National Field Representative  
National Treasury Employees  
Union  
Suite 1101 - 1730 K Street, N. W.  
Washington, D. C. 20006

373

Re: Internal Revenue Service  
Southeast Region  
Chamblee, Georgia  
Case No. 40-5246 (CA)

Dear Mr. Poor:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed by the National Treasury Employees Union and NTEU Chapter No. 070 alleging violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances disclosed by the investigation in the subject case, I conclude, in agreement with the Assistant Regional Director and essentially for the reasons advanced by him in his decision, that a reasonable basis for the complaint in this matter does not exist.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



5-14-74

Mr. Wallace Roney  
Acting President  
Washington, D. C., U.S. Marshals  
Association, Ind.  
Post Office Box 1349  
Washington, D. C. 20013

374

Re: U. S. Marshals Service  
District of Columbia  
Case No. 22-5174 (RO)

Dear Mr. Roney:

I have considered carefully your request for review of the Acting Assistant Regional Director's dismissal of the RO petition filed in the above-named case by the Washington, D. C. United States Marshals Association, Ind.

I find that the Acting Assistant Regional Director's dismissal action was warranted as the subject cross-petition was not timely filed in accordance with Section 202.5(b) of the Assistant Secretary's Regulations and in the absence of sufficient evidence establishing good cause for extending the posting period of the initial petition in Case No. 22-5070 (RO). Further, I find no indication of any improper statements or conduct on the part of any LMSA Area Office employee, other than your bare assertions, which in any way might have prejudiced your position in this matter.

The allegation raised for the first time in your request for review that the American Federation of Government Employees, Local 2272's waiver of exclusive recognition in Case No. 22-2070 (RO) was illegal and invalid cannot be considered. Evidence or information furnished for the first time in a request for review will not be considered by the Assistant Secretary. See, in this regard, Report Number 46 (copy enclosed).

Under all of these circumstances, your request that the dismissal of the subject petition by the Acting Assistant Regional Director be reversed, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAY 14 1974

Mr. E. V. Curran  
Director  
Office of Labor Relations  
Department of Transportation  
Federal Aviation Administration  
800 Independence Avenue, S. W.  
Washington, D. C. 20590

375

Re: Federal Aviation Administration  
Washington, D. C.  
Case No. 22-5142(AP)

Dear Mr. Curran:

I have considered carefully your request for review of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability.

In your request for review, you contend that those policies and practices which are derived from the Federal Aviation Administration's (FAA) System Error Review Reporting Program are not covered specifically in the negotiated agreement between the FAA and the Professional Air Traffic Controllers Organization, affiliated with the Marine Engineers Beneficial Association, AFL-CIO (PATCO) and, thus, are not grievable under that agreement by virtue of the proscription contained in Section 13(b) of Executive Order 11491, as amended. In addition, you disagree with the Assistant Regional Director's finding that the requirement of recertification is a condition of employment affecting the working conditions and the retention of air traffic controllers and argue that, in the instant case, the grievant's assignment to training due to his involvement in a "systems error" had no effect on his working conditions or his retention. You allege further that as the FAA's Orders 8020.3A and 7210.3A were basically unchanged from October 1, 1972, predating the execution of the negotiated agreement, effective April 4, 1973, the Assistant Regional Director failed to note that Article 5, Section 2 of the negotiated agreement requires consultation with the PATCO ". . . prior to implementing changes in personnel policies . . ." In this respect, you maintain that, as no personnel policy changes were effected subsequent to the negotiation of the agreement, the FAA had no obligation under the agreement to consult with the PATCO on any aspect of the System Error Review Reporting Program. Finally, you contend that the System Error Review Reporting Program is an operational matter and, thus, under Section 12(b) of the Order is not a matter subject to negotiation or consultation with the PATCO.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



MAY 14 1974

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Under all of the circumstances, I agree with the conclusion of the Assistant Regional Director that the unresolved issues herein involve the interpretation and application of the negotiated agreement and, thus, are arbitrable pursuant to the terms of that agreement. In my view, the grievance in this case has resulted in a dispute between the parties as to the interpretation and application of certain express provisions of the negotiated agreement. In this regard, particularly noted were the parties' opposing positions with respect to the scope and intent of Article 5 of the agreement as applied to the instant grievance, and the provision of Article 7, Section 8, of the agreement which states that "disputes" under Article 5 shall be considered disputes involving the interpretation and application of the agreement. On the basis of the above, I find that the grievance involved herein should be resolved in accordance with the negotiated grievance arbitration procedure. Other arguments which you raise in your request for review are best left to the arbitrator for decision on the merits of the grievance.

Accordingly, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Ronald L. Owens  
8485 Dover Way  
Arvada, Colorado 80005

Re: Airways Facility Sector  
Federal Aviation Administration  
Denver, Colorado  
Case No. 61-2274(DR)

Dear Mr. Owens:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your petition in the subject case seeking to decertify Local 2665, American Federation of Government Employees, AFL-CIO (AFGE) as the exclusive representative of a unit of all nonsupervisory electronic technicians and Wage Board employees assigned to the Denver Airways Facility Sector (Activity).

I find, in agreement with the Assistant Regional Director, that dismissal of the petition in this matter is warranted. Thus, the instant petition was deemed to be untimely on its face in that it was not filed within the prescribed 60 to 90 day period prior to the expiration of the negotiated agreement between the Activity and the AFGE. As a consequence, the petition is barred under Section 202.3(c) of the Assistant Secretary's Regulations. Further, I find no probative evidence to support your contention that you were given erroneous information by a Labor-Management Services Administration official with respect to the date upon which you could file your petition in a timely manner.

Under the foregoing circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

5-31-74



Michael L. Shakman, Esq.  
Devoe, Shadur & Krupp  
203 South LaSalle Street  
Chicago, Illinois 60604

377

Re: VA Research Hospital  
Chicago, Illinois  
Case No. 50-11052(RO)

Dear Mr. Shakman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's finding that the existing negotiated agreement between the Activity and Veterans Administration Independent Service Employees Union (Independent) does not constitute a bar to an election in the subject case.

In agreement with the Assistant Regional Director, I reject your contention that the existing agreement bars the petition filed herein by Local 73, General Service Employees Union, Service Employees International Union, AFL-CIO (GSEU). As the one year extension of the agreement occurred approximately four months before the original termination date of the agreement, such extension is viewed as being premature and, therefore, cannot serve as a bar to a timely petition. Your attention in this regard is directed to Section 202.3(e) of the Regulations of the Assistant Secretary which relates to this point. In this regard, it is noted that the change in the agreement bar rule from two to three years in 1972 was not intended to provide a means for acting inconsistent with the premature extension rule contained in the Regulations. Under these circumstances, the petition in the subject case which was filed by GSEU on August 31, 1973, and which date falls within the open period defined by Section 202.3(c)(1) of the Regulations, is considered to be timely.

Accordingly, your request for review, seeking reversal of the action of the Assistant Regional Director rejecting your challenge to the subject petition as untimely, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

May 31, 1974

378

Mr. William R. Cole  
3641 Marvin  
St. Louis, Missouri 63114

Re: United States Army  
Adjutant General Publications  
Center  
St. Louis, Missouri  
Case No. 62-3838 (CA)

Dear Mr. Cole:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's dismissal of the complaint in the above named case, alleging violation of Section 19(a)(1), (2), (4), and (5) of Executive Order 11491, as amended.

I find that while the 19(a)(4) allegation contained in your complaint was not cited, either specifically or in substance, in the pre-complaint charges filed with the Commander of the U. S. Army Adjutant General Publications Center (Activity) on September 21, 1973, your 19(a)(2) allegation was not only specifically cited, but the substance of this allegation was incorporated clearly into the September 21, 1973, letter of charges. Thus, while I agree with the Assistant Regional Director's determination that your 19(a)(4) allegation cannot be considered in view of its failure to meet the pre-complaint charge requirements of Sections 203.2(a)(3) and 203.3(a)(3) of the Assistant Secretary's Regulations, I have determined that your 19(a)(2) allegation should be considered to be a part of the instant complaint.

I conclude, in agreement with the Assistant Regional Director, that based on Section 19(d) of the Order, your 19(a)(1) and (2) allegations cannot be entertained. In this regard, I find that all of the issues which you raise in your 19(a)(1) and (2) allegations have been fully grieved through step three of the negotiated grievance procedure and, thus, these same issues may not be raised also as unfair labor practices under Section 19 of the Order. On the above basis, I agree with the dismissal of the 19(a)(1) and (2) allegations as contained in the instant complaint.

While I agree with the Assistant Regional Director's conclusion that further proceedings on your 19(a)(5) allegation are unwarranted, I find that the Commanding Officer's refusal to continue to arbitration of Mr. Fulkerson's grievance, after processing it through the third

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5-31-74



step of the negotiated grievance procedure, established a reasonable basis for a complaint under Section 19(a)(6) of the Order, although Section 19(a)(6) was not specifically alleged to have been violated in the instant complaint. See, in this regard, U. S. Department of the Air Force, Air Force Communications Service (AFCS), 2024th Communications Squadron, Moody Air Force Base, Georgia, A/SLMR No. 248, in which the Assistant Secretary adopted an Administrative Law Judge's recommendation to treat a complaint as charging a violation of a particular section of the Order (numerically omitted) where "the body of the complaint charges conduct that would be a violation of that subsection . . . ."

In finding a reasonable basis for the complaint under Section 19(a)(6), I note particularly that the negotiated agreement between the parties was executed on May 5, 1970, was an agreement of indefinite duration, and, therefore, was still in effect at the time Mr. Fulkerson's grievance was filed. Thus, in view of the fact that the negotiated agreement involved herein was entered into prior to November 24, 1971, the otherwise applicable provisions of the Order, as amended, contained in Section 13(d), as implemented by Part 205 of the Assistant Secretary's Regulations, were inoperative. In light of this finding, I have determined that the Order's unfair labor practice procedures would be the appropriate vehicle for determining the issue of the Activity's refusal to arbitrate the subject grievance. See Norfolk Naval Shipyard, A/SLMR No. 290 and Puget Sound Naval Shipyard, Department of the Navy, Bremerton, Washington, A/SLMR No. 332.

As I am persuaded that sufficient evidence has been presented in the instant case to establish a reasonable basis for the complaint under 19(a)(6), your request for review is granted, in part, and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint, and, upon appropriate amendment by the Complainant consistent with the above rationale, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Otto J. Thomas  
President, Overseas Federation  
of Teachers  
DGF HS Box 19  
NavSta - Rota  
FPO New York 09540

379

Re: Department of Army  
U. S. Dependents School  
European Area  
Torrejon, Spain  
Case No. 22-3988 (RO)

Dear Mr. Thomas:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objections of the Acting Assistant Regional Director, which found your objection to the conduct of the election in the subject case to be without merit.

In your objection you state that a voter appeared at a time close to but prior to the scheduled closing of the polls and that she was not permitted to vote on the basis that the ballot box had been sealed and the polls were closed. In agreement with the Acting Assistant Regional Director, I find your objection to be without merit. Thus, the evidence disclosed that observers for all of the parties had agreed that when the designated closing hour arrived the polls should be closed, there being no other individuals present and seeking to vote. Under these circumstances and noting that all of the observers signed the "Certification on Conduct of Election" form, certifying, among other things, that the balloting was fairly conducted and that all eligible voters were given an opportunity to vote their ballots in secret; it was concluded that the Acting Assistant Regional Director's finding that the objection had no merit was proper.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JUN 18 1974

Mr. Lewis M. Scaggs  
Representative for Complainant  
P. O. Box 205  
Warner Robins, Georgia 31093

Mr. John W. Davis  
Route 1, Box 6  
Marshallville, Georgia 31057

380

Re: American Federation of Government  
Employees, Local 987, AFL-CIO  
Warner Robins, Georgia  
Case No. 40-5215(CO)

Gentlemen:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violation of Section 19(b)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, it is found that the American Federation of Government Employees, Local 987, AFL-CIO did not violate Section 19(b)(1) and (2) of the Order, as alleged, by surveillance of the Complainant's activities and by making charges about the Complainant to his supervisor. In my view, the mere fact that the Complainant was asked to join the Respondent labor organization and declined, without more, does not establish a reasonable basis for the complaint in the absence of any evidence that the Complainant was singled out for disparate treatment because he is not a member of, or refused to join, the Respondent labor organization.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 20210



JUN 18 1974

Mr. Philip R. Kete  
President, Local 2677  
Representative, National Council of  
OEO Locals  
American Federation of Government  
Employees, AFL-CIO  
1200 19th Street, N. W.  
Washington, D. C. 20506

381

Re: Office of Economic Opportunity  
Case Nos. 22-5178 (AP) and  
22-5189 (AP)

Dear Mr. Kete:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above named cases.

In your request for review, you contend that the Assistant Regional Director erred in stating that "an arbitrator may not be put in a position of interpreting the agreement which might result in a finding repugnant to the Executive Order" and make a finding that "the decision whether or not to fill vacancies is a right covered by Section 12(b) of the Executive Order." In this connection, you contend that "the Assistant Regional Director should not have applied any rule in determining arbitrability other than those used by courts in the private sector and that the rule enunciated by him is inconsistent with the intent of the Executive Order and the rights of the parties." In addition, you contend that the Assistant Regional Director's finding that the question of whether to fill vacancies is covered by Section 12(b) should be reversed as not being based on authority or reason, and that arbitration should not be barred simply because an arbitrator may find that a remedy is not available.

In agreement with the Assistant Regional Director, I find that the issues herein involve management rights under Section 12(b) of the Order and, thus, are outside the scope of the contractual grievance-arbitration procedure. See Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31; Charleston Naval Shipyard, FLRC No. 72A-33; and Naval Public Works Center, Norfolk, Virginia, FLRC No. 71A-56. In this regard it was noted that the gravamen of your grievance involves the Activity's failure to post and fill certain vacancies. In my view, the filling of vacancies is a right clearly

reserved to management under Section 12(b) which, in accordance with the rationale of the above cited decisions of the Federal Labor Relations Council, is not subject to waiver through negotiations.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



"JUN 18 1974

John P. Helm, Esq.  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W  
Washington, D. C. 20006

382

Re: Department of Army  
Rock Island Arsenal  
Headquarters and Installation  
Support Activity  
Rock Island, Illinois  
Case No. 50-9668(RO)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of objections to the election filed by Local 15, National Federation of Federal Employees (NFFE) in the above named case.

Section 202.20(b) of the Regulations of the Assistant Secretary provides, in pertinent part, that "The objecting party shall bear the burden of proof at all stages of the proceedings regarding all matters raised in its objections."

I conclude, in agreement with the Assistant Regional Director, and based on his reasoning, that the National Federation of Federal Employees, Local 15, failed to meet its prescribed burden of proof in support of the objections filed. In reaching my conclusion herein, I have considered the matters raised by your request for review, but find that they point to no facts which would require a different conclusion.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Objections is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON, D.C. 2010



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JUN 18 1974

Mr. Howard L. Yingling  
Director, Providence Office  
Defense Mapping Agency  
Topographic Center  
Brookside Avenue  
West Warwick, Rhode Island 02893

383

Re: Defense Mapping Agency  
Topographic Center  
Providence Office  
West Warwick, Rhode Island  
Case No. 31-7566(AP)

Dear Mr. Yingling:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above named case.

In your request for review, you allege that the American Federation of Government Employees, Local 1884, AFL-CIO (AFGE) has not demonstrated that the Providence Office has violated, misinterpreted or misapplied any provision of the negotiated agreement between the Providence Office and the AFGE. The essence of your position is that the filling of the position of Security Specialist (General) is not subject to the provisions of Article XXI, entitled "Promotions", of the negotiated agreement and that the content of the subject grievance is not appropriate for processing under the negotiated grievance procedure.

In my view, the subject agreement does not clearly exclude the position of Security Specialist (General) from the bargaining unit, and hence it was concluded that the filling of this position arguably is subject to the provisions of Article XXI of the agreement. It is concluded therefore that the issue as to whether questions related to the procedure in filling of the position of Security Specialist (General) are subject to the terms of Article XXI of the agreement should be resolved through the negotiated grievance-arbitration procedure.

Accordingly, and noting the absence of any evidence which would indicate that the Assistant Regional Director acted arbitrarily or failed in any way to give adequate consideration to all the evidence and arguments presented in the case, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



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WASHINGTON, D.C. 20210



JUN 18 1974

Ms. Gene Bernardi  
President, Local 3217  
American Federation of  
Government Employees, AFL-CIO  
Arden Road  
Berkeley, California 94704

384

Re: Pacific Southwest Forest and  
Range Experiment Station,  
Forest Service, USDA  
Berkeley, California  
Case No. 70-4033

Dear Ms. Bernardi:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's partial dismissal of the 19(a)(5) and (6) complaint in the above-named case.

In agreement with the Assistant Regional Director, I find that a reasonable basis was not established with respect to those allegations of the complaint which were dismissed. Thus, no reasonable basis was found for those allegations of 19(a)(6) violations detailing certain alleged failures to consult with the Complainant. As the Assistant Regional Director found, in some cases the evidence showed that no changes in policies or practices had, in fact, occurred. In other instances he found that the alleged reorganization plans, over which bargaining on implementation and impact might properly take place, had not been completed. I also agree that the alleged failure to consult on "many policies and directives . . . because of refusal to supply the Local with copies of Washington Office letters and directives" is too broad an allegation, and that, as the Assistant Regional Director found, "there is no blanket requirement that all communications between a national office and its management in the field on such a broad range of subjects be provided to a labor organization." Finally, I agree with the Assistant Regional Director that under the circumstances of this case no reasonable basis was shown in support of the alleged violation of Section 19(a)(5).

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's partial dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



JUN 18 1974

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

385

Re: Department of Army  
U. S. Army Training Center  
Fort Leonard Wood, Missouri  
Case No. 62-3831(RO)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the dismissal by the Assistant Regional Director of an objection to the runoff election in the subject case held on February 7, 1974.

Your objection alleges that a flyer was circulated by Local R14-32 of the National Association of Government Employees (NAGE) on February 5, 1974, the contents of which warrant the setting aside of the runoff election. However, no evidence was submitted by you that the flyer was in fact distributed on this date, nor did you attempt to refute the NAGE's rebuttal to your objection to the effect that the flyer in question was not used in the runoff election campaign. Therefore, I find that the Assistant Regional Director was correct in dismissing your objection for failure to meet your burden of proof pursuant to Section 202.20(b) of the Regulations of the Assistant Secretary.

Under these circumstances, I find it unnecessary to consider the additional matters raised in your request for review as the arguments relating to them are premised upon the unsupported allegation that the flyer was used during the runoff election campaign.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objection involved herein, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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Accordingly, your request for review is granted and the Assistant Regional Director's finding to the contrary is hereby set aside.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

7/8/74

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Re: Office of Economic Opportunity  
Washington, D. C.  
Case No. 22-5216(AP)

Ms. Bertha Carpenter  
Chief Steward  
American Federation of Government  
Employees, AFL-CIO, Local 2677  
National Council of OEO Locals  
1200 19th Street, N. W.  
Washington, D. C. 20506

Dear Ms. Carpenter:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case wherein he found that the issues raised in the grievance were not arbitrable under the terms of the negotiated agreement and the provisions of Executive Order 11491, as amended.

In your request for review, you assert, in pertinent part, that whether Section 6 of the amendments to the agreement has been complied with is an ". . . arbitrable question of fact and contract interpretation."

In agreement with your contention, I find that the subject grievance regarding whether or not the Office of Economic Opportunity (Agency) has complied with Section 6 of the amendments to the agreement is a matter subject to the negotiated grievance and arbitration procedures. Thus, you concede that the grievance does not involve the filling of vacancies in the management of the Agency, a subject which would fall under the reserved powers of management under Section 12(b) of the Order. Rather, in my judgment, it involves a dispute as to the proper and intended interpretation and application of certain provisions of the agreement. Therefore, I find that the grievance should be resolved in accordance with the negotiated grievance-arbitration procedure.

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



7/8/74

Mr. Kermit I. Tull  
National Vice President  
AFGE Ninth District  
Suite E  
3214 Tinker Diagonal  
Del City, Oklahoma 73115

387

Re: Headquarters, U. S. Air Force  
Tinker Air Force Base, Oklahoma  
Case No. 63-4765(CA)

Dear Mr. Tull:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed by the American Federation of Government Employees, Local 916, AFL-CIO, alleging violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

It is your position that Section 10(e) of Executive Order 11491, as amended, was violated when a decision was made at a management meeting, in which the grievant and his representatives were excluded, to resolve the grievance in question. You allege that this resolution was intended to show the grievant that his problems could be solved without your assistance. I disagree with your position. In this connection, the Assistant Secretary found a violation under somewhat similar circumstances in Veterans Administration Hospital, Charleston, South Carolina, A/SLMR No. 87. However, unlike the situation in the instant case, the labor organization in the cited case sought to continue processing the grievance within the negotiated grievance procedure, and was refused. In the case at hand, there is no evidence that you sought to process the grievance further under the negotiated procedure prior to the filing of the unfair labor practice charge. As there was no evidence that the Activity's resolution of the grievance was intended to bypass the exclusive representative or any provisions of the negotiated grievance procedure, I conclude that the complaint was properly dismissed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



7/8/74

John J. D'Angelo, Esq.  
Bank and Minehart  
Suite 735 Philadelphia Savings  
Fund Building  
Twelve South Twelfth Street  
Philadelphia, Pa. 19107

388

Re: Air Engineering Center  
Naval Air Support Activity  
Philadelphia, Pa.  
Case No. 20-4311

Dear Mr. D'Angelo:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. As found by the Assistant Regional Director, the 19(a)(4) allegation with respect to discrimination during an Activity reduction in force and all alleged incidents occurring after October 10, 1973, were not included in the pre-complaint charge filed with the Activity on October 10, 1973. Allegations newly raised in a complaint are untimely under Section 203.2(a)(1) of the Assistant Secretary's Regulations and will not be considered. Moreover, there was no evidence that Mr. Chickillo was disciplined or discriminated against for filing a complaint or testifying under the Order. With respect to the 19(a)(1) allegation concerning Mr. Chickillo's non-selection for the positions of Building and Grounds Manager, Supervisory Engineering Technician and Maintenance Superintendent I find no evidence to establish that the Activity's non-selection of Mr. Chickillo for these positions constituted interference with his rights assured under the Order or was based on union membership or union activity considerations. Further, it appears that the charge regarding non-selection for the Maintenance Superintendent position was filed untimely more than six months after the occurrence of the alleged unfair labor practice.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

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WASHINGTON, D.C. 20210



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7/8/74

Mr. Robert S. Kraft  
Haas & Najarian  
Attorneys at Law  
451 Jackson Street  
San Francisco, California 94111

389

Re: American Federation of Government  
Employees, Local 1157, AFL-CIO  
Case No. 70-4178(CO)

Dear Mr. Kraft:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging a violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. In this regard, the statement in the complaint admitting that the Complainant rejected the AFGE's offer of representation on December 23, 1972, was more than the rejection of an individual representative as you contend in your request for review. Instead, under the circumstances, it was viewed as a total rejection of the AFGE's offer of representation. In my view, the Complainant's rejection of representation on December 23, 1972, relieved the Respondent of any obligation under Section 10(e) of Executive Order 11491, as amended, to represent the Complainant at the subsequent hearing.

With regard to your allegation that the Respondent's offer of limited representation and testimony by its officers against the Complainant at the adverse action hearing also was in violation of the Order, I refer you to my decision in United States Department of the Navy, Naval Ordnance Station, Louisville, Kentucky, A/SLMR No. 400 at footnote 5, in which I stated regarding the obligations of a labor organization under Section 10(e) to represent unit employees that "within the context of this obligation clearly an exclusive representative retains discretion to make decisions as to the merits of a particular unit employee's case and to represent the employee

accordingly." Thus, the Respondent had the right to assess the merits of the case and to offer its representation accordingly so long as its decision was not discriminatory and was reached without regard to labor organization membership.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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July 8, 1974

Mr. Joseph Girlando  
National Representative  
American Federation of Government  
Employees, AFL-CIO, Local 3306  
300 Main Street  
Orange, New Jersey 07050

390

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-3125 (R0)

Dear Mr. Girlando:

I have considered carefully your request for review in the instant case seeking reversal of the Assistant Regional Director's dismissal of the subject petition based on untimeliness and on a deficient showing of interest.

In my view, the controlling date in computing the "open" period for the filing of a petition is the terminal date of an agreement. See Assistant Secretary's Report No. 38. In the instant case, the effective date of the agreement was April 13, 1972, and its termination date was two (2) years from its effective date which would be April 12, 1974. Thus, the open period for filing a petition in the instant case would have been 60-90 days prior to April 12, 1974, or during the period January 12, 1974 - February 11, 1974. As your petition was filed on February 11, 1974, it was viewed as timely. Therefore, I am remanding the instant case to the Assistant Regional Director for reinstatement of the petition and for further processing as noted below.

I have been advised administratively, with regard to the dismissal in part based on a showing of interest deficiency, that, subsequent to the dismissal, the Activity submitted a revised list of eligible employees which excluded certain employees classified as "temporary employees." I am directing him to cause a further investigation to be made to determine the eligibility of employees classified as "temporary employees."

I am further directing the Assistant Regional Director to cause an investigation to be made concerning allegations raised

by the incumbent that: (1) the showing of interest was obtained in violation of Section 20 of the Executive Order; (2) the petition was "tainted" because the President of AFGE Local 3306 is a supervisor; and (3) the petition is "tainted" because the President of Local 3306 signed the petition and participated in solicitation of the showing of interest.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

7-26-74

Mr. James L. Neustadt  
Assistant General Counsel  
American Federation of  
Government Employees  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

391

Re: Department of Army  
Baltimore District Corps of  
Engineers  
Baltimore, Maryland  
Case No. 22-5152(CA)

Dear Mr. Neustadt:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a) (1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings are unwarranted in that a reasonable basis for the complaint was not established. Thus, in my view, the incident complained of did not constitute a "formal discussion" concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit within the meaning of Section 10(e) of the Order which would entitle the Complainant to be represented at the discussion in question. See Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLM No. 336, FLRC No. 74A-11.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 26, 1974

Mr. Michael J. Riselli  
General Counsel  
National Association of  
Government Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

392

Re: Department of the Army  
Rock Island Arsenal Headquarters  
U. S. Army Armament Command  
Rock Island, Illinois  
Case No. 50-11059 (RO)

Dear Mr. Riselli:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objection of the Assistant Regional Director.

In your objection, you state that a campaign flyer was distributed by the NFFE during the morning hours of the day of the election, contrary to the ground rules for the election; that the place of distribution was in close proximity to the election polls; and that "numerous copies" of the flyer "were observed in, about, and outside of the cafeteria as early as 7 a.m. and throughout the day in open violation of electioneering ground rules." As you noted, the subject matter of the flyer, a newspaper column by Jack Anderson, has been involved previously in a ruling of the Assistant Secretary in Army and Air Force Exchange Region Warehouse, Fort Bragg, North Carolina, Case No. 40-4365 (copy attached). In that case, the editorial comment added by the party which disseminated the Anderson column was such as to affix the imprimatur of truth to unsupported allegations contained in the article, thereby characterizing those allegations as factual information. Thus, the radio announcements referred to the column and added such comments as, "Now that you know the truth . . . vote for honesty and integrity . . . vote AFGE-AFL-CIO." As distinguished from that case, the editorial comment contained on the flyer with the Anderson article in the instant case takes issue with statistics contained in the item regarding relative membership strength of the NAGE and the NFFE. The comment is introduced with the phrase "You form your own opinion after reading the below", and continues,

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

July 26, 1974

"NAGE presumably told the Washington Merry-Go-Round, for its Washington Post article of October 31, 1972, that 'Lyons heads . . . the 100,000-strong National Association of Government Employees . . . .'

However, the U. S. Civil Service Commission's records published as of November 1972 show that NAGE represented only 83,067 Federal employees."

Further comment in the flyer all goes to the question of membership strength. In agreement with the Assistant Regional Director, I find that the thrust of the editorial comment contained in the flyer was the relative membership strength of the NFFE and the NAGE, brought out by references to specific membership figures contained in an article which was reproduced in its entirety. Although the article did refer to alleged Mafia connections of an officer of the NAGE, it is clear that there was no editorial comment upon the truth or falsity of such allegation and no attempt to affix the imprimatur of truth to the Mafia-link assertions of the article. Moreover, the investigation disclosed no evidence that the flyer was distributed by the NFFE or that the distribution was widespread. At most, four or five copies were found three floors away from the nearest of eight widely separated polling places. Thus, as concluded by the Assistant Regional Director, I find that the burden of proof to support the objection was not met by the NAGE.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objection, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. William J. Barnes  
Business Representative  
District Lodge 74  
International Association of Machinists  
and Aerospace Workers  
800 Elkin Street  
Norfolk, Virginia 23523

393

Re: Department of Navy  
Naval Air Rework Facility  
Norfolk, Virginia  
Case No. 22-5272(AP)

Dear Mr. Barnes:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability.

In your request for review, you state that the grievance filed by the Naval Air Rework Facility (Activity) questioned the unauthorized presence of Mr. C. E. Bozoti, a non-unit employee, in the office provided by the Activity for the exclusive use of the Chairman of the IAM Shop Committee under the terms of Article VI, Section 3 of the negotiated agreement between the Activity and the IAM. You assert that the grievance does not, however, "charge the Union with conducting 'unauthorized business' concerning the use of the Union office space", an issue raised by the Activity's Application.

Under all of the circumstances, I agree with the conclusion of the Assistant Regional Director that the unresolved issues herein involve the interpretation and application of the negotiated agreement and, thus, are arbitrable pursuant to the terms of that agreement. Thus, the subject grievance raises questions regarding the use of the office space provided by the Activity pursuant to Article VI, Section 3 of the negotiated agreement and the intent of the parties as to that section of the agreement, which should be resolved in accordance with the negotiated grievance-arbitration procedure.

Accordingly, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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July 26, 1974

Mr. N. E. Rizzo  
Personnel Officer  
NWS Eastern Region Headquarters  
585 Stewart Avenue  
Garden City, New York 11530

394

Re: National Weather Service  
U. S. Department of Commerce  
Caribou, Maine  
Case No. 31-7565(AP)

Dear Mr. Rizzo:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above named case.

In your request for review, you allege that the Assistant Regional Director did not address himself to the pertinent issues of the case which are: (1) the disciplining of supervisor Godbois by suggesting that he receive a five day suspension; and (2) the suggestion that the grievant be granted eight hours compensatory time off or administrative leave for the next medical appointment of his wife. You contend that your Agency has taken appropriate action in resolving the issue of disciplinary action but complain that the Assistant Regional Director has permitted the National Association of Government Employees (NAGE) to introduce the further question of the nature of the discipline, which you allege is not the issue to be decided. You contend that the direct issues to be resolved by the Assistant Regional Director are whether disciplinary action was taken against the supervisor, and whether the request for compensatory or administrative time is to be granted the aggrieved employee. You also allege that the Assistant Regional Director is ignoring the application of Article IV, Section 1 of the multi-unit agreement between National Weather Service and the NAGE and the supplemental agreement, as the Assistant Regional Director believes arbitration should be invoked even though such resolutions sought are contrary to law and are not resolvable by an arbitrator.

Under all of the circumstances, I agree with the conclusion of the Assistant Regional Director that the unresolved issues herein involve the interpretation and application of a negotiated agreement and, thus, are arbitrable pursuant to the terms of that agreement. Contrary to your contention that the issues involved herein require resolutions that are contrary to law and, thus, are not resolvable by an arbitrator, I find that the immediate issue is the right of the NAGE to take the instant grievance to arbitration. Under the terms of the negotiated agreement, either party unilaterally may invoke arbitration if the matter in dispute is still unresolved. Further, under the unambiguous language of the agreement, a party may file exceptions to an arbitrator's award with the Federal Labor Relations Council. This is confirmed by Article XI, Section 5 of your negotiated agreement. On the basis of the above, I find, in agreement with the Assistant Regional Director, that Article X, Section 2, and Article XI, Section 1 of the negotiated agreement clearly require the processing of a grievance, such as the grievance involved herein, to arbitration at the request of either the Activity or the labor organization, and that the issue raised by the NAGE, i.e. - that it has a right to know the action taken because the remedy it sought was arguably within the authority of the Director of the Agency pursuant to Article X, Section 1 of the agreement - may be considered by an arbitrator pursuant to the parties' negotiated agreement.

Accordingly, and as there is no evidence to support your contention that the Assistant Regional Director has not addressed himself to the pertinent issues of the case, and ignored the application of the appropriate sections of the agreement and supplemental agreement between the parties, your request for review, seeking the setting aside of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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Director is directed to reinstate the complaint and to issue a notice of hearing, absent settlement.

August 22, 1974

Sincerely,

Richard V. Falcon, Esq.  
500 West Baltimore Street  
Baltimore, Maryland 21201

395

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Re: Department of Health, Education  
and Welfare  
Social Security Administration  
Baltimore, Maryland  
Case No. 22-5271(CA)

Dear Mr. Falcon:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of a complaint in the subject case filed by Lawrence R. Ambush, an individual, alleging violations of Section 19(a)(1) and (2) of the Executive Order.

The Acting Assistant Regional Director found that the charge and complaint filed by the Complainant on December 28, 1973, and March 28, 1974, respectively, were untimely basing his conclusion on the fact that May 25, 1973, the date of notification of separation of the Complainant, was the date on which the alleged unfair labor practice occurred. Contrary to the Acting Assistant Regional Director, I find that the controlling dates in this regard are June 28, 1973, the final notification, and June 30, 1973, the actual date of termination of the Complainant's employment. Thus, contrary to the Acting Assistant Regional Director, I conclude that both the charge and the complaint were timely under Section 203.2(a)(2) and (b)(3) of the Assistant Secretary's Regulations.

The Acting Assistant Regional Director further found that the subject complaint did not contain a clear and concise statement of facts to constitute the alleged unfair labor practices, and that no documents were submitted with the complaint from which such information could be extracted. Additionally, he found that the evidence did not sustain the allegations that the Complainant's separation was improper under the Executive Order. Contrary to the Acting Assistant Regional Director, I find that under the circumstances the complaint herein and its attachments with the supplemental facts and exhibits submitted by the Complainant, were sufficient to establish a reasonable basis for the complaint.

Accordingly, your request for review seeking reversal of the dismissal of the complaint is granted and the Assistant Regional

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/27/74



Mr. N. E. Rizzo  
Personnel Officer  
National Weather Service  
Eastern Region  
585 Stewart Avenue  
Garden City, New York 11530

396

Re: National Weather Service  
Pittsburgh, Pennsylvania  
Case No. 21-3997(AP)

Dear Mr. Rizzo:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In your request for review, you assert that in accordance with the negotiated agreement and Federal Personnel Manual requirements the Activity is precluded from considering the remedy sought, that is, the payment of holiday premium pay for days not actually worked by an employee due to a possible violation of scheduling provisions as set forth in the negotiated agreement. You state also that the original scheduling format has been resumed in partial settlement of the grievance herein.

In agreement with the Assistant Regional Director, I find that the subject grievance may be considered by an arbitrator pursuant to the terms of the parties' negotiated agreement.

Accordingly, your request for review, seeking the setting aside of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/22/74



Mr. John Jerome Connerton  
Labor Relations Advisor  
Labor Disputes and Appeals Section  
Labor & Employee Relations Division  
Office of Civilian Manpower Management  
Department of the Navy  
Washington, D. C. 20390

397

Re: Department of Navy  
National Naval Medical Center  
Bethesda, Md.  
Case No. 22-5251(AP)

Dear Mr. Connerton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above named case.

The essence of your position is that Article XIII, Section 1, of the negotiated agreement, does not merely set forth examples of actions which are covered by this Article but refers specifically to adverse actions and those matters which constitute adverse actions. Further, you contend that termination of a probationary employee as defined in the Federal Personnel Manual (FPM), Chapter 315 is not an adverse action. Consequently, as termination of a probationary employee is allegedly not an adverse action, your position is that it is not covered by Article XIII, Section 1 of the negotiated agreement. Moreover, you contend that a probationary employee has no protection or appeals rights unless the parties specifically provided for such in the negotiated agreement and that the parties have not so provided in the negotiated agreement. You further contend that there is nothing in either the bargaining history or past practice providing for such rights and protections.

Under the particular circumstances, I find that the unresolved issues herein involve the interpretation and application of the negotiated agreement and are arbitrable pursuant to the terms of the agreement. In this regard, particularly noted were the parties opposing positions with respect to whether Article XIII, Section 1 of the negotiated agreement applies to probationary employees.

Accordingly, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210

8/22/74



Mr. Robert Weimer, President  
American Federation of Government Employees,  
Local Union 27601, AFL-CIO,  
P.O. Box 11291, Station E.  
Albuquerque, New Mexico 87112

398

Re: Transportation - FAA, Airways  
Facilities Sector  
Albuquerque, New Mexico  
Case No. 63-4904(CA)

Dear Mr. Weimer:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case, alleging violations of Section 19(a)(1), (2), (4), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are unwarranted. Thus, for the reasons cited by the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established in that the evidence does not reveal that the Activity herein interfered with any rights assured by the Executive Order. Further, I am in agreement with the Assistant Regional Director that your pre-complaint charge alleging that the Activity's filing of a CU petition was a violation of Section 19(a) of the Order was untimely and therefore could not be considered. Moreover, I find that there was insufficient evidence presented to indicate that the Activity's filing of the petition was in bad faith or was motivated by a desire to evade negotiating with the AFGE.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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August 22, 1974

Ms. Janet Cooper  
Staff Attorney  
National Federation of Federal  
Employees, Ind.  
1737 "H" Street, N. W.  
Washington, D. C.

399

Re: Treasury Disbursing Center  
Austin, Texas  
Case No. 63-4816(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case filed by NFFE Local 1745 alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In Agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. However, contrary to the Assistant Regional Director, I find that Section 10(e) of the Order sets forth only an exclusive representative's right to be represented at "formal" discussions involving employees in the unit. See in this regard: U. S. Department of the Army, Transportation Motor Pool, Fort Wainwright, Alaska, A/SLMR No. 278; U. S. Army Headquarters, U. S. Army Training Center, Infantry, Fort Jackson Laundry Facility, Fort Jackson, South Carolina, A/SLMR No. 242. In the instant case, the grievant did not seek to be represented by the NFFE Local 1829, the exclusive representative at the Activity, but rather sought to have as her representative an officer of the NFFE Local 1745 which did not have exclusive recognition at the Activity. Thus, because the Complainant, NFFE Local 1745, is not the exclusive representative at the Activity, it has no Section 10(e) rights under the Order.

With regard to your contention that "Section 7(d)(1) of the Executive Order protects an employee's option to choose his own representative in an agency grievance procedure regardless of exclusive recognition," I have held in Fort Wainwright, cited above, that "Section 7(d)(1) does not establish any rights for employees, organizations or associations enforceable under Section 19 of Executive Order 11491, as amended. Rather, I view 7(d)(1) as

delineating those instances in which employees may choose a representative other than their exclusive representative in certain grievance or appellate actions, and those instances in which an agency may consult and/or deal with certain organizations or associations not qualified as labor organizations without violating Section 19 of the Order".

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 22, 1974

Mr. H. M. Bossier  
Business Representative  
AFGE Local No. 40  
P. O. Box 155  
Falls City, Washington 98024

400

Re: U. S. Coast Guard Base  
Seattle, Washington  
Case No. 71-2872

Dear Mr. Bossier:

I have considered carefully your request for review seeking the setting aside of the Assistant Regional Director's approval of the Settlement Agreement in the above-named case.

You state that your only objection to becoming a party to the Settlement Agreement is the lack of a requirement for disciplinary action against a supervisor whose actions were the basis for the instant unfair labor practice complaint. Specifically, you "recommend his forced retirement."

Under all of the circumstances, I conclude that the Assistant Regional Director's approval of the Settlement Agreement was appropriate. Although you assert that the removal of this employee as a supervisor "would be consistent with, and indeed required under GENERAL PROVISIONS / sic / Section 1 of Executive Order 11491," there is no authority granted under the Executive Order for a remedy which would direct the forced retirement or discharge of an employee for participation in the commission of an unfair labor practice.

Accordingly, your request for review, seeking the setting aside of the Assistant Regional Director's approval of the Settlement Agreement in this matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 22, 1974

Mr. Kermit I. Tull  
National Vice President  
AFGE Ninth District  
Suite E  
3214 Tinker Diagonal  
Del City, Oklahoma 73115

401

Re: Department of the Air Force  
Headquarters, Oklahoma City Air  
Materiel Area  
Tinker Air Force Base, Oklahoma  
Case No. 63-4831(AC)

Dear Mr. Tull:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition for amendment of recognition in the above named case.

I find, in agreement with the Assistant Regional Director, that the subject petition for amendment of recognition is not the proper vehicle to consolidate three separate units. Thus, I agree with the Assistant Regional Director that a petition for exclusive recognition (an RO petition) is the appropriate vehicle to use in such circumstances so that the employees involved will be provided the opportunity to express their desires regarding their inclusion in a broadened unit. In this connection, I refer you to the decision of the Assistant Secretary in Headquarters, U. S. Army Aviation Systems Command, St. Louis, Missouri, A/SLMR No. 160, in which the circumstances under which a petition such as that filed in the instant case could properly be filed were clearly defined.

It should be noted that my decision herein does not preclude the parties from engaging in joint negotiations covering any combination of units at any level of the agency where the parties are in agreement that such an arrangement would provide for more meaningful negotiations. This approach has been suggested in Section E.3. of the Study Committee's Report and Recommendations on Labor-Management Relations in the Federal Service (August 1969) which preceded the issuance of Executive Order 11491.

Accordingly, under the circumstances set forth above, your request that the Assistant Regional Director's dismissal action be reversed is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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August 22, 1974

Mr. Michael J. Riselli  
General Counsel  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

402

Re: Department of the Army, Headquarters  
U. S. Army Training Center Engineer  
and Fort Leonard Wood  
Fort Leonard Wood, Missouri  
Case No. 62-3655(RO)

Dear Mr. Riselli:

I have considered carefully your request for review seeking reversal of the dismissal by the Assistant Regional Director of objections to the election held in the instant case.

In your request for review, you take exception on three grounds to the Assistant Regional Director's Report and Findings on Objections. You assert that a certain National Federation of Federal Employees' (NFFE) flyer was distributed through the Activity's official mail system; that the NFFE flyer contained deliberate misrepresentations which affected the results of the election; and that, because of the timing of the NFFE flyer, the National Association of Government Employees (NAGE) had no opportunity for rebuttal.

Under the circumstances, I find that there is insufficient evidence to indicate that the NFFE flyer in question was distributed, as alleged, through the Activity's official base-wide mail system.

With reference to the second objection, regarding the alleged untruthful content of the flyer, the text which is questioned reads in pertinent part as follows:

"Locally, there are two unfair labor practice charges pending in the Department of Labor against NAGE for actions taken at this installation.

"One - a charge brought against them by some of their own people in their present unit, and

"The other - for violations of the Executive Order that governs the conduct of federal employee unions."

As noted by the Assistant Regional Director in his Report and Findings on Objections, the first "charge" referred to was an unfair labor practice complaint (Case No. 62-3834(CO)) filed by two unit employees in a unit represented by the NAGE and which, at the time of the instant election, was under investigation by the St. Louis Area Administrator. In your request for review, you assert that a reasonable voter would read the flyer's description of the first "charge" to mean that some NAGE members filed charges against their own union. I do not agree that such an inference necessarily flows from the language used in the flyer; rather, I find that "their own people in their present unit" also may reasonably be inferred to mean their own present unit people. With respect to the second referenced "charge," I agree with the Assistant Regional Director that the discrepancy in the forum of the appeal in Case No. 63-3712(CO) (Federal Labor Relations Council as opposed to the Department of Labor) is not a misrepresentation or deception which reasonably could have tended to interfere with the free choice of the employees voting in the election.

Moreover, even assuming arguendo that the NFFE flyer involved was untruthful in certain respects, you admit in your request for review that was not until Tuesday, January 15, 1974. In my view, the intervening period of four days afforded the NAGE adequate time to prepare and disseminate a response to the NFFE flyer correcting any alleged misrepresentations contained therein.

Accordingly, under all of the circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objections involved herein, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/22/74



Mr. George Fredericksen  
1714 Kingsway Road  
Norfolk, Virginia 23518

403

Re: U. S. Navy  
Naval Air Station  
Fifth Naval District  
Norfolk, Virginia  
Case No. 22-5256(CA)

Dear Mr. Fredericksen:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above named case alleging violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

It is found that the request for review is procedurally defective in that, contrary to the requirement of Section 202.6(d) of the Regulations of the Assistant Secretary, and the Assistant Regional Director's instructions in his letter dismissing your complaint, a copy of the request for review was not served on the Assistant Regional Director.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/22/74



Mr. Kenneth Bull  
National Representative  
American Federation of Government  
Employees, AFL-CIO  
5001 South Washington  
Englewood, Colorado 80110

404

Re: U. S. Air Force  
Air Force Finance and Accounting  
Center  
Denver, Colorado  
Case No. 61-2315(CA)

Dear Mr. Bull:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all the circumstances, I conclude, in agreement with the Assistant Regional Director and essentially for the reasons advanced by him in his decision, that a reasonable basis for the complaint has not been established. I find that the Activity demonstrated good faith in its willingness to discuss issues with the Complainant following the January, 1974, meeting. In this regard, it is noted that you have not taken exception to the Activity's account of what occurred at that meeting or to the Assistant Regional Director's finding that following the February meeting the Activity continued to demonstrate good faith in its willingness to discuss issues with the Complainant. Thus, I conclude that further proceedings in this matter would not be warranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20110

8/22/74



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Major General Frank A. Bailey  
Base Detachment Commander  
Arkansas Air National Guard  
189 Tac Recon GP (RTU)  
Post Office Box 1211  
Little Rock Air Force Base  
Jacksonville, Arkansas 72076

405

Re: National Guard Bureau  
Arkansas Air National Guard  
189 Tac Recon GP (RTU)  
Jacksonville, Arkansas  
Case No. 64-2290(Arbit)

Dear General Bailey:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability.

In your request for review you contend that the parties clearly defined their intent that the effective date of the negotiated agreement was to be the date that the agreement was approved by the Chief, National Guard Bureau and certain orally agreed conditions had been met. As the agreed conditions were not fulfilled until September 7, 1973, you argue that the agreement was not in full force until that date. In addition, you contend that, in view of Article XXVIII of the agreement, the earliest the agreement could have been in effect would have been August 6, 1973. You also disagree with the Assistant Regional Director's statement that "oral agreements cannot alter a written contract," contending that, "rules and opinions should not be permitted which would prevent the parties from entering into an oral agreement as a result of consulting, conferring and discussing in good faith where a meeting of the minds occur." Finally, you contend for the first time in your request for review that the position of Administrative Technician GS-8 is a supervisory job outside of the exclusive unit and, thus, the procedures contained in Article XIX of the negotiated agreement were not applicable to the selection of a candidate for this position.

Under the particular circumstances of this case, I find, contrary to the Assistant Regional Director, that the effective date of the negotiated agreement herein was August 6, 1973, and

not July 6, 1973. In this connection, it was noted that the Article XXVIII of the agreement provided that the agreement would not be effective until approval by the Chief, National Guard Bureau. The agreement was, in fact, approved by the Chief, National Guard Bureau on August 6, 1973, and thus, became effective on that date. Moreover, it was concluded that because the term of the negotiated agreement herein was clear and unambiguous, it could not be altered on the basis of certain oral agreements allegedly reached after its effective date.

With respect to the arbitrability of the instant grievance, I agree with the conclusion of the Assistant Regional Director that the unresolved issues herein involve the interpretation and application of the negotiated agreement and are arbitrable pursuant to the terms of the agreement. In this regard, particularly noted were the parties' opposing positions with respect to whether the selection of the employee for the position vacancy of Administrative Technician, which occurred after the effective date of the negotiated agreement, was covered by Article XIX of the agreement.

The assertion presented for the first time in your request for review that the position of Administrative Technician is a supervisory position outside of the exclusive unit cannot be considered. It is established policy that evidence or information presented for the first time in a request for review will not be considered by the Assistant Secretary. See, in this regard, Assistant Secretary's Report Number 46 (copy enclosed).

Accordingly, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U. S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D. C. 20210

8-27-74



- 2 -

Mr. Kermitt I. Tull  
National Vice President  
AFGE 9th District  
Suite E  
3214 Tinker Diagonal  
Del City, Oklahoma 73115

406

Re: U. S. Department of Agriculture  
Forest Service  
Ouachita National Forest  
Hot Springs, Arkansas  
Case No. 64-2279(RO)

Dear Mr. Tull:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objection to Conduct of Elections of the Assistant Regional Director, which found your objection to be without merit.

In your objection, you state that William B. Roach, an engineering technician, is a supervisor; that he is acting and serving as temporary President of NFFE Local 796, that he was active as a NFFE President before and during the subject election, and that he campaigned during the campaign period prior to the subject election. You state further that Roach took annual leave in order to campaign and that he was reimbursed for his expenses by NFFE. Your objection is that the outcome of the election was affected because of the campaigning by this alleged supervisor.

You have submitted organizational charts and an official description of Roach's job which might indicate that he is a supervisor of certain employees. As has been previously held, however, actual duties performed, rather than official job titles or descriptions alone, will determine the status of an employee. See, e.g., U. S. Department of the Air Force, Holloman Air Force Base, Alamogorda, New Mexico, A/SLMR No. 235. All the other evidence submitted indicates that, in fact, Roach is not a supervisor. Thus, performance evaluations for the three employees in question were signed by a supervisor who submitted a statement

that he never consults Roach in evaluating these employees. Roach and Roach's supervisor also state that Roach does not supervise the employees. All of the employees in question state that to their knowledge Roach is not their supervisor. Aside from giving monthly written maintenance requirements to the crew, Roach is available for technical assistance in performing specific jobs but his contacts with the crew are casual and infrequent. Thus, according to a statement by one of the three employees, during the last one-month assignment period, Roach had no contact with the crew after giving them their initial written instructions (which instructions are always approved by Roach's supervisor before they are passed to the crew).

In agreement with the Assistant Regional Director, I conclude that under all of the circumstances the evidence adduced establishes that Roach is not a supervisor within the meaning of the Executive Order.

Accordingly, and noting particularly that Roach appeared on the voter eligibility list without objection by the Intervenor, and also that he was permitted to vote without challenge your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objection to Conduct of Elections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/30/74



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Your request for review refers to other conduct, not set forth in your report of investigation submitted to the Assistant Regional Director, which you allege to be violative of the Order. It is established policy that the Assistant Secretary will not consider such evidence furnished for the first time in a request for review. See, in this regard, Report on a Ruling of the Assistant Secretary, Report Number 46.

Mr. Herbert Cahn  
President, Local 476  
National Federation of  
Federal Employees  
P. O. Box 204  
Little Silver, New Jersey 07739

407

Sincerely,

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3329(CA)

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Dear Mr. Cahn:

In accordance with my letter of July 7, 1974, in which I vacated my ruling of March 4, 1974, denying the request for review in the subject case on the basis of timeliness, I have now considered carefully the merits of your request for review seeking reversal of the Assistant Regional Director's dismissal of the 19(a)(1) and (2) complaint herein.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. Thus, under the circumstances, I find that Mr. Greenman's statement to Mr. Iannacone that he had been seen in the "Should Cost" file did not demonstrate union animus or constitute evidence of discriminatory motivation or the disparate treatment necessary to provide a reasonable basis for the Section 19(a)(1) and (2) allegations in the instant case. Also, in agreement with the Assistant Regional Director, I find that as the agency grievance procedure under which the grievance herein was processed was not the result of any rights accorded individual employees or labor organizations under Executive Order 11491, as amended, the Agency's failure to follow its grievance procedure or its deviation from such procedure, including an attempt to limit the number of representatives representing a grievant, does not, standing alone, interfere with rights protected under the Order. Cf. Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334, FLRC No. 74A-3. Further, noting that the Complainant labor organization in this matter does not hold exclusive recognition for any employees in the unit involved, I agree with the Assistant Regional Director's finding that Section 10(c) of the Order is not applicable in the instant case.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/30/74



Mr. David N. Smith  
Business Agent  
Service Employees International  
Union, Local 626, AFL-CIO  
8004 Mandarin Drive  
Orlando, Florida 32809

408

Re: U. S. Air Force, Billeting Fund  
Patrick Air Force Base, Florida  
Case No. 42-2509(BO)

Dear Mr. Smith:

I have considered carefully your request for review of the Assistant Regional Director's dismissal of the RO petition filed in the above-named case by the Service Employees International Union, Local 626, AFL-CIO.

Under the circumstances herein, I find that there are questions of fact and policy which can be resolved best on the basis of record testimony. Therefore, I am remanding the subject case to the Assistant Regional Director for reinstatement of the petition and issuance of a notice of hearing.

In order that an adequate record be made at the hearing, evidence should be adduced concerning, but not limited to, the following matters:

1. What categories of employees are specifically included in and sought to be excluded from the claimed unit?
2. What is the extent of exclusive representation by labor organizations of the non-appropriated fund (NAF) employees of Patrick Air Force Base?
3. Are there any agreement bars to an election in the petitioned for unit or for any NAF employees at the Base?
4. What is the degree of interchange and transfer between the employee classification(s) in the unit sought and the other NAF employee classifications at the Base?

5. What are the work locations and job contacts between employees within the petitioned for unit and between the employees of the claimed unit and any employees with identical job classifications performing similar functions employed by the remaining NAFs at the Base?

6. Should intermittent employees be included in the petitioned for unit?

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/30/74



Mr. Carl Abramowitz  
207 Hampton Avenue  
Brooklyn, New York 11235

409

Re: Council of Customs Locals,  
AFGE, Locals 2652, 2768, and  
2899, AFL-CIO  
Case No. 30-5569(CO)

Dear Mr. Abramowitz:

This is in connection with your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of your complaint in the subject case alleging violation of Section 19(b) (1) of Executive Order 11491, as amended.

I find that the request for review is procedurally defective in that it was filed untimely with the Assistant Secretary. The Acting Assistant Regional Director issued his decision in this matter on July 31, 1974, and, as you were advised therein, a request for review of that decision must have been received by the Assistant Secretary no later than the close of business August 13, 1974. Your request for review, mailed August 13, 1974, was, in fact not received in my office until after the August 13, 1974, due date and, therefore, it was viewed as having been filed untimely.

Under these circumstances, the merits of the subject case have not been considered and your request for review, seeking reversal of the Acting Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/30/74



Ms. Geraldine Dobbs  
President  
American Federation of Government  
Employees, Local 1781  
P. O. Box 5172  
China Lake, California 93555

410

Re: Department of the Navy  
Naval Weapons Center  
China Lake, California  
Case No. 72-4678

Dear Ms. Dobbs:

I have carefully considered your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violations of Section 19(a)(2) of the Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as the subject complaint is untimely filed. Thus, the complaint does not comply with the requirements of Section 203.2(b)(2) of the Assistant Secretary's Regulations which provides that a complaint must be filed within 60 days after "a written decision expressly designated as a final decision on the charge is served by the respondent on the charging party." In this regard, the Activity's final answer to the pre-complaint charge in the instant case was served on Mr. Simshauser's representative, Mr. Oscar Paulsen of the AFGE, on December 28, 1973, and the instant unfair labor practice complaint was not filed until March 4, 1974, over 60 days later. I find, therefore, that the instant complaint was filed more than 60 days subsequent to the Activity's final decision on the pre-complaint charge and thereby failed to satisfy the timeliness requirements of Section 203.2(b)(2) of the Regulations.

With regard to the contention that the December 28, 1973, response by the Activity was not the "letter of decision" promised by the Activity at the parties' December 17, 1973 meeting, I find that the Activity's written response of December 28, 1973, clearly indicated that it was the Activity's final answer to the charge, and thus satisfied the requirements of the Assistant Secretary's

Regulations. Thus, in my view, the evidence in support of the contention that the letter was not the promised "letter of decision," is insufficient to warrant going outside the clear language of the Activity's response of December 28, 1973, which fulfilled the requirements of the Assistant Secretary's Regulations.

Accordingly, under all the circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violations of Section 19(a)(2) of the Order, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

8/30/74



Edward Ferenczy, Chairman  
U.S. Merchant Marine Academy  
Department of Engineering  
Kings Point, New York 11024

411

Re: Department of Commerce,  
U.S. Merchant Marine Academy,  
Kings Point, New York  
Case No. 30-5455(CA)

Dear Mr. Ferenczy:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-name case alleging violation of Section 19(a) (1), (5) and (6) of Executive Order 11491, as amended.

I find that your request for review raises material issues of fact and policy which can best be resolved after a hearing. Accordingly, your request for review is granted, and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint and to issue a notice of hearing in this proceeding.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

August 30, 1974

Mr. John A. Snowberger  
LMR Representative  
American Federation of Government  
Employees, Local 2760  
P. O. Box 11262 - Station E  
Albuquerque, New Mexico 87112

412

Dear Mr. Snowberger:

This is in response to your letter of August 10, 1974, in which you request "review of the refusal to accept an Unfair Labor Practices Complaint and the refusal to accept a written charge of unfair labor practices" on the part of the Dallas Area Director of the Labor-Management Services Administration (LMSA).

Section 6(a) of Executive Order 11491, as amended, (copy enclosed), provides that in matters arising under Section 6(a) of the Order (including the authority to decide unfair labor practice complaints under Section 6(a)(4)) which involve the Department of Labor, "the duties of the Assistant Secretary described in paragraphs [6](a) and (b) of this section shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission." Accordingly, as your complaint alleges an unfair labor practice on the part of the Department of Labor, this matter comes within the jurisdiction of the Civil Service Commission.

The Civil Service Commission Regulations issued under the authority of Section 6(a) of the Order are to be found in 5 CFR Section 711 (copy enclosed). Among other things, you should note that Section 711.102(c) provides that a complaint should be filed with the General Counsel, U. S. Civil Service Commission, Washington, D. C., on forms prescribed by the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

SEPT 13 1974

Mr. William B. Roach  
Gaston Route  
Mt. Ida, Arkansas 71957

413

Re: USDA Forest Service  
Hot Springs, Arkansas  
Case No. 64-2340 (CA)

Dear Mr. Roach:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging that the USDA Forest Service (Activity) violated Section 19(a)(1), (4) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I agree with the Assistant Regional Director that the allegations in your complaint concerning your termination and suspension in 1972 and your reassignment in September 1973, are untimely under the Assistant Secretary's Regulations. Moreover, I agree with his conclusion that Section 19(d) of the Order prohibits the consideration of the allegations in your complaint, including the allegation concerning your administrative reassignment on January 20, 1974, as all such allegations have previously been raised under the Agency grievance or appeals procedure.

Accordingly, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

September 13, 1974

Mr. Arthur B. Johnson  
President, American Federation of  
Government Employees, Social Security  
Local 1336, AFL-CIO  
Box 15281  
Room 1146, 601 East 12th Street  
Kansas City, Missouri 64106

414

Re: Social Security Administration  
Bureau of Retirement and Survivors  
Insurance  
Mid-American Program Center  
Kansas City, Missouri  
Case No. 60-3623(CA)

Dear Mr. Johnson:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by American Federation of Government Employees, Social Security Local 1336, AFL-CIO (AFGE) alleging, in part, that the Social Security Administration, Bureau of Retirement and Survivors Insurance, Mid-American Program Center (Activity), violated Section 19(a)(6) of Executive Order 11491, as amended.

Under all of the circumstances, I find in agreement with the Assistant Regional Director that further proceedings in this matter are unwarranted. It is your contention that the Activity failed to consult and confer with the AFGE prior to the implementation of changes in its policy on the right of union officials serving as acting supervisors to receive official time to conduct union business. In this connection, you claim that in consulting and conferring with the AFGE's Vice President, Treasurer and Head Steward the Activity did not satisfy its bargaining obligation because, allegedly, such officials lacked authority to represent the AFGE.

It was concluded that in meeting and conferring with the AFGE's Vice President, Treasurer, and Head Steward, the Activity satisfied its bargaining obligations under the Order. Thus, these AFGE officials had apparent authority to represent the AFGE in labor relations matters by virtue of the offices they hold and it was incumbent upon them or the AFGE to advise the

Activity of any limitations on such authority. Also, it was noted that the evidence revealed that these officials had served as representatives of the AFGE in the past without any expressed restrictions on their authority.

Accordingly, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

9-13-74

Ms. Janet Cooper  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

Mr. J. Richard Hall  
President, Local 1437  
National Federation of Federal  
Employees  
241 Sixth Avenue  
New York, New York 10014

415

Re: U. S. Department of Army  
Picatinny Arsenal  
Case No. 32-3528(RO)

Dear Ms. Cooper and Mr. Hall:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objections to Conduct of Election of the Assistant Regional Director which found your objections to be without merit.

In your objections, you state that many factors including certain acts and conduct by management, management officials and by the Petitioner, Local 225, American Federation of Government Employees, AFL-CIO, affected the results of the election in the subject case.

In agreement with the Assistant Regional Director, I conclude that you have not met the burden of proof necessary to establish by a preponderance of the evidence that the conduct involved improperly affected the results of the election or that a relevant question of fact exists warranting a hearing.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections to Conduct of Election, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

September 20, 1974

416

Mr. Carl Abramowitz  
207 Hampton Avenue  
Brooklyn, New York 11235

Re: Council of Customs Locals,  
AFGE, Locals 2652, 2768, and  
2899, AFL-CIO  
Case No. 30-5569(CO)

Dear Mr. Abramowitz:

This is in connection with your request for reconsideration of September 8, 1974, with respect to my ruling of August 30, 1974, in the above-named case.

The grounds set forth in your request for reconsideration of my ruling of August 30, 1974, were considered previously in connection with your original submission.

Under these circumstances, I find that your request for reconsideration does not raise additional facts which would require a contrary result. Accordingly, your request for reconsideration is hereby denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

September 26, 1974

417

Ms. Dorothy Crackenberger  
1407 Willard Street  
Sturgis, South Dakota 57735

Re: United States Department of  
Agriculture,  
Farmers Home Administration,  
Huron, South Dakota  
Case No. 60-3700(CA)

Dear Ms. Crackenberger:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging violation of Section "19(a)" of Executive Order 11491, as amended.

I have reviewed the investigative file in this case and I agree with the decision of the Assistant Regional Director for the reasons stated that further proceedings on your complaint are unwarranted. Section 19(a) of the Executive Order prohibits agency management from committing certain defined unfair labor practices. It provides, in part, that agency management shall not --

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order; /this refers to the rights to form, join and assist labor organizations or to refrain from such activity./

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization . . . .

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order.

Thus, Section 19(a) essentially protects Federal employees from discriminatory treatment because of their union activity.

Upon considering the allegations of your complaint in light of the above discussion and, in addition to procedural shortcomings, noting the absence of any evidence of discrimination against you based on union activity, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

September 26, 1974

Mr. John K. Cabral  
American Federation of Government  
Employees, Local 882, AFL-CIO  
2305 So. Beretania Street, Room 103  
Honolulu, Hawaii 96814

418

Re: Department of the Navy  
U. S. Naval Station  
Pearl Harbor, Hawaii  
Case No. 73-558

Dear Mr. Cabral:

Your request for review seeking reversal of the Assistant Regional Director's denial of the Intervenor's (AFGE) motion to dismiss the petition filed by the International Federation of Federal Police (IFFP) in the subject case is denied.

As stated in the Assistant Secretary's Report on a Decision No. 8 (copy attached), no provision is made for the filing of a request for review of an Assistant Regional Director's (formerly Regional Administrator's) action in denying a motion to dismiss a petition. Accordingly, your request for review cannot be considered by the Assistant Secretary. I regret any inconvenience caused by the inadvertent reference to request for review procedures which was set forth in the Assistant Regional Director's denial of the AFGE's motion to dismiss in this matter.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

September 27, 1974

Mr. J. M. Hopperstad  
President  
American Federation of Government  
Employees, Local 1857, AFL-CIO  
5305 Watt Avenue  
P. O. Box 1037  
North Highlands, California 95660

419

Re: Department of the Air Force  
McClellan Air Force Base  
California  
Case No. 70-4232

Dear Mr. Hopperstad:

I have considered carefully your request for review seeking reversal, in part, of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above named case, in which he found certain grievances to be untimely filed, and another grievance to be filed timely and grievable.

In your request for review, you contend that the Assistant Regional Director erred in finding that certain allegations contained in a grievance filed by the American Federation of Government Employees, Local 1857, AFL-CIO (AFGE) were untimely. The evidence revealed that on February 12, 1974, the AFGE filed a grievance against the Activity in which it alleged that the Activity had violated the parties' negotiated agreement by failing to notify or consult with the AFGE concerning a change in a certain job classification. The AFGE amended the grievance on February 23, 1974, to allege that the Activity had violated the negotiated agreement by failing to give the AFGE the opportunity to be present on January 8, 1974, at a formal discussion which involved a grievance concerning the reclassification of the subject position. The Activity had notified the AFGE on October 30, 1973, of the reclassification of the subject position and it had notified the AFGE, on February 27, 1974, of the previous formal discussion on the grievance involving such reclassification. On March 12, the Activity denied the grievance contending that both of the subject allegations were untimely pursuant to Section 4, Step 1 of Article XVI of the negotiated agreement which states that a grievance must be presented "within 15 work days after receipt of the notice of the action, or occurrence of the incident alleged to be a violation of this agreement."

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Contrary to the Assistant Regional Director, and under all of the circumstances, I conclude that a reasonable basis exists to support your contention that the allegation in the instant grievance involving the failure of the Activity to afford the AFGE the opportunity to be present at the formal discussion of January 8, 1974, of the grievance pertaining to the reclassification of the instant position was filed timely. Thus, I conclude that one could reasonably interpret the language of Section 4, Step 1 of Article XVI of the negotiated agreement to mean that a grievance is timely if filed within 15 work days of the time the grievant becomes aware of the alleged violation. Accordingly, and noting that the parties have a negotiated procedure to resolve disputes concerning the interpretation and application of the language of their agreement, I find that the issue as to the timeliness of this allegation should be resolved through the use of the negotiated procedure provided for in Article XVI (Grievance and Arbitration Procedure) of the parties' negotiated agreement.

In agreement with the Assistant Regional Director, I find that the allegation in the grievance involving the failure of the Activity to notify the AFGE or discuss with it the change in the classification of the subject position was filed untimely. In reaching this conclusion, it was noted that the AFGE was advised of the change in classification on October 30, 1973, and that the grievance concerning such reclassification was not filed until February 12, 1974. Further, it was noted that no request for review has been filed concerning the finding of the Assistant Regional Director that a grievance dealing with Article XXXI, Section 1 of the negotiated agreement was timely filed and was grievable.

Accordingly, the request for review, seeking reversal of the Assistant Regional Director's finding concerning the allegation involving the Activity's failure to afford the AFGE the opportunity to be present at the January 8 formal discussion of the grievance on the reclassification, is granted. In addition, the request for review, seeking reversal of the Assistant Regional Director's findings involving the allegation concerning the failure of the Activity to notify or consult with the AFGE on changes in the subject job classification, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

September 27, 1974

Mr. Michael J. Massimino  
President, Local 1340  
National Federation of Federal  
Employees  
P. O. Box 86  
Pomona, New Jersey 08240

420

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, New Jersey  
Case No. 32-3615 (CA)

Dear Mr. Massimino:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint in the subject case alleging a violation of Section 19(a)(1), (5) and (6) of the Executive Order, as amended.

The evidence establishes that the National Aviation Facilities Experimental Center's (Respondent) supplement to FAA Order 3770.2A resulted from a higher level management interpretation of the existing Agency regulation, which interpretation was uniformly applicable to other "appointing jurisdictions" within the Agency. In such circumstances, I find that there is no right established under the Order, which would entitle you to the kind of information, *i.e.*, the process (correspondence between the Respondent, FAA Headquarters and the Civil Service Commission on this matter) and the rationale utilized by higher level agency management in arriving at the interpretation of its own regulation, which was sought in your letter to the Respondent, dated March 27, 1974. With respect to the Respondent's issuance of the local level regulation supplement and any other matters which might have adversely affected the unit employees, the evidence establishes you were given notice of the Respondent's intent to supplement the existing regulation in accordance with the Agency's interpretation and afforded an adequate opportunity to comment thereon prior to the supplement's issuance, but you failed to do so. Under all of the circumstances, therefore, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted.

Accordingly, and as there is insufficient evidence to establish a reasonable basis for your contention that the Respondent violated Section 19(a)(1), (5) or (6) of the Order, and no evidence to support your contention that the Assistant Regional Director decided the merits of the case without fully and fairly considering all relevant evidence, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

7-27-74



Mr. Roy J. Bucholtz  
Assistant Counsel,  
National Treasury Employees Union  
Suite 1101  
1730 K Street, N.W.  
Washington, D.C. 20006

421

Re: Internal Revenue Service  
Greensboro District Office  
Greensboro, North Carolina  
Case No. 40-5314(AP)

Dear Mr. Bucholtz:

I have considered carefully your request for review, and the addendum thereto, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case, wherein he found that the negotiated agreement did not provide for advisory arbitration of whether an employee's downgrading was voluntary or involuntary.

In your request for review you contend that if the employee's request to be downgraded was in fact involuntary, the personnel action becomes a constructive downgrading or an adverse action, and it is undisputed that under Section 32 of the negotiated agreement advisory arbitration is available for adverse actions.

Contrary to the Acting Assistant Regional Director, I conclude that in the particular circumstances of this case both the threshold question of determining whether an involuntary downgrading of an employee is an adverse action and thus subject to advisory arbitration under Article 32 "Advisory Arbitration of Adverse Actions," of the negotiated agreement, as well as a finding on the merits (if the arbitrator determines that such action is subject to the provisions of Article 32) involve questions of interpretation and application of such negotiated agreement and should be resolved through the negotiated procedure.

Accordingly, your request for review is granted and the Acting Assistant Regional Director's finding to the contrary is set aside.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

SEP 27 1974

Mr. Francisco Rivera  
Chief Steward  
American Federation of Government  
Employees  
Local Union 4142  
229 Havana Street  
Corpus Christi, Texas 78405

422

Re: U. S. Army Aeronautical Depot  
Maintenance Center,  
Corpus Christi, Texas  
Case No. 63-4887 (CA)

Dear Mr. Rivera:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging violation of Section 19(a)(2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that insufficient evidence has been presented to establish a reasonable basis to support the complaint that you were denied a promotion because of union activity. Thus, I conclude that the complaint was properly dismissed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

OCT 3, 1974

Mr. Michael J. McMorrow  
Ms. Edna Bee  
U. S. Department of Commerce  
Maritime Commission  
Room 4898-C  
Washington, D.C. 20235

423

Re: Department of Commerce,  
U. S. Merchant Marine Academy,  
Kings Point, New York  
Case No. 30-5455 (CA)

Dear Mr. McMorrow and Ms. Bee:

This is in response to your Motion for Reconsideration or, in the alternative, for Clarification of Order, in the above named case.

The Motion for Reconsideration is hereby denied as, in my view, it does not raise any matter which was not considered previously in connection with the August 30, 1974, disposition of the request for review in the subject case.

Your alternative Motion for Clarification of the Order also is denied. In this connection, it is noted, among other things, that the appropriate interpretation of provisions of the parties negotiated agreement are disputed by the parties and that the Activity acknowledged this disagreement in its response to the request for review in this matter. Under these circumstances, and as the disposition of the remaining aspects of the complaint depend, in part, upon the interpretation of the negotiated agreement, your Motions are hereby denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

10/3/74



424

Ms. Myrtle Lia  
2324 Ft. Stockton Drive  
San Diego, California 92103

Re: Veterans Administration Hospital  
La Jolla, California  
Case No. 72-4646

Dear Ms. Lia:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint filed in the above-named case.

It is found that the request for review in this matter is procedurally defective in that, contrary to the requirement of Section 202.6(d) and Section 203.7(c) of the Regulations of the Assistant Secretary, a copy of the request for review was not served on the Veterans Administration Hospital, La Jolla, California, the Respondent herein, although you were advised that you were required to do so in the decision of the Assistant Regional Director.

Accordingly, the merits of the case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

10-10-74

Mr. Vincent J. Paterno  
President  
Association of Civilian Technicians, Inc.  
343A Hungerford Court  
Rockville, Maryland 20850

425

Re: The Adjutant General,  
State of Illinois,  
Illinois National Guard  
Case No. 50-9685(CA)

National Guard Bureau,  
Washington, D. C.  
Case No. 50-9636(CA)

Dear Mr. Paterno:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaints filed in the above-named cases.

It is concluded that under all of the circumstances a reasonable basis for the Section 19(a)(1) and (6) allegations in the subject complaints was established. Accordingly, your request for review seeking reversal of the dismissal of your complaints in this regard is granted and the Assistant Regional Director is directed to reinstate these allegations in the complaints and to issue a notice of hearing, absent settlement.

With respect to the Section 19(a)(2) allegations in the complaints, it is concluded, in agreement with the Assistant Regional Director, that further proceedings are unwarranted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

OCT 10 1974

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. Robert M. Tobias  
Counsel  
National Treasury Employees Union  
Suite 1101 - 1730 K Street, N. W.  
Washington, D. C. 20006

426

Re: Internal Revenue Service  
Chamblee Service Center  
Chamblee, Georgia  
Case No. 40-5335(CA)

Dear Mr. Tobias:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject complaint filed by the National Treasury Employees Union (NTEU) and NTEU Chapter 070, alleging violations of Section 19(a) (1), (2) and (6) of Executive Order 11491, as amended, by the Internal Revenue Service, Chamblee Service Center, Chamblee, Georgia (Activity).

Under all of the circumstances, including, but not limited to, the Activity's past practice of allowing unit employees to escort National Representatives of the NTEU while such representatives are at the Activity and the parties' divergent characterizations with regard to the October 1973 discussion of the matter between NTEU and Activity representatives, I find that a reasonable basis for the complaint exists with respect to the 19(a)(1) and (6) allegations that the Activity had failed to consult and negotiate with the NTEU with regard to the Activity's November 29, 1973, change in the escort policy.

Accordingly, that portion of the complaint is remanded to the Assistant Regional Director for reinstatement of the 19(a) (1) and (6) allegations of the complaint and the issuance of a Notice of Hearing.

With respect to the Section 19(a)(2) allegations, I find in agreement with the Assistant Regional Director, that the evidence did not disclose a reasonable basis for the complaint with respect to such allegations.

Sincerely,

Paul J. Passer, Jr.  
Assistant Secretary of Labor

October 10, 1974

Mr. Glenn Hicks  
President, National Federation of  
Federal Employees, Local 158  
1730 S. Chapano  
Las Cruces, New Mexico 88001

427

Re: Department of the Army  
White Sands Missile Range  
White Sands Missile Range, New Mexico  
Case No. 63-4930(CA)

Dear Mr. Hicks:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging that the Department of the Army, White Sands Missile Range (Activity) violated Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that the Section 19(a)(1) and (2) allegations contained in the subject complaint were filed untimely in that these allegations were filed less than 30 days subsequent to the date the pre-complaint charge in this regard was filed and prior to any final written decision on the charge. Moreover, I find that, even assuming that such allegations were filed timely, further proceedings would be unwarranted as there is no evidence that the alleged improper treatment accorded Richards and Campos was motivated by anti-union considerations.

Further, in agreement with the Assistant Regional Director, I find that there was insufficient evidence to establish a reasonable basis for the 19(a)(6) allegations in the complaint. Also there was insufficient evidence presented to sustain the allegation that certain employees had cancelled their membership in the NFFE because of improper conduct by the Activity.

Regarding your request that you be afforded the opportunity to present additional evidence should it be determined that the evidence presented previously was insufficient to sustain the complaint, I call to your attention Assistant Secretary's Report

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

October 15, 1974

Number 46 (copy enclosed) which states, in part, that, "...evidence or information required by the Regulations that is furnished for the first time in a request for review, where a Complainant has had adequate opportunity to furnish it during the investigation period ... and prior to the issuance of the Regional Administrator's [now designated as Assistant Regional Director] decision, shall not be considered by the Assistant Secretary."

Under all of these circumstances, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Allen B. Coats  
General Representative  
Metal Trades Department, AFL-CIO  
431 Rio Del Mar  
Vallejo, California 94590

428

Re: San Francisco Naval Public Works Center  
Case Nos. 70-4328 and 70-4309

Dear Mr. Coats:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition filed by Metal Trades Department, AFL-CIO (MTD) in Case No. 70-4328, and his dismissal of the MTD's request for intervention in Case No. 70-4309.

In agreement with the Assistant Regional Director, I find that the petition and the request to intervene, dated July 3, 1974, and received in the San Francisco Area Office, San Francisco, California, on July 10, 1974, were filed untimely and that, therefore, the petition must be dismissed and the request to intervene must be denied for that reason. Thus, the evidence established that the prescribed Notice to Employees of the petition filed by the Activity in Case No. 70-4309 was posted by the latter on June 26, 1974. In accordance with Section 202.5(b) and (c) of the Assistant Secretary's Regulations, a petition or request for intervention must be filed within ten days after the initial date of posting of the notice of petition. Under these circumstances, the last day for the filing of a cross-petition or a request for intervention was July 8, 1974.

In your request for review you state that you were expecting certain documents from the Activity and, therefore, waited until July 8, 1974, to mail the petition and request for intervention. You contend that both the petition and request for intervention were timely filed because they were mailed and postmarked on July 3, 1974, which was the last day of the posting period. However, it is clear that under Section 202.5(c) of the Assistant Secretary's Regulations, "No labor organization may participate to any extent in any representation proceeding unless it has notified the Area Administrator in writing ... of its desire to intervene within ten (10) days after the initial date of posting of the notice of petition ..." (emphasis added).



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

10-15-74



Accordingly, and as good cause has not been shown for extending the period allowed for the timely filing of the petition and request to intervene, your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition in Case No. 70-4328 and denial of the request for intervention in Case No. 70-4309, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Thomas Gosselin  
National Field Representative  
National Treasury Employees Union  
Suite 1101 - 1730 K Street, N. W.  
Washington, D. C. 20006

429

Re: Internal Revenue Service  
Austin Service Center  
Case No. 63-4995(G&A)

Dear Mr. Gosselin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above-named case wherein he found your Application to have been filed untimely.

Contrary to the Assistant Regional Director, I find that the Application herein was timely filed. Thus, I conclude that the prescribed sixty (60) day filing period under Section 205.2(a) did not commence until there was a final written rejection as to the arbitrability of the matters in dispute pursuant to the invoking of arbitration under the negotiated agreement. Therefore, as the arbitration clause of the negotiated agreement was not invoked until March 25, 1974, the Activity's letter in response, dated April 3, 1974, was considered as the final rejection, rather than the letter of March 15, 1974, which was considered as the final rejection by the Assistant Regional Director. Accordingly, and noting that as the final rejection was served by mail, in accordance with Section 206.2 of the Regulations an additional three days are added to the prescribed sixty day period, I find that the instant application docketed June 10, 1974, was filed timely under Section 205.2(a) of the Regulations.

With respect to the question of arbitrability; I conclude that, in the circumstances of this case, both the threshold question of determining whether the placing of a seasonal employee in non-duty status for reasons other than workload is an adverse action and thus subject to advisory arbitration under Article 31 of the negotiated agreement, as well as a finding on the merits, involve questions concerning the interpretation and application of the negotiated agreement and should be resolved through the negotiated procedure.

Accordingly, your request for review is granted and the Assistant Regional Director's finding to the contrary is set aside.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

October 25, 1974

George Tilton, Esq.  
Associate General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

430

Re: Department of Agriculture  
Office of Investigation  
Temple, Texas  
Case No. 63-4992(RO)

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's denial of the request for intervention in the subject case by the National Federation of Federal Employees, Local 1375 (NFFE).

In agreement with the Assistant Regional Director, I find that the request to intervene, dated July 8, 1974, and received in the Dallas Area Office, Dallas, Texas, on July 9, 1974, was untimely filed and must be denied for that reason. In this regard, it was noted that the prescribed Notice to Employees of the petition in this matter, filed by American Federation of Government Employees, AFL-CIO, Local 3542 (AFGE), was posted by the Activity on June 24, 1974, and remained posted through July 5, 1974. This notice reads, in part, as follows:

" . . . that in accordance with the Regulations of the Assistant Secretary, any labor organization, including any incumbent labor organization, having an interest in representing the employees being sought and desiring to intervene in this proceeding MUST submit to the Area Administrator, within 10 days from the date of the posting of this notice /evidence of showing of interest/. . ."  
(Emphasis added)

Although the posted Notice to Employees in and of itself was considered to be adequate notice to the NFFE, the evidence further indicates that the NFFE was notified by letter, dated June 21, 1974, from the Area

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Office of the filing of the AFGE petition in the subject case, which letter attached a copy of the petition, and set forth the requirements of Section 202.5 of the Assistant Secretary's Regulations regarding intervention.

October 25, 1974

Under all of these circumstances, I conclude that the NFFE had actual, as well as constructive, notice of the filing of the AFGE's petition in the subject case and failed to file a timely intervention within the prescribed ten-day period after the initial posting of the notice of petition. See Section 202.5(c) of the Assistant Secretary's Regulations and Report on a Ruling No. 43 (copy enclosed).

Accordingly, and noting that good cause has not been shown for extending the period allowed for timely intervention, your request for review, seeking reversal of the Assistant Regional Director's denial of intervention, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

James R. Rosa, Esq.  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

431

Re: Naval Air Rework Facility  
Pensacola, Florida and  
Secretary of the Navy,  
Washington, D. C.  
Case No. 42-2529(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's partial dismissal of the complaint in the above named case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings with regard to the Section 19(a)(6) allegation against the Secretary of the Navy are unwarranted. Thus, in my view, the obligation to meet and confer under Section 11(a) of the Order applies only in the context of the exclusive bargaining relationship between the exclusive representative and the activity or agency which has accorded exclusive recognition. In this regard, it was noted that the Activity herein and not the Secretary of the Navy accorded recognition to the exclusive representative and is a party to the negotiated agreement that was in effect at all times material herein.

However, under the particular circumstances of this case, I find, contrary to the Assistant Regional Director, that a reasonable basis exists for the 19(a)(1) allegation in the complaint against the Secretary of the Navy. Thus, while the Assistant Regional Director correctly concluded that a derivative 19(a)(1) complaint would be inappropriate in these circumstances, I find that a reasonable basis exists for the complaint against the Secretary of the Navy insofar as it is alleged that the latter independently violated Section 19(a)(1) by improperly interfering with terms of an existing negotiated agreement

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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

between the exclusive representative and the Activity herein. Accordingly, your request for review is granted, in part, and the case is remanded to the Assistant Regional Director who is directed to reinstate the Section 19(a)(1) portion of the complaint against the Secretary of the Navy and, absent settlement, to issue a notice of hearing.

October 25, 1974

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

432

Re: Tobacco Division  
Agricultural Marketing Service  
Case No. 41-3686(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. You contend that the remark by Mr. Ray Douglas, a Tobacco Division Supervisor, to W. T. Church, Acting President of Local 1555, National Federation of Federal Employees (NFFE), that the union should not take on Ms. Pickral's case because "mud would be thrown in the union's face," constituted an improper attempt to discourage NFFE from representing Ms. Pickral. In my view, such statement, standing alone, does not establish a reasonable basis for the complaint. In this regard, it was noted that the remark in question was made in an informal conversation between Douglas and Church with no employees present, that the NFFE was not obligated under Section 10(e) of the Order to represent Ms. Pickral, an employee not in an exclusive bargaining unit, and that the NFFE subsequently represented Ms. Pickral at the proceeding brought under the agency grievance procedure.

Accordingly, as a reasonable basis for the complaint has not been established in this matter, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

10-25-74

Mr. Michael J. Massimino  
President, Local 1340  
National Federation of Federal  
Employees  
P.O. Box 86  
Pomona, New Jersey 08240

433

Re: Federal Aviation Administration  
National Aviation Facilities  
Experimental Center  
Atlantic City, New Jersey  
Case No. 32-3649 (CA)

Dear Mr. Massimino:

I have considered carefully your request for review in which you seek reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case, which alleges violation of Section 19(a) (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are not warranted. Thus, for the reasons cited by the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established in that the evidence does not reveal that the Activity herein improperly failed or refused to meet and confer, upon request, with Local 1340, National Federation of Federal Employees, over the proposed issuance of supplements to certain agency regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

10-25-74

Mr. Alfonso Garcia  
National Representative  
American Federation of  
Government Employees (AFL-CIO)  
5911 Dwyer Road #28  
New Orleans, La. 70126

434

Re: USAE Waterways Experiment Station  
Vicksburg, Mississippi  
Case No. 41-3599(RO)

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition in the instant case filed by the American Federation of Government Employees, AFL-CIO, Local 3310, seeking a unit of all fire fighters at the USAE Waterways Experiment Station, Vicksburg, Mississippi.

I find that the request for review raises questions of fact and policy as to the guard related duties performed by employees classified as fire fighters which can best be resolved on the basis of record testimony. Accordingly, the Assistant Regional Director is directed to reinstate the petition and issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



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WASHINGTON, D.C. 20210

10/25/74



- 2 -

Mr. Larry A. Henson  
Forest Supervisor  
U. S. Department of Agriculture  
Forest Service  
Ozark-St. Francis National Forests  
Russellville, Arkansas 72801

435

Re: U. S. Department of Agriculture  
Forest Service  
Ozark-St. Francis National Forests  
Russellville, Arkansas  
Case No. 64-2268(RO)

Dear Mr. Henson:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's finding that improper conduct had occurred in the subject case warranting the setting aside of the election and the direction of a rerun election.

The Assistant Regional Director determined that a pre-election speech by the Administrator of the Activity's Sylamore Ranger District contained statements "that were incorrect and misleading and other statements which, taken together and in context of the talk as a whole, could possibly have been construed as encouraging employees indifferent as to the outcome of the election, to vote against exclusive representation." He noted in this regard that it is clearly established policy, as expressed in the Order, that agency or activity management must remain neutral in any representation election campaign and that the talk involved herein was confusing and may have left the impression on employees that Activity management was opposed to the election of an exclusive representative.

In your request for review, you disagree with the Assistant Regional Director's characterization of the speech, and you note that officials of the Petitioner, Local 1075, National Federation of Federal Employees, Independent (NFFE), attended the meeting involved and responded affirmatively at least two times when asked if information given was correct. Although you concede that certain information "may not have been completely accurate," you emphasize that there was no intent to misinform. Finally, you argue that the objecting party has

not met its burden of proof in sustaining the objection because "we have received no evidence presented by NFFE to prove the charge," and "it appears the findings have been derived primarily from our own transcript of the meeting in question."

In agreement with the Assistant Regional Director, I find that employees reasonably could interpret the speech involved herein as casting doubt upon the neutrality of the Activity, which neutrality is required in an election campaign conducted pursuant to the Order. In reaching this conclusion, I note especially the inference that the more votes cast, the more chance the NFFE would lose, which inference was clearly left by the Administrator's comment: "if you throw away [the vote] -- and you really don't want a union, but you throw it away and don't bother to vote, then it takes less positive voters for a union." In my judgment, it is important to recognize that neither the intent of the speech nor the lack of protest by the NFFE's representatives who were present is determinative of whether certain conduct may have improperly affected the election herein. Rather, the question in all cases is simply whether the conduct objected to might reasonably be found to have improperly affected the results of the election.

While I shall affirm the Assistant Regional Director's decision to direct a new election in this matter, it should be emphasized that by so doing I do not seek to negate attempts by activity or agency management to urge employees to vote. The objectionable aspect of the speech in this case is the fact that management's position could reasonably be interpreted by employees as opposing the election of the NFFE as exclusive representative. A speech encouraging employees to vote could legitimately inform them that the outcome is determined by the majority of votes cast for or against representation. This message would encourage voting and still give no indication that management has a preference for or against exclusive recognition.

Based on the foregoing circumstances, I find that the burden of proving the objection has been sustained. Further, you have not raised any questions as to the authenticity of your own transcript of the meeting upon which the Assistant Regional Director's findings were based. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections to Conduct of Elections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

10-31-74

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Under these circumstances, your request for review, seeking reversal of the dismissal of the instant complaint by the Assistant Regional Director, is denied.

Sincerely,

Mr. Stanley Q. Lyman  
National Vice President  
Federal Aviation Science and  
Technological Association  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

436

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Re: Federal Aviation Administration  
JFK International Airport  
Jamaica, New York  
Case No. 30-5640(26)

Dear Mr. Lyman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of a complaint filed by the Federal Aviation Science and Technological Association (FASTA), affiliated with the National Association of Government Employees alleging that the Federal Aviation Administration, JFK International Airport violated Section 19(a)(1) and (3) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that because the FASTA did not file a pre-complaint charge in this matter, as required by Section 203.2(a) of the Assistant Secretary's Regulations, dismissal of the instant complaint is warranted. With respect to your contention that the subject complaint be treated as a pre-complaint charge, it was noted that Section 203.2(a) of the Assistant Secretary's Regulations provides, in part, that a charge in writing must be filed directly with the party against whom the charge is directed and the parties involved shall investigate the alleged unfair labor practice and attempt informally to resolve the matter. The instant complaint does not satisfy the foregoing requirements related to a pre-complaint charge. Further, the complaint enclosed with your request for review was not filed in accordance with Section 203.4 of the Assistant Secretary's Regulations which requires, in part, that a complaint be filed with the Area Administrator for the area in which the alleged unfair labor practice occurred.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

10-31-74

Mr. Robert E. Coy  
Assistant General Counsel  
Veterans Administration  
Office of General Counsel  
Washington, D. C. 20420

437

Re: Veterans Administration Center  
Mountain Home, Tennessee  
Case No. 41-3624(AP)

Dear Mr. Coy:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability.

In your request for review you contend that the Assistant Regional Director erred in finding that the February 11, 1974, grievance is subject to arbitration under the negotiated grievance procedure contained in the parties' negotiated agreement because: (1) the grievance does not involve the interpretation or application of the agreement, and (2) the February 11, 1974, grievance was not filed under the negotiated grievance procedure.

Under the particular circumstances of this case, I find, in agreement with the Assistant Regional Director, that the unresolved issues herein involve the interpretation and application of the negotiated agreement and are arbitrable pursuant to the terms of the agreement. In this regard, it was noted that the February 11, 1974, grievance clearly alleged violations of Section 3 and Section 5 of Article XXII of the negotiated agreement. Further, Article XXII, Section 1 of the agreement provides that the negotiated grievance procedure "will be the sole procedure for processing grievance(s) over the interpretation or application of the agreement and covers only those employees included in the recognized unit . . ." And, pursuant to Article XXII, Section 9 of the negotiated agreement, the exclusive representative has made a timely request for arbitration of the dispute.

Based on the foregoing, and noting that Section 13(a) of the Order provides that where a negotiated grievance procedure is available it shall be the exclusive procedure available to unit employees for

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resolving grievances concerning the interpretation and application of the agreement, I find that the subject grievance is arbitrable under the negotiated agreement. Accordingly, your request for review, seeking to set aside the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is: Room 300, 1371 Peachtree Street, N. E., Atlanta, Georgia 30309.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



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complaint alleging violations of Section 19(a)(1) and (6) of the Order, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Richard O. Shave  
President, Local 943  
National Federation of Federal  
Employees  
Post Office Box K-65  
Keesler Station  
Biloxi, Mississippi 39534

438

Re: Keesler Technical Training Center  
Keesler Air Force Base, Mississippi  
Case No. 41-3673(CA)

Dear Mr. Shave:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

It is your contention that the Activity failed to consult with you regarding the "specific car pooling/parking plan which was implemented at this Center," by memorandum dated February 26, 1974.

The evidence reveals that your labor organization was notified at a meeting with the Commanding Officer on February 20, 1974, of the change in local parking policy required by the government-wide energy conservation policy published in the Federal Register and promulgated by the General Services Administration (GSA). Thereafter, on February 26, 1974, the Commanding Officer issued a memorandum to all activities at Keesler Air Force Base to the effect that this GSA policy would be implemented as of March 7, 1974. Despite the above notifications of the required changes, your labor organization failed to request that the Activity meet and confer on either the impact of the change on employees in the unit which you represent or on the procedures for implementing the new policy. Under these circumstances, I find that the Activity was under no obligation to meet and confer with your labor organization on these matters.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-11-74

Mr. Jack L. Copess  
Secretary-Treasurer  
Hawaii Federal Employees Metal Trades  
Council, AFL-CIO  
925 Bethel Street, Room 210  
Honolulu, Hawaii 96813

439

Re: Department of the Navy  
Pearl Harbor Naval Shipyard  
Case No. 73-568

Dear Mr. Copess:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that insufficient evidence has been presented to establish a reasonable basis for the complaint that the Respondent violated Section 19(a)(1) and (6) of the Order. In this regard, I agree with the Assistant Regional Director that, under the circumstances of this case, the failure of the superintendent of Shop 26 to meet immediately with the Union steward, upon the latter's request, instead of the following morning as suggested by the superintendent, did not, standing alone, constitute a failure to meet and confer at a reasonable time with the Complainant as required by Section 11(a) of the Order. Thus, I conclude that the instant complaint was properly dismissed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Passer, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-11-74

Michael Sussman, Esq.  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

440

Re: United States Information Agency  
Broadcasting Service (VOA)  
New York, New York  
Case No. 30-5579(RO)

Dear Mr. Sussman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the petition in the subject case filed by the National Federation of Federal Employees.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that dismissal of the petition in this matter is warranted. Thus, the evidence establishes that the instant petition was not filed within the 90-60 day period prior to the expiration of the negotiated agreement between the Activity and the American Federation of Government Employees, Local 1812, AFL-CIO, covering the claimed employees, and that, consequently, the petition is untimely and is barred under Section 202.3(c) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Passer, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-11-74

Mr. Calvin Williams  
Deputy Regional Director  
Office of Economic Opportunity  
Region IX  
100 McAllister Street  
San Francisco, California 94102

441

Re: Office of Economic Opportunity  
Region IX  
San Francisco, California  
Case No. 70-4236

Dear Mr. Williams:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability.

In your request for review, you contend that the Assistant Regional Director erred in finding that the February 5, 1974, grievance is subject to arbitration under the negotiated grievance procedure. However, I am advised that prior to the date of your request for review, the grievance which is the subject of the Application herein, did, in fact, proceed to arbitration and that prior to the completion of the arbitration process the parties entered into a settlement agreement dated July 18, 1974, which resolved any allegations or claims alleged in the February 5, 1974, grievance.

Pursuant to Section 6(a)(5) of the Order the Assistant Secretary is responsible for deciding "questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement." As the evidence in the instant case reveals that the parties have entered into a settlement agreement, which disposed of the grievance, I find that the issue raised in the instant Application is moot. Accordingly, the Application for decision on grievability or arbitrability in the instant case is dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-11-74

Mr. Ronald L. Crain  
85 Carib Drive  
Merritt Island, Florida 32952

442

Re: National Aeronautics and Space  
Administration  
John F. Kennedy Space Center  
Kennedy Space Center, Florida  
Case No. 42-2497(AP)

Dear Mr. Crain:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case.

In your request for review, you assert that a decision should be rendered on the merits of your grievance which has been processed through the negotiated grievance procedure. In agreement with the Assistant Regional Director, and based upon his fact findings and reasoning, I find that the Application herein should be dismissed.

Accordingly, your request for review, seeking the setting aside of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-25-74

William F. Crowell, Esq.  
Government and Service Employees  
Union, Local 3  
Laundry and Dry Cleaning International  
Union, AFL-CIO  
610 - 16th Street, Room 501  
Oakland, California 94612

443

Re: Department of the Navy  
Navy Exchange  
U. S. Naval Air Station  
Alameda, California  
Case No. 70-4283(27)

Dear Mr. Crowell:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above named case. The Assistant Regional Director found that the Union's April 1, 1974, grievance was filed untimely and, accordingly, he dismissed the subject Application for Decision on Grievability which involves a grievance of April 11 concerning the timeliness of the April 1 grievance.

In your request for review, you assert, in pertinent part, that the Assistant Regional Director's determination that the April 1 grievance was untimely filed is defective because it fails to indicate which time limitation of the agreement assertedly was violated in processing that grievance under the negotiated agreement. Further, you contend that the Assistant Regional Director exceeded his authority in deciding the issue of whether that grievance was filed timely, rather than the issue of whether the matter of timeliness of the April 1 grievance was subject to the grievance and arbitration provisions of the parties' negotiated agreement.

Under all of the circumstances, I find that the grievance of April 11, which concerns the issue of whether the Union's earlier grievance of April 1 had been filed timely in accordance with the agreement, raises a matter involving the interpretation and application of the negotiated agreement. Thus, the grievance of April 11 raises an issue whether, under certain provisions of the negotiated agreement, namely, Article 20, Section 6 and 7(a) and (b), the April 1 grievance was filed timely. Accordingly, as the April 11 grievance is subject to the grievance and arbitration provisions of the parties' negotiated agreement, your request for review is granted and the Assistant Regional Director's finding to the contrary is hereby set aside.

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Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is: 9061 Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

11-25-74

Mr. Phillip R. Kete  
President,  
American Federation of Government  
Employees, Union Local 2677  
1200 - 19th Street, N. W.  
Washington, D. C. 20506

444

Re: Office of Economic Opportunity  
Local 2677,  
National Council of OEO Locals,  
American Federation of Government  
Employees, AFL-CIO  
Case No. 22-5386(AP)

Dear Mr. Kete:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In your request for review, you argue both that the Assistant Regional Director was incorrect in concluding that disputes over compliance with prior arbitration awards are not themselves arbitrable and that, nevertheless, this issue was not before him because the relief you sought in your grievance over the failure to comply with the prior arbitration award was the discipline of the management officials who declined to comply with the prior award, and not the arbitration of questions related to the enforceability of such award.

In agreement with the Assistant Regional Director, I find that the issue raised by the Activity's Application herein is not whether a grievance is arbitrable under a negotiated agreement, but, rather, goes to the enforcement of a prior arbitration award. In my view, the enforcement of a prior arbitration award does not come within the Assistant Secretary's authority under Section 13 of the Order. Similarly, there is no authority granted in Section 13 which would enable the Assistant Secretary to enforce disciplinary action for non-compliance with an arbitrator's award.

Accordingly, your request for review, seeking the setting aside of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

November 25, 1974

John J. Franco, Jr., Lt. Col., USAF  
Labor Relations Counsel  
Office of the Staff Judge Advocate  
Sacramento Air Logistics  
McClellan Air Force Base, California 95652

445

Re: Department of the Air Force  
McClellan Air Force Base,  
California  
Case No. 70-4329

Dear Col. Franco:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case.

In your request for review, you contend that: (1) the timeliness issue raised in this case is not subject to the negotiated grievance procedure, and that such issue should be resolved by the Assistant Secretary; (2) the subject grievance is untimely and, thus, the AFGE is precluded from raising the matter under the negotiated grievance procedure; and (3) even assuming the grievance is found to have been filed timely, the subject matter of the grievance would not be grievable because it involves a promotion to a position which is excluded from the bargaining unit.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that the issues raised in this case should be resolved through the negotiated grievance procedure. In my view, the timeliness issue results from a dispute between the parties as to the interpretation and application of provisions of the negotiated agreement regarding the time period during which grievances may be filed. In this regard, noted were the parties' opposing positions with regard to whether the instant grievance is timely within the meaning of such provisions. As the resolution of the timeliness issue involves the interpretation and application of the negotiated agreement, I find that such issue should be resolved through the negotiated grievance procedure.

With respect to the issue concerning the grievability of the subject matter of the grievance, such issue involves a dispute between the parties as to whether certain provisions of the agreement cover promotions to positions excluded from the bargaining unit. In this connection, noted particularly were the parties' opposing views with

U.S. DEPARTMENT OF LABOR

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WASHINGTON

11-27-77

respect to the scope and intent of Article XXXI, Promotions, of the negotiated agreement. I, therefore, find that the merits of the instant grievance involves a dispute over the interpretation and application of the parties' negotiated agreement and must be resolved in accordance with the negotiated grievance procedure contained in such agreement. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Mr. Endome H. Gilmore  
1531 - 52nd Avenue  
Apartment 201  
Beavor Heights, Maryland 20027

446

Re: Securities and Exchange  
Commission  
Case No. 22-5371 (CA)

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is 450 Golden Gate Avenue, Room 9061, San Francisco, California 94102.

Dear Mr. Gilmore:

Sincerely,

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), (3) and (4) of Executive Order 11491, as amended.

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings on the subject complaint are unwarranted.

Thus, with regard to allegation (a) of the complaint, that on February 13, 1974, the Comptroller of the Respondent "allegedly was a co-conspirator in the denial of /Mrs. Fox's/ civil rights in the non-deduction of her union dues..." for the pay periods from January 20, 1974 to the present, the evidence indicates that Mrs. Fox's dues deduction was cancelled only after she was expelled from the Local of her Union. Moreover, there is insufficient evidence to establish that the Respondent conspired with the Union to cause her expulsion from the Union, which act precipitated the cancellation of her dues deduction in accordance with the requirements of the Federal Personnel Manual.

Allegation (b) of Mrs. Fox's complaint states that her husband sent a telegram on May 13, 1974, to the Secretary of Labor asking him to investigate allegations by her of "bizarre threats and harassments" by the Assistant Personnel Director of the Respondent and by a fellow employee. The evidence discloses that the date of the telegram (attached as Exhibit F to Mrs. Fox's unfair labor practice charge) was, in fact, January 22, 1973, and referred to actions committed prior to that date. The

U.S. DEPARTMENT OF LABOR

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WASHINGTON

11/27/74

evidence also reveals that the acts alleged as unfair labor practices in this portion of the unfair labor practice complaint (attached as Exhibits B and E of the unfair labor practice charge letter) involve events which occurred more than nine months prior to the filing of the instant unfair labor practice complaint. Accordingly, under Section 203.2(b)(3) of the Assistant Secretary's Regulations, such allegations are untimely and may not be considered by the Assistant Secretary.

Finally, allegation (c) of the complaint, alleging continuous and continual harassment concerning Mrs. Fox's position description by her present supervisor, was not included in her unfair labor practice charges dated May 19, 1974, and served upon the Respondent on May 20, 1974. In this regard, Section 203.2(a) of the Assistant Secretary's Regulations requires that a charge be filed and that certain other procedural steps be completed before a complaint is filed. As no charge had been filed in this regard, the Assistant Regional Director properly did not consider this part of the unfair labor practice complaint.

Based on all of the foregoing, your request for review, seeking reversal of the dismissal of the instant complaint by the Assistant Regional Director, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Ms. Janet Cooper  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

447

Re: Department of the Army  
Indiana Army Ammunition Plant  
Charlestown, Indiana  
Case No. 50-11018(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the above-named case filed by NFFE Local 1581 alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that there is insufficient evidence to establish a reasonable basis to support the complaint that Ms. Phyllis Beyl was singled out for job audit purposes because of her union activity. With respect to your contention that an unidentified management official told Ms. Beyl "...to be careful they are out to get her," it was noted that this unsupported allegation was raised for the first time in your request for review and, therefore, cannot be considered. See, in this regard, Report on a Ruling of the Assistant Secretary, No. 46. Under these circumstances, I conclude that the complaint was properly dismissed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

12-13-74

Mr. Frank B. James  
Executive Vice-President,  
American Federation of Government  
Employees, Local 1122,  
Western Program Center,  
P. O. Box 100  
San Francisco, California 94101

448

Re: Department of Health, Education,  
and Welfare, Social Security  
Administration,  
San Francisco, California  
Case No. 70-4278

Dear Mr. James:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject complaint filed by the American Federation of Government Employees, AFL-CIO, Local 1122 (AFGE) alleging violations of Section 19(a)(1), (2), (4) and (5) of Executive Order 11491, as amended, by the Department of Health, Education, and Welfare, Social Security Administration, San Francisco, California (Activity).

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. As found by the Assistant Regional Director, the allegations in the complaint involve an alleged unilateral change in the criteria under which the Activity grants official time to union officials and result from a dispute between the parties on what constitutes "acceptable justification" under Article 10 of the negotiated agreement for the purpose of granting official time to such union officials. Thus, because the dispute herein involves the interpretation and application of express provisions of the parties' negotiated agreement, I find that the matter should not be considered in the context of an unfair labor practice, but rather, should be resolved through the negotiated grievance procedure contained in the agreement. See Report on a Ruling No. 49 (Copy enclosed). In addition, it was noted that no evidence was presented to support the AFGE's contention that, prior to the alleged unilateral change in policy, the Activity had approved unlimited requests for use of official time by union officials without "presentation of acceptable

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justification."

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

12-13-74

Mr. Carmine T. Corrado  
National Association of Government  
Employees National Representative  
4713 Threchopt Road  
Hampton, Virginia 23666

449

Re: U. S. Army Training Aids  
Management Agency  
Case No. 22-5388(RO)

Dear Mr. Corrado:

I have considered carefully your request for review seeking reversal of the denial by the Acting Assistant Regional Director of your request for intervention in the subject case.

The evidence establishes that the Notice of Petition in the instant case was posted on July 25, 1974, and that the terminal date for intervention was, therefore, August 5, 1974. Your request to intervene was untimely filed in that it was dated August 6, and mailed August 8, 1974.

In your request for review, you note that the Activity failed to notify the NAGE of information required under Section 202.4 of the Assistant Secretary's Regulations. In my view, the failure in this regard did not, standing alone, constitute good cause for extending the time within which intervention must be filed. Rather, in agreement with the Acting Assistant Regional Director, I find that the posting of the prescribed Notice of Petition constituted sufficient notice to afford all interested parties the opportunity to intervene timely in this matter. Under these circumstances, as it is clear that your organization did not timely intervene during the prescribed 10-day posting period, it is concluded that your request for intervention was untimely. See Section 202.5(c) of the Assistant Secretary's Regulations.

Accordingly, your request seeking reversal of the Acting Assistant Regional Director's dismissal of your request to intervene is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

12-13-74

Mr. Charles J. Hall  
Deputy Director of Personnel  
Deputy of the Army  
Headquarters, Military Traffic  
Management and Terminal Service  
Washington, D. C. 20315

450

Re: Headquarters, Military Traffic  
Management and Terminal Service  
Case No. 22-5343(AP)

Dear Mr. Hall:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above-named case.

I agree with your contention that the subject grievance is not arbitrable insofar as it involves Article XX, Details, and Article XVII, Career Program Management. Thus, I find that the consideration of these provisions by an arbitrator would require the interpretation of certain Department of the Army Regulations contrary to the clear proscription in Article XXIII, Section 4 of the negotiated agreement. However, I disagree with your contention that the instant grievance is not arbitrable insofar as it involves Article XVIII, Merit Promotion and Placement, because such Article was not cited specifically in the grievance. In this regard, I note that the grievance herein clearly referred to a violation of "merit promotion principles." I also disagree with your contention that the issue involving Article XIV, Employee Development, should not be referred to arbitration because allegedly such issue is only a minor part of the grievance. In this connection, it was noted that the grievance clearly alleged that such provision was violated because employees, other than the one selected, did not receive training and developmental opportunities. Thus, in my view, a decision as to whether the Activity violated Article XVIII and Article XIV should be resolved through the arbitration process provided for in the negotiated agreement as the matters involved concern the interpretation and application of the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

12-13-74

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 14120, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19106.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

Mr. Donald Moore  
Vice President,  
Local 3217, American Federation of  
Government Employees, AFL-CIO  
2115 - 66th Avenue  
Oakland, California 94621

451

Re: United States Department of  
Agriculture,  
Pacific Southwest Forest and  
Range Experiment Station  
Berkeley, California  
Case No. 70-4254

Dear Mr. Moore:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's decision finding that the grievance in the subject case was not arbitrable under the negotiated agreement.

I find that the request for review is procedurally defective in that it was filed untimely with the Assistant Secretary. The Assistant Regional Director issued his decision in this case on September 19, 1974, and, as you were advised therein, a request for review of that decision must have been received by the Assistant Secretary no later than the close of business October 2, 1974. Your request for review, mailed October 1, 1974, was, in fact, not received in my office until after the October 2, 1974, due date and, therefore, it was viewed as having been filed untimely.

Under these circumstances, the merits of the subject case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



Mr. Louis P. Poulton  
Associate General Counsel  
International Association of  
Machinists and Aerospace Workers  
Machinists Building  
1300 Connecticut Avenue  
Washington, D. C. 20036

12-18-74  
452

Re: Aberdeen Proving Ground  
Aberdeen, Maryland  
Case No. 22-5400(CA)

Dear Mr. Poulton:

Your request to withdraw the request for review of the Assistant Regional Director's dismissal of the complaint in the above-named case has been referred to the undersigned for reply.

The reasons advanced in support of your request to withdraw have been considered carefully, and the request is hereby granted. Accordingly, the subject case is being returned to the Assistant Regional Director for appropriate action.

Sincerely,

Louis S. Wallerstein  
Director

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

12-19-74

Ms. Lisa Renee Strax  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

453

Re: Department of Transportation  
Federal Highway Administration  
Case No. 71-3009

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint filed by Local 1348, National Federation of Federal Employees, in the above-named case alleging violation of Section 19(a)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. Thus, I find that the parties' agreement extending their basic negotiated agreement, which contained a provision for dues withholding, terminated at the close of the negotiations session held on April 17, 1974. In this connection, the evidence revealed that the parties agreed to extend their negotiated agreement, which was scheduled to expire on June 30, 1973, until the termination of the mediation phase of negotiations held under the auspices of the Federal Mediation and Conciliation Service (FMCS). Also, it revealed that the mediation phase of negotiations terminated with the close of the negotiations session held on April 17, 1974, as during that session the FMCS indicated that it was terminating its efforts in the matter and no further negotiations sessions were held or scheduled between the parties. In these circumstances, and as Section 21(a) of the Executive Order provides that the privilege of dues withholding is based on the existence of a withholding agreement, I find that the expiration of the basic agreement, which contained the parties' dues withholding agreement, terminated the Activity's obligation to continue the dues withholding privilege.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

12-19-74

Mr. Milton D. McFarland  
President, American Federation of  
Government Employees, Local 51,  
AFL-CIO  
155 Hermann Street  
San Francisco, California 94102

454

Re: Bureau of the Mint  
U. S. Assay Office  
San Francisco, California  
Case No. 70-4319

Dear Mr. McFarland:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(1), (2) and (5) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that there is insufficient evidence to establish a reasonable basis for the complaint and, consequently, further proceedings in this matter are unwarranted. Thus, there is no evidence to support your contention that the reassignment of the two union stewards was motivated by anti-union considerations or by a desire to isolate such stewards from other employees in the bargaining unit. Regarding the second allegation, the evidence indicates that the foreman's admonition to the steward occurred during a safety meeting and after the steward attempted to restrict the foreman from discussing matters which the steward viewed as not being related to safety. In my view, this isolated admonition is insufficient to establish that the Complainant was denied appropriate recognition or that employees were coerced in the exercise of their rights under the Order.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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DEC 24 1974

Mr. Cullen P. Keough  
Assistant Regional Director  
U. S. Department of Labor  
Room 2200 Federal Office Building  
911 Walnut Street  
Kansas City, Mo. 64106

455

Re: Department of Air Force  
Ellsworth Air Force Base, South Dakota  
Case No. 60-3412(RO)  
FLRC No. 73A-60

Dear Mr. Keough:

On October 30, 1974, the Federal Labor Relations Council (Council) set aside the Assistant Secretary's denial of the request by the National Federation of Federal Employees, Local 179 (NFFE) to intervene in the above named case and remanded the matter to the Assistant Secretary for appropriate action consistent with the Council's decision.

Under the circumstances of this case, the Council disagreed with the Assistant Secretary's determination that the NFFE's failure to serve simultaneously on all interested parties its request to intervene, as required by Section 202.5(c) of the Assistant Secretary's Regulations, warranted denial of the intervention request. The Council was of the view that the Assistant Secretary's application of his Regulations did not assure that the NFFE's right to participate in the proceeding was protected, and that the denial of the intervention herein abridged the right of the affected employees to select the exclusive representative of their choice. In this connection, the Council noted that the NFFE had complied with all of the procedural requirements which were contained in a letter it had received from the Area Office and that such letter had made no reference to the requirement for simultaneous service of the NFFE's intervention request on all interested parties. Moreover, the Area Office had notified the NFFE that it had complied with all of the necessary requirements and that its request to intervene was granted at a time when the NFFE could have corrected the deficiency in its intervention request by serving the other parties with a copy of such request. And, further, that the parties had actual notice of the NFFE's intervention request as they had received copies of the Area Office's letter granting the request to intervene so that the service requirement had been met.

In view of the Council's action setting aside the denial of the request to intervene, the instant case should be reopened and the NFFE's request to intervene granted. Further, the election previously held in this matter should be declared void and the Certification of Representative issued to the Petitioner, Local 2228, American Federation of Government Employees, AFL-CIO, as a result of such election, should be revoked. Thereafter, the petition in this matter should be processed in accordance with Part 202 of the Assistant Secretary's Regulations.

Sincerely,

Paul J. Fassler, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

December 24, 1974

Mr. Robert J. Gorman  
President, National Federation of  
Federal Employees, Local 1300  
8 East Delaware Place #3R  
Chicago, Illinois

456

Re: General Services Administration  
Region 5, Federal Supply Service,  
Quality Control Division  
Chicago, Illinois  
Case No. 52-5716 (RO)

Dear Mr. Gorman:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the subject petition filed by the National Federation of Federal Employees, Local 1300.

Under the circumstances herein, I find that your request for review raises issues of fact and policy which can be resolved best on the basis of record testimony. Therefore, I am recommending the subject case to the Assistant Regional Director for reinstatement of the petition and the issuance of a notice of hearing.

In order that an adequate record may be made at the hearing, evidence should be adduced concerning whether or not the claimed employees have been fairly and effectively represented by the Intervenor, American Federation of Government Employees, Local 2075, AFL-CIO. Further, evidence should be adduced concerning the appropriateness of the unit sought by the instant petition.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

Mr. James T. King, Jr.  
Acting Personnel Officer  
U. S. Department of Commerce  
Domestic and International Business  
Administration  
14th & Constitution Ave., N. W.  
Washington, D. C. 20230

DEC 24 1974

457

Re: U. S. Department of Commerce  
Domestic and International Business  
Administration, Phoenix District  
Office  
Phoenix, Arizona  
Case No. 72-4749(RA)

Dear Mr. King:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the RA petition filed in the above-named case.

In your request for review, you indicate that you seek an election in a unit consisting of a single employee and a determination as to whether Executive Order 11491, as amended, requires the Activity to continue to accord recognition to the National Federation of Federal Employees, Local 376, (NFFE) as the exclusive representative in a single employee unit. In Report on a Ruling of the Assistant Secretary, Report No. 44 (copy enclosed), it was concluded that "units of more than one employee were contemplated by the Order and consequently ...a single employee unit is not appropriate for the purposes of collective bargaining." Under these circumstances, I find, in agreement with the Assistant Regional Director, that as the unit involved herein is inappropriate for the purposes of exclusive recognition under the Order, dismissal of the instant petition seeking an election in such unit is warranted. I find also, in view of the inappropriateness of the unit involved, that the Activity is not required by the Order to continue to accord recognition to the NFFE as the exclusive representative of such unit.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Jack L. Copess  
Secretary-Treasurer  
Hawaii Federal Employees  
Metal Trades Council  
825 Bethel Street  
Honolulu, Hawaii 96813

DEC 24 1974

458

Re: Pearl Harbor Naval Shipyard  
Case No. 73-573

Dear Mr. Copess:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. The evidence reveals that an employee, who was being interviewed for the second time by one of the Activity's supervisors in connection with an investigation of another supervisor, requested union representation prior to answering any of the supervisor's questions. The supervisor advised the employee that he could have union representation but that such representation would formalize the meeting and, in any event, he would have to answer the questions. In this connection, the supervisor read to the employee the Activity's regulation regarding the penalties for concealing facts during an investigation.

Under the particular circumstances of this case, I find that the above remarks attributed to the supervisor did not establish a reasonable basis for the instant complaint. Thus, the supervisor did not deny union representation to the employee involved, and the evidence does not establish that the remarks in issue were designed to discourage the employee from seeking such representation. Further, it does not appear that the remarks were motivated by a desire to retaliate against the employee for seeking union representation or were based on any other anti-union considerations.

Accordingly, and noting also that the employee involved was not the object of the supervisor's investigation, your request

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

DEC 24 1974

Mr. Milton D. McFarland  
President, American Federation of  
Government Employees, Local 51,  
AFL-CIO  
155 Hermann Street  
San Francisco, California 94102

459

Re: Bureau of the Mint  
U. S. Assay Office  
San Francisco, California  
Case No. 70-4320

Dear Mr. McFarland:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings are unwarranted in that a reasonable basis for the complaint has not been established. Thus, while I agree with your contention that the pressroom policies in issue involve working conditions, there is insufficient evidence to establish that the Activity's March 19, 1974, memorandum enumerating such policies constituted a change in the existing pressroom policies. Rather, it appears that such memorandum merely reaffirmed and restated existing policies. Under these circumstances, I find that the Activity was not obligated to meet and confer with the Complainant prior to posting the subject memorandum.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

January 3, 1975

Mr. Russ Hatfield  
President  
Federal Employees Metal Trades Council,  
Long Beach - AFL-CIO  
P. O. Box 20310  
Long Beach, California 90801

460

Re: Long Beach Naval Shipyard  
Long Beach, California  
Case NO. 72-4730

Dear Mr. Hatfield:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging violation of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. Thus, I find that the statement made by the Activity's representative, Jim Minks, did not constitute a violation of the Order. In this connection, it was noted that the evidence did not establish that the statement was motivated by anti-union considerations. Nor did the evidence establish that the conduct in question interfered with, restrained, or coerced the Activity's employees in the exercise of their rights assured under the Order or discouraged membership in a labor organization by discriminating against its employees in regard to hire, tenure, promotion, or other conditions of employment. Also, I find no basis to support your contention that the Activity's conduct in refusing to meet with the Complainant concerning Mink's statement violated Section 19(a)(6) of the Order. In this regard, see U.S. Department of Defense, Department of the Army, Army Materiel Command, Automated Logistics Management Systems Agency, A/SLMR No. 211.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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January 3, 1975

Mr. Gordon N. Kellett  
Acting Chief, Civilian Personnel Division  
Directorate of Personnel,  
Training and Force Development  
Headquarters United States Army  
Materiel Command  
5001 Eisenhower Avenue  
Alexandria, Virginia 22304

461

Re: Department of the Army  
U.S. Army Materiel Command  
Watervliet Arsenal  
Watervliet, New York  
Case No. 35-3233(AP)

Dear Mr. Kellett:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability in the above-named case.

In your request for review, you contend that: (1) the agreement provisions concerning training and arbitration should not be considered because these provisions were not raised during the processing of the grievance; (2) the agreement provision regarding training gives the Activity the absolute right to determine training for employees; (3) the Assistant Regional Director refused to consider whether the Activity had discretion concerning the implementation of the Agency directive on race relations/equal employment opportunity training; and (4) the Activity has sole responsibility for informing employees of their rights and obligations under the Equal Employment Opportunity Program pursuant to Chapter 713 of the Federal Personnel Manual.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that the subject grievance is arbitrable. Thus, I disagree with your contention that the grievance is not arbitrable because Article 26, Training and Development, and Article 37, Grievance and Arbitration, cited in the Application, were not alleged specifically during the processing of the grievance. In this connection, I note that the grievance involves a dispute concerning compulsory participation in a training program

and the parties disagree as to whether such dispute is subject to the arbitration procedures in Article 37 of the negotiated agreement. Moreover, as the grievance concerns training, it involves a dispute over the interpretation and application of Article 26 of the Agreement. Also, in my view, the directive requiring participation in the subject race relations/equal employment opportunity program was not issued by an appropriate authority within the meaning of Section 12(a) of the Executive Order and, consequently, such directive may not vary the terms of the existing negotiated agreement. In this regard, see Department of the Navy, Supervisor of Shipbuilding, Conversion and Repair, Pascagoula, Mississippi, A/SLMR No. 390, in which it was determined that appropriate authorities under Section 12(a) of the Executive Order refers only to those authorities outside an agency which are empowered to issue regulations and policies that are binding on the affected agency. Further, there appears to be nothing in Chapter 713 of the Federal Personnel Manual requiring the Activity to use the type of training in question to inform employees about its equal employment opportunity program.

Accordingly, based on the foregoing considerations, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability, is denied.

Pursuant to Section 203.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

1-3-75

Mr. Jack L. Copess  
Secretary-Treasurer  
Hawaii Federal Employees Metal  
Trades Council, AFL-CIO  
925 Bethel Street, Room 210  
Honolulu, Hawaii 96813

462

Re: Department of the Navy  
Pearl Harbor Naval Shipyard  
Case No. 73-574

Dear Mr. Copess:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that there is insufficient evidence to establish a reasonable basis for the complaint and, consequently, further proceedings in this matter are unwarranted. The evidence revealed that during the course of a discussion of a pending wage schedule conversion, and after an employee expressed dissatisfaction with the new wage schedule, a representative of the Activity told the employee that if he did not like his job, he could "quit." In my view, this isolated statement does not constitute a violation of any employee rights assured by the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

January 3, 1975

Mr. James R. Rosa  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

463

Re: Social Security Administration  
Mid-America Program Center, BRSI  
Kansas City, Missouri  
Case No. 60-3836 (CA)

Dear Mr. Rosa:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. It is your contention that the Activity violated Section 19(a)(1) and (6) of the Order by its refusal to comply with the Assistant Secretary's Decision and Order in Department of Health, Education, and Welfare, Social Security Administration, Kansas City Payment Center, Bureau of Retirement and Survivors Insurance, A/SLMR No. 411. The evidence reveals that the Activity filed a timely petition for review of the Assistant Secretary's Decision with the Federal Labor Relations Council (Council) and requested a stay of the remedial order. The above matters currently are pending before the Council.

Under all of the circumstances, I find, in agreement with the Acting Assistant Regional Director, that the matters raised in the subject complaint concern compliance with a remedial order of the Assistant Secretary and do not involve issues which may be raised under Section 19 of the Executive Order. With respect to questions concerning compliance with remedial orders of the Assistant Secretary where requests for stays have been filed, I have been advised that this matter recently has been raised with the Council for its consideration by the American Federation of Government Employees with respect to a petition for review and a stay

requested by the Respondent in Department of the Navy, Naval Air Station, Fallon, Nevada, A/SLMR No. 432, FLRC No. 74A-80.

Based on the foregoing considerations, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

1-13-75



Mr. Frank James  
Executive Vice-President  
American Federation of Government  
Employees, AFL-CIO, Local 1122  
Western Program Center  
P.O. Box 100  
San Francisco, California 94101

464

Re: Department of Health, Education,  
and Welfare,  
Western Program Center,  
Social Security Administration  
San Francisco, California  
Case No. 70-4291

Dear Mr. James:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. Thus, in my view, the Complainant herein did not present sufficient evidence to establish a reasonable basis for the allegation that the assignment of claims authorizers at the Program Center constituted a unilateral change in terms and conditions of employment of unit employees. In this regard, see Section 203.5(c) of the Assistant Secretary's Regulations which provides that the Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint.

Accordingly, as a reasonable basis for the complaint has not been established in this matter, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

January 23, 1975

Mr. Michael M. Goldman  
Assistant Counsel  
National Treasury Employees Union  
1730 K Street, N. W.  
Suite 1101  
Washington, D. C. 20006

465

Re: Internal Revenue Service District,  
Columbia, South Carolina  
Case No. 40-5339(CA)

Dear Mr. Goldman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint under Section 19(a)(2) of the Order has not been established. Thus, I find that, standing alone, the Respondent's alleged threat to disclose personal information about employee McManus if she assisted in a grievance matter does not constitute discrimination in regard to hiring, tenure, promotion or other conditions of employment which would encourage or discourage membership in a labor organization. I am persuaded, however, that a reasonable basis for the complaint has been established under Section 19(a)(1) and (6) of the Order based on the alleged threat to McManus to prevent her from testifying in a grievance proceeding, and the alleged warning not to go to management officials or a union representative about the matter.

As I am persuaded that sufficient evidence has been presented in the instant case to establish a reasonable basis for the complaint under Section 19(a)(1) and (6) of the Order, your request for review in this regard is granted and the case is remanded to the Assistant Regional Director for reinstatement of the complaint, insofar as it alleges violation of Section 19(a)(1) and (6), and for issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

1/22/75



Mr. Thomas Angelo  
Assistant Counsel  
National Treasury Employees Union  
1730 K Street, N. W. Suite 1101  
Washington, D. C. 20006

466

Re: U. S. Civil Service Commission  
Appeals Review Board  
Washington, D. C.  
Case No. 22-5519(CA)

Dear Mr. Angelo:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

With respect to the merits, I find in agreement with the Acting Assistant Regional Director, that further proceedings on the instant complaint are unwarranted. Thus, under the circumstances, I find that the statement at issue, contained in the Respondent Board's decision, did not, standing alone, interfere with, restrain, or coerce employees in the exercise of rights assured by the Order. Nor, in my view, did such statement discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment.

With respect to the additional matters raised in the Respondent's "response" to the request for review, seeking reversal of the Acting Assistant Regional Director's finding that the Complainant had standing to file the instant unfair labor practice complaint, it was noted that Section 203.7(c) of the Assistant Secretary's Regulations provides, in effect, that only a complainant can file a request for review of a dismissal action by an Assistant Regional Director. Moreover, even assuming that the Respondent had standing to file a request for review in the particular circumstances of this case, the above noted Section of the Assistant Secretary's Regulations requires also that a request for review be filed with the Assistant Secretary within ten days of service of the Assistant Regional Director's action. In the instant case, the Respondent did not file a timely request for review concerning the Acting Assistant Regional Director's finding, nor did it request an extension of time in which to file a request

for review. Rather, the Respondent sought only to file a "response" to the Complainant's request for review. Under these circumstances, I find that the additional matters raised in the Respondent's "response" to the request for review, seeking reversal of a finding by the Acting Assistant Regional Director, cannot be considered.

Accordingly, as a reasonable basis for the subject complaint has not been established, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

1/23/75

William B. Peer, Esq.  
Barr and Peer  
1101 - 17th Street, N. W.  
Washington, D. C. 20036

467

Re: U. S. Department of the Air Force  
Grand Forks Air Force Base,  
North Dakota  
Case No. 60-3747(RO)

Dear Mr. Peer:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your RO petition in the above-named case.

I find that the instant case presents factual issues which can be resolved best on the basis of evidence adduced at a hearing. Accordingly, the case is hereby remanded to the Assistant Regional Director for reinstatement of the petition and for the issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JAN 30 1975

Mr. George E. Bowles  
Grand Lodge Representative  
International Association of Machinists  
and Aerospace Workers  
1347 River Street, Room 4  
Honolulu, Hawaii 96817

468

Re: U. S. Army Engineer  
Division, Pacific Ocean /  
Ft. Armstrong  
Honolulu, Hawaii  
Case No. 73-562

Dear Mr. Bowles:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the objections to the election filed by the Hawaii Federal Lodge 1998, International Association of Machinists and Aerospace Workers (IAM), in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the IAM failed to meet its prescribed burden of proof in support of its objections and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul. J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

1/30/75

Mr. L. W. Berglund, Jr.  
Commander, U. S. Navy,  
Assistant Naval Plant Representative  
Naval Air Systems Command  
Naval Plant Representative Office  
Bethpage, New York 11714

469

Re: Department of the Navy  
Naval Air Systems Command  
Bethpage, New York  
Case No. 30-5645

Dear Commander Berglund:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case.

The essence of your position is that the grievance filed by Local 2693, American Federation of Government Employees, AFL-CIO, (AFGE) on behalf of Harvey A. Studen, a probationary employee, is not grievable under the terms of the current negotiated agreement between the Activity and the AFGE because, allegedly, probationary employees have no rights under the agreement. Also, you contend that the instant grievance is barred because the issues in such grievance were litigated previously in an appeal by Studen to the Civil Service Commission.

In my view, the instant grievance involves a matter subject to the grievance procedure contained in the parties' negotiated agreement. Thus, there is no indication in the agreement that probationary employees are not covered by Article XI (Performance Evaluation) and Article XVII (Training) of the agreement. Nor is there any indication that they have no right to process grievances concerning alleged violations of the agreement through the negotiated grievance procedure. Further, in my view, the issues presented in the instant grievance differ from the physical handicap issues involved in the previous appeal to the Civil Service Commission, whose jurisdiction is limited in the case of adverse actions against probationary employees, and, consequently, I find that the grievance is not barred by such appeal.

Accordingly, as the matters in dispute involve the interpretation and application of certain provisions of the parties' negotiated agreement, your request for review, seeking reversal of

the Assistant Regional Director's Report and Findings on Grievability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



1-30-75

Mr. John Helm  
Staff Attorney  
National Federation of Federal Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

470

Re: U.S. Department of Health, Education and  
Welfare, Social Security Administration  
Grand Rapids, Michigan  
Case No. 52-5578(RO)

Dear Mr. Helm:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's denial of intervention by the National Federation of Federal Employees (NFFE) in the above-named case.

The evidence establishes that the Notice of Petition in the instant case was posted on August 16, 1974, and that the terminal date for intervention was, therefore, August 26, 1974. Your request to intervene was untimely filed in that it was dated August 27, and received by the Area Office on August 28, 1974.

In your request for review, you note that the Petitioner, American Federation of Government Employees, Local No. 3272, AFL-CIO (AFGE), failed to name the NFFE as the incumbent labor organization on the instant petition, that the NFFE sought information from the Department of Labor as soon as it became aware of the subject petition, and that NFFE did not receive a copy of the petition from the Department of Labor until August 26, 1974. Also, you allege that the posting of the Notice of Petition should not be held to constitute notice to the NFFE because of alleged collusion between the president of the NFFE Local involved and the AFGE.

In my view, the above noted contentions by the NFFE do not constitute good cause for extending the time period within which intervention must be filed. Rather, in agreement with the Acting Assistant Regional Director, I find that the posting of the prescribed Notice of Petition constituted sufficient notice to afford all interested parties the opportunity to intervene timely in this matter. Moreover, it was noted that the evidence establishes that the NFFE was aware of the filing of the instant petition prior to the posting

of the Notice of Petition. Thus, the NFFE, by letter dated August 14, 1974, made a request for a copy of the instant petition to the Chicago Area Office but made no mention in its letter of any intention regarding intervention. Under these circumstances, and as it is clear that the NFFE did not timely intervene during the prescribed 10-day posting period, it is concluded that your request for intervention was untimely. See, in this regard, Section 202.5(c) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's denial of the NFFE's request to intervene, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20510

1/30/75



Mr. Howard Toy  
Director of Personnel  
Office of Economic Opportunity  
1200 - 19th Street, N. W.  
Washington, D. C. 20506

471

Re: Office of Economic Opportunity  
Case No. 22-5512(AP)

Dear Mr. Toy:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case wherein he found that the issues raised in the subject grievance were grievable under the terms of the parties' negotiated agreement and the provisions of Executive Order 11491, as amended.

In your request for review, you assert, in essence, that the delegation of authority order in question was not a "new regulation" and did not constitute a substantive change in an existing regulation within the meaning of Article 3, Section 6 of the negotiated agreement between the Office of Economic Opportunity (Agency - Applicant) and Local 2677, National Council of OEO Locals, American Federation of Government Employees, AFL-CIO (AFGE). As the Agency Director's power to delegate authority is vested in the Economic Opportunity Act of 1964, as amended, and, in this case, in the rules of the Federal Labor Relations Council (FLRC), you maintain that the consultation requirements of Article 3, Section 6 of the agreement do not apply to the issuance of such a delegation of authority. Moreover, you contend that the Agency Director's decision to delegate authority and to determine to whom such authority should be delegated were both reserved management rights under Section 12(b) of the Order.

In agreement with your contention, I find that the instant grievance regarding whether or not the Agency has complied with Article 3, Section 6 of the negotiated agreement through the issuance of the delegation of authority order in question is patently not a matter subject to the contractual grievance-arbitration procedure. In reaching this result, it was noted that Article 3, Section 6 of the agreement is limited to those matters affecting



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

2/24/75



Mr. Ralph J. McElfresh, Jr.  
President  
International Federation of Professional  
and Technical Engineers  
1126 - 16th Street, N. W., Suite 200  
Washington, D. C. 20036

477

Re: Norfolk Naval Shipyard  
Case No. 22-5532(CA)

Dear Mr. McElfresh:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violation of Section 19(a)(2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director and based on his reasoning, I find that dismissal of the instant complaint is warranted in that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

2-24-75

Richard Remmes, General Counsel  
National Association of Government  
Employees  
285 Dorchester Avenue  
Boston, Massachusetts 02127

478

Re: U. S. Public Health Hospital  
Brighton, Massachusetts  
Case No. 31-8606(CA)

Dear Mr. Remmes:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

In agreement with the Assistant Regional Director, and based upon his reasoning, I find that the evidence presented is insufficient to establish a reasonable basis for the instant complaint. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

2/24/75

Mr. Paul R. Woodman  
President, American Federation of  
Government Employees, Local 2202  
P. O. Box 4336  
Pasadena, California 91106

479

Re: Internal Revenue Service  
Los Angeles District  
Los Angeles, California  
Case No. 72-4736

Dear Mr. Woodman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objections to election, filed by the American Federation of Government Employees, Local 2202, in the above-named case.

In agreement with the Assistant Regional Director and based on his reasoning, I find the dismissal of the objections in this matter was warranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

2/28/75

Mr. George Tilton  
Associate General Counsel  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

480

Re: Massachusetts Army National Guard  
Boston, Massachusetts  
Case No. 31-8853(RO)

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's denial of your motion to dismiss the petition filed by the National Association of Government Employees, Local RI-154, in the above-named case.

No provision is made for filing a request for review of an Assistant Regional Director's action in denying a motion to dismiss a petition. See, in this regard, Report on a Decision of the Assistant Secretary, Report No. 8 (copy enclosed.)

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's action in this matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

February 28, 1975

Mr. James Rosa  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

481

Re: Headquarters, Army and Air Force  
Exchange Service  
Ohio Valley Exchange Region  
Case No. 50-11136(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that there is insufficient evidence to establish a reasonable basis for the instant complaint. Thus, no evidence was presented by the Complainant that the negotiated agreement in question was signed, or was requested to be signed, prior to the filing of the decertification petition in Case No. 50-11122(DR), or that the Respondent refused to sign the agreement prior to the filing of such petition. Rather, it is alleged merely that an initialed copy of the agreement exists which you contend you will present at a later date. In this latter regard, see Section 203.5(c) of the Assistant Secretary's Regulations which provides, in part, that, "The Complainant shall bear the burden of proof at all stages of the proceedings, regarding matters alleged in its complaint. . ." (emphasis added).

Under these circumstances, as there is no evidence that the agreement in question was signed, or was requested to be signed, or that the Respondent refused to sign the agreement, prior to the filing of the decertification petition and as, in my view, the filing of the decertification petition in Case No. 50-11122(DR) raised a valid question concerning representation, I find that the Respondent was not obligated to comply with your request to sign the agreement during the pendency of such petition. Cf. Department of the Navy, Naval Air Rework Facility, Jacksonville, Florida, A/SLMR No. 155.

Accordingly, and noting also that the negotiated agreement herein was not ratified by the local union membership until after the filing of the above-noted decertification petition, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

2-28-75

- 2 -

Mr. Arthur G. Palman  
Regional Personnel Officer  
General Services Administration,  
Region 3  
7th & D Streets, S. W.  
Washington, D. C. 20407

482

Re: General Services Administration  
Region 3  
Case No. 22-5530(AP)

Dear Mr. Palman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In your request for review, you contend that there was no violation of the provisions of the negotiated agreement in issue and, further, that only two of the provisions cited in connection with the grievance are applicable to the matter. In addition, you contend that the agreement does not require consultation with the American Federation of Government Employees, Local 2151 on individual reassignments, that any assignments which have occurred were made consistent with the terms of the negotiated agreement and Executive Order 11491, as amended, and that the matter is not grievable or arbitrable.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the grievance herein is subject to the negotiated grievance and arbitration procedures in the parties' negotiated agreement. Thus, in my view, the evidence establishes that the issues in dispute involve the interpretation and application of certain provisions of the agreement and that the agreement provides a means by which such disputes may be resolved. I therefore, conclude that it will effectuate the purposes of the Order for the parties to resolve the instant dispute through their negotiated procedures.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 14120, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

February 28, 1975

Mr. Thomas J. O'Rourke  
Office of Chief Counsel  
General Legal Services Division  
Room 4134, IRS Building  
1111 Constitution Avenue, N. W.  
Washington, D. C. 20224

483

Re: Internal Revenue Service  
Omaha District Office  
Case No. 60-3722(G&A)

Dear Mr. O'Rourke:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, I find that the instant grievances over entitlement to reimbursement for per diem and travel expenses involve matters concerning the interpretation and application of Article 27 of the parties' negotiated agreement and, therefore, are subject to arbitration under such agreement. In reaching this conclusion, I reject your contention that the Budget and Accounting Act constitutes a statutory appeals procedure within the meaning of Section 13(a) of the Order which would preclude a finding of arbitrability in this matter. Thus, in my view, a statutory appeals procedure is one which establishes a formalized procedure for considering appeals. On the other hand, the Budget and Accounting Act merely provides machinery for claims settlement or adjudication. In this regard, it was noted that the Comptroller General has upheld binding arbitration awards involving the payment of money based on the view that such awards become nondiscretionary agency policies when consistent with law, regulation and the Order. See e.g., Matter of National Labor Relations Board employee, File B-180010, Comptroller General decision issued October 31, 1974. In this latter regard, the Comptroller General has stated that when there is doubt as to whether an award may be properly implemented, a decision from the Federal Labor Relations Council or from the Comptroller General should be sought.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 2200, 911 Walnut Street, Kansas City, Missouri 64106.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

2/28/75

Mr. Val J. Kozak  
Director, Field Operations  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

484

Re: Federal Aviation Administration  
Sector 19,  
Greer, South Carolina  
Case No. 40-5858(RO)

Dear Mr. Kozak:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the RO petition filed in the above-named case.

In agreement with the Assistant Regional Director, I find that the dismissal of the subject cross-petition is warranted on the basis that such petition was not timely filed in accordance with Section 202.5(b) of the Assistant Secretary's Regulations and that there was insufficient evidence to establish good cause for extending the prescribed posting period of the initial petition filed in Case No. 22-5554(RO) and posted at the Activity on October 24, 1974. See, in this regard, U. S. Marshals Service, District of Columbia, FLRC No. 74A-35.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

2/28/75

Mr. Val J. Kozak  
Director, Field Operations  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

485

Re: Federal Aviation Administration  
Sector 31,  
Montgomery, Alabama  
Case No. 40-5859(RO)

Dear Mr. Kozak:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the RO petition filed in the above-named case.

In agreement with the Assistant Regional Director, I find that the dismissal of the subject cross-petition is warranted on the basis that such petition was not timely filed in accordance with Section 202.5(b) of the Assistant Secretary's Regulations and that there was insufficient evidence to establish good cause for extending the prescribed posting period of the initial petition filed in Case No. 22-5554(RO) and posted at the Activity on October 25, 1974. See, in this regard, U. S. Marshals Service, District of Columbia, FLRC No. 74A-35.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject petition, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

3/7/75



Mr. Stanley Q. Lyman  
National Vice President  
National Association of Government  
Employees  
205 Dorchester Avenue  
Boston, Massachusetts 02127

486

Re: Veterans Administration Hospital  
Jamaica Plain, Massachusetts  
Case No. 31-8567(RO)

Dear Mr. Lyman:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objections of the Assistant Regional Director in the above-named case.

In agreement with the Assistant Regional Director and based on his reasoning, I find that your objections are without merit. With respect to your allegations of misconduct in the polling area, it was noted particularly that the employee statements offered in support of such allegations were deficient in several respects. Thus, the statements did not establish the identity of the alleged solicitors, nor did they indicate the time or place of the alleged improper conduct with specificity. Under these circumstances, I find that you have failed to meet the burden of proof in support of your objections as required in Section 202.20(b) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

3-7-75

Mr. Stephen E. Whitehead  
President  
Tidewater Virginia Federal Employees  
Metal Trades Council, AFL-CIO  
Building 402, Norfolk Naval Shipyard  
Portsmouth, Virginia 23709

487

Re: U. S. Department of Navy  
Norfolk Naval Shipyard  
Portsmouth, Virginia  
Case No. 22-5387(CA)

Dear Mr. Whitehead:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed in the above-named case.

It is concluded that, under all of the circumstances, a reasonable basis for the instant 19(a)(2) complaint was established. Accordingly, your request for review, seeking reversal of the dismissal of your complaint, is granted and the Assistant Regional Director is directed to reinstate the complaint and absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

3/11/75

Mr. Wilson R. Hart  
Chief, Equal Opportunity and  
Labor Relations Division  
Directorate of Civilian Personnel  
Headquarters, Cameron Station  
Alexandria, Virginia 22314

488

Re: Defense Supply Agency  
Defense Construction Supply Center  
Case No. 53-7387(AR)

Dear Mr. Hart:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

In your request for review, you contend that the Assistant Regional Director erred in finding subject to arbitration the grievance relating to employee Peterson's suspension. You base your contention that the grievance is not subject to arbitration on the fact that the Board of Appeals and Review (BAR) of the Civil Service Commission affirmed the suspension on its merits.

The BAR acted in this matter pursuant to its jurisdiction to review the sufficiency of an agency's reasons for suspending an employee who is the subject of an adverse action. In view of the jurisdiction of the BAR with respect to the suspension action, I find that further processing of the grievance under the negotiated agreement is precluded under Section 13(a) of Executive Order 11791, as amended, as the matter involved is covered by a statutory appeals procedure. Accordingly, the finding of the Assistant Regional Director that the subject grievance is arbitrable is reversed, and the Application is hereby dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

3/11/75

Mr. Michael J. Riselli  
General Counsel  
National Association of Government  
Employees  
1341 G Street, N. W.  
Washington, D. C. 20005

489

Re: Department of the Army  
Rock Island Arsenal Headquarters  
U. S. Army Armament Command  
Rock Island, Illinois  
Case No. 50-11059(RO)

Dear Mr. Riselli:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the objection to the election filed by the National Association of Government Employees, Local R7-39, in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find no merit to the objection in this matter. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objection, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

3-27-75

490

Mr. Lee A. Holder  
P. O. Box 629  
Oak Harbor, Washington 98277

Re: U. S. Naval Air Station, North Island  
San Diego, California  
Case No. 71-3033(CA)

Dear Mr. Holder:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that the complaint was not filed timely pursuant to Section 203.2 of the Regulations of the Assistant Secretary. Thus, as he noted, the incidents alleged to constitute unfair labor practices occurred on or before May 3, 1973. The charge in this matter was dated July 8, 1974, and the complaint was dated September 26, 1974.

In your request for review, among other things, you allege that the Activity denied you an opportunity to file a timely unfair labor practice complaint due to procedural delays on your grievance concerning a cancellation of home leave and your transfer to the State of Washington. I find that these contentions do not warrant a contrary result in this matter. Moreover, it should be noted that Section 19(d) of the Order precludes the raising of issues as unfair labor practices where, as here, the issues can be raised under an appeals procedure or have been raised previously under a grievance procedure.

Accordingly, under all of these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 27, 1975

491

Mr. Gary B. Landsman  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

Re: General Services Administration  
Region 2  
New York, New York  
Case No. 30-5109

Dear Mr. Landsman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections in the above named case.

In your request for review, you contend that the Assistant Regional Director's decision to issue a Notice of Hearing should be reversed because the evidence adduced in support of the objection involved does not establish a reasonable basis for a hearing; the objection was not served in accordance with the Assistant Secretary's Regulations; and the Area Administrator failed to conduct a proper investigation in the matter. In addition, you request that a certification of representative be issued by the Area Administrator for the professional and nonprofessional employees in Groups (b) and (c) on the grounds that the objection in issue involves only Group (a) and that the employees in Groups (b) and (c) should not be denied exclusive representation pending the final disposition of such objection.

In accordance with Section 202.20(f) of the Assistant Secretary's Regulations, I find that the Assistant Regional Director's decision to issue the instant notice of hearing is not subject to review. Also noting that it appears that the objection herein was filed timely with the Area Office and served on the National Office of the Petitioner, American Federation of Government Employees, AFL-CIO, and the absence of any evidence that the Activity was not served properly, I find that the matters raised in your request for review do not warrant reversal of the Assistant Regional Director's determination that the instant objection was filed in accordance with the Assistant Secretary's Regulations. Moreover, I find that the evidence does not establish that the Area Administrator failed to conduct a proper investigation in this matter.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

March 28, 1975

Finally, as the instant objection involves only Group (a), and the final outcome of the election in Group (a) cannot affect the results of the election in Groups (b) and (c), I agree that the employees in Groups (b) and (c) should not be denied exclusive representation pending the outcome of the election in Group (a). Therefore, I shall direct the Assistant Regional Director to cause the Area Administrator to issue a certification of representative in accordance with Section 202.20(a) of the Assistant Secretary's Regulations for the professional and nonprofessional employees in Groups (b) and (c). Moreover, should the final disposition of the election in Group (a) result in the employees in Group (a) exercising their option to be included in Group (c), the Area Administrator should issue an appropriate amendment to such certification of representative.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied. However, the Assistant Regional Director is directed to cause the Area Administrator to issue a certification of representative for the employees in Groups (b) and (c).

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. James B. Rhoads  
Archivist of the United States  
National Archives and Records  
Service  
General Services Administration  
Washington, D. C. 20408

492

Re: National Archives and Records Service  
General Services Administration  
Washington, D. C.  
Case No. 22-5713(AP)

Dear Mr. Rhoads:

This is in connection with your request for review in the subject case and your request that the time period in which to file the request for review be extended.

I find that both your request for review and your request for an extension of time are procedurally defective in that such requests were filed untimely with the Assistant Secretary. Regarding the request for review, the Acting Assistant Regional Director issued his decision in this matter on January 29, 1975, and, as you were advised therein, a request for review of that decision must have been received by the Assistant Secretary no later than the close of business February 11, 1975. Your request for review was, in fact, not received by my office until February 13, 1975, two days after the request for review in this matter was due and, therefore, it was viewed as having been filed untimely.

As to your request for an extension of time in which to file the request for review, Sections 205.6(b) and 202.6(d) of the Assistant Secretary's Regulations require that, "Requests for an extension of time shall be in writing and received by the Assistant Secretary not later than three (3) days before the date the request for review is due." (Emphasis added). As your request was received on February 13, 1975, two days after the request for review in this matter was due, it also is untimely.

Under these circumstances, and noting that the matters raised in your requests do not, in my view, warrant a contrary result,

the merits of the subject case have not been considered and your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

3-28-75

Marvin T. Harmatz, Esq.  
National Labor Relations Board  
721 - 19th Street, Room 260  
Denver, Colorado 80202

493

Re: National Labor Relations Board  
Denver, Colorado Regional Office  
and  
National Labor Relations Board  
Case No. 61-2289(CA)

Dear Mr. Harmatz:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's partial dismissal of the subject complaint filed by the National Labor Relations Board, Local Union 27 alleging violations of Section 19(a)(1), (2), (4) and (6) of Executive Order 11491, as amended, by the National Labor Relations Board and National Labor Relations Board, Region 27 (Respondent).

In agreement with the Acting Assistant Regional Director and based on his reasoning, I find that a reasonable basis has not been established for allegations 3, 4, 7, 8, 9, 10, 16, 17, 18 and 19 and for the 19(a)(6) portions of allegations 1, 6, 9, and 20 of the complaint and, consequently, further proceedings on such allegations are unwarranted. However, under all of the circumstances, I find that a reasonable basis exists for the 19(a)(1) and (2) portions of allegation 6 in the complaint concerning the failure of the Respondent to timely reevaluate Field Examiner Hjelle.

Accordingly, the request for review, seeking reversal of the dismissal of certain allegations in the complaint, is denied except for the 19(a)(1) and (2) portions of allegation 6 concerning the failure of the Respondent to timely reevaluate Field Examiner Hjelle. In this latter regard, the Assistant Regional Director is directed to reinstate such allegation and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

3-18-75

Mr. Joe C. Wilson  
National Vice President  
National Association of Government  
Employees, Independent  
3300 West Olive Avenue, Suite A  
Burbank, California 91505

494

Re: U.S. Department of Army  
U.S. Army Air Defense Center  
and Fort Bliss  
Fort Bliss, Texas  
Case No. 63-4989(RO)

Dear Mr. Wilson:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the objections to the election in the above-named case.

In agreement with the Assistant Regional Director, I find that dismissal of the objections in this matter is warranted. Thus, with respect to objection 1, I find that the alleged telephone call by an employee to urge another employee as to how to cast his vote did not constitute objectionable conduct. In this regard, it was noted particularly that there is no evidence or suggestion of Activity involvement or support of such conduct. As to objection 2, it was noted that the Activity made a bona fide offer to correct the erroneous bulletin and that, in any event, the NAGE had sufficient time prior to the election to apprise the voters and correct any error involved. I also find insufficient evidence to support your contention that an observer engaged in misconduct in the polling area during the balloting. See, in this regard, Section 202.20(b) of the Assistant Secretary's Regulations.

Under these circumstances, I conclude, in agreement with the Assistant Regional Director, that the instant objections are without merit and, accordingly, your request for review is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

3-27-75

Mr. Gary B. Landsman  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

495

Re: St. Lawrence Seaway Development  
Corporation  
Massena, New York  
Case No. 35-3248(CA)

Dear Mr. Landsman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed by the American Federation of Government Employees, AFL-CIO (AFGE) in the above-named case, alleging violations of Section 19(a)(1), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that a reasonable basis for the instant complaint was not established. In reaching this determination, I find that the AFGE did not present sufficient evidence to show that the Activity unilaterally excluded certain employees from the bargaining unit. Thus, the evidence establishes that the Activity's list of "excepted positions" was provided at the request of the AFGE and in compliance with Section 1 of the parties' negotiated agreement. In my view, if the AFGE did not agree with some or all of the "excepted positions" listed by the Activity, the appropriate vehicle for resolving any disputed position would have been the filing of a petition for clarification of unit.

Accordingly, as a reasonable basis for the complaint has not been established in this matter, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

April 3, 1975

Mr. Rocco C. DeMarco  
Assistant Regional Director, LMSA  
U. S. Department of Labor  
Room 1033-B, Federal Office Building  
230 S. Dearborn Street  
Chicago, Illinois 60604

496

Re: Department of the Navy  
Naval Ammunition Depot  
Crane, Indiana  
Case No. 50-9667  
FLRC No. 73A-60

Dear Mr. DeMarco:

On February 7, 1975, the Federal Labor Relations Council (Council) set aside the Assistant Secretary's finding that the grievance in the above case was on a matter subject to the negotiated grievance procedure and remanded the case to the Assistant Secretary for appropriate action consistent with the Council's decision.

The Council found that in reaching his decision in the matter the Assistant Secretary failed to make the "necessary determinations" and did not use the proper standard for determining whether the instant grievance was subject to the negotiated grievance procedure. The Council concluded that where there is a question as to whether a grievance is on a matter for which a statutory appeal procedure exists, the Assistant Secretary must decide such question, considering any relevant laws or regulations in reaching his decision. Also, the Council concluded that where there is a question as to whether the grievance is on a matter subject to the negotiated grievance procedure, such question must be decided by the Assistant Secretary, as an arbitrator would if the question were referred to him. The Council noted that in reaching such a decision, the Assistant Secretary should consider the relevant agreement provisions in the light of related statutory provisions, the Order and regulations. The Council noted also that the Assistant Secretary should give consideration in his decision to evidence and arguments concerning the intent and past practice of the parties to the agreement and any special meaning which particular phrases in the agreement may have in the Federal sector.

Under all of the circumstances, including the Council's rationale in the subject case, the contentions of the parties, and the evidence presented previously, it is concluded that the instant grievance is not a matter for which a statutory appeal procedure exists. In this connection, it is noted that Chapter 315 of the Federal Personnel Manual provides certain grounds upon which a probationary employee may appeal his termination and none of these grounds are involved in the instant grievance. It is also noted that while the Activity claimed that the probationary employee herein could appeal the circumstances surrounding his termination through the appeal procedure, no contention was made that the matters raised in the instant grievance may be raised under such appeal procedure.

Regarding the issue as to whether the instant grievance is on a matter subject to the negotiated grievance procedure, it was concluded that prior to a final disposition of the issue, the parties should be afforded the opportunity to present any additional evidence and arguments they may have concerning whether the agreement provisions in issue encompass probationary employees. In this connection, any additional evidence and arguments presented should include, but not be limited to, whether the parties intended Article XX (Acceptable Level of Competence) of their agreement to cover probationary employees; whether by past practice probationary employees have been covered by any provisions in the agreement; whether the special meaning of "acceptable level of competence" in the Federal sector is applicable to the instant agreement; and any other matters concerning the relationship between the agreement in question and laws, regulations, and the Order, which the parties believe will aid in the resolution of the subject issue.

Accordingly, it was concluded that the instant case should be remanded to the Assistant Regional Director for additional investigation and for issuance of a notice of hearing or an appropriate Report and Findings in accordance with Part 205 of the Assistant Secretary's Regulations.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

4-22-75

Mr. Richard L. Robertson  
Chief Steward  
Local 574  
International Brotherhood of  
Electrical Workers  
632 Fifth Street  
Bremerton, Washington 98310

497

Re: Puget Sound Naval Shipyard  
Bremerton, Washington  
Case No. 71-3246

Dear Mr. Robertson:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's finding that the subject complaint filed in the above-named case was untimely.

In agreement with the Assistant Regional Director, I find that the complaint is procedurally defective in that it was filed untimely. Thus, the alleged unfair labor practice occurred on March 20, 1974, more than six months prior to the date the pre-complaint charge was filed and more than nine months prior to the date the subject complaint was filed. Under these circumstances, I find that the pre-complaint charge and the complaint herein did not meet the timeliness requirements of Section 203.2(a)(2) and 203.2(b)(3), respectively, of the Assistant Secretary's Regulations.

Accordingly, the merits of the subject case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

4-22-75

Mr. Herbert Cahn  
President, National Federation of  
Federal Employees, Local 476  
P. O. Box 204  
Little Silver, New Jersey 07739

498

Re: U. S. Army Electronics Command  
Ft. Monmouth, New Jersey  
Case No. 32-3673(CA)

Dear Mr. Cahn:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that a reasonable basis for the instant complaint has been established. Accordingly, your request for review is granted and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D.C. 20210

4-22-75



Mr. Leonard Spear  
Law Offices  
Meranze, Katz, Spear and Wilderman  
21st Floor  
Lewis Tower Building  
N. E. Cor. 15th & Locust Street  
Philadelphia, Pennsylvania 19102

499

Re: Pennsylvania Army and Air National  
Guard  
Case No. 20-4549(CA)

Dear Mr. Spear:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

4-22-75

Mr. Michael Sussman  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

500

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-3249(CA)

Dear Mr. Sussman:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the subject complaint filed by the National Federation of Federal Employees, Local 491 (NFPE), in the above-named case.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis has not been established for the complaint and, consequently, further proceedings in this matter are unwarranted. Thus, I agree that the NFEE and the American Federation of Government Employees, Local 3306, AFL-CIO (AFGE), the Petitioner in Case No. 35-3125(RO), were in equivalent status at the time the Activity revised the employee eligibility list and that the Activity's conduct in this regard, including its dealings with the AFGE concerning the list, was not violative of the Order. In this connection, it was noted particularly that both the AFGE and the NFEE received copies of the revised eligibility list from the Activity and that there was insufficient evidence to establish that the NFEE was prejudiced by its alleged failure to receive such list at the same time as the AFGE.

Accordingly, under all of these circumstances, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

April 22, 1975

Mr. Bennett C. Joseph, Jr.  
Chairman, Grievance Committee  
Local 491  
National Federation of Federal  
Employees, Inc.  
P. O. Box 442  
Bath, New York 14810

501

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-3254 (CA)

Dear Mr. Joseph:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the subject complaint filed by the National Federation of Federal Employees, Local 491 (NFFE) in the above-named case.

In agreement with the Acting Assistant Regional Director, I find that further proceedings in this matter are not warranted inasmuch as a reasonable basis for the complaint was not established. As found by the Acting Assistant Regional Director, the basic issue involved herein is whether or not a particular employee is a supervisor within the meaning of the Order. Under the circumstances of this case such a matter, in my view, should be resolved through the processing of a petition for clarification of unit (CU) rather than in the context of an unfair labor practice proceeding.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

4.22-75



502

Mr. Wilbert Carmichael  
212 Devoe Drive  
Columbia, South Carolina 29204

Re: American Federation of Government  
Employees, AFL-CIO, Local 1909  
Case No. 40-5755(CO)

Dear Mr. Carmichael:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director and based on his reasoning with respect to the merits of the instant case, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

4-30-75

Mr. Michael Sussman  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

503

Re: Headquarters, 31st Combat  
Support Group (TAC)  
Homestead Air Force Base, Florida  
Case No. 42-2575

Dear Mr. Sussman:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that further proceedings in the instant case are unwarranted. Thus, in my view, the Complainant did not present sufficient evidence to establish a reasonable basis for the allegation that the failure of the Activity to grant Ollie Shields official time to appeal the Activity's decision on his grievance, which was being processed under the Agency grievance procedure, or to grant him an extension of time to file such an appeal, was motivated by anti-union considerations.

Accordingly, and noting that a violation of an agency grievance procedure would not, by itself, constitute a violation of Section 19 of the Order, Cf. Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-7-75

Mr. Alfonso Garcia  
National Representative  
American Federation of  
Government Employees  
5911 Dwyer Road, Apt. 28  
New Orleans, Louisiana 70126

504

Re: U.S. Department of Agriculture  
National Finance Center  
New Orleans, Louisiana  
Case No. 64-2441

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. Thus, in my view, the Complainant herein did not present sufficient evidence to establish a reasonable basis for the allegation that the Activity's termination of Evelyn Bowers was motivated by anti-union considerations. In this regard, see Section 203.5(c) of the Assistant Secretary's Regulations which provides that the complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-7-75

Lisa Renee Strax, Esq.  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

505

Re: Department of Air Force  
K. I. Sawyer Air Force Base,  
Michigan  
Case No. 52-5862(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. It is your contention that the Activity violated Section 19(a)(6) of the Order by refusing to consult, confer, or negotiate with the National Federation of Federal Employees, Local 1256 (NFFE), prior to May 9, 1974, over the impact on unit employees of a reduction in Environmental Differential Pay. The evidence reveals, however, that at no time before May 9, 1974, did the NFFE request to meet and confer concerning the impact such pay reductions would have on unit employees, although it is undisputed that the NFFE was notified of the planned reductions prior to that time. Cf. U.S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-7-75

Mr. Jack L. Copess  
Hawaii Federal Employees  
Metal Trades Council, AFL-CIO  
925 Bethel Street, Room 210  
Honolulu, Hawaii 96813

506

Re: Department of the Navy  
Pearl Harbor Naval Shipyard  
Case No. 73-587(CA)

Dear Mr. Copess:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the subject complaint filed by the Hawaii Federal Employees Metal Trades Council, AFL-CIO, in the above-named case.

In agreement with the Assistant Regional Director, I find that further proceedings in the matter are not warranted. Thus, it was concluded that Section 19(d) of the Order prohibits the consideration of the allegations raised in your complaint as the evidence establishes that such allegations have been raised previously under a negotiated grievance procedure.

Accordingly, and noting that matters raised for the first time in a request for review cannot be considered by the Assistant Secretary (see Report on Ruling, No. 46, copy enclosed), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-7-75

Ms. Lynne Holland  
C/o Arthur McLaughlin  
Executive Secretary  
Overseas Education Association/  
National Education Association  
1201 - 16th Street, N. W.  
Washington, D. C. 20036

507

Re: U. S. Dependents School  
European Area (Directorate)  
Case No. 22-5571(CA)

Dear Ms. Holland:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(3) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the instant complaint was not established, and, consequently, further proceedings in this matter are unwarranted. With respect to the matters raised in your request for review which had not previously been raised with the Assistant Regional Director, see Assistant Secretary's Report on a Ruling, No. 46. (Copy enclosed).

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-7-75

Michael Sussman, Esq.  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

508

Re: Headquarters, 31st Combat  
Support Group (TAC)  
Homestead Air Force Base, Florida  
Case No. 42-2573(CA)

Dear Mr. Sussman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1) and (2) allegations of the complaint in the above-captioned case.

The Assistant Regional Director dismissed the complaint in its entirety on the grounds that no reasonable basis for the complaint was established. In so finding, he concluded that the incident which led to the penalizing of employee Schaffer was not pretextual but, rather, that the Respondent had acted "in a disinterested defense of, or furtherance of its safety rules ..." by disciplining Schaffer for the violation of those rules. He concluded, further, that there was no evidence that the Respondent intended to interfere with employees' protected rights.

Upon careful consideration of your request for review, I have concluded that a reasonable basis for the Section 19(a)(1) and (2) allegations has been established, and that factual issues have been raised which can best be resolved by a hearing.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1) and (2) portions of the complaint, is granted, and this case is hereby remanded to the Assistant Regional Director for reinstatement of the Section 19(a)(1) and (2) portions of the complaint and, absent settlement, for issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

May 15, 1975

Mr. Allen Kaplan  
National Vice-President  
American Federation of Government  
Employees, Seventh District  
446 North Central  
Northfield, Illinois 60093

509

Re: Veterans Administration  
Veterans Administration Hospital  
Allen Park, Michigan  
Case No. 52-5381(CA)

Dear Mr. Kaplan:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above named case alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted based on the Complainant's lack of cooperation and prosecution of its complaint. Cf. American Federation of Government Employees, AFL-CIO, National Office, A/SLMR No. 483. In this regard noted particularly was the Complainant's indication to the Assistant Regional Director, two days prior to the opening of the third rescheduled hearing, that if the hearing took place as scheduled on November 13, 1974, it would not attend.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-19-75

Mr. Darrell D. Reazin  
Vice President  
Professional Air Traffic Controllers  
Organization,  
Western Region, Marine Engineers  
Beneficial Association, AFL-CIO,  
8105 Edgewater Drive, Suite 109  
Oakland, California 94621

510

Re: Department of Transportation  
Federal Aviation Administration  
Oakland Air Route Traffic  
Control Center  
Case No. 70-4463

Dear Mr. Reazin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find that further proceedings in this matter are unwarranted. In your request for review you contend that the Respondent Activity violated the Order by changing the contents and format of the monthly newsletter, the Oakland Center Free Press, without consulting the Complainant labor organization and by using the newsletter to avoid its bargaining obligations. In support of your contention, you cite three articles which appeared in the newsletter concerning parking, a revised employee dress code, and new drapes and furniture for the television room. However, there is insufficient evidence to establish that the Activity refused to meet and confer with the Complainant on such subjects or that the articles in question were designed to disparage or undermine the status of the Complainant as exclusive representative. Moreover, there is no evidence that the Activity aided in or encouraged the preparation of the articles dealing with parking and new drapes and furniture.

In reaching the disposition herein, it was noted additionally that the allegations in your request for review differ from the allegations set forth in the instant complaint. Thus, the complaint is based on alleged improprieties in the establishment and publication of the newsletter, whereas, as indicated above, the allegations raised in your request for review are based essentially on alleged changes in the format and contents of the newsletter.

Under all of these circumstances, I find that a reasonable basis has not been established for the instant complaint. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

5-19-75

Mr. Donald R. Paquette  
Associate Professor of Engineering, and  
Vice Chairman, USMMA Chapter, UFCT  
U. S. Merchant Marine Academy  
9 Flo Drive  
Syosset, New York 11791

511

Re: Department of Commerce  
U. S. Merchant Marine Academy  
Case No. 30-5585(CA)

Dear Mr. Paquette:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint filed by you alleging that the Department of Commerce, U.S. Merchant Marine Academy violated Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director and based on his reasoning, I find that the dismissal of the instant complaint is warranted. Thus, I find that the 1969 Qualification Standards, which were formulated in accordance with Section 6.05 of Maritime Administration Order No. 181(A), superseded the 1966 Qualification Standards. Moreover, even assuming that the 1969 revisions were adopted unilaterally, no finding of a violation of the Executive Order could be made on such a basis because your unfair labor practice charge and complaint in this matter was untimely filed in relation to such conduct. See, in this regard, Section 203.2 of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

- 2 -

May 19, 1975

Mr. H. C. McBeth  
Acting Civilian Personnel Officer  
Department of the Army  
Corpus Christi Army Depot  
Corpus Christi, Texas 78149

512

Re: U.S. Department of the Army  
U.S. Army Aeronautical Depot  
Maintenance Center  
Corpus Christi, Texas  
Case No. 63-5033 (G&A)

Dear Mr. McBeth:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability in the above-named case.

In your request for review, you contend that the Assistant Regional Director erred in finding arbitrable the subject grievance concerning administrative leave for blood donations. The grievance alleged violations of Article 3, Section 1, of the parties' negotiated agreement which incorporates Section 12(a) of Executive Order 11491, as amended. In reaching his decision, the Assistant Regional Director found that the Federal Labor Relations Council's (Council) decision in Elmendorf Air Force Base (Wildwood Air Force Station), 72A-10, nullified Article 5, Section 2 and Article 28, Section 1 of the negotiated agreement which were included in the agreement pursuant to an Agency directive and which, in effect, excluded questions involving the interpretation of published Agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the Agency from the scope of the negotiated grievance procedure. It is your contention that while the Elmendorf decision may have rendered invalid the provisions in issue, such decision did not extend the grievance procedure to matters excluded prior to such decision.

Under all of the circumstances, I find that the subject grievance is not on a matter subject to the negotiated grievance procedure. Thus, in Department of the Navy, Naval Ammunition Depot, Crane, Indiana, 74A-19, the Council held that in deciding whether a grievance is on a matter subject to a negotiated grievance procedure, the Assistant Secretary must consider all relevant factors including the intent of

the parties. Applying this principle to the instant case, it is clear that when the parties negotiated their current agreement, they did not intend for the negotiated grievance procedure to cover matters, such as those at issue herein, which involve the interpretation of published Agency policies or regulations, provisions of law, or regulations of other appropriate authorities. In this connection, it was noted that the parties specifically excluded such matters from the negotiated grievance procedure. Moreover, while the Council's decision in Elmendorf rendered invalid the Department of Defense directive which restricted the scope and nature of the grievance procedure, in my view, such decision did not necessarily extend the coverage of the existing negotiated grievance procedure to matters excluded previously by the parties.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, is granted, and the Application herein is dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

MAY 19 1975

Mr. H. C. McBeth  
Acting Civilian Personnel Officer  
Department of the Army  
Corpus Christi Army Depot  
Corpus Christi, Texas 78149

513

Re: U.S. Department of the Army  
U.S. Army Aeronautical Depot  
Maintenance Center  
Corpus Christi, Texas  
Case No. 63-5049(C&A)

Dear Mr. McBeth:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability in the above-named case.

In your request for review, you contend that the Assistant Regional Director erred in finding arbitrable the subject grievance which involves the Activity's refusal to approve promotional training for the grievant. The grievance alleged violations of Article 3, Section 1, of the parties' negotiated agreement which incorporates Section 12(a) of Executive Order 11491, as amended. In reaching his decision, the Assistant Regional Director found that the Federal Labor Relations Council's (Council) decision in Elmendorf Air Force Base (Wildwood Air Force Station), 72A-10, nullified Article 5, Section 2 and Article 28, Section 1 of the negotiated agreement which were included in the agreement pursuant to an Agency directive and which, in effect, excluded questions involving the interpretation of published Agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the Agency from the scope of the negotiated grievance procedure. It is your contention that while the Elmendorf decision may have rendered invalid the provisions in issue, such decision did not extend the grievance procedure to matters excluded prior to such decision.

Under all of the circumstances, I find that the subject grievance is not on a matter subject to the negotiated grievance procedure. Thus, in Department of the Navy, Naval Ammunition Depot, Crane, Indiana, 74A-19, the Council held that in deciding whether a grievance is on a matter subject to a negotiated grievance procedure, the Assistant Secretary must consider all relevant factors including the intent of the parties. Applying this principle to the instant case, it is clear that

when the parties negotiated their current agreement, they did not intend for the negotiated grievance procedure to cover matters, such as those at issue herein, which involve the interpretation of published Agency policies or regulations, provisions of law, or regulations of other appropriate authorities. In this connection, it was noted that the parties specifically excluded such matters from the negotiated grievance procedure. Moreover, while the Council's decision in Elmendorf rendered invalid the Department of Defense directive which restricted the scope and nature of the grievance procedure, in my view, such decision did not necessarily extend the coverage of the existing negotiated grievance procedure to matters excluded previously by the parties.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, is granted, and the Application herein is dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

5-29-75

JUN 3 1975

Mr. Michael Sussman  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

514

Re: Veterans Administration Hospital  
New Orleans, Louisiana  
Case No. 64-2513(CO)

Dear Mr. Sussman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director and based on his reasoning, I find that dismissal of the instant complaint is warranted in that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Mr. Curtis Ristesund  
National Vice President  
12th District, AFGE  
3320 Grand Avenue, Suite 2  
Oakland, California 94610

515

Re: U. S. Navy, Naval Air Rework  
Facility, Naval Air Station,  
Alameda, California  
Case No. 70-4582(25)

Dear Mr. Ristesund:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's action in denying the request by the American Federation of Government Employees, AFL-CIO (AFGE), for an extension of the posting period in the subject case and, therefore, denying the AFGE's request to intervene.

In my view, your request for review failed to show good cause for extending the ten day posting period as required by Section 202.5(c) of the Assistant Secretary's Regulations. Nor did it raise any material issue which would warrant reversal of the Assistant Regional Director's action in this matter. In reaching the disposition herein, it was noted that while the posting period ended on January 9, 1975, the AFGE was given until January 13, 1975, to submit an adequate showing of interest. However, no additional showing of interest was submitted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's denial of the AFGE's request for an extension of the posting period and, in effect, reversal of his denial of the AFGE's request for intervention on the basis of inadequate showing of interest, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

6/4/75

Pat Morris, Esq.  
Law Offices of Nicholas & Morris  
505 South Water Street  
Corpus Christi, Texas 78401

516

Re: Corpus Christi Army Depot  
Corpus Christi, Texas  
Case No. 63-5368(CA)

Dear Mr. Morris:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that dismissal of the instant complaint is warranted. Thus, Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of an unfair labor practice proceeding upon the Complainant, and in the instant case insufficient evidence was presented to establish a reasonable basis for the allegations that Mr. Flores was discriminated against because of his union activities or because he had filed a complaint or had given testimony under the Executive Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the instant matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

6-4-75

Mr. John Helm  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20066

517

Re: U. S. Army Air Defense Center  
Fort Bliss, Texas  
Case No. 63-5355(CA)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. Thus, in my view, the Complainant did not present sufficient evidence to establish a reasonable basis to support the allegations that the Activity's application of the reduction-in-hours procedures, rather than reduction-in-force procedures, to the "NCO Club" employees, and any differences in treatment accorded "NCO" employees and "CO Club" employees, were based on anti-union considerations or on the filing of a complaint or giving testimony under the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

6-4-75

Janet Cooper, Esq.  
Staff Attorney  
National Federation of  
Federal Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

518

Re: VA - Veterans Administration Data  
Processing Center, Austin, Texas  
Case No.s 63-5277(CA),  
5276(CA),  
5288(CA) and  
5278(CA)

Dear Ms. Cooper:

I have considered carefully your requests for review seeking reversal of the Assistant Regional Director's dismissal of the complaints in the above-named cases.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the complaints has not been established. It is your assertion that the allegations contained in the instant complaints establish prima facie violations of various sub-sections of Section 19(a) of Executive Order 11491, as amended, and that the denials by the Respondent Activity raise credibility issues sufficient to warrant a hearing. However, the bare allegations contained in the instant complaints are devoid of any supporting evidence such as signed statements by alleged discriminatees or by witnesses.

It has long been established policy that to warrant further proceedings a complaint must be supported by evidence, and that the burden of proof is borne by the Complainant at all stages of the unfair labor practice proceeding. In this latter regard, see Section 203.6(e) of the Assistant Secretary's Regulations.

Accordingly, your requests for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaints, are denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210

6-9-75



Ms. Janet Cooper  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

519

Re: Department of Housing and Urban  
Development,  
Detroit Area Office,  
Detroit, Michigan  
Case No. 52-5817(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the subject complaint filed by the National Federation of Federal Employees, Local 1804 (NFFE), in the above-named case.

In agreement with the Acting Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, I agree that as the parking permits involved herein were issued and subsequently revoked by the General Services Administration and as the Respondent had no control over such parking permits or involvement in the decision to revoke them, it had no obligation to meet and confer with the NFFE in this regard. Moreover, it was noted that the NFFE did not request to meet and confer concerning the revocation and that the Respondent offered to meet and confer with the NFFE with regard to the impact of the revocation of the parking permits on adversely affected employees.

Accordingly, under these circumstances, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON  
6/9/75

Mr. Michael Sussman  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

520

Re: U. S. Air Force  
31st Combat Support Group (TAC)  
Homestead Air Force Base, Florida  
Case No. 42-2644(CA)

Dear Mr. Sussman:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's finding that dismissal of the instant complaint was warranted based on untimeliness.

In agreement with the Acting Assistant Regional Director, I find that the subject complaint, filed October 15, 1974, is procedurally defective in that it was untimely because it was filed more than 60 days after the date on which the final written decision on the charge was served on the charging party. You contend in your request for review that the Respondent Activity did not serve your office with a final written decision on the charge. However, the evidence reveals that on June 26, 1974, the Respondent Activity properly served a final written decision on the charging party, NFFE Local 1167, pursuant to Section 203.2(b)(2) of the Assistant Secretary's Regulations, and that, at that time, you had not been designated as counsel of record. Moreover, your request for review, filed March 3, 1975, over three months after the Assistant Regional Director's dismissal letter was sent to your office, is also untimely.

Under these circumstances, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Passer, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210



6-9-75

Ms. Janet Cooper  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

521

Re: Veterans Administration  
Veterans Administration Data  
Processing Center  
Austin, Texas  
Case Nos. 63-5349(CA) and  
63-5357(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaints in the above-named cases, alleging violations of Section 19(a)(2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that there is insufficient evidence to establish a reasonable basis for the instant complaints. As you are aware, Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding regarding matters alleged in the complaint upon the Complainant. No evidence was presented to support the complaints in this matter, other than undocumented allegations of a cause-and-effect relationship leading to the promotions of a number of individuals as a result of their alleged activities on behalf of a decertification effort.

Under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaints, is denied.

Sincerely,

Paul J. Passer, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

JUN 10 1975

Mr. Neal Fine  
Assistant Counsel  
National Treasury Employees Union  
Suite 1101  
1730 K Street, N.W.  
Washington, D.C. 20006

522

Re: Internal Revenue Service  
Austin Service Center  
Austin, Texas  
Case No. 63-5065(CA)

Dear Mr. Fine:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I agree with the Assistant Regional Director that Section 19(d) of the Order precludes further proceedings on allegations (a), (c), (e), (f) and (g) of Charge I of the complaint as such allegations were raised previously under the parties' negotiated grievance procedure. Thus, I agree with the Assistant Regional Director that the Complainant's withdrawal of the subject grievance did not afford it the right to file an unfair labor practice complaint concerning the allegations raised in such grievance. Moreover, I agree with the Assistant Regional Director that there is insufficient evidence to support a reasonable basis for the remaining allegations in Charge I. I therefore conclude the allegations in Charge I of the complaint were properly dismissed.

However, contrary to the Assistant Regional Director, I find that a reasonable basis exists for Charge II of the complaint and that the issues raised therein can best be resolved on basis of evidence adduced at a hearing. Accordingly, your request for review is granted, in part, and the case is remanded to the Assistant Regional Director for reinstatement of the allegations in Charge II of the complaint and, absent settlement, the issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

June 19, 1975

Ms. Janet Cooper  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

523

Re: General Services Administration  
Federal Supply Service  
Case No. 22-5725(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the Respondent Activity was not obligated to meet and confer with the National Federation of Federal Employees, Local 1642 (Complainant), with respect to the Quality Control Laboratory Evaluation Study which was conducted during February and March 1974. Moreover, I find that the Complainant failed to establish a reasonable basis for its allegation that personnel reassignments and transfers resulted from the instant study.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

-2-

June 19, 1975

Accordingly, your request for review, seeking the setting aside of the Assistant Regional Director's approval of the settlement agreement in this matter, is denied.

Sincerely,

Mr. Gary B. Landsman  
Staff Counsel  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, N. W.  
Washington, D. C. 20005

524

Re: Arizona National Guard  
Air National Guard  
Sky Harbor Airport  
Phoenix, Arizona  
Case No. 72-4777

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

Dear Mr. Landsman:

I have considered carefully your request for review seeking the setting aside of the Assistant Regional Director's approval of the Settlement Agreement in the above-named case.

The substance of the allegations in this case concerned the Activity's refusal to recognize employee Deyerberg as president of the local union, because it considered him a supervisor. The Assistant Secretary, in a clarification of unit proceeding, determined that Deyerberg was not a supervisor within the meaning of Section 2(c) of the Order and, therefore, his job classification was included in the unit. Arizona National Guard, Air National Guard, Sky Harbor Airport, A/SLMR No. 436. Thereafter, the Assistant Regional Director declined to issue a notice of hearing herein and approved a settlement agreement which included the posting of a notice indicating that the Activity would recognize Deyerberg as the local union's designated representative.

In your request for review, you urge that the basis of the charges did not deal with the issue of whether Deyerberg was a supervisor, but whether an Activity had the authority to "supercede the authority of the Assistant Secretary ... in regard to unit clarifications and supervisory determinations." In view of the resolution of the supervisory status of Deyerberg, and the Respondent's agreement to post a notice indicating its recognition of his status as the union's designated representative, I find that the Assistant Regional Director's approval of the settlement agreement in this matter was appropriate.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON  
6-19-75

Mr. Jerry L. Snider  
President, Missouri State Federation  
of Federal Employees  
National Federation of Federal Employees  
8702 David  
St. John, Missouri 63114

525

Re: Automated Logistics Management  
Systems Agency,  
St. Louis, Missouri  
Case No. 62-4087(CA)

Dear Mr. Snider:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director and based on his reasoning, that a reasonable basis for the instant complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, D.C. 20210  
6-23-75



Mr. Paul Arca  
Acting Staff Director  
Labor Relations and Equal  
Opportunity Staff  
Social Security Administration  
6401 Security Boulevard  
Baltimore, Maryland 21235

526

Re: Social Security Administration  
Bureau of District Office Operations  
Boston Region  
Case No. 31-8590(AP)

Dear Mr. Arca:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability in the above-named case.

In your request for review, you contend that the Assistant Regional Director erred in finding grievable and arbitrable the subject grievance which involves the failure of the Activity either to prepare a performance appraisal of Stewart Ehrlich, a probationary employee, during the ninth or tenth month of his employment or to issue an appropriate certification of his performance as required by the Federal Personnel Manual (FPM) and to give Ehrlich two weeks notice of his termination as required by the Agency's policy and procedures. The grievance alleged violations of Article 3, Section 1(a) of the parties' negotiated agreement which incorporates Section 12(a) of Executive Order 11491, as amended. In reaching his decision, the Assistant Regional Director found that the Order does not exclude questions involving the interpretation of published Agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the Agency from the negotiated grievance procedure. He also found that the parties had not agreed to exclude such questions from the scope of their negotiated grievance procedure and that the subject grievance did not involve a matter for which a statutory appeal procedure exists. It is your contention that there is no provision in the negotiated agreement which makes the termination of a probationary employee or the procedures "leading up" to such a termination grievable or arbitrable.

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Under all of the circumstances, I find that the instant grievance is not on a matter subject to the negotiated grievance procedure. Thus, in Department of the Navy, Naval Ammunition Depot, Crane, Indiana, 74A-19, the Federal Labor Relations Council held that in deciding whether a grievance is on a matter subject to a negotiated grievance procedure the Assistant Secretary must consider all relevant factors, including those provisions of the negotiated agreement which describe the scope and coverage of the negotiated grievance procedure as well as the substantive provisions of the agreement which are being grieved. Applying this principle to the instant case, it is clear that the subject grievance is not on a matter which is grievable or arbitrable under the negotiated grievance procedure. Thus, Article 32, Section 2 (Grievances) of the negotiated agreement provides, in part, that a grievance under the agreement does not include "issues requiring the interpretation of published DHEW and CSC policies and regulations." In my view, a decision on the merits of the subject grievance would require an interpretation of Chapter 315, Subchapter 8, Section 3 of the FPM and the Agency's Personnel Guides for Supervisors, Chapter VII, SSA Guide 2-2 (SSA Guide 2-2). Moreover, while Chapter 315, Subchapter 8, Section 3 of the FPM provides that a probationary employee should be evaluated during the ninth or tenth month of employment and the employee's supervisor should issue an appropriate certification as to his performance, the subject section indicates that an activity's failure to comply with such provisions will not affect the activity's right to terminate the probationary employee. Regarding the issue in the grievance concerning notification to the employee involved, while SSA Guide 2-2 provides that a "probationary employee should be given at least 2 weeks advance notice" of his termination, it is unclear whether the provision is advisory or mandatory, or whether the failure of an activity to comply with such provision affects in any way its right to terminate a probationary employee. Under these circumstances, and noting also the Activity's undisputed contention that when the parties negotiated the subject agreement they did not intend for the negotiated grievance procedure to cover matters involving probationary employees, such as those at issue herein, I find that the subject grievance is not grievable or arbitrable under the negotiated agreement.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, is granted, and the application herein is hereby dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

June 24, 1975

Mr. Robert M. Tobias  
General Counsel  
National Treasury Employees Union  
Suite 1101  
1730 K Street, N. W.  
Washington, D. C. 20006

G. Jerry Shaw, Attorney  
General Legal Services Division  
Branch 1 - Room 4109  
Internal Revenue Service  
1111 Constitution Avenue, N. W.  
Washington, D. C. 20224

527

Re: National Treasury Employees Union  
(Internal Revenue Service)  
Case No. 22-5976(CO)

Gentlemen:

This is in connection with the request for review in the subject case, filed on behalf of the National Treasury Employees Union (NTEU), seeking reversal of the Administrative Law Judge's finding that there exists reasonable cause to believe that the NTEU has picketed and currently plans to picket the Internal Revenue Service, in connection with a labor-management dispute, in violation of Section 19(b)(4) of the Executive Order 11491, as amended. In this regard, the Administrative Law Judge ordered, among other things, that the NTEU cease and desist, pending disposition of the complaint, from picketing the Internal Revenue Service in a labor-management dispute, and that it shall immediately take affirmative action to prevent and stop any such picketing.

Upon careful consideration of the parties' stipulation, the Administrative Law Judge's Order, and the NTEU's request for review, I find that the evidence supports the Administrative Law Judge's conclusion that the Assistant Regional Director has established at the preliminary hearing in this matter that there exists a reasonable cause to believe that a violation of Section 19(b)(4) of the Order has occurred and that there has been no satisfactory written offer of settlement by the NTEU.

Accordingly, and noting particularly that the foregoing determination is not a decision on the merits of the instant case but, rather, is a finding

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merely that the Assistant Regional Director has established that there is reasonable cause to believe that a violation of Section 19(b)(4) has occurred, the request for review filed by the NTEU in this matter is hereby denied. Further, under the circumstances, the request filed on behalf of the Internal Revenue Service to respond to the NTEU's request for review is hereby denied.

June 24, 1975

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

John Helm, Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

528

Re: Defense Supply Agency,  
Defense Industrial Plant  
Equipment Center  
Memphis, Tennessee  
Case No. 41-3921(CA)

Dear Mr. Helm:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director and based on his reasoning, I find that further proceedings in this matter are not warranted in that a reasonable basis for the complaint has not been established.

In your request for review, you urge that Section 19(a)(6) was violated because the events described constituted a substantial change in working conditions, and also because the incident involved constituted a formal discussion within the meaning of Section 10(e). I find, in agreement with the Assistant Regional Director, that under the circumstances herein the investigation of the alleged theft did not constitute a change in working conditions. Nor did the incident constitute a formal discussion within the meaning of Section 10(e) of the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor



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WASHINGTON

June 24, 1975

Mr. Gerald C. Tobin  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N. W.  
Washington, D. C. 20006

529

Re: Veterans Administration Center  
Bath, New York  
Case No. 35-3125(RO)

Dear Mr. Tobin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's denial of your motion to dismiss the petition filed by the American Federation of Government Employees, Local 3306, AFL-CIO, in the above-named case.

No provision is made for filing a request for review of an Assistant Regional Director's action in denying a motion to dismiss a petition. See, in this regard, Report on a Decision of the Assistant Secretary, Report No. 8 (copy enclosed).

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's action in this matter, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

6/24/75

Mr. Elbert C. Newton  
Labor Relations Advisor  
Department of the Navy  
Regional Office of Civilian Manpower  
Management  
Box 88, Naval Air Station  
Jacksonville, Florida 32212

530

Re: Naval Aerospace and Regional  
Medical Center,  
Pensacola, Florida  
Case No. 42-2712(RA)

Naval Aerospace Medical  
Laboratory,  
Pensacola, Florida  
Case No. 42-2713(RA)

Naval Aerospace Medical  
Institute,  
Pensacola, Florida  
Case No. 42-2714(RA)

Dear Mr. Newton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the RA petitions in the above-named cases and have concluded that the effect of the Naval Aerospace Medical Center's reorganization in July 1974, and its impact upon the employees in the exclusively recognized unit, can best be determined on the basis of evidence adduced at a hearing.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the petitions, is granted, and the Assistant Regional Director is directed to reinstate the petitions, consolidate the above-named cases and issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON

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June 30, 1975

Lisa Renee Strax, Esq.  
Staff Attorney  
National Federation of Federal  
Employees  
1737 H Street, N.W.  
Washington, D.C. 20006

531

Re: U. S. Air Force, Headquarters  
31st Combat Support Group (TAC)  
Homestead Air Force Base,  
Florida  
Case No. 42-2649(CA)

Dear Ms. Strax:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violation of Sections 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are not warranted inasmuch as a reasonable basis for the complaint was not established. You assert that the Respondent Activity violated the Order by refusing to complete Step 2 of the negotiated grievance procedure so as to avoid the possibility of advisory arbitration.

In my view, in the absence of bad faith, grievability and arbitrability questions, such as those involved herein, are not matters to be resolved under Section 19 of the Order. Section 13(d) of the Executive Order provides a procedure for the referral of grievability and arbitrability questions to the Assistant Secretary. Thus, a party may, in good faith, assert that a matter is not grievable or arbitrable under a negotiated agreement. Thereafter, pursuant to Part 205 of the Assistant Secretary's Regulations, a determination may be obtained from the Assistant Secretary as to whether the matter involved is grievable or arbitrable.

Under these circumstances, and noting that there was insufficient evidence to establish that the Respondent Activity

acted in bad faith or that you were prejudiced by its alleged failure to serve you with a copy of the request for an extension of time in which to answer your request for review, I find that denial of your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is warranted.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON

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June 30, 1975

Dolph David Sand, Esq.  
Office of Chief Counsel  
Branch No. 1  
General Legal Services Division  
Room 4425 - IRS Building  
1111 Constitution Avenue, N. W.  
Washington, D. C. 20224

532

Re: Internal Revenue Service  
Philadelphia Service Center  
Case No. 20-4723(AP)

Dear Mr. Sand:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, in the above-named case.

In your request for review, you contend that the Acting Assistant Regional Director erred in finding arbitrable the subject grievance concerning an employee's forfeiture of certain benefits as a result of the employee having been on leave without pay from December 1, 1971 until January 7, 1974. It is your position that the grievance filed on February 7, 1974, was filed untimely under the terms of the negotiated grievance procedure as it was filed more than 15 days after the occurrence of the event in issue. In this connection, you contend that the critical date is either December 1, 1971, the date on which the grievant's leave without pay status began or January 7, 1974, the date the grievant's leave status terminated, rather than January 30, 1974, the date on which allegedly the grievant first learned of the forfeiture of her benefits. You further contend that even if the grievance was filed timely, such grievance is not arbitrable because the matters in dispute do not involve an adverse action under the terms of the negotiated agreement as, allegedly, the grievant's request for leave without pay was voluntary. Finally, you contend that the Assistant Secretary must decide the timeliness issue, and if necessary, the issue as to whether the dispute herein involves an adverse action and is, therefore, arbitrable.

Under the particular circumstances of this case, I find that the instant grievance was filed untimely and consequently is not arbitrable under the parties' negotiated arbitration procedure. In my view, the primary issue herein is whether the grievant was coerced into requesting leave without pay.

If the grievant's request for leave without pay was voluntary, the Activity's action in placing her on leave would not constitute an adverse action within the meaning of the negotiated agreement and the matter would not be grievable or arbitrable under the agreement. In this regard, it was noted that the exclusive representative of the grievant conceded in its Application that the issues as to the propriety of the subject forfeiture of benefits may be raised under the agreement only if the grievant's request for leave was involuntary. In these circumstances, I conclude that as the primary issue involves whether the leave involved was voluntary or coerced, the critical date for determining the timeliness of the grievance is the date on which the grievant was placed on leave. And as the instant grievance was filed more than 15 days after such date, in my view, it was filed untimely under the negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is granted, and the instant Application is dismissed.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

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WASHINGTON

June 30, 1975

Mr. Juan Bernal  
President, National Federation of  
Federal Employees, Local 1112  
2042 Santa Rosa  
Houston, Texas 77023

533

Re: U. S. Air Force - 2578th Group  
Ellington AFB, Texas  
Case No. 63-5284(CA)

Dear Mr. Bernal:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a) (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence presented by the Complainant herein was insufficient to establish a reasonable basis for its contentions that the Activity's conduct in rescheduling certain employee lunch hours and in refusing to pay overtime to employees who worked during their normal lunch hours, but who did not work in excess of eight hours during their shifts, constituted a change in established policies and practices. Rather, the evidence established merely that one unit employee was permitted to work through his scheduled 45 minute lunch period and, in lieu of such lunch period, he was given compensatory time and was not paid overtime.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.  
Assistant Secretary of Labor

