



UNDER SECRETARY OF THE ARMY
WASHINGTON

22 MAR 2000



CHALLENGE Number 2000-0099

[REDACTED]

International President
International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Dear [REDACTED]

This responds to your appeal of the February 24, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 8, 2000.

Logistics System Support Center Functions

Activity Challenged. You are appealing the decision that the FAIR Act inventory properly includes on the list the work performed by the Logistics System Support Center (LSSC).

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

Rationale. Your appeal suggests that the LSSC functions are inherently Governmental because the LSSC designs and sustains combat logistics systems; LSSC employees require at least a secret clearance to perform their duties; many functions in the LSSC are not ADP related but include acquisition, supply management, logistics management, security, contracting officer representative functions; some LSSC functions are listed in regulations, pamphlets and the Office of Federal Procurement Policy (OFPP) Letter 92-1 as examples of inherently Governmental functions; some LSSC functions related to mobilization and war reserves are not performed in the private sector; and other Government agencies have characterized the "same" functions and "positions" as inherently Governmental.

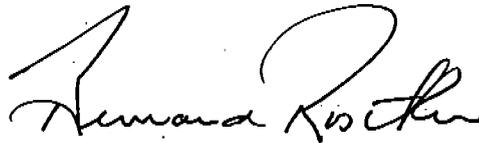
Many important core missions of the Army are not inherently Governmental and have, therefore, been included on the FAIR list as non-inherently Governmental functions exempted from private sector performance. Determining what is or is not inherently Governmental, the focus of the FAIR Act, is a different issue from determining what is appropriate for private sector performance. Many other very important Army



missions are performed by contractors, or have been determined to be most appropriately performed by contractors, such as the work performed at the LSSC. Moreover, as indicated in the Assistant Secretary's decision, under the FAIR Act, each agency is required to determine for itself, in light of its unique roles and missions, which, if any, of its functions are inherently Governmental.

With respect to the non-ADP related functions at the LSSC, your interpretation of the OFPP 92-1 would not be unreasonable if the FAIR Act challenge process was applied to jobs, rather than to functions. But the FAIR Act challenge process pertains to functions, not to individual jobs. Therefore, if a function is otherwise determined not be Governmental in nature, performance, administration, and management (as distinct from policy and oversight) of work required to perform that function is also not inherently Governmental. A non-inherently Governmental function is not rendered inherently Governmental by virtue of the mere non-availability of a private sector vendor to perform that function. Also, whether a function is Governmental or not is not determined by the qualification requirements or subject matter expertise of the individuals performing the function. Finally, application of an ADP system to military databases and uses does not convert an automation support function into an inherently Governmental function.

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

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

Bernard Rostker