



DEPARTMENT OF THE ARMY
UNITED STATES ARMY, EUROPE, and SEVENTH ARMY
UNIT 29351
APO AE 09014-9351

REPLY TO
ATTENTION OF:

AEAGA-CL

29 DEC 2004

CPD Policy Memorandum LN-GE-LAB 6

SUBJECT: Implementation of Decisions and Prohibition of Unilateral Actions – Labor Management Relations in Germany

1. Reference Annex C, USAREUR Regulation 690-61, Labor-Management Relations – Local National (LN) Employees in Germany, 24 Apr 2000 (German Personnel Representation Law (modified Version)).
2. Purpose: To establish policy and provide guidance on the implementation of decisions made under reference above.
3. Policy:
 - a. As a rule, an agency chief must implement all decisions regarding matters subject to the reference. Works council concurrence with an action does not compel the agency chief to effect that action; it simply means that the action may be implemented.
 - b. Works councils may not become involved in the management of the agency, in accordance with section 74, above reference. Accordingly, the works council may not attempt to implement actions independently, even if the agency chief does not do so after obtaining the consent of the works council. Instead, the works council may only pursue judicial enforcement of agreements or decisions. Attempts by the works council to implement decisions may constitute a gross violation of its legal obligation to remain disengaged from agency management and may set the stage for management to obtain a labor court ruling dissolving the works council in accordance with section 28, paragraph 1, above reference.
4. In addition to the above, the following needs to be observed:
 - a. If an agency chief fails to take an action without providing substantial reasons for doing so, he/she certainly acts within the framework of his authority to not implement actions; however, if challenged, such an act may constitute a violation of the duty to cooperate with the works council in mutual trust (section 2, para 1, reference above).
 - b. In codetermination matters, the works council is entitled to take the initiative. However, it may only enforce a desired matter if it concerns an action subject to the provisions of section 70, para 1, reference above, where the conciliation proceedings are concluded by a binding decision of the conciliatory committee. It also follows that the agency chief is compelled to effect an action covered by section 70, para 1, reference above, which was initiated by the works

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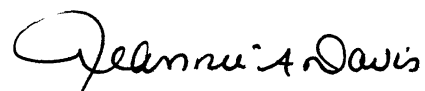
council and to which he has agreed, because otherwise the works council's legal right to take the initiative would be invalidated.

c. The agency chief must implement the action without changes as agreed upon during the participation proceedings with the works council. If he/she decides to implement the matter in a different way than agreed upon, the agency chief must involve the works council in a new participation procedure concerning the changed matter.

d. The agency chief's right of execution is not applicable in connection with decisions which the works council is authorized to render under its own jurisdiction. This encompasses, for example, the appointment of the election committee (section 20, reference above), the summoning of a personnel assembly (section 49, reference above), or the arrangement of office hours (section 43, reference above).

5. In individual matters subject to works council participation, on the basis of an oral or written agreement, the agency can empower the works council to implement the action. Such arrangements require the approval of the entire works council and should be limited to social matters such as the management of social facilities, the arrangement of work outings, Christmas parties or other joint employee activities because the vast majority of all other matters require mandatory actions by the agency chief in his capacity as employer. Works councils are responsible for the proper execution of the matter; however, the liability for damages under German civil law rests with the agency chief because works councils cannot be held pecuniarily liable.

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