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Armstrong



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Payment of SES Performance Awards of the
Railroad Retirement Board's Office of
Inspector General

File: B-231445

Date: March 20, 1989

DIGEST

The Railroad Retirement Board may elect to use either its general appropriations or the separate appropriation supporting its Office of Inspector General (OIG) to pay performance awards to members of the OIG's Senior Executive Service. When one can reasonably construe two appropriations as available for an expenditure, we will accept an administrative determination as to which appropriation to charge; once the Board has made its selection, it must continue to use that appropriation.

DECISION

The United States Railroad Retirement Board (Board) asks whether it may use appropriations intended for the Board's Office of Inspector General (OIG) to pay performance awards to OIG's Senior Executive Service (SES) employees, or whether it should use other appropriations made to the Board. For the reasons given below, we conclude that the Board may use either appropriation.

BACKGROUND

The Railroad Retirement Board is an independent agency within the executive branch charged to administer the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v, and the Railroad Unemployment Insurance Act, 45 U.S.C. §§ 351-368. Section 23 of the Railroad Retirement Act, 45 U.S.C. § 231v, provided for the establishment of the

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Office of Inspector General within the Board subject to the Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101.1/

The Congress typically finances the operations of the OIG by the appropriation "Limitation of Review Activity," an appropriation separate from other appropriations made to the Board. See, e.g., Pub. L. No. 100-436, 102 Stat. 1680, 1712 (the Board's fiscal year 1989 appropriation). The appropriation is for audit, investigatory and review activities. The Board pays salaries of OIG employees from this appropriation.

The Board questions whether this account is the appropriate account from which to pay performance awards to the OIG's SES employees. Under the Civil Service Reform Act, the Board determines to whom performance awards will be made and the amounts of those awards.2/ 5 U.S.C. § 5384. The Board suggests that as a consequence, such awards are payable not from the OIG's separate appropriation, but only from the Board's other appropriations.3/

The Board is concerned, however, that use of such other appropriations, when the OIG has its own appropriation, constitutes an impermissible augmentation of the OIG

1/ Effective April 1989, the Board's Office of Inspector General will operate under authority of section 9 of the Inspector General Act. Recently enacted amendments to that Act repealed section 23 of the Railroad Retirement Act, and amended section 9 of the Inspector General Act to establish section 9 as the authority for the Board's Office of Inspector General. Pub. L. No. 100-504, §§ 102(d), (e)(3), 102 Stat. 2515 (1988).

2/ The Act imposes on the agency restrictions on the aggregate amount of awards it may make in any fiscal year. 5 U.S.C. § 5384(b)(3).

3/ The operations of the Board, other than the OIG's activities, are generally funded by two appropriations: "Limitation on Administration" and "Limitation on Railroad Unemployment Insurance Administration Fund." See Pub. L. No. 100-436, 102 Stat. at 1711-12. According to a Board official, the Board pays the salaries of non-OIG staff from these appropriations; amounts are drawn from each account in proportion to the type of work performed. The Board uses these appropriations, in the same manner, to pay performance awards to its non-OIG SES staff.

appropriation. The Board asks for our help in solving its dilemma.

DISCUSSION

Where one can reasonably construe two appropriations as available for an expenditure not specifically mentioned under either appropriation, we will accept an administrative determination as to which appropriation to charge. See, e.g., 59 Comp. Gen. 518, 520 (1980). In this case, we find that there are sound reasons to support funding OIG SES performance awards from either the OIG appropriation or the other appropriations available to the Board; hence, the Board has discretion to determine which appropriation(s) it will use and we will accept its decision. Once the Board makes its choice, it must continue using the same appropriation(s) to the exclusion of any other, unless, of course, and until the Congress, by law, dictates otherwise. Id. at 521.

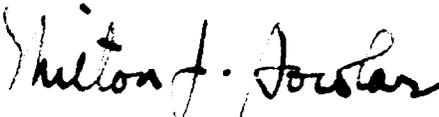
Because the Civil Service Reform Act contemplates that the head of an agency will make determinations regarding performance awards, one can reasonably construe the Board's general appropriations as available for payment of OIG SES performance awards in the same manner and to the same extent as non-OIG SES performance awards. Alternatively, one may reasonably construe the OIG appropriation as available for payment of OIG performance awards. In this regard, the payment of performance awards from the appropriation available for the activity which presumably benefitted from the performance being rewarded is not an unreasonable proposition. Also, the Board could view SES performance awards for OIG employees as akin to salaries and thus chargeable to the OIG appropriation.

We do not share the Board's concern that drawing on its general appropriations would constitute an impermissible augmentation of the OIG appropriation. As a general rule, an agency may not augment an appropriation from outside sources (including another of the agency's appropriations) without specific statutory authority. 59 Comp. Gen. 415, 417 (1980). This rule is derived from the principle that when the Congress appropriates funds for an activity, the appropriation represents a limitation on that activity, and all expenditures for the activity must come within that limitation. In this instance, an augmentation of the OIG appropriation would result only if it were clear that the Congress intended the OIG appropriation to be the exclusive source of funds for OIG performance awards. See generally 65 Comp. Gen. 635 (1986) (holding that because the Congress designated a Department of Labor appropriation as the

exclusive source for paying administrative law judges hearing black lung cases, an augmentation would result if the Department borrowed judges from the National Labor Relations Board on a nonreimbursable basis).

SUMMARY

We do not agree with the Board's suggestion that the Civil Service Reform Act requires payment of OIG SES performance awards only from Board general appropriations. So long as the Board retains its statutory prerogative of determining OIG SES performances to be rewarded and amounts of awards, paying the awards from the OIG appropriation is not inconsistent with, nor would it detract from, the Board's administrative responsibilities under the Act. In any event, we conclude that the Board's general appropriations, in the same manner and to the same extent as non-OIG SES performance awards, or the OIG appropriation can be reasonably construed to be available for OIG SES performance awards. The choice is the Board's, but once made, must be consistently followed.

for 
Comptroller General
of the United States