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B-40842

OCT 5 1977

The Honorable Robert N. C. Nix, Chairman
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

Your letter of September 23, 1977, requested our report on H.R. 9094, 95th Congress, 1st Session, a bill to provide for improved labor-management relations in the Federal service and for other purposes.

A review of H.R. 9094 reveals that it incorporates the majority of the provisions contained in H.R. 13 and H.R. 1589, 95th Congress, 1st Session. We commented on the provisions of these earlier bills by separate letters, dated May 2, 1977, and have not changed our position in the interim. Therefore, in view of the limited time available to prepare our comments on H.R. 9094, we shall restrict them to matters of primary concern to this Office. However, we urge the Committee to consider at this time our previous comments in its deliberations on H.R. 9094.

The Federal Personnel Management Project (FPMP) of the President's Reorganization Project is currently studying labor-management relations in the Federal Government with a view toward recommending changes in that program that will be compatible with the planned overall reorganization. On September 20, 1977, the FPMP issued Option Paper 4 dealing with labor-management relations in the Federal Government. Federal agencies, unions, and other interested groups have been requested to comment upon the various options presented. For this reason we strongly recommend that further consideration on a comprehensive Federal labor-management relations bill be deferred until the President's reorganization plans have been completed.

With regard to the specific provisions of H.R. 9094, we have the following comments:

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Coverage of the Bill

The term "agency" as defined in section 7103(a)(3) is given a comprehensive definition for the executive branch which has the effect of extending coverage of the bill to the maximum number of executive branch employees. The entire judicial branch is excluded. The legislative branch is also excluded, except for the Library of Congress, the Government Printing Office, and the General Accounting Office which is included by virtue of 5 U.S.C. § 105. This means that the congressional committee staffs, the Congressional Budget Office, the Congressional Research Service, and the Office of Technology Assessment are exempted from the coverage of the bill. If these organizations are exempted, then the General Accounting Office should also be exempted since it is an agency which performs audit, investigative, and review functions for the Congress. We, therefore, recommend amending subsection 7103(a)(3) as follows: "(3) 'agency' means the Library of Congress, the Government Printing Office, the Postal Rate Commission, and any Executive agency, as defined in section 105 of this title except the General Accounting Office."

Jurisdiction of the Comptroller General

The language of sections 7118(b)(4) and 7123 concerning orders of the Federal Labor Relations Authority is ambiguous with respect to the statutory jurisdiction of the General Accounting Office and the Comptroller General. The proposed language could be construed as authorizing the Authority to make final and binding determinations concerning the legality of payments ordered to remedy agency unfair labor practices or ordered by arbitration awards without reference to the Comptroller General. Since 1921, the Comptroller General has had exclusive authority under 31 U.S.C. §§ 74 and 82d, to render advance decisions regarding the legality of expenditures of appropriated funds that are binding on the executive branch of Government. Such authority should not be divided so that two or more agencies will have concurrent jurisdiction to render advance decisions binding on the same parties.

Differences and inconsistencies in the decisions of the two or more decision makers would confuse executive agencies in need of guidance and eventually introduce so much uncertainty in the law that the precedential value of all past decisions would be destroyed.

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Hence, we suggest that this possible ambiguity be removed by adding the following after subsection 7118(b)(4) on line 23, page 50, and after subsection 7123 on line 14, page 57: "Provided, that nothing in this section shall serve to preclude an agency head or an authorized certifying or disbursing officer of an agency from exercising their statutory right under 31 U.S.C. §§ 74 and 82d to request an advance decision from the Comptroller General of the United States as to the legality of any payment."

Expenditures by the Federal Labor Relations Authority

Section 7105(g) could be construed as authorizing the authority to expend appropriated funds without regard to restrictions contained in existing law, regulations, and Comptroller General decisions. For example, under this construction, the Board would have discretion to (1) fix the compensation of employees without regard to restrictions contained in title 5, United States Code; (2) pay travel and subsistence expenses of employees without regard to restrictions contained in the Federal Travel Regulations; and (3) lease office space and facilities without regard to restrictions contained in title 40, United States Code, or regulations promulgated by the General Services Administration.

We question whether the authority requires such broad discretionary authority to accomplish its mission particularly since many existing agencies with similar missions have been able to function well within the constraints of existing laws and regulations governing expenditure of appropriated funds. No reason appears as to why the authority should not be held accountable for the expenditure of its funds in the same manner as other Federal agencies. Therefore, we suggest that subsection 7105(g) be deleted and subsection (h) be redesignated as (g).

Statutory Pay and Benefits

The newly added provisions of sections 7114 and 7115 regarding the establishment of pay and benefits of Federal employees contain many complicated issues with far reaching ramifications. In the limited time available, we have been unable to study these issues in detail and therefore it would be inappropriate for us to comment on them. Inasmuch as these issues are currently being studied by the President's Reorganization Project, we feel that such legislation should be deferred until the President's study has been completed.

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Finally, we wish to express our appreciation for the opportunity to comment on this bill and for the committee's adoption of certain of our earlier recommendations and suggestions. If we can be of further assistance, please contact us.

S. J. KELLEY

Deputy |

Comptroller General
of the United States