



RELEASED  
UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY  
REFER TO: B-156287

May 15, 1978

Mr. Harold H. Borel  
Financial Manager  
Regional Commissioner of Customs  
U.S. Customs Service  
Department of the Treasury  
New Orleans, Louisiana 70112

Dear Mr. Borel:

Subject: FIS-8-V:A:F

Further reference is made to your submission to our Office concerning the negotiability of certain union-sponsored proposed provisions in a labor-management contract for your region which would provide that the Customs Service reimburse union representatives for travel expenses incident to assisting and representing employees in connection with adverse action hearings, grievances, and statutory appeal hearings.

In requesting our determination in this matter you have cited our decision in 46 Comp. Gen. 21 (1966) in which we held that, subject to guidelines prescribed by the U.S. Civil Service Commission, agencies could pay the travel expenses of union officials incident to their attendance at activities such as joint employee-management cooperation committees. We stated that such travel expenses were allowable under the Commission's guidelines implementing section 12 of Executive Order No. 10988, where the agency certified that the travel by the union representatives was conducted primarily in the interest of the United States.

In your telephone conversation of April 10, 1978, with Mr. David Agazarian, one of our staff attorneys, you stated that your office is not currently considering the issue of negotiability of travel expenses for union representatives as the negotiations with regard to this matter have been suspended. However, you stated that the Customs Service anticipates that the National Treasury Employees Union will raise this question sometime in June incident to the negotiation of a labor-management agreement at the national level.

We do not believe it is appropriate to issue a formal ruling under such circumstances. Instead, we believe this issue should be

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resolved under the usual procedures regarding negotiability. With regard to a disagreement as to whether or not a proposal is negotiable, section 11(c) of Executive Order No. 11491, as amended, provides in pertinent part as follows:

"(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

"(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

"(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

"(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

"(4) A labor organization may appeal to the Federal Labor Relations Council for a decision when--

"(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

"(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section."

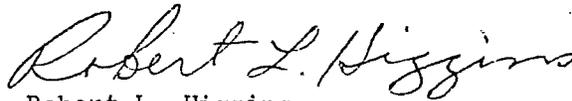
Accordingly, any dispute between the Customs Service and the National Treasury Employees Union should be resolved by the Federal Labor Relations Council under section 11(c).

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For your general information we enclose copies of certain related decisions. Our decisions have allowed the payment of travel expenses to witnesses appearing on behalf of employees at hearings. 48 Comp. Gen. 644 (1969). Note, however, the decisions do not allow payment of an employee's travel expenses incurred as a result of his travel to see and confer with his attorney nor do they allow the payment of attorney's fees except in the most limited cases. B-156482, June 23, 1975.

If in connection with a specific voucher or example your office has a question about the legality of an expenditure, we will be glad to further consider these issues.

Sincerely yours,



Robert L. Higgins  
Assistant General Counsel

Enclosures

cc: Mr. Harold D. Kessler  
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