



Decision

Matter of: National Labor Relations Board—Provision of Space to the National Labor Relations Board Federal Credit Union

File: B-328566

Date: December 14, 2017

DIGEST

The National Labor Relations Board's (NLRB) appropriations were available to continue to provide the NLRB Federal Credit Union space and associated services where the credit union did not maintain a certain membership standard continuously. The Federal Credit Union Act of 1934 authorizes agencies to provide space and services to a credit union that, upon application, meets a certain membership standard. 12 U.S.C. § 1770. The law does not require the credit union to maintain the membership standard after the initial application.

DECISION

The Inspector General of the National Labor Relations Board (NLRB) asks whether NLRB's appropriation was available to continue to provide space and associated services to the NLRB Federal Credit Union (credit union) between 2009 and 2015, during which time NLRB was aware that the credit union did not maintain the membership standard referenced in the Federal Credit Union Act of 1934 for agencies to provide such space. Letter to General Counsel, GAO, from Inspector General, NLRB (Oct. 27, 2016) (Request Letter), at 3. We conclude that NLRB's appropriation was available for this purpose. Although the act provides a membership requirement for the initial application for the allotted space, the act does not demand that the membership numbers be monitored or maintained after that initial application.

Our practice when rendering decisions is to obtain facts and legal views from the relevant agency. NLRB provided such information in a response to a development letter. Letter to Assistant General Counsel for Appropriations Law, GAO, from General Counsel, NLRB (July 31, 2017) (Response Letter). See GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP.

BACKGROUND

The Federal Credit Union Act of 1934, as amended, provides that, upon application, a credit union may request that an officer or agency of the United States allot the credit union space within the agency's building. Federal Credit Union Act of 1934, Pub. L. No. 73-467, 48 Stat. 1216 (June 26, 1934), *as amended by* Pub. L. No. 75-197, 50 Stat. 487 (July 9, 1937), *classified at* 12 U.S.C. § 1770. The act does not define the term "application." Section 1770 authorizes the agency to grant the credit union space and associated services, free of charge, if the credit union demonstrates that 95 percent of the members to be served at that location are federal employees, were federal employees at the time of admission into the credit union, or are members of either of the previous group's family. *Id.* The term "services" includes, but is not limited to, the provision of "lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service . . . and security systems." *Id.*

NLRB provided space and associated services to the NLRB Federal Credit Union since it was established in 1938 until 2015.¹ NLRB Office of Inspector General, *NLRB Credit Union*, Report No. OIG-INS-54-08-02 (May 6, 2008) (OIG Report), at 1; Response Letter, at 1. NLRB provided rent-free space to the credit union within its former headquarters, located at 1099 14th Street NW, Washington, DC 20005, and covered the costs associated with maintaining the space. See OIG Report, at 2–3.

In 2008, the NLRB Office of Inspector General issued a report regarding NLRB's support of the credit union. The report highlighted that NLRB did not keep a current record of whether the credit union maintained the 95 percent membership requirement set forth in section 1770. *Id.*, at 1. The report suggested, among other things, that NLRB take steps to create some form of agreement requiring the credit union to document its membership qualifications and addresses the support to be provided by the agency. *Id.*, at 5.

In light of the report, NLRB requested that the credit union provide NLRB with updated membership numbers. Request Letter, at 2. The credit union responded that it did not meet the 95 percent requirement set forth in section 1770. *Id.*, Enclosure 2 (Letter from President, NLRB Federal Credit Union, to Director of Administration, NLRB (Apr. 30, 2009)). The credit union also emphasized that it could not sustain operation without NLRB's support. *Id.* The credit union requested that NLRB meet with it to discuss granting an "accommodation" whereby NLRB would permit it to continue operating in the 14th Street location notwithstanding the credit union's failure to meet the membership requirement. *Id.*

¹ NLRB stated that the credit union "had been initially allotted NLRB building space well in the past, presumably under some 'application' within the meaning of section 1770." Response Letter, at 1. That initial application is not at issue in this decision.

According to a credit union official, NLRB did not take any action after receiving the credit union's letter requesting an accommodation. NLRB continued to provide support to the credit union until July 2015, when NLRB moved to a new headquarters building, located at 1015 Half Street SE, Washington, DC 20003. Request Letter, at 3. In light of the credit union's low membership percentage, NLRB declined to provide space to the credit union in its new location. *Id.*, at 1.

The Inspector General asks whether NLRB's appropriation was available to obligate for space and associated services for the credit union after NLRB received the credit union's letter indicating that the credit union failed to meet section 1770's membership requirement. *Id.*, at 3. Specifically, the Inspector General asks whether the credit union's request for an accommodation constituted an "application" under the statute such that the membership requirement had to be met in order for the agency's funds to be available for space and services for the credit union. *Id.*

DISCUSSION

The question here is whether the credit union's request for an accommodation to the membership percentage requirement constitutes an application for support under section 1770 such that NLRB's appropriation would not be available to provide support to the credit union. Although we have previously concluded that agencies can provide credit unions with items and services under section 1770, GAO has not had occasion to analyze the meaning of the term "application" within this section. See B-226065, Mar. 23, 1987 (holding that an agency can provide an automatic teller machine to its credit union if the agency determines that the machine would materially contribute to the authorized agency purpose under 12 U.S.C. § 1770).

We first look to the language of the statute to determine its meaning of the term "application." When the language of a statute is clear on its face, it is the plain meaning of that language that controls. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009); *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997). The relevant statute here provides:

"[U]pon application by any credit union . . . addressed to the officer or agency of the United States charged with the allotment of space . . . in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion lease land or allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space . . . is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families"

12 U.S.C. § 1770.

Under a plain meaning reading of the statute, the application contemplated in this section is the initial formal request by a credit union to receive support from an agency. The statute grants the officer or agency the authority to allot space in response to that application only if the credit union can demonstrate that it meets the 95 percent membership requirement imposed by section 1770.

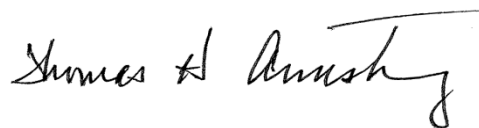
The statutory language is silent with regard to whether the credit union must continuously maintain the membership requirement after the initial allotment of space was approved. Section 1770 neither requires the agency to periodically monitor the status of the credit union's membership nor does it require the credit union to periodically reapply for support. Therefore, we do not read any additional requirements into the plain language of section 1770. An agency could, in its discretion, impose a continuous membership requirement; however, such monitoring is not required and would be in addition to the conditions set forth in section 1770.

Similarly, the credit union's request for an accommodation does not fit within section 1770's use of the term "application." Section 1770 only contemplates one initial application for support on the part of the credit union. It does not require subsequent action. NLRB began providing support to the credit union in 1938; NLRB presumes it did so after some form of application where the credit union met the membership standard. As such, the credit union's subsequent request for an accommodation is not the initial request for support discussed in section 1770. Therefore, NLRB's appropriations were available to provide support to the credit union from 2009 to 2015.

NLRB told us that it did not view the credit union's request for an accommodation as an application under the statute. Response Letter, at 1. NLRB stated that it interpreted the term "application" in section 1770 to refer to an initial, formal request for support and that the credit union's request for an accommodation did not fit that meaning of the term. *Id.*, at 1–2. Based on our analysis, we conclude the same.

CONCLUSION

The NLRB credit union's request for an accommodation regarding its membership percentage was not an "application" under section 1770. Section 1770's membership requirement applies only to the initial application to receive space and associated services from an agency without charge, and does not require additional membership requirements after that initial application. As such, NLRB's appropriations were available to provide the credit union with space and associated services from 2009 to 2015.



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