United States General Accounting Office

GAO

Testimony

Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, House of Representatives

For Release on Delivery
Expected at
10:00 a.m., EST
Tuesday,
May 19, 1998

LEGAL AVAILABILITY OF FUNDS:

Expenses of Election Officer Supervision of the International Brotherhood of Teamsters 1996 Election Rerun

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GAO/T-OGC-98-52

Mr. Chairman, Mrs. Mink, and members of the Subcommittee, I am pleased to be here today to discuss the Comptroller General's April 28, 1998, opinion concerning the availability of appropriated funds to pay the costs of supervising a rerun of the 1996 International Brotherhood of Teamsters election. With your permission, I have a brief statement which I will read, and a copy of our April 28th opinion that I would like to submit for the record.

In 1989, the United States District Court for the Southern District of New York entered a consent order embodying a voluntary settlement of charges brought by the United States against the International Brotherhood of Teamsters (Union). In the Consent Decree, the Union agreed to a number of sweeping changes in the Union's electoral processes.

One of the reforms mandated by the Consent Decree was the appointment of an Election Officer to supervise, at the Union's expense, the 1991 election of Union officers. The Consent Decree also gave the United States the option to have the Election Officer supervise, at the government's expense, the 1996 election. The United States availed itself of that option and paid about $17.5 million from funds appropriated to the Departments of Labor and Justice to cover the costs of supervising the 1996 election. After the election, the Election Officer uncovered serious violations of the election rules, refused to certify the results of the election, and ordered a rerun.

In the fall of 1997, the Justice Department negotiated an agreement in principle with the Union to share the costs of supervising the rerun. To pay the government's share, Justice proposed to use the unobligated balance (about $900,000) remaining from the $1.9 million appropriated in its 1997 Appropriations Act and to transfer $1.9 million from other Justice appropriations.

As you know, the tentative agreement stalled when the Appropriations Committees objected to the use of further federal funds to pay for supervising the election rerun. In deference to the Committees' objections, Justice abandoned its proposal. Shortly thereafter, Congress included in the 1998 Justice and Labor Appropriations Acts restrictions on the use of any funds made available in those acts to pay for the Election Officer's supervision of a rerun of the 1996 election.

In December 1997, the Election Officer applied to the U.S. District Court for the Southern District of New York for an order securing funding for the 1996 election rerun. In response, on December 18, 1997, the District Court ordered the Union to fund the Election Officer's supervision of the rerun. On March 30, 1998, the U.S. Court of Appeals for the Second Circuit reversed the District Court's order. Although both courts agreed that the rerun is a continuation of the 1996 election and that the government has the right, but not the obligation, to have the 1996 election supervised by the Election Officer, the Appeals Court held that "[i]f the government chooses to exercise that right . . . the [Consent] Decree provides that the government must bear the costs of the supervision."

In response to your questions, Mr. Chairman, concerning the availability of funds to pay for the Election Officer's supervision of a 1996 election rerun, we examined the 1997 Justice Appropriations Act, the 1998 Justice and Labor Appropriations Acts, and the so-called Judgment Fund, the permanent, indefinite appropriation used to pay most litigative and many administrative awards against the United States.

As I noted earlier, Congress, in the 1997 Justice Appropriations Act, provided the Department with $1.9 million "for supervision of the [Union's] national election." Since Congress provided that those funds remain "available until expended," and since both the District Court and Court of Appeals view the election rerun as a continuation of the 1996 election, Justice may use the unobligated balance of the $1.9 million to pay the costs of supervising an election rerun.

The transfer and reprogramming provisions contained in the 1997 Justice Appropriations Act do not authorize Justice to transfer or reprogram funds in fiscal year 1998 to cover the expenses of a 1996 election rerun. An appropriation act is by its very nature non-permanent legislation. Accordingly, its provisions expire at the end of the covered fiscal year, except for those provisions that Congress enacts as permanent provisions of law. We found nothing in the language or nature of the 1997 Appropriations Act's reprogramming and transfer provisions to indicate that they survive the close of fiscal year 1997.

With respect to the 1998 Justice and Labor Appropriations Acts, Congress included specific restrictions on the use of funds made available in those acts to pay the Election Officer's expenses of supervising the election rerun in fiscal year 1998. Thus, funds made available in those acts are not available to cover these expenses. We also found that because of the restrictions contained in the 1998 Labor and Justice Appropriations Acts, Justice and Labor could not use any funds transferred or reprogrammed from other funds made available in those acts to pay the Election Officer's expenses of supervising the election rerun. Nor may Justice or Labor transfer funds from previously appropriated multiple or no-year funds to pay the Election Officer's expenses. The language of the transfer authority provided in the 1998 Justice and Labor Appropriations Acts only authorizes transfers of funds made available in those acts for the current fiscal year, not the transfer of funds appropriated in different fiscal years.

Finally, with respect to the Judgment Fund, the Appeals Court's reversal of the District Court's order does not satisfy the statutory criteria governing payments from the Judgment Fund. The Appeals Court did not make a final, specific, monetary award against the United States–a prerequisite to payment from the Judgment Fund. Rather, the court simply explained its interpretation of the Consent Decree: if the government chooses to supervise the rerun, it will have to pay for that supervision.

Any court order can be translated into a specific monetary amount in the sense that the costs of compliance with the order can be calculated and quantified. That does not mean,

however, that those costs are payable from the Judgment Fund. As the Supreme Court has noted, the Judgment Fund is not "an all-purpose fund for judicial disbursement . . . Rather, funds may be paid out only on the basis of a judgment based on a substantive right to compensation . . ." OPM v. Richmond, 496 U.S. 414, 432 (1990).

We view the costs of supervising a rerun of the 1996 election as programmatic costs that but for the specific restrictions in the 1998 Justice and Labor Appropriations Acts, Justice and Labor could pay from available operating accounts. In our opinion, the fact that Congress has chosen to bar the use of funds made available in those Acts should not be viewed as an invitation to convert the Judgment Fund from an appropriation to pay damage awards to a program account to circumvent congressional restrictions on the appropriations that would otherwise be available to cover these expenses.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions the Subcommittee may have concerning our opinion.

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