

BY THE COMPTROLLER GENERAL RELEASED

Report to the Chairman, Subcommittee on Federal Expenditures,
Research and Rules, Committee on Governmental Affairs,
United States Senate

OF THE UNITED STATES

Deficient Management Practices at the Federal Labor Relations Authority--Action Being Taken

The Federal Labor Relations Authority's purchase of office furniture and furnishings in excess of \$255,000 was

- made with funds from an expired 1979 appropriation,
- done in contravention of Federal Property Management Regulations, and
- made during the President's Government-wide moratorium on furniture buying.

FLRA has issued an Anti-Deficiency Act violation report on the matter to the President and the Congress. Because officials have taken or are planning to take corrective actions to prevent the recurrence of such practices, GAO is not making recommendations at this time.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-208388

The Honorable John C. Danforth
Chairman, Subcommittee on Federal
Expenditures, Research and Rules
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

In response to your February 26, 1982, letter, we investigated furniture procurement practices at the Federal Labor Relations Authority (FLRA). You requested a review of how a newly created agency, FLRA, could spend over \$150,000 to furnish four offices with unusually expensive office furniture believed to have been unauthorized and in contravention of General Services Administration (GSA) regulations. On May 20, 1982, at a hearing before your Subcommittee, we presented our preliminary findings with respect to FLRA furniture procurement practices and related procurement matters. This report summarizes the information provided during that hearing and additional data subsequently obtained.

We conducted our review at FLRA headquarters in Washington, D.C. The original objectives were to determine (1) why FLRA bought furniture outside GSA's central supply system, (2) the extent of, and justification for, procuring such extravagant furniture, (3) the managerial controls FLRA used to minimize unnecessary furniture procurement, and (4) the improvements, if any, needed to strengthen procurement and contracting procedures. Pursuant to your directions following the hearing, we modified our objectives to include determining if, in fact, FLRA had violated section 3679 of the revised statutes, commonly referred to as the Anti-Deficiency Act, in its furniture procurement.

We reviewed various Federal procurement and property manuals, regulations, and instructions and FLRA contract files, related correspondence, memorandums, and other associated documents. We also interviewed the FLRA members and personnel concerned with management and procurement operations. This review was performed in accordance with generally accepted government audit standards.

We found that FLRA:

--Violated the Federal Property Management Regulations (FPMR) when purchasing office furniture and furnishings outside of the GSA central supply system.

- Ignored the President's moratorium on furniture procurement.
- Violated the Anti-Deficiency Act.
- Apparently made improper salary payments to an FLRA official.

We are not making recommendations at this time because of the FLRA corrective actions already taken or planned. We believe that the corrective actions as outlined by the FLRA Chairman and currently being implemented by the FLRA management team should prevent the recurrence of such conditions.

ORGANIZATION AND RESPONSIBILITIES

FLRA was created by the Civil Service Reform Act of 1978 and has been in existence for about 4 years. FLRA provides leadership in establishing policies and guidance relating to the Federal Service Labor-Management Relations program. In addition, as part of its mission, FLRA

- serves as a neutral party in the settlement of disputes that arise between Government employees and the employing agency;
- determines the appropriateness of Government employee bargaining units;
- supervises or conducts Government employee representation elections;
- prescribes criteria and resolves issues relating to granting of consultation rights to labor organizations;
- prescribes criteria and resolves issues with respect to the applicability of agency rules and regulations; and
- resolves negotiability disputes, unfair labor practice complaints, and exceptions to arbitration awards.

For fiscal year 1982, FLRA's budget authority was about \$14 million. During fiscal year 1982, FLRA sustained a budget cut, resulting in a 25-percent reduction-in-force of its overall staff.

The FLRA enabling legislation stated that the President shall designate one member of the three member board to serve as chairman. The legislation did not indicate the relationship of the chairman to the other two members. Thus, the role of the chairman is undefined. According to FLRA officials, one member sought a formal legal opinion of the chairman's authority from the FLRA solicitor. In January 1979, the solicitor advised that special powers and duties do not attach to the office of chairman (except the power to preside at FLRA meetings), but that the

members could delegate to the chairman additional powers and duties which are not inconsistent with their obligations under law. This, however, was not done. As a result, FLRA has been managed, collectively, by the chairman and two members. Although the members had issued a "Delegation of Authority" in September 1979 to the FLRA executive director to exercise final authority over management and administrative matters, in practice, many administrative and management issues were not decided by the executive director but rather were decided by the members.

In our opinion, many of the administrative and management problems discussed in this report can be traced back to authority and responsibility being shared equally among the three members, rather than the designated chairman being the agency head. On May 20, 1982, the three members testified before your Subcommittee on the inefficiency and ineffectiveness of their management. Further, effective that day, the members delegated to the chairman the responsibility and authority to manage internal administrative matters. This included all housekeeping services and functions, such as procurement, fiscal management, personnel management, and office services.

VIOLATION OF THE FPMR

FLRA contracted for office furniture and furnishings for Presidential appointee offices without submitting the required waiver request and receiving approval from GSA to waive the use of GSA sources. Instead, FLRA awarded a contract for \$88,808 directly to a commercial vendor for the members' office furniture on June 5, 1981. Subsequently, FLRA directed contract modifications for additional furniture, wallpaper, draperies, and carpeting that brought the final contract price to \$255,350. (See app. I.)

The distribution of furniture and furnishings among the three members' offices was about \$55,000, \$58,000, and \$44,000. Also, included were the General Counsel's office furnishings for about \$23,000. The balance, about \$70,000, included carpeting, wallpaper, and draperies for the agenda room, senior executive service (SES) offices, and administrative law judges' offices. About \$5,000 worth of furniture was undelivered or in storage at the time of our review. (See app. II.)

Generally, Government agencies are required to obtain office furniture from or through GSA sources, the theory being that the central supply agency is able to achieve economies in procurement when contracting for and managing classes or groups of commodities for the entire Government. Also, written requests for waivers must be submitted by the agency for GSA's approval before an agency initiates action to procure items outside the GSA supply system.

When asked why FLRA bypassed GSA for its office furniture, FLRA officials advised us that they were unaware of the GSA

requirements and thought it was proper to contract directly since the FLRA technical staff did not inform them otherwise. The FLRA technical staff (i.e., the office services manager and contracting officer and the financial manager) told us that they did what they thought was proper. This was confirmed in the congressional hearing and in signed statements. They explained that an atmosphere existed at FLRA that one did not tell the members or other FLRA officials what they did not want to hear if one wanted to be considered a team player. Both individuals are no longer with FLRA. Similarly, when we asked why such expensive furniture was bought, the contracting officer at the time stated that when he tried to raise the issue of excessive furniture cost, he was told by management if that is what the members want, to get it because they are Presidential appointees.

We compared some of the FLRA contract prices for individual furniture pieces with the GSA prices for the same or equivalent furniture. For those items tested, the FLRA contract prices were at least double the GSA prices. For example, the contract prices were \$3,785 for a conference room table, \$765 for a wing chair, and \$1,981 for an executive style desk, whereas the GSA prices for items of comparable quality and size were \$899, \$360, and \$709, respectively.

Contract files lacking documentation
and resultant duplicate purchases

We found that the managerial controls FLRA used to minimize unnecessary furniture procurement were seriously deficient. For example, no justifications were prepared by the intended users and submitted to managers so that the furniture request could be evaluated against furniture stocks in the FLRA warehouse. Written justification for procurement is prescribed so that managers can identify and avoid redundant purchases and determine the appropriateness of the procurement before it is approved.

FLRA records show that, as part of the creation of FLRA, the Department of Labor contributed about \$430,000 as "startup" money in fiscal year 1978. From the \$430,000 startup fund, the Federal Labor Relations Council's (FLRA's predecessor) executive director, now an FLRA member, approved and ordered, through the Civil Service Commission's procurement office, GSA-scheduled office furniture for the FLRA Presidential appointee offices. Items purchased included desks, chairs, sofas, butler trays, tables, settees, bookcases, and credenzas. An example of typical Presidential appointee office furniture procured from this startup fund is included as appendix III.

FLRA records indicate that most of the Presidential appointee furniture and other office furniture purchased with the \$430,000 startup fund was stored at a commercial warehouse pending FLRA's move to a single location for its national headquarters. We found some of this Presidential appointee furniture (desks, tables, butler

trays, sofas, etc.) in offices of non-Presidential appointees at FLRA. FLRA duplicated purchases of many furniture items in fiscal year 1981 with those purchased from the fiscal year 1978 startup fund. Had written justifications been prepared to support the need to purchase additional Presidential appointee furniture in 1981, managers would have had the opportunity to question and possibly avoid duplicate purchases.

Executive type office furniture policy

According to FLRA officials, fiscal year 1979 money was used to purchase executive wood type office furniture for FLRA headquarters staff (GS-14 and below). In our opinion, this was in contravention of GSA regulations.

The FPMR sets forth detailed rules for civilian agencies to follow in determining furniture standards. The FPMR in effect at the time states that:

"The use of executive type wood office furniture, whether new or rehabilitated, shall be limited to personnel in grade GS-15 and above * * * similar or matching office furniture (may be) assigned to secretaries and staff assistants whose duties are in direct support of these personnel * * * The acquisition of new items shall be limited to those requirements which are considered absolutely essential and shall not include upgrading to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more expensive lines * * *."

The regulations further provide that an agency's furniture requirements shall be filled from usable excess stocks, rehabilitated stocks, or the least expensive new furniture that will satisfy the need.

Notwithstanding the above regulations, FLRA headquarters offices for all employees (except for two employees' metal desks in the mailroom) are furnished completely with executive type wood office furniture. When we questioned FLRA officials about this, the Deputy Executive Director prepared an official FLRA response and stated that officials furnished FLRA headquarters comparably to what they thought other agencies of FLRA's stature had. FLRA and GSA records disclose that FLRA transferred thousands of dollars worth of serviceable office furniture out of FLRA (while moving to its new location, 500 C Street, SW., Washington, D.C.) through GSA to other Government offices, such as the Departments of the Navy and Agriculture and the Federal Communications Commission, as well as to State governments. From one warehouse location, FLRA officials were still declaring furniture excess and disposing of furniture (some new) during our review.

FURNITURE BAN IGNORED

On January 22, 1981, the President issued a memorandum that directed all executive department and agency heads to reduce unnecessary Federal spending. Department and agency heads were to (1) reduce travel by 15 percent, (2) cut consulting, service contracts, and study contracts by 5 percent, (3) stop, until further notice, procurement of furniture, office machines, and other equipment, and (4) discontinue redecorating political appointees' offices. He advised that the Office of Management and Budget (OMB) would issue detailed instructions for carrying out the first three actions.

On January 30, 1981, OMB issued a bulletin which informed agency heads of an immediate moratorium on procurement of certain equipment (including furniture), unless an exemption from OMB was obtained. The bulletin stated that no new obligations (i.e., contracts) were to be entered into for the purchasing, leasing, or rental of equipment covered by the moratorium. The bulletin also stated that to obtain an exemption from this moratorium, an agency's head must send a justification letter to the Director of OMB explaining why the procurement cannot be postponed.

As we understand the FLRA management structure at that time, the FLRA head would have included all three members. From discussions with the members, the Executive Director, the Deputy Executive Director, and other senior staff, FLRA officials apparently received, read, and discussed the Presidential memorandum.

They also received the subsequent implementing OMB bulletin. However, notwithstanding the procurement moratorium, these management officials took no action to rescind their previously issued instructions to the contracting officer to order and procure the subject furniture. The contract file contains a memorandum dated December 30, 1980, from one member directing the contracting officer to order his (the member's) furniture immediately. Attached to the memorandum was a list of brand-name furniture.

On the bottom of the memorandum was a written notation, below the Deputy Executive Director's name, stating what appeared to be the Government's estimated cost of the initial furniture contract. Another memorandum in the contract file dated January 7, 1981, from the Executive Director instructed the contracting officer to buy the office furniture under competitive procurement procedures.

Based on the documentation found in the contract file, we believe that sometime between the date of the Presidential memorandum on January 22, 1981, directing agency heads to stop procurement of furniture, and the date the furniture contract was awarded on June 5, 1981, either (1) the head of FLRA should have

obtained an exemption from OMB as required or (2) those individuals who had instructed the contracting officer to order and procure the furniture should have canceled their instructions. Neither action was taken.

ANTI-DEFICIENCY ACT VIOLATION

You requested us to determine if FLRA had violated the Anti-Deficiency Act in its furniture procurement. In fiscal years 1981 and 1982, FLRA used money to pay for the \$255,350 furniture and furnishing contract from an FLRA fiscal year 1979 supplemental appropriation of \$1,789,000. FLRA needed \$860,000 of the total appropriation for initial startup costs as identified in the fiscal year 1979 supplemental budget justification. These costs were described as being one-time and nonrecurring and were associated with the physical establishment of FLRA. The supplemental appropriation was 1-year money and therefore had to be obligated by September 30, 1979, or else it would have expired.

Using a reimbursable work authorization (RWA) as the written binding agreement to support its action, FLRA obligated the entire startup fund (\$860,000) with GSA in August 1979 to refurbish, renovate, and generally improve and remodel the quarters to be occupied by FLRA. In May 1980, 8 months after the availability of funds expired, the Executive Director and Deputy Executive Director, along with the members, apparently believing that the funds were still available for obligation since "GSA had not put these monies into its system," decided to authorize the use of \$500,000 for furniture, moves, equipment, and refurbishment required throughout FLRA. The agency considered the remaining \$360,000 reserved for the renovation of headquarters space when assigned.

FLRA maintained a separate accounting of the \$860,000 start-up fund and, according to FLRA officials, as time progressed they viewed the \$860,000 startup fund as a second checking account.

By obligating part of the \$860,000 fund for furniture and equipment contracts with commercial vendors and with GSA after it was no longer available for obligation, FLRA violated the Anti-Deficiency Act, section 3679, Revised Statutes (31 U.S.C. 1341).

FLRA has submitted a report of an Anti-Deficiency Act violation (see app. IV), but the report covers only the \$340,505 paid to commercial vendors and describes this as only a "technical" violation of the act. FLRA also should have reported the amount paid to GSA after September 30, 1979, as an additional violation.

According to FLRA's Anti-Deficiency Act report, about \$196,000 of the \$860,000 startup fund remains unexpended. Using the FLRA unverified unexpended balance, we estimate the additional violation to be about \$324,000.

In its Anti-Deficiency Act violation report, FLRA explains that it views the orders placed with GSA in fiscal years 1980 and 1981 not as additional obligations of the fiscal year 1979 appropriation but as serving "to partially liquidate the original obligation incurred with GSA in FY 1979." However, no obligation was validly incurred with GSA in fiscal year 1979. As the FLRA report notes, GSA never accepted the RWA. More fundamentally, whether or not GSA accepted it, the RWA could not have validly obligated the fiscal year 1979 funds. The law (31 U.S.C. 1501) requires, as a condition for recording an obligation, a binding agreement for specific goods to be delivered or work or services to be performed. The RWA was not sufficiently specific to meet this criterion. It merely called for GSA to refurbish, renovate, and generally improve and remodel the quarters to be occupied by FLRA at Headquarters and regional offices and any interim staging areas necessary for ultimate relocations. Start and completion dates were not filled in. Indeed, the report says that "specific orders for specific work were to be subsequently placed against this initial RWA."

Without a valid obligation before the end of fiscal year 1979, the funds were no longer available for obligation or expenditure. When FLRA later issued orders to GSA for specific work or services, citing the fiscal year 1979 appropriation, it was not "liquidating" an earlier obligation; it was in effect creating obligations and making expenditures at a time when no funds were lawfully available for obligation. This violated the Anti-Deficiency Act and also the prohibition in Article I, section 9 of the Constitution against drawing money from the Treasury which has not been appropriated by law. These violations should be duly reported to the Congress.

The fact that FLRA had sufficient accounting controls to insure that no more than \$860,000 would be spent is immaterial since any expenditure from the \$860,000 fund was an overexpenditure. FLRA members and officials evidently acted in good faith, in the mistaken belief that the funds had been validly obligated in fiscal year 1979 and remained available for obligation. Although the vendors in this case have already been paid, the General Fund of the Treasury was used to pay for an illegal transaction and must be reimbursed.

The following three options are available to FLRA:

- Return the goods and attempt to secure reimbursement for at least their current value. To the extent overexpenditures were for services, rather than goods, this option is limited because services are not returnable.

--Keep the goods and services but reimburse the Treasury from current appropriations, if sufficient. For accounting purposes, these purchases would be recorded as a fiscal year 1983 procurement.

--Request a supplemental appropriation from the Congress, which would then be returned to the Treasury.

While these measures may appear to be mere bookkeeping transactions, unless the General Fund is reimbursed, the deficit resulting from the Constitutional violation will remain. Notwithstanding the good faith of FLRA, we cannot regard such a violation as a mere technicality.

POTENTIAL IMPROPER PAYMENTS TO AN FLRA OFFICIAL

While performing our review of FLRA procurement of furniture, several FLRA employees informed us that FLRA had hired a senior official during the Presidentially ordered hiring freeze. The personnel records indicated that a veteran with reinstatement rights had been hired to fill the position. Documentation in the personnel file disclosed that FLRA erred in classifying the individual as having reinstatement rights, and FLRA personnel officials said they also erred when notifying the unsuccessful applicants that the person selected was a veteran. In addition, the official personnel file contained an oath of office document for the individual dated January 16, 1981 (the Friday before the hiring freeze of January 20, 1981). Payroll documents for processing this applicant into the agency were time/date stamped February 11, 1981. These documents included U.S. Federal Income Tax withholding form, death benefits form, and health benefits form. The employee's payroll files also disclosed a starting date of January 16, 1981.

To resolve what appeared to be an inconsistency, we asked the individual's last employer for his last date of employment. The employer said the date was February 9, 1981. We then provided copies of the conflicting documentation (FLRA pay records and previous employer's letter) to the Executive Director. The Executive Director instituted an immediate investigation because the law requires recoupment by the Government of improperly received pay when not in the performance of work.

Subsequently, FLRA officials advised us that while it appears that the individual received a salary for a period of time in which work was not performed, there is a conflict with respect to the length of the period. They said that further inquiry is underway to reconcile this matter. They stated in December 1982 that appropriate administrative action, including financial recoupment to the extent warranted, would follow.

AGENCY ACTIONS AND OUR EVALUATION

Throughout our investigation, we discussed our findings with the Chairman and the Executive Director. As a result, FLRA management has taken numerous corrective actions to remedy problems highlighted in this report. For example, FLRA members appear to agree that one individual should have superior administrative and management responsibility (and corresponding superior authority). The members signed a statement and testified before your Subcommittee hearing in May 1982 that internal management of FLRA would be far more effective and efficient if authority for such management were assigned to one individual (the chairman). We applaud this action. With the chairman acting and functioning as agency head for administrative and management matters, the executive director and other senior staff will have a single individual to look to for leadership and direction without fear of reprisal.

The Chairman and the Executive Director have assured us that GSA regulations and future Presidential memorandums and OMB bulletins will be strictly adhered to. They advised that the unique set of circumstances surrounding the creation of FLRA, and the good-faith misunderstanding on everyone's part appeared to be contributing factors to past events. They also cited the high turnover rate of individuals in key FLRA positions and the fact that when these problems occurred, the FLRA headquarters' staff was in four different locations, which amplified the difficulty level of management. They pointed out that FLRA has issued an Anti-Deficiency Act violation report (see app. IV) as the law requires and is investigating the potential improper payments to an FLRA official. As required, appropriate administrative action, including financial recoupment, to the extent warranted, is expected to follow.

We must emphasize that while FLRA has taken initiative in correcting certain actions, its violation of the Anti-Deficiency Act must be reported to the Congress in full. The Anti-Deficiency Act violation report which FLRA has submitted is incomplete in that it covers only the amount paid to commercial vendors. It should also include the amount paid to GSA after September 30, 1979.

OTHER MATTERS

Shortly after we received your letter, the FLRA Executive Director asked us to assist FLRA in reviewing and evaluating procurement procedures and related contracting matters. We used much of the information we developed in response to your request, particularly dealing with the furniture procurement and contracting, in fulfilling the Executive Director's request.

We found that the required documentation needed in FLRA contract and purchase order files was either absent or incomplete. We also found that 40 percent of FLRA small purchases (those under \$10,000) were made in the last quarter of fiscal year 1981, which is contrary to OMB guidance with respect to yearend (last quarter) spending.

When we presented these findings to FLRA officials, they took management actions to prevent recurrence. If properly implemented, we believe the changes will improve procurement and contracting procedures.

According to FLRA officials, procedures recently instituted ensure that full documentation of the procurement process will appear in the new contract and purchase order files. Under the current FLRA procedures, requested goods and services estimated to cost in excess of \$1,000 are scrutinized by top management, including the chairman, before approval. This is an effort to hold down unnecessary expenditures as well as yearend spending. Additionally, other cost saving measures, such as turning in FLRA's leased car and canceling the lease as well as canceling plans for installing private bathrooms in members' offices, demonstrate efforts to hold FLRA's spending to a minimum.

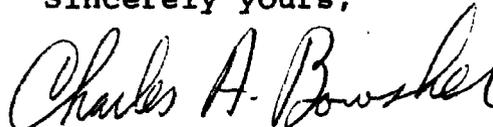
Further, other positive management actions have occurred. The new chief financial officer (acting) has taken steps to remedy deficiencies he found. These include (1) eliminating the backlog of small purchase orders, (2) eliminating the backlog of vendor invoices being processed for payment, and (3) having financial and accounting reports prepared within 10 days of the end of the month so that management will have current financial data for decision-making. As a result of FLRA's actions and stated direction, we are not making recommendations at this time.

AGENCY COMMENTS

FLRA has reviewed and commented on this report. FLRA believes the report misstates the facts in a number of key areas. However, upon analysis, we found that most of FLRA's concerns appear to be that this report will be misread or misinterpreted rather than being factually in error. We have included and addressed FLRA's comments in Appendix V.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of this report. At that time we will send copies to the FLRA Chairman and other interested parties, and make copies available to others upon request.

Sincerely yours,



Comptroller General
of the United States

MODIFICATIONS TOFLRA CONTRACT FOR FURNITURE AND FURNISHINGS

		<u>Cost in dollars</u>
Basic contract, June 5, 1981		
115 office furniture items		\$ 88,808.13
Modification #1, July 16, 1981		
- 21 items		
+ 129 items	+\$ 50,758.59	
		139,566.72
Modification #2, Aug. 17, 1981		
Substitution of one item	+ 61.00	
		139,627.72
Modification #3, Sept. 18, 1981		
Carpet, wallpaper, and draperies	+ 117,036.45	
		256,664.17
Modification #4, Jan. 19, 1982		
Substitution of item	\$- 1,313.50	
Total		<u>\$255,350.67</u>

Source: FLRA contract file - April 1982

DISTRIBUTION OF COSTS UNDER
FLRA CONTRACT FOR FURNITURE AND FURNISHINGS

	<u>Cost</u>	<u>Total</u>
Chairman		
Furniture	\$32,063.70	
Carpet, draperies, wallpaper	<u>23,064.47</u>	
		\$ 55,128.17
Member F		
Furniture	40,712.67	
Carpet, draperies, wallpaper	<u>16,808.13</u>	
		57,520.80
Member A		
Furniture	29,502.84	
Carpet, draperies, wallpaper	<u>15,200.33</u>	
		44,703.17
General Counsel		
Furniture	-0-	
Carpet, draperies, and wallpaper	<u>22,754.65</u>	
		22,754.65
Subtotal		<u>\$180,106.79</u>
Agenda room, and SES and administrative law judges' offices' furniture, carpet, draperies, and wallpaper	<u>69,664.31</u>	69,664.31
Other, undelivered, and/or in storage	<u>\$ 5,579.57</u>	5,579.57
Subtotal		<u>75,243.98</u>
TOTAL		<u>\$255,350.67</u>

Source: GAO Inventory - April 1982.

March 12, 1980

MEMORANDUM

TO: L. B. Applewhaite
 FROM: B. C. Mayo *JCM*
 SUBJECT: Office Furniture for M Street

According to Richard Wolfe, the following is a list of our office furniture for M Street:

Member's Office

1	bar/refrigerator	
2	tables	24 x 24 x 21
1	butler table	43 x 31 x 18
2	arm chairs	21 x 21 x 33
2	triple credenzas	91 x 13 x 50
1	hutch	91 x 13 x 50
1	sofa	84 x 33 x 26
2	lounge chairs	29 x 33 x 26
1	settee	60 x 33 x 26
1	judge's chair	
1	desk	

Staff Assistant's Office

1	desk
1	chair
1	custom chest

Reception area

2	lamp tables	24 x 24 x 21
2	tray tables	16 x 39 x 30
3	arm chairs	23 x 24 x 32-1/2

We will require a leadtime of three months for delivery of any lamps you may select. It is difficult to select lamps without seeing the upholstered furniture.



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

July 22, 1982

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Enclosed are four copies of a report on a violation of section 3679 of the Revised Statutes, as amended, 31 U.S.C. § 665, within the Federal Labor Relations Authority (the Authority). While this violation is wholly technical in nature, as detailed in the accompanying report, this report is filed in compliance with the letter and spirit of the law and with the administrative responsibility in connection therewith. The Authority is currently awaiting receipt of a report from the General Accounting Office (GAO) which, we are informally advised, will refer to this matter.

The Authority has found no evidence to indicate that any willful violation is involved. Rather, the violation was caused primarily by a unique set of circumstances surrounding the creation of the Authority as an agency in early 1979 (see Reorganization Plan No. 2 of 1978, 3 C.F.R. 323 (1979); and Title VII of the Civil Service Reform Act of 1978, 92 Stat. 1191), and an apparently good-faith misunderstanding on the part of certain former Authority administrative staff employees as to the ramifications of having obligated the appropriation at issue herein. The administrative system of fund control within the Authority, as prescribed in Authority regulations, is currently under review to ensure its adequacy. Additionally, certain other administrative actions, detailed in the accompanying report, have been or will be taken at the Authority's direction to address this situation and to prevent any recurrence. Moreover, it is the Authority's firm intention to ensure strict compliance with the provisions of 31 U.S.C. § 665 in all financial matters. Further, the advice of GAO and the Office of Management and Budget has been and will continue to be sought so as to ensure maximum effective accounting controls.

Because of the circumstances described in the report, we believe that the administrative actions detailed therein fully address the situation and assure that a similar situation will not recur. No disciplinary action appears to be appropriate in view of these unique circumstances, as well as the fact that the personnel primarily responsible for the technical violation are no longer employed by the Authority.

Copies of this report are also being submitted to the presiding officer of both Houses of Congress and to the Director, Office of Management and Budget.

Member Leon B. Applewhaite, who took the oath of office as a Member of the Authority on August 16, 1979, submits a separate statement below.

For the Authority,



Ronald W. Haughton
Chairman



Henry B. Frazier III
Member

Enclosure

While I was not a member of the Authority when the decision to obligate the \$860,000 to the General Services Administration was made, I fully concur in the filing of this report.



Leon B. Applewhaite
Member

FEDERAL LABOR RELATIONS AUTHORITYREPORT ON A VIOLATION OF SECTION 3679OF THE REVISED STATUTES, AS AMENDED, 31 U.S.C. § 665

Appropriation Title And Symbol: Additional amount for "Salaries and expenses" for the Federal Labor Relations Authority (Authority or FLRA), FY 1979, appropriation symbol 5490100.

Type Of Violation: Based on verbal assertions made by General Accounting Office (GAO) auditors during their recent audit of FLRA procurement practices, and based on intensive internal investigation by the Authority, it has been determined that various obligations incurred by the Authority during the period February 1980 through September 1981 constitute an overobligation of the above-referenced appropriation. It is to be emphasized at the outset, however, that this overobligation could not have resulted in an expenditure in excess of the appropriation, for the reasons set forth at p. 6, below. For this reason the violation is purely technical in nature.

Amount Of Violation: The total amount of the overobligation is currently calculated to be \$340,505.48. This total amount is broken down into individual obligations as follows:

<u>Date of Obligation</u> ^{1/}	<u>Amount of Obligation</u>
2/06/80	\$ 3,653.13
3/28/80	18,233.00
4/01/80	3,873.50
11/23/80	22,384.13
6/05/81	88,808.13
7/16/81	50,758.59
7/30/81	2,546.67
8/13/81	266.04
8/13/81	376.00
8/14/81	400.00
8/17/81	94.25
8/24/81	3,207.00
8/24/81	7,500.80
8/26/81	7,520.00
9/02/81	61.00
9/15/81	3,516.25
9/22/81	857.00
9/22/81	114,847.19
9/23/81	11,500.00
9/26/81	102.80
	<u>\$340,505.48</u>

^{1/} The obligations comprising the overobligation are those obligations which were placed by staff of the Authority with private vendors for goods and services connected with start-up of the agency pursuant to Reorganization Plan No. 2 of 1978, 3 C.F.R. 323 (1979) and Title VII of the Civil Service Reform Act of 1978, 92 Stat. 1191 (CSRA), and which were charged against the subject appropriation, and paid by the U.S. Treasury as authorized by the FLRA. They are described in more detail at pp. 5 to 6, below. The determination was made by former Authority administrative staff that these commitments to private vendors constituted valid obligations of the subject appropriation, and were consistently charged against

(Continued)

Pertinent Facts Concerning The Violation:

The primary reasons for the technical violation of 31 U.S.C. § 665 in this matter are: 1) the relatively short time period of availability of the subject FY 1979 appropriation for obligation by the Authority (i.e., approximately two months); 2) the unique problems associated with initiation of operations of a new agency in the federal government; 3) the two years and ten months after inception of the Authority that the General Services Administration (GSA) took to obtain headquarters office space for the Authority; and 4) the apparent misunderstanding on the part of certain former Authority administrative staff employees as to the ramifications of having obligated the subject appropriation.

The overobligation of the subject appropriation that occurred does not appear to have been willful on the part of Authority employees. Rather, it apparently was the product of a good-faith misunderstanding by these employees regarding the proper administration of the subject appropriation. The particular circumstances regarding this technical violation of 31 U.S.C. § 665 are now set forth.

A. Obligations Placed On The Subject Appropriation

The appropriation at issue herein was part of the Supplemental Appropriations Act of 1979, Pub. L. No. 96-38, 93 Stat. 97. As regards the Authority, Title I of this Supplemental Appropriations Act appropriated a total of \$1,360,000 for "Salaries and expenses."^{2/} Id., 93 Stat. at 124. This supplemental appropriation legislation became effective on July 25, 1979, and the Authority's appropriation thereunder was made available for obligation through September 30, 1979. The total of \$1,360,000 represented the full amount of the supplemental appropriation sought by the Authority.

The Authority's request for the supplemental appropriation was composed of two basic components. One of these components was \$500,000 for new functions to be performed by the Authority as a result of Reorganization Plan No. 2 of 1978

(Continued)

the FY 1979 start-up fund during FY 1980 and FY 1981. Charging these obligations against the 1979 appropriation appears to be inconsistent with correct procedures. This point, and the possible deficiencies for FY 1980 and the FY 1981 that such incorrect charging of the obligations may give rise to, are discussed at pp. 8 to 9, below. Subsequent orders placed by the Authority with GSA in FY 1980 and FY 1981 do not constitute additional obligations of the FY 1979 appropriation, but rather serve to partially liquidate the original obligation incurred with GSA in FY 1979, as described at pp. 3 to 5, below.

The dates used in connection with these subsequent obligations from the start-up fund are the dates of issuance of the order or requisition, or the date of execution of the contract, and not the date of delivery or performance of services, or payment therefor.

2/ Title II of this supplemental appropriation separately appropriated \$429,000 to the Authority for the purpose of satisfying increased payroll costs engendered by the civilian pay increase of FY 1979. The total appropriation to the Authority under this supplemental appropriation act was thus \$1,789,000. This separate appropriation for the pay increase is not here at issue, and will not be discussed further.

and the Civil Service Reform Act of 1978.^{3/} The other basic component of the request, and the one that is relevant to the present situation, was \$860,000 for "start-up" costs associated with establishment of the Authority as a new agency in the government. These costs included such items as moving to a headquarters office and establishing nine regional offices and several subregional offices;^{4/} renovating and remodeling such office space as it was acquired; obtaining equipment and furniture; and relocating to regional offices employees of predecessor agencies to the Authority.

Both the House and Senate Appropriations Committees reported out the Authority's supplemental request favorably. The Senate Committee stated in its report that it "recommends approval of the full [Authority supplemental] request. The Committee fully supports the activities of the Federal Labor Relations Authority and is interested in providing the Agency with all necessary resources to carry out the responsibilities assigned to it." S. Rep. No. 824, 96th Cong., 1st Sess. 153 (1979). The House Appropriations Committee also recommended approval of the full amount of the Authority's supplemental request. Concerning the start-up fund, the House Committee report expressly recognized the need for such a fund to enable the agency to, among other things, "locate space . . . , do renovation work, install communications, physically move offices and relocate employees, as required. These are one time and non-recurring costs which are associated with the physical establishment of the Authority." H.R. Rep. No. 227, 96th Cong., 1st Sess. 132 (1979). The bill was approved by the President on July 25, 1979. [1979] Pub. Papers 1320.

Given the very short period of time during which the supplemental appropriation was available for obligation (i.e., two months); what at that time appeared to be an imminent move into headquarters office space at 1726 M St., NW., Washington, D.C. (see p. 7, below); and in light of Congress' clearly stated intent that the Authority have these start-up funds available to it, former administrative employees on the Authority staff sought to obligate the start-up fund prior to the end of FY 1979. In this connection, discussions were initiated by these employees with representatives of GSA and OPM in August 1979.^{5/} The purpose of these discussions was to arrange for issuance by the

^{3/} Under the Reorganization Plan and the CSRA the Authority was created as a new agency in the executive branch to oversee the conduct of labor-management relations in the federal government. It has assumed duties previously performed by several other agencies pursuant to executive order, and also performs various other duties under the CSRA not previously performed by other agencies. This amount appropriated for new functions was validly obligated in its entirety in FY 1979.

^{4/} At its inception the headquarters of the Authority was housed in the offices of various other agencies, such as the Office of Personnel Management (OPM), another government agency created by Reorganization Plan No. 2 and the CSRA, and the Department of Labor. A separate headquarters facility, capable of accommodating all Authority headquarters staff in one location, was necessary in order to ensure, among other things, the independent role of the Authority in federal labor relations intended by the Reorganization Plan and the CSRA and efficiency of Authority operations. Because efforts to obtain headquarters office space for the Authority were protracted over a period of years and because these efforts are essential to an understanding of the Authority's obligation of the start-up fund, these space-acquisition efforts are discussed separately at pp. 7 to 8, below.

^{5/} OPM was serving as the Authority's accounting agent during FY 1979.

Authority of a reimbursable work authorization (RWA), GSA Form 2957, to the GSA for the full amount of the start-up fund. The RWA would authorize GSA to perform various kinds of remodeling and refurbishing work on the office space anticipated to be occupied by the Authority, and provide necessary equipment to the Authority. The issuance of such an RWA to GSA would serve to obligate the start-up fund, and thus prevent it from lapsing at the end of FY 1979. No funds were to be transferred from FLRA to GSA in connection with this RWA. Rather, specific orders for specific work were to be subsequently placed against this initial RWA. The start-up fund itself would remain in the Authority's account in the meantime.

As a result of these discussions during August 1979, on August 13 a GSA representative orally advised the Authority staff that GSA would accept the RWA discussed above. Accordingly, on August 17, 1979, the contracting officer of the Authority delivered such an RWA to GSA bearing that date. It was physically accepted by an employee of GSA on that date.

This RWA specifies that GSA is to "refurbish, renovate and generally improve and remodel the quarters to be occupied by the Federal Labor Relations Authority." Although these are primarily services, there is no indication that the original purpose of the start-up fund, to include the provision of all necessary resources associated with start-up, was to be changed. The work is to be done at "Headquarters and Regional Offices and any interim staging areas necessary for ultimate relocations." Blanks on the RWA form for "start" and "completion" dates for the work are not filled in. The "open end amount" to be spent is \$860,000.00. The form is signed by the Authority's contracting officer at the time. His signature certifies that "this constitutes a valid obligation and an order for GSA to perform the work described above."

GSA representatives have recently stated to Authority staff that GSA did not at any time enter the RWA into GSA's accounting system as, for example, an accounts receivable; nor did they countersign and return the RWA to the Authority; nor did they conduct estimates of work to be done in accordance with the RWA. Further, GSA representatives have recently indicated to the Authority staff that GSA came to view the 1979 RWA as being invalid subsequent to its issuance, based on the eventual withdrawing by GSA of office space previously offered to the Authority, as described at pp. 7 to 8, below. Thus, these GSA representatives state that they returned the RWA to the Authority's contracting officer some time in early 1980. This former Authority employee denies that it was returned to him.^{6/}

^{6/} Further in this regard, an RWA submitted to GSA by the Authority in September 1981, for erection of walls and other structural work in the Authority's present headquarters building, originally stated that it was to "replace [the RWA] signed 8-17-79." GSA representatives advised that they did not accept the September 1981 RWA with the "replace" designation, since GSA did not view the original August 1979 RWA as still being valid. Accordingly, these GSA representatives have indicated that they directed that the above-referenced replacement designation on the September 1981 RWA be crossed out before GSA would accept it. This was done by the contracting officer of the Authority and the September 1981 RWA was accepted by GSA for processing. GSA's direction to delete the replacement designation in the 1981 RWA was an indication that GSA no longer considered the 1979 RWA to be valid. This determination by GSA was apparently not understood by Authority administrative staff, and was not reported to the Authority Members.

Subsequent to delivery by the contracting officer of the RWA to GSA, the Authority's Director of Administration transmitted a copy thereof to the Authority's accounting agent, OPM, on August 31, 1979. In his letter of transmittal to the Chief, Fiscal Division of OPM, FLRA's Director of Administration stated that the RWA "authoriz[ed] GSA to expend up to \$860,000 to refurbish, renovate, and generally improve and remodel" FLRA headquarters and regional offices. The Director of Administration also stated that "the proposed GSA schedule calls for the planning and design to begin immediately with the construction to follow thereafter." Further, he advised that the RWA and his transmittal letter to OPM constituted a "valid obligation" of the start-up fund, and that "when GSA completes its work, we [FLRA] will be invoiced by GSA for the exact cost of all work performed, not to exceed \$860,000."^{7/} OPM's Fiscal Division Chief acknowledged receipt of the RWA and its transmittal letter on August 31, 1979. The Authority reported the obligation of the start-up fund to the Treasury Department on its Report of Obligation for September 30, 1979, Treasury Form 225, and continued to show it as an obligation in subsequent reports including the Authority Members' presentation regarding the President's budget submission to Congress for FY 1981.

Believing the start-up fund to have been obligated in FY 1979, FLRA staff began in October 1979 to place specific orders with GSA against that obligation.^{8/} Thus, various RWA's and other orders were issued to GSA during late 1979 and early 1980 for specific work to be done and goods to be purchased in connection with the Federal Service Impasses Panel's (FSIP's) move into its new quarters at 1730 K St., NW., Washington, D.C. (The FSIP is an entity within the Authority

^{7/} In a memorandum dated August 31, 1979, to all of the Members of the Authority, the General Counsel of the Authority and the Authority's Deputy Executive Director, the Director of Administration transmitted copies of these documents dated August 17 and August 31, 1979, which he stated "officially obligate the \$860,000" In this memorandum the Director of Administration stated further that "in addition to salvaging this money which we would have lost forever if it had not been so obligated, this eases the burden on the procurement staff of 2 to complete the many actions otherwise to have been taken for use of excess funds in procurements of extras to the extent of this \$860,000, and removes the worry about how we would have handled the renovations in FY 1980 from the 1980 budget if we had lost these dollars."

^{8/} Staff members did not apparently view the obligation as restricting them to GSA as the sole supplier of goods and services relating to start-up expenses. In fact, a former administrative staff member who was involved in these events has indicated that no particular thought was given to whether there were any restrictions imposed on the Authority regarding the source of goods and services as a result of the obligation. Also, Authority staff members have stated that they did not view the August 1979 RWA as being limited to a move to any specific building, such as M Street. Rather, staff viewed the start-up monies as being available for any "one-time-only" expenses associated with start-up. The staff so advised all of the Authority Members as to the status of the account and the unexpended amount therein, in conjunction with a review of the status of funds for FY 1980 (see p. 6, fn. 10, below).

under the CSRA.) Also, several obligations were incurred with private vendors during the period February through November 1980.^{9/} This initial phase of expenditures and obligations with GSA and private vendors, amounting to thirteen separate items totalling approximately \$55,000, was concluded in November 1980.^{10/} Nine of the thirteen items were RWA's to GSA to perform various kinds of work on FLRA and FSIP office facilities. The remaining four orders were to private concerns for FSIP furnishings and FLRA moving costs. Internal accounting procedures were established by the Authority staff to ensure that actual contracts and orders under the fund never exceeded \$860,000.00. Specifically, each new order or obligation made from the start-up fund, whether to GSA or a private vendor, was deducted from the initial total of \$860,000.00. This "running balance" would reflect the amount of the fund remaining available for expenditure at any given time. Accordingly, it was clear that actual expenditures of the start-up fund would never exceed the amount of the fund itself, and in fact they never did. It is for this reason that the violation of the Act in this case can accurately be described as being wholly technical in nature.

During the period November 1980 through June 1981 there were no orders or additional obligations placed on the subject appropriation. However, beginning in June 1981, apparently in response to confirmation of availability of the Authority's present headquarters space at 500 C St., SW., Washington, D.C. (see p. 8, below), further obligations of the start-up fund were incurred with private vendors. These obligations, totalling approximately \$300,000, were made either by way of contract or purchase order for various goods and services.^{11/}

Concerning all of the above-referenced obligations with private concerns, Authority staff did not amend or seek to amend the original August 1979 RWA delivered to GSA, to indicate to GSA that various items were being obtained from private vendors. It does appear, though, that certain components of GSA were aware of the use by the Authority of private vendors. For example, GSA representatives from its interior design division were present at meetings during 1980 with Authority staff members who were accompanied by representatives

^{9/} Transactions with private vendors based on the start-up fund appear to have been motivated by a perception on the part of administrative staff that GSA would not be in a position to perform certain needed tasks. This capacity was likewise not available within the Authority.

^{10/} Eleven of these thirteen items were initially charged to FY 1980 funds, rather than the FY 1979 start-up monies. The reason for this appears to have been that, even though staff did not view the 1979 RWA or the supplemental appropriation itself as necessarily restricting expenditures to a specific move to a specific location (see p. 5, fn. 8, above), it had been decided by various management officials to be prudent to "save" the start-up fund for expenditures only when a specific headquarters location had been obtained. Because no such location had been obtained as of late 1979 and early 1980, FY 1980 funds were used initially.

However, in the spring of 1980 FLRA staff determined that steps had to be taken to curtail spending in FY 1980. Accordingly, these eleven expenditures were retroactively charged back against the start-up fund in May 1980.

^{11/} Orders were also placed by the Authority with GSA during this time for various goods and services, and were charged to the start-up fund.

of a private design firm that worked with the Authority in planning office layouts in 1980 and 1981. Concerning the failure of FLRA administrative staff to execute amending documents to GSA, it appears that this is accounted for at least in part by the staff's lack of perception that the original RWA in any way limited the sources from which the Authority could obtain goods and services.

As of the date of this report there is an unexpended balance in the start-up fund of approximately \$196,000. Expenditures from the start-up fund were halted effective October 1, 1981.

B. The Authority's Search For Headquarters Office Space

Obtaining office space for the Authority's own national headquarters and regional offices was identified as a priority matter by management of the Authority's predecessor, the Federal Labor Relations Council (FLRC), well before the Authority came into existence in January 1979.^{12/} For example, in July 1978, Alan Campbell, Chairman of the former Civil Service Commission and the FLRC, wrote a letter to the Director of GSA urging that separate office space be provided to both the Authority and the Merit Systems Protection Board (MSPB) promptly after their inception under Reorganization Plan No. 2 and the CSRA. The rationale given for such separate space was the efficiency of operation resulting from adequate space and the CSRA's goal of independence and separation of the Authority.^{13/}

In accordance with this recognition of the importance of office space, staff of the former Civil Service Commission, on behalf of the FLRC, sent an SF 81 form requesting such space to GSA in October 1978. Meetings were held between FLRA and GSA representatives to discuss the subject in February 1979. Subsequent to these meetings, GSA prepared and submitted to the Authority specifications to be included in solicitations for office space. These specifications were approved by the Authority in early March 1979.

On April 11, 1979, GSA verbally offered space to the Authority at 1726 M St., NW., Washington, D.C., with occupancy due to begin in August 1979. The verbal offer was accepted by the Authority in early May 1979. By letter dated May 21, 1979, GSA indicated that occupancy of the M St. building would be completed by April 1980.

During the balance of 1979 there was no firm written offer of the M St. space to the Authority, nor was there any express action rescinding the previous verbal offer. Rather, there were several extensions of the time by which the Authority could begin to take occupancy. The Authority also sought to obtain independent leasing authority from GSA in mid 1979, in an effort to expedite the space acquisition process. This request was denied by GSA in August 1979.

^{12/} Although acquisition of both headquarters and regional office space was viewed as a priority matter, it appears that acquisition of the former was on the whole a more difficult problem than acquisition of the latter. As a result, this portion of the report will focus on efforts to obtain headquarters space only.

^{13/} This rationale for office space was repeatedly advanced by Authority officials during the time that they were seeking office space, particularly for the headquarters office. Thus, Chairman Haughton of the Authority expressed the

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In any event, preparations for occupancy of M St. were carried on by the Authority through the early months of 1980. Floor plans were drawn up and discussed with GSA representatives; space utilization rates were calculated; various plans concerning M St. were approved by FLRA and the GSA; and GSA specified that its alterations of M St. would be completed by December 1980.

Although all indications in early 1980 were that the Authority would be moving to 1726 M St., NW., sometime toward the end of 1980, the plans were upset by GSA's letter to the Authority of April 18, 1980. In this letter GSA Regional Director Kallaur advised the Authority that the M St. building had been assigned by GSA to the President's Council on Wage and Price Stability (COWPS). The Authority would have to await assignment to office space in a different location. A prospectus was prepared to this end in late April 1980.

In late June 1980, however, GSA indicated that COWPS would not be receiving the M St. space, due to their (COWPS') continuing budget problems in Congress. Accordingly, plans were again made for FLRA occupancy of the M St. building. These plans were again quickly frustrated, though, when, in August 1980, Mr. Kallaur advised Authority staff that GSA had an unspecified higher priority for the M St. building. As a result, it became necessary to again prepare a prospectus, for congressional approval, to seek office space elsewhere. The process of prospectus review by Congress was underway in November, 1980, when GSA advised the Authority that the M St. site had been assigned to the transition team of President-elect Reagan. The Authority's prospectus then before Congress was approved in December 1980.

Finally, in the spring of 1981, GSA made available to the Authority the present headquarters offices at 500 C St., SW. This space was made available to the Authority pursuant to GSA's normal leasing procedures, as opposed to the congressional prospectus route. Occupancy took place in late October 1981, some two years and three months after congressional enactment of the Authority's start-up fund appropriation.

This protracted search for office space added greatly to the Authority's problems in validly obligating the start-up fund and rendered it virtually impossible for the Authority staff to make significant expenditures from the fund during FY 1979. Such expenditures had to await the finding of such office space, thus necessitating issuance of an obligation in FY 1979 that was far removed in time from the expenditures associated with it.

C. Additional Observations Regarding The Relationship Of
FY 1980 and FY 1981 Obligations To The 1979 Appropriation

The obligations incurred in FY 1980 and FY 1981 with private vendors, as set forth at p. 1, above, were incorrectly charged against the 1979 start-up fund appropriation. This is so because after September 30, 1979, that appropriation was no longer available for obligation. That is, the 1979

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Authority's pressing need for such space, based on these reasons, to both the House and Senate Appropriations Committees during proceedings on the 1979 supplemental appropriations bill. Furthermore, GAO recognized the pressing need for such space in its report on the Authority's first year of operations. General Accounting Office, The Federal Labor Relations Authority: Its First Year In Operations 8, 9 (1980).

appropriation lapsed at the end of FY 1979 and no new obligations could be placed against that appropriation in subsequent years. (As indicated at p. 2, fn. 1, above, subsequent orders placed with GSA did not constitute new obligations against the FY 1979 appropriation.)

As a result, the obligations incurred with private vendors in FY 1980 and FY 1981 could only be properly charged against the Authority's appropriation accounts for FY 1980 and FY 1981, because accounts for these two years would be the only sources of funds available to pay for these obligations. Thus, unless sufficient amounts are available in these FY 1980 and FY 1981 accounts that can be restored to meet these FY 1980 and FY 1981 obligations, deficiencies could be incurred for these two years, instead of the deficiency of \$340,505.48 for FY 1979 reported herein.

Rather than make the adjustments to charge these FY 1980 and FY 1981 accounts, thus creating possible deficiencies for either or both of those two years, the overobligation of the FY 1979 appropriation that presently exists is reported herein. Further, in reporting the technical violation of 31 U.S.C. § 665 based on overobligation of the FY 1979 appropriation, the Authority nonetheless recognizes the error of charging FY 1980 and FY 1981 obligations to a FY 1979 appropriation.

Positions Of Officers Or Employees Responsible For The Possible Violation:

The position titles of the Authority officers or employees believed to be responsible for the technical violation of the Act in this case are as follows: Financial Manager; Office Services Manager (who also served as the Authority's contracting officer); and Director of Administration. The individuals occupying these positions during the relevant periods of time are no longer employed by the Authority. They have, however, been interviewed in connection with the preparation of this report. Because of the apparently good-faith misunderstanding and unique circumstances involved in this case, no discipline has been imposed on any employee or officer of the Authority.

Statement Of Action Taken At The Direction Of The Authority:

At the direction of the Authority, the following actions have been or shall be taken in response to the matters described above:

- 1) The unexpended balance of the start-up fund, presently totaling some \$196,000, has been deobligated. Additionally, the Authority has acted on this date to declare as surplus this unexpended balance effective the end of FY 1982. The balance will thus lapse to the general fund of the Treasury pursuant to 31 U.S.C. § 701(a)(2).
- 2) The Members of the Authority, in response to a suggestion by Senator Abdnor, Chairman of the Senate Subcommittee on Treasury, Postal Service, and General Government that administrative responsibility for the agency be lodged in one person, have delegated to the Chairman of the Authority the responsibility for the management of internal administrative matters of the agency. A memorandum describing this delegation was submitted to Senator Danforth, Chairman of the Senate Subcommittee on Federal Expenditures, Research and

Rules, at a hearing of that subcommittee involving the Authority on May 20, 1982. This delegation includes matters pertaining to approval of requests for major procurements by components of the Authority. By consolidating responsibility for such matters in a single person, more effective scrutinizing of procurement actions will be achieved, thus establishing a further safeguard against any possible overobligations of appropriations.

3) The Chairman of the Authority, pursuant to the delegation described above, has issued on this date a memorandum to the Executive Director instructing the Executive Director to ensure that all expenditures on an obligation are made only to the vendor specified in that obligation; that the validity of all obligations incurred by the Authority are to be strictly scrutinized throughout each fiscal year; that obligations not be charged against an appropriation that is no longer available for appropriation; and that all fiscal division employees of the Authority thoroughly refamiliarize themselves with relevant requirements of 31 U.S.C. § 665 and the Authority's Regulations for Administrative Control of Funds.

4) In the event that, in the future, an appropriation is sought by the Authority from Congress to accommodate a need that is beyond the control of the Authority (such as meeting expenses of moving into office space that is to be obtained by GSA), part of the request will include a multi-year period of availability of the appropriation for obligation. This will eliminate the need for prompt obligation of the appropriation to avoid its lapsing.

5) Contacts will be initiated with other appropriate agencies, such as the Office of Management and Budget, to undertake cooperative efforts to ensure that such a situation does not arise again.

6) Advice has been and will continue to be sought by the Authority from GAO (whose auditors verbally alerted the Authority to the deficiency problems discussed herein) concerning the establishment and maintenance of effective accounting controls for the Authority.

7) The Authority has initiated a review of its regulations concerning the administrative system of fund control to determine whether these regulations are in need of amendment to prevent recurrence of this kind of situation.

8) Action will be taken to fill the Financial Manager and Office Services Manager positions, which are currently vacant, on a permanent basis.

Statement Regarding The Adequacy Of The System Of Administrative Control:

The system of administrative controls prescribed in the Authority's regulations for Administrative Control of Funds is under review to ensure its adequacy, as indicated above.

Concluding Remarks

The violation of 31 U.S.C. § 665 which occurred in this matter is wholly technical in nature, in that accounting controls established by the Authority ensured that no overexpenditure of the start-up amount provided in the FY 1979 supplemental appropriation would or could take place, and in fact none did. Further, the violation which occurred was the product of unique circumstances surrounding the Authority's start-up of operations. Primary among these unique circumstances was the lengthy delay in the obtaining of office space for the Authority. Finally, the violation was also the product of an apparently good-faith misunderstanding on the part of former Authority administrative staff employees as to the ramifications of having obligated the subject appropriation in FY 1979. Based on the foregoing, the Authority believes that the affirmative actions specified above will remedy the situation and prevent any recurrence in the future.



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D.C. 20424

November 9, 1982

Mr. Donald J. Horan
Director
Procurement, Logistics and
Readiness Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Horan:

We have reviewed the Report: Furniture Procurement and Other Practices at the Federal Labor Relations Authority (Code 942154). The Report states in its final paragraph that FLRA officials have reviewed and commented on matters discussed and agree that the Report contains no misstatement of fact. While some of our suggestions concerning the earlier draft have been adopted, in our opinion the Report misstates the facts in a number of key areas by omitting of relevant points and by emphasizing certain others in a way which can only be misleading to the reader. [See GAO note 1, p. 25.]

In our opinion the Report does not adequately reflect the significant administrative problems facing our new agency at its inception. When the FLRA became operational in January 1979, it was composed of activities drawn from the Department of Labor and the Federal Labor Relations Council. The initial staff had no common operating experience and no administrative structure was provided to service the new agency. Limited resources at start-up permitted the development of only a "bare bones" administrative staff. This group was always stretched very thin by the demands inherent in putting a new agency on line. These problems were discussed at length in the Comptroller General's Report to the Congress on the FLRA's first year of operation (FPCD-80-40, April 2, 1980). In each of the specific areas discussed in the instant Report where questions are raised about whether the agency's actions were consistent with appropriate law and regulation, the agency administrative support specialists in the area all acknowledge that they believed at the time that the actions were proper. These specialists never advised either the Authority Members or agency management of any potential that actions being taken were improper. To the contrary, there were always assurances that the actions were legal. [See GAO note 2, p. 25.]

The problem of reliance on a small and new technical administrative staff was compounded by the fact that agency activities were in four separate locations in Washington. The Congress recognized the need to bring these fragments together and authorized funding in July, 1979, but the General Services Administration was unable to provide facilities. Operating authority in each of the support areas was delegated through

the Executive Director and the Director of Administration to the head of each functional activity. The organization operated with that delegation until it was consolidated in October 1981. We believe the Report should, at the outset, acknowledge the significance of these problems. [See GAO note 3, p. 25.]

The interspersing in the Report of selected specific aspects of the furniture procurement with broader, conclusionary statements about general administrative and management practices at the FLRA could cause the reader to draw unwarranted conclusions about connections between the two. Thus, for example, the draft Report states that "many administrative and management issues . . . were decided by the three member agency head" without describing the issues to which it refers. As to the furniture procurement, the Report goes on in subsequent pages to criticize FLRA decisions to: (1) award a contract directly to a commercial vendor without seeking GSA approval to waive the use of GSA services; (2) procure the furniture without following the proper procedures for seeking a waiver of the OMB moratorium on such procurements; and (3) obligate 1979 funds by a reimbursable work order in a manner contrary to the Anti-Deficiency Act. [See GAO note 4, p. 25.]

A reader could erroneously conclude that the Members themselves made these decisions. In reality, neither the Members, the Executive Director nor the Deputy Executive Director was aware of these decisions or of their impropriety until the review by GAO. These actions were taken by the technical staff without consulting with the Members, the Executive Director or the Deputy Executive Director. The technical staff apparently concluded that the actions which they were taking were proper and consistent with governing requirements. [See GAO note 5, p. 25.]

The Report may be interpreted as suggesting that the Contracting Officer was told by the Members to get the furniture they wanted despite the cost. This suggestion is erroneous. The Members never gave any such direction. As the Contracting Officer stated in testimony before the Senate Subcommittee, "[A]t no time did I discuss these purchases with the Members." Further, the Contracting Officer has explained the reasons that he did not procure the furniture from or through GSA sources in his testimony before the Senate Subcommittee. He explained that the Federal Supply Service was contacted but at that time the Service had no schedules under which an agency could buy furniture because they had all been cancelled. He further testified that he made an effort to obtain furniture from the Federal Supply Service but was unable to obtain any. Finally, the Contracting Officer explained that he procured the furniture in question through a solicitation on the open market because there was a GSA regulation which permitted such solicitation if furniture is not available in the Federal Supply Schedule. Accordingly, we feel that the cited statements from our former Office Services Manager, Contracting Officer and Financial Manager are inappropriate and irrelevant. [See GAO note 6, p. 26.]

The Report states that the Federal Labor Relations Council's Executive Director ordered GSA scheduled office furniture from vendors. This is inaccurate. The Civil Service Commission made all necessary arrangements for the procurement of the furniture recommended by the GSA interior design experts, including ordering the furniture from vendors. [See GAO note 7, p. 26.]

The conclusion that managers would have been able to avoid "duplicate" furniture purchases is apparently based upon a lack of full and complete information as to why some Presidential appointee furniture was found in the offices of non-Presidential appointees at FLRA. The initial furniture procurement for the Office of the Members was accomplished in 1978. At that time no decision had been made as to the location of the FLRA National Headquarters and, therefore, no floor plan or interior design plan had been developed. The GSA interior decorators and office design experts who advised FLRC personnel at that time concerning the procurement and who developed the list of furniture which was ordered, recommended procurement of a minimal amount of furniture, which would afford the Members an opportunity to begin working in their offices immediately after their appointments. This procurement was done by the U.S. Civil Service Commission.

Between 1978 and 1981 when GSA approved of the final floor plans for the Members' offices in their present location at 500 C Street, SW., four separate configurations were developed for the Members' offices. One of these configurations, which was the first of three developed for the space at 500 C Street, SW., was accompanied by an interior design proposal which included sufficient furniture for these rooms. The furniture which was included in this interior design proposal was intended to supplement the furniture which had been procured in 1978 and it was this furniture which was ordered in June and July 1981. Subsequently, however, the floor plans for the Members' offices, as previously indicated, went through two additional changes which reduced the amount of space allocated to each Member. The final GSA approved layout in mid-August 1981, authorized substantially less space for the Members' office, reception area, agenda/work room and space for staff assistants.

Because the furniture had been ordered for an office and reception area which were larger than the final GSA approved floor plan, some of the furniture could no longer be accommodated in the space which was finally authorized. Some of the furniture was transferred to key SES officials on the staff of the agency. These SES management personnel did not have, at that time, office furniture authorized for individuals at the SES level. Consequently, full use was made of the furniture which Members could not use and as a result, additional furniture did not have to be ordered for the SES employees. Under these circumstances, it is not totally accurate to conclude that had written justification been used

to support the need to purchase additional Presidential appointee furniture in 1981, managers would have been able to avoid duplicate purchases because the final size of the offices had not been determined when the furniture was ordered. [See GAO note 8, p. 26.]

The Report states that money was used to purchase "Executive Type Office Furniture" for all FLRA headquarters staff (GS-14 and below), which in GAO's opinion was in contravention of GSA Federal Property Management Regulations.

When the FLRA was established, the only furniture which was available for use by the staff was that transferred to the FLRA by the Department of Labor and Federal Labor Relations Council. All Department of Labor employees coming to the FLRA headquarters were transferred with their existing wood furniture. Council employees below grade GS-15 were transferred with old and poor quality metal furniture. When furniture was being obtained for newly hired personnel it was decided to obtain wood furniture for them and to replace the existing metal furniture with wood furniture. People who already had wood furniture did not get new furniture.

As to the contention that the procurement of this wood furniture violated the FPMR, we feel that this is not correct. The wood furniture purchased for staff is classified in GSA Federal Supply Service catalogs as "Executive Wood Office Furniture - Unitized Style". The other styles of executive wood furniture are classified as "traditional style" and "general office".

FPMR temporary regulation E-74 (July 31, 1981) governing the use standards for office furniture and furnishings provides for three levels of employees. Level A--Executive (persons in the SES and above) are entitled to "traditional style furniture." Level B--middle management (GS-13 through GS-15) are entitled to "unitized wood office furniture." Level C--General (GS-1 through GS-12) are entitled to "general wood office furniture." We did not purchase "Executive type wood furniture" for non-SES or equivalent employees, but "unitized style," as authorized.

While some persons below the grade of GS-13 received wood furniture, the FPMR provides for the authorization of "similar or matching office furniture to be assigned to secretaries and staff assistants whose duties are in direct support of these personnel and are located in contiguous areas." In our view, our procurement of unitized style wood furniture is totally consistent with the regulation. [See GAO note 9, p. 26.]

The Report states that either an exemption from the procurement moratorium should have been obtained or individuals who had previously instructed the Contracting Officer to procure the furniture should have cancelled their instructions. While it now appears that an exemption from the moratorium was not properly obtained, this was not apparent at the time. All of the Members testified in the hearings held by the

Senate Subcommittee that, based on information provided by staff, it was their understanding that a waiver had been obtained for the purchase of the furniture. The Authority's Executive Director testified that he was told by procurement staff that the agency was cleared to proceed with the procurement. At the same Hearing, the agency's former Contracting Officer testified that "it was . . . [his] understanding that we had a waiver to obtain the furniture." No one advised or even suggested to the Members that the agency had no such waiver or exemption. Moreover, there appeared to be no need to cancel any instructions to proceed with the procurement. In this regard, the Contracting Officer informed the staff of at least one Member, soon after the issuance of the OMB Bulletin, that the procurement of furniture for their offices had been put on "hold" because of the moratorium and would remain on hold pending the granting of a waiver or until the moratorium was lifted. [See GAO note 10, p. 27.]

The Report raises two basic issues concerning the Authority's recently filed "Report on a Violation of Section 3679 of the Revised Statutes, as amended, 31 U.S.C. §§ 665." The Report asserts first that the Authority failed to include in its Report orders placed by it with the General Services Administration (GSA), after September 30, 1980, as part of the overobligation of the subject appropriation; and second, that it was inappropriate for the Authority to have characterized the violation of the Anti-Deficiency Act here involved as having been technical in nature.

As to the first issue, it appears to be premised on the contention that while the Reimbursable Work Authorization (RWA) issued in 1979 by the Authority to GSA may initially have been a valid obligation of the start-up fund appropriation, it ceased to be valid at the end of FY 1979. According to the Report, the appropriation therefore should have been lapsed by Authority officials at the end of FY 1979. All obligations incurred subsequent to that time, including orders placed with GSA, were thus placed against an appropriation that was no longer available for obligation, the Report states, and hence should be added to the amount of overobligation reported. It noted, however, that no overexpenditure of the appropriation occurred, and that no appropriation is necessary in this situation. [See GAO note 11, p. 27.]

In responding to this issue several points should be noted at the outset. By way of background, the \$860,000 referred to in the Report was an appropriation to be used for initial start-up for the entire agency. As to the substance of the first point, there appears to be agreement between the Authority and GAO that there has been no overexpenditure of the subject appropriation. Second, the Authority has clearly and unequivocally stated in its Anti-Deficiency Act Report that it was error for Authority staff not to have lapsed the subject appropriation at the end of FY 1979. Hence, there is no substantive disagreement between the Authority and GAO on this issue either.

The disagreement, rather, seems to hinge on the import of the Authority staff's failure to lapse the appropriation on its books. More particularly, GAO's first issue is premised on actions that should have been taken by Authority staff concerning the lapsing of funds, but were not in fact taken. Authority staff, rightly or wrongly, continued to consider the appropriation to be available for obligation through FY 1981, and continued to incur obligations against the appropriation through FY 1981. These obligations were in all instances met by payments from the subject appropriation by the United States Treasury, as authorized by the Authority.

The approach adopted by the Authority in preparing its Report was to consider those actions actually taken by staff concerning the appropriation, as opposed to those actions which should have been taken. This approach is, in the Authority's opinion, most in keeping with the intent of Congress in enacting the Anti-Deficiency Act.

When attention is focused on those actions actually taken by Authority staff, it can be seen that the orders placed with GSA in FY 1980-81 were partial liquidations of the 1979 RWA, and not separate obligations themselves. The subsequent orders with GSA involved the very kind of goods and services that GSA was to supply in accordance with the original 1979 RWA. It would therefore be wholly inconsistent with those actions actually taken by staff to count the subsequent GSA orders as obligations in addition to the original 1979 RWA. For this reason, the Authority properly did not do so in its Report.

As to the Authority's designation of the reported Anti-Deficiency Act violation as being "technical" in nature, the Report asserts that by spending funds no longer available for obligation, the Authority violated the Act in "more than a merely technical sense." The Authority strongly asserts that there is nothing in the facts to indicate anything more than a "technical violation" of the Act.

The disagreement on this point appears to stem from a misunderstanding as to the Authority's reason for terming the violation a technical one. As the Authority made clear in its Report, it views the reported violation as being technical solely in the sense that, because of Authority accounting procedures, no overexpenditure could have resulted from the overobligation in this case, and no appropriation is necessary as a result of the violation. Indeed, as indicated above, there appears to be substantial agreement between GAO and the Authority on this latter point. The designation by the Authority of a technical violation was because there was no overexpenditure of funds involved in this situation and no additional appropriation is necessary. In the Authority's opinion this designation of a technical violation is justified under the unique circumstances detailed in its Anti-Deficiency Act Report.

Apart from the questions concerning the allegation of a violation of an Anti-Deficiency Act by this agency are the implications concerning Member and agency management knowledge of such a violation. We acknowledge with approval the statement that the Members evidently acted in good faith in their belief that funds obligated in 1979 remained available for obligation. However, the Report contains the earlier statement that, "In May of 1980, eight months after the availability of funds expired, the Executive Director and Deputy Executive Director, along with the Members decided . . . to authorize the use of \$500,000. . . ." This sentence conveys the impression that the Members (and the Executive Director and Deputy Executive Director) had somehow become aware, at least by May 1980, that the 1979 Reimbursable Work Authorization was not a valid obligation of the \$860,000. However, no facts are presented to support such a conclusion. The facts, as set forth in the FLRA's "Report on a Violation of Section 3679 of the Revised Statutes, as Amended," show that the use of a reimbursable work order to obligate the start-up funds was done by the Director of Administration with the concurrence of an official within the Office of Personnel Management and that the Authority Members, Executive Director and Deputy Executive Director had good reason to believe and did believe that the 1979 RWA was a valid obligation at its inception and at all relevant times remained a valid obligations. However, the discussion continues to imply that the Executive Director, Deputy Executive Director and the Members may have recognized that the actions which they were taking were improper. None of these officials were aware of a possible Anti-Deficiency Act violation until advised of the problem by the General Accounting Office. The approach of authorizing the use of \$500,000 of the funds for furniture, and equipment contracts with commercial vendors and with GSA was recommended by the financial and procurement staffs and was explained by them as nothing more than authorizing an expenditure of funds already obligated for that purpose. It was never considered by the Members, the Executive Director or the Deputy Executive Director nor by the technical staff as an obligation of funds that had already been obligated, or of funds no longer available for obligation. [See GAO note 12, p. 28.]

The statement in the Report that "apparently the FLRA Members agree that one individual should have superior administrative and management responsibility (and corresponding superior authority) to act and function as the head of FLRA" is not totally accurate. The Members have agreed, as the Report points out, that one individual should be delegated the responsibility and authority for management of internal administrative matters. However, the delegation does not and could not constitute an agreement that the Chairman is the head of the agency. The three Members must be responsible for carrying out their statutory duties. [See GAO note 13, p. 28.]

The Report states that "one of the main reasons the FLRA has had four Executive Directors in as many years was because the Executive Directors were trying to satisfy three different masters (Members). . . ." This statement is without factual support in the draft Report. While it is

true that the Authority has indeed had four individuals who served as Executive Director, the first left that position 11 days after the creation of the Authority to become one of its Members. It can hardly be said he changed positions due to the stated reason.

[See GAO note 14, p. 28.]

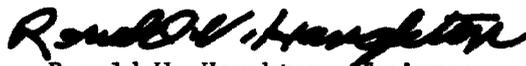
In conclusion, we would like to state that notwithstanding a basic point that the Members consistently relied upon the advice of staff to whom certain procurement responsibilities had been delegated, we do not seek to evade responsibility on the grounds of such delegation. The delegations only explain the facts, they do not relieve the Members of ultimate responsibility for carrying out their statutory duties.

[See GAO note 15, p. 28.]

We appreciate the opportunity to comment on the Report. It is our understanding that copies of our comments will be submitted to Senator Danforth and other recipients of your Report.

Finally, we want to state that the work of the GAO staff and the advice which it has already given to this agency have been most appreciated. Similarly, we have done our very best to respond positively to the thoughtful suggestions made by Senator Danforth and Senator Chiles. We are now in a position to say that as a result of the assistance given to us, our agency's administrative services have been restructured and our new management procedures have been implemented to tighten controls and make the delivery of administrative services more effective. The positive management actions taken by the FLRA are recognized and discussed at the conclusion of the Report.

Sincerely,


Ronald W. Haughton, Chairman


Henry B. Frazier III, Member


Leon B. Applewhaite, Member

GAO ANALYSIS AND RESPONSE
TO FLRA COMMENTSGAO Note 1:

We deleted the reference to FLRA's agreement that the report contains no misstatement of fact and have included FLRA's revised comments in this appendix.

GAO Note 2:

We agree that our previous report discussed at length FLRA's first year of operation. Because the report was to the Congress and presumably available to the Subcommittee for whom this report was prepared, we saw no need to repeat a discussion of administration problems that faced FLRA at its inception.

According to FLRA, its administrative support specialists, agency management, and members were unaware that their actions were inconsistent with applicable laws and regulations, implying no lack of good faith. We have no comment.

GAO Note 3:

We agree. Our report recognizes that operating authority was delegated from the members to the executive director (see p. 3) and that the FLRA headquarters staff was in four different locations (see p. 10).

GAO Note 4:

We do not agree that our statement "many administrative and management issues ***" will cause readers to draw unwarranted conclusions. The purpose of the sentence is to contrast management responsibility according to the Delegation of Authority of the Members in September 1979 with what we found in practice at the time of our review.

GAO Note 5:

The FLRA statement that "A reader could erroneously conclude that Members themselves made these (improper) decisions," in our opinion, is FLRA's speculation. Nowhere in our report do we state the members were aware of the impropriety of the decisions. On the contrary, on page 10, we reported FLRA's good-faith misunderstanding appeared to be a contributing factor to past events. Also, the fact that the report contains no recommendations should indicate that we place credence in the corrective actions already taken or planned by the FLRA Chairman and the Executive Director to address the problems discussed in the report.

GAO Note 6:

We agree that the members did not direct the contracting officer to get the furniture despite the cost. However, according to a memorandum in the contract file, a member (not members) told the contracting officer to order his furniture. (See p. 6).

With respect to the contracting officer's testimony before the Subcommittee, we should point out that FLRA did not submit the required waiver request to GSA, or receive approval from GSA to waive the use of GSA sources for the 1981 Presidential appointee furniture procurement. As a result, the solicitation for this procurement was not authorized.

GAO Note 7:

We agree that the Civil Service Commission purchased the furniture as directed by the Federal Labor Relation Council's (FLRC's) Executive Director. Therefore, we have modified our report (see p. 4) to show that the former Civil Service Commission's procurement office, acting as procurement agent, performed the first office furniture procurement for the FLRA Presidential appointee offices at the direction of the former FLRC's Executive Director.

GAO Note 8:

The purpose of mentioning "duplicate" purchases was to demonstrate that the lack of proper documentation for this procurement justifying why additional Presidential appointee desks, chairs, sofas, butler-trays, and settees were needed, resulted in FLRA managers purchasing many of these same items twice--once out of the fiscal year 1978 \$430,000 startup funds and once out of the fiscal year 1979 \$860,000 startup fund. We did not address the question of whether full use of the duplicate Presidential appointee furniture was being made by non-Presidential appointee employees.

GAO Note 9:

We note that the "old and poor quality metal furniture" referred to by FLRA was evidently considered worthy of use by the Departments of Agriculture and the Navy and the Federal Communication Commission as well as State government offices, according to FLRA and GSA records. Further, FLRA could document only a very limited amount of wooden executive office furniture as having been transferred into FLRA from the Labor Department and FLRC.

While it is true that the FPMR has been temporarily changed to allow GS-13s and 14s to have executive wood furniture, the temporary regulation had not as yet been published at the time FLRA purchased additional wood executive office furniture. (See p. 5 for a discussion of GSA regulations in effect at the time of FLRA purchases.)

Additionally, as we previously noted, we found that everyone (except for two employees with metal desks in the mailroom) at FLRA headquarters has executive wood office furniture. FLRA's purchasing new executive office furniture was not consistent with GSA regulations. FLRA excessed furniture and disposed of thousands of dollars worth of serviceable office furniture. The regulations provide that agency furniture requirements be filled from usable excess stocks, rehabilitated stocks, or the least expensive new furniture that will satisfy the need.

GAO Note 10:

We attempted to document that "the Contracting Officer informed the staff of at least one Member, soon after the issuance of the OMB Bulletin, that the procurement of furniture for their offices had been put on hold because of the moratorium and would remain on hold pending the granting of a waiver or until the moratorium was lifted." Our review of the contract file disclosed no action to suspend or "hold" the procurement. The contract file did contain a copy of the OMB bulletin dated January 30, 1981 (not the Presidential memorandum of January 22, 1981), with the handwritten notation that the moratorium was "lifted for FLRA on March 25, 1981." The notation was initialed by a person other than the contracting officer of the FLRA procurement staff. The contracting officer is on record with GAO that he was only aware of OMB and GSA previous moratoriums for which he believed he had a waiver. He stated he was not aware of the January 22, 1981, Presidential furniture moratorium until the Subcommittee hearing of May 20, 1982. He further stated that he would have not signed a contract for additional Presidential appointee furniture under any circumstances had he known the moratorium existed.

To support its position, FLRA identified two "furniture" documents from one member's files, both dated before the January 22, 1981, Presidential office furniture moratorium, with the word "hold" handwritten on them. There was no date on the documents identifying when this notation had been made; however, the "released" notation was dated June 2, 1981. It appears inconsistent to us that FLRA officials could think they had a waiver from OMB to the furniture moratorium when they did not request such a waiver. Previous instructions required that waiver requests be made by the head of the agency.

GAO Note 11:

We do not agree with FLRA that "no overexpenditure of the appropriation occurred, and that no appropriation is necessary in this situation." As we explain on page 3, a deficit exists in the General Fund of the Treasury as a result of the FLRA illegal transactions. Unless the General Fund is reimbursed, the deficit resulting from the Constitutional violation will remain. The fact

that FLRA officials did not take action to recognize the lapsing of the appropriation did not continue its availability for lawful obligation.

GAO Note 12:

Our report, pages 7 through 9, explains our position on the reported FLRA violation of the Anti-Deficiency Act.

GAO Note 13:

We agree with FLRA that the "delegation does not and could not constitute an agreement that the Chairman is the head of the agency." As stated on page 3, the members delegated to the chairman the responsibility and authority for management of internal administrative matters. This included all housekeeping services and functions, such as procurement, fiscal management, personnel management, and office services. This delegation certainly makes it appear to us that for administrative and management matters, the chairman is to act and function as the head of FLRA.

GAO Note 14:

The count of four executive directors did not include the member referred to by FLRA in its comments. However, to avoid further confusion, we have deleted the statement from our final report.

GAO Note 15:

We agree that initially, procurement responsibility had been delegated from the members to the FLRA executive director, to the Director of Administration, and finally down to the Office Services Division. Subsequently, however, we believe the delegation was amended when the members made it clear to the technical staff in early 1980 that the staff could make no decisions, only recommendations, with respect to spending the \$860,000 startup fund.

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