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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-200341 (MRV)

[Entitlement to Payment For DEC 29 1980

Anthony Cardinale, Director
Department of Defense
Office of Dependents Schools
2461 Eisenhower Avenue
Alexandria, Virginia 22331

Dear Mr. Cardinale:

This replies to your letter of September 7, 1980, requesting a decision as to whether or not 5 U.S.C. § 7131 creates an obligation upon your agency to pay travel and per diem expenses to employees negotiating a collective bargaining agreement on behalf of a labor union.

Your letter states that the Overseas Education Association (OEA), the exclusively recognized representative of a worldwide unit of agency employees, has requested payment for travel and per diem expenses in connection with negotiations on a worldwide agreement between July and December 1979. The estimated expenses for negotiations in 1979 were \$20,000, and the agency anticipates that the renewal of negotiations will probably cost an additional \$20,000 to \$40,000.

The union's claim is based upon a policy statement issued by the Federal Labor Relations Authority, O-PS-3 and O-PS-6, 2 FLRA No. 31, December 19, 1979, which states that any employee who is on official time under the provisions of 5 U.S.C. § 7131 while representing an exclusive representative in the negotiation of a collective bargaining agreement is entitled to payment from the agency for travel and per diem expenses.

You point out, on behalf of the Office of Dependents Schools, that this policy statement by the Authority is not a "final order" which would be subject to judicial review under the provisions of 5 U.S.C. § 7123. Moreover, you believe that the Authority's ruling is erroneous, and that this matter falls within our jurisdiction since it involves the expenditure of appropriated funds. You ask us for a prompt decision because your agency is placed in the untenable position of either making what you consider to be illegal payments for travel or being held in violation of the Civil Service Reform Act.

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We understand that an unfair labor practice charge has been filed by OEA in this matter and that the charge is currently pending before the General Counsel of the Authority. We further understand that the above referred to policy statement of the Authority has been reaffirmed by a recent ruling of the Authority, 4 FLRA No. 40, September 29, 1980, which upheld an unfair labor practice complaint against the Bureau of Alcohol, Tobacco and Firearms, Western Region.

We agree with your concern about making payments from appropriated funds when the issue involved has not been finally decided. Therefore, we believe you should defer any payment until the matter is resolved.

Our general policy is not to issue a decision on a matter that is pending in court, unless requested to do so by the court. We understand that the Authority's ruling against the Bureau of Alcohol, Tobacco and Firearms has been appealed by the Department of Justice to the U.S. Court of Appeals for the Ninth Circuit. In view of the overlapping jurisdiction between our Office and the Authority, we believe the matter should be decided by the courts. In the circumstances we find it inappropriate for us to issue a decision on the merits of the request at this time.

Sincerely yours,

MILTON J. SOCOLAR

Milton J. Socolar
General Counsel

cc: (1) The Honorable Ronald W. Haughton, Chairman
Federal Labor Relations Authority
1900 E Street, NW.
Washington, D.C. 20415

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- (2) The Honorable H. Stephen Gordon
General Counsel
Federal Labor Relations Authority
1900 E Street, NW.
Washington, D.C. 20415
- (3) Jackie D. Rollins, President ✓
Overseas Education Association
1201 16th Street, NW.
Washington, D.C. 20036
- (4) The Honorable Alice Deniel ✓
Assistant Attorney General
Civil Division
Department of Justice
Washington, DC 20530