

DECISION



13539 *PLN-I*
112148
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195347, B-195348

DATE: April 24, 1980

MATTER OF: Merit Systems Protection Board - [Travel expenses
of hearing officers]

DLG-00166

DIGEST: Merit Systems Protection Board ordered all hearings conducted by its hearing officers to be conducted in Board's field offices instead of home areas of appellants. Due to resulting inconvenience, both employing agencies and employees and their unions offered to reimburse Board for travel expenses of hearing officers if hearings were moved to home areas. Board may not accept reimbursement from other agencies or augment its appropriations by accepting donations from employees or unions.

This case presents two issues for our decision: (1) whether the Merit Systems Protection Board may accept full or partial reimbursement from other Federal agencies for the travel expenses of the Board's hearing officers, and (2) whether the Board may accept reimbursement from employees or their unions for such travel expenses.

The circumstances giving rise to the Board's request for a decision are described as follows:

"While the Board came into existence on January 1st, 1979, as the adjudicatory successor to the Civil Service Commission, the Reform Act imposed many additional responsibilities on the Board. As a result, there was a reduction in the funds available to cover the expenses of conducting employee appeal hearings. Therefore, on May 18, 1979, the Board determined that its hearing officers would no longer be sent to the home area of the employee appellant to conduct hearings. Instead, in order to reduce travel expenses, the Board ordered that all hearings be conducted within its various offices."

The Board states that this policy has provoked complaints from employing agencies, employees, and their unions. The Board has received voluntary offers from agencies, employees, and unions to

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reimburse all or part of the hearing officers' travel expenses if the Board will schedule the hearings in the home areas of the employees.

The Merit Systems Protection Board was established by title II of Public Law 95-454, October 13, 1978, 92 Stat. 1111, et seq. The Board is authorized to hear, adjudicate, or provide for the hearing or adjudication of all matters within its jurisdiction, 5 U.S.C. 1205(a)(1). 1/ Additionally, section 7701 of title 5, United States Code, provides that an employee or applicant for employment may submit an appeal to the Board from any action appealable to the Board under any law, rule, or regulation, and that an appellant shall have the right to a hearing. The law is silent concerning the location of the hearing but presumably the site of a hearing may be set under the authority of the Board to prescribe regulations necessary for the performance of its functions pursuant to 5 U.S.C. 1205(g). Thus, the Board has the authority to require that all hearings be conducted within its various field offices.

However, if the Board is authorized to accept reimbursement, it appears that the Board would authorize hearing officers to travel to the home areas when reimbursement of the travel expenses has been promised by employing agencies, employees or their unions. The Board would make the appropriate payment for the hearing officers' travel and obtain the agreed upon reimbursement from the parties and apply it to the Board's appropriation from which the hearing officers' travel was paid.

We shall first address the question of reimbursement by the employing agencies.

Section 628-1 of title 31, United States Code (1976), provides that no funds shall be withdrawn from one appropriation account for credit to another except as authorized by law. Such a transfer of funds is authorized by the so-called "Economy Act," 31 U.S.C. § 686 (1976) as reimbursement for services performed by one

1/ The provisions of title 5, United States Code, which are cited herein were added or amended by Public Law 95-454.

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agency at the request of another. However, the Economy Act is applicable only when there is no other statute which specifically authorizes the provider agency to render the service in question and when the requested service is not a part of its mission for which it has already received appropriated funds. B-192875, January 15, 1980. In the instant case 5 U.S.C. § 1205(a)(1), supra, states that the Board shall provide for the hearing or adjudication of all matters within its jurisdiction. Thus, the Board is required to provide for a hearing or adjudication when an employee presents an appeal within the jurisdiction of the Board. When a hearing is appropriate under the statute or the Board's regulations, the Board is required to provide a hearing officer and is authorized to designate the site of the hearing. We believe that the Board is required not only to pay the hearing officer's salary but also his necessary travel expenses. Accordingly, reimbursement of the hearing officer's travel expenses by another Federal agency would be an augmentation of the Board's appropriations.

We are unaware of any other provision of law that would permit a transfer of appropriated funds from the employee's agency to the Board for this purpose. Therefore, we hold that the Board may not accept reimbursement from another Federal agency for the travel expenses of a hearing officer to a hearing site away from one of the Board's field offices.

The remaining question is whether the Board may accept voluntary reimbursement from an employee or a union. The threshold question here is whether the Board's acceptance of the voluntary reimbursement of its hearing officers' travel expenses constitutes an unauthorized augmentation of its appropriations.

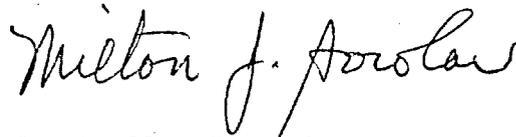
The general rule is that appropriations may not be augmented with funds from private sources unless specifically authorized by law. Congress has from time to time provided a particular Government activity with specific authority to accept donations and to use the funds for agency purposes. 26 Comp. Dec. 43 (1919), 23 Comp. Gen. 694 (1944), 36 id. 268 (1956), 46 id. 689 (1967).

Applying the foregoing general rule to the present case, the Merit Systems Protection Board would be authorized to accept the reimbursement of hearing officers' travel expenses from employees

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or unions only if the Congress has provided it with specific statutory authority to accept such donations and apply them for the specified purposes. In its submission the Board does not refer to any specific authority to accept donations. Our analysis of the Board's organic act, the Civil Service Reform Act of 1978, supra, and the Reorganization Plan No. 2 of 1978, supra, does not disclose the requisite authority. It follows that any funds received by the Board for the purpose of reimbursing it for the travel expenses of its hearing officers would be considered an improper augmentation of its appropriations. See Customs Service, 59 Comp. Gen. ____ (B-197541, March 10, 1980).

In summary, we find no authority for the Board to accept voluntary reimbursement from either employees or their unions or from other Federal agencies for the travel expenses of the Board's hearing officers.



Acting Comptroller General
of the United States