The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Use of Appropriated Funds by Air Force to Provide Support for Child Care Centers for Children of Civilian Employees.

File: B-222989

Date: June 9, 1988

DIGESTS

1. The Secretary of the Air Force may, under section 139 of Pub. L. No. 99-190, 99 Stat. 1185, 1323 (1985), codified at 40 U.S.C. § 490b (Supp. III 1985), provide support for child care centers for the children of civilian employees by authorizing the allotment of space under his control in government buildings, as well as the services delineated in paragraph 139(b)(3), and may do so without charge. The support provided may include the cost of making the space suitable for child care facilities, including the cost of renovation, modification or expansion of existing government-owned or leased space.

2. The authority of the Secretary of the Air Force to allocate space for child care centers under section 139 of Pub. L. No. 99-190, 99 Stat. 1185, 1324 (1985), is limited to the allotment of existing space in government-owned or leased buildings. Section 139 does not grant independent authority to enter new leases for child care facilities, and we are aware of no legislation that specifically authorizes the Air Force to do so for civilian child care centers.

3. The authority of the Secretary of the Air Force to allot space and to make it suitable for child care facilities under section 139 of Pub. L. No. 99-190, 99 Stat. 1185, 1324 (1985), is applicable to existing space in federal buildings. This authority extends to the expansion of existing space in military child care centers in government buildings to accommodate the children of civilian employees.

4. Reimbursement of costs associated with the provision of space allotted under section 139 of Pub. L. No. 99-190, 99 Stat. 1185, 1324 (1985), is authorized by paragraph 139(b)(2) to be made to the miscellaneous receipts or any other appropriate account of the Treasury. Section 139 does not expressly authorize funds received as reimbursement to be credited to agency appropriations. Payments received by the Air Force for its capital improvement expenditures in providing space for civilian child care centers must, therefore, be deposited in the Treasury as miscellaneous receipts or result in an improper augmentation of Air Force appropriations.

DECISION

The Deputy Assistant Secretary of the Air Force for Accounting and Audit has requested our decision on whether appropriated funds are available to provide certain assistance to child care centers for children of civilian Air Force employees. He asks specifically whether section 139 of Pub. L. No. 99-190, 99 Stat. 1185, 1323 (1985), codified at 40 U.S.C. § 490b (Supp. III 1985), or any other statute, provides authority for the Air Force to use appropriated funds to lease facilities or renovate existing government-owned or leased facilities for such child care centers, or to expand for this purpose existing facilities for children of military employees which are separately authorized by law. He also asks whether any reimbursement received under section 139 for capital improvement expenditures may be credited to the current appropriation providing child care support costs, or must be credited to the appropriation that "initially absorbed them."

In brief, we conclude that: (1) in providing support for civilian child care centers, the Secretary is authorized by section 139 to allot existing space under his control in government buildings, as well as the services delineated in section 139(b)(3), and may do so without charge; (2) the support provided also may include the cost of making the space suitable for child care facilities, including the design, renovation, and modification of existing government-owned or leased space; (3) section 139 is applicable to space in all federal buildings, and authorizes the Secretary to expand existing military day care centers to include the children of civilian employees; and (4) reimbursement received by the Air Force for its capital improvement expenditures incurred in providing space for civilian child care centers must be paid into the Treasury as miscellaneous receipts or result in an improper augmentation of Air Force appropriations.

BACKGROUND

In 1978, the American Federation of Government Employees and the Air Force Logistics Command (AFLC) reached an impasse in their negotiations over a collective bargaining agreement. One of the issues being pursued by the union was the establishment of day care centers for children of civilian employees. The union proposal provided: "[t]he employer will provide adequate space and facilities for a day care center at each [work site]" and stated that each center would be "self supporting, exclusive of the services and facilities provided by the employer."

The AFLC and the union initially agreed to submit to an arbitration panel this and other issues on which they could not agree. In May of 1980, the arbitration panel included the union's day care proposal in its award, but, as a result of a procedural dispute the AFLC had not participated fully in the administrative proceedings or filed exceptions to the award. The union then brought an unfair labor practice action against the AFLC for failing to implement the arbitration award.

An administrative law judge and then the Federal Labor Relations Authority (FLRA) found that the AFLC had committed an unfair labor practice by not implementing the award, and the FLRA ordered the AFLC to incorporate the terms of the arbitration award in its collective bargaining agreement with the union, 15 FLRA No. 27 (1984). The FLRA decision and order was upheld by the U.S. Court of Appeals in Department of the Air Force v. Federal Labor Relations Authority, 775 F.2d 727 (6th Cir. 1985), a decision that dealt only with the administrative and procedural issues in this dispute. Neither the substantive terms of the collective bargaining agreement, nor the Air Force's authority to implement them was addressed by the court. Since the Air Force has raised with us a number of questions concerning its authority to implement the child care provision of the collective bargaining agreement, and since the union has not opposed the submission of the questions to us, our responses are provided below.

The Air Force has asked us to determine what authority it has to comply with the arbitration award by leasing space for civilian day care facilities, renovating existing government-owned or leased space to make it suitable for providing day care, or expanding existing military day care facilities to handle civilian dependents.1/

DISCUSSION

Section 139

Section 139 of Public Law 99-190 permits government officials to make available to child care providers space under their control in federal buildings, and certain designated services, and to do so without charge. Section 139 states in pertinent part:

1/ The military day care centers are authorized and funded under provisions not applicable to civilian employees of the military services.

"(a) . . . if any . . . entity which provides or proposes to provide child care services for Federal employees applies to the officer . . . of the United States charged with the allotment of space in the Federal buildings . . . in which such . . . entity provides or proposes to provide such services, such officer . . . may allot space in such a building to such . . . entity if--

"(1) such space is available;
"(2) such officer . . . determines that such space will be used to provide child care services to a group of individuals of whom at least 50 percent are Federal employees; and
"(3) such officer . . . determines that such . . . entity will give priority for available child care services in such space to Federal employees."

Paragraph 139(b) states in part:

"(b)(1) [I]f an officer . . . allots space to an . . . entity under subsection (a), such space may be provided to such . . . entity without charge for rent or services.

"(b)(2) If there is an agreement for the payment of costs associated with the provision of space allotted under subsection (a) or services provided in connection with such space, nothing in title 31, United States Code, or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

"(b)(3) . . . the term 'services' includes the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service,) and security systems (including installation and other expenses associated with security systems)."

Section 139, in effect, authorizes all government agencies to use their appropriations in support of certain designated assistance to a child care facility. The statute does not mandate the provision of such assistance, but if an agency head has decided to assist a child care center, then under section 139, the agency can provide support in the form of suitable quarters and limited services, and may choose to do so without charge. In providing suitable facilities, the

agency may renovate, modify or expand existing space in federal buildings.

In introducing the original version of section 139 as an amendment to the Treasury, Postal Service, and General Government appropriation bill for fiscal year 1986, Senator Trible noted that his amendment would "permit child care facilities in Federal buildings to be treated in the same manner as credit unions," i.e., receiving space, utilities, and certain services without charge. Subsequently, during debate on the amended version of the bill that ultimately was enacted, Representative Conte noted that the legislation was designed to encourage these services in qualifying buildings around the country, and that the user agencies would determine the need for day care facilities and the space to be provided, and whether any additional services, such as furniture or telephones, would be furnished.

The legislative history makes it clear that section 139 was not intended to create a right or entitlement to free space or services for day care facilities, but, rather, to encourage the GSA and user agencies to make such assistance more readily available. The determination to support such facilities, based on the particular facts of each situation, still requires the individual exercise of agency judgment and administrative discretion.

Question 1

The first question asked by the Deputy Assistant Secretary is:

> "Does §139 of PL 99-190 (or any other statutory provision) provide authority for the use of appropriated funds to lease facilities for day care centers for children of civilian employees?"

Under 10 U.S.C. § 114 (a)(7), no funds may be obligated or expended for the operation and maintenance of the Air Force unless authorized by law specifically for this purpose. We are aware of no legislation other than section 139 that specifically authorizes funds for the Air Force to provide space for civilian child care centers, so it appears that section 139 would be the exclusive legislative authority under which the Air Force might lease space for this purpose.

As noted previously, under section 139 the Secretary of the Air Force may use appropriated funds to allocate space under his control in federal buildings to civilian day care centers, and he may elect to do so without charge. However, this authority is limited by paragraph 139(a)(1) to the

allocation of "available" space in federal buildings, which, in our view, precludes the Air Force from leasing new space specifically for civilian child care facilities.

Question 2

The next question asked is:

> "Does §139 of PL 99-190 (or any other statutory provision) provide authority for the use of appropriated funds to renovate existing government owned or leased facilities to make those facilities suitable as day care centers?"

As noted in our discussion of section 139, that provision authorizes an agency head to assist a child care center by, among other things, allotting to it existing space in federal buildings. In our view, this includes as well the authority to renovate or modify this space to make it suitable for use as a child care facility.

Question 3

The third question asked by the Deputy Assistant Secretary is:

> " . . . Does §139 of PL 99-190 now authorize the use of appropriated funds for expansion of existing day care facilities established to serve the military members to create space for children of civilian employees?"

Child care centers for the children of military employees are included in the services provided and paid for in part with appropriations for the operation and maintenance of the active forces for welfare and recreation, made permanent law by Department of Defense Appropriation Act, 1984, Pub. L. No. 98-212, § 735, 97 Stat. 1421, 1444 (1983). Under regulations defining Air Force Morale, Welfare, and Recreation (MWR) programs and activities, and establishing eligibility and use priorities (Air Force Regulation 215-1, March 25, 1985), the responsible base commander is authorized to provide services in an MWR child care program for children of DOD civilian employees if there is sufficient space available to do so. Id., at § 6(a)(9), (10), (14) and (15).

When there is no space available for children of civilian employees in an MWR facility housed in a government-owned or leased building, but the space is suitable for expansion, then section 139 authorizes the Secretary to use Air Force appropriations to do so. As noted in our first answer, however, section 139 does not authorize the leasing of new

or additional space simply to permit expansion of an MWR facility for civilian children.

Question 4

The Deputy Assistant Secretary's last question is:

> "Reimbursement for costs incurred in providing day care facilities is optional under §139 of PL 99-190. If capital improvements are made with appropriated funds, could that portion of reimbursements received in future years representing recovery of capital improvement expenditures be credited to the then current appropriation that initially absorbed them?"

Paragraph 139(b)(2) states in pertinent part:

> "If there is an agreement for the payment of costs associated with the provision of space allotted under subsection (a) . . . nothing in title 31, United States Code, or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury." (Emphasis supplied.)

Under 31 U.S.C. § 1301(a) (1982),2/ an agency must use appropriated funds to pay for its authorized expenditures. Any reimbursements for these expenditures must be deposited into the Treasury as miscellaneous receipts, 31 U.S.C. § 3302(b),3/ unless an agency has specific statutory authority to retain them. Paragraph 139(b)(2) does not expressly authorize funds received from a child care center as reimbursement to be credited to agency appropriations,

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2/ Section 1301(a) states:

> "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

3/ Section 3302(b) provides:

> "Except as provided in section 3718(b) of this title [not applicable here], an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim."

and deposit of such payments to the credit of either of the suggested appropriation accounts would result in an improper augmentation of Air Force appropriations.

Although the reference in paragraph 139(b)(2) to "other appropriate account of the Treasury" is not clear, a reasonable construction of its terms leads us to conclude that the underscored portion of that paragraph is intended simply to preserve the right of an agency, where specifically authorized, to deposit the funds into some "other appropriate account." We are aware of no such specific statutory authority for the Air Force, and thus we conclude that such reimbursements must be deposited in the Treasury as miscellaneous receipts.

Milton J. Socolar

for Comptroller General
of the United States