DIGEST - L - CP

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DECISION

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

995

"But see" on
56 Comp. Gen. 131

FILE: B-192258 DATE: September 25, 1978

MATTER OF: Federal Aviation Science and Technological Association, NAGE - Bargaining on Use of Privately Owned Vehicle and Administrative Leave

DIGEST: 1. Federal Labor Relations Council requests our ruling on the legality of a union-proposed bargaining agreement provision that the use of a privately owned vehicle is advantageous to the Government when employees attend training courses at the FAA Academy which last 2 weeks or longer. If the FAA determines that use of a privately owned vehicle is advantageous to the Government, appropriated funds may be expended for this purpose. Applicable regulations and Comptroller General decisions do not preclude negotiations on situations in which it is determined that the use of a privately owned vehicle would be advantageous to the Government.

2. Federal Labor Relations Council requests our ruling on the legality of a union-proposed bargaining agreement provision that administrative leave for 1 day to secure lodging be granted to employees attending the FAA Academy. Federal Travel Regulations permit reduced per diem for extended temporary duty, as in the case of employees attending the FAA Academy. Therefore, it is within the discretion of an agency to provide time to secure reasonable lodgings.

This action involves the request of June 22, 1978, by the Executive Director of the Federal Labor Relations Council (FLRC) for a ruling by the General Accounting Office on certain proposed collective-bargaining agreement provisions involved in Federal Aviation Science and Technological Association, National Association of Government Employees and Federal Aviation Administration, Department of Transportation, FLRC No. 78A-26. The agreement provisions were proposed to the Federal Aviation Administration (FAA), Department of Transportation (DOT), by the Federal Aviation Science and Technological Association (FASTA), a division of the National Association of Government Employees (NAGE). They were determined to be non-negotiable by DOT. FASTA then requested the FLRC

to review DOT's determination, and FLRC now seeks our opinion as to whether the proposed provisions are in conflict with the Federal Travel Regulations (FTR) (FPMR 101-7) and applicable Comptroller General decisions.

At the outset we point out the limits of our jurisdiction with regard to this matter. Our function is not to decide the question of which issues are, or are not, negotiable. This is the responsibility of the FLRC. However, we are required by 31 U.S.C. § 74 to rule on the legality of expending appropriated funds. Hence, we shall confine our consideration to whether the proposed provisions would result in an expenditure of appropriated funds not authorized by law.

FIRST UNION PROPOSAL

The first union proposal determined to be nonnegotiable provides:

> "All in-agency training shall be construed to be advantageous to the government. When such training requires the employee to be away from his duty station for two weeks or more, the employee may choose to travel by privately owned conveyance. Such travel by P.O.V. shall be advantageous to the government, and adequate travel time for such travel shall be authorized. Per diem and mileage monies shall be paid for travel accomplished under this section to the full amount authorized by law."

The FLRC has asked us to rule on:

> " * * * whether this section of the proposal, as intended to be implemented, conflicts with the Federal Travel Regulations (FPMR 101-7), the decision in 56 Comp. Gen. 131 (1976), and other applicable Comptroller General decisions."

As intended to be implemented the above-quoted section would require that the FAA determine that use of a privately owned vehicle is advantageous to the Government for those employees attending mandatory training at the FAA Academy in Oklahoma City, Oklahoma, which lasts 2 weeks or longer.

It is our understanding that the training periods generally extend from 3 to 12 weeks. Employees attending the training courses must arrange for their lodging commensurate with reduced per diem and subsistence granted by the FAA. The choice of lodging is restricted by the lack of public transportation in Oklahoma City. Employees in effect are limited to choosing lodging along a specially designated FAA bus route which in the absence of public transportation operates between Oklahoma City and the FAA Academy from 6 to 6:30 a.m. and at 4:30 p.m. Monday through Friday. However, lodging along the FAA bus route often is not within walking distance of restaurants, stores, and churches.

For the reasons stated below we find that the first union proposal as intended to be implemented does not conflict with the Federal Travel Regulations or decisions of the Comptroller General. However, the wording of the proposal is not restricted to training at the FAA Academy and nothing in this decision is meant to suggest that an agency could make a blanket determination that use of a privately owned vehicle is advantageous to the Government for all in-agency training. Our decision is limited to the circumstances of this case involving training at the FAA Academy.

Mileage for official use of privately owned vehicles authorized at 5 U.S.C. § 5704 (1976) provides for payment if the use of the vehicle is authorized or approved as more advantageous to the Government or the cost to the Government is limited to the cost of transportation which otherwise would have been used.

Paragraph 1-2.2c of the Federal Travel Regulations (Temporary Regulation A-11, Supplement 4, April 29, 1977), which implements 5 U.S.C. § 5704, provides in pertinent part:

"c. Presumptions as to most advantageous method of transportation.

"(1). Common carrier. Since travel by common carrier (air, rail, or bus) will generally result in the most efficient use of energy resources and in the least costly and most expeditious performance of travel, this method shall be used whenever it is reasonably available. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier would exceed the cost by some other method of transportation. The determination that another method of transportation would be more advantageous to the Government than common carrier transportation shall not be made on the basis of personal preference or minor inconvenience to the traveler resulting from common carrier scheduling.

* * * * *

"(3) Privately owned conveyance. Except as provided in 1-2.2d, the use of a privately owned conveyance shall be authorized only when such use is advantageous to the Government. A determination that the use of a privately owned conveyance would be advantageous to the Government shall be preceded by a determination that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. To the maximum extent possible, these determinations and the authorization to use a privately owned conveyance shall be made before the performance of travel."

In our decision 56 Comp. Gen. 131 (1976) we pointed out that the purpose of para. 1-2.2c was to prohibit the use of privately owned vehicles as being advantageous to

the Government unless the specific conditions contained in the regulation have been determined to be met. However, 56 Comp. Gen. 131 does not bar negotiations between an agency and a union with respect to the use of a privately owned vehicle. That decision was limited to a holding that a departmental regulation as interpreted by an arbitrator contradicted the express requirements of FTR para. 1-2.2c. Additionally, we note that the wording of para. 1-2.2c has been changed since 56 Comp. Gen. 131 to permit consideration of hardship to the traveler as a factor in determining advantage to the Government. The basic intent of the regulation has not been changed, however. A determination of advantage to the Government may be made only after consideration of the criteria set forth in the regulation.

The determination of advantage to the Government is primarily the responsibility of the agency concerned after consideration of the factors contained in FTR para. 1-2.2c. We stated in 56 Comp. Gen. 865 (1977) that an agency's determination of whether:

> "* * * an employee's use of his privately owned vehicle for travel is or is not advantageous to the Government will not generally be questioned by this Office. 26 Comp. Gen. 463 (1947); B-161266, March 24, 1970; B-160449, February 8, 1967. The particular determination that privately owned vehicle travel of FAA employees to the FAA Academy in Oklahoma from distant locations is not advantageous to the Government is not questioned here. If the FAA found such method of transportation to be to the Government's advantage, then traveltime during regular duty hours of work, would be allowed, and per diem and mileage expenses would be payable, without regard to the constructive cost of travel by common carrier."

Therefore, if the FAA should determine that travel by FAA employees in a privately owned vehicle to the FAA Academy is advantageous to the Government, the FAA may expend appropriated funds to pay for such travel.

In considering whether a determination of advantage to the Government should be made, it appears that consultation and negotiation with employees as represented by their labor organizations would be appropriate. In that connection we noted in National Council of Meat Graders, 57 Comp. Gen. 379 (1978), that the responsibility of an agency head or his designee to make a determination does not, in itself, require the conclusion that the item involved is not negotiable.

Accordingly, we conclude that the proposal, as intended to be implemented, is not in conflict with the Federal Travel Regulations or our decisions, provided the required determination is made.

SECOND UNION PROPOSAL

The second union proposal determined to be non-negotiable provides:

> "One day of administrative leave will be provided to each employee attending the FAA Academy for the purpose of finding living accommodations."

The FLRC requests us to rule on:

> "* * * whether this section of the union proposal, as intended to be implemented, conflicts with the holding in 56 Comp. Gen. 865 (1977), and other applicable Comptroller General decisions."

As intended to be implemented, the above-quoted section would require the FAA to provide 1 day of administrative leave to find housing to employees upon arrival in Oklahoma City, Oklahoma, to attend the FAA Academy, as accommodations are not provided by the Government and per diem is reduced due to the extended temporary duty.

Our decision 56 Comp. Gen. 865 (1977) does not bar negotiations between an agency and a union with regard to the granting of administrative leave to find housing upon arrival at a temporary site when Government accommodations are not furnished and per diem is reduced due to extended temporary duty. That decision held that administrative leave could not be granted to employees for excess traveltime resulting from the use of a privately owned vehicle for the employee's personal convenience. Such a result was consistent with prior Comptroller General decisions and FPM Supplement 990-2 chapter 630, subchapter S3-4, which states in pertinent part:

> "* * * Absences because of excess travel time resulting from the use of privately owned motor vehicles for personal reasons on official trips is generally chargeable to annual leave.* * *"

In 56 Comp. Gen. 865 we pointed out that there is no general statutory authority under which Federal employees can be excused from their official duties without charge to leave. However, excused absences have been authorized in specific situations by law and Executive order. In addition, over the years it has been recognized that in the absence of a controlling statute the head of an agency may in certain situations excuse an employee for brief periods of time without charge to leave or loss of pay. Decisions of the Comptroller General addressing the scope of agency discretion to grant administrative leave have generally drawn a distinction between absences connected with activities which further an agency's function and those which, though for a worthy cause, do not.

In the context of official travel we have recognized several situations in which administrative leave may appropriately be granted. In 55 Comp. Gen. 510 (1975) and in 56 Comp. Gen. 629 (1977), we recognized that employees may be granted brief periods of rest following air travel necessarily performed during hours normally allocated to rest. Where a transferred employee delayed his travel an additional day through no choice of his own but awaiting the tardy arrival of a moving company, we upheld the granting of 8 hours administrative leave. 55 Comp. Gen. 779 (1976).

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Similarly, in B-180693, May 23, 1974, we held that an employee could be granted administrative leave for the purpose of complying with agency cancellation of an imminent and previously authorized transfer. See also B-160278, December 13, 1966, B-160838, March 10, 1967, and 56 Comp. Gen. 865 at 868.

The Federal Travel Regulations in ~~Part~~ Chapter 2 recognize the problems encountered by employees who are transferred in locating suitable quarters by providing for a house hunting trip and a temporary quarters and subsistence allowance.

Consistent with that concept, our view is that the Federal Aviation Administration is not precluded by our decisions, including 56 Comp. Gen. 865, from granting one day's administrative leave to employees on extended temporary duty at the FAA Academy in order to secure suitable lodgings at a reduced cost.

Acting Comptroller General
of the United States