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DECISION

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

FILE: B-190440 DATE: January 20, 1978

MATTER OF: American Federation of Government Employees, Local 2814 and Federal Railroad Administration

DIGEST: Union proposal would allow Federal employees on temporary duty for more than a specified period of time to transport their dependents in Government vehicles. Agency states that proposal violates 31 U.S.C. § 638a(c)(2), which prohibits use of Government vehicles for other than "official purposes." However, where agency determines that transportation of dependents in Government vehicle is in interest of Government and vehicle's use is restricted to official purposes, the statute would not be violated. Accordingly, section 638a(c)(2) does not, by itself, render the union proposal nonnegotiable.

This action is in response to a letter dated October 3, 1977, from Mr. Henry B. Frazier, III, Executive Director, Federal Labor Relations Council, requesting our ruling on a negotiability matter concerning the American Federation of Government Employees (AFGE), Local 2814 and the Department of Transportation, Federal Railroad Administration, FLRC No. 77A-65. The matter involves a proposal by AFGE which would permit Federal employees to transport their legal dependents in Government vehicles while performing official business, subject to certain conditions.

The proposal in question is set forth below:

"Section E. Employees assigned GSA vehicles will have the right to transport their legal dependents while traveling in GSA vehicles, subject to the following conditions:

"1. The immediate supervisor must be notified in writing of such travel by dependents by the submission of a planned itinerary in advance, which identifies the dependents and relationship of the dependents.

"2. The employee is on a planned itinerary requiring an absence of more than sixty (60) hours from his duty station."

The AFGE states that a similar provision was included in a Federal Railroad Administration order effective January 20, 1972, following negotiations on that point between the agency and the AFGE. The union believes that the proposal is not in conflict with law.

The Department of Transportation's position is set forth in a July 26, 1977, letter to the Federal Labor Relations Council. The Department states that it is of the opinion that the above-quoted proposal is nonnegotiable because it contravenes 31 U.S.C. § 638a(c)(1970). It further states that the inclusion of a similar provision in prior Federal Railroad Administration regulations does not overcome the prohibition contained in the cited statute. Section 638a(c) states, in pertinent part:

"Unless otherwise specifically provided, no appropriation available for any department shall be expended--

* * * * *

"(2) for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of officers and employees engaged in field work the character of whose duties makes such transportation necessary and then only as to such latter cases when the same is approved by the head of the department concerned.* * *"

Section 638a(c)(2) does not define the term "official purposes." It provides only that the term does not include the transportation of employees between their homes and places of employment, except in certain specified cases not relevant here. In construing section 638a(c)(2), this Office has recognized that its primary purpose is to prevent the use of Government vehicles for the personal convenience of employees.

The AFGE proposal would allow an employee's dependents to accompany him in a Government vehicle from the employee's residence or headquarters to his temporary duty station incident to an assignment which would require an absence of more than a specified time period. The proposal does not purport to authorize the transportation of dependents for any purpose when the employee himself would be prohibited from performing travel. Of course, if the employee used the Government vehicle to transport a dependent for other than "official purposes," he would be subject to the sanctions set forth in section 638a(c)(2). See Clark v. United States, 162 Ct. Cl. 477 (1963), in which the Court of Claims held that a 90-day suspension of an employee was sufficient punishment when he permitted his wife to drive a Government vehicle on personal business, on a few occasions. Thus, under the AFGE proposal the Government vehicle could be used only for "official purposes" and the transportation of any dependents could only be made incident to such use.

Determinations concerning Government interest with regard to section 638a(c)(2) are primarily to be made by the administrative agency concerned within the framework of applicable laws. 54 Comp. Gen. 855 (1975) and B-164184, June 21, 1968. However, in making determinations with regard to Government interest, an agency should consider the possible increased liability of the Government under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., for damages suffered by such dependents through any negligence of the employee. Furthermore, employees should be advised that their dependents are not authorized to drive Government vehicles. Since such dependents are not "employees" within the meaning of the Federal Tort Claims Act, the Government would apparently not be liable for damages suffered by a third party occasioned by the negligence of the dependent. Moreover, it appears that should damage result from the negligence of the dependent such person

might be held liable not only to the third party, but also to the Government for any damage to the Government vehicle.

Other factors for consideration would be the availability of space in the Government vehicle and the possible disruption in routine which might be caused by a large number of dependents accompanying an employee. Also, since GSA vehicles are involved, the contract agreement should be approved by GSA. The specific conditions of each particular situation will, no doubt, suggest additional factors for consideration. Since determinations should be made on a case-by-case basis, as opposed to a blanket policy, we suggest that the agency retain authority to make the required determination on a case-by-case basis.

Accordingly, where the transportation of a dependent in a Government vehicle is such that the dependent merely accompanies an employee on an otherwise authorized trip scheduled for the transaction of official business, and the agency involved makes a determination that it is in the Government's interest for the dependent to accompany the employee (for instance, for morale purposes), we do not believe that the provisions of section 638a(c)(2) would be violated. Thus, we are of the view that the provisions of 31 U.S.C. § 638a(c)(2) do not, by themselves, serve to make the AFGE proposal nonnegotiable.

R.F. Kelly

Deputy Comptroller General
of the United States