



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-253164

August 23, 1993

Gloria Joseph
Director, Office of Administration
National Labor Relations Board

Dear Ms. Joseph:

By letter dated April 15, 1993, you asked for our opinion on whether the National Labor Relations Board (NLRB) violated the Antideficiency Act by obligating funds in excess of the designated apportionment and prior to receiving a signed reapportionment from the Office of Management and Budget (OMB). We conclude that a technical violation of the Antideficiency Act occurred.

NLRB had a 1993 apportionment of \$1 million for an ADP initiative. NLRB and OMB considered the initial apportionment amount as a spending floor, and informally agreed that if NLRB determined more resources were available for this initiative, OMB would reapportion. NLRB made such a determination and, after conversations with OMB, hand-delivered a reapportionment request. NLRB's budget officer, assuming the request had been signed, authorized an obligation of funds that exceeded the \$1 million apportionment by \$349,120.50. The budget officer subsequently discovered that the reapportionment request had been lost after it reached OMB, and that it had not been signed. NLRB then submitted another reapportionment request. OMB signed this request, but advised NLRB that its actions had resulted in an overobligation of the initial apportionment and reprimanded NLRB for obligating resources before OMB had signed the reapportionment.

You question whether, in these circumstances, an Antideficiency Act violation occurred and, if so, whether such a "technical" violation should be reported. The Antideficiency Act provides that no officer or employee of the government shall make or authorize an expenditure or obligation in excess of an apportionment. The head of the agency is to report violations to the President and the Congress. 31 U.S.C. § 1517.

The apportionment process mandated by the Antideficiency Act is a cornerstone financial management control designed to

manage the rate of agency expenditures to avoid over- or under-expenditure. OMB Circular A-34, Aug. 26, 1985, that implements 31 U.S.C. § 1517, requires each agency to have an internal system of administrative fund control to ensure that apportionments are not exceeded. In our view, neither informal understandings regarding OMB's intention to reapportion or verbal assurances concerning that intention provide the requisite authority to exceed the apportioned amount. An agency should not obligate appropriated funds before obtaining a valid, signed apportionment. Since NLRB obligated funds before receiving written approval of its reapportionment, it, therefore, at least technically, violated the Antideficiency Act. See, e.g., B-235086, Apr. 24, 1991; B-95136, Aug. 8, 1979.

You also ask whether Congress intends that such violations be reported. In this regard, the Act directs, without exception, that agency heads report violations of the Act immediately to the President and the Congress along with a statement of the relevant facts and actions taken in response to the violation.¹ There may be circumstances where a report would serve no useful purpose and, in such a case, we would be reluctant to interpret the Act to require such a report. See Republic Nat'l. Bank of Miami v. United States, 113 S. Ct. 554, 561 (1992) (law does not require useless acts). Although we recognize that in certain respects a report here would have only limited utility, particularly to OMB, that is not to say it has no utility and hence should not be provided.

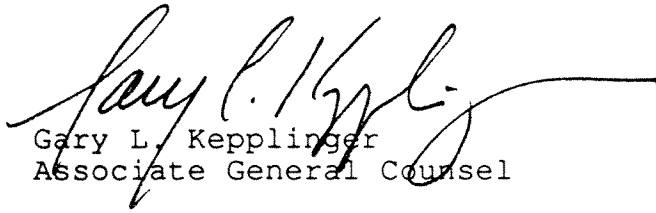
As you know, Congress has vested control of the apportionment process for the executive branch in the President who discharges this function through OMB. See 31 U.S.C. §§ 1512, 1513; OMB Circular No. A-34, Aug. 26, 1985, § 12.5. Since the violation of the Act is at the apportionment level, we also think that it is important to consider OMB's views. In this regard, OMB staff has informally advised us that they desire a report.

Accordingly, we recommend that NLRB file with Congress and OMB the requisite report detailing the relevant facts and any remedial actions.

¹OMB Circular A-34, Aug. 26, 1985, details the contents of a report on an Antideficiency Act violation.

We trust the foregoing responds to your request. Should you have any question, please contact Mr. Thomas Armstrong or Ms. Barbara Timmerman at (202) 512-5644.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel