

ORAL ARGUMENT SCHEDULED FOR APRIL 16, 2004

No. 03-1321

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**ASSOCIATION OF CIVILIAN TECHNICIANS,
PUERTO RICO ARMY CHAPTER,**

Petitioner

v.

FEDERAL LABOR RELATIONS AUTHORITY,

Respondent

**ON PETITION FOR REVIEW OF A DECISION AND ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY**

BRIEF FOR THE FEDERAL LABOR RELATIONS AUTHORITY

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ORAL ARGUMENT SCHEDULED FOR APRIL 16, 2004
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

Appearing below in the administrative proceeding before the Federal Labor Relations Authority (Authority) were the Association of Civilian Technicians, Puerto Rico Army Chapter (union) and United States Department of Defense, National Guard Bureau, Puerto Rico National Guard, San Juan, Puerto Rico (Puerto Rico Guard). The union is the petitioner in this court proceeding; the Authority is the respondent.

B. Ruling Under Review

The ruling under review in this case is the Authority's decision in *Association of Civilian Technicians, Puerto Rico Army Chapter and United States Department of Defense, National Guard Bureau, Puerto Rico National Guard, San Juan, Puerto Rico*, Case No. 0-NG-2519, decision issued on January 24, 2003, reported at 58 F.L.R.A. 318. The Authority's order denying the union's motion for reconsideration was issued on August 7, 2003, reported at 59 F.L.R.A. 2.

C. Related Cases

This case has not previously been before this Court or any other court. Counsel for the Authority is unaware of any cases pending before this Court which are related to this case within the meaning of Local Rule 28(a)(1)(C).

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<i>ACT, Puerto Rico</i>	<i>Ass'n of Civilian Technicians, Puerto Rico Army Chapter</i> , 56 F.L.R.A. 493 (2000), <i>vacated</i> 269 F.3d 1112 (D.C. Cir. 2001)
<i>ACT v. FLRA</i>	<i>Ass'n of Civilian Technicians v. FLRA</i> , 269 F.3d 1112 (D.C. Cir. 2001)
Add.	Addendum
Authority	Federal Labor Relations Authority
<i>BATF</i>	<i>Nat'l Treasury Employees Union</i> , 26 F.L.R.A. 497 (1987)
<i>BATF v. FLRA</i>	<i>Bureau of Alcohol, Tobacco and Firearms v. FLRA</i> , 464 U.S. 89 (1983)
Br.	Brief
Council	Federal Labor Relations Council
DOD	Department of Defense
<i>DOD, Arlington</i>	<i>United States Dep't of Defense, Education Activity, Arlington, VA</i> , 56 F.L.R.A. 119 (2000)
FLRA	Federal Labor Relations Authority
<i>Fort Benjamin Harrison</i>	<i>Dep't of the Army, United States Army Commissary, Fort Benjamin Harrison, Indianapolis, Ind. v. FLRA</i> , 56 F.3d 273 (D.C. Cir. 1995)

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<i>GSA</i>	<i>Nat'l Federation of Federal Employees</i> , 24 F.L.R.A. 430 (1986)
JA	Joint Appendix
<i>NTEU</i>	<i>Nat'l Treasury Employees Union</i> , 55 F.L.R.A. 1174 (1999)
Puerto Rico Guard	Puerto Rico National Guard
<i>Richmond</i>	<i>OPM v. Richmond</i> , 496 U.S. 414 (1990)
Statute	Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (2000)
Union	Association of Civilian Technicians, Puerto Rico Army Chapter

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BRIEF FOR THE FEDERAL LABOR RELATIONS AUTHORITY

STATEMENT OF JURISDICTION

The decision and order under review in this case was issued by the Federal Labor Relations Authority (“Authority” or FLRA) on January 24, 2003. The Authority’s decision is published at 58 F.L.R.A. 318. The Authority’s order denying petitioner’s motion for reconsideration was issued on August 7, 2003, and is published at 59 F.L.R.A. 2. Copies of these Authority determinations are included in the Joint Appendix (JA) at JA 13-35 and JA 46-47, respectively. The Authority exercised jurisdiction over the case pursuant to § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (2000) (Statute).¹ This Court

¹ Pertinent statutory provisions are set forth in the attached Addendum (Add.) to this brief.

has jurisdiction to review the Authority's final decisions and orders pursuant to § 7123(a) of the Statute.

STATEMENT OF THE ISSUE

Whether the Authority properly determined that a collective bargaining provision requiring reimbursement for employees' purely personal travel and recreational expenses is inconsistent with law because the provision requires an expenditure of appropriated funds not authorized by law.

STATEMENT OF THE CASE

This case arose as a negotiability proceeding under § 7117(c) of the Statute. The Association of Civilian Technicians, Puerto Rico Army Chapter (union) and the Puerto Rico National Guard (Puerto Rico Guard) negotiated a contract provision requiring the Puerto Rico Guard to reimburse employees for lost personal travel and recreational expenses, including nonrefundable expenses for local theater, sports events and banquets, whenever the agency cancels previously approved leave. The provision was disapproved by the Department of Defense (DOD) as contrary to law under § 7114(c) of the Statute. The union appealed the disapproval to the Authority pursuant to § 7117 of the Statute. Subsequently, the Authority determined that the provision was inconsistent with federal law and upheld DOD's disapproval.

The union sought judicial review of the Authority's decision. On review, this Court held that the Authority's decision was based on an erroneous application of the Travel Expenses Act. The Court remanded the matter to the Authority for further consideration.

On remand, the Authority held that the provision was inconsistent with law because the provision requires an expenditure of appropriated funds not authorized by law and again dismissed the union's appeal. The union now seeks review of the Authority's decision on remand.

STATEMENT OF THE FACTS

A. Background

Through collective bargaining, the union and the Puerto Rico Guard agreed to the following provision.

Once leave has be[en] approved and the employer has a compelling need to cancel the previously approved leave, the employer agrees not to subject the employee to a loss of funds expended in the planning of the leave (i.e., hotel reservations, airline tickets, etc.). The employee will demonstrate the unavoi[da]b[ility] of the loss of funds.

JA 14 (alteration in original). Pursuant to § 7114(c) of the Statute, the provision was submitted to DOD for agency head review. The agency head disapproved the provision, asserting that it was contrary to law because it requires the agency to reimburse employees for purely personal travel and other expenses, which would constitute an unauthorized use of appropriated funds.² JA 18.

B. Prior Proceedings before the Authority and this Court

The union challenged DOD's disapproval by filing a negotiability appeal under § 7117 of the Statute with the Authority.³ The Authority upheld the disapproval and dismissed the union's appeal. *Ass'n of Civilian Technicians, Puerto Rico Army Chapter*, 56 F.L.R.A. 493, 497 (2000) (*ACT, Puerto Rico*), vacated 269 F.3d 1112 (D.C. Cir. 2001). The Authority found that the expenses for which reimbursement were sought were "personal expenses" and, relying on decisions of this Court and

² Under § 7114(c) of the Statute, an agency head may disapprove an agreed-upon provision if the provision is inconsistent with the Statute or any other applicable law, rule, or regulation.

³ When an agency head disapproves a contract provision as contrary to applicable law, rule, or regulation under § 7114(c), he or she is making a negotiability decision. Accordingly, the union may challenge the disapproval under the review provisions of § 7117. *See AFGE v. FLRA*, 778 F.2d 850, 853 (D.C. Cir. 1985).

those of the United States Comptroller General, held that such expenses were not authorized by the Travel Expenses Act, 5 U.S.C. §§ 5701-5756 (2000). Stating that the Travel Expenses Act governed employee travel expenses, the Authority concluded that the expenditures required by the provision were not authorized by law. *Id.*

On review, this Court reversed the Authority, holding that the Travel Expenses Act concerned only “official travel” and was, therefore, irrelevant to the negotiability of the disputed provision. *Ass’n of Civilian Technicians v. FLRA*, 269 F.3d 1112, 1116 (D.C. Cir. 2001) (*ACT v. FLRA*). The Court acknowledged, however, that a bargaining provision or proposal that requires an expenditure of appropriated funds not authorized by law is outside the obligation to bargain. *Id.* Noting that the union had argued that the expenditure required by the provision at issue was authorized by the Statute, the Court remanded the case to the Authority to consider this and other arguments previously raised but not addressed. *Id.* at 1118.

C. The Authority’s Decision on Remand

After requesting and receiving supplemental submissions from the parties, the Authority again dismissed the union’s negotiability appeal (Member Pope concurring). The Authority held that the provision is contrary to law because the provision requires an expenditure of appropriated funds not authorized by law. JA 28.

The Authority first stated the well-established principles that: 1) under § 7117(a)(1) of the Statute the obligation to bargain extends only to matters not inconsistent with federal law; and 2) any government disbursement of funds must be authorized by statute. Applying these principles, the Authority rejected the union’s contention that the expenditures required by the provision are authorized by law, specifically, the terms of the Statute. In this regard, the Authority found no express or implied authorization in the Statute or its legislative history for agencies to expend funds for these personal travel and recreational expenses as required by the provision

in this case. The Authority noted that the Supreme Court had held that the Statute did not provide authorization for travel expenses to be paid to union negotiators (citing *Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 107 (1983)) and that the Authority had similarly held that the Statute could not be the statutory source for authorization for others types of expenditures to be paid by federal agencies. JA 20-21.

The Authority rejected the union's reliance on *National Treasury Employees Union*, 26 F.L.R.A. 497 (1987) (*BATF*) and *National Federation of Federal Employees*, 24 F.L.R.A. 430 (1986) (*GSA*) to draw a different conclusion. The Authority noted that in those cases, it had found that under appropriate law, an agency could through negotiations determine that the use of government telephones constituted "official business." Noting that this Court had stated that the provision at issue here "certainly does not address official business," *ACT v. FLRA*, 269 F.3d at 1116, the Authority held that *BATF* and *GSA* were inapposite. JA 21-23.

The Authority emphasized that in all cases concerning the question of whether the spending required by a bargaining proposal was authorized by law, it has looked beyond the Statute for such authorization. In that regard, the Authority noted that it had consistently held that when a bargaining proposal requires payments beyond the limits of the particular statute authorizing payment, the proposal is inconsistent with federal law and outside the duty to bargain. JA 23.

Next the Authority rejected the union's arguments that the Puerto Rico Guard's appropriations for general operating expenses provides the agency with the discretion to make the expenditures authorized by the provision. Looking first at the language of the applicable appropriations act, the 2000 Department of Defense Appropriations Act, Pub. L. No. 106-79, 113 Stat. 1212, 1216-17 (October 25, 1999), the Authority found nothing in the express language of the act or its legislative history that indicates

that Congress intended these funds to be expended for the purpose of reimbursing employees for personal expenses incurred in connection with the cancellation of previously approved leave. JA 23-25.

The Authority did acknowledge, however, that appropriations law does not require that every item of expenditure be specified in an appropriation act, and that expenditures may be justified by general appropriations language where the expenditure is reasonably necessary to carrying out an authorized agency function. Nonetheless, the Authority determined that even if the “necessary expense” doctrine applied in this situation, the provision would not satisfy application of that doctrine. In that regard, the Authority found that the union had not demonstrated that reimbursement of personal expenses for planned activities while on leave would make any contribution to the Puerto Rico Guard’s authorized functions. The Authority also found that Congress’ enactment of 10 U.S.C. § 1053a, which provides statutory authorization for reimbursement of travel and related expenses incurred by *military* personnel as a result of canceled leave, suggests that specific statutory authorization would be required for individuals to receive reimbursement for personal losses incurred as a result of an agency’s cancellation of leave. JA 26-27.

Additionally, the Authority held that the provision is contrary to 5 U.S.C. § 5536. That statute provides that “[a]n employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance.” In the Authority’s view, reimbursement of personal losses incurred as a result of the Agency’s cancellation of leave constitutes “additional pay or allowance for the disbursement of public money” (citing *Kizas v. Webster*, 707 F.2d 524, 536-37 (D.C. Cir. 1983)). JA 27-28.

Finally, the Authority determined that it need not address the specifics of the union's contention that the provision constituted an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute. In so holding, the Authority relied on its well-established precedent (*e.g.*, *Nat'l Treasury Employees Union*, 55 F.L.R.A. 1174, 1181 (1999)) to the effect that a provision that is nonnegotiable because it is contrary to law or Government-wide regulation under § 7117(a)(1) of the Statute remains nonnegotiable regardless of whether it may be considered an appropriate arrangement. JA 28.

For all the foregoing reasons, the Authority dismissed the union's negotiability appeal. JA. 28.⁴

STANDARD OF REVIEW

The standard of review of Authority decisions is "narrow." *AFGE, Local 2343 v. FLRA*, 144 F.3d 85, 88 (D.C. Cir. 1998). Authority action shall be set aside only if it is "arbitrary, capricious, or an abuse of discretion" or "otherwise not in accordance with law." *See* 5 U.S.C. § 7123(c), incorporating 5 U.S.C. § 706(2)(A).

"Congress has specifically entrusted the Authority with the responsibility to define the proper subjects for collective bargaining, drawing upon its expertise and understanding of the special needs of public sector labor relations." *Library of Congress v. FLRA*, 699 F.2d 1280, 1289 (D.C. Cir. 1983). With regard to a negotiability decision like the one under review in this case, such a "decision will be upheld if the FLRA's construction of the [Statute] is 'reasonably defensible.'" *Overseas Educ. Ass'n v. FLRA*, 827 F.2d 814, 816 (D.C. Cir. 1987) (citation omitted).

⁴ The Authority denied the union's request for reconsideration, finding that the union failed to establish the extraordinary circumstances required for reconsideration under 5 C.F.R. § 2429.17 (2003). JA 47.

Courts “also owe deference to the FLRA’s interpretation of [a] union’s proposal.” *NTEU v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994).

To the extent this case requires the Authority to interpret and apply federal laws other than its own organic statute, such interpretations, although not entitled to deference, should be followed to the extent the Authority’s reasoning is “sound.” *Ass’n of Civilian Technicians, Tex. Lone Star Chapter v. FLRA*, 250 F.3d 778, 782 (D.C. Cir. 2001) (quoting *Dep’t of the Treasury v. FLRA*, 837 F.2d 1163, 1167 (D.C. Cir. 1988)).

SUMMARY OF ARGUMENT

It is well-established, and undisputed, that under the Constitution and other federal laws all expenditures of appropriated funds must be authorized by Congress. The Authority properly held that neither the Statute nor the agency’s appropriations legislation authorized the expenditure of funds to reimburse employees for travel and recreational expenses forfeited when previously approved leave is canceled. Because there is no spending authorization for the provision, it is inconsistent with federal law within the meaning § 7117(a)(1) of the Statute.

1. Neither the Authority nor the courts have ever relied upon the Statute to authorize the expenditure of appropriated funds. Indeed, both the Supreme Court and this Court have previously rejected attempts to rely on the Statute to authorize agency spending. *See Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 107 (1983); *see also, Dep’t of the Army, United States Army Commissary, Fort Benjamin Harrison, Indianapolis, Ind. v. FLRA*, 56 F.3d 273 (D.C. Cir. 1995).

Similarly, the Authority has not relied on the Statute to determine if expenditures required by bargaining proposals are authorized by law. Instead, the Authority has

consistently looked outside the Statute for such authorization. In that regard, and contrary to the union's contentions, it was such independent law that authorized the expenditure of funds for the use of telephones by union officials in *National Treasury Employees Union*, 26 F.L.R.A. 497 (1987) (*BATF*) and *National Federation of Federal Employees*, 24 F.L.R.A. 430 (1986) (*GSA*). In determining the existence of such independent spending authorization, the Authority has continued the practice of its predecessor, the Federal Labor Relations Council.

2. The Puerto Rico Guard's appropriations legislation also does not authorize the expenditure of appropriated funds for the travel and recreational expenses referenced in the disputed provision. Although specific expenses may be authorized by general appropriations for agency operations where such expenditures are reasonably necessary to carry out an agency's authorized functions, the personal travel and recreational expenses at issue here certainly cannot properly be considered reasonably necessary for such a purpose.

3. The union mistakenly argues, however, that by statutorily creating an obligation for agencies to bargain collectively, Congress implicitly authorized the expenditure of appropriated funds to implement *any* bargained-for provision not otherwise expressly or implicitly prohibited by law. The union's claim lacks merit.

First, the union does not cite any precedent where the Statute has been recognized as providing the authorization for agency expenditures that would otherwise lack appropriations law support. As noted above, the union's reliance on the *GSA* and *BATF* cases in this regard is misplaced. In addition and contrary to the

union's contention, the Authority will not enforce contract provisions where such provisions require expenditures not authorized under applicable spending laws.

Second, the union's theory is untenable because it permits collective bargaining to determine an agency's spending authority. According to the union, agencies are authorized to spend funds not otherwise authorized by Congress, as long as the expenditures are part of a collective bargaining agreement to which the agency is a party. However, such a "blank check" for agency spending could not have been intended by Congress. Congress, not Executive Branch agencies, controls the nation's purse strings. *See* U.S. Const. Art. I, § 9, cl. 7.

4. The disputed provision is also inconsistent with 5 U.S.C. § 5536, which provides that any "pay or allowance" disbursed to federal employees must be specifically authorized by law. The Authority properly found that the disbursements called for in the provision fit within the broad scope of the terms "pay or allowance" as recognized by this Court. *See Kizas v. Webster*, 707 F.2d 524 (D.C. Cir 1983).

5. Finally, the union's contention that § 7106(b)(3) of the Statute provides authorization for reimbursing employees for forfeited personal travel and recreational expenses is without merit. Both the Authority and this Court have held that the "appropriate arrangement" clause found in § 7106(b)(3) serves only as an exception to the management rights found at § 7106(a). Where, as here, a bargaining provision is found to be inconsistent with law under § 7117(a)(1), § 7106(b)(3) has no applicability. *See United States Dep't of the Treasury, Internal Revenue Serv. v. FLRA*, 996 F.2d 1246, 1252 (D.C. Cir. 1993).

ARGUMENT

I. THE AUTHORITY PROPERLY DETERMINED THAT A COLLECTIVE BARGAINING PROVISION REQUIRING REIMBURSEMENT FOR EMPLOYEES' PURELY PERSONAL TRAVEL AND RECREATIONAL EXPENSES IS INCONSISTENT WITH LAW BECAUSE THE PROVISION REQUIRES AN EXPENDITURE OF APPROPRIATED FUNDS NOT AUTHORIZED BY LAW

It is well-established that all expenditures of appropriated funds must be authorized by Congress. *See* 31 U.S.C. § 1301(a); *see also OPM v. Richmond*, 496 U.S. 414, 416 (1990) (*Richmond*). As relevant here, the Authority has consistently held, and this Court has agreed, that bargaining proposals or provisions that require the expenditure of funds in a manner not authorized by law are inconsistent with law and therefore outside an agency's obligation to bargain under § 7117(a)(1) of the Statute. *See, e.g., United Power Trades Org.*, 48 F.L.R.A. 291, 292 (1993) (*UPTO*), *aff'd mem.*, No. 93-70827 (9th Cir. May 23, 1995); *ACT v. FLRA*, 269 F.3d at 1116. As demonstrated below, the Authority in the instant case reasonably construed its own Statute, and properly concluded that the collective bargaining law does not authorize the expenditures required by the disputed provision. The Authority also properly determined that the agency's appropriations statute for agency operations does not authorize the provision's personal travel and recreational reimbursements. Therefore, because the disputed provision would require the expenditure of funds in a manner not authorized by law, it is outside the agency's obligation to bargain.

A. The Authority Reasonably and Properly Determined That the Collective Bargaining Law it Administers Does Not Authorize the Expenditure of Funds to Reimburse Employees for Personal Travel and Recreational Expenses

The Authority's determination that the Statute does not authorize the expenditures required by the provision was reasonable because it is consistent with the Statute's language, and with judicial and Authority precedent. Accordingly, under the deferential standard the Court should apply to this determination, the Authority's decision on this point should be upheld.⁵

It is undisputed that the Statute does not contain any express authorization for the personal travel and recreational expenditures here at issue. Additionally, and as the Authority and the courts have held, there is no implied authorization in the Statute for such expenditures.

Although there are no cases precisely on point, such precedent as exists is supportive of the Authority's interpretation of the Statute. Two cases in particular are consistent with the proposition that the collective bargaining law that the Authority administers is not a spending statute for appropriations law purposes. In the first case, as the union acknowledges (Brief (Br.) 13-14), the Supreme Court has ruled that the terms of the Statute do not provide authorization for the payment of travel and per diem expenses for union negotiators. *Bureau of Alcohol, Tobacco and Firearms v.*

⁵ The union contends (Br. 10) that the Authority is not due deference because the case concerns "appropriations law." However, the principle issue in the case involves the role of the Statute in authorizing expenditures. This question is one arising under the Statute and, therefore, is a question on which the Authority is due appropriate deference.

FLRA, 464 U.S. 89, 107(1983) (*BATF v. FLRA*). The Court thus recognized that the Statute, by itself, was not intended by Congress to provide a foundation for the expenditures there at issue.

This Court's decision in *Department of the Army, United States Army Commissary, Fort Benjamin Harrison, Indianapolis, Ind. v. FLRA*, 56 F.3d 273 (D.C. Cir. 1995) (*Fort Benjamin Harrison*) also supports the proposition that the Statute does not contain an implied authorization for the expenditure of agency funds. In *Fort Benjamin Harrison*, discussing unfair labor practice remedies that the Authority could properly impose based on the Statute's provisions, this Court held that the Statute does not waive the government's sovereign immunity to liability for money damages. *Id.* at 276-79. Thus, in a different context from that of *BATF v. FLRA, supra*, this Court has recognized that the Statute was not intended to serve as a basis for government expenditures.

The Authority's determination in the instant case that the Statute does not authorize agency spending for employee personal travel and recreational reimbursements is also consistent with the Authority's own case law. There is, of course, the long line of Authority cases in which the Authority looked only to law outside the Statute for the requisite authorization to spend appropriated funds. *See, e.g., UPTO*, 48 F.L.R.A. at 292 (finding no authorization for reimbursement of licensing fees), *aff'd mem.*, No. 93-70827 (9th Cir. May 23, 1995); *Dep't of the Navy*, 34 F.L.R.A. 635, 638 (1990) (provision for safety vests to be used for commuting to work is inconsistent with laws regarding purchase of safety equipment); *cf. United States Dep't of Defense, Education Activity, Arlington, VA*, 56 F.L.R.A. 119 (2000)

(*DOD, Arlington*) (Authority set aside arbitration award implementing a provision that required an expenditure of federal money that was not authorized by law outside the Statute).

The Authority's holdings in this area continued the practice of the Federal Labor Relations Council (Council) under the Executive Order that preceded enactment of the Statute.⁶ Section 11 of Executive Order 11,491 obligated agencies to bargain over "matters affecting working conditions, *so far as may be appropriate under applicable law*" (emphasis added). In applying § 11, the Council examined whether there was statutory spending authorization for matters required by bargaining proposals. *See Am. Fed'n of Gov't Employees, Nat'l Council of Meat Graders and U.S. Dep't of Agric., Food Safety and Quality Serv., Meat Grading Branch*, 6 F.L.R.C. 465, 466 (1978). In fact, the Council sought advisory opinions on spending authorization from the Comptroller General. *Id.* In enacting the Statute, Congress was presumed to be aware of the Executive Order practices. *See NLRBU v. FLRA*, 834 F.2d 191, 201 (D.C. Cir. 1987) (Executive Order practice not explicitly eliminated in Statute constitutes "guidance" with respect to congressional intent); *see also Fort Stewart*

⁶ The Statute was enacted as § 701 of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (1978). Prior to the enactment of the Statute, labor-management relations in the federal service were governed by a program established in 1962 by Exec. Order No. 10,988, 3 C.F.R. 521 (1959-1963 comp.). The Executive Order program was revised and continued by Exec. Order No. 11,491, 3 C.F.R. 861 (1966-1970 comp.), as amended by Exec. Orders Nos. 11,616, 11,636, and 11,838, 3 C.F.R. 605, 634, 957 (1971-1975 comp.), *reprinted in* 5 U.S.C. § 7101 note at 1028-1033 (1994).

Schools v. FLRA, 860 F.2d 396, 402 (11th Cir. 1988), *aff'd* 495 U.S. 641 (1990) (Congress presumed to be aware of Executive Order practices).

In addition, the Authority's holding in the instant case that the Statute does not authorize the expenditure of funds is also consistent with the Authority's decisions in the *GSA* and *BATF* cases. In both *GSA and ATF*, the Authority rejected agency contentions that proposals providing for use of government telephones by unions in connection with labor-management relations activities were contrary to law, specifically 31 U.S.C. § 1301 (regarding the unauthorized expenditure of appropriated funds). *GSA*, 24 F.L.R.A. at 431; *BATF*, 26 F.L.R.A. at 497-98. However, the Authority did not hold the proposals consistent with law because the Statute provided authorization for the required expenditures. Instead, the Authority held that other applicable statutes provided the agencies with the discretion to determine that telephone service for union offices for use relating to labor-management relations activities is sufficiently within the government's interest so as to constitute official business. *GSA*, 24 F.L.R.A. at 432-33; *BATF*, 26 F.L.R.A. at 498.

Similarly, in *BATF v. FLRA*, although finding no entitlement to travel expenses for union negotiators under the Statute, the Supreme Court suggested that such expenses might be paid under the Travel Expenses Act where agencies determine that such travel is in the interest of the government. 464 U.S. at 107 n.17; *see also Dep't of the Treasury, U.S. Customs Service v. FLRA*, 836 F.2d 1381, 1385-86 (D.C. Cir. 1988) (travel expenses for union negotiators are negotiable because agency has discretion under the Travel Expense Act to determine that such travel concerns official business and such discretion may be exercised through collective bargaining). In all

of these cases, spending was authorized under laws other than the Statute. Nothing in these cases stands for the proposition that the Statute may authorize the expenditure of appropriated funds in cases where such expenditures would be otherwise prohibited.

B. The Authority Correctly Determined That the Agency's Appropriations Act Does Not Authorize the Expenditure of Funds to Reimburse Employees for Personal Travel and Recreational Expenses

In addition to rejecting the collective bargaining law as an applicable funding statute, the Authority also properly concluded that the agency's appropriations for general operating expenses did not authorize the provision's required reimbursements to employees for lost travel and recreational expenses. This aspect of the Authority's appropriations law analysis was also correct and should be upheld.

As the Authority recognized, 31 U.S.C. § 1301(a) does not require that every item of expenditure be specified in an appropriations act. *See* JA 25. To require an explicit appropriation for every expense would be clearly impractical given the levels of generality Congress uses to provide funding for government agencies and operations. *See Customs Serv.*, Comp. Gen. Decision B-270,446 (Feb. 11, 1997). Instead, the Comptroller General has developed the necessary expense doctrine which requires that expenditures of appropriated funds must "make a direct contribution to carrying out either a specific appropriation or authorized agency function for which more general appropriations are available." *Id.* Put another way, expenditures must

be reasonably necessary to carrying out an agency's authorized functions. *Internal Revenue Serv.*, 71 Comp. Gen. 527, 528 (1992).⁷

However, the expenses at issue here, reimbursement for personal travel and entertainment expenses such as airline tickets, hotel reservations, and tickets to the theater and sports events, cannot properly be considered as "reasonably necessary" to carrying out the Puerto Rico Guard's mission. The Comptroller General has consistently held that personal expenses of employees do not fall within the necessary expense doctrine. *See, e.g., Internal Revenue Serv.*, 68 Comp. Gen. 502, 505 (1989) ("An agency may not use appropriated funds to pay for items of personal expense unless there is specific statutory authority").

The union appears to concede the validity of this proposition in a situation not involving collective bargaining. However, the union argues (*e.g.*, Br. 11) that by statutorily creating an obligation for agencies to bargain collectively, Congress implicitly authorized the expenditure of appropriated funds to implement *any* contract provision not otherwise expressly or implicitly prohibited by law. From this premise, the union concludes that an agency may expend appropriated funds to satisfy any contractual obligation, even if the agency would not be authorized to expend funds in

⁷ The Comptroller General is required to "investigate all matters related to the receipt, disbursement, and use of public money." 31 U.S.C. § 712(1). In performing this role, the Comptroller General is authorized to give agencies guidance concerning the allowable expenditure of appropriated funds. *See BATF v. FLRA*, 464 U.S. at 101 n.11 (citing 31 U.S.C. § 3529). Although decisions of the Comptroller General are not binding as precedent on either the Authority or this Court, this Court considers the "assessment of the [Comptroller General] as an expert opinion, which [the Court] should prudently consider" *ACT v. FLRA*, 269 F.3d at 1116.

this manner in the absence of the contract provision. As discussed below, the union's contentions on this point lack merit and should be rejected.

C. The Union's Objections to the Authority's Holding That the Provision Requires an Expenditure of Appropriated Funds Not Authorized by Law Lack Merit

As noted above, the union contends that the Statute, read in concert with an agency's appropriation for general operating expenses, authorizes the expenditure of funds for any matter as long as the matter is the product of collective bargaining. Thus, under the union's theory (Br. 12), absent an express or implicit statutory prohibition of spending, a bargaining proposal or provision could never be found contrary to law under § 7117(a)(1) of the Statute on the grounds that it requires an unauthorized expenditure of funds. This sweeping proposition, which would essentially bar Authority consideration of appropriations law issues in resolving negotiability disputes under the Statute, is wholly unsupported.

In this regard, the union does not cite any case where the Statute has been recognized as providing the authorization for agency expenditures that would otherwise lack appropriations law support. In particular, the union's reliance on the *GSA* and *BATF* cases is misplaced. Both cases involved proposals permitting use of government telephones by union representatives involved in labor-management relations activities. The Authority rejected agency contentions that union use of government telephones was inconsistent with various legal and regulatory provisions, including 31 U.S.C. § 1301. *See GSA*, 24 F.L.R.A. at 431-32. Section 1301 provides, in part, that "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

The Authority decided the appropriations law question in *GSA* and *BATF* based on a federal statute authorizing the use of government telephones for official government business. *See GSA*, 24 F.L.R.A. at 432-3 (citing 31 U.S.C. § 1348(b) and 41 C.F.R. § 201-38.007). The Authority's resolution of this issue based on law outside the Statute rather than the Statute's collective bargaining provisions thus provides no support for the union's contention that the Statute itself authorizes expenditures for matters that are the product of collective bargaining.

The fact that the Authority addressed the appropriations law question in *GSA* and *BATF* by relying in part on the Statute's statement in § 7101 that labor organizations and collective bargaining are in the public interest does not alter this conclusion. The Authority referenced the Statute's provisions only as an aid in construing the term "official business" in the external law authorizing government telephone use. The Authority noted in this connection that "official business" had been held to encompass telephone use that was in the interest of the United States. *GSA*, 24 F.L.R.A. at 432. The Statute's instruction that labor organizations and collective bargaining are in the public interest was relevant to this issue. However, the external legal and regulatory provisions concerning telephone use constituted the basis of the Authority's resolution of the appropriations law issues in the cases, not the Statute.

Further, the union's reliance (Br. 12 n.3) on the Comptroller General's decision in *Department of the Navy*, Comp. Gen. Decision B-249,061 (May 17, 1993) is misplaced. Contrary to the union's contention, the Comptroller General did not hold there that "the law of appropriated funds" allows the Authority to enforce contract

provisions requiring expenditures that could not be paid absent the Statute. Rather, in *Department of the Navy*, the Comptroller General merely reiterated the position, first enunciated in *Cecil E. Riggs*, 71 Comp. Gen. 374 (1992), that the Comptroller General has no jurisdiction to review matters that are subject to the grievance/arbitration provisions of § 7121. As a matter of fact, the Authority will not enforce a collective bargaining provision that requires an expenditure not otherwise authorized by law. *See, e.g., DOD, Arlington*, 56 F.L.R.A. at 122 (vacating an arbitration award as contrary to law, where award would require an expenditure of federal money not authorized by law).

The union's proposed elevation of the collective bargaining law to appropriations law status is problematic in another respect. Under established appropriations law principles, the locus of control over public expenditures lies with the Congress. *See Nat'l Ass'n of Reg'l Councils v. Costle*, 564 F.2d 583, 586 (D.C. Cir. 1977) (“[g]overnment agencies may only enter into obligations to pay money if they have been granted such authority by Congress”). Accordingly, agency determinations to make expenditures must ultimately be traceable to particular congressional enactments. It is Congress, not the Executive Branch agencies, that controls the purse strings. *See* U.S. Const. Art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law. . .”).

The union's proposed interpretation of the collective bargaining law's significance for appropriations law purposes suggests a significant alteration of this established relationship. Under the union's reading, the Statute would be converted from a law authorizing a federal government program, into a blank check that would

permit agencies to obligate federal funds for a potentially wide range of expenditures for which there was no substantively relevant appropriations authorization. As the union expresses it, a bargaining provision is “lawful” unless a federal law or government-wide regulation “expressly or implicitly prohibits the expenditures required by the contract provision.” Br. 12. This effective transfer of spending authority to agencies runs counter to the Constitution’s Appropriations Clause. *See OPM v. Richmond*, 496 U.S. 414, 428 (1990) (“If agents of the Executive were able [through unauthorized statements] to obligate the Treasury for the payment of funds, the control over public funds that the Clause reposes in Congress in effect would be transferred to the Executive”). This inconsistency between the union’s theory for the Statute, as authorizing the use of public funds to reimburse employees for such things as missed sports events and unattended banquets, and the realities of federal appropriations law provides another reason for rejecting the union’s challenge to the Authority’s decision in this case.

In sum, the Authority properly held that the provision was inconsistent with law, because it would require the expenditure of appropriated funds not authorized by law. In addition, the Authority properly rejected the union’s contention that the terms of the Statute provided the necessary authorization.

II. THE PROVISION IS INCONSISTENT WITH 5 U.S.C. § 5536

The Authority’s alternative holding, namely that the proposal is contrary to 5 U.S.C. § 5536, is also consistent with law and should be upheld. The union mistakenly argues that the reimbursements required by the provision are not “pay or allowance[s]” within the meaning of that section. Contrary to the union’s contentions,

the Authority properly relied on this Court's decision in *Kizas v. Webster*, 707 F.2d 524 (D.C. Cir 1983).

Although *Kizas v. Webster* does not address reimbursements of the precise nature of those at issue here, it stands for a broad interpretation of the terms "pay and allowance." According to the Court, § 5536 governs "*all incidents of employee compensation*" (emphasis added), including not only pay and benefits such as retirement and insurance, but also travel and subsistence payments, as well as compensation for injury and unemployment. 707 F.2d at 536. Section 5536 bars "any additional pay, extra allowance, or compensation, *in any form whatever.*" *Id.* at 537 (quoting (including emphasis) from *Johnston v. United States*, 175 F.2d 612, 617 (4th Cir. 1949)). According to the Court, Congress intended in § 5536 that all "extras" were to be eliminated from the public service. *Id.* (citing *Mullett's Adm'x v. United States*, 150 U.S. 566, 570 (1893)).

The Authority reasonably held that the reimbursements called for by the provision would be an incident of compensation or one of the "extras" that Congress was intending to bar. On the other hand, the union provides no example of disbursements to employees arising out of their employment, found by a court or other authority as falling outside of § 5536's scope.⁸

⁸ Contrary to the union's contention, Congress's enactment of 10 U.S.C. § 1053a, providing analogous reimbursements for the military, demonstrates that Congress recognized that, absent specific authorization, such reimbursements would be barred by § 5536.

III. THE AUTHORITY REASONABLY AND PROPERLY DETERMINED THAT § 7106(b)(3) DOES NOT PROVIDE AUTHORIZATION FOR REIMBURSING EMPLOYEES FOR FORFEITED PERSONAL TRAVEL EXPENSES

Following its own long-standing precedent as well as the rulings of this Court, the Authority reasonably and properly held that where, as here, a proposal or provision is inconsistent with law under § 7117(a)(1) of the Statute, it remains so regardless of whether it is an appropriate arrangement under § 7106(b)(3). *See, e.g., Nat'l Treasury Employees Union*, 55 F.L.R.A. 1174, 1181 (1999) (*NTEU*). Section 7106(b)(3) was intended as an exception to the management rights provisions found in § 7106(a). *See AFGE Local 2782 v. FLRA*, 702 F.2d 1183, 1186-88 (D.C. Cir. 1983) (*AFGE, Local 2782*). Accordingly, a proposal may be found negotiable as an appropriate arrangement, even though it interferes with a management right in contravention of § 7106(a). *Id.*; *see also Nat'l Ass'n of Gov't Employees, Local R14-87*, 21 F.L.R.A. 24, 30-31 (1986) (adopting *AFGE, Local 2782*).

On the other hand, § 7106(b)(3) is not an exception to the requirements of § 7117(a)(1). Where a proposal is found to be nonnegotiable by virtue of its inconsistency with law or government-wide regulation, § 7106(b)(3) has no applicability. *NTEU*, 55 F.L.R.A. at 1181. The Authority's position is wholly consistent with the views of this Court. *United States Department of the Treasury, Internal Revenue Serv. v. FLRA*, 996 F.2d 1246,1252 (D.C. Cir. 1993) ("Unlike the exemption in the management's right's section, the [§ 7117(a)(1)] exception to an agency's obligation to bargain is not conditioned on the need to bargain over 'appropriate arrangements'").

Contrary to the union's suggestion (Br. 17), the Authority followed the Court's instructions on remand with respect to the appropriate arrangements question. The Court instructed the Authority to determine if "the expenditures required by the disputed provision . . . are specifically authorized as an 'appropriate arrangement.'" *ACT v. FLRA*, 269 F.3d at 1117. The Authority determined, consistent with its precedent and that of this Court, that because the provision is inconsistent with law within the meaning of § 7117(a)(1) of the Statute, § 7106(b)(3) cannot operate to bring the provision into the agency's obligation to bargain.

CONCLUSION

The union's petition for review should be denied.

Respectfully submitted,

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February 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ASSOCIATION OF CIVILIAN TECHNICIANS,)
PUERTO RICO ARMY CHAPTER,)
)
Petitioner)
)
v.) No. 03-1321
)
FEDERAL LABOR RELATIONS AUTHORITY,)
Respondent)

CERTIFICATE OF SERVICE

I certify that a copy of the additional Entry of Appearance Form has been served this day, by mail, upon the following:

Daniel M. Schember
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Tracy Arcaro
Paralegal

February 19, 2004

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§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

* * *

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

* * *

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

§ 7114. Representation rights and duties

* * *

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

* * *

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

- (A) filing a petition with the Authority; and
- (B) furnishing a copy of the petition to the head of the agency.

* * *

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e) and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that—

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated

grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a

determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected—

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

*** * ***

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the

court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

*** * ***

5 U.S.C. § 5536. Extra pay for extra services prohibited

An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance.

10 U.S.C. § 1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 1223 of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

* * *

31 U.S.C. § 712(1). Investigating the use of public money

The Comptroller General shall--

(1) investigate all matters related to the receipt, disbursement, and use of public money;

* * *

31 U.S.C. § 1301. Application

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

(b) The reappropriation and diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation originally was made shall be construed and accounted for as a new appropriation. The unexpended balance shall be reduced by the amount to be diverted.

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation—

(1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or

(2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

(d) A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the law specifically states that an appropriation is made or that such a contract may be made.

31 U.S.C. § 1348. Telephone installation and charges

* * *

(b) Under regulations prescribed by the Secretary of the Army on recommendation of the Chief of Engineers, not more than \$30,000 may be expended each fiscal year to install and use in private residences telephones required for official business in constructing and operating locks and dams for navigation, flood control, and related water uses.

* * *

31 U.S.C. § 3529. Requests for decisions of the Comptroller General

(a) A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General on a question involving--

(1) a payment the disbursing official or head of the agency will make;
or

(2) a voucher presented to a certifying official for certification.

(b)(1) Except as provided in paragraph (2), the Comptroller General shall issue a decision requested under this section.

(2) A decision requested under this section concerning a function transferred to or vested in the Director of the Office of Management and Budget under section 211(a) of the Legislative Branch Appropriations Act, 1996 (109 Stat. 535), as in effect immediately before the effective date of title II of the General Accounting Office Act of 1996, or under this Act, shall be issued--

(A) by the Director of the Office of Management and Budget, except as provided in subparagraph (B); or

(B) in the case of a function delegated by the Director to another agency, by the head of the agency to which the function was delegated.

5 C.F.R. § 2429.17. Reconsideration

After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order. The motion shall be filed within ten (10) days after service of the Authority's decision or order. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Authority, unless so ordered by the Authority. A motion for reconsideration need not be filed in order to exhaust administrative remedies.