149289

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Navy - Payment for Commercial Driver's License Fees

File: B-249061

Date: May 17, 1993

DIGEST

Navy may not use appropriated funds to pay for licensing fees incurred by its Pearl Harbor Naval Shipyard employees, notwithstanding bargaining agreement provision contemplating such use of appropriated funds, since both the Federal Labor Relations Authority and our Office have held that fees for licenses necessary to qualify employee for his or her job are a personal expense of the employee.

DECISION

The Acting Head, Employee Relations Branch of the Department of the Navy, Pearl Harbor Naval Shipyard (Shipyard), has requested a decision concerning the legality of an agreement contemplating the use of appropriated funds for the payment of fees for the procurement of commercial driver's licenses for certain employees. As explained in further detail below, the Navy may not use appropriated funds to cover such expenses.

BACKGROUND

According to the Shipyard, the Hawaii Federal Employees Metal Trades Council (Council), the exclusive representative of bargaining unit employees at the Shipyard, and the Shipyard entered into an agreement in which the Shipyard would pay for licensing fees incurred by those employees required to have driver's licenses to perform their jobs. After execution of the agreement, it was brought to the Shipyard's attention that payment of such fees was improper. The Council, however, argues that the signed agreement with the shipyard is binding since it was properly negotiated in accordance with Federal Labor Relations Act (FLRA).

DISCUSSION

The Federal Labor Relations Authority (Authority) is responsible for supervising the collective bargaining process and administering other aspects of federal labor relations established by the Civil Service Reform Act of 1978, including the adjudication of negotiability disputes.

See Bureau of Alcohol Tobacco & Firearms v. Federal Labor Relations Authority, 464 U.S. 89, 92 (1983).

Under the FLRA, the government has a duty to bargain in good faith to the extent not inconsistent with any federal law or any governmentwide rule or regulation. 5 U.S.C. § 7117. The Authority has taken the position that payment of personal expenses are not negotiable items. Thus, the Authority has distinguished between items that are personal expenses, and thus not negotiable, and those expenses that are official expenses, and thus properly chargeable to appropriations to the extent required by bargaining agreements. For example, in American Federation of Government Employees Counsel 214, AFL-CIO and Air Force Logistics Command, 30 FLRA No. 112, the Authority rejected the Union's negotiability appeal with respect to the Air Force's provision of personal items of clothing and footwear.

Similarly, in National Federation of Federal Employees Local 214 and Department of the Army, Health Services Command, Mancrief Army Community Hospital, 40 FLRA No. 104, the Authority concluded that a Union proposal for the Army to pay the cost of examinations necessary for certain medical personnel to obtain the National Registry of Emergency Medical Technicians certifications was nonnegotiable as inconsistent with federal law. To reach this result, the authority applied decisions of the Comptroller General holding that an employee must bear the costs of qualifying for his or her job, including the costs of obtaining required licenses or permits. Id.

Our Office has consistently ruled that expenses necessary to qualify a government employee to do his or her job are personal expenses and not chargeable to appropriated funds. B-218964, Nov. 26, 1985; B-235727, Feb. 28, 1990. We consider such costs to be personal expenses that must be borne by the employee. We have specifically held that driver's permits are considered personal expenses incident to qualifying for the position for which employed. 21 Comp. Gen. 769, 772 (1942). We have maintained this position even when a license is mandated by federal law. B-250038, Sept. 23, 1992; see also B-248955, July 24, 1992 (agency may not pay for costs of obtaining engineering certificate even though agency requires such certificate as qualification for position).

Accordingly, we believe the agreement to pay for licensing fees is inconsistent with established rules governing the availability of appropriated funds and hence the Navy may not use appropriated funds to pay for licensing fees.[1] However, consistent with our recent decision in Cecil E. Riggs, et. al, B-222926.3, April 23, 1992, 71 Comp. Gen. 374, to the extent that this matter is grieved, we will respect and apply the decisions of the grievance procedure in the discharge of our statutory functions.

Milton J. Socolar

Acting Comptroller General
of the United States

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[1]As for the binding nature of the agreement, the provisions of Executive Order 11491, section (12)(a), as amended, provide that all federal sector collective bargaining agreements are subject to existing laws and regulations. The Civil Service Reform Act of 1978, codified at 5 U.S.C. § 7101 et seq., provides that policies, regulations and procedures under Executive Order 11491 "shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of" the Civil Service Reform Act or its implementing regulations. 5 U.S.C. § 7135(b). We know of no provisions of the Act or implementing regulations which supercede section 12(a) of the Executive Order.