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Additional Safeguards Needed for Tennessee Valley Authority Trades and Labor Employees To Protect Their Interests in Collective Bargaining. FPCD-78-12; B-114850. March 15, 1978. Released March 20, 1978. 6 pp. + 3 appendices (6 pp.).

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Authority: National Labor Relations Act. Labor-Management Reporting and Disclosure Act. Executive Order 11901. Executive Order 11491.

Concern has been expressed about the denial of rights to the Tennessee Valley Authority's (TVA's) trades and labor employees. A review of TVA's labor-management relations program focused on the effect of TVA's exemption from laws and regulations applicable to labor relations in the private and Federal sector and on the labor relations program's collective bargaining structure. Findings/Conclusions: Because of the similarity of TVA's operations to private industry, the Congress permitted TVA the authority and flexibility to operate autonomously in personnel matters. As an employer, TVA was exempted from most civil service laws and regulations as well as those governing labor-management relations in the private and Federal sectors. The structure of bargaining for trades and labor employee representatives is centralized both vertically and horizontally, and decisionmaking has moved from the locals to the national levels of the unions. This centralized union bargaining structure and the exemption from labor legislation have resulted in a decline of employee control and participation and a dissolution of employee rights. There seem to be few, if any, avenues of relief for employees dissatisfied with the negotiated agreements or the positions taken by their union representatives. Employees do not have access to statutory labor relations procedures to handle and resolve complaints. Recommendations: Congress should include TVA employees under either existing statutory labor relations procedures or any forthcoming legislative procedures applicable to other Federal employees. The Board of Directors of TVA should take measures to enhance employee influence over the bargaining process. (RRS)

5646

REPORT BY THE

# Comptroller General

OF THE UNITED STATES

## Additional Safeguards Needed for Tennessee Valley Authority Trades and Labor Employees to Protect Their Interests in Collective Bargaining

Tennessee Valley Authority's highly centralized union bargaining structure for blue-collar employees and its exemption from labor legislation and Executive Order 11491, as amended, have limited the control of, and participation in, the bargaining process by rank-and-file membership of recognized labor organizations.

The Congress should extend coverage of labor legislation to TVA. TVA management should take steps to increase employee participation in the negotiation process and to safeguard employee rights.

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RELEASED

3/20/78





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

B-114350

The Honorable Clifford Allen  
House of Representatives

Dear Mr. Allen:

In response to your July 21, 1977, request, we reviewed aspects of the Tennessee Valley Authority's (TVA's) labor-management relations program relevant to your constituent's concern about the denial of rights to TVA's trades and labor employees. We focused primarily on the effect of TVA's exemption from laws and regulations applicable to labor relations in the private and Federal sectors and on the labor relations program's collective bargaining structure rather than on its effectiveness and efficiency.

We interviewed TVA officials, the chairman of the Trades and Labor Council, representatives of international unions comprising the council, local union business agents and representatives, and the coauthors of a recently published indepth study of collective bargaining at TVA. Our analysis also included consultations with officials at the Department of Labor and the National Labor Relations Board.

TVA is an independent Government corporation created as part of the New Deal program to improve navigability and provide flood control on the Tennessee River, to produce fertilizer, and to generate and distribute electric power in the Tennessee Valley area. Primarily because of the similarity of TVA's operations to private industry, the Congress permitted TVA the authority and flexibility to operate autonomously in personnel and other matters. As an employer, TVA was exempted from most civil service laws and regulations, as well as from those governing labor-management relations in the private, and more recently, the Federal sector.

Consonant with the liberal attitude toward labor unions during the New Deal era, in 1935 TVA's Board of Directors issued an employee relations policy giving employees the right to organize and join unions and to bargain collectively with management. In its initial dealings

with labor, TVA strongly encouraged a centralized union structure to avoid the inefficiencies inherent in negotiating and administering individual agreements with a large number of local unions. TVA's varied work force also dictated a different bargaining structure for blue-collar and white-collar employees. Management and labor efforts resulted in the creation of two highly centralized union structures--the Trades and Labor Council and the Salary Policy Employee Panel.

The main focus of your constituent's concern with TVA's labor-management relations program appears to be the employees' lack of control over their designated union representatives and their lack of accessibility to third party adjudicatory bodies. Specifically, his comments related to the Trades and Labor Council, which bargains for the approximately 20,000 construction and operating and maintenance employees at TVA. Likewise, our analysis focused on the council and the resultant bargaining structure.

#### BARGAINING STRUCTURE

The structure of bargaining for TVA's trades and labor employee representatives is centralized both vertically and horizontally. Decisionmaking authority has moved from the locals to the national levels of the unions. These unions, in turn, have formed a central bargaining organization--the Trades and Labor Council.

The Trades and Labor Council, an ad hoc body of 16 representatives from international unions with craft jurisdiction over work performed at TVA, is a party to TVA's two collective bargaining agreements covering construction employees and annual and hourly operating and maintenance employees. It does not operate under bylaws or a charter, and, according to council officials, its operation does not involve the collection, use, or disbursement of funds. The chairman, elected by council members from their own ranks for a 3-year term, retains his status as an international representative and remains on the payroll of his international union. Salaries of other council members are also paid by the international unions they represent.

The council exercises authority in negotiating as well as in administering TVA's collective bargaining agreements. Representatives of its international union members--signatories to the two agreements--individually negotiate wages and benefits for their respective crafts,

whereas the council, as an entity, negotiates on general working conditions applying uniformly to all trades and labor employees. International representatives stated that as council members, each has an equal voice in determining council policy although the number of local unions and, likewise, the number of TVA employees represented by each varies considerably. TVA and council officials observed that the absence of proportional representation under the council is similar to that part of the private sector where unions do not operate under a "one-man-one-vote system."

The more than 200 local unions with TVA employee membership are represented on the council solely through the international unions with which they are affiliated. Local union representatives have no voice, however, in selecting international union representatives who are appointed by the president of their international. 1/

Agreements negotiated by TVA and the council do not require ratification by either rank-and-file membership or local union representatives. According to local union representatives, their participation in negotiations is confined to accumulating prevailing wage data for use in negotiations and attending negotiating sessions as observers, at the international's discretion. Other duties of local representatives include the day-to-day handling of problems and questions at the worksite.

In administering the collective bargaining agreements, the council exercises authority in such areas as the settling of grievances, handling of work stoppages, and recognition of additional unions. Under the negotiated grievance procedure, for example, the council must approve appeal of a grievance to binding arbitration, the procedure's final step. These procedures are detailed in appendix I.

In our interviews with authors of a detailed study of TVA's collective bargaining experience, they observed

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1/In contrast to the council, the Salary Policy Employee Panel, which is the centralized union bargaining structure for most TVA white-collar employees, is composed of representatives of its five member unions; international union representatives have only a limited role. Panel members, for the most part, are therefore directly responsible to TVA employees in local bargaining units.

that while a highly centralized bargaining structure like the council is efficient and contributes to more responsible conduct by labor, centralization can be carried too far. They stressed the potential dangers of inadequate democracy when employees, without adequate referendum rights and effective election controls, are unable to influence the structure purporting to represent them.

#### TVA'S EXEMPTED STATUS

TVA's exemption from coverage under the National Labor Relations Act and the Labor-Management Reporting and Disclosure Act has prohibited TVA employees access to the machinery and procedures available to private sector employees to safeguard their rights as members of a labor organization. These safeguards include the unfair labor practice and representation procedures, the regulations enforcing standards of conduct, and the reporting and disclosure requirements for labor unions.

Executive Order 11901, issued on January 30, 1976, also excluded TVA from coverage under Executive Order 11491, as amended, which governs the Federal labor-management relations program. The procedures of Executive Order 11491 safeguarding employee rights parallel those in the private sector, although sanctions are somewhat more permissive. Events surrounding TVA's exemption are detailed in appendix II.

Officials of TVA, the Trades and Labor Council, and the Salary Policy Employee Panel requested the Federal Labor Relations Council to remove TVA from the order's coverage. TVA and Trades and Labor Council officials continue to enthusiastically support TVA's independent status. They feel that procedures in their negotiated agreements, particularly the grievance procedure, offer employees an adequate avenue of redress. (The negotiated grievance procedure covers employee complaints on how policy is applied to them by their supervisors and excludes employee complaints about policies, standards, or procedures. The agreement provides that these complaints may be taken up with the employees' council representative, but no formal procedure is provided.) These officials also oppose TVA's coverage under Federal labor legislation proposed in recent sessions of the Congress. Of the bills introduced in the 95th Congress, H.R. 1589 does not specifically exempt TVA, while H.R. 13 and the most recent H.R. 9094 do.

Trades and labor employees have also been denied access to the courts for review of TVA and council practices. For example, in 1975 the District Court for the Eastern District of Tennessee dismissed a suit filed by 20 trades and labor employees against TVA and the council. This was partly because no statutory basis existed for the plaintiff's claim that the council breached its duty of fair representation since neither the National Labor Relations Act nor the Railway Labor Act applies to TVA's labor-management relations program. 1/

### CONCLUSIONS

Many of your constituent's observations and allegations appear to have merit.

While TVA's centralized union bargaining structure and its exemption from labor legislation and Executive order have been justified historically as facilitating a more responsible, efficient, and effective relationship between the parties, the result appears to be a decline of employee control and participation and a dissolution of employee rights.

There seem to be few, if any, avenues of relief for employees dissatisfied with the negotiated agreements or the positions taken by their union representative since the international union representatives on the council are not elected by the local membership and are not accountable to them. Similarly, employees do not have access to statutory labor relations procedures to handle and resolve complaints, such as unfair labor practices and violations of standards of conduct. Employees are not likely to have access to the courts under most circumstances.

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1/Employees alleged that "TVA is working hand in glove with the Labor Council to effect an iron hand over labor relations in total derogation of the rights and interests of plaintiffs and others \* \* \* and that the Council is operating in direct opposition to democratic principles and the concepts of equal representation and one-man one-vote." They cited the fact that the negotiated agreement covering TVA trades and labor employees was entered into without ratification by individual employees and that the council had no adequate internal procedures, bylaws, rules, or regulations to ensure democratic representation.

In light of the commitment expressed in national labor legislation and in TVA's employee relations policy to support the right of employees to organize and bargain collectively, we believe that congressional and TVA actions are warranted to ensure that these rights are adequately safeguarded.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress include TVA employees under either existing statutory labor relations procedures or any forthcoming legislative procedures applicable to other Federal employees.

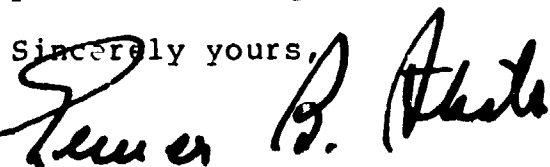
RECOMMENDATION TO THE CHAIRMAN  
OF THE BOARD OF TVA

We recommend that the Board of Directors of TVA, to the extent feasible in its capacity as an employer and party to the agreements negotiated with the Trades and Labor Council, take measures to enhance employee influence over the bargaining process.

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In commenting on our report, TVA disagreed with our conclusions and recommendations but did not present us with facts that would warrant modification of our position. (See app. III.)

As arranged, we are sending copies of this report to interested congressional committees, the Office of Management and Budget, and the Chairman of the Board of Directors of the Tennessee Valley Authority. Copies will also be available to other interested parties who request them.

Sincerely yours,  


Comptroller General  
of the United States



INFORMATION ON TVAPROCEDURES

Procedures covering most of the areas subject to third party determination under the Federal and private sector programs are included in the two collective bargaining agreements negotiated between TVA and the Trades and Labor Council. These procedures cover construction workers and annual and hourly operating and maintenance employees. The procedures are summarized below.

DETERMINATION OF APPROPRIATE BARGAINING UNIT

The agreement provides that the majority of the employees in any appropriately defined bargaining unit has the right to determine the organization representing that unit. Units defined by well established standards and practice are recognized as appropriate units. The manager of union-management relations of TVA is authorized to investigate and attempt to adjust disputes as to the employees who constitute an appropriate unit. Either the Trades and Labor Council or TVA management may invoke arbitration if the manager of union-management relations is unable to adjust the disputes.

PROCEDURES FOR ADDITIONAL UNIONS BECOMING PARTIES TO AGREEMENT

The agreement requires that employees in the trades and labor classification who constitute an appropriate unit under the procedure cited above may apply to the council and TVA

"\* \* \* through a national or international union affiliated with the AFL-CIO, provided that a majority of such employees have designated such national or international union as their representative, that such employees signify their intention to conform to the purposes and provisions of this agreement, and provided further that the Council accepts such union as a member." (Under-scoring supplied.)

Therefore, even if a group meets all other specified criteria, the council may bar a union from council membership, in effect precluding it from participation in the negotiation process.

**WORK STOPPAGES**

TVA and the council are empowered jointly to handle any incidents of groups of employees leaving work. 1/ In such instances, their employment status is held in suspense while a joint committee comprised of council and TVA representatives investigates the incident and recommends to TVA the appropriate action to be taken against individuals found responsible.

The procedure prohibits employees under investigation from having a representative present when questioned by the committee and also precludes employees from using the negotiated grievance procedure to challenge actions taken against them.

**NEGOTIATED GRIEVANCE PROCEDURE**

The four-step grievance procedure provides for appeal of the decision of the manager of union-management relations to an impartial referee. While the grievance is generally handled by the employees' local union business agent through step 2 of the procedure, the appropriate international representative assumes control in step 3 and only the council may invoke arbitration. Whereas under the Executive order an arbitrator's decision may be appealed to the Federal Labor Relations Council, no such review is available under TVA procedures.

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1/A TVA official noted that since these incidents are termed "work stoppages" rather than strikes, the penalty provided by 5 U.S.C. 7311 (1970) regarding strikes against the United States is not invoked.

ADDITIONAL INFORMATION ONTVA'S EXEMPTION FROMEXECUTIVE ORDER 11491

The Federal Labor Relations Council's (FLRC's) memorandum to the President, which recommended an amendment to Executive Order 11491 1/ excluding the TVA from coverage, emphasized TVA's long bargaining history, which preceded post-New Deal legislation in the labor relations field, and TVA's "productive labor-management cooperative program," which emulates no other labor-management relations program. The FLRC relied on TVA's bargaining history predating the Executive order program of the Federal sector as well as the concurrence of TVA management and labor organizations representing TVA employees.

Exclusion had been requested by TVA management and the two central organizations representing TVA employees--the Trades and Labor Council and the Salary Policy Employee Panel--in letters to the FLRC dated January 9, 1976. TVA argued in its request that inasmuch as the TVA board was granted express authority under section 3 of the TVA act to provide a system of organization of TVA employees to fix responsibility and promote efficiency "without regard to the provision of the Civil Service laws," this authority cannot be diminished except by specific legislation. TVA contended that since the statutory basis for Executive Order 11491 is Civil Service law (5 U.S.C. §3301 and 7301), "it is clear that the executive order does not extend to TVA's activities."

This differed with TVA's position taken in 1973 in "Report on Statutory Exceptions of the Tennessee Valley Authority from the Competitive Service." It stated that

"while TVA was covered by Executive Order 10988 and its successor (E.O. 11491), its collective bargaining contracts are among those in the Federal service allowed to continue in operation by provisions in each order."

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1/Section 4(b) of the Executive order empowers the Federal Labor Relations Council to report and make recommendations to the President.

This position was consistent with the interpretation of most experts as to TVA's status under the order, that is, while TVA was not itself exempted, under section 24 (savings clause), agreements entered into before the effective date of Executive Order 10988 (Jan. 17, 1962) were permitted to continue in effect. By this provision, the wide range of issues negotiated under TVA's agreements was not affected by the limited scope of negotiable areas under the order.

An apparent impetus for TVA's removal from the order involved an unfair labor practice charge that TVA had violated sections 19(a)(1) and (2) of the order by discriminatorily discharging members of Local 760 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry for participation in a work slowdown. The charge was filed with the Assistant Secretary of Labor in accordance with Executive order procedures. The Assistant Secretary found TVA guilty of discriminating against employees because of their union membership and awarded back pay to employees not covered by Civil Service Commission adverse action procedures. This ruling permitted use of the unfair labor practice procedure in appealing suspension and removal. 1/

TVA's request for exemption from the order referred to the Assistant Secretary's decision as having the "potential of disrupting, even destroying, TVA's labor relations program \* \* \*." Coincidentally, on the same day this request was made, the District Court for the Northern District of Alabama approved a \$225,000 settlement between the parties involving the same dispute decided by the Assistant Secretary. The Assistant Secretary's decision, pending appeal before the Federal Labor Relations Council, was subsequently withdrawn.

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1/Only TVA employees covered by the Veterans Preference Act have access to the Commission's adverse action procedures.

**TENNESSEE VALLEY AUTHORITY**  
KNOXVILLE, TENNESSEE 37902

February 2, 1978

Mr. Monte Canfield, Jr., Director  
United States General Accounting Office  
Energy and Minerals Division  
Washington, D.C. 20548

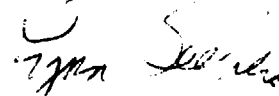
Dear Mr. Canfield:

This is in response to your January 19 letter making available for our review and comments a draft letter concerning TVA's labor-management relations.

The draft letter contains a number of inaccuracies and generally does not reflect the considerations involved in this complex and important subject. It does not seem to us that conclusions such as those suggested in your draft letter can be properly drawn. Under these circumstances we believe that TVA and the unions representing its employees could more fully contribute to your inquiry by further discussing the subject with your representatives.

We welcome your further study of this matter.

Sincerely,



Lynn Seeber  
General Manager

[See GAO note on following page.]

GAO note: In subsequent conversations with the Director of Personnel at TVA, we asked TVA to clarify or explain the very general concerns expressed in their letter of February 2, 1978. The Personnel Director made a number of points we feel are not relevant to the overall findings in our report and do not justify changing our conclusions or recommendations.

The fact remains that TVA employees do not generally have access to the independent third party machinery available to most private and public employees to handle and resolve complaints such as unfair labor practices and violations of standards of conduct. Additionally, employees under the Trades and Labor Council have very little participation in and control of the collective bargaining process. These factors warrant our conclusions and recommendations. In our opinion, our recommendation to the Chairman of the Board of TVA is not restrictive and permits management flexibility in enhancing and protecting employee rights.