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

FILE: B-190292 DATE: March 28, 1978

MATTER OF: National Council of Meat Graders, AFGE - Legality of Bargaining Proposals

DIGEST: 1. Federal Labor Relations Council requests our ruling on the legality of a union-proposed bargaining agreement provision that would require Department of Agriculture to provide cooler coats and gloves as protective clothing for meat grader employees. If the Secretary of Agriculture or his designee determines that protective clothing is required to protect employees' health and safety, the Department may expend its appropriated funds for this purpose. Applicable law and regulations do not preclude negotiations on the determination.

2. Federal Labor Relations Council requests our ruling on the legality of a union-proposed bargaining agreement provision that would require Department of Agriculture to provide frocks as uniforms for meat grader employees. If the Secretary of Agriculture determines that these employees are required to wear frocks as uniforms, appropriated funds may be expended for this purpose. Applicable law and regulations do not preclude negotiations on the determination.

3. Federal Labor Relations Council requests our ruling on a union-proposed bargaining agreement provision that requires Department of Agriculture to authorize portal-to-portal mileage allowances for meat grader employees who use their private vehicles in connection with their work. The proposed provision is contrary to the general requirement that an employee must bear the expense of travel between his residence and his official headquarters, absent special authority, and therefore, may not be properly included in an agreement.

4. Federal Labor Relations Council requests our ruling on a union-proposed bargaining agreement provision that requires the Department of Agriculture to authorize the maximum mileage rate for meat grader employees who use their privately owned vehicles in connection with their work. The Federal Travel Regulations (FTR) require agency and department heads to fix mileage rates in certain situations at less than the statutory maximum. Hence, the proposed provision is contrary to the FTR.

This action is in response to a request of September 27, 1977, from the Federal Labor Relations Council (FLRC) for a ruling by the General Accounting Office on certain proposed collective-bargaining agreement provisions involved in American Federation of Government Employees, National Council of Meat Graders and U. S. Department of Agriculture, Food Safety and Quality Service, Meat Grading Branch, FLRC No. 77A-63. The agreement provisions were proposed to the Meat Grading Branch, United States Department of Agriculture, by the National Council of Meat Graders, American Federation of Government Employees (AFGE). They were determined to be non-negotiable by the Secretary of Agriculture. The AFGE then requested the FLRC to review the Secretary's determination and FLRC now seeks our opinion as to whether the proposed provisions are in conflict with applicable law, regulations, or Comptroller General decisions.

FIRST UNION PROPOSAL

The portion of the first union proposal determined to be non-negotiable by the Secretary of Agriculture provides:

> "Section 22. 'The employer agrees to furnish all necessary protective clothing such as gloves, frocks, and cooler coats * * *.'"

The FLRC has asked us to rule on:

> "* * * (1) whether the portion of the proposal pertaining to protective clothing such as gloves and cooler coats, as intended to be implemented,

> conflicts with the holding in 51 Comp. Gen. 446 (1972) and applicable statutes; and (2) whether the portion of the proposal pertaining to protective clothing such as frocks, as intended to be implemented, conflicts with 5 U.S.C. § 5901 (1970)."

At the outset we should point out the limits of our jurisdiction with regard to this matter. Our function is not to decide the broad question of which issues are, or are not, negotiable, because this is the responsibility of the FLRC. However, we are required by 31 U.S.C. § 74 to rule on the legality of expending appropriated funds. Hence, we shall confine our consideration to the latter question.

The Department of Agriculture considered cooler coats and gloves as protective clothing under occupational health and safety laws and regulations and considered frocks as uniforms under laws and regulations governing the furnishing of uniforms to employees. We believe this categorization is appropriate and we shall also consider them in this context.

Cooler Coats and Gloves

The Department of Agriculture found that cooler coats and gloves could not be considered as "uniforms" for the meat graders because such items did not satisfy the criteria established in Department of Agriculture Personnel Manual, chapter 594 (June 14, 1974), governing uniform allowances. The Department also found, relying on our decision, B-174629, 51 Comp. Gen. 446 (1972), that cooler coats and gloves could not be considered as "protective clothing" inasmuch as they are personal items of clothing and are not required to protect an employee engaged in hazardous work. The Department points out that, although there is a variance of temperatures from meat plant to meat plant, it believes the work environments of the employees of the Meat Grading Branch easily satisfy the standards prescribed by the Occupational Safety and Health Administration, Department of Labor, for safe and healthful working conditions.

Under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651, 668 (1970), Federal agency heads are required to establish and maintain a comprehensive occupational safety and health program consistent with the standards set forth in the Act. Section 668(a) of title 29 of the United States Code explicitly provides that:

> "* * * The head of each agency shall (after consultation with representatives of employees thereof)--
>
> "(1) provide safe and healthful places and conditions of employment consistent with the standards set under section 655 of this title;
>
> "(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees * * *."

Pursuant to authority contained in the above-quoted statute and Executive Order 11807, September 28, 1974, 39 F.R. 35559, the Secretary of Labor has promulgated Safety and Health Regulations for Federal Employees in 29 C.F.R. Part 1960. The regulations specify that "it is the responsibility of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standard promulgated under section 6 of the Act." Section 1960.1(a). Executive Order 11807 requires the heads of agencies to consult with employee unions and to provide for employee participation in the operation of agency safety and health programs. Such participation is to be consistent with Executive Order 11491, as amended. 29 C.F.R. § 1960.2(d). Each agency head is also required by Executive Order 11807 to designate an agency official to administer the agency's program and to give that official sufficient authority to represent the interest and support of the agency head. The designated official assists the agency head in taking steps to provide sufficient funds for necessary staff, equipment, material, and training to ensure an effective agency occupational safety and health program. 29 C.F.R. § 1960.16.

Our decision in B-174629, January 31, 1972, published at 51 Comp. Gen. 446, does not bar negotiations between an agency and a union with respect to safety and health programs. On the contrary, that decision makes it clear that protective clothing and equipment may be furnished by the Government if determined to be necessary under the Occupational Safety and Health Act of 1970, regardless of whether or not the purchase satisfies the requirements of 5 U.S.C. § 7903. We pointed out that the Secretary of Labor's general standard for personal protective

equipment, in 29 C.F.R. § 1910.132(a), provides that protective equipment and protective clothing shall be provided, used, and maintained whenever necessary because hazards of processes or environment could cause injury or physical impairment.

Therefore, if the head of an executive agency or department, or an official designated by him, determines that certain items of equipment or clothing are required to protect employees from the aforementioned hazards, the agency or department may expend its appropriated funds to procure such items. See B-187507, December 23, 1976.

Nothing in the law and regulations discussed above or our decisions, including 51 Comp. Gen. 446, supra, would serve to preclude negotiations on the determination required by the Secretary of Agriculture or his designee to procure cooler coats and gloves for the meat grader employees. In fact, 29 U.S.C. § 668(a) requires him to consult with representatives of his employees about the safety and health program of the Department and the implementing regulations of the Secretary of Labor further emphasize that this shall be done consistently with the labor management relations program set up under Executive Order 11491. We conclude that the proposal as to cooler coats and gloves is not in conflict with the law, regulations, or our decisions, provided the required determination is made.

Frocks

We shall next examine the conditions under which frocks may be provided for meat grader employees as uniforms. Entitlement of Federal employees to uniforms or uniform allowances is governed by 5 U.S.C. § 5901 (1970). The implementing regulations for 5 U.S.C. § 5901 are contained in Bureau of the Budget (now Office of Management and Budget) Circular No. A-30, Revised August 20, 1966. Paragraph 4b of that circular provides:

> "b. Deciding whether to furnish uniforms or to pay allowances. Whenever the agency head determines that a group of employees is required to wear a uniform, he shall determine whether the best interests of the Government will be served by furnishing Government-owned uniforms to employees, or by paying uniform allowances for uniforms procured by employees or by a combination of both

> methods. In making his decision he shall consider the comparative cost, including administrative costs, of each alternative to the Government, as well as the comparative advantages of each alternative to employees. The decision may be effective as of the date it is made provided funds usable for this purpose are available; otherwise, the decision may be effective when funds become available."

From the foregoing, it is clear that an agency or department head must make a determination that a group of employees are required to wear uniforms before appropriated funds may be expended for this purpose. See 48 Comp. Gen. 678 (1969).

As with protective clothing discussed above, neither the law, regulations, or our decisions governing employee uniform allowances would serve to preclude negotiations on this matter. If the appropriate determination is made, we would interpose no objection to the proposed agreement provision regarding frocks. In this connection, we note that the Department's letter of July 12, 1977, states that the employer has determined that frocks do meet the criteria for uniforms and has requested authority to provide an allowance for frocks under 5 U.S.C. § 5901.

SECOND UNION PROPOSAL

The first and second paragraphs of the second union proposal determined by the Secretary of Agriculture to be non-negotiable provide:

> "Section 27.1. 'Employees using their private vehicles in the performance of their work will be paid mileage portal to portal when work is performed at one or more duty points.
>
> "'The maximum mileage rate will be paid regardless of the number of miles an employee drives in the performance of their work.'"

The FLRC requests us to rule on:

> "* * * whether these paragraphs of the proposal, as intended to be implemented, conflict with the

Federal Travel Regulations or with prior Comptroller General decisions. * * *"

Portal to Portal Mileage

The matter covered by the first paragraph of the second proposal, concerning mileage allowances from residence to official duty station and return for employees who use their private vehicles in connection with their work, has been the subject of several decisions of our Office. We have consistently held that employees must place themselves at their regular places of work and return to their residences at their own expense, absent statutory or regulatory authority to the contrary. 55 Comp. Gen. 1323, 1327 (1976); 36 id. 450 (1956); and B-185974, March 21, 1977.

Because the above-quoted proposal concerning portal-to-portal mileage allowances could be construed as making the Government responsible for providing travel expenses to meat grader employees for travel between their residences and their official headquarters without exception, we hold that the above-quoted proposal is contrary to law and our decisions and, therefore, may not be included in an agreement. 54 Comp. Gen. 312, 318 (1974). However, we are of the opinion that the law, regulations and our decisions governing such travel expenses would not serve to preclude the negotiation of an agreement provision that would conform to the guidance set forth in our decision Matter of Department of Agriculture Meat Graders - Mileage, B-131810, January 3, 1978, covering travel expenses for meat grader employees.

Maximum Mileage Rate

We turn now to the proposal that requires the Department of Agriculture to pay meat grader employees the maximum mileage rate regardless of the number of miles they drive their privately owned vehicles in connection with their work. Pursuant to paragraphs 1-2.2c(3), 1-4.2a and 1-4.4 of the Federal Travel Regulations (FPMR 101-7), as revised May 1977, agency and department heads have been restricted as to the rates they may authorize in certain situations. These regulations require that the determination as to the mileage rate to be paid depends upon whether the use of the private vehicle is advantageous to the Government.

Accordingly, this proposed agreement provision is contrary to the Federal Travel Regulations and, therefore, may not legally be included in an agreement.

R. F. Keller

Deputy Comptroller General
of the United States