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L80-139

Board Member Oliver

General Counsel

Authority of Office of Management and Budget

This is in response to your inquiry dated August 16, 1979, wherein you asked that this office determine precisely what legal authority the Office of Management and Budget (hereinafter OMB) has over the operations of the Board. In general, there is little that I can add to the conclusion expressed in General Counsel's opinion L-78-541. That conclusion, that "OMB has been given fairly broad powers to monitor the performance of Federal agencies in terms of efficiency and economy. That is, OMB has authority to study and to make recommendations in many areas of the operation of an agency. However, except for the influence inherent in its budgetary function, OMB generally cannot compel an agency to conduct its business in any particular manner," remains valid as an overall answer to your inquiry.

Specifically, you asked about OMB's authority to curtail the Board's use of the Railroad Unemployment Insurance Act administrative expense appropriation. As you know, the Railroad Unemployment Insurance Act administration fund is permanently appropriated by section 11 of the Railroad Unemployment Insurance Act (45 U.S.C. § 361). That fund is to be used to pay expenses involved in the administration of the Railroad Unemployment Insurance Act. Section 665(c) of Title 31 of the United States Code requires that:

"* * * all appropriations or funds available for obligation for a definite period of time shall be so apportioned as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period; and all appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. * * *

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Subsection (d) of section 665 delegates to the Director of OMB the responsibility for all apportionments required by subsection (c). The Railroad Unemployment Insurance Act administration fund is an appropriation which must be apportioned in accord with subsection (c). Therefore, the Director of OMB has legislative authority to curtail the use of the fund only to "achieve the most effective and economical use" of the fund. Other than this apportionment authority, it would appear that OMB has no authority over the use of the Railroad Unemployment Insurance Act administrative expense appropriation.

Thus the Board could disagree with OMB as to whether the apportionment mandated by OMB will provide the most efficient and economical use of the fund. However, since the Board would be trying to change OMB's original opinion and has, as a practical matter, few other avenues of appeal, this approach might prove quite frustrating.

A better approach would be to amend 31 U.S.C. § 665(d)(1) to include the Board as one of the entities which is permitted to do its own apportionment. The amended section would then read as follows:

"(d)(1) Any appropriation available to the legislative branch, the judiciary, the United States International Trade Commission, the District of Columbia, or the Railroad Retirement Board which is required to be apportioned under subsection (c) of this section, shall be apportioned or reapportioned in writing by the officer having administrative control of such appropriation. Each such appropriation shall be apportioned not later than thirty days before the beginning of the fiscal year for which the appropriation is available, or not more than thirty days after approval of the Act by which the appropriation is made available, whichever is later." (New language is underlined).

Such an amendment would, of course, be applicable to funds appropriated to administer the Railroad Retirement Act and the Milwaukee Railroad Restructuring Act as well as the funds appropriated to administer the Railroad Unemployment Insurance Act.

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Regarding the power of OMB to set personnel ceilings, section 311 of the Civil Service Reform Act of 1978 (Public Law 95-454) mandated that the civilian employees of the Federal government shall not exceed the number of such employees on September 30, 1977. This restriction expires on January 31, 1981. The President is authorized to prescribe regulations to carry out the mandate contained in this section.

Similar action by Congress, primarily in the interest of economy, efficiency and the effective use of personnel, has a long history. See Public Law 77-821, section 607 of Public Law 79-106, section 201 of Public Law 90-364, and Public Law 94-106. Concurrently, the Bureau of the Budget, the predecessor of OMB, has issued guidelines in order to accomplish the same goals. The most common method of control over employment has been by means of personnel ceilings.

Section 311, cited above, appears to be the only current legislation requiring a cap on the total civilian employment of the Federal government. However, OMB has issued Circular No. A-64, a copy of which is attached, which directs Federal agencies to abide by personnel ceilings set by OMB. If the Board fails to comply with the ceilings set by OMB, the Board is required to report the violations. There are no further legal repercussions, but OMB's "power of the purse" is usually adequate to insure compliance with its personnel ceilings.

Under present law, the Board is required to submit its budget and any legislative proposal or comments on pending legislation to OMB before these items are submitted to Congress. This interference with the Board's operations could only be terminated by new legislation. The Interstate Commerce Commission and the Consumer Product Safety Commission both have direct access to Congress on these matters. Similar legislation could be added to the Railroad Retirement and Railroad Unemployment Insurance Acts. Such an amendment could read as follows:

"(1) Whenever the Board submits any budget estimate or request (including manpower needs) to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

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"(2) Whenever the Board submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress."

Finally, concerning your request as to the authority, if any, OMB has to require that particular information be set forth in the Board's triennial valuations, it is my opinion that you are correct that OMB lacks the authority to compel the Board to include material such as it requested in the valuations.

Dale G. Zimmerman

Attachment

cc: William P. Adams, Chairman
Board Member Chamberlain

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