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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-195704 (RCP)

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Mr. James A. Bayer, President
Local No. 1625
American Federation of
Government Employees
NAVPHIBASE, Little Creek
Norfolk, Virginia 23521

OCT 31 1979

Dear Mr. Bayer:

This is in reply to your letter of July 21, 1979, with enclosures, requesting a final and binding decision concerning the pay of certain nonappropriated fund employees who are paid on a commission basis by the Navy Exchanges. Specifically, you present the claim of Mr. Lance D. Lord, a former automobile mechanic at a Navy Exchange Service Station who contends that he was improperly compensated in contravention of controlling regulations.

In accordance with the delimiting provisions of 5 U.S.C. § 2105(c) (1976) this Office has held that while nonappropriated funds instrumentalities are integral parts of the Government of the United States, the employees of such instrumentalities are not considered to be employees of the United States for the purposes of laws administered by the Civil Service Commission (now Office of Personnel Management). This conclusion results from the clear legislative intent that the purpose of excluding employees of the nonappropriated funds instrumentalities from the restrictions and requirements applicable to civil service employees was to enable such instrumentalities to be operated in accordance with methods of private commercial enterprise. 37 Comp. Gen. 671 (1958), and 48 id. 192 (1968).

We have further recognized that nonappropriated fund activity employees - such as Mr. Lord in the instant case - are not compensated from funds appropriated by Congress out of which this Office could authorize or direct payment of compensation. Since we have no authority over payments from funds of the Navy Exchange Service Station, the



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nonappropriated fund activity involved, we lack jurisdiction over the issue presented and, accordingly, cannot adjudicate its merits. See B-188680, May 16, 1977.

Thus, we do not believe that it would be appropriate for this Office to comment on the payment question presented. Rather, it would appear that its resolution is for determination within the Department of Defense.

We are enclosing Mr. Lord's statement and supporting materials along with copies of those decisions referenced in this letter.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel

Enclosures