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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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The Honorable Frank E. Moss
United States Senate

Dear Senator Moss:

This is in reply to your November 19, 1975, letter, asking whether we had assessed the performance of the Federal Employees Appeals Authority since it was established in July 1974.

We have not evaluated the appeals system administered by the Authority which has had jurisdiction over certain statutory appeals procedures since September 1974. The establishment of the new system involved major changes--changes we believe were necessary to improve the fairness, objectivity, and efficiency of the system. We will likely review their operation as soon as sufficient case history is available. Also, there have been several legislative proposals concerning the Federal Labor Relations Program. Some of these proposals would make issues which are now subject to statutory appeals procedures, subject to arbitration if an employee or a labor organization so chooses. Passage of such a bill could considerably affect Authority operations.

We recently surveyed the procedural recourses available to Federal employees in seeking reconsideration of any unfavorable management action and we are summarizing the results. While the efficacy of the Authority was not explored, we did survey the overall appeal and grievance rights of Federal employees. We found 28 distinct statutory appeal procedures with varying employee rights and differing procedural requirements. Any external reporting on this survey will be provided to you.

Your letter also expressed a constituent's concern about the Authority being a part of the executive branch rather than the judicial system. Our previous report, which you cited, did not address that question. However, in a number of statutes, Congress has granted the Civil Service Commission broad discretion to prescribe reasonable procedures and regulations for administering many aspects of Federal employment (e.g., 5 U.S.C. 1302, 3301, 3302, 5115, 5338, 7701, and 8347). These regulations have the force and effect of law and are binding on Federal agencies.

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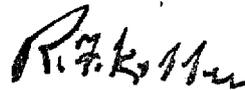
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Under its statutory authority the Commission has established procedures whereby Federal employees may appeal certain agency decisions that adversely affect them to the Commission for adjudication. The Authority was established by the Commission to make final decisions on these appeals. This procedure is consistent with the administrative law doctrine of primary jurisdiction; a court should not interfere with a Federal agency program unless exceptional circumstances exist. Such circumstances include an agency's failure to follow its own procedure, abuse of discretion, prima facie illegality of agency actions, unlawful or unreasonable delay, action taken in excess of agency powers, and inadequacy of administrative remedies. (See 5 U.S.C. 706 (1970) and McKart v. United States, 395 U.S. 185 (1969), North Philadelphia Community Board v. Temple University of Commonwealth System of Higher Education, 330 F. Supp. 1107 (1971).)

Hence, there is basis in law for an administrative body such as the Authority, to render final administrative decisions on employee appeals, and those decisions are subject to court review.

Sincerely yours,



Acting

Comptroller General
of the United States