



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-247348

June 22, 1992

Mr. John W. Rensbarger  
Inspector General  
The Library of Congress  
Washington, D.C. 20540

Dear Mr. Rensbarger:

This is in further response to your request for our opinion regarding the status of Ms. Patricia Gardner, an employee of the Government Printing Office (GPO), who has been on detail to the Library of Congress since 1988. Upon completion of our review of the matter, we find that the detail of Ms. Gardner by GPO to the Library of Congress is in violation of both 44 U.S.C. § 316 and 31 U.S.C. § 1301(a) (1988), and should be terminated. We are advising the heads of both agencies of our findings by letters dated today which contain a detailed discussion of our opinion. Enclosed for your information is a copy of our letter to the Librarian of Congress.

We trust this satisfies your inquiry.

Sincerely yours,

*for*   
Comptroller General  
of the United States

Enclosure

054758/146969



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-247348

June 22, 1992

The Honorable Robert W. Houk  
Public Printer  
U.S. Government Printing Office  
Washington, D.C. 20401

Dear Mr. Houk:

As you presumably are aware, we received a request from the Inspector General of the Library of Congress for an opinion regarding the status of Ms. Patricia R. Gardner, an employee of the Government Printing Office (GPO), who has been on detail to the Library of Congress since 1988. This is to advise you that we have completed our review of the matter. For the reasons stated below, we have concluded that the detail of Ms. Gardner by GPO to the Library of Congress is in violation of both 44 U.S.C. § 316 (1988) and 31 U.S.C. § 1301(a) (1988), and should be terminated. In addition, we find the obligation and expenditure of GPO funds for the detail constitute violations of the Antideficiency Act, 31 U.S.C. § 1341.

BACKGROUND

In 1988, GPO alleged Ms. Gardner took certain improper actions in connection with a GPO procurement and downgraded her from Assistant Public Printer (Administration) at the grade GS-18 level, to a grade GS-15 position. Ms. Gardner appealed this action to the Merit Systems Protection Board (MSPB). In a decision issued on September 15, 1988, the MSPB reversed the agency downgrade action by ordering GPO "to cancel the demotion and to retroactively restore [Ms. Gardner] effective January 11, 1988," but did not issue findings regarding other issues raised by Ms. Gardner. As a result of this decision, GPO and Ms. Gardner entered into a settlement which provided, among other things, for GPO to detail her to a position in another federal agency acceptable to her for one year, with the understanding that the detail could be extended to two years by agreement of the parties or terminated at any time if GPO management deemed that Ms. Gardner's services were needed at GPO.

As a result of this settlement, Ms. Gardner was detailed to the Library of Congress in late 1988. Since April 1989,

Ms. Gardner has been serving as the Library's Acting Chief of Contracts and Logistics Services, a grade GS-15 position, at her retained GPO grade GS-18 salary. Although the agreement between Ms. Gardner and GPO contemplated that the detail would not exceed 2 years, Ms. Gardner has continued at the Library through the present time. However, in August 1990, GPO proposed to the Library that the Library assume the costs of Ms. Gardner's salary over a phased-in period. By letter dated December 4, 1991, the Librarian of Congress concurred and agreed to assume 25 percent of Ms. Gardner's annual salary and benefits in fiscal year 1992, 50 percent in fiscal year 1993, and all costs in fiscal year 1994, provided Ms. Gardner is still detailed to the Library at that time.

In his request to our Office, the Inspector General questioned whether this detail is in violation of 44 U.S.C. § 316, which states that "An employee of the Government Printing Office may not be detailed to duties not pertaining to the work of public printing and binding in an executive department or other Government establishment unless expressly authorized by law."<sup>1</sup> In developing this case, we requested the views of both GPO and the Library of Congress on whether this detail violated 44 U.S.C. § 316. We also questioned whether this detail violated 31 U.S.C. § 1301(a), which requires that appropriations be applied only to the objects for which they are made unless otherwise provided by law, since under this arrangement the GPO has been paying Ms. Gardner's salary and benefits without reimbursement by the Library.

In response, GPO contends that Ms. Gardner's detail to the Library was one part of a "global" settlement which resolved all matters relating to the action before the MSPB as well as two pending Equal Employment Opportunity complaints filed by Ms. Gardner. GPO states that management was concerned that to place Ms. Gardner back in her former position would have been disruptive. GPO cites to the MSPB policy encouraging settlements between litigants before it, as well as the broad authority vested in the agency to resolve complaints of discrimination. GPO also suggests that the legislative history of 44 U.S.C. § 316 indicates Congress may not have been concerned about the type of ameliorative detail involved here but rather situations where agencies could avoid having some of the costs for printing charged to their budgets by having details of GPO personnel. Finally, concerning the limitation in 31 U.S.C. § 1301(a), GPO indicates it could not find any definitive authority as to

---

<sup>1</sup>We note that the Library of Congress has been found to be a "Government establishment." See 14 Dec. Gen. 674 at 676 (1908), cited with approval in 23 Comp. Gen. 157 (1943).

whether that limitation applies to a revolving fund such as that in place at GPO under 44 U.S.C. § 309, but GPO defers to our expertise on that question. GPO further indicates, however, that the agreement whereby the Library assumes Ms. Gardner's costs would eliminate this objection.

In its response to our inquiry, the Library of Congress states its understanding that it was assisting the Public Printer in his attempt to bring about the settlement of Ms. Gardner's grievances under Title VII of the Civil Rights Act of 1964, as amended. It is the Library's opinion that the remedial provisions of Title VII supersede any general statutory limitations imposed on the Public Printer if he chooses to define Ms. Gardner's assistance to the Library as a detail in the best interests of GPO and one that not only effectuated the purposes of Title VII but served public printing as well. The Library did not comment specifically on the limitation in 31 U.S.C. § 1301(a).

#### OPINION

A "detail" is the temporary assignment of an employee to a different position or set of duties for a specified period of time. Federal Personnel Manual, ch. 300, § 8 (Inst. 369, May 15, 1990). As noted above, the detail of GPO employees to other government establishments is limited by 44 U.S.C. § 316, which provides that such employees "may not be detailed to duties not pertaining to the work of public printing and binding." Neither GPO nor the Library of Congress have suggested that Ms. Gardner's work at the Library of Congress has to any appreciable extent pertained to the work of public printing and binding.

We have reviewed the legislative history of the Act of June 25, 1910, ch. 384, § 1, 36 Stat. 770, from which the present provision found in 44 U.S.C. § 316 derives, and we found nothing therein to suggest that it would not apply to a detail such as that of Ms. Gardner under the circumstances described above. GPO points to a colloquy between the Public Printer and the Chairman of the Subcommittee of the House Committee on Appropriations suggesting that Congress' principal objection was that agencies were abusing the privilege of having details of GPO personnel to avoid absorbing some of the costs for printing.<sup>2</sup> However, the discussion does not indicate that to be the sole objection to the details, and the language of the statute on its face clearly prohibits a detail not pertaining to the work of

---

<sup>2</sup>Colloquy referred to found in House of Representatives Sundry Civil Appropriations Bill for 1911: Hearings before the Subcommittee of House Committee on Appropriations, pages 915-918 (1910).

public printing and binding, unless expressly authorized by law. Therefore, we do not view the colloquy in the hearings referred to by GPO as sufficient to render the plain meaning of the statutory prohibition inapplicable to details such as that of Ms. Gardner. See generally, Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980), concerning the weight to be given the plain meaning of a statute.

Further, we find that Ms. Gardner's detail is in conflict with 31 U.S.C. § 1301(a). In 64 Comp. Gen. 370 (1985), we held that, absent specific statutory authority, nonreimbursable interagency details violate the provision in section 31 U.S.C. § 1301(a) that appropriations be spent only on the objects for which they are appropriated. In that case the appropriation funding the details neither provided for the details nor was so connected with the work that was being done that it could be said the details furthered a specific purpose for which the appropriation was made. Correspondingly, we found that such details augmented the appropriations of the receiving agency. Our holding covered situations both in which the detail was not authorized by statute, and in which the detail was so authorized but the statute said nothing about how the detail was to be funded.<sup>3</sup> 64 Comp. Gen. at 376-82. In Ms. Gardner's situation, not only was the detail not authorized by statute, but as indicated above it was in contravention of a specific provision of law, 44 U.S.C. § 316.

The GPO raises the question of whether the limitation on appropriations in 31 U.S.C. § 1301(a) is applicable to a revolving fund such as that in place at GPO and authorized by 44 U.S.C. § 309. Under the revolving fund concept, receipts are credited directly to the fund and are available, without further appropriation by Congress (unless the legislation specifies otherwise), for expenditures to carry out the purposes of the fund. We have held that revolving funds are appropriations, and, accordingly, that the legal principles governing appropriations also apply to revolving funds. See 63 Comp. Gen. 110 at 112 (1983), and decisions cited therein. Since paying Ms. Gardner's salary to do the work of the Library of Congress is not an authorized purpose of GPO's fund, doing so results in expenditures of GPO funds on objects for which they are not appropriated. It also results in unlawful augmentation of the Library's appropriations. See 61 Comp. Gen. 419, 422 (1982).

---

<sup>3</sup>See 5 U.S.C. § 3341. Reimbursable details generally are authorized by section 601 of the Economy Act, 31 U.S.C. § 1535.

Finally, both GPO and the Library of Congress suggest that the limitation on details contained in 44 U.S.C. § 316 and the appropriations limitation in 31 U.S.C. § 1301(a) may be overcome by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (1988). Under Title VII and the implementing regulations in 29 C.F.R. § 1613.217, federal agencies are permitted in the informal settlement of discrimination complaints to make payments of backpay, and attorney fees and costs, and to grant other appropriate relief, without a corresponding personnel action and without a finding of discrimination. 62 Comp. Gen. 239, 244 (1983). Such settlement authority embraces "appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section. . . ." 42 U.S.C. § 2000e-16(b). See also 29 C.F.R. § 1613.217(a).

While the term "appropriate remedies" is to be construed broadly, awards in Title VII settlements are generally limited to the maximum amount of backpay that could be recovered upon a finding of discrimination. 62 Comp. Gen. at 243-245. This is because, while we recognize that agencies have broad authority to settle claims in this area, such settlements cannot include benefits which the agency does not have authority to provide. See generally Albert D. Parker, 64 Comp. Gen. 349, 354 (1985); B-239592, Aug. 23, 1991. So, for example, in Nina R. Mathews, B-237615, June 4, 1990, we held that an employee may not be reimbursed for economic losses pursuant to a resolution agreement made under the Age Discrimination in Employment Act and/or Title VII of the Civil Rights Act since there is no authority for reimbursement of compensatory damages under either statutory authority. We further held that the employee could not be placed on administrative leave with pay for a year, as provided in the agreement, since there is no authority under which the agency could grant administrative leave for such a lengthy period.

This limitation on the agency to only provide benefits in a settlement agreement which it otherwise has the authority to provide is also reflected in the district court's holding in Shaw v. Library of Congress, 479 F.Supp. 945 (D. D.C. 1979), which both GPO and the Library of Congress cited in support of their positions. In Shaw, 479 F.Supp. at 949, the court said:

". . . In light of the historic policy favoring the amicable settlement of disputes and the particular settlement policy of Title VII, no regulation should be interpreted as intending to limit the bargaining options available to an agency confronted by a bona fide discrimination complaint unless the language of the regulation is

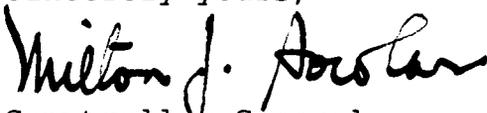
specific and unambiguous. . . ." (Emphasis added).

In this case, as discussed above, there is a statute which specifically and unambiguously provides that GPO employees may not be detailed to other agencies to perform duties not pertaining to printing and binding, and there is a statute specifically requiring that appropriations be applied only to the objects for which they are made. Therefore, detailing Ms. Gardner to the Library of Congress to perform duties other than printing and binding and at the expense of GPO cannot be part of a remedy in the settlement of Ms. Gardner's claims.

Accordingly, while we can understand the reasons for Ms. Gardner's detail, it is our view that it is in violation of law and should be terminated. By letter of today, we are providing similar advice to the Librarian of Congress.

In addition, we must advise you that when an agency's appropriation is not available for a designated purpose, and the agency has no other funds available for that purpose, any officer of the agency who authorizes an obligation or expenditure of agency funds for that purpose violates the Antideficiency Act.<sup>4</sup> Since the Congress has not appropriated funds to GPO for the purpose of this detail, the obligation may be viewed either as being in excess of the amount (zero) available for that purpose or as in advance of appropriations made for that purpose. In either case the Antideficiency Act is violated.<sup>5</sup>

Sincerely yours,

*for*   
Comptroller General  
of the United States

---

<sup>4</sup>31 U.S.C. § 1341(a) provides that:

"(1) An officer or employee of the United States Government or of the District of Columbia government may not - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

<sup>5</sup>B-245541, May 21, 1992; and 60 Comp. Gen. 440 (1981). See also, B-204270, Oct. 13, 1981.



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-247348

June 22, 1992

The Honorable James H. Billington  
Lirarian of Congress  
Washington, D.C. 20540

Dear Dr. Billington:

As you presumably are aware, we received a request from the Inspector General of the Library of Congress for an opinion regarding the status of Ms. Patricia R. Gardner, an employee of the Government Printing Office (GPO), who has been on detail to the Library of Congress since 1988. This is to advise you that we have completed our review of the matter. For the reasons stated below, we have concluded that the detail of Ms. Gardner by GPO to the Library of Congress is in violation of both 44 U.S.C. § 316 (1988) and 31 U.S.C. § 1301(a) (1988), and should be terminated.

BACKGROUND

In 1988, GPO alleged Ms. Gardner took certain improper actions in connection with a GPO procurement and downgraded her from Assistant Public Printer (Administration) at the grade GS-18 level, to a grade GS-15 position. Ms. Gardner appealed this action to the Merit Systems Protection Board (MSPB). In a decision issued on September 15, 1988, the MSPB reversed the agency downgrade action by ordering GPO "to cancel the demotion and to retroactively restore [Ms. Gardner] effective January 11, 1988," but did not issue findings regarding other issues raised by Ms. Gardner. As a result of this decision, GPO and Ms. Gardner entered into a settlement which provided, among other things, for GPO to detail her to a position in another federal agency acceptable to her for one year, with the understanding that the detail could be extended to two years by agreement of the parties or terminated at any time if GPO management deemed that Ms. Gardner's services were needed at GPO.

As a result of this settlement, Ms. Gardner was detailed to the Library of Congress in late 1988. Since April 1989, Ms. Gardner has been serving as the Library's Acting Chief of Contracts and Logistics Services, a grade GS-15 position, at her retained GPO grade GS-18 salary. Although the agreement between Ms. Gardner and GPO contemplated that the

detail would not exceed 2 years, Ms. Gardner has continued at the Library through the present time. However, in August 1990, GPO proposed to the Library that the Library assume the costs of Ms. Gardner's salary over a phased-in period. By letter dated December 4, 1991, the Librarian of Congress concurred and agreed to assume 25 percent of Ms. Gardner's annual salary and benefits in fiscal year 1992, 50 percent in fiscal year 1993, and all costs in fiscal year 1994, provided Ms. Gardner is still detailed to the Library at that time.

In his request to our Office, the Inspector General questioned whether this detail is in violation of 44 U.S.C. § 316, which states that "An employee of the Government Printing Office may not be detailed to duties not pertaining to the work of public printing and binding in an executive department or other Government establishment unless expressly authorized by law."<sup>1</sup> In developing this case, we requested the views of both GPO and the Library of Congress on whether this detail violated 44 U.S.C. § 316. We also questioned whether this detail violated 31 U.S.C. § 1301(a), which requires that appropriations be applied only to the objects for which they are made unless otherwise provided by law, since under this arrangement the GPO has been paying Ms. Gardner's salary and benefits without reimbursement by the Library.

In response, GPO contends that Ms. Gardner's detail to the Library was one part of a "global" settlement which resolved all matters relating to the action before the MSPB as well as two pending Equal Employment Opportunity complaints filed by Ms. Gardner. GPO states that management was concerned that to place Ms. Gardner back in her former position would have been disruptive. GPO cites to the MSPB policy encouraging settlements between litigants before it, as well as the broad authority vested in the agency to resolve complaints of discrimination. GPO also suggests that the legislative history of 44 U.S.C. § 316 indicates Congress may not have been concerned about the type of ameliorative detail involved here but rather situations where agencies could avoid having some of the costs for printing charged to their budgets by having details of GPO personnel. Finally, concerning the limitation in 31 U.S.C. § 1301(a), GPO indicates it could not find any definitive authority as to whether that limitation applies to a revolving fund such as that in place at GPO under 44 U.S.C. § 309, but GPO defers to our expertise on that question. GPO further indicates,

---

<sup>1</sup>We note that the Library of Congress has been found to be a "Government establishment." See 14 Comp. Dec. 674 at 676 (1908), cited with approval in 23 Comp. Gen. 157 (1943).

however, that the agreement whereby the Library assumes Ms. Gardner's costs would eliminate this objection.

In its response to our inquiry, the Library of Congress states its understanding that it was assisting the Public Printer in his attempt to bring about the settlement of Ms. Gardner's grievances under Title VII of the Civil Rights Act of 1964, as amended. It is the Library's opinion that the remedial provisions of Title VII supersede any general statutory limitations imposed on the Public Printer if he chooses to define Ms. Gardner's assistance to the Library as a detail in the best interests of GPO and one that not only effectuated the purposes of Title VII but served public printing as well. The Library did not comment specifically on the limitation in 31 U.S.C. § 1301(a).

#### OPINION

A "detail" is the temporary assignment of an employee to a different position or set of duties for a specified period of time. Federal Personnel Manual, ch. 300, § 8 (Inst. 369, May 15, 1990). As noted above, the detail of GPO employees to other government establishments is limited by 44 U.S.C. § 316, which provides that such employees "may not be detailed to duties not pertaining to the work of public printing and binding." Neither GPO nor the Library of Congress have suggested that Ms. Gardner's work at the Library of Congress has to any appreciable extent pertained to the work of public printing and binding.

We have reviewed the legislative history of the Act of June 25, 1910, ch. 384, § 1, 36 Stat. 770, from which the present provision found in 44 U.S.C. § 316 derives, and we found nothing therein to suggest that it would not apply to a detail such as that of Ms. Gardner under the circumstances described above. GPO points to a colloquy between the Public Printer and the Chairman of the Subcommittee of the House Committee on Appropriations suggesting that Congress' principal objection was that agencies were abusing the privilege of having details of GPO personnel to avoid absorbing some of the costs for printing.<sup>2</sup> However, the discussion does not indicate that to be the sole objection to the details, and the language of the statute on its face clearly prohibits a detail not pertaining to the work of public printing and binding, unless expressly authorized by law. Therefore, we do not view the colloquy in the hearings referred to by GPO as sufficient to render the plain meaning

---

<sup>2</sup>Colloquy referred to found in House of Representatives Sundry Civil Appropriations Bill for 1911: Hearings before the Subcommittee of House Committee on Appropriations, pages 915-918 (1910).

of the statutory prohibition inapplicable to details such as that of Ms. Gardner. See generally Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980), concerning the weight to be given the plain meaning of a statute.

Further, we find that Ms. Gardner's detail is in conflict with 31 U.S.C. § 1301(a). In 64 Comp. Gen. 370 (1985), we held that, absent specific statutory authority, nonreimbursable interagency details violate the provision in section 31 U.S.C. § 1301(a) that appropriations be spent only on the objects for which they are appropriated. In that case the appropriation funding the details neither provided for the details nor was so connected with the work that was being done that it could be said the details furthered a specific purpose for which the appropriation was made. Correspondingly, we found that such details augmented the appropriations of the receiving agency. Our holding covered situations both in which the detail was not authorized by statute, and in which the detail was so authorized but the statute said nothing about how the detail was to be funded.<sup>3</sup> 64 Comp. Gen. at 376-82. In Ms. Gardner's situation, not only was the detail not authorized by statute, but as indicated above it was in contravention of a specific provision of law, 44 U.S.C. § 316.

The GPO raises the question of whether the limitation on appropriations in 31 U.S.C. § 1301(a) is applicable to a revolving fund such as that in place at GPO and authorized by 44 U.S.C. § 309. Under the revolving fund concept, receipts are credited directly to the fund and are available, without further appropriation by Congress (unless the legislation specifies otherwise), for expenditures to carry out the purposes of the fund. We have held that revolving funds are appropriations, and, accordingly, that the legal principles governing appropriations also apply to revolving funds. See 63 Comp. Gen. 110 at 112 (1983), and decisions cited therein. Since paying Ms. Gardner's salary to do the work of the Library of Congress is not an authorized purpose of GPO's fund, doing so results in expenditures of GPO funds on objects for which they are not appropriated. It also results in unlawful augmentation of the Library's appropriations.

Finally, both GPO and the Library of Congress suggest that the limitation on details contained in 44 U.S.C. § 316 and the appropriations limitation in 31 U.S.C. § 1301(a) may be overcome by Title VII of the Civil Rights Act of 1964, as

---

<sup>3</sup>See 5 U.S.C. § 3341. Reimbursable details generally are authorized by section 601 of the Economy Act, 31 U.S.C. § 1535.

amended, 42 U.S.C. § 2000e-16 (1988). Under Title VII and the implementing regulations in 29 C.F.R. § 1613.217, federal agencies are permitted in the informal settlement of discrimination complaints to make payments of backpay, attorney fees and costs, and to grant other appropriate relief, without a corresponding personnel action and without a finding of discrimination. 62 Comp. Gen. 239, 244 (1983). Such settlement authority embraces "appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section. . . ." 42 U.S.C. § 2000e-16(b). See also 29 C.F.R. § 1613.217(a).

While the term "appropriate remedies" is to be construed broadly, awards in Title VII settlements are generally limited to the maximum amount of backpay that could be recovered upon a finding of discrimination. 62 Comp. Gen. at 243-245. This is because, while we recognize that agencies have broad authority to settle claims in this area, such settlements cannot include benefits which the agency does not have authority to provide. See generally Albert D. Parker, 64 Comp. Gen. 349, 354 (1985); B-239592, Aug. 23, 1991. So, for example, in Nina R. Mathews, B-237615, June 4, 1990, we held that an employee may not be reimbursed for economic losses pursuant to a resolution agreement made under the Age Discrimination in Employment Act and/or Title VII of the Civil Rights Act since there is no authority for reimbursement of compensatory damages under either statutory authority. We further held that the employee could not be placed on administrative leave with pay for a year, as provided in the agreement, since there is no authority under which the agency could grant administrative leave for such a lengthy period.

This limitation on the agency to only provide benefits in a settlement agreement which it otherwise has the authority to provide is also reflected in the district court's holding in Shaw v. Library of Congress, 479 F.Supp. 945 (D. D.C. 1979), which both GPO and the Library of Congress cited in support of their positions. In Shaw, 479 F.Supp. at 949, the court said:

" . . . In light of the historic policy favoring the amicable settlement of disputes and the particular settlement policy of Title VII, no regulation should be interpreted as intending to limit the bargaining options available to an agency confronted by a bona fide discrimination complaint unless the language of the regulation is specific and unambiguous. . . ." (Emphasis added).

In this case, as discussed above, there is a statute which specifically and unambiguously provides that GPO employees may not be detailed to other agencies to perform duties not pertaining to printing and binding, and there is a statute specifically requiring that appropriations be applied only to the objects for which they are made. Therefore, detailing Ms. Gardner to the Library of Congress to perform duties other than printing and binding and at the expense of GPO cannot be part of a remedy in the settlement of Ms. Gardner's claims.

Accordingly, while we can understand the reasons for Ms. Gardner's detail, it is our view that it is in violation of law and should be terminated.

By letter of today we are providing similar advice to the Public Printer.

Sincerely yours,

*Milton J. Fowler*

*for* Comptroller General  
of the United States

cc: Mr. John W. Rensbarger  
Inspector General  
The Library of Congress