

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 82-799

**TITLE** BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, Petitioner  
v. FEDERAL LABOR RELATIONS AUTHORITY, ET AL.

**PLACE** Washington, D. C.

**DATE** October 11, 1983

**PAGES** 1 thru 51



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440 FIRST STREET, N.W.  
WASHINGTON, D.C. 20001

1                   IN THE SUPREME COURT OF THE UNITED STATES

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3 BUREAU OF ALCOHOL, TOBACCO AND                 :

4 FIREARMS,   :

5   Petitioner                 :

6                         v.   : No. 82-799

7 FEDERAL LABOR RELATIONS AUTHORITY                 :

8 ET AL.   :

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10   Washington, D.C.

11   Tuesday, October 11, 1983

12                         The above-entitled matter came on for oral  
13 argument before the Supreme Court of the United States  
14 at 1:50 p.m.

15 APPEARANCES:

16 MS. CAROLYN CORWIN, ESQ., Office of the Solicitor  
17 General, Department of Justice, Washington, D.C.; on  
18 behalf of the Petitioner.

19 MS. RUTH E. PETERS, ESQ., Sclicitor, FLRA, Washington,  
20 D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: Ms. Corwin, you may proceed whenever you are ready.

ORAL ARGUMENT OF MS. CAROLYN CORWIN, ESQ.,  
ON BEHALF OF THE PETITIONER

MS. CORWIN: Mr. Chief Justice, and may it please the Court:

The question presented by this case is a straightforward one. It is whether Congress intended for union dues or the federal taxpayers to fund the travel expenses and per diem of federal employees who represent their unions in collective bargaining.

Federal agencies pay such expenses for their own representatives at collective bargaining sessions. The question here is whether the Respondent, The Federal Labor Relations Authority, correctly concluded that Congress also meant for the agencies to fund the similar expenses of the union representatives to those sessions.

The statute the Court must construe in this case is Title VII of the Civil Service Reform Act passed by Congress in 1978. Title VII establishes a statutory framework for the federal labor management relations program.

That program formerly had been governed by executive order, and under the executive order program

1 the unions bore their own travel expenses and per diem.  
2 There was no entitlement under the executive order  
3 program to any reimbursement from federal agencies for  
4 those expenses.

5 Title VII sets out a series of detailed  
6 provisions governing the federal labor relations  
7 program. None of those provisions addresses the subject  
8 of travel expenses and per diem.

9 The Authority has cited Section 7131 of the  
10 statute, and that section relates to authorization of  
11 official time for employee union representatives. In  
12 Section 7131 Congress went quite far in subsidizing the  
13 collective bargaining process in the federal sector by  
14 providing for federal payment of the salaries of the  
15 employee union negotiators.

16 The question here is whether the Respondent,  
17 the FLRA, correctly concluded that Congress meant to go  
18 further in subsidizing the collective bargaining process  
19 by funding another category of expenses, the travel  
20 expenses and per diem of the employee union  
21 representatives.

22 QUESTION: Ms. Corwin, in 7131(a) where the  
23 statute says that the employee representative, exclusive  
24 representative, shall be authorized official time for  
25 such purposes, does that mean anything more than that

1 his federal salary will be paid during those and he will  
2 not have to take leave?

3 MS. CORWIN: That is the understanding. The  
4 term "official time" is one that had grown up within the  
5 federal labor relations program under the executive  
6 order.

7 It had always been understood to connote  
8 payment of salary. Now it also meant that you did not  
9 lose time in terms of accruing other benefits such as  
10 pension rights and so on, but the basic principle was  
11 that official time meant payment of your salary.

12 QUESTION: Does that mean travel time?

13 MS. CORWIN: It did not mean travel time under  
14 the executive order program, and we suggest that the  
15 term "official time" as it grew up in the labor  
16 relations program indicated that you did not have this  
17 right to federal reimbursement of your travel time.

18 QUESTION: Did it not at least mean that you  
19 were on official business?

20 MS. CORWIN: No, it definitely --

21 QUESTION: You mean they were paying the  
22 employee when he was on unofficial business?

23 MS. CORWIN: The understanding of official  
24 time was that the salary was paid --

25 QUESTION: Because why?

1 MS. CORWIN: There were several reasons that  
2 -- Are you referring to the old executive order program  
3 at this point?

4 QUESTION: I am referring to the statute we  
5 are construing.

6 MS. CORWIN: The statute we are construing  
7 uses the term "official time" as it was used under the  
8 executive order program and that is why --

9 QUESTION: Well, why do you think Congress  
10 would authorize unlimited time for collective bargaining  
11 purposes and pay for it?

12 MS. CORWIN: Well, I think there are several  
13 rationales that Congress probably had in mind.

14 QUESTION: Did they say which one they had in  
15 mind?

16 MS. CORWIN: In the legislative history of the  
17 1978 Act you do not have any statement of why it was  
18 that Congress concluded -- For example, in the House  
19 report you do not have any explanation of why they  
20 incorporated this.

21 What they were in fact doing was extending the  
22 provisions under the executive order program in which  
23 official time had been available up to a particular  
24 ceiling. Now under the executive order program the  
25 reasoning had been that it prevented delay. It was

1 easier to schedule sessions if you gave people some time  
2 off and it minimized the individual hardship.

3 QUESTION: So I suppose they were paying them  
4 either because they considered it official business or  
5 because they thought it was in the public interest to  
6 subsidize collective bargaining.

7 MS. CORWIN: Well, I think there were several  
8 considerations, but the assumption that it was official  
9 business was not one of them. Under the executive order  
10 program --

11 QUESTION: How do you know?

12 MS. CORWIN: The Comptroller General had been  
13 asked this question early on in the executive order  
14 program.

15 QUESTION: Is he the final interpreter of  
16 congressional intent?

17 MS. CORWIN: The Comptroller General had been  
18 consulted in his capacity as the individual who makes  
19 rulings on expenditures of federal funds, and his  
20 conclusion was under this executive order program even  
21 if an employee was granted official time, that is, even  
22 if his salary was paid that did not translate into  
23 official business for the federal government, that in  
24 essence the employee --

25 QUESTION: What was the rationale for paying



1 the salary?

2 MS. CORWIN: Well, several rationales were  
3 suggested in the various reports underlying the  
4 executive order program. One was --

5 QUESTION: Did the Comptroller General say  
6 what it was?

7 MS. CORWIN: Well, the Comptroller General in  
8 ruling on the official business point suggested that  
9 even though it had been stated in the executive order  
10 that collective bargaining might be in the public  
11 interest, it was nevertheless not equivalent to official  
12 business. I do not think the Comptroller General cited  
13 the reports I am referring to that refer to the grant of  
14 official time in terms of solving scheduling  
15 difficulties and in terms of solving the individual  
16 hardships that might arise.

17 QUESTION: But that was -- They surely must  
18 have been concerned with making collective bargaining  
19 work.

20 MS. CORWIN: That is certainly true, and I  
21 think that has always been the case under the federal  
22 labor relations program that that clearly was a concern  
23 that Congress had in the 1978 Act. But I do not think  
24 that translates into any sort of mandate for  
25 reimbursement of all expenses underlying collective

1 bargaining, and I think that is what the Court needs to  
2 consider in determining whether Congress without ever  
3 making any mention of the subject has authorized these  
4 sorts of expenses to be paid.

5 QUESTION: Well, surely the federal government  
6 is doing something with respect to collective bargaining  
7 representatives that industry does not do, or does  
8 industry do the same thing?

9 MS. CORWIN: No, this is not the practice in  
10 industry. The examples that were before Congress in  
11 1978 did not include any example in which the employer  
12 would fund the collective bargaining expenses of the  
13 union.

14 QUESTION: Even by paying salaries?

15 MS. CORWIN: The only instances in which that  
16 occurred would be when the parties had agreed to it  
17 through a negotiation of a collective bargaining  
18 agreement.

19 QUESTION: Well, then the government does  
20 subsidize the process to an extent that private industry  
21 does not.

22 MS. CORWIN: That is so, and in 1978 I think  
23 you have a very careful consideration by Congress in  
24 determining what it ought to put into this legislation  
25 about how far it ought to go in terms of --

1                   QUESTION: By using that word "official  
2 time"?

3                   MS. CORWIN: Well, I think the terminology  
4 "official time" is what they picked up from the old  
5 executive order program, and I think it is significant  
6 that they used that term as opposed to some other term  
7 they might have used. But you have the very careful  
8 consideration in 1978 about how much farther than the  
9 executive order program you ought to go and to what  
10 extent the federal government ought to be subsidizing  
11 the collective bargaining process.

12                   In essence what Congress did was to provide  
13 this subsidy of the salary expenses, but it did not go  
14 further. Now we think there are numerous indications  
15 that Congress itself did not intend this sort of  
16 requirement and moreover that it did not intend to  
17 delegate any sort of discretion to the Federal Labor  
18 Relations Authority to impose that sort of requirement  
19 either.

20                   I will summarize those points briefly. First,  
21 as I have mentioned there is total silence in the  
22 language in legislative history, and that silence occurs  
23 in the context of both the existing federal sector  
24 practice and the private sector practice in which unions  
25 bore their own expenses of collective bargaining.

1           Secondly, as I referred in response to Justice  
2 White's question the use of the term "official time" is  
3 significant. That is a term that had a particular  
4 meaning in the context of the federal labor relations  
5 program. Congress picked up that term.

6           Third, what you have here is the Authority  
7 reading into the statute a requirement that has the  
8 effect of imposing a monetary liability on the federal  
9 government, and you have that reading in the absence of  
10 any expression of congressional intent that it meant to  
11 go further and to provide this sort of subsidy in  
12 addition to what it had provided for in the terms of the  
13 statute.

14           QUESTION: May I ask you a question right  
15 there? If one draws an analogy to the Labor Relations  
16 Board in the private sector, we habitually give a great  
17 deal of deference to the agency that administers the  
18 statute.

19           I am not sure I understand what your position  
20 is with respect to the degree of deference that should  
21 be paid to this agency or what our standard of review  
22 is. Do we just approach it as a brand new question of  
23 statutory construction, or do we attach some weight to  
24 the fact that this agency was created by Congress and  
25 perhaps was authorized to make decisions of this kind?

1 MS. CORWIN: Well, I think the general  
2 principle that you have set out is one with which we  
3 agree that an administrative agency normally does  
4 deserve deference. I think there are several points to  
5 consider here.

6 First, I think even if one gave the maximum  
7 deference to the agency in this case it would not  
8 overcome the indications I have suggested the Congress  
9 simply did not intend to go this far and did not intend  
10 the Authority to be able to --

11 QUESTION: What if we were persuaded that the  
12 Congress just never thought of this problem?

13 MS. CORWIN: Well, I think that there are  
14 several other points that you ought to consider in  
15 determining whether deference is due if that is the  
16 concern here. I think in addition to the points I have  
17 suggested concerning what Congress may have had in mind  
18 you ought to consider the point about imposition of  
19 monetary liability on the federal government.

20 QUESTION: Will it not always be true that in  
21 the labor disputes that this agency has jurisdiction  
22 that there will always be a potential for imposing costs  
23 on the sovereign and, therefore, every time it rules  
24 against the government they are not entitled to  
25 deference?

1 MS. CORWIN: No, I think that is not the case  
2 because Congress clearly had in mind that the remedies  
3 ordered by the Authority would involve things like back  
4 pay, and it did include within Title VII a specific  
5 reference to the Back Pay Act because it anticipated  
6 that this sort of award was going to come up on a  
7 regular basis. It referred to the Section 5596, The  
8 Back Pay Act, which is outside of Title VII.

9 Here you do not have any reference to the  
10 particular Chapter 57 that relates to travel expenses  
11 and per diem so you do not have Congress making the same  
12 sort of cross-reference indicating that it acknowledged  
13 that there would be some sort of monetary liability. I  
14 think that is another point that the Authority here felt  
15 it necessary to go outside of the limitations of its own  
16 statute, outside of Title VII and to refer to Chapter 57  
17 which is not within its responsibility for  
18 construction. Rather it is within the General Services  
19 Administration's realm of authority.

20 I think another point to consider when you are  
21 determining the deference that is due here is that this  
22 particular statutory scheme is one in which Congress did  
23 not leave much in the way of gaps or interstices for the  
24 authority to fill. You have quite a detailed blueprint  
25 here which was the product of some very careful

1 consideration by Congress about how far it ought to go.

2           It was urged on the one hand to stick with the  
3 old executive order program and simply to codify that.  
4 On the other hand, it was urged to go much further in  
5 the direction the employee unions wanted it to do.

6           QUESTION: Ms. Corwin, you have given me the  
7 reasons why they should get less deference than agencies  
8 often get. What is the degree of deference that you  
9 think this agency is entitled to with respect to this  
10 issue if we conclude that Congress did not think of this  
11 particular problem? Are they entitled to any deference  
12 at all?

13           MS. CORWIN: I do not think that under the  
14 circumstances of this particular case that the Authority  
15 ought to receive any deference because of the principle  
16 that in the case of imposition of monetary liability on  
17 the federal government the presumption of this Court has  
18 always been that one does not read that into the statute  
19 absent some expression of congressional intent, but I  
20 think even if the Court did determine that there ought  
21 to be some deference it is not enough to overcome the  
22 indications of that principle and other indications that  
23 suggest that Congress did not --

24           QUESTION: But your answer to my question  
25 really is they are not entitled to any deference?

1 MS. CORWIN: That would be our position under  
2 the circumstances of this particular case.

3 QUESTION: But in effect they are construing a  
4 statute that is committed to the Comptroller General  
5 rather than to them.

6 MS. CORWIN: I think that is one point that  
7 they have gone outside of their own statute and that  
8 diminishes any deference. I think the point of what  
9 they are doing imposes this monetary liability. It is  
10 something that brings this other principle of statutory  
11 construction into play.

12 QUESTION: I thought you were -- You really  
13 said earlier that you thought the Congress had really  
14 addressed it in the sense that it had limited the  
15 subsidization to official time and that that is a term  
16 of art.

17 MS. CORWIN: I think that is correct. In  
18 using the term "official time" I think you have to  
19 conclude that Congress must have intended it to be  
20 official time as it was known to the federal --

21 QUESTION: And as though it said and no more.

22 MS. CORWIN: Yes, I think this is a statute  
23 which Congress considered quite carefully how far to go,  
24 and as I was suggesting to Justice Stevens there were  
25 people who were urging it to go much further. There



1 were people who were urging it to do much less than it  
2 did, and the result is a rather detailed blueprint of  
3 the way Congress wanted this labor relations program to  
4 work.

5           There was provision of a certain subsidy, a  
6 rather generous subsidy in the form of the salaries, but  
7 there was then no further step.

8           QUESTION: That is all.

9           QUESTION: This is somewhat like the rule that  
10 if you are on the subject matter and you include one and  
11 do not take the other then that is an inference you  
12 intended to omit it.

13           MS. CORWIN: I think that general principle is  
14 certainly applicable here, but I think in this  
15 particular context in this statute you do have rather  
16 careful consideration about whether the Congress ought  
17 to go further in terms of subsidizing unions and  
18 subsidizing collective bargaining. The fact that they  
19 did not take the step in this case I think is  
20 particularly significant.

21           I think one has to also consider the fact that  
22 the statute reflects the fact that Congress was aware  
23 that there was a source of union funds out there that  
24 unions would have dues with which they could pay such  
25 expenses and with which they had paid the expenses all

1 along. It seems to me that given the assumption that  
2 unions would have dues and that Congress was aware of  
3 this, it is even more inappropriate to assume that  
4 Congress without making any mention at all somehow felt  
5 it was appropriate to add on or that the Authority  
6 itself ought to go further and add on some sort of  
7 financial requirement that would shift the expenses from  
8 where they normally would fall and where they always had  
9 been to the federal agencies.

10 Now all of these considerations I have  
11 mentioned have led all of the Courts of Appeal that have  
12 considered the issue other than the court below to  
13 conclude that the Authority exceeded its statutory  
14 discretion, exceeded its statutory authority in this  
15 case, and we think that is the proper conclusion based  
16 on these considerations I have suggested.

17 Now I would like to briefly turn to the  
18 alternative argument that the Authority and Respondent,  
19 NTEU, have put forward and that is the argument that  
20 collective bargaining is somehow equivalent to be  
21 on-the-job or on-duty status and that that in turn leads  
22 to the conclusion that there is official business here  
23 and then you in turn reach the conclusion that travel  
24 expenses and per diem were intended under the statute.

25 I think that the language of the statute

1 simply does not amount to what Respondents are arguing.  
2 Congress could have written Section 7131 with different  
3 language.

4           It could have said collective bargaining  
5 amounts to being on-duty status. Better yet it could  
6 have said collective bargaining for the purposes of  
7 Chapter 57, the part that relates to travel expenses and  
8 per diem outside of Title VII, collective bargaining  
9 shall constitute official business.

10           It did not say any of these things. Rather  
11 the language that Congress did use was and the term of  
12 art "official time" which had this construction under  
13 the old program of no travel expenses, no per diem, that  
14 is, the unions for those costs and Congress also  
15 referred to the time an employee otherwise would be in a  
16 duty status.

17           Now that language suggests that you simply  
18 cannot draw out the equivalency of collective bargaining  
19 and duty status that Respondents have suggested in this  
20 case, and we think the medly of various agency  
21 regulations and decisions that they have cited from  
22 different statutes and different periods of time simply  
23 do not add up to the conclusion they have drawn. I  
24 think if you look individually at those particular  
25 references and look at them collectively they do not

1 lead you to the conclusion that collective bargaining is  
2 the same as being on the job or that Congress intended  
3 the Authority to be able to so define it.

4           Ultimately in this case you keep coming back  
5 to the conclusion that the federal employee unions did  
6 not succeed in persuading Congress or in moving Congress  
7 to the point at which it concluded that there ought to  
8 be a federal subsidy for these particular expenses. You  
9 have Congress silent on the subject in the face of the  
10 existing practice in both the private sector and the  
11 federal sector under which the unions bore their own  
12 expenses under which each side to the collective  
13 bargaining bore its own expenses.

14           You have Congress using a term of art  
15 "official time" that had a particular meaning under the  
16 federal labor relations statute and no indication in the  
17 legislative history that Congress intended to change  
18 that meaning. Finally you have no evidence in the  
19 statute that Congress intended to authorize the FLRA to  
20 go further, to go beyond what Congress itself had  
21 decided that it would provide.

22           You have no evidence that Congress intended  
23 the Authority to be in the business of shifting expenses  
24 from the unions to the federal agencies.

25           Unless there are further questions at this

1 time, I will reserve the remainder of my time.

2 CHIEF JUSTICE BURGER: Very well.

3 Ms. Peters.

4 ORAL ARGUMENT OF RUTH E. PETERS, ESQ.,

5 ON BEHALF OF THE RESPONDENT

6 MS. PETERS: Mr. Chief Justice, and may it

7 please the Court:

8 At issue here today in the first Federal Labor  
9 Relations Authority case to be heard by this Court is  
10 the Authority's determination that a federal employee  
11 union representative who is granted official time to  
12 participate in collective bargaining negotiations is  
13 entitled to receive a per diem allowance and travel  
14 expenses from the employer agency for travel in  
15 connection with the negotiations.

16 Now as the Ninth Circuit recognized in this  
17 case the Authority's determination is correct  
18 essentially for these reasons: first, because the  
19 Authority correctly discerned the congressional  
20 objectives underlying the federal sector labor statute  
21 and adopted an interpretation of the official time  
22 provision that comports with and furthers those  
23 objectives; and second, because employee representatives  
24 who are on official time for negotiations are engaged in  
25 official business within the meaning of the Travel

1 Expense Act and are accordingly entitled to the payment  
2 of travel expenses.

3           Now I intend to discuss both of those points,  
4 and in the process I also hope to discuss the ways in  
5 which the nature and scope and purpose of collective  
6 bargaining under the federal sector statute differs from  
7 bargaining under the old executive order program or in  
8 the private sector under the National Labor Relations  
9 Act because ultimately the test of the appropriateness  
10 of the Authority's determination is not whether it would  
11 have been appropriate under the old executive orders or  
12 in the private sector, but rather --

13           QUESTION: Is it your view that Congress just  
14 absentmindedly overlooked this problem?

15           MS. PETERS: I do not think Congress  
16 overlooked it. It did not address it directly, but it  
17 did choose a certain term "official time" from which I  
18 think it is reasonable to say that certain consequences  
19 flow.

20           QUESTION: Do you agree that it shows that  
21 Congress had the general subject matter in mind?

22           MS. PETERS: It had in mind what status it  
23 wanted these people to be on while they were bargaining,  
24 negotiating and --

25           QUESTION: Would that not reasonably suggest

1 all the other problems that were related to it?

2 MS. PETERS: I think that Congress could have  
3 seen that it chose the phrase "official time" to which  
4 attributes of employment could attach, and we agree with  
5 Respondent, NTEU, in this regard that it is significant  
6 that Congress chose this term because it does equate  
7 with duty time or work time and is different from  
8 nonduty time or leave or administrative leave or excused  
9 absence.

10 We are not the only ones to see this  
11 distinction. Even the Petitioner, I think, at footnote  
12 five of its reply brief sees a difference between  
13 official time on the one hand and leave time on the  
14 other. The executive orders distinguished between  
15 official time and nonduty time.

16 Executive Order 10988, for example, said that  
17 employer-employee meetings should be conducted on  
18 official time wherever possible but that the employer  
19 could require that negotiations be conducted on nonduty  
20 time. Furthermore, as we noted --

21 QUESTION: Do you agree with the proposition  
22 that before you can hold the United States government  
23 responsible for the payment of money it has to be in  
24 clear and unambiguous language?

25 MS. PETERS: Well, I certainly do not agree

1 with the Petitioner's approach to the authority that  
2 they have cited in their brief.

3 QUESTION: I did not say the Petitioners. I  
4 said me.

5 MS. PETERS: Well, there are a number of  
6 statutes that deal with the federal work force that have  
7 broad statutory terms such as "official time" or in the  
8 Fair Labor Standards Act, for example, "hours of work".  
9 There are a number of remedial and compensatory statutes  
10 that have such terms.

11 If that rule were to be applied really  
12 strictly it would just shut off one side of the ability  
13 to --

14 QUESTION: Give me one statute that says  
15 official time which includes travel time.

16 MS. PETERS: I cannot cite you to a statute  
17 that says official time --

18 QUESTION: But do you not need one?

19 MS. PETERS: No, because I think official time  
20 means duty time or duty status and that connotes that it  
21 is official business within the meaning of the Travel  
22 Expense Act and that the things that you have going when  
23 you are on official time, paid time, time for which you  
24 are paid by the government --

25 QUESTION: Would you go so far as to say that



1 if you go to a meeting in Paris you could charge the  
2 government with the Concorde rates?

3 MS. PETERS: Well, that would be a subject I  
4 guess for the GSA travel regulations as to what kind of  
5 carrier you can take, but that is not really the issue  
6 here.

7 As I was saying, we are not the only ones to  
8 see the difference between official time and duty time.

9 QUESTION: But is your sole reliance not on  
10 the language "official time"?

11 MS. PETERS: Our sole reliance on that?

12 QUESTION: Yes, that should be interpreted to  
13 mean official business and hence subject to  
14 reimbursement for travel expenses.

15 MS. PETERS: Well, our reliance is on that and  
16 our reliance is on the congressional objectives and  
17 purposes where they found collective bargaining to be in  
18 the public interest.

19 QUESTION: I know, but if they had not --  
20 Suppose they had decided not to subsidize collective  
21 bargaining at all.

22 MS. PETERS: Right.

23 QUESTION: You would not then be here making a  
24 claim would you?

25 MS. PETERS: That is right.

1           QUESTION: Except for the official time and  
2 the payment of wages while you are bargaining you would  
3 not be here.

4           MS. PETERS: That is right.

5           QUESTION: So is there any historical support  
6 in the executive orders or practice in the government  
7 for suggesting that official time includes travel?

8           MS. PETERS: Well, the Assistant Secretary of  
9 Labor Management Relations Regulations under the  
10 executive order provided that witnesses at hearings be  
11 granted official time, and they also got travel  
12 expenses. He precluded the payment of overtime for  
13 them.

14           Also as I remember --

15           QUESTION: But that is a far cry from saying  
16 -- Witnesses is one thing, but representing an  
17 organization as its bargaining representative is  
18 another. Is that all you have got for the past  
19 practice?

20           MS. PETERS: Well, we have that and then, of  
21 course, under Executive Order 10988 did provide that  
22 meetings and consultations could be conducted on  
23 official time and the Comptroller General first said  
24 that they could not get travel expenses either but then  
25 he modified that in keeping with the Civil Service

1 Commission guidelines so that it would seem that in some  
2 circumstances --

3 QUESTION: How did he modify it?

4 MS. PETERS: Pardon?

5 QUESTION: How did he modify it?

6 MS. PETERS: He modified it by saying that  
7 travel expenses could be paid pursuant to the Civil  
8 Service Commission guidelines which those guidelines for  
9 the most part did not allow the payment of travel  
10 expenses for negotiations. But then negotiations under  
11 that executive order -- The use of official time was not  
12 encouraged for negotiations under that executive order,  
13 but one could assume that for the activities for which  
14 official time could be used or was encouraged under the  
15 executive order assumably travel expenses could be  
16 paid.

17 QUESTION: Do you know of any instances in the  
18 past where travel expenses have actually been paid for  
19 the time spent negotiating or to go and come from  
20 negotiating sessions?

21 MS. PETERS: You mean before the Act? I do  
22 not have anything that I can cite to, but as I recall --  
23 Well, I do not have anything I can cite to on that.

24 QUESTION: Is there any practice since?

25 MS. PETERS: In the payment -- Well, people

1 are sort of waiting to see what this Court does in it  
2 before --

3           QUESTION: Has anybody actually paid the  
4 expenses up to date?

5           MS. PETERS: Not that I know of, no, but that  
6 is because the matter has been in litigation I believe.

7           I would note that other attributes of  
8 employment do attach to time spent in negotiations. For  
9 example, we noted in our brief that the Office of  
10 Personnel Management in the Federal Personnel Manual  
11 letter characterized official time spent on  
12 representational functions as hours of work.

13           Now that characterization on the part of OPM  
14 has an operative significance beyond that FPM letter  
15 because the same phrase appears in its regulations  
16 applying the Fair Labor Standards Act to federal  
17 employees, and there OPM provides in 5CFR551.424B that  
18 official time is hours of work for FLSA purposes.

19           On the other hand, it says that such things as  
20 leave and holidays and excused absences which it calls  
21 paid periods of nonwork in 5CFR551.401 is not hours of  
22 work for FLSA purposes. So that is one attribute of  
23 employment that attaches to someone on official time.

24           Then as we have also noted --

25           QUESTION: Who promulgated those regulations,

1 Ms. Peters?

2 MS. PETERS: That was OPM. That was OPM which  
3 administers the Fair Labor Standards Act as it applies  
4 to federal employees.

5 As we have also noted --

6 QUESTION: What is the relationship between  
7 the FLRA and OPM?

8 MS. PETERS: They are separate agencies with  
9 separate areas of responsibility.

10 As we also noted an employee who would be  
11 injured traveling to or from negotiations would be  
12 considered to be injured in the course of duty for  
13 Federal Employee Compensation Act purposes, and it also  
14 --

15 QUESTION: If you analogize that to state  
16 workmen's compensation laws, certainly state workmen's  
17 compensation laws have been extended to situations where  
18 they will find something arose out of and in the course  
19 of employment that it is inconceivable the employee  
20 would have been paid for if he had been demanding pay.

21 MS. PETERS: That may be, but my point is that  
22 there are a number of attributes of employment that  
23 attach to someone who is in the federal sector on  
24 official time for --

25 QUESTION: I am suggesting your last example

1 proves very little.

2 MS. PETERS: I think that perhaps more  
3 instructive than the various factors that support our  
4 view that it is official business, that time spent  
5 negotiating is official business is the fact that  
6 Petitioner really has not provided any reason why  
7 negotiations should not be considered official  
8 business.

9 Petitioner suggested a test which says that  
10 official business -- that an activity is not official  
11 business unless it is conducted under the direction of a  
12 supervisor or that the quality of the employee's  
13 performance can be appraised. However, the Petitioner  
14 has cited no support in statute or regulation or case  
15 authority for that test.

16 In fact, the authority cited at pages 42 and  
17 43 of our brief which indicates that the official  
18 business designation is given to activities that are not  
19 directly mission related contradicts that contention.  
20 That authority applies, for example, to employees who  
21 attend administrative employment-related hearings about,  
22 for example, their own suspensions or their own  
23 performance appraisal appeal, and it shows that it  
24 covers things such as going to meetings and conferences  
25 and seminars and that sort of thing which may or may not

1 be directly mission-related.

2           Petitioner also points to the language of  
3 Section 7131(a) which specifies that an employee who is  
4 on official time will be on official time or the  
5 employee otherwise would have in duty status. The  
6 Petitioner suggests that Congress intended by this  
7 language either to say that they were not really on duty  
8 time or that because they would generally travel and  
9 take meals while they are not on duty time that Congress  
10 meant by this language to preclude travel expenses.

11           But suffice it to say that very similar  
12 language appeared in the Assistant Secretary of Labor's  
13 regulations under the executive order and there travel  
14 expenses and per diem were paid, but overtime was  
15 excluded. The language also appears in OPM's FLSA  
16 regulations regarding official time, where it appears to  
17 be viewed merely as the restriction on the amount of  
18 unscheduled overtime that can be counted as hours of  
19 work.

20           So I think the most reasonable view of that  
21 language is that it is a restriction on the payment of  
22 overtime and premium paid to employees who are involved  
23 in negotiations and not on the payment of travel  
24 expenses. Petitioner has also suggested here today and  
25 in the reply brief that "official time" is a term of art

1 simply used in labor relations programs and that it does  
2 not operate to signify entitlement to travel and per  
3 diem.

4 Well, the term "official time" was used in the  
5 executive orders, and it is used in the federal sector  
6 statute, but it has no more artful use than to signify  
7 that certain activities are to be conducted on duty time,  
8 paid time rather than on nonduty time. This usage  
9 supports rather than defeats the notion that the  
10 employee who is engaged in activities that are conducted  
11 on official time is engaged in official business.

12 So as far as our position that this is  
13 official business, that negotiations is official  
14 business I would point then to the way Congress  
15 characterized the time spent in the activity and the  
16 great importance that it attached to the activity, that  
17 is, that it is something that is in the public  
18 interest. The nature of the activity, that is, that it  
19 is employment related. It certainly seems to me that  
20 something that is federal employment related could fall  
21 within the sphere of official business and in fact as I  
22 indicated people who attend administrative hearings  
23 about their own grievances or suspensions or performance  
24 appraisal appeals are considered to be on official  
25 business and entitled to travel expenses.



1           So I think all those factors point to the  
2 conclusion that these employees are on official  
3 business. Now I would like to address the deference  
4 point because when the Authority based on the goals and  
5 objectives of its statute also determined that employees  
6 are engaged in official business within the meaning of  
7 the Travel Expense Act the courts that ruled adversely  
8 on this issue and the Petitioner take the position that  
9 for that reason the Authority is owed less than usual  
10 deference because it refers to another statute.

11           Now first of all as both Judges Haney and  
12 Oakes pointed out in their dissents in the Eighth and  
13 Second Circuits this position of the Petitioner and the  
14 other courts is in error because first of all the very  
15 core of the Authority's analysis here is of the  
16 interpretation of the terms of its own statute, but in  
17 any event the notion that the Authority is necessarily  
18 owed less deference in cases such as this where in order  
19 to resolve completely an issue under its own statute it  
20 has to look outside in an ancillary fashion at another  
21 statute --

22           QUESTION: What you are saying is that they  
23 are construing the authority of another agency, the  
24 authority conferred by Congress on a different agency.

25           MS. PETERS: Well, first I would note that GSA

1 which has authority under the Travel Expense Act in its  
2 regulations has essentially said that individual  
3 agencies can authorize travel and thus determine whether  
4 it is official business or not except as otherwise  
5 provided by law. I would think it would be fair to take  
6 from that that when an agency is affected by someone  
7 else's enabling statute such as the FLRA statute that it  
8 is up to the FLRA to determine what is official business  
9 within the meaning of that enabling statute.

10 QUESTION: But the underlying proposition is  
11 that it is the business of the agency. The central  
12 business of the agency is what is covered by the GSA  
13 provision.

14 MS. PETERS: Yes.

15 QUESTION: In other words, if a judge is  
16 assigned from one district to another he is authorized  
17 to have his expenses paid and his per diem, but there he  
18 is engaged or she is engaged in the business of that  
19 agency and not some other agency.

20 MS. PETERS: Yes. But an individual federal  
21 agency besides having its own enabling statute is  
22 covered by a number of statutes and regulations dealing,  
23 well, such as in this case with federal personnel  
24 matters, and travel could be connected with those  
25 statutes as well. It would seem reasonable that the

1 person responsible or the agency responsible for those  
2 statutes would determine whether something is official  
3 business within the terms of that statute.

4           As I was saying this notion that the Authority  
5 is necessarily owed less deference in a situation such  
6 as this where it finds it necessary to look outside to  
7 another statute has troubling implications not only for  
8 this case but also for the Authority's ability in the  
9 future to function in the way that Congress intended.  
10 The Authority has a unique enabling statute and in some  
11 instances there is an express direction that they may  
12 have to look outside the statute in order to resolve  
13 completely an issue arising under the statute.

14           For example, in Section 7117 under which the  
15 Authority makes determinations of negotiability it must  
16 determine according to Congress whether a union  
17 bargaining proposal is not inconsistent with any federal  
18 law or any government-wide rule or regulation. Now the  
19 Congress did not set out a separate standard of review  
20 for negotiability determinations, however.

21           The standard of review for those final orders  
22 is the same as for other final orders of the authority.  
23 That is, it will not be set aside unless it is arbitrary  
24 and capricious.

25           I think that it is just a matter of common

1 sense that even where Congress has not made it express  
2 that an agency such as the FLRA that administers a  
3 federal sector collective bargaining program will from  
4 time to time have to resolve issues that in an ancillary  
5 fashion implicate federal personnel laws or regulations  
6 or other laws or regulations affecting the federal work  
7 force or work place and this case is an example --

8 QUESTION: Ms. Peters, can I ask a question at  
9 this point?

10 MS. PETERS: Sure.

11 QUESTION: It goes to the standard of the  
12 review problem and the method of review.

13 MS. PETERS: Sure.

14 QUESTION: Supposing the issue arose such as  
15 Justice Marshall asked you about that whether the  
16 employee was entitled to take first class because there  
17 was not tourist available or something that went to the  
18 amount of the travel expense reimbursement and there was  
19 a refusal to pay the requested amount, could the  
20 employee under your view of the statutory scheme cite  
21 that as an unfair labor practice and ask that it be  
22 decided by your Authority?

23 MS. PETERS: They might try to take it up  
24 through the unfair labor practice route. If they were  
25 under a collective bargaining agreement it could also I

1 would imagine be the topic for a negotiated grievance  
2 procedure, but that does not necessarily mean even if  
3 they ask that the Authority review it that a complaint  
4 would issue or that if a complaint did issue --

5 QUESTION: This is the route they took in this  
6 case.

7 MS. PETERS: Pardon?

8 QUESTION: This is the route they took in this  
9 case. This arised out of an unfair labor practice  
10 proceeding.

11 MS. PETERS: Yes.

12 QUESTION: As I understand you you say the  
13 standard of review is arbitrary and capricious for that  
14 reason, and I was giving you a hypothetical with the  
15 issue just a little different. They are coming up in  
16 exactly the same way. Would you say there the standard  
17 of review would also be arbitrary and capricious?

18 MS. PETERS: If it came up in an unfair labor  
19 practice proceeding, yes.

20 QUESTION: The question of whether they could  
21 have ridden first class instead of tourist?

22 MS. PETERS: Well, if he raised that as an  
23 unfair labor practice matter, but what I am saying is  
24 that you might try to bring it up that way but it would  
25 not necessarily be a violation of the Act and the

1 general counsel would not necessarily issue a  
2 complaint.

3 QUESTION: No, but if your Authority thought  
4 that the Comptroller General's people were being much  
5 too strict I would suppose under your view you would  
6 have the right to say yes that is an unfair labor  
7 practice if we are not getting the right amount of  
8 money.

9 MS. PETERS: The Authority would be bound by  
10 the GSA's federal travel regulations which it recently  
11 recognized in a negotiability determination are a  
12 government-wide regulation and that an issue cannot be  
13 -- For example, a union bargaining proposal cannot be  
14 inconsistent with the federal travel regulations, and I  
15 believe that there --

16 QUESTION: Well, what if we had here -- I know  
17 we do not, but what if we had here a regulation by the  
18 Comptroller General labeled travel regulation and it  
19 said just what the Solicitor General is saying here that  
20 union negotiating sessions do not support a travel  
21 expense claim?

22 MS. PETERS: Well, one point in that regard is  
23 that GSA has never before or since the Authority's  
24 determination said anything like that nor has Congress.  
25 It has been silent in the nearly four years since the

1 Authority has made this determination even though it has  
2 used the official time language --

3 QUESTION: But the case would be different if  
4 they had such a regulation. Is that what you are  
5 suggesting?

6 MS. PETERS: If they had such a regulation?

7 QUESTION: Yes.

8 MS. PETERS: That said that --

9 QUESTION: If we knew that the Comptroller  
10 General in some written formal document had adopted the  
11 position of the Solicitor General in this case, would it  
12 be a different law suit?

13 MS. PETERS: If he issued a decision or if the  
14 GSA instead of having the regulation saying that an  
15 agency may determine whether it is authorized travel or  
16 not, yes, it would be a different case and the Authority  
17 would have to look at those regulations. But that is  
18 not the case here.

19 Traditionally the Comptroller General has  
20 given leeway ever since the Civil Service Commission  
21 days to the labor relations body to determine the travel  
22 expenses and official time question. At this point the  
23 Comptroller General has noticed that even as to his  
24 official time rulings under the executive orders that  
25 because of the nature of Section 7131 which is very

1 specific and departs from the executive orders he  
2 considers his decisions under the executive orders on  
3 that issue to be superseded to the extent that they are  
4 inconsistent with the new law.

5 QUESTION: Ms. Peters, this is irrelevant, but  
6 I am curious. Does the record indicate how much as a  
7 practical matter we are talking about in dollars?

8 MS. PETERS: Overall or --

9 QUESTION: In this issue.

10 MS. PETERS: In this particular case or  
11 government-wide?

12 QUESTION: In this issue generally.

13 MS. PETERS: In this issue generally. No.  
14 Petitioner I believe cited a speech by an OPM official  
15 suggesting \$2 million, a figure something like that, but  
16 I do not think that there is any really documentable --

17 QUESTION: No hard evidence.

18 MS. PETERS: -- Hard evidence on that point.

19 QUESTION: We have a lot of speeches cited to  
20 us.

21 MS. PETERS: Pardon?

22 QUESTION: We have a lot of speeches cited to  
23 us.

24 MS. PETERS: I see.

25 But on the area of cost, I would point out



1 that any discussion of the cost of the Authority's  
2 determinaton must necessarily take into account the  
3 benefits that Congress viewed as being derived from  
4 collective bargaining such as increased productivity or  
5 more efficient government which would in some sense cut  
6 down on the overall cost of government one would think.

7           QUESTION: Have you got any commentators in  
8 this case?

9           (Laughter)

10           MS. PETERS: I have not a single commentator  
11 to cite, student or nonstudent.

12           I would note that the statute by its own terms  
13 and also the Authority decisions set limits on the  
14 entitlement to official time and thus accordingly to the  
15 entitlement to travel and per diem. Section 7131  
16 expressly limits the number of employee representatives  
17 who are entitled to official time to the number of  
18 management representatives, and that is a number, of  
19 course, that is within the control of the agency.

20           The statute also limits official time  
21 entitlement to federal employees so that any union staff  
22 members who are involved in the negotiations will not  
23 receive either official time or travel expenses. The  
24 statute prohibits the use of official time for internal  
25 union matters so that it is only the activities which

1 Congress perceives as being in the public interest for  
2 which official time can be used.

3           The Authority has placed limits on the  
4 entitlement to official time. It has ruled that an  
5 employee negotiator in order to receive official time  
6 must be a member of the bargaining unit involved in the  
7 negotiations and not another bargaining unit.

8           QUESTION: If I could follow Justice  
9 Blackmun's question one step further, if we agree with  
10 you is there any way we can prevent all of the meetings  
11 being held in Hawaii, Nevada, Puerto Rico, et cetra?

12           MS. PETERS: Well, that is generally one of  
13 the ground rules that has to be established by the  
14 parties. I would imagine that the management  
15 representatives unless they want to go to Hawaii will  
16 make some efforts to keep the meeting from being held  
17 there.

18           QUESTION: They will deduct theirs from the  
19 income tax. It will not hurt them.

20           (Laughter)

21           MS. PETERS: Not if it is official business I  
22 do not think, but in any event that is a matter for the  
23 parties to determine and in fact given the number of  
24 nation-wide bargaining units that is one additional  
25 factor in support of the Authority's determination

1 because it facilitates the parties coming to agreement  
2 on where to hold the meetings so that if all the  
3 management representatives are already centrally located  
4 in Washington, D.C., for example, they can bring the  
5 union representatives in there and there will not be any  
6 cost of travel for the management representatives at  
7 all.

8 I would address one final point and that is  
9 the third ground upon which the Authority relied in  
10 defining which the Ninth Circuit relied in finding that  
11 the Authority's determination was correct and that is  
12 that the Authority's reading of the official time  
13 provision of Section 7131A which entitled negotiators to  
14 payment of travel expenses and per diem is consistent  
15 with the Authority's reading of Section 7131C which  
16 enables the Authority to determine that an employer  
17 agency will grant official time and in the Authority's  
18 view travel expenses and per diem to employee  
19 participants in Authority proceedings.

20 Now the --

21 QUESTION: Have you said as much as you are  
22 going to say, Ms. Peters, about why this is justifiably  
23 different than private collective bargaining?

24 MS. PETERS: It is different from private  
25 collective bargaining first of all because in the

1 private sector there is no statutory official time  
2 requirement and secondly because both the parties to  
3 private bargaining are private parties there is not even  
4 a question of equalizing public funding support.

5 QUESTION: But you can look at that two  
6 different ways I think. You can look at the public  
7 sector bargaining as the government, the employer  
8 representing the public but the employees are  
9 representing an adverse faction just as they would  
10 represent an adverse faction in private sector  
11 bargaining.

12 The fact that all are government employees in  
13 a technical sense I do not think really makes it  
14 irreputable, the other position.

15 MS. PETERS: Well, I think there are  
16 differences in the nature and scope and structure of  
17 private sector bargaining as compared to federal sector  
18 bargaining which means that it may well not be an  
19 appropriate determination in the private sector but it  
20 is supportable here. The scope of bargaining in the  
21 private sector is very broad entailing a large number of  
22 economic items for one thing, and in the structure  
23 emphasis is upon private ordering with the parties  
24 largely left free to muster up whatever economic forces  
25 they can to bring to bear on the issues.

1           For that nature the nature of collective  
2 bargaining in the private sector is often referred to as  
3 economic warfare with each side having an arsenal of  
4 economic weapons such as strike or lock out to enforce  
5 their views in bargaining issues. Now in the federal  
6 sector that is much different.

7           The scope is narrow with no bargaining over  
8 items such as wages or pensions or a host of other items  
9 that would be bargainable. In the structure --

10           QUESTION: Why does narrow versus broad  
11 bargaining suggest that your conclusion rather than the  
12 opposite one should be reached?

13           MS. PETERS: Because it dictates that there is  
14 a different nature of bargaining. While certainly the  
15 bargaining that occurs in the federal sector is an arms  
16 length transaction with independent views being  
17 expressed by both sides of the table, it cannot be  
18 characterized as economic warfare because there are no  
19 economic weapons. We are not concerned about an  
20 economic balance, and there are no legal economic  
21 weapons such as strike or lock out.

22           QUESTION: That shows why it may be different  
23 but why does it show that it is more likely that the  
24 official time should be construed to include what you  
25 contend it is here as opposed to the private sector?

1 MS. PETERS: Because it is a question here.  
2 Entitlement to official time turns upon what in the  
3 private sector would turn upon perhaps a company rule  
4 governing travel expenses. Here it turns upon a federal  
5 statute which says if something is official business  
6 that it is official time.

7 QUESTION: Yes, but you concede then I take it  
8 the private sector bargaining unless they cover it in  
9 the collective bargaining contract the union  
10 representative would not be paid. Here your group of  
11 federal employees could bargain for this payment could  
12 it not?

13 MS. PETERS: Well, that is not entirely clear  
14 to me. If this Court were to hold that this were not  
15 official business and the Authority is bound in a  
16 negotiability situation if there were a union bargaining  
17 proposal that travel expenses be paid but this Court has  
18 found that collective bargaining negotiation time is not  
19 official business it may well be. It certainly is  
20 arguable that that proposal would be inconsistent with  
21 the federal law or government regulation so that it  
22 could not be --

23 QUESTION: The wage payment or the payment for  
24 the official time does not necessarily have to be  
25 official business does it?

1 MS. PETERS: The wage payment? The wage  
2 payment -- Well, the Congress did express, though, that  
3 they were to be on paid time just as management was on  
4 paid time.

5 QUESTION: Whether it is official business or  
6 not?

7 MS. PETERS: Well, management is on official  
8 business so if they are on paid time the same as  
9 management --

10 QUESTION: No, but the employees.

11 MS. PETERS: Pardon?

12 QUESTION: How about the employee?

13 MS. PETERS: Well, in our view the employee is  
14 on official business.

15 CHIEF JUSTICE BURGER: Thank you.

16 Do you have anything further?

17 ORAL ARGUMENT OF CAROLYN CORWIN, ESQ.,

18 ON BEHALF OF THE PETITIONER -- REBUTTAL

19 MS. CORWIN: Mr. Chief Justice, just a few  
20 points.

21 We are not in any way suggesting that the FLRA  
22 should never look outside its own statute, and I do not  
23 want to leave the Court with that impression. I think  
24 that the core of the analysis of the FLRA does encompass  
25 a reference to a statute outside of its own

1 jurisdiction, and we suggest that that may diminish the  
2 deference that is due and we also suggest that the  
3 Authority is inconsistent with the general approach of  
4 the General Services Administration in this area in  
5 which the agency is in the best position to determine  
6 its own mission and to determine whether travel  
7 corresponds to that mission.

8 To the extent that Ms. Peters suggested that  
9 the term "official business" shows up in Title VII, I  
10 just wanted to indicate that it does not. I may have  
11 misunderstood what she said, but the term "official  
12 business" shows up in the General Services  
13 Administration statute. It does not show up in the  
14 federal labor relations statute.

15 I would also like to address the point that  
16 was raised about payment for witnesses at hearings and  
17 some of the regulations of the Assistant Secretary of  
18 Labor. There is considerable authority in a lot of  
19 areas for payment in relation to attendance at official  
20 hearings.

21 The Comptroller General has approved that sort  
22 of payment not only in the labor relations area but in  
23 broader areas of personnel management. That is not what  
24 we are talking about here.

25 We are talking about collective bargaining



1 negotiations where you do not have any sort of history  
2 of this sort of payment being approved. In fact you  
3 have articulated understandings that travel expenses  
4 were not included within the concept of official time.

5           There was also reference to Office of  
6 Personnel Management regulations referring to hours of  
7 work. I think if you look at those regulations that  
8 term is not any sort of substantive judgment about what  
9 an employee is doing during representation or collective  
10 bargaining.

11           That is basically an accounting or reporting  
12 term. You put your hours into hours of work and you  
13 determine whether the minimum wage has been paid or  
14 overtime is required.

15           I do not think it has any bearing on the issue  
16 before the Court here.

17           QUESTION: Ms. Corwin, can I ask one other  
18 question?

19           MS. CORWIN: Yes, indeed.

20           QUESTION: In a way this law suit is kind of a  
21 strange case because it is a fight within the family.  
22 They are different government agencies disagreeing with  
23 one another.

24           As I understand your opponent she seems to say  
25 if the Comptroller General had ruled unequivocally on

1 this issue that may well change the result. I wonder  
2 why it had to reach us and it could not have been  
3 resolved at some sort of a level like that.

4 MS. CORWIN: Well, unfortunately the situation  
5 and I will try to clarify that is that the Comptroller  
6 General has been asked for his views under this  
7 statute. By the time the question was raised as I  
8 understand it the matter was already before the  
9 Authority and in the courts, and the Comptroller General  
10 has adopted regulations that say when that is the case  
11 unless both parties to the dispute ask the Comptroller  
12 General he will not issue an opinion and therefore the --

13 QUESTION: His time is less valuable than ours  
14 I guess.

15 (Laughter)

16 MS. CORWIN: Unfortunately I think by the time  
17 somebody thought of that alternative things were already  
18 in the Courts of Appeals.

19 QUESTION: But the other agencies are not  
20 bound by the Comptroller General. They are bound by the  
21 rulings of this Court. Is that not the difference?

22 MS. CORWIN: That is, of course, a matter that  
23 is of great interest to the agencies, but I --

24 QUESTION: It certainly does not bind the  
25 individual employee.

1 MS. CORWIN: Well, generally there is a  
2 considerable amount of deference given to the  
3 Comptroller General's views, and I would like to clarify  
4 the executive order situation in which the Comptroller  
5 General rules that in the case in which an agency  
6 concluded that it was in the best interests of the  
7 government that there could be authorization of travel  
8 expenses. Now this was by no means a blanket  
9 authorization.

10 The principle here articulated by the  
11 Comptroller General was that if the agency concludes  
12 that it is for the interest of the government, more  
13 convenient, will save money overall that the agency in a  
14 particular fact situation could conclude that it was  
15 appropriate to pay the expenses but not in the sort of  
16 broad situation you have here not generally for  
17 collective bargaining purposes.

18 I think one ought to assume that Congress was  
19 aware of this Comptroller General interpretation and  
20 that it did adopt this sense in the same sense that it  
21 used the term "official time". Finally, I think the  
22 proposition that collective bargaining is in the public  
23 interest is one with which we have no difficulty.

24 This was a proposition that was essentially  
25 included in the executive order program in some

1 different words. It was articulated by Congress in the  
2 1978 Act, and I think it is a foundation of the federal  
3 labor management relations program, but that general  
4 proposition is not enough to get us to the conclusion  
5 that Congress somehow intended to shift the expenses in  
6 this case from the unions where they had always been to  
7 the federal agencies.

8           The general proposition is simply not  
9 translated into an entitlement to federal reimbursement  
10 of the expenses here.

11           Thank you.

12           CHIEF JUSTICE BURGER: Thank you, counsel.

13           The case is submitted.

14           (Whereupon, at 2:48 p.m., the case in the  
15 above-entitled matter was submitted.)

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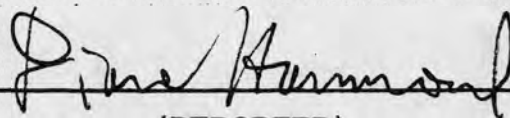
**CERTIFICATION**

**Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:**  
**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, Petitioner v. FEDERAL LABOR RELATIONS AUTHORITY, ET AL. #72-799**

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**and that these attached pages constitute the original transcript of the proceedings for the records of the court.**

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