

porary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill. . . .

The amendment restricts the use of funds to carry out part of the authorized activity while allowing but not requiring the agency to use funds in the bill to carry out other authorized activities. While an amendment to an appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity or a portion thereof authorized by law if the limitation does not require new duties or impose new determinations.

The Chair overrules the point of order.

***Reduction in Trade Adjustment Assistance by Amount of Unemployment Insurance***

**§ 73.12 Where existing law (19 §2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance was held not**

**to impose new duties upon officials already required to make those reductions.**

The proceedings of June 18, 1980,<sup>(10)</sup> are discussed in § 52.36, supra.

**§ 74. Federal Employment**

***Maximum Age***

**§ 74.1 To an appropriation bill, an amendment to provide that no part of the funds thereby appropriated shall be used to pay compensation of persons who allocate positions in the classified civil service with a requirement of maximum age for such positions was held to be a proper limitation and in order.**

On Mar. 30, 1955,<sup>(11)</sup> the Committee of the Whole was considering H.R. 5240, an independent offices appropriation bill. The following proceedings took place:

Amendment offered by Mr. [Sidney R.] Yates [of Illinois]: On page 37, after line 25, insert a new section to be designated as section 108, as follows:

“No part of any appropriation contained in this title shall be used to pay the compensation of any officers and employees who allocate positions in the

10. 126 CONG. REC. 15354-56, 96th Cong. 2d Sess.

11. 101 CONG. REC. 4077, 84th Cong. 1st Sess.

classified civil service with a requirement of maximum age for such positions.”

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Illinois [Mr. Yates] on the ground that it is legislation and placing a duty upon the agency to determine the age of each applicant. . . .

MR. YATES: Mr. Chairman, this is negative restriction directed solely to funds sought to be appropriated by this bill. It is not legislation on an appropriation bill.

THE CHAIRMAN:<sup>(12)</sup> The Chair is ready to rule. It appears to the Chair that this is a proper limitation. Therefore, the point of order is overruled.

***Limiting Number of Employees in Executive Office of President***

**§ 74.2 An amendment to a general appropriation bill restricting the total amount of funds used to pay certain salaries and for certain positions constitutes a valid limitation if it is confined to appropriations made by that bill and does not affect funds appropriated in other acts.**

On June 22, 1972,<sup>(13)</sup> During consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of

12. Albert Rains (Ala.).

13. 118 CONG. REC. 22098, 22099, 92d Cong. 2d Sess.

order was raised against the following amendment:

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Udall: On page 38, line 18, add a new section 611, as follows:

Sec. 611. No part of the appropriation made by this Act shall be expended for the compensation of more than 1647 employees in the Executive Office of the President, including not more than 50 employees of any Department or agency detailed to serve in the Executive Offices;

Nor shall the total amount appropriated to the Executive Office of the President for personnel compensation exceed \$29,737,760;

Nor shall any part of the appropriations be expended for the compensation of more than 95 ungraded employees in the Executive Office of the President, whose individual salaries are in excess of the maximum rates of pay established at the pay level of GS-10 of the General Schedule (5 USC 5332);

Nor shall any part of the appropriation be expended for the compensation of more than 549 employees in the Executive Office of the President whose annual rates of pay are more than the minimum rate in effect for GS-13 of the General Schedule (5 USC 5332) but less than the annual rate of pay for Level II of the Executive Schedule (5 USC 5313);

Except that no part of this section shall apply to the compensation of any employees of the White House Office, or the compensation of the President. . . .

MR. [HOWARD W.] ROBISON of New York: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Arizona.

THE CHAIRMAN:<sup>(14)</sup> The Chair will hear the gentleman.

MR. ROBISON of New York: Mr. Chairman, it is my understanding that in order to be qualified under the rules and the precedents of the House, a limitation on an appropriation bill must limit the funds appropriated under that act and that act only.

I think the chairman of the subcommittee has already pointed out to the Chair that there are other Executive Office agencies under the heading of the Executive Office of the President to which the amendment seeks to add a limitation. I would say to the Chair that those agencies are, among others, the Council on Environmental Quality, the National Aeronautics and Space Council, the National Commission on Productivity, the National Council on Marine Resources and Engineering, the Office of Consumer Affairs, the Office of Science and Technology, the Special Representative for Trade Negotiations, and finally, Mr. Chairman, the Office of Economic Opportunity, for none of which agencies is money provided under this appropriation bill.

MR. UDALL: Mr. Chairman, I wish to be heard on a point of order; in the first place, my esteemed friend from New York (Mr. Robison) did not reserve a point of order. He is either making the same one my friend from Oklahoma made, or he is making a different one, and the gentleman from Oklahoma's point of order has been ruled upon.

He has no right to make a point of order, since he did not reserve one, and debate had intervened.

On the second ground, I think the Chairman has already covered in his

earlier ruling the precise point the gentleman has raised.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, may I be heard further?

THE CHAIRMAN: Yes, the gentleman is recognized.

MR. STEED: Mr. Chairman, if the Chair will direct his attention to the first paragraph, he will see a specific reference to the number 1,647 employees in the Executive Office of the President. It does not say, in this act. It says, in the entire office. It says:

Nor shall the total amount appropriated—

Not in this act, but in all acts—

To the Executive Office of the President for personnel compensation exceed \$29,737,760.

Mr. Chairman, there is no way from the record here or any other available record that we can show where the 1,647 limitation does increase or decrease the people available in the Executive Office of the President.

In the rules of the House it is very specific under the Holman rule, that unless a definite reduction can be shown this language would be legislation and would not be appropriate to this bill.

THE CHAIRMAN: The point made by the gentleman from New York is essentially that already made by the gentleman from Oklahoma. This bill does contain appropriations for the Executive Office of the President and the Chair reads the amendment as being a limitation upon those appropriations. And, as pointed out before, the specific provision is that no part of the appropriations made by this act shall be ex-

14. John S. Monagan (Conn.).

pending for certain purposes—detailed in the first four paragraphs of the amendment. The Chair is constrained, therefore, to overrule the point of order.

### *Hatch Act Application*

**§ 74.3 To an appropriation bill an amendment providing that no part of any appropriation in the bill be used for compensation of any officer or employee of a designated bureau who for the purposes of the Hatch Act, “shall not be included within the construction of the term ‘officer’ or ‘employee’” was held in order as a limitation where the determinations of employment status were already required by law.**

On Mar. 4, 1954,<sup>(15)</sup> the Committee of the Whole was considering H.R. 8067, a State, Justice, and Commerce Departments appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Louis C.] Rabaut [of Michigan]: At page 52, after line 19, add the following new section:

“Sec. 604. No part of any appropriation contained in this act shall be used to pay the salary or wages of any officer or employee of the Bureau of Secu-

rity and Consular Affairs of the Department of State who, for the purposes of the act of August 2, 1939, as amended (5 U.S.C. 118i), shall not be included within the construction of the term ‘officer’ or ‘employee.’”

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill; that it changes existing law and requires new and additional duties.

THE CHAIRMAN:<sup>(16)</sup> Does the gentleman from Michigan desire to be heard?

MR. RABAUT: Yes, Mr. Chairman. I cite volume VII, Cannon’s Precedents, section 1663 and section 1670:

1. Denial of use of an appropriation for payment of salaries of employees of the Department of Agriculture who forecast the price of agricultural products was construed as a proper limitation and in order on an appropriation bill.

The Chairman at that time, March 2, 1928, Allen T. Treadway, of Massachusetts, relied on prior decisions of Chairmen of the Committee of the Whole, Mr. Graham, of Illinois, in 1924, and Mr. Longworth, of Ohio, in 1923, and held such a limitation proper and not subject to a point of order.

2. An amendment forbidding payment of salary authorized by law from any part of an appropriation to a designated individual was held to be a limitation and in order on an appropriation bill. . . .

MR. TABER: . . . This amendment, Mr. Chairman, refers to the so-called Hatch Act, section 118i, of title V of the Code. It reads as follows:

For the purposes of this section the term “officer” or “employee” shall

15. 100 CONG. REC. 2697, 2698, 83d Cong. 2d Sess.

16. Leroy Johnson (Calif.).

not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the Office of the President (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws. The provisions of the second sentence of this subsection shall not apply to the employees of the Alaska Railroad.

This provision in effect brings about the prohibition of payments to these employees who are not determined to be officers or employees within the provisions of this paragraph of section 118. It requires a determination on the part of some officer before the thing can be effective. For that reason, it requires additional duties to be performed by some officer before it can be effective. Therefore, it is subject to the rule that it requires additional duties, and it is an attempt on the part of the amendment to change and enlarge the provisions of that section. . . .

MR. RABAUT: Mr. Chairman, in House Report No. 1365, 82d Congress, relative to H.R. 5678, the McCarran-Walter bill, it is stated on page 36:

The Bureau of Security and Consular Affairs, section 104, creates a new organizational setup within the Department of State to administer the issuance of passports and visas. There will be a responsible authority in the Department of State of rank and power corresponding to the Commissioner of Immigration and Naturalization and to the Director of the Federal Bureau of Investigation—

MR. J. EDGAR HOOVER—

and the Central Intelligence Agency—

Mr. Dulles—

All of whom are to collaborate in the interests of national security.

Is it the contention of anybody here that we would want, for instance, Mr. J. Edgar Hoover going around the country making political speeches?

THE CHAIRMAN: The Chair is prepared to rule. . . .

It appears to the Chair that the contention of those who make the point of order is answered by this provision in Hinds' Precedents, volume IV, section 3954:

A provision that no part of an appropriation for pay of retired Army officers should go to one receiving pay for services as a civil employee was held to be a limitation.

Likewise we have a similar expression in Cannon's Precedents, volume VII, section 1651, which contains the provision that no part of an appropriation shall be allotted to a beneficiary failing to comply with certain requirements. That provision was held in order as a proper limitation on an appropriation bill. With those two precedents the Chair is constrained to overrule the point of order, and the Chair so rules.

The point of order is overruled.

### *Past Employment of Heads of Departments*

**§ 74.4 An amendment providing that no part of an appropriation shall be paid to**

**the head of any executive department who, within a specified period was a partner in a firm which derived any income from representing a foreign government, was held to be a proper limitation on an appropriation bill and in order.**

On July 26, 1951,<sup>(17)</sup> the Committee of the Whole was considering H.R. 4740, a State, Justice, Commerce Departments and Judiciary appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [John] Phillips [of California]: On page 58, following line 14, add a new section to be numbered section 602:

"None of the money appropriated in this act shall be paid to the head of any executive department who, within a period of 5 years preceding his appointment, was a partner in, or a member of, a professional firm which derived any part of its income from representing, or acting for, a foreign government, or who, acting as an individual, derived income from such representation."

Mr. John J. Rooney, of New York, made a point of order on which debate occurred as follows:

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Chairman, the proposed amendment starts out under the guise of a limitation, "No money in this

appropriation shall be paid," and so forth. A limitation, as I understand it, cannot impose any more duties upon an official, any affirmative duties, any additional duties, that do not presently exist by law.

Let us see what additional duties this amendment imposes upon someone. It does not state here, but someone has to carry out the provisions of this amendment if it were held to be in order and it was adopted. "Who in a period of 5 years preceding his appointment." Who is going to determine the 5-year period? Somebody has got to say. That is an additional duty and responsibility resting upon somebody. This is legislation. "Was a partner in." Somebody has to pass on that. That imposes additional duties upon somebody. "Or a member of a professional firm which derived any part of its income from representing, or acting for a foreign government." That imposes additional duties upon someone, and that duty is not imposed upon anybody by law now. There is no organic law now relating to it. "Or who, acting as an individual, derived income from such representation." There are many firms where men may be partners in one thing and in one case, and not partners in another. Somebody has to determine all of these factors.

Mr. Chairman, under the guise of a limitation I respectfully submit that the proposed amendment constitutes pure legislation. . . .

MR. PHILLIPS: . . . I am sure that all the information necessary was necessarily obtained before the appointment was made. It all appears, I will say to the gentleman from Massachusetts, in the Senate hearings. . . .

MR. [CLARE E.] HOFFMAN of Michigan: . . . If [Mr. McCormack's] argu-

17. 97 CONG. REC. 8963, 8965, 82d Cong. 1st Sess.

ment is logically followed through it would not be possible for the Congress to make any appropriation, because every appropriation that we make requires that someone take some action to determine that a condition or situation exists before the money appropriated can be had or used. For example, if we make an appropriation for the armed services, someone has to certify the individuals who are entitled to receive it. Someone must take action to create the obligation which justifies the expenditure. What I say with reference to this appropriation is true with reference to every appropriation bill. Every appropriation requires something be done before the money becomes available, an action which is incidental rather than legislative. . . .

THE CHAIRMAN:<sup>(18)</sup> . . . The Chair is prepared to rule.

The gentleman from California has offered an amendment which has been reported by the Clerk. The gentleman from New York has made a point of order against the amendment on the ground that it is not a proper limitation on an appropriation bill.

The Chair has examined the amendment with some degree of care. . . .

It should be clear that almost any limitation must necessarily require some action on the part of somebody. One of the classic illustrations given on many occasions by the distinguished parliamentarian to whom the Chair made reference a few moments ago, Hon. James R. Mann, of Illinois, was that if a provision states that "no part of this appropriation shall be paid to a red-headed man," somebody will have to find that red-headed man and deter-

mine whether his hair is red; therefore, it would appear that in any instance where a limitation is sought to be imposed there must be some activity contemplated or some effort exerted by someone to carry out the provisions of the limitation.

The Chair would invite attention to section 1593 of Cannon's Precedents. . . .

The Chair is of the opinion that that decision is applicable to the pending question raised by the point of order made by the gentleman from New York. It would appear that the over-all and controlling element of the pending amendment is a limitation on an appropriation bill. It is entirely negative in character, and does not affirmatively impose any additional duties upon anybody.

Therefore the Chair overrules the point of order.

*Parliamentarian's Note:* As a general rule, it is in order in a general appropriation bill to describe the qualifications of the recipients of funds provided therein and to deny the availability of those funds to persons or purposes not meeting those criteria, so long as the restriction is confined to the fiscal year covered by the bill. See §54, supra, discussing qualifications of recipients of funds. Of course, a determination must be made by the administrator of the funds as to whether prospective recipients have the qualifications described as a condition to receiving funds, and in some instances

18. Jere Cooper (Tenn.).

that determination may entail the performance of new and substantial duties on the part of the administrator. In such cases, as has been seen (§52, supra), the express or implied requirement that such duties be performed would amount to legislation prohibited by Rule XXI. The question of whether the new duties are in fact of such a substantial nature is sometimes a difficult one, especially where those duties are merely implicit in the proposed limitation. The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order. See 115 CONG. REC. 21653, 21675, 91st Cong. 1st Sess., July 31, 1969 (discussed in §61.6, supra), ruling that the words "in order to overcome racial imbalance" in an amendment to

an appropriation bill would impose additional duties on school officials. If language such as that involved in the 1951 ruling above were to be ruled on today, the issue of whether it constitutes prohibited "legislation" might depend on whether the applicability of the provision could be determined on the basis of information that was already required to be disclosed under existing law, or whether the administrator of the funds in question would have to undertake new duties of an investigative nature.

***Abortion; Prohibition Against Federal Funds for Insurance Coverage***

**§ 74.5 An amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees health benefits plan which provides any benefits or coverage for abortions after the last day of contracts currently in force, was held not to constitute legislation, since the amendment did not directly interfere with executive discretion (in contracting to establish such plans); it is permissible by limitation to negatively deny**

**the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.**

On Aug. 20, 1980,<sup>(19)</sup> during consideration of the Department of Treasury and Postal Service appropriation bill (H.R. 7593), an amendment was ruled in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [JOHN M.] ASHBROOK [of Ohio]: Page 43, after line 5, insert the following:

"Sec. 614. No funds appropriated by this Act shall be available to pay for an abortion or the administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program which provides any benefits or coverage for abortions under such negotiated plans after the last day of the contracts currently in force." . . .

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I make a point of order that this amendment constitutes legislation in an appropriation bill. This limitation changes existing law, and imposes new duties on administrative officials.

This amendment changes current law in a variety of ways. Section 8904 of title 5, United States Code, lists the authorized content of a Federal employee health plan. This amendment, in effect, amends this section to add an exclusion. By doing so, the amendment changes the benefits provided to Fed-

eral employees. Directly on point is the precedent found in section 9.8 of chapter 26 of Deschler's Procedure, holding that language in a general appropriation bill changing the allowances and benefits due overseas employees of the Foreign Claims Settlement Commission was held to be legislation and not in order (106 Congressional Record 17899, 86th Congress, 2d session, August 26, 1960).

There are other ways in which this amendment changes the basic law. Throughout the development of Federal labor-relations law culminating in passage of the Civil Service Reform Act of 1978, a careful balance was worked out on labor organization rights. Congress did not go along with providing an agency shop in which dues would be required from bargaining unit members, but did allow labor organizations to offer health plans exclusively to their members as a membership and fund-raising device. This amendment would strip one of the attractive features out of these plans and would thereby deny labor organizations one of the rights which they fought hard for during civil service reform. . . .

This amendment imposes considerable new duties on the Office of Personnel Management. The general rule on this is well stated in section 11.3 of chapter 26 of Deschler's Procedure:

It is not in order, in an appropriation bill, to impose additional duties on an executive officer or to make the appropriation contingent upon the performance of such duties.

Currently, virtually all the health plan contracts for 1981 are written, signed and sealed. Most provide abortion health services or indemnification

19. 126 Cong. Rec. 22171, 22172, 96th Cong. 2d Sess.

for abortions. The adoption of this amendment would force the renegotiation of these contracts in the very limited time prior to the beginning of the open session in October. The administrative burdens are so high, in fact, that I am not certain they can be discharged in time. . . .

Another side of this question of administrative duties has to do with changing the authority of a Federal official. . . .

. . . [S]ections 20.6 and 13.3 of chapter 26 of Deschler's Procedure stand for the proposition that changing the authority of a Federal official renders an amendment out of order. Here, the plenary authority of the Director of the Office of Personnel Management to negotiate health plans is limited by a requirement that he negotiate plans having a certain type of coverage. By tying the Director's hands in this way, the amendment is seriously changing the contracting authority of an executive official. . . .

MR. ASHBROOK: Mr. Chairman, if we read the amendment, the amendment very clearly is a limitation on expenditures, it is a limitation consistent with previous limitations that have been upheld by this Chair.

As I say, it does not require any affirmative actions.

My colleague, the gentlewoman from Colorado, refers to abortions that are in current health benefits programs. I know of no federally protected right that anyone would have for an abortion that comes under a Federal employees' health benefit program.

The truth of the matter is that since June 30, the Supreme Court upheld the right of this Congress to withhold

funds. This has been the stated purpose. The Hyde amendment originally withheld funds for activities that up to that time had been legal. There is nothing new about that. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: . . . If the Chair will examine the specific limitations that are embodied in the language, he will find that it would require nothing more than incidental determinations which have been held in the past to be perfectly adequate and within the rule allowing limitations on expenditures.

I would cite to the Chair chapter 25, section 10.4, Deschler's Procedure, where it was ruled in the 86th Congress that:

Where the manifest intent of a proposed amendment is to impose a limitation on the use of funds appropriated in the bill, the fact that the administration of the limitation will impose certain incidental but additional burdens on executive officers does not destroy the character of the limitation.

In this case, the amendment forbids the use of Federal funds to pay for an abortion or the administrative expenses in connection with any health plan under the Federal employee's health benefit program providing abortions. Those health plans at the present time are well known, are available, their contents are fully known, and no new determinations must be made. . . .

THE CHAIRMAN:<sup>(20)</sup> The Chair is prepared to rule on the point of order.

The gentlewoman from Colorado makes the point of order that the amendment offered by the gentleman

<sup>20</sup> Richardson Preyer (N.C.).

from Ohio (Mr. Ashbrook), is legislation on an appropriation bill in violation of clause 2, rule XXI. The gentlewoman cites statutory provisions relating to the discretionary authority conferred upon the Office of Personnel Management in contracting with health insurance carriers to establish health benefit plans for Federal employees, and also to administer the health benefits fund. The gentlewoman then cites precedents to the effect that it is not in order on a general appropriation bill to directly limit executive discretionary authority, to directly change entitlement benefits or to directly change contracts entered into pursuant to law, or otherwise impose new duties not required by existing law by requiring new investigations or judgments to be made. All of the precedents examined by the Chair standing for the proposition asserted by the gentlewoman from Colorado involve situations where the Chair was able to discern from the language of the amendment itself, rather than from resulting circumstances which might derive from the enactment of the amendment, that a change in law would necessarily result from the amendment.

On the other hand, the great weight of precedent in the House, not only with respect to the denial of availability of funds in a general appropriation bill for abortions but also for any other purpose otherwise authorized by law, indicates that it is permissible as a limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed or although contracts may remain unsatisfied thereby. And, while new determinations, which the gentlewoman suggests would necessarily

have to be made in order to properly administer the funded program within the terms of the amendment cannot be foreclosed as possibilities, the Chair sees no language in the amendment itself which would require those new findings to be made. Such was the essence of the decision of the Chair on July 17, 1979, where to the D.C. appropriation bill a substitute amendment providing that none of the funds in the bill provided by the Federal payment to the District shall be used to perform abortions was held not to constitute legislation.

The Chair rules therefore that the amendment is in order, and the point of order is overruled.

### ***Striking Employees Not To Be Rehired***

**§ 74.6 Where existing law (5 U.S.C. §§ 7311, 3333; 18 USC § 1918) provided civil and criminal sanctions against strikes by federal employees, and where a federal court order had enjoined a particular strike by a union representing a group of federal employees, it was held in order as a limitation on a general appropriation bill to deny funds for the rehiring of those employees engaged in a strike, where federal officials administering those funds would know which of the employees in question were "on strike".**

On Sept. 10, 1981,<sup>(1)</sup> an amendment to a general appropriation bill prohibiting the use of funds therein to rehire certain federal employees engaged in a strike in violation of federal law (5 U.S.C. § 7311; 18 U.S.C. § 1918) was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law (5 USC § 3333) requiring an affidavit undertaking not to strike to be signed by federal employees, and a court order enjoining the strike in question, already imposed an obligation on the administering officials to enforce the law. The proceedings were as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [ROBERT S.] WALKER [of Pennsylvania]: On page 38, after line 15, insert the following new section:

"Sec. 322. None of the funds provided in this Act shall be used to rehire Federal air traffic controllers engaged in a strike in violation of Federal law." . . .

MR. [LAWRENCE] COUGHLIN [of Pennsylvania]: . . . Mr. Chairman, I make a point of order that the amendment offered by the gentleman from Pennsylvania is legislation on an appropriation bill, contrary to clause 2 of rule XXI.

I make the further point of order that it places additional duties on offi-

cers of the Government or implicitly requires them to make investigations, compile data or otherwise make determinations not otherwise required by law.

Mr. CHAIRMAN, chapter 26 of the Deschler's procedure, section 11.2 states:

Where an amendment, in the guise of a limitation, imposes additional determinations and duties on an executive, it may be ruled out as legislation on a general appropriation bill. . . .

MR. [DENNIS E.] ECKART [of Ohio]: . . . I would like to draw to the Chair's attention that, in fact, other duties may be incumbent as a result of this point of order in the amendment raised by virtue of the fact that it would require a self-standing judicial determination to be made if, in fact, the strike was a violation of Federal laws, separate judicial determination that has not been made. Therefore, there is a contingency contained in this amendment which I believe would place it within the grounds of the point of order. . . .

THE CHAIRMAN:<sup>(2)</sup> [T]he determination required of the Federal Government by the amendment involves a set of facts that is within the knowledge of the Federal Government in that the Federal Government is under an obligation to know which of its employees have been engaged in a strike in violation of Federal laws.

The Chair would cite the precedent in Deschler's procedure, chapter 5, section 12.7, which states:

While an amendment under the guise of a limitation may not require

1. 127 CONG. REC. 20109, 20110, 97th Cong. 1st Sess.

2. Richard A. Gephardt (Mo.).

affirmative action or additional duties on the part of federal officials, it is in order on a general appropriation bill to deny funds to a non-federal recipient of a federal grant program unless he is in compliance with a provision of federal law; for such a requirement places no new duties on a federal official (who is already charged with responsibility for enforcing the law) but only on the non-federal grantee.

The Chair would also cite the related precedents appearing in Cannon's precedents, volume 7, sections 1661 and 1662.

For these reasons the Chair overrules the point of order.

## § 75. Foreign Relations

### *Nonmarket Economy Countries*

#### **§ 75.1 To a general appropriation bill containing funds for foreign assistance, an amendment prohibiting the availability of funds therein for nonmarket economy countries other than those eligible for certain preferential tariff treatment under existing law was held a proper limitation on the use of funds in the bill.**

On Dec. 11, 1973,<sup>(3)</sup> during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 11771), a

3. 119 CONG. REC. 40871, 93d Cong. 1st Sess.

point of order was raised against the following amendment:

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ichord: Page 18, line 10, strike out the period and insert in lieu thereof the following: “; except that no funds shall be obligated or expended under this paragraph, directly or indirectly, for the use or benefit of any non-market economy country (other than any such country whose products are eligible for column 1 tariff treatment on the date of the enactment of this Act).”

MR. [GARNER E.] SHRIVER [of Kansas]: Mr. Chairman, I raise a point of order on this amendment.

This amendment, like the other one, places additional responsibilities and additional duties. It is legislation on an appropriation bill; it requires considerable research and work in order to determine the nonmarket economy country. And then that is put just in parentheses in the bill. . . .

THE CHAIRMAN:<sup>(4)</sup> The Chair is prepared to rule.

The language, as contained in this amendment, appears to the Chair to be strictly a limitation on the manner in which the funds are to be expended. Almost any limitation requires some determination in order to establish the fact of whether or not the limitation would apply.

So the Chair is constrained to overrule the point of order.

### *Executive Agreements*

#### **§ 75.2 To a bill making appropriations for the mutual se-**

4. Charles M. Price (Ill.).