

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

CP

Matter of: Joseph Hanley, et al.

File: B-235386

Date: November 16, 1989

DECISION

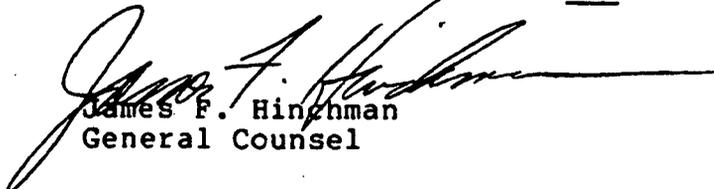
The issue in this case is whether the Department of Labor may use appropriated funds to pay employees' union dues where, due to administrative error, the department failed to withhold the union dues from the pay of Mr. Joseph Hanley and four other employees over several pay periods.^{1/}

Under the Federal Labor-Management Relations Statute, 5 U.S.C. § 7115(a) (1982), upon receiving an employee's written authorization, federal agencies must withhold union dues from the employee's pay and make an appropriate allotment to the exclusive representative for the employee's bargaining unit. We have held that, where union dues were not collected by an agency due to administrative error, the agency may use appropriated funds to reimburse the union. However, since the payment of union dues is a personal obligation of the employees, after reimbursing the union the agency must seek to recover the amount of the dues from the employees or exercise its power to waive collection from the employees under 5 U.S.C. § 5584 (1982). B-180095, Oct. 2, 1975, as modified by 60 Comp. Gen. 93 (1980).

Under the waiver authority, the agency head is authorized to waive in whole or in part repayment by the employees of amounts aggregating not more than \$500, such as those here in question, if collection would be against equity and good conscience and not in the best interest of the United States. This waiver authority may not be exercised if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. 5 U.S.C. § 5584(b)(1). See also 4 C.F.R. Part 91 (1989).

^{1/} This decision is in response to a request from Mr. Thomas C. Komarek, Assistant Secretary for Administration and Management, Department of Labor.

In exercising this authority in this case, the agency should take into consideration the fact that in all five of the situations at issue, the failure to withhold the union dues was reported by the union, but not by the employees involved. We have held that if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, then the employee is not without fault and waiver will be denied. See Cathy A. Clark, B-230464, Dec. 12, 1988, and cases cited. Should the agency determine that a review of the bi-weekly Earnings and Leave Statements by the employees would have clearly shown that the dues were not being withheld, then the employees may be considered partially at fault and waiver should be denied. See B-180095, supra.


James F. Hinchman
General Counsel

CIVILIAN PERSONNEL

Compensation

Overpayments

Error detection

Debt collection

Waiver