

45800
00854

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

Johnnie Luster
Civ. Serv.

FILE: B-188094

DATE: February 11, 1977

MATTER OF: United States Information Agency - Entitlement
of Prevailing Rate Employees Who Negotiate
Their Wages

- DIGEST:**
1. Section 9(b) of Pub. L. 92-392, governing prevailing rate employees, exempts bargaining agreements, in effect on August 19, 1972, containing wage setting provisions. Certain United States Information Agency radio broadcast technicians are covered by such an agreement and therefore may continue to negotiate wage setting procedures until the parties agree to delete wage setting provisions from their agreement. Then such employees would be governed by the Prevailing Rate Statute, 5 U. S. C. subchapter IV, chapter 53.
 2. Prevailing rate employees serving under bargaining agreements exempted from effects of the Prevailing Rate Statute, 5 U. S. C. Subchapter IV, chapter 53, may negotiate wages and employee benefits otherwise covered by provisions of that statute. However, they may not negotiate pay and employee benefits governed by other statutes and regulations, such as overtime pay and retirement benefits.

This action involves a request from Mr. Edward J. Nickel, Assistant Director (Administration and Management), United States Information Agency (USIA), for a ruling on whether the bargaining unit comprised of prevailing rate radio broadcast technicians represented by Local 1418, National Federation of Federal Employees (NFFE), is covered by the provisions of the Act of August 19, 1972, Public Law 92-392 (86 Stat. 564), the prevailing wage law, which has been codified as subchapter IV, chapter 53, of title 5, United States Code.

Local 1418, NFFE and USIA entered into a collective bargaining agreement on August 15, 1968, which has governed their relationship since that time. Article XI of the agreement established

B-188094

a Joint Wage Council consisting of four voting members representing both management and the union. The duties of the council are set forth in section 3 of Article XI of the agreement as follows:

"Section 3. The Council will meet on call by the Chairman or upon the request of any voting member. The function of the Council shall be to consider and make recommendations to the Chief, Domestic Service Personnel Division, concerning the timing of wage surveys; the identification of data sources and jobs to be surveyed; the selection of data collectors to conduct the survey; and the proposed wage schedule to be established by the Chief, Domestic Service Personnel Division based on the data collected. Wage surveys will be scheduled on the approximate anniversary of the last annual survey unless major changes in industry or other compelling reasons justify a change in schedule."

The wages of the prevailing rate employee in the bargaining unit are fixed in accordance with a special wage schedule established as a result of a wage survey conducted on the basis of recommendations of the Council. When Public Law 92-392 was enacted in August 1972, USIA assumed that employees in the bargaining unit were covered by the provisions of that law and attempted to make wage setting procedures conform to provisions of the law. It was not until August 27, 1975, after USIA sought advice and approval from the Civil Service Commission as to whether the timing and coverage of the wage survey could be changed, that the Commission advised USIA that it had no authority to approve or disapprove the request because section 9(b) of Public Law 92-392 (5 U.S.C. § 5345 note, Supp. V, 1975) excluded that bargaining unit from coverage of the provisions of the prevailing rate law.

The USIA is currently involved in contract negotiations in which the union is attempting to negotiate specific pay issues and the agency is understandably concerned with the legal ramifications of such negotiations.

For this reason, USIA requests a ruling on the following three questions regarding that agency's authority to negotiate employee compensation.

B-188094

Question 1 "Does the fact that the Agency negotiates the mechanism (survey methodology) by which employees' wages are established mean that said wages are 'negotiated' and therefore said employees are exempt from PL 92-392?"

We are of the opinion that this question must be answered in the affirmative. Our view is based on section 9(b) of Public Law 92-392 which provides as follows:

"(b) The amendments made by this Act shall not be construed to--

"(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;

"(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act for the renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

"(3) nullify, change, or otherwise affect in any way after such date of enactment any agreement, arrangement, or understanding in effect on such date with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such

B-188004

contract, or the replacement of such contract with a new contract, after such date."

The legislative history of section 9(b) is explicit as to what it was intended to accomplish.

"Savings clause for existing agreements

"Section 9(b)(1) of the bill, with the committee amendment, provides that the amendments made by the Act shall not be construed to abrogate, modify, or otherwise affect the provisions of any existing contract pertaining to the wages, conditions of employment, and other employment benefits of Government employees, which contract resulted from negotiations between agencies and employee organizations. Paragraph (2) of section 9(b) states that the provisions of any contract in effect on the date of enactment of the Act may be renewed, extended, modified or improved through negotiation after the enactment date of the Act. Paragraph (3) of section 9(b) provides that the Act shall not affect any existing agreement between agencies and employee organizations regarding the various items which are negotiable, nor shall the Act preclude the inclusion of new items in connection with the renegotiation of any contract.

"The provisions of section 9(b) are directed at those groups of Federal employees whose wages and other terms or benefits of employment are fixed in accordance with contracts resulting from negotiations between their agencies and employee organizations. * * * It is not this committee's intent to affect, in any way, the status of such contracts or to impair the authority of the parties concerned to renegotiate existing contracts or enter into new agreements. However, the prevailing rate employees who are now covered by such contracts will be subject to the provisions of this Act when such contracts expire and are not renewed or replaced by new contracts." H. R. Rep. No. 339, 92d Cong., 1st Sess. 22 (1971).

B-188094

From the foregoing, it is clear that Congress intended to exempt prevailing rate employees serving under those collective bargaining agreements in effect on August 19, 1972, the date of enactment of Public Law 92-392, that contained provisions covering any substantive matters concerning how their wages were to be fixed. In our opinion Article XI of the agreement here in question provides a detailed procedure for fixing the wages of employees in the bargaining unit, and hence Congress intended that such agreement was not to be affected by the provisions of Public Law 92-392. Moreover, we note that the Civil Service Commission in the exercise of its authority under 5 U.S.C. § 5343(b) and (c) has also ruled that this bargaining unit was excluded from the provisions of the prevailing rate law in its letter to USIA dated August 27, 1975, and in its letter to the President, NFFE, also dated August 27, 1975.

Question 2 "If such employees are exempt from statutory pay provisions, are they therefore automatically and indefinitely entitled and, indeed, required to negotiate all aspects of their wages (e. g., the applicability and rates of base pay and premium pay)?"

Employees exempted from coverage of the prevailing rate statute by section 9(b) of Public Law 92-392 are not indefinitely entitled and required to negotiate all aspects of their wages. Under the provisions of section 9(b), the agency and the union may, upon renegotiation of the agreement, elect not to continue to include provisions in the agreement concerning the fixing of wage rates. In that event, the employees in the bargaining unit would automatically be covered by the provisions of the prevailing rate statute as set forth in 5 U.S.C. chapter 53, subchapter IV. However, as long as an exempt agreement that includes wage setting authority is renegotiated or renewed, the full range of wage setting procedures covered by the provisions of Public Law 92-392 are subject to negotiation by the parties to the agreement. On the other hand, the parties may elect to incorporate, expressly or by reference, certain provisions of the prevailing rate statute. We should point out however that employees covered by an exempt agreement are not entitled to the benefits of the prevailing rate statute where such provisions have not been incorporated in the agreement. See, for example, B-184858, August 19, 1976.

B-188094

Question 3 "If the employees are entitled to negotiate wages, may they also negotiate other benefits such as night differential, overtime rates, retirement, etc., that make up the total pay package. That is, once undertaken, what are the boundaries of negotiations?"

As a general principle, the parties to the agreement may negotiate employee wages and benefits covered by provisions of the prevailing rate statute contained in subchapter IV, chapter 53 of title 5, United States Code. On the other hand employee wages and benefits covered by other statutes and regulations may not be negotiated. Therefore such issues as basic wages and night differentials may be negotiated because they are included in the Prevailing Rate Statute. By the same token, overtime pay and retirement are covered by other statutes and regulations and therefore may not be negotiated.

Deputy

R. F. Kelly
Comptroller General
of the United States