DOCUMENT RESUME

01998 - [A1232211]

[Translation Services for Federal Court]. B-186919. April 27, 1977. 5 pp.

Decision re: Gustavo Hoffman; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).
Organization Concerned: United States District Court, Southern District of New York.
Authority: 28 U.S.C. 753g. Ex Parte Peterson, 253 U.S. 300, 312, 314 (1920). 6 Comp. Gen. 364. 6 Comp. Gen. 140. 7 Comp. Gen. 364. 6 Comp. Gen. 474. 32 Comp. Gen. 427. 43 Comp. Gen. 390. 54 Comp. Gen. 561. 45 Comp. Gen. 649. 24 Comp. Gen. 924.

The propriety of paying an interpreter for services 7 days a week in providing simultaneous translations for trials in New York City was questioned. The court ordered the translator to provide services 7 days a week for the duration of three trials, so he may be paid for days on which the court was not in session and no services were rendered, less fees earned for services rendered to others on those days. (RRS)

DECISION

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

FILE: B-186919 DATE: April 27, 1977

MATTER OF: Gustavo Hoffman - Translation services for Federal court

DIGEST: Interpreter was appointed by Federal District Court and ordered to be prepared to render translating services 7 days a week for duration of trial. Order also provided for payment of interpreter for 7 days per week. Since court order constitutes valid contract and relationship established between court and interpreter is not that of employer-employee, interpreter may be paid for days on which court was not in session and no services were rendered, less fees earned for services rendered to other persons on such days.

By a letter received in this Office on January 24, 1977, the Administrative Office of the United States Courts has requested our decision concerning the propriety of paying Mr. Gustavo Hoffman for his services in providing simultaneous translations from English to Spanish for trials held in the United States District Court for the Southern District of New York.

The record indicates that in each of three criminal trials held in New York during 1976, the Assistant United States Attorney applied to the Court for the appointment of Mr. Hoffman to provide simultaneous translation services for non-English speaking defendants. In response thereto, the clerk of the United States District Court for the Southern District of New York was ordered by Judge Marvin E. Frankel on February 19, 1976, to pay Mr. Hoffman $125 per day for Tuesday through Friday, excluding official Court holidays, for his services from February 24, 1976, through the conclusion of the trial, in the matter of United States v. Fernando Valenzuela, et al. Judge Robert L. Carter, however, on June 1, 1976, issued an order to pay Mr. Hoffman for his services from May 17, 1976, through the conclusion of the trial, at the rate of $125 per day, 7 days a week, Monday through Sunday, excluding official Court holidays in the case of United States v. Rev. Alberto Mejias, et al. A similar order for $125 per day, 7 days a week was issued by Judge Richard Owen for Mr. Hoffman's services from July 26, 1976, through the conclusion of the trial, in the matter of United States v.

Juan Antonio Alvarez, et al. The orders which require payment to Mr. Hoffman for 7 days a week were evidently based upon Mr. Hoffman's affidavit stating that compensation on such terms is standard in the profession for the services of a simultaneous interpreter. In exchange for such compensation, the relevant court orders required Mr. Hoffman to perform services on each of the 7 days of the week during which the Court may be in session.

Upon rendering his services, Mr. Hoffman submitted invoices, which were referred to the Administrative Office of the United States Courts (Administrative Office) for payment. The Administrative Office initially refused to make any payments to Mr. Hoffman on the grounds that the cost of simultaneous translation, when provided upon the motion of the United States Attorney, was an expense of litigation to be paid from appropriations made to the Department of Justice. Subsequently, an agreement was reached between the Administrative Office and the Justice Department whereby each agency would pay one-half of the total cost of translation services for cases already concluded or in progress. Although the Department of Justice apparently has paid in full its portion of the invoices, authorized certifying officers of the Administrative Office have disallowed claims for interpreter's fees for Saturdays, Sundays, periods during which trial was postponed, and other days on which Court was not in session and on which no services were rendered to the Government. The Administrative Office has, therefore, requested a decision from this Office as to whether such claims may lawfully be paid.

It is the position of the Administrative Office that a determination as to whether the interpreters are employees of the Federal Government or are independent contractors is dispositive of the propriety of payment in this matter. Citing the decision of the Comptroller General at 6 Comp. Gen. 364 (1926), the Administrative Office contends that a contract for translating a foreign language into English and vice versa is essentially one for personal services to be performed by Government employees. Such a contract, it is argued, is proscribed as creating a relationship tantamount to that between employer and employee in contravention of the civil service laws.

The term "personal services" as used in early decisions of the Comptroller General included all services normally performed by Government employees and all services which could be performed by incumbents of existing civil service positions. It was held in those decisions that Government agencies were not authorized to contract

for the performance of such services because it was considered that Government functions should not be performed by contractors who could not be personally held responsible for failure or misfeasance. 6 Comp. Gen. 140 (1926); id. 364 (1926); id. 474 (1927). See also 32 Comp. Gen. 427 (1953). The format and operation of the contract, whether on a job or end production basis, or whether under conditions suggesting an employer-employee relationship were not stressed.

Since those early decisions, this Office and the Civil Service Commission have recognized that services normally performed by Government personnel may be performed under a proper contract if that method of procurement is found to be more feasible, more economical, or necessary to the accomplishment of the agency's task. Thus, in 43 Comp. Gen. 390 (1963), we stated:

> "The general rule is that purely personal services for the Government are required to be performed by Federal personnel under Government supervision. See for example, 6 Comp. Gen. 140; 24 id. 924; and 32 id. 427, which is cited in the letter. However, the requirement of this rule is one of policy rather than positive law and when it is administratively determined that it would be substantially more economical, feasible, or necessary by reason of unusual circumstances to have the work performed by non-Government parties, and that is clearly demonstrable, we would not object to the procurement of such work through proper contract arrangement. 31 Comp. Gen. 372."

A "proper contract" for services as contemplated by the above language has been recognized to be one in which the relationship established between the Government and the contract personnel is not that of employer-employee. 51 Comp. Gen. 561 (1972). Further, the services must be of a type which could properly be delegated to non-Government personnel. Thus, the rule allowing contract procurement of personal services is limited strictly on a job basis under which the Government contracts for the furnishing of a product or the performance of a service without detailed Government control or supervision over the method by which the required result is achieved. 45 Comp. Gen. 649 (1966). In determining whether the relationship created is proscribed, the Civil Service Commission has taken the position that the contract is to be questioned if it permits or requires detailed Government supervision over the contractor's employees. Decisions of

this Office have referred to the criteria set forth in chapter 304, subchapter 1-4 of the Federal Personnel Manual for ascertaining whether a contract permits or requires detailed Government supervision over the contractor's employees. 51 Comp. Gen. 561, supra.

Additional guidance has been provided in the Federal Personnel Manual Letters No. 300-8, dated December 12, 1967, and No. 300-12, dated August 20, 1968, issued by the Civil Service Commission for review by the agencies of personal services contracts. According to these opinions, one of the basic criteria by which the employer-employee relationship is judged is whether the inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to adequately protect the Government's interest, to retain control of the function, or to retain full personal responsibility in a duly authorized Federal official.

Regarding contracts for translating services, we note that the decision at 51 Comp. Gen. 561, supra, concerned an agreement by the Office of Economic Opportunity with an individual for the translation of certain materials from English to Spanish. Upon a finding that detailed supervision of the translator was not required, this Office determined that no employer-employee relationship was created, and upheld the agreement.

In the present case, Mr. Hoffman, the interpreter, provided translation services during trials in a United States District Court. However, the interpreter provided his own equipment, which was rented to the Government. Further, it does not appear that the presiding judges actually supervised Mr. Hoffman in the performance of his duties. Moreover, since court reporters provide services equally essential to the administration of justice, and since under 28 U.S.C. 753g (1970), the services of such reporters may be obtained by contract with independent contractors over whom detailed supervision may not be possible, it would appear that such supervision is likewise not necessary in the case of interpreters to protect the Governmental interests enumerated in the above opinion of the Civil Service Commission. We conclude, therefore, that the requisite supervision necessary to the establishment of an employer-employee relationship is not present in this case. Thus, the contracts for the services of an interpreter for 7 days per week are within the power of the Courts to make. Ex Parte Peterson, 253 U.S. 300, 312, 314 (1920); Federal Rules of Criminal Procedure, Rule 28; Federal Rules of Civil Procedure, Rule 43(f).

Accordingly, the claim of Mr. Hoffman may be paid to the extent permitted in the orders of the District Court.

Deputy Comptroller General
of the United States