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DECISION



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

H. D. ...

FILE: B-131587

DATE: March 24, 1978

MATTER OF: Canal Zone Government - Effect of consolidation of school systems on payroll plan - Reconsideration

DIGEST: Teachers being transferred from Latin American Schools to American Schools in Canal Zone object to additional period without pay caused by consolidation of two school systems. Teachers point out inequities and hardships which result from merger plan, and request that they be paid same as if merger had not been implemented during 12-month period in question. Hardships enumerated by teachers do not overcome prohibition of 5 U.S.C. 5536. Prior decision of December 21, 1977, is sustained.

This decision is in response to a request by Local 500 of the American Federation of State, County and Municipal Employees, AFL-CIO, for reconsideration of our decision B-131587, December 21, 1977.

Our decision concerned the union's proposal that teachers who are forced to take a second vacation period due to consolidation of school systems in the Canal Zone be paid during this second vacation period. We ruled that the proposal could not be instituted since it would result in teachers receiving 16 months of pay during a 12-month period which would be in contravention of 5 U.S.C. 5536. The facts of this case were fully stated in our decision of December 21, 1977, and need not be repeated here.

In asking for reconsideration the union states, in pertinent part, as follows:

"Implementation of the Latin American teachers recommendation meant that from March 1976 to March 1977 the Latin American teachers would have earned 15-months pay in 12 months, but it also meant that from March 1977 to March 1978 the teachers would have earned only 9-months pay in a 12-months period as they would not have been paid for the 3-months from June 5, 1977 through August 24, 1977 (vacation period) as previously outlined. Further, teachers would have received 24 months pay from March 1976 - March 1978 based on the teachers proposal in a 24 months period. There would have been a loss in

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income to any Latin American teacher because of the consolidation of the two systems. The recommendation of the Governor of the C. Z. Government results in 21-months of pay in a 24-month period. This represents a loss of pay; it is morally incorrect, and also detrimental to the concept of the annual salaries teachers expect to earn.

* * * * *

"Assuming that 5 U.S.C. 5536 is applicable in this case, we hold that present laws governing pay administration sustain that any employee who transfers from one position to a similar position within any federal agency through no fault of his should not suffer any loss of pay. Transferred Latin American teachers suffered a loss of income during the 1977 calendar year and they shouldn't. Consequently, a resolution by your Office is necessary to correct this inequity."

The operative finding which required this Office to reject the union's proposal was that during the 12 months from March 7, 1977, to March 7, 1978, teachers would be paid more than 12 months of the annual pay to which they are entitled in contravention of 5 U.S.C. 5536 (1976). Although the union challenges the equity of this determination, it does not dispute its factual correctness.

In requesting reconsideration, the union now asserts that it is not seeking additional compensation for the vacation period of June 5 - August 24, 1977. Instead, it urges that the Latin American teachers be given full compensation for the period December 19, 1976, through March 6, 1977. The union now advises us that during this period - which was a vacation for the Latin American schools - the teachers worked in an in-service program of Phase I of the transitional period. They were paid on a fee basis (3 hours) during this time. The union argument is that the Latin American teachers should be paid full compensation for this period since they would not be paid during the U.S. school vacation of June - August 1977. The union concedes that this solution would have resulted in 15 months pay in 12 months (March 1976 - March 1977), but argues that the teachers earned only 9-months pay from March 1977 to March 1978. and, therefore, that it would result in only 24-months pay from March 1976 - March 1978.

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Otherwise, the union says that the teachers transferred to the U. S. school system will lose pay ranging from \$3,500 to \$7,000 by the end of calendar year 1978.

We recognize the hardship suffered by the Latin American teachers but we must adhere to our earlier decision because the present proposal would still result in a violation of section 5536 of title 5, U.S. Code. Moreover, if we understand it correctly, the proposal would require full compensation for the period of December 1976 to March 1977, when the teachers worked only on a part-time basis (for which they have been paid). We do not believe that would be proper.

Finally the union states that, if we don't change our ruling, we should decide on a plan which would recoup the lost salaries for calendar year 1977. We regret that we are unable to do so. Our decision is based on the present law and it would require legislative action to provide the relief that the union seeks for the affected teachers.

Upon reconsideration, we find no basis to change the conclusion reached in our decision of December 21, 1977.

R. F. K. H. H.
Deputy Comptroller General
of the United States