

DECISION



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

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as were originally taken.*

FILE: B-191619

DATE: May 9, 1978

MATTER OF: Government Printing Office - Employment
Negotiations With Employee Representatives

- DIGEST:
1. Authority of Public Printer under Kiess Act, 44 U.S.C. § 305 (1970), to set wages of certain Government Printing Office (GPO) employees does not require the Public Printer to confer with employee representatives concerning employment standards for GPO printing procurement contracts.
 2. Authority of Public Printer under Kiess Act, 44 U.S.C. § 305 (1970), to set wages of certain Government Printing Office (GPO) employees is limited by 5 U.S.C. § 5544 (1976) with regard to overtime entitlement. Employees must actually work overtime hours in order to receive overtime pay. 42 Comp. Gen. 195 (1962).
 3. Authority of Public Printer under Kiess Act, 44 U.S.C. § 305 (1970), to set wages of certain Government Printing Office (GPO) employees is limited by 5 U.S.C. § 5544 (1976) with regard to overtime entitlement. To the extent that proposals of employee representatives are inconsistent with section 5544, they may not be implemented.

This action is in response to the requests contained in three letters dated April 4, 1978, from the Honorable John J. Boyle, Public Printer, for a decision concerning the scope of negotiations which may be conducted with Government Printing Office (GPO) employee representatives under the authority of 44 U.S.C. § 305 (1970). The Public Printer has posed a series of questions which may be grouped into three general questions as follows.

I

The first question presented is whether the Public Printer, under the above-cited statutory provision, has a duty to confer with employee representatives on the following two demands:

B-191619

1. "That the Public Printer provide in GPO printing procurement contracts, made in accordance with Federal Procurement regulations, that the contractor must pay its employees in accordance with the standards of wages, hours and working conditions arrived at by the said conference between the GPO and the employee representatives; and
2. "That no contract be made which would adversely affect the complement of any bargaining unit regardless of price or other considerations."

The Public Printer states that while there are probably ways to comply with the net result desired by the employee representatives, the agency wishes to know whether or not 44 U.S.C. § 305 requires the Public Printer to confer on these matters.

II

The second question pertains to the following proposal on overtime which has been presented by employee representatives during the course of conferences held under the authority of 44 U.S.C. § 305: X

"Overtime shall be defined as any work performed before or after the employee's regular scheduled shift."

The question presented is whether the Public Printer has the authority to grant overtime when an employee has been in a leave or leave without pay (LWOP) status prior to or following 8 hours of work.

III

The third question presented is whether the Public Printer, under the authority of 44 U.S.C. § 305, has a

B-191619

duty to confer and the authority to allow the following proposals which have been presented by the GPO employee representatives:

1. "Daily overtime work in excess of two hours in any one day shall be compensated at double the regular rate of pay.
2. "All work performed on Saturday shall be compensated at double the regular rate of pay.
3. "All work performed on Sunday shall be compensated at double the regular rate of pay.
4. "All work performed on a holiday shall be compensated for at double the regular rate of pay, in addition to the holiday pay.
5. "There shall be no hire for less than a full shift on premium days.
6. "Any employee called back to work after finishing a regular shift shall be guaranteed a minimum of four hours pay at the applicable overtime rate. Such employees shall have the right to leave upon completion of the work which required the callback.
7. "Any employee designated essential in an emergency situation shall be compensated at the applicable overtime rate."

The Public Printer specifically questions whether overtime compensation for employees whose pay is set under the above-cited statutory provision is governed by 5 U.S.C. § 5544 (1976) or some other statutory provision and whether our

B-191619

decision in B-189782, February 3, 1978 (57 Comp. Gen. 259),
is applicable to these GPO employees.

DISCUSSION

The authority for the fixing of compensation of certain GPO employees is contained in 44 U.S.C. § 305, commonly referred to as the Kiess Act, which provides as follows:

"(a) The Public Printer may employ journeymen, apprentices, laborers, and other persons necessary for the work of the Government Printing Office at rates of wages and salaries, including compensation for night and overtime work, he considers for the interest of the Government and just to the persons employed, except as otherwise provided by this section. He may not employ more persons than the necessities of the public work require nor more than four hundred apprentices at one time. The minimum pay of journeymen printers, pressmen, and bookbinders employed in the Government Printing Office shall be at the rate of 90 cents an hour for the time actually employed. Except as provided by the preceding part of this section the rate of wages, including compensation for night and overtime work, for more than ten employees of the same occupation shall be determined by a conference between the Public Printer and a committee selected by the trades affected, and the rates and compensation so agreed upon shall become effective upon approval by the Joint Committee on Printing. When the Public Printer and the committee representing the trade fail to agree as to wages, salaries, and compensation, either party may appeal to the Joint Committee on Printing, and the decision of the Joint Committee is final. The wages, salaries, and compensation so determined are not subject to change oftener than once a year.

B-191619

"(b) The Public Printer may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work."

At the outset, we note that GPO is not covered by Executive Order No. 11491, as amended, which governs labor-management relations in the executive branch.

With respect to the first question involving the establishment of employment standards for GPO printing procurement contracts, we would point out that we have recognized that the broad provisions of 44 U.S.C. § 305 place no limitation on the Public Printer's authority to fix workweeks of less than 40 hours and pay overtime for work in excess of that workweek. See 36 Comp. Gen. 163 (1956). However, we have also held that this statute does not provide a basis for participating in a union-sponsored pension plan, particularly where the employees are also covered under the civil service retirement program as set forth in 5 U.S.C. §§ 8331 et seq. (1976). See B-177147, December 19, 1972.

Section 305 of title 44, United States Code, quoted above, relates to the setting of wages for certain employees of the Government Printing Office, and it contains no reference to printing contracts or to employment standards for such contracts. Therefore, although the Public Printer is vested with broad authority under the Kiess Act to set wages, we do not believe that statute requires the Public Printer to confer on the demands stated above in the first question relating to the establishment of employment standards in GPO printing contracts.

With regard to questions two and three, we note that while the Public Printer may, with the approval of the Joint Committee on Printing, fix the rates of wages, salaries, and compensation under the authority of the Kiess Act, we have long held that the provisions of 5 U.S.C. § 5544 (1976) govern the payment of overtime to these employees. See 46 Comp. Gen. 217 (1966); 42 id. 309 (1962); 36 id. 163 (1956); 13 id. 265 (1934); and B-176365, October 31, 1972. Section 5544 provides, in pertinent part, as follows:

B-191619

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. * * * The overtime hourly rate of pay is computed as follows:

"(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

"(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

"(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

"An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. * * *"

8-191619

With regard to the second question concerning overtime performed before or after the employee's regular scheduled shift and the effect of the taking of leave or leave without pay, we would point out that under section 5544 work in excess of 8 hours a day or in excess of 40 hours a week is considered overtime work. See 42 Comp. Gen. 195 (1962). However, we have also held that employees must actually work overtime hours in order to receive the overtime rate of pay. 46 Comp. Gen. 217 (1966); and 42 *id.* 195 *supra*. Thus, where an employee works an 8-hour shift but is on leave during his scheduled overtime hours, he is not entitled to overtime pay. On the other hand, if the employee is on leave during any part of his 8-hour shift but works the overtime hours, he is entitled to overtime pay for the overtime hours. 42 Comp. Gen. 195, *supra*.

The Public Printer has not provided our Office with sufficient information indicating how this proposal might impact upon existing GPO regularly scheduled shifts and administrative workweeks, and, in the absence of such information, we are unable to provide more than the general guidance set forth above in response to the second question.

Finally, with regard to the third question involving seven proposals concerning overtime entitlement, we would respond that, to the extent these proposals are inconsistent with the provisions of 5 U.S.C. § 5544 we believe the Public Printer is under no obligation to confer on such proposals pursuant to 44 U.S.C. § 305. Although our decision in B-189782, February 3, 1978, pertained to the overtime entitlement of prevailing rate employees whose wages have been established through collective bargaining pursuant to section 9(b) of Pub. L. 92-392, August 19, 1972, 5 U.S.C. § 5343, note (1976), it is relevant to the present case. In that decision we held that, under 5 U.S.C. § 5544, there is no authority to establish overtime pay rates at a figure greater than one and one-half times the basic hourly pay rate, and that holding would be equally applicable to this case.

The questions are answered accordingly.

R. F. Ketter
Deputy Comptroller General
of the United States

GOVERNMENT PRINTING OFFICE
Printing procurement contracts
Employment standards

GOVERNMENT PRINTING OFFICE
Employees
Overtime compensation
Actual work requirement

COMPENSATION
Overtime
Actual work requirement

GOVERNMENT PRINTING OFFICE
Employees
Overtime compensation
Proposals inconsistent with law



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

B-191619

MAY 9 1978

The Honorable Claiborne Pell
Chairman, Joint Committee on
Printing
Congress of the United States

Dear Mr. Chairman:

By three letters dated April 4, 1978, the Honorable John J. Boyle, Public Printer, requested our opinion concerning various questions which have arisen during conferences with employee representatives held in accordance with the provisions of 44 U.S.C. § 305.

By decision of today, B-191619, we have responded to the questions raised by the Public Printer. We have enclosed a copy of our decision for your consideration.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure

RELEASED.

283



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

B-191619

MAY 9 1978

The Honorable John J. Boyle
Public Printer
Government Printing Office
Washington, D.C. 20401

Dear Mr. Boyle:

Further reference is made to your three letters dated April 4, 1978, requesting our opinion concerning various questions which have arisen during conferences with employee representatives held in accordance with the provisions of 44 U.S.C. § 305.

Enclosed is a copy of our decision of today, B-191619, which responds to the questions you have raised. We have also forwarded a copy of our decision to the Honorable Claiborne Pell, Chairman, Joint Committee on Printing, Congress of the United States.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure