

DECISION

6811



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON 20548

FILE: B-189782

DATE: June 23, 1978

MATTER OF: Department of the Interior - Delayed  
Implementation of Decision on Overtime  
Pay under Negotiated Agreements

DIGEST: Implementation of decision 57 Comp. Gen. 259 (1978) is postponed until end of Second Session of 96th Congress. If Congress takes no action, GAO will apply decision to all agreements affected by 57 Comp. Gen. 259 (1978) at date of end of Second Session of 96th Congress.

In our decision of February 3, 1978, entitled Matter of Department of Interior - Overtime Pay for Prevailing Rate Employees Who Negotiate Their Wages, 57 Comp. Gen. 259, we stated that although section 9(b) of Pub. L. 92-392, August 19, 1972, 5 U.S.C. § 5343 note, governing prevailing rate employees, exempts the wage-setting provisions of certain bargaining agreements from the operation of that law, section 9(b) does not exempt agreement provisions from the operation of other laws or provide independent authorization for agreement provisions requiring expenditure of appropriated funds not authorized by any other law. Accordingly, certain negotiated labor-management provisions relating to overtime pay which had been in effect for many years were held to be invalid.

In order to cushion the impact of the decision on those long-standing practices, our decision provided that the Department of the Interior was authorized to delay its implementation until the earliest expiration date of each agreement which contains any provision inconsistent with the decision or until a period of 3 years had elapsed, whichever occurred first.

We have subsequently been informed by Mr. Charles H. Pillard, President, International Brotherhood of Electrical Workers, that the formula for delaying implementation of our decision does not accomplish that objective in several cases. He states:

"\* \* \* the provisions which [the Comptroller General] has ruled to be illegal are contained in collective bargaining contracts which reopen for bargaining on an annual basis. In fact, at

B-189782

least three of these contracts with IBEW Local Unions are open for bargaining at this time, and others will open for bargaining in the near future. Therefore, despite the Comptroller General's apparent intent to allow for the passage of legislation before his decision would be implemented, employees are losing time-honored benefits at the present time."

We noted in our decision 57 Comp. Gen. 259 that the contract provisions in question were negotiated over a long period and that our decision was the first one stating they were illegal. Accordingly, and in order to cushion the impact of our decision, we authorized the Department of the Interior to delay its implementation and suggested that the Bureau of Reclamation might wish to request legislation permitting the continued negotiation of the contract provisions in question.

As pointed out by Mr. Pillard, our instructions regarding the implementation of our decision operate unequally. Those contracts which contain the provisions in question and which have expired may not include such provisions upon renewal. On the other hand where the contracts have not expired, the provisions may be continued for various periods up to 3 years from the date of our decision. Upon further consideration we believe that all of the provisions should be continued for a reasonable period of time so that Congress may consider the matter. Also, it now is our view that all contract provisions should terminate on the same date if Congress takes no action. Therefore, our decision is modified to authorize the Department of the Interior to continue, or to renegotiate, the contract provisions in question until the end of the Second Session of the 96th Congress. If Congress has taken no action by that time, the decision becomes fully effective as to all agreements on that date.

  
Acting Comptroller General  
of the United States