

Part I

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

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FILE: B-189782

DATE: March 1, 1979

MATTER OF: Department of the Interior - Labor-Management Wage Agreements Negotiated Under Section 9(b) of Pub. L. No. 92-392

DIGEST: Section 704 of Pub. L. No. 95-454, Civil Service Reform Act of 1978, allows prevailing rate employees whose contracts were negotiated pursuant to section 9(b) of Pub. L. No. 92-392 to receive overtime pay, penalty pay, and various other pay without regard to whether there is specific authority for such payments in section 15 of the Boulder Canyon Project Adjustment Act, 43 U.S.C. § 618n (1964).

This action involves a request from the Honorable Cecil D. Andrus, Secretary, United States Department of the Interior, for a decision on the legality of certain overtime pay, penalty pay, and various other pay provisions negotiated for prevailing rate employees whose wages have been established through collective bargaining pursuant to section 9(b) of Pub. L. No. 92-392, August 19, 1972, 5 U.S.C. § 5343 note. The Secretary is concerned that our decisions in 57 Comp. Gen. 259 (1978) and 57 Comp. Gen. 578 (1978) may render such payments illegal absent a finding by this Office that section 15 of the Boulder Canyon Project Adjustment Act, 43 U.S.C. § 618n (1964), provides independent authority for such payments. In addition, the Secretary questions whether the consolidation of two dams with Hoover Dam subjects employees of the dams consolidated to section 15 of the Boulder Canyon Project Adjustment Act. He advises that these employees, as well as the employees of the Boulder Canyon Project, all negotiated their contracts pursuant to 9(b) of Pub. L. No. 92-392. The Secretary's request in this matter pre-dated the enactment of section 704 of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, October 13, 1978, 92 Stat. 1218, and our subsequent decision B-189782, January 5, 1979, 58 Comp. Gen.

Our decision in 57 Comp. Gen. 259 (1978) held that certain Department of the Interior and other employees who negotiated their wages and whose collective bargaining agreements were preserved under section 9(b) of Pub. L. No. 92-392 could not negotiate their wages in contravention of other laws. This decision had the effect of rendering illegal certain long-standing

provisions in such negotiated agreements. In 57 Comp. Gen. 575 (1978) we postponed implementation of our prior decision until 1980 in order to mitigate the harshness of our decision and to allow Congress to consider the issue.

Congress specifically provided in section 704 of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, October 13, 1978, 92 Stat. 1218, special authority for the continued negotiation of wages and related matters to employees subject to section 9(b) of Pub. L. No. 92-392, August 19, 1972. Section 704 of the Civil Service Reform Act provides:

"Sec. 704. (a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.

"(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of--

"(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

"(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

"(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code."

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We recently held in B-189782, January 5, 1979, 58 Comp. Gen. ___, that this section of the Civil Service Reform Act overruled our decisions 57 Comp. Gen. 259 and 57 Comp. Gen. 575 insofar as those decisions invalidated contract provisions concerning overtime pay for employees whose contracts are covered by section 9(b). Contract provisions which we found to be invalid solely because they were inconsistent with 5 U.S.C. § 5544, are now held, pursuant to B-189782, January 5, 1979, 58 Comp. Gen. ___, to be properly negotiable.

In the instant case, therefore, it is not necessary that we find independent statutory authority in section 15 of the Boulder Canyon Project Adjustment Act to uphold the pay provisions negotiated pursuant to section 9(b) of Pub. L. No. 92-392. As noted above, the Civil Service Reform Act allows such negotiated agreements to stand on their own merit. It, therefore, makes no difference whether employees at all three dams are subject to section 15 of the Boulder Canyon Project Adjustment Act because all the employees involved negotiated their wages pursuant to section 9(b) of Pub. L. No. 92-392. Accordingly, the wage and pay provisions described above are legal.


Deputy Comptroller General
of the United States