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DECISION



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

FILE: B-201968

DATE: November 24, 1981

MATTER OF: Lump-sum leave payment -
prevailing rate employees

DIGEST: Lump-sum annual leave payments made to prevailing rate employees may be adjusted to reflect the increase in new rates of pay commencing after the effective date of Public Law 96-369, only if the employee performed service after the effective date of the act as required by subsection 114(c) of the act.

The questions to be resolved involve what rate of pay should be used for lump-sum leave payments to prevailing rate employees who separated from Government service at about the time Public Law 96-369, October 1, 1980, 94 Stat. 1356, was approved. Should the increase in pay authorized by that law be applicable to those employees separating after the approval date of that law; or, only to those separating on or after the effective date of Executive Order No. 12248, October 16, 1980; or, does the increase apply to all separated employees whose extended leave would have carried past either the date of the law or the Executive order?

Prevailing rate employees separated after the date Public Law 96-369 was enacted, October 1, 1980, are entitled to the increased rate of pay. Employees who separated on or before that date are not entitled to the increase.

These questions were presented by Lieutenant Colonel G. Lipka, FC, Office of the Comptroller of the Army.

The questions arise as a result of provisions in recent appropriation acts which limit the amount of wage increases for prevailing rate employees authorized by 5 U.S.C. 5341 et seq. The pay of prevailing rate employees is adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. These rates are established by wage surveys and subsequently implemented by an order granting the increase. Since 5 U.S.C. 5344 requires that increases pursuant to these surveys be granted within a period of time after the survey is ordered, a retroactive entitlement is often effected because the implementing order granting the increase is issued later. This provision requires that employees must be in the service of the United States, including the Armed Forces, or the Government of the

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District of Columbia, on the date of the issuance of the order granting the increase in order to be entitled to retroactive pay. In addition, entitlement to a retroactive increase exists if an individual died or retired during the period beginning on the effective date of the increase and ending on the date the order is issued.

The questions concern whether these rules apply to pay increases stemming from the enactment of Public Law 96-369. Specifically, the question is raised concerning whether the increases authorized by this law also authorize an adjustment in lump-sum payments made to employees for unused annual leave at the time of separation.

Lump-sum annual leave payments are authorized and governed under 5 U.S.C. 5551. That section provides in part:

"* * * The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave. * * *"

Recent appropriation acts have had provisions limiting prevailing rate employees' pay increases resulting from wage surveys to a rate which would not exceed the overall average increase in pay granted to General Schedule employees in that particular year. Section 114 of Public Law 96-369, in effect provided in part that, for the period commencing October 1, 1980, until the effective date of the next wage survey, the rate of pay of these employees could be increased by 75 percent of the difference between the rates in effect on September 30, 1980, and the rate that would have been in effect but for a limitation in a prior appropriation act, Public Law 96-74.

Subsection 114(c) of Public Law 96-369 provides as follows:

"(c) The provisions of this section shall apply only with respect to pay for services performed by affected employees after the date of enactment of this Act."

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Thus, prevailing rate employees became entitled to an increase after the effective date of the act for service actually performed. Likewise, a prevailing rate employee who actually performed service after the effective date of the act and was then separated is entitled to an adjustment in his lump-sum payment for annual leave. The fact that Executive Order No. 12248 implementing various laws granting increases to Government employees was not issued until October 16, 1980, did not delay this entitlement. In fact prevailing rate employees are not covered by Executive Order No. 12248. That Executive order merely implemented pay increases for General Schedule and other pay systems and has no bearing on prevailing rate employee increases. Public Law 96-369 itself provides the increase for prevailing rate employees.

Accordingly, a prevailing rate employee who separated after the effective date stated in Public Law 96-369 and received a lump-sum payment for annual leave which did not include the increase authorized by that act is entitled to an adjustment reflecting the new rate. Such an employee actually performed service after the effective date of the act and at the time of separation and entitlement to a lump-sum payment the increased rate was the rate of pay for the position. This rate is also the rate legally payable under 5 U.S.C. 5551. However, if the employee was separated on or prior to the effective date of Public Law 96-369 he would not have performed service after that date and would not be entitled to the increase in computing the lump-sum payment.

for Milton J. Fowler
Comptroller General
of the United States