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DECISION



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

FILE: B-201817

DATE: January 27, 1982

MATTER OF: National Federation of Federal Employees,
Local 1239 - Waiver of Union Dues
Erroneously Deducted

DIGEST:

Agency erroneously continued to deduct union dues from three employees who were promoted out of bargaining unit and re-mitted amounts to union. Upon discovering the error, the agency refunded the deductions to the employees and collected the amounts erroneously paid from the union. Since the record shows that the union was not at fault in receiving these payments, repayment is waived pursuant to 5 U.S.C. § 5584.

Local 1239 of the National Federation of Federal Employees (NFFE) has requested waiver of repayment of union dues it received which had been erroneously withheld from three employees after they had been promoted out of Local 1239's bargaining unit. We hold that Local 1239 is entitled to waiver of repayment of the erroneously withheld union dues.

Three employees of the Dugway Proving Ground, Utah, Department of the Army, namely, Mr. Bert C. Barlow, Mr. Darrell L. Coffman, and Mr. Bud M. Cox, all authorized the agency to deduct union dues from their pay and remit that money directly to Local 1239. When these three employees were then promoted to supervisory positions at various dates from 1973 to 1976, the agency should have terminated the dues allotments from the employees to the union, but failed to do so. In October 1979, the agency discovered the error and refunded to the employees the amounts withheld by mistake. In addition the agency recouped the total amount erroneously withheld, \$1,063.50, from current amounts due Local 1239.

Local 1239 protested this action and raises the following arguments in its defense. First, the union contends that it did not know who among its members were supervisors and, therefore, was not aware that

it had received erroneously withheld funds. Second, the union contends that it provided services to these employees during the period in question. In view of these circumstances the union requests waiver under the provision of 5 U.S.C. § 5584.

Before discussing the specific issues in this case, a review of past decisions in this area is necessary. In an early decision we recognized that, when an agency failed to terminate union dues allotments from employees promoted to supervisory positions, the continued withholdings were erroneous, and we held that remittance of those withholdings to the union represented erroneous payments. 54 Comp. Gen. 921 (1975). In that case we upheld the agency's actions in refunding the erroneously withheld dues to the employees and recouping the total amount of the erroneous payments from the current amounts due the union. We did not discuss the issue of whether the agency may waive recoupment from the union. Our decision was upheld by the Court of Claims in Lodge 2424, International Association of Machinists and Aerospace Workers, AFL-CIO v. United States, 215 Ct. Cl. 125 (1977). See also B-180095, December 8, 1977.

In our next major decision in the area, Recoupment of Union Dues, B-180095, September 8, 1980, we were faced with a similar factual situation but with some important differences. In that case after the agency discovered its error, it neither refunded the erroneous dues allotment deductions to the employees nor recovered any money from the union. Also in that case the union sued for and was granted an injunction to restrain the agency from setting off against current allotment checks to the union the dues of two union members who had been promoted out of the bargaining unit but whose voluntary dues allotments had been continued. American Federation of Government Employees Local 1858 (AFL-CIO) v. Clifford Alexander, Secretary of the Army, Civil Action No. 78-W-5023-NE decided April 14, 1978, United States District Court for the Northern District of Alabama. Since the union had convinced the district court that it had provided services to these employees despite the fact that they were not in the bargaining unit, and since the employees should have noticed that their dues allotments continued, we held that there was no requirement to reimburse the employees or to recoup the allotments from the union.

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In our next case in this area, Buster Owens, B-195406, May 11, 1981, we were presented with a situation where the employee had been promoted out of the bargaining unit and diligently attempted to have his allotment terminated on several occasions after promotion. We held that the employee was entitled to reimbursement of the improperly withheld allotment and we recognized that, under the rationale of our earlier decisions, the union was legally obligated to repay the erroneous amounts. However, since the union was without fault in continuing to receive what had been a properly authorized allotment, we granted waiver of the amount due the Government under 5 U.S.C. § 5584.

In a similar case, Roy W. English, B-192050, July 13, 1981, an employee named Roy English authorized the deduction of union dues from his paycheck, but the dues were deducted from the paycheck of another employee, Roy W. English. We held that Roy W. English was entitled to be paid the amounts erroneously withheld from his salary. We also relied on Buster Owens, supra, in holding that the agency involved should determine whether waiver of the erroneous payments to the union was appropriate in view of all the facts.

Therefore, in this case it is clear that the payments of the erroneously withheld union dues to NFFE Local 1239 were erroneous payments which may be considered for waiver. Buster Owens, supra, and Roy W. English, supra. Also, we see no reason to object to the agency's action in refunding the dues to the employees in this case.

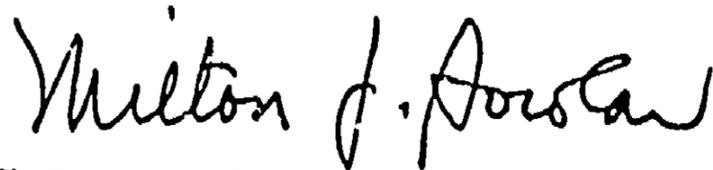
Under 5 U.S.C. § 5584, a claim of the United States against a person arising out of an erroneous payment of pay or allowances (other than travel, transportation, and relocation payments) to an employee, may be waived if collection action would be against equity and good conscience and not in the best interests of the United States and if there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining waiver.

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In the present case, the claim of the United States against Local 1239 arises out of the erroneous transmittal of voluntary union dues allotments to the union. Since the allotments represent pay otherwise due the employees, the erroneous payments to the union qualify for waiver consideration under 5 U.S.C. § 5584, and the union, as a person pursuant to the rules of construction of 1 U.S.C. § 1, is entitled to request a waiver of the Government's claim.

The record before us shows that Local 1239 was not at fault in this matter because it was not aware of receiving erroneous payments. The Department of the Army as the employing agency had the sole responsibility for terminating the dues allotments for ineligible employees. The erroneous payments were made through administrative error on the Army's part and were received by the union in good faith and without fraud or misrepresentation.

Accordingly, the collection from Local 1239 of the \$1,063.50 amount representing erroneously paid union dues allotments is waived under the provisions of 5 U.S.C. § 5584.



Acting Comptroller General
of the United States