



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Prevailing Rate Employees - Proper Wage Schedule
for Certain Floating Plant Operators
File: B-224662
Date: August 21, 1987

DIGEST

The National Federation of Federal Employees (NFFE) requests our decision as to whether certain U.S. Army Corps of Engineers prevailing rate employees who work aboard a floating plant and are paid under a special schedule with rates set according to the New Orleans, Louisiana wage area may be placed under the Lake Charles-Alexandria wage area schedule or, in the alternative, under a special schedule with rates comparable to that wage schedule. The NFFE's request may not be granted since it appears that the employees are being paid in accord with longstanding Corps practices. Any change in those practices must be authorized by the Office of Personnel Management after consideration and recommendation by the Prevailing Rate Committee.

DECISION

The President of the National Federation of Federal Employees (NFFE), Mr. James M. Peirce, has requested our decision as to whether certain U.S. Army Corps of Engineers (Corps) prevailing rate employees who work aboard a floating plant and are paid under a special schedule with rates set according to the New Orleans, Louisiana wage area should be placed under the Lake Charles-Alexandria wage area schedule or, in the alternative, under a special schedule with rates comparable to that wage schedule. Mr. Peirce submitted this request under our procedures set forth at Part 22, Title 4 of the Code of Federal Regulations for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. Although the Corps has not objected to our consideration of this matter, it has declined to submit any comments. We requested the comments of the Office of Personnel Management (OPM) on this matter and provided both the Corps and NFFE with the opportunity to respond to those comments. Only the NFFE responded. For reasons which we will explain below, we cannot grant the relief that NFFE seeks.

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The seven Corps employees who are the subject of this request work aboard the picket boat Kent at the Old River Control Structure located in Concordia Parish, Louisiana. As we understand it, the Old River Control Structure is a sill, or weir constructed by the Corps which controls the amount of water flowing from the Mississippi River to the Atchafalaya River in order to prevent the Mississippi from changing its course. The picket boat Kent patrols the Mississippi in the vicinity of the Old River Control Structure, protecting the structure from vessels and barges which may be drawn from the Mississippi to the Atchafalaya through its gates.^{1/}

The operations of the Kent are under the jurisdiction of the Corps' District Engineer, New Orleans, Louisiana District. All floating plant personnel under the jurisdiction of the New Orleans District Engineer are paid according to the Federal Wage System schedule for the wage area in which the New Orleans District Headquarters is located--the New Orleans, Louisiana wage area. The Old River Control Structure is located within the Lake Charles-Alexandria, Louisiana, Federal Wage System wage area. The NFFE asserts that the floating plant personnel aboard the Kent should be placed under the Lake Charles-Alexandria wage area or on a special schedule identical to that schedule because they are permanently stationed in Concordia Parish, Louisiana, and perform all of their work within the Lake Charles-Alexandria wage area while the other floating plant personnel are stationed at the New Orleans District Headquarters and travel through several wage areas as their workload dictates.

Under the Federal Wage System,^{2/} all prevailing rate employees who work within a wage area are paid according to rates set by the regular wage schedules established for that area unless specifically excluded and paid under a special schedule. Special schedules fall within two broad categories, those established by OPM pursuant to OPM regulations found at 5 C.F.R. § 532.23¹ and those

^{1/} The Control of Nature, Atchafalaya, The New Yorker, Feb. 23, 1987, at 39.

^{2/} The statutory provisions governing the Federal Wage System are found in Subchapter IV of Chapter 53 of Title 5, United States Code.

"documented" under the Federal Wage System. The latter category consists of agency-established special schedules in existence when the Coordinated Federal Wage System was implemented in 1968. Paragraph 2 of Subchapter 2, Federal Personnel Manual (FPM) Supplement 532-1, which covers the procedures and instructions for the operation of the Federal Wage System, provides with regard to these special schedules:

"There are many special schedules now in use on which determinations have not been made to either continue to pay the employees special schedule rates or to bring them under the regular wage schedules of the wage system. These schedules described in Appendix V, have been adjusted under policies and practices of the establishing agency. As an interim measure they are continued as special schedules under the Federal Wage System until they have been reviewed and decisions have been made on the recommendations of the Federal Prevailing Rate Advisory Committee."

Corps floating plant operators are paid by special schedules within this category which are documented in Section B of Appendix V to FPM Supp. 532-1. Section B provides as follows with regard to the basis for the floating plant schedules:

"Schedules are established identical to the regular Federal Wage System schedule for wage area in which the District Headquarters are located, except that when the floating plant operations are performed exclusively in a wage area other than the District headquarters wage area, the special schedule is established identical to the regular wage schedule for the wage area in which the floating plant operations are performed."

The NFFE's basic contention is that a new special schedule for the Kent employees is justified under the language of Section B of Appendix V, quoted above, providing for an exception to the use of the District headquarters wage area schedule when the floating plant operations are performed exclusively in a wage area other than the District headquarters wage area. It points out that the Kent employees perform all of their work within the Lake Charles-Alexandria wage area and that the Kent has not moved from the Old River Control Structure since 1981 when it arrived to replace the picket boat Belmont, which had operated at the Old River

Control Structure since 1973. The NFFE further supports its contention by pointing out that the Kent employees are permanently assigned to Concordia Parish rather than the New Orleans District Headquarters.

In 1980 and 1981, the Commander of the New Orleans District and the Commander of the Lower Mississippi Valley Division of the Corps made several requests to the Corps Headquarters in Washington, D.C., for support of the establishment of a special schedule for the employees assigned to floating plant positions at the Old River Control Structure. ^{3/} In addition to the reasons cited by the NFFE, it was pointed out in these requests that the use of the New Orleans wage area schedule results in a disparity of treatment between the floating plant operators and a group of lower skilled maintenance employees at the Old River Control Structure who are paid under the Lake Charles-Alexandria wage area schedules. These requests also indicated that there was a disparity between the pay of the Kent floating plant operators and those permanently duty stationed in New Orleans because the latter received per diem while the Kent employees stopped receiving per diem at the time they were transferred to Concordia Parish. ^{4/} Finally, the New Orleans District Headquarters pointed out that the application of the New Orleans wage area schedule to the Kent employees made recruitment and retention difficult.

The Corps Headquarters in Washington, D.C., responded that it could not support these requests for implementation of a special schedule. It stated that the language of Section B, Appendix V of FPM Supplement 532-1 had been misinterpreted because exceptions to the practice of establishing schedules identical to the regular Federal Wage System schedule for the wage area in which a District Headquarters is located are permitted only when the entire floating plant operations of a District are performed exclusively in a wage area other than the District headquarters wage area. The Washington

3/ The Commanders also requested that employees assigned to floating plant positions located at Simmesport, Louisiana (Avoyelles Parish), be included in a new special schedule. The NFFE makes no mention of these employees.

4/ Under 5 U.S.C. § 5947 Corps employees engaged in floating plant operations may be furnished quarters or subsistence or both if such is determined to be equitable and necessary.

Headquarters stated that this interpretation had been implemented through Corps actual practices for 25 years. The Washington Headquarters also stated that OPM would have to approve any new special schedule.

We wrote to OPM for its comments on this case, specifically with regard to the proper interpretation of the language relating to exceptions in Section B, Appendix V of FPM Supp. 532-1. The OPM responded that it believes the Corps interpretation, that the exception applies only when all floating plant operations performed by the Corps in the District are located in the non-District wage area, is the correct interpretation. It went on to state, however, that:

"We recognize that language in Appendix V, as to the basis for the schedule, may be ambiguous and subject to different interpretations. However, the overriding fact is that Subchapter S2-2 of the FPM Supplement requires the Corps to continue its pre-1972 pay practices for the floating plant employees. Based on the information available to us, it appears that the Corps has consistently followed their expressed practice for over 25 years. The Corps has no legal authority to change that practice unless approved by OPM."

In its letter to us OPM concluded by stating that:

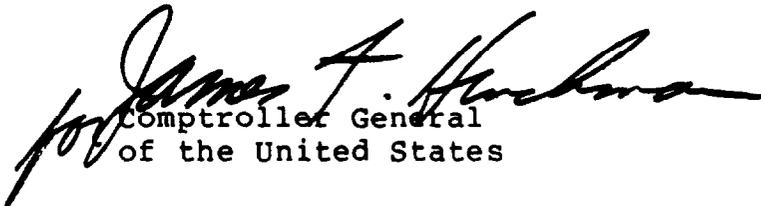
"[I]t is our understanding that the Corps is now studying the set aside floating plant special pay practices preliminary to making a recommendation for Federal Prevailing Rate Advisory Committee consideration. The Committee is the proper forum for studying this particular special schedule practice and some of its attendant problems. We hope that the National Federation of Federal Employees, as a member of the Committee, will present its views relative to pay equity for the employees involved when the present practice is considered by the Committee."

The NFFE responded to OPM's letter by pointing out that OPM had dealt only with the Union's interpretation of Section B of Appendix V and the possibility of establishing a new special schedule. It contends that OPM ignored its argument that the picket boat Kent cannot be described as a "floating plant" since it does not move out of the area and, that as a result, the employees should be placed under the regular schedule of the Lake Charles-Alexandria wage area.

The NFFE has cited no definition of the term "floating plant," so as to provide a context for addressing its argument that the Kent is not, in fact, a floating plant. Moreover, even though the Kent does not move out of the Lake Charles-Alexandria area and apparently has not done so for some time, the Union has not demonstrated that the operations of the Kent or the duties of its employees differ in any way from the operations and functions performed by other picket boats and their employees. Therefore, we have no basis to determine that the Kent is not a floating plant.

It is clear that OPM is the final authority for approving special schedules and rates under the Federal Wage System. Section 5343(c)(3)(B) of Title 5, United States Code, provides that OPM shall issue regulations prescribing requirements for the development of wage schedules and rates for "non-supervisory and supervisory prevailing rate employees paid under special wage schedules and rates * * *." The OPM's regulations regarding special schedules, found at 5 C.F.R. § 532.231, and the provisions of S4-3, FPM Supp. 532-1 set forth the conditions under which OPM will approve special schedules.

Both the Corps and OPM assert that the Corps is following its longstanding practice with regard to the floating plant special schedule. The NFFE does not challenge that assertion. As a result, because we concur that it is the special schedule practice which must control until changes are made through the prescribed channels, the Kent employees are not entitled to placement under a different special schedule nor are they entitled to be placed under the Lake Charles-Alexandria wage area schedule rather receiving a new special schedule. The latter change should also occur only after consideration and recommendation by the Prevailing Rate Committee and final determination by OPM.


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