B-259770

February 15, 1995

The Honorable Slade Gorton United States Senator 3206 Jackson Federal Building 915 Second Avenue Seattle, WA 98174

Dear Senator Gorton:

This responds to your December 7, 1994, letter with enclosures, on behalf of your constituent

We understand that Mr.

is a federal employee who is a member of a collective bargaining unit covered by a collective bargaining agreement that includes grievance procedures for resolving employee claims. We do not have jurisdiction to settle claims by such employees.

et al.,

Therefore, we may not decide a claim by Mr.

However, we are providing the following information for your assistance.

Based on the correspondence enclosed with your letter, we understand Mr. primary concern to be that federal employees do not receive sufficient compensation when they are required to work on a holiday. In particular, he notes that a federal employee who receives the day off on a Monday holiday gets the benefit of a 3-day weekend off plus an "extra" 8 hours of pay since the employee is paid for the full 80-hour pay period while actually working only 72 hours. He contrasts this with a federal employee who must work on the holiday but is paid for only 8 hours more than he works, i.e., he works 80 hours during the pay period and is paid for 88 hours. In addition, Mr. notes that the employee who must work on the holiday loses the benefit of the 3-day weekend. To compensate for this, he suggests that the employees who must work on the holiday be paid what Mr.

considers true "double time," that is, 2 times their basic rate of pay in addition to their regular pay for the 8 hours they work on the holiday.

We do not agree that employees who are given the holiday off are necessarily treated better than those who must work on the holiday. In both cases, the employees are receiving 8 hours more pay than they work. For the reasons explained below, that is the maximum entitlement allowed by law.

The authority to pay premium pay to federal employees for work performed on a holiday is found at 5 U.S.C. § 5546, and in implementing regulations issued by the Office of Personnel Management (OPM) found at 5 C.F.R. §§ 550.131, copy enclosed. The statute and regulations limit the premium that may be paid for 8 hours work on a holiday to 8 hours extra pay. 5 U.S.C. § 5546(b). Therefore, to increase the amount payable for holiday work as suggested by Mr. would require new legislation.

The correspondence you enclosed also raises a collateral issue that relates to the establishment of work schedules for employees at Mr.

Apparently, Mr.

and others were permitted to work a compressed schedule, i.e., four, 10-hour days with 3 days off each week. Because of supervision requirements, at least in some situations, the employees are no longer permitted to work the compressed schedules and now are required to work five, 8-hour days each week. It appears that Mr.

believes that alternative arrangements could be made to allow the employees to continue to work the compressed schedules.

Pursuant to the Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6120, et seq., and implementing OPM regulations, an agency "may establish programs which use a 4-day workweek or other compressed schedule." 5 U.S.C. § 6127(a). However, whether or not to establish such a program is discretionary with the agency, and if the head of the agency finds that a particular compressed schedule has had or would have an "adverse agency impact," the agency may not establish or continue such a schedule. 5 U.S.C. § 6131(a). Thus, generally, a determination of whether to discontinue a compressed work schedule is a matter within the discretion of the agency concerned, although if the schedule was established pursuant to a collective bargaining agreement, the matter may be subject to review by the Federal Services Impasses Panel if the agency and the employees' representative cannot reach an agreement. 5 U.S.C. § 6131(c).

We trust this is responsive to your inquiry.

Sincerely yours,

\s\ Seymour Efros for Robert P. Murphy General Counsel

Enclosures

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DIGEST

- 1. In regard to a constituent's complaint, a Senator is advised that the authority for premium pay for work performed on a holiday is found at 5 U.S.C. § 5546 and in implementing regulations issued by the Office of Personnel Management, which are found at 5 C.F.R. § 551.131. These provisions limit the premium that may be paid for 8 hours work on a holiday to 8 hours extra pay. The constituent argues that this limitation gives a greater benefit to those who are given the day off and suggests that the premium payable be increased to 2 times the basic pay rate plus the regular 8 hours of pay. The suggested remedy to this perceived inequity would require new legislation.
- 2. In regard to a constituent's complaint, a Senator is advised that under the Flexible and Compressed Work Schedules Act, an agency may establish a compressed work schedule program, and the agency may discontinue such a program if it finds "adverse agency impact." Generally, this is a matter of agency discretion, but if the program was established under a collective bargaining agreement, a determination to discontinue it may be subject to review by the Federal Services Impasses Panel.