

DECISION



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

FILE: B-173783.169

DATE: AUG 5 1976

MATTER OF: U.S. Information Agency - Effective date
of special wage schedule adjustments

DIGEST: Special wage schedule employees of U.S. Information Agency receive wage adjustments based upon regular wage schedule for San Francisco area prevailing rate employees. The effective date is often several weeks after the effective date of an adjustment in the regular schedule. Special schedule employees are not within scope of 5 U.S.C. 5344 and agency may continue its current pay practice since special rate could be determined on basis other than wage surveys.

By letter of August 22, 1975, Mr. Clyde M. Webber (now deceased), National President, American Federation of Government Employees (AFGE), reference 14/FWS, has requested our opinion as to the effective date for implementation of special wage schedules under the Federal Wage System.

Mr. Webber cites as a representative case the Radio Antenna Riggers employed by the U.S. Information Agency in the San Francisco area. The special wage schedule for these employees is computed on the basis of the regular wage schedule of the San Francisco Federal Wage System. The 1974 adjustment for the regular wage schedule was effective November 18, 1974. However, the U.S. Information Agency did not implement a special wage schedule for its Radio Antenna Riggers until January 5, 1975. Mr. Webber argues that Public Law 92-392, approved August 19, 1972, 5 U.S.C. 5341 et seq., requires a full-scale wage survey at least every 2 years with interim surveys between the full-scale surveys. He contends that this "cycle of annual surveys and resulting adjustments" applies to both regular and special wage schedules and that there is no provision for allowing a cycle to extend beyond 1 year.

AFGE raised this question previously with the Civil Service Commission and was advised by the Commission on May 29, 1975, that the delay in the 1974 adjustment apparently involved untimely receipt of the San Francisco area schedule upon which the computations are made for the Radio Antenna Riggers' special schedule. On the question of whether these employees are entitled to retroactive pay when the effective date of a new schedule is delayed, the Civil Service Commission cited a

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decision of this Office, B-144049, October 12, 1960 (40 Comp. Gen. 212 (1960)), which held that under the relevant statutes a wage rate may not be made retroactively effective when it is based on the wage survey of another agency or on the information gathered by another agency without an independent determination of the prevailing rate.

Mr. Webber notes that the decision in 40 Comp. Gen. 212 predates the establishment of the Federal Wage System under Public Law 92-392, and he argues that an agency cannot delay or defer wage increases through a failure to act or administrative oversight. Mr. Webber concludes that Federal Wage System employees, whether under a regular or special wage schedule, are within the scope of 5 U.S.C. 5344, and that when an agency fails to issue a schedule in a timely manner, the employees should be entitled to retroactive payments.

The Civil Service Commission has provided the following opinion by letter dated May 3, 1976:

"It is our opinion that the provisions of 5 U.S.C. 5344 do not apply to the special wage schedule issued by the United States Information Agency (USIA) for Radio Antenna Riggers in the San Francisco, California wage area. The requirement that increases in rates of basic pay granted pursuant to a wage survey be put into effect within the 45-day time limitation specified in the statute applies only to those prevailing rate employees who are directly affected by the wage survey process. We do not believe 5 U.S.C. 5344 can realistically be extended to cover such special schedule employees as the USIA group whose rates of basic pay are not increased until a completed regular wage schedule is obtained from the lead agency, and an agency pay differential is applied thereto.

"The provisions of 5 U.S.C. 5344 are designed to assure that prevailing rate employees for whom a wage survey has been conducted are granted appropriate wage increases in an expeditious fashion. There is no similar requirement with respect to the USIA employees discussed in this letter who are

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not part of the actual survey process, and whose wage adjustments do not reflect the results of the wage survey. The agency could, if it so desired, arbitrarily establish a special schedule of wages for Radio Antenna Riggers in San Francisco by any one of a number of other methods which do not require the conduct of wage surveys. We therefore believe that the provisions of 5 U.S.C. 5344 do not apply in this case, and that the agency may continue its current pay practices as provided in Appendix V to FPM Supplement 532-1. (Emphasis added.)

Section 5344 of title 5, United States Code, provides, in pertinent part:

"(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made."

A similar provision dates back to Public Law 85-872, approved September 2, 1958. See 38 Comp. Gen. 538 (1959). 5132 5245 (1970)

The legislative history of Public Law 92-392 does not indicate that Congress expressly intended that the above-cited section would apply to special schedule employees. See H.R. Rep. No. 92-339, 92d Congress, 1st Session 16 (1971); S. Rep. No. 92-791, 92d Congress, 2d Session 5 (1972). In fact, the legislative history indicates an express intention to continue existing practices which previously had been handled administratively. S. Rep. No. 92-791, *supra*, 2, 5 (1971). Further, the Civil Service Commission's regulation pertaining to these special schedule employees (Appendix V to Federal Personnel Manual Supplement 532-1) provides, in pertinent part:

"b. Special schedule practices. (1) Current agency practices with respect to these special wage schedules or rates are to be continued

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except those practices which were required to be modified as a result of Public Law 92-392. For example, the law provides that special schedules may have single or multiple rates or steps according to prevailing practices in the industry on which the schedule is based. Current agency step rate practice will be continued pending the indepth studies of these special schedules."

The Civil Service Commission characterizes the implementation of special wage schedule adjustments as a current agency practice which may be continued under the Federal Wage System, and we find nothing in Public Law 92-392 or its legislative history to the contrary. These pay practices are to be continued until each special schedule has been reviewed by the Federal Prevailing Rate Advisory Committee and a decision has been made on the Committee recommendations. We do not disagree with the position of the Civil Service Commission on this matter.

Accordingly, we conclude that special wage schedule employees, such as the Radio Antenna Riggers employed by USIA in San Francisco, are not covered by the requirement of 5 U.S.C. 5344 that pay increases granted pursuant to wage surveys shall be put into effect within the 45-day time period specified in the statute. The agency may, therefore, continue its current pay practices pursuant to Appendix V to FPM Supplement 532-1.

R.F. KELLEY

[Signature]

Comptroller General
of the United States