



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

092207

B-177313

April 20, 1973

The Honorable Robert E. Hampton, Chairman
United States Civil Service Commission

Dear Mr. Hampton:

Further reference is made to your letter of February 6, 1973, requesting our decision as to the propriety of the Civil Service Commission's regulations providing for indefinite pay retention when an employee's grade is reduced as the result of the initial application of job-grading standards under the Federal Wage System, Public Law 92-392, during the period beginning November 17, 1972, and ending October 1, 1974. Federal Personnel Manual Supplement 532-1, issued January 16, 1973, contains the procedures on which you have requested our decision and all references in this decision will be to that issue.

You state that under section 5346 of title 5, United States Code, as amended by Public Law 92-392, approved August 19, 1972, 86 Stat. 564, the Commission is required to establish and maintain a job-grading system for all prevailing rate positions included in the statutory wage system. As a consequence of establishing and implementing a uniform job-grading system, it is likely that some prevailing rate employees may suffer, through no fault of their own, a reduction in pay on the initial application of job-grading standards to their positions after converting to the new statutory wage system.

Section 9(e)(1) of Public Law 92-392 provides, in part, as follows:

Except as provided by this subsection, an employee's initial rate of pay on conversion to a wage schedule established pursuant to the amendments made by the Act shall be determined under conversion rules prescribed by the Civil Service Commission. * * *

The effective date for Public Law 92-392 (except for non-appropriated fund employees) is November 17, 1972, and on that date most prevailing rate employees were automatically converted to the statutory wage system. As of that date, however, all appropriate job-grading standards had not been issued and in other cases, agencies had not had an opportunity prior to that date to apply job-grading standards under the former system (the Coordinated Federal Wage System).

PUBLISHED DECISION
52 Comp. Gen. 715888

715888

BEST DOCUMENT AVAILABLE

E-177313

Pursuant to §10-3, FPM Supplement 532-1, the initial application of job-grading standards during the period from November 17, 1972, to October 1, 1974, is considered as part of the conversion process. In line with this provision the Commission has provided indefinite pay retention for those employees whose grades were or would be reduced during that period because of the initial application of job-grading standards (§10-8). For employees whose grades are reduced other than because of initial conversion, the provisions of 5 U.S.C. 5345, as enacted by Public Law 92-392, are for application with a maximum of a 2-year period for salary retention (§9-1).

You say that a question has arisen as to the Commission's authority to provide for indefinite pay retention in the circumstance described above and request our decision on the matter.

Section 5345, title 5, United States Code, as enacted by section 1 of Public Law 92-392 provides in pertinent part as follows:

(a) Under regulations prescribed by the Civil Service Commission, * * * a prevailing rate employee—

* * * * *

is entitled to basic pay at the scheduled rate to which he was entitled immediately before the reduction in grade or reassignment * * * for a period of 2 years from the effective date of the reduction in grade or reassignment, * * *

Regarding the pay of an employee upon conversion to the statutory wage system, section 9(a)(2) of Public Law 92-392 provides as follows:

In the case of any employee described in section 2105(c), 5102(c)(7), (8), or (14) of title 5, United States Code, who is in the service as such an employee immediately before the effective date, with respect to him, of the amendments made by this Act, such amendments shall not be construed to decrease his rate of basic pay in effect immediately before the date on which such amendments become effective with respect to him. In addition, if an employee is receiving retained pay by virtue of law or agency policy immediately before the date on which the first wage schedule applicable

BEST COPY AVAILABLE

to him under this Act is effective, he shall continue to retain that pay in accordance with the specific instructions under which the retained pay was granted until he leaves his position or until he becomes entitled to a higher rate.

The legislative history indicates that the purpose of the statute is to enact into law established principles and policies related to blue collar employees of the Federal Government which previously were handled administratively. Prior to the enactment of Public Law 92-392 the majority of the employees covered by that law were under the Coordinated Federal Wage System (CFWS) or were being converted to it. Under CFWS an employee's existing rate of pay was retained for 2 years when he was changed to a lower grade or reassigned to a lower-pay wage position through no fault of his own. However, an employee, who was changed to a lower-pay position upon initial conversion from the old wage system to CFWS, generally retained his pay indefinitely.

Considering the foregoing it would appear that the Congress, in enacting section 9(a) did not intend the provisions concerning demotions to be applicable to conversions to a uniform wage system. In that connection it is noted that subsection 9(a)(2), which in addition to providing pay retention with respect to rate of basic pay received by an employee immediately before the effective date of the amendments, provides for the continuation of previously authorized pay retention rights "in accordance with the specific instructions under which the retained pay was granted." This necessarily recognizes the previous practice of 2-year pay retention for demotions, and indefinite pay retention for initial conversions. 5 U.S.C. 5345 would accordingly not be applicable to conversions.

In view of the above it is our opinion that the Commission's action in providing for indefinite pay retention when a Federal employee's grade is reduced as the result of the initial application of standards under Public Law 92-392 for the period beginning November 17, 1972, and ending October 1, 1974, is legally proper.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

- 3 -

cc: The Honorable Carl W. Clewlow
Deputy Assistant Secretary of Defense
(Civilian Personnel Policy)

BEST DOCUMENT AVAILABLE

Reference: Letter of February 27, 1973