

DOCUMENT RESUME

02581 - [A1792901]

[Retroactive Salary Increase]. B-180010.07. June 15, 1977. 5 pp.

Decision re: E. G. Walters; John L. Nichols; Willie L. Ableidinger; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government; Central Personnel Management (805).

Organization Concerned: Bureau of Reclamation.

Authority: P.L. 92-392, sec. 9(b). 5 U.S.C. 5333(b). 55 Comp. Gen. 1006. 55 Comp. Gen. 1443. B-169686 (1970). 5 C.F.R. 531.301 et seq. 5 C.F.R. 531.305(c). F.P.H. Supplement 532-1, App. V, sec. K. Executive Order 11491.

D. D. Anderson, Assistant Commissioner of the Department of Interior, Bureau of Reclamation, requested a decision on the claims of three employees for retroactive salary increases. The nonunion foremen who supervise union workers awarded retroactive pay increases may also receive retroactive increases, since their special wage schedule sets pay without limitation at 114% of journeyman's wages. The civil service supervisor of these foremen may also receive an increase pursuant to 5 U.S.C. 5333, the effective date of which is governed by 5 C.F.R. 531.305(c). (Author/DJM)

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DECISION



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

FILE: B-180010.07

DATE: June 13, 1977

MATTER OF: E. G. Walters, et al. - retroactive salary increase

- DIGEST:**
1. Wage board foremen who are precluded from union membership supervise craftsmen whose pay is established by collective bargaining. Arbitrator awarded pay rate increase for nonsupervisory wage board employees retroactive to date of basic agreement containing arbitration clause. Since special wage schedule for foremen establishes foremen's rate of pay without limitation at 114 percent of negotiated rate for supervised journeymen, salary increase for foremen may be made retroactive to date set by arbitrator for pay rate increase for nonsupervisory employees.
 2. General Schedule supervisor of wage board foremen who are granted retroactive salary increase may receive retroactive adjustment in pay pursuant to 5 U.S.C. 5333 since effective date for adjustment set forth at 5 C.F.R. 531.305(c) applies only to initial determination to grant adjustment, and not to subsequent increases or decreases due to changed circumstances.

By a letter dated August 27, 1976, Mr. D. D. Anderson, Assistant Commissioner of the Department of the Interior, Bureau of Reclamation, requested our decision concerning the claims of Messrs. E. G. Walters, John L. Nichols, and Willie L. Ableidinger for retroactive adjustments of compensation. Each of the claimants in this case is a supervisory employee of the Bureau of Reclamation's Yakima Project in Yakima, Washington. Messrs. Walters and Ableidinger are hourly powerplant foremen paid under a special wage schedule. Mr. Nichols, a general schedule employee, is a Power Operations Supervisor, grade GS-11.

The foremen directly supervise craftsmen whose hourly pay rates are determined through collective bargaining under an agreement between the Department of the Interior and the International Brotherhood of Electrical Workers, Local Union No. 77. The foremen are excluded from the bargaining unit under the provisions of Executive Order No. 11491, October 29, 1969, as amended, and their pay is established under a special wage schedule within the Federal Wage System. This special wage schedule is set forth in section K of Appendix V to the Supplement 532-1 of the Federal

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Personnel Manual, and provides for the rate of pay of power plant operation and maintenance supervisory personnel (foremen) at the Yakima Project as follows:

"114 percent of journeyman rate negotiated under collective bargaining agreement between Bureau of Reclamation and IBEW Local 77."

The salary rate for the Power Operations Supervisor, grade GS-11, who directly supervises the two foremen, has been administratively adjusted under the authority of 5 U.S.C. 5333(b) and 5 C.F.R. 531.301 et seq.

In March 1975, the agency and the union reached an impasse in their efforts to negotiate a new wage schedule for the nonsupervisory hourly employees and the matter was referred to arbitration. The arbitrator's award dated September 30, 1975, increased the journeyman's rate of pay from \$7.36 to \$8.43 per hour, retroactive to March 17, 1975, the effective date for the basic collective-bargaining agreement which contained the arbitration provision. Pursuant to our decision in Matter of Bureau of Reclamation Yakima Project, 55 Comp. Gen. 1006 (1976), the award was fully implemented and a new wage schedule for nonsupervisory personnel was established retroactive to March 17, 1975.

Since the powerplant foremen were not included in the bargaining unit, the special wage schedule governing their rates of pay was increased effective October 26, 1975, which was the beginning of the first pay period following signature by the Regional Director. Based upon the fact that a foreman's salary is based entirely on the highest paid journeyman under his supervision, the foremen have submitted claims for a retroactive increase in compensation from March 17, 1975, to October 25, 1975.

It is well established that in the absence of specific language to the contrary, the provisions of salary increase statutes which make the increase retroactive require that the increase be applied to reflect the pay status an employee would have attained had the amended pay schedules been operative and applied currently during the retroactive period. B-169686, May 22, 1970. Thus, we have held that where the pay of a wage board supervisor is linked by regulation to that of a particular grade of the General Schedule, the effect of the regulation is to assimilate the pay

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of the wage board supervisor to that of the General Schedule position to which it is linked. Our decision in B-169686, supra, therefore, held that the supervisory wage schedule could retroactively be adjusted to reflect a retroactive General Schedule salary increase in effect at the time of the area wage schedule adjustment for nonsupervisory personnel.

In the present case, the rate of pay for foremen at the Yakima Project is set, without limitation, at 114 percent of the journeyman rate negotiated under the collective bargaining agreement. The salary for the foremen is, therefore, assimilated to the negotiated rate of pay for the journeyman position. The negotiating process itself is sanctioned by statute, since section 9(b) of Public Law 92-392 provides that the laws presently governing the prevailing rate systems shall not be construed to abrogate, modify, or otherwise affect collective bargaining agreements in effect on August 19, 1972. Since under the special wage schedule, the rate of pay for foremen is assimilated without limitation to the rate of pay negotiated for journeymen at the Yakima Project, the retroactivity provisions of the negotiated rate are to be applied to the rate of pay for the foremen. Accordingly, the claims of Messrs. Walters and Ableidinger may, if otherwise proper, be paid retroactively to March 17, 1975.

Concerning the claim of Mr. Nichols, we have been informally advised that prior to entering on duty with the Bureau of Reclamation on May 25, 1975, he was employed by the Bureau of Indian Affairs, Department of the Interior, at grade GS-11, step 1. Immediately upon his appointment to the Bureau, Mr. Nichols' rate of pay was adjusted to grade GS-11, step 5, pursuant to 5 U.S.C. 5333. When the arbitration award was given effect by the agency, Mr. Nichols received a second pay adjustment to grade GS-11, step 8, on November 9, 1975, under 5 U.S.C. 5333. His present claim for a retroactive increase in the pay adjustment has been submitted in connection with the claims of the foremen over whom he exercises regular supervision.

Statutory authority for the payment of an adjustment to supervisors of wage board employees is provided by 5 U.S.C. 5333. The legislative history to this provision indicates that the section was enacted for the purpose of improving morale among General Schedule supervisors who otherwise would be paid less than their subordinates who are under a wage board system. See

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Committee Print of the House Committee on Post Office and Civil Service, February 28, 1962, at pages 3 and 4, and page 20. The statute merely authorizes and permits the agencies to make an appropriate pay adjustment under regulations prescribed by the Civil Service Commission. Thus, the initial determination whether to make an adjustment in a given instance is generally within the discretion of the employing agency. Matter of Billy M. Medaugh, 55 Comp. Gen. 1443 (1976).

After an agency initially decides to grant a pay adjustment, 5 C.F.R. 531.305(c) provides for the effective date as follows:

"Effective date. The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart."

Noting, however, that the pay adjustment for supervisors paid under the General Schedule is contingent upon the regular supervision of a wage grade employee, and is limited to the nearest rate of his grade which exceeds the highest rate of basic pay paid to the supervised employee, we held in Medaugh that these conditions must be met at all times, and that the adjustment previously granted must be increased, reduced, or eliminated, as required by changed circumstances. Since under Medaugh, the rate of the adjustment payable to the supervisor is determined by reference to the highest rate of basic pay paid to any wage board employee whom he regularly supervises, and thus may vary up or down, the provision of 5 C.F.R. 531.305(c) concerning the effective date is applicable only to the initial determination to grant the adjustment, and does not apply to subsequent fluctuations of the rate at which the adjustment is paid.

In the present case, the employing agency initially determined to grant a pay adjustment to Mr. Nichols when he entered on duty on May 25, 1975. Thereafter, increases or decreases in the pay adjustment must be made in accordance with our decision in Medaugh. As noted above, retroactive salary increases are to be applied to reflect the status an employee would have attained had the amended pay schedules been operative and applied currently during the retroactive period. B-169686, supra. Since a retroactive increase in compensation is to be awarded to the

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foremen whom Mr. Nichols supervised, an appropriate increase is to be made in the pay adjustment to Mr. Nichols' basic salary which had previously been authorized under 5 U.S.C. 5333.

The claims, if otherwise proper, should be processed by the employing agency in accordance with the foregoing.


Acting Comptroller General
of the United States