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DECISION

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

FILE: B-180095 DATE: November 15, 1976

MATTER OF: Henry A. Wade - Deduction of Union Dues from Backpay

DIGEST: Erroneously separated employee had voluntary allotment for deduction of union dues in effect at time of separation. Since employee did not consent, at time of restoration, to deduction of dues from backpay award, refusal of agency to do so was proper because there is no authority under Back Pay Act authorizing such deduction. Nor is deduction of dues from current pay authorized, absent consent of employee. Termination of voluntary dues allotment that occurred at separation remains in effect, and agency is not obligated to union for amount equivalent to back dues.

This case arises from a request of November 14, 1975, for an advance decision submitted by Dr. John T. Mason, Director of the Veterans Administration (VA) Hospital, Murfreesboro, Tennessee, concerning the authority for deducting union dues from a backpay award.

On September 13, 1974, Mr. Henry A. Wade, a psychiatric nursing assistant at the VA Hospital, Murfreesboro, was removed from his position. He appealed his removal. In a decision dated May 19, 1975, the Federal Employees Appeals Authority ordered him restored to his former position with backpay from the date of his separation.

At the time of his removal, Mr. Wade was a member of VA Hospital Local 1844, American Federation of Government Employees (AFGE), holder of exclusive recognition at the VA Hospital, Murfreesboro, and had on file a signed authorization calling for the withholding of union dues from his salary. He never cancelled this authorization.

In appealing his separation, Mr. Wade designated as his representative the National Representative of AFGE. However, shortly thereafter Mr. Wade selected as a new representative a private attorney who continued to represent him throughout the

remainder of the proceedings. Mr. Wade elected not to become a dues-paying member of the union when he was reinstated with backpay on June 2, 1975, and he has not rejoined the union. When he was paid backpay, no union dues were deducted.

When Mr. Wade was ordered restored to duty, a representative of Local 1844 contacted the Hospital Personnel Officer and requested that union dues be withheld from the backpay award. Hospital officials could find no authority for deduction of union dues from a backpay award. Further discussions with officials of Local 1844 were held without reaching an agreement. In an effort to avoid further controversy, the hospital contacted Mr. Wade who stated that he did not want union dues withheld from his backpay award.

On September 19, 1975, Local 1844 filed an unfair labor practice complaint with the hospital. The two elements of the charge were that the hospital refused to deduct union dues from the backpay award, and that hospital officials contacted Mr. Wade directly. On August 26, 1976, the complaint was dismissed by the Assistant Secretary of Labor for Labor-Management Relations on the grounds that the hospital's conduct did not tend to encourage or discourage membership in the union, and that, since there was genuine uncertainty concerning the deduction of union dues from the backpay award, the hospital should be allowed a reasonable time to comply with the decision it requested from the Comptroller General.

The hospital director has asked us two questions based on the foregoing facts: (1) In the absence of a specific request from the employee, can the hospital deduct union membership dues from the backpay award or from current salary after reinstatement? (2) Is the hospital liable to the union for the back union dues?

Voluntary allotments for the withholding of union dues are authorized by section 21 of Executive Order 11491, 3 C.F.R. § 254 (1974). Section 21 permits an agency and a labor organization to agree to a dues check-off procedure, subject to regulations of the Civil Service Commission. The Civil Service Commission regulations on this point are published in 5 C.F.R. § 550.321 et seq. (1976). Section 550.322(c) provides that "an agency shall discontinue paying an allotment when the allotter is separated from the Federal service * * *." The agreement between the Hospital and Local 1844, entitled "Payroll Allotment for Collection of Dues," which was approved November 1, 1973, requires that an allotment be terminated when an employee is separated.

This is apparently a case of first impression and we are not aware of any guidance or instructions on what to do when an

employee is restored to the rolls, nor are there any instructions regarding deduction of union dues from a backpay award.

In other areas, the methods to be used in computing a backpay award are very explicit. When an erroneously separated employee is restored to the rolls, under 5 U.S.C. § 8706(f) (Supp. II, 1972), if he was covered by Federal Employees Group Life Insurance at the time of his separation he is deemed to have been covered during the period of separation, but no premiums are to be deducted from the backpay award. At the time of restoration, an erroneously separated employee, under 5 U.S.C. § 8908 (1970), has the option to enroll in a health benefit plan as if he were a new employee, or to have his coverage restored, with adjustments for contributions and claims to be made as if the separation had not occurred. This section was amended to its present form by Public Law 88-284, March 17, 1964, 78 Stat. 164, 166. In the section by section analysis of the report of the Senate Committee on Post Office and Civil Service, S. Rep. No. 642, 88th Cong., st Sess., November 13, 1963, the following explanation was given:

> "Under the present law, an employee who is erroneously removed or suspended from his position and then restored is deprived of coverage and benefits during the period of his removal. The employee's coverage, when he is restored, is made retroactive, adjustment of premiums and claims being made back to the date of his removal. It has occurred that employees erroneously removed have had, during the period of suspension, no need of health coverage. They were impelled under existing law, however, to pay back premiums, even though they would have filed no claims for coverage had they been on the job. This amendment would permit a restored employee to elect either retroactive coverage or enrollment as a new employee. Thus an employee could elect to enroll afresh if he had not needed retroactive coverage, because he had little or no medical expense or because he had bought other health insurance during the period of removal." (At p. 7)

The health benefit program for Federal employees is entirely voluntary, and participation can be terminated at any time. The withholding of union dues is also entirely voluntary, and can be terminated at the times agreed to between the parties (here March 1 and September 1 of each year). Additionally, the analysis of benefits received during the period of separation discussed in the above quotation has a parallel to the instant case. Just as a separated employee might purchase other health insurance, Mr. Wade apparently chose to retain a representative other than the one provided by the union. Thus, additional expenses for a representative of his own choosing were incurred by the individual for which reimbursement is not authorized.

We believe, in light of the complete lack of guidance in the area, that the procedure applicable to enrollment in the Federal employee health benefit plan provides an appropriate model to be used for the deduction of union dues. In effect, that is what the hospital did in this case when it requested Mr. Wade's permission to deduct union dues from his backpay. By exercising his option not to rejoin the union, Mr. Wade precluded the voluntary deduction of union dues from his backpay award.

In the absence of the reinstated employee's express consent, we find no authority in the Back Pay Act, 5 U.S.C. § 5596 (1970), or in the Civil Service Commission's regulations thereunder, for the deduction of union dues from a backpay award. A voluntary authorization to deduct dues is terminated, under the regulations and the labor-management agreement, upon separation and can only be renewed by a new authorization by the employee. Likewise, there is no authority to deduct union dues from the employee's current salary after reinstatement unless he executes a new authorization.

Accordingly, in answer to the first question, since Mr. Wade declined to authorize the deduction of union dues from his backpay award, and declined to rejoin the union, the VA Hospital, Murfreesboro, properly refused to deduct the union dues from the backpay award and from Mr. Wade's current salary.

With regard to the second question presented, we hold that the hospital is not liable to the union for the back union dues. Because Mr. Wade was given the opportunity to authorize deduction of dues from the backpay award, but declined to do so, the

termination of the dues checkoff at the time of separation remained in effect. Therefore, since there was no valid voluntary dues allotment authorization in effect for the period of Mr. Wade's separation, the union was not entitled to receive the dues, and the hospital is not now obligated to pay an equivalent amount to the union. 54 Comp. Gen. 921 (1975), and B-180095, October 1, 1974.

R. F. Keller

Acting Comptroller General
of the United States