



BACKGROUND

In our February 3 decision we stated that, although section 9(b) of Pub. L. No. 92-392, August 19, 1972, 5 U.S.C. § 5343 note, governing prevailing rate employees, exempts the wage-setting provisions of certain bargaining agreements from the operation of that law, section 9(b) does not exempt agreement provisions from the operation of other laws or provide independent authorization for agreement provisions requiring expenditure of appropriated funds not authorized by any other law. Accordingly, certain negotiated labor-management provisions relating to overtime pay which had been in effect for many years were held to be invalid.

We noted in that decision that the contract provisions in question had been negotiated over a long period and that our decision was the first one stating they were illegal. Therefore, to cushion the impact of our decision, we authorized the Department of the Interior to delay its implementation of the decision and we suggested that the Bureau of Reclamation might wish to request legislation permitting the continued negotiation of the contract provisions in question.

On June 23, 1978, in B-189782 (57 Comp. Gen. 575), we modified our February 3 decision, postponing the date of its implementation by authorizing the Department of the Interior to continue to negotiate or to renegotiate the contract provisions in question until the end of the Second Session of the 96th Congress. If Congress had taken no action by that time, the February 3 decision was to become fully effective as to all agreements on that date.

The Comptroller General's authority to render advance decisions to heads of agencies and to certifying and disbursing officers on matters involving appropriated funds is found in 31 U.S.C. §§ 74 and 82d. It is clear that under Title VII of the Civil Service Reform Act, the Comptroller General may not overrule a specific arbitration award or a DLG-00167 decision of the Federal Labor Relations Authority made thereon. However, with those exceptions, the Comptroller General retains the authority to render decisions on the legality of

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expenditures of appropriated funds. Accordingly, this Office has the jurisdiction to issue a decision to the Deputy Assistant Secretary.

OPINION

The Civil Service Reform Act of 1978 specifically addresses the legality of negotiated contract provisions arrived at under section 9(b) of Pub. L. No. 92-392. Section 704 of the Civil Service Reform Act of 1978 states:

"Sec. 704. (a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.

"(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of--

"(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

"(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

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"(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code."

The following statement in the Conference Report on the Civil Service Reform Act of 1978 describes the purpose of Section 704:

"CERTAIN COLLECTIVE BARGAINING AGREEMENTS

"Section 704(d) of the House bill provides certain savings clauses for employees principally in agencies under the Department of the Interior and the Department of Energy who have traditionally negotiated contracts in accordance with prevailing rates in the private sector of the economy and who were subject to the savings clauses prescribed in section 9(b) of Public Law 92-392, enacted August 19, 1972.

"The Senate contains no comparable provision.

"The conference report adopts the House provision with an amendment.

"As revised, section 704(d) overrules the decision of the Comptroller General in cases number B-L89782 (sic) (Feb. 3, 1978) and B-L9L520 (sic) (June 6, 1978), relating to certain negotiated contracts applicable to employees under the Department of the Interior and the Department of Energy. This section also provides specific statutory authorization for the negotiation of wages, terms and conditions of employment and other employment benefits traditionally negotiated by these employees in accordance with prevailing practices in the private sector of the economy.

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"Section 704(d)(1) authorizes and requires the agencies to negotiate on any terms and conditions of employment which were the subject of negotiations prior to August 19, 1972, the date of enactment of Public Law 92-392. Section 704(d)(1) may not be construed to nullify, curtail, or otherwise impair the right or duty of any party to negotiate for the renewal, extension, modification, or improvements of benefits negotiated.

"Section 704(d)(2) requires the negotiation of pay and pay practices in accordance with prevailing pay and pay practices without regard to chapter 71 (as amended by this conference report), subchapter IV of chapter 53, or subchapter V of chapter 55, of title 5, United States Code, in accordance with prevailing practices in the industry." Conference Report No. 95-1272, 95th Cong., 2d Sess. 159 (1978).

By virtue of section 704(b)(B), prevailing rate employees whose labor-management contract provisions are covered by section 9(b) of Pub. L. No. 92-392, may negotiate the contract provisions without regard to subchapter V of chapter 55, title 5, United States Code. Subchapter V contains 5 U.S.C. § 5544, pertaining to overtime pay for prevailing rate employees, which provision was the subject of our February 3 decision. Accordingly, our decision of February 3, 1978, is overruled insofar as it invalidated certain overtime contract provisions of employees who negotiate their wages pursuant to section 9(b) of Pub. L. No. 92-392.

Our decision B-191520, June 6, 1978, relied in part on the rationale in the February 3 decision and held invalid certain other contract provisions concerning overtime pay for prevailing rate employees. The June 6 decision likewise is overruled insofar as it invalidated the contract provisions of employees who negotiate their wages pursuant to section 9(b) of Pub. L. No. 92-392. The arbitration award overruled

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and the contract provisions held invalid in our June 6 decision may be reinstated insofar as the applicable contract provisions were covered by section 9(b) of Pub. L. No. 92-392. Our prior decision in 56 Comp. Gen. 360 (1977) is also overruled insofar as it pertains to overtime provisions negotiated under section 9(b).

The Deputy Assistant Secretary has also asked many other questions as to what contract provisions may or may not be negotiated under the stay order contained in our earlier decision of June 23, 1978. Our stay order was intended to preserve the status quo for employees covered by section 9(b) until the Congress had had a chance to consider this matter. Since the Congress, by passing Section 704, has acted on the matter, our stay order will no longer be necessary. Accordingly, the Deputy Assistant Secretary's questions must now be viewed in light of the recently passed Civil Service Reform Act of 1978. In view of the date of the submission, the many difficult issues raised by the Act have not been addressed by the interested parties. Moreover, the questions asked are very broad and we are not acquainted with the factual background essential for a thoroughly considered decision. Therefore, we shall not render a decision on these issues until a request has been made by an appropriate party concerning the specific facts involved and the matter has been fully briefed by all those interested.

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