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DECISION

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

FILE: B-190779 DATE: July 7, 1978

MATTER OF: Chester G. Christenson, et al.--Retroactive wage increase

DIGEST: Retroactive wage adjustments for Federal wage board employees which are not based upon a Government "wage survey," but rather on negotiations and arbitration under a 1959 basic bargaining agreement are not governed by 5 U.S.C. 5344 as added by section 1(a) of Public Law 92-392; section 9(b) of that law preserving to such employees their bargained for and agreed to rights under that basic bargaining agreement.

This action is in response to a letter from Ms. Manzanares, Authorized Certifying Officer, Bureau of Reclamation, United States Department of the Interior, requesting an advance decision. The question involves the legality of paying retroactive salary for work performed by and lump-sum leave payments to wage-board employees who were retired or separated from service prior to the date a retroactive wage increase was put into effect based on an arbitration decison.

The submission states that the circumstances which led up to the request for decision are that on June 15, 1976, negotiations began for wage increases of wage-board employees at the Hungry Horse Project, Hungry Horse, Montana. On June 25, 1976, negotiations reached an impasse and eventually went to arbitration with the hearing held on October 20, 1976. By action dated February 10, 1977, the Arbitrator recommended a specific wage increase to be effective June 26, 1976. On March 1, 1977, the Commissioner of Reclamation approved that pay adjustment, but to be effective from July 4, 1976, since the date recommended by the Arbitrator fell during a pay period.

In the meantime, four wage-board employees left their employment at the project. Two were retired (Chester G. Christenson, February 15, 1977, and Donald L. Renken, August 27, 1976) and two were separated (William Purdy, September 11, 1976, and James Sheehan, August 27, 1976). Apparently, based on a finding that they were not employed on the date the wage increase was ordered into effect (March 1, 1977), none of them received the retroactive increase.

The submission indicates that in September 1977, Mr. Christenson filed a claim with the agency in the amount of $141.44, representing additional compensation believed due for his lump-sum leave to

reflect the retroactive rate increase. By letter dated September 25, 1977, that claim was denied under the provisions of Federal Personnel Manual Supplement 990-2, 550-21, Subchapter S2 and our decision, 54 Comp. Gen. 655 (1975).

By letter dated October 19, 1977, the International Brotherhood of Electrical Workers, Local 768, served notice to the project superintendent at Hungry Horse of their intention to file a formal grievance on behalf of the before-mentioned former employees. The submission indicates that it is the union's view that refusal to pay the retroactive pay is a discriminatory practice. Apparently, it is their contention that a retroactive arbitration award should be treated as though the terms of the award were in fact put into effect on the date specified and all subsequent pay transactions would be made according to those terms.

The view is expressed in the submission that the before-cited decision of this Office prohibits the retroactive pay for the aggrieved employees, that is, unless a retroactive pay adjustment based on an arbitration decision is not subject to the limitations of 5 U.S.C. § 5344 and our decision.

Section 5344 of title 5, United States Code (Supp. II, 1972), as added by section 1(a) of Public Law 92-392, August 19, 1972, 86 Stat. 568, provides:

> "(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.
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> "(b) Retroactive pay is payable by reason of an increase in rates of basic pay referred to in subsection (a) of this section only when--
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> > "(1) the individual is in the service of the Government * * * on the date of the issuance of the order granting the increase; or

> "(2) the individual retired or died during the period beginning on the effective date of the increase and ending on the date of issuance of the order granting the increase, and only for service performed during the period."

In 54 Comp. Gen. 655, supra, we held that retroactive adjustments of wages of wage-board employees which adjustment is based on a Government wage survey are governed by 5 U.S.C. § 5344 which places limitations on the entitlement to such adjustments. We held therein that an employee who retires or dies during a period covered by a retroactive wage adjustment, is entitled to such increases for services actually performed but that he may not receive such adjustment for any lump-sum leave payment received. Other employees are not entitled to such retroactive increase unless they were "in the service of the Government" on the day the wage increase is ordered into effect.

We do not view the before-quoted Code provisions or the decision construing those provisions as controlling the cases in the submission.

Section 9(b) of Public Law 92-392, supra, provides that:

"(b) The amendments made by this Act shall not be construed to--

> "(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;
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> "(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act for renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

> "(3) nullify, change, or otherwise affect in any way after such date of enactment any agreement, arrangement, or understanding in effect on such date with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such contract, or the requirement of such contract with a new contract, after such date."

According to the material submitted with the request, the basic bargaining agreement under which the June 1976 negotiation for wage increases began was entered into in 1959. The basic agreement which became effective at that time called for negotiated rates of pay and established that such rates would be based on "work of a similar nature performed under similar circumstances prevailing in various geographic areas in and contiguous to the Project." Additionally, the bargaining agreement authorized the establishment of a joint fact finding committee regarding determination of what those rates of pay should be, as opposed to requiring acceptance of a Government wage survey.

Since there was no "wage survey" involved, it is our view that 5 U.S.C. § 5344 and the limitations imposed therein on receipt of retroactive pay would not be a barrier in the cases indicated in the submission. In this connection, we find nothing in FPM Supplement 990-2, 550-21, subchapter S2, which would prohibit the lump-sum leave payments from being computed at the increase rate.

Accordingly, the named former employees are entitled to receive the retroactive wage adjustment, if otherwise correct.

R. F. Keller

Deputy Comptroller General
of the United States