

EGM

DECISION



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

10,405

FILE: B-192511

DATE: June 8, 1979

MATTER OF: Liability of Certifying Officers for Advance of Severance Pay in Colombia to Foreign Service Local Employees Later Terminated for Cause

DIGEST: 1. State Department may issue instructions to U.S. Embassy in Bogota, Colombia, stating that certifying officer (CO) will not be liable for advance severance pay paid to eligible employees who subsequently lose eligibility for such payment provided certification of payment was made on basis of information provided CO that was complete on its face with respect to purpose of payment and showed administrative finding of compliance with Department's Foreign Service National employee severance pay plan.

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end para.

2. State Department may establish compensation plans for alien foreign service employees based on "compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest." 22 U.S.C. § 889 (1976). However, Department may not, solely because practice of local employers is not to seek recovery, refrain from collection efforts when alien employee loses eligibility for certain compensation. Federal Claims Collection Act mandates attempts to recover. 31 U.S.C. §§ 951-953 (1976).

This responds to a request from the Deputy Assistant Secretary for Budget and Finance, Department of State (Department) for our opinion on the following questions:

- 1. "If an advance severance payment were made to an FSN [Foreign Service National] employee of the Embassy or a Consulate in Colombia and the same employee were later terminated for cause, thus not entitled to severance benefits, would the certifying officer who approved the advance payment be exempt from collecting or repaying the amount advanced?"
2. "If the answer to the above question is affirmative, would the Department be correct in issuing an instruction to the Embassy in Bogota that certifying

005527

B-192511

officers will not be liable for any advance payments made in compliance with the Foreign Service National employee severance pay plan, provided all conditions of the plan are otherwise met?"

The above questions arose as the result of our decision, Advances of Severance Pay to Foreign Service Local Employees of United States in Colombia, B-192511, dated February 5, 1979, in which we concluded that severance payments may be made to Foreign Service local employees of the U.S. Embassy in Colombia in advance of their separation from Government service in accordance with the following local practice.

Colombian law requires that employers provide employees with severance pay and authorizes the advance payment of accrued severance pay for the purpose of:

1. purchasing a home;
2. paying a mortgage thereon; or
3. making improvements on a home previously purchased.  
(Articles 249, 256, Colombian Labor Code (1978).)

Under 22 U.S.C. § 889(a)(1) (1976), the Secretary of State is authorized to establish compensation plans for alien employees in accordance with prevailing local practices to the extent consistent with the public interest. Pursuant to this authority, the Department established a Foreign Service National (FSN) employee severance pay plan for eligible Colombian employees of all U.S. Government agencies in Colombia. In our decision, Advances of Severance Pay, supra, we authorized the advance payment of severance pay for the three purposes set forth above.

Thus, with regard to the application of funds, an administrative determination should be made that the plan has been complied with, and that the FSN employee complied with the local practice as set forth in Article 256 of the Colombian Labor Code. That article (as translated by the State Department) requires that--

"\* \* \* advances \* \* \* be approved by the respective Work Inspector or in his absence, by the Municipal

B-192511

Mayor, after it is determined that they are going to be dedicated to the ends indicated in said paragraphs."

The problem in this case arises because the employees' right to severance pay is not absolute. Under the Department's plan, employees may lose their eligibility for severance pay if employment is terminated:

- "a) For cause of misconduct or malfeasance as determined by employing agency.
- "b) For cause of willfully committing material damage to his office or building, machinery, materials, instruments and other objects connected with his work.
- "c) For cause of security when employing agency determines that termination is necessary and advisable in the interest of the national security of the United States."

In view of the fact that an employee may lose his eligibility for severance pay subsequent to the advance payment, the Department is concerned about the liability of certifying officers who certify vouchers covering such advance payments. Under 31 U.S.C. § 82c (1976), which sets forth the responsibilities of certifying officers--

"The officer or employee certifying a voucher shall (1) be held responsible for the existence and correctness of the facts recited in the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved; and (2) be held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved: \* \* \*."

B-192511

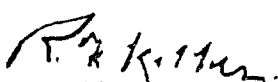
Under the above statutory provision, vouchers for advances of severance pay to FSN employees in Colombia may be certified for payment (if otherwise proper) provided that the record before the certifying officer is complete on its face with respect to the purpose of the payment, and indicates that the appropriate Department official has made a finding that the proposed payment is in compliance with the Department's FSN employee severance pay plan.

As a general proposition, if certifications are made in accordance with the conditions set forth above, then the certifying officer would not be held liable for otherwise proper payments if the FSN employee should subsequently lose his eligibility for severance pay, for causes which did not exist at the time of the payment, or which existed but which the certifying officer did not know of and had no reason to know of. If the Department's proposed instruction is carefully worded to include the qualifications in the preceding paragraph, then we would have no objection to its issuance to the U.S. Embassy in Bogota.

The Department refers to correspondence indicating that--

"the local practice of Colombian employers is not to attempt to collect any severance pay amounts advanced to an employee who is later terminated for cause, notwithstanding the fact that the individual, because of the nature of the separation, becomes technically ineligible for the amounts previously advanced."

Under 22 U.S.C. § <sup>In addition</sup> ~~889~~ (a) (1), the <sup>DPS</sup> ~~Secretary~~ may follow local practice as to "prevailing wage rates and compensation practices." However, this does not confer authority to follow local practice as to collection of claims in favor of the United States. The Department would still be required to attempt collection of the advance severance pay. See the Federal Claims Collection Act, 31 U.S.C. §§ 951-953 (1976). The fact that the payment was proper at the time it was made does not affect the debt to the United States that arose by reason of the employee's termination for cause.

  
Deputy Comptroller General  
of the United States