

15123
File
PLM I

DECISION



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

FILE: B-198436

DATE: October 9, 1980

MATTER OF: Special Police Officers, Water and Power
Resources Service ~~Sunday premium pay~~

[ENTITLEMENT TO]

DIGEST: Special Police Officers of Water and, Power Resources Service are not entitled to Sunday premium pay for work performed on Sundays that was not within their officially scheduled workweek as established by appropriate agency authority. Employees official hours were 12 midnight to 8 a.m. Monday, but they worked unofficial hours of 11:30 p.m. Sunday to 7:30 a.m. Monday. The unofficial hours do not satisfy criteria of "regularly scheduled work" required by 5 U.S.C. § 5546(a) governing Sunday premium pay because such hours were not authorized by appropriate agency officials. See regulations cited.

The Regional Director, Lower Colorado Regional Office, Water and Power Resources Service, Department of the Interior, has requested an opinion of this Office on whether Special Police Officers assigned to the Security Division, Lower Colorado Dams Project Office, are entitled to Sunday premium pay under 5 U.S.C. § 5546(a) in circumstances where a dispute exists regarding officially ordered and approved work schedules. For the reasons which follow we conclude that the employees in question are not entitled to Sunday premium pay since the unofficial hours actually worked do not satisfy the criteria of "regularly scheduled work" required by 5 U.S.C. § 5546(a)(1976).

Entitlement of an employee to Sunday premium pay is governed by 5 U.S.C. § 5546(a) which provides:

"§ 5546. Pay for Sunday and holiday work

"(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the

~~012338~~ 113509

entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay."
(Emphasis supplied.)

Also, Sunday work has been defined in section 550.103(o) of title 5, Code of Federal Regulations, as all work during a regularly scheduled tour of duty within a basic workweek when any part of that work is performed on Sunday. This Office has construed the term "work during a regularly scheduled 8-hour period of service" as used in the above-quoted statute concerning Sunday premium pay, as work which is duly authorized in advance and scheduled to recur on successive days or after specified intervals. Clara A. Day, B-185022, June 2, 1976, and Comptroller General decisions cited therein.

Furthermore, the authority to fix the hours of work of employees, including the authority to fix basic workweeks and work schedules, is vested in the heads of agencies. This authority may be delegated to subordinate officials and must be exercised in accordance with applicable laws. See 5 U.S.C. §§ 302, 6101(a); 5 C.F.R. § 610.111; and Federal Personnel Manual chapter 610, subchapter 1. In this regard, 5 C.F.R. § 610.111 provides in pertinent part:

"(a) The head of each agency, with respect to each group of full-time employees to whom this subpart applies, shall establish by regulation:

"(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days.
* * * the regulation shall specify the calendar days constituting the basic workweek and the number of hours of employment for each calendar day included within the basic workweek."

In accordance with this scheduling authority Water and Power Resources Service Instructions supplementing the above regulations provide for the establishment of workweeks in paragraph R610.1.1(A) as follows:

"The Chief, Division of Management Support, and Regional Directors may approve tours of duty variations within limitations of the statutes and the Commission's regulations. Heads of projects and field offices may approve only a variation in the tour of duty

other than Monday through Friday (e.g., Tuesday through Saturday, or Wednesday through Sunday) for individuals in order to stagger the force for the performance of necessary Saturday or Sunday work and to obtain 24 hours per day or 7 days per week coverage."

Documentation provided in the record in the present case clearly indicates that the official working schedule for the Special Police Officers assigned to the Security Division, Lower Colorado Region, Water and Power Resources Service, Department of the Interior, authorized and approved by the Project Manager, established three basic shifts in order to provide for 24-hour, coverage: 12 midnight to 8 a.m.; 8 a.m. to 4 p.m.; 4 p.m. to 12 midnight, 7 days a week.

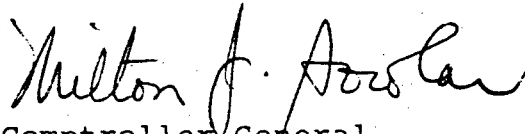
However, it is equally clear from the record that, in actuality, the Special Police Officers have worked a schedule that deviates from the official working schedule and includes the following shifts: 11:30 p.m. to 7:30 a.m.; 7:30 a.m. to 3:30 p.m.; and 3:30 p.m. to 11:30 p.m. The Regional Director further states that while it is unclear when or the reasons why the deviation from the official working schedule began, the revised unofficial schedule has apparently become--after an indeterminate period--a matter of Security Division policy and was incorporated into the Security Operation Manual.

These latter observations on the part of the Regional Director are at once unfortunate and, from a legal standpoint, misleading, as they obviously raise the expectation on the part of the Special Police Officers in question that their actual shifts worked from 11:30 p.m. on Sunday to 7:30 a.m. on Monday would eliminate application of the official work schedule thereby creating an entitlement to Sunday premium pay. However, such a result in these circumstances is contrary to law.

Under the provisions of paragraph R610.1.1(A) of the Water and Power Resources Service Instructions implementing section 610.111 of title 5, Code of Federal Regulations, the Chief, Division of Management Support, the Regional Directors, and, in certain circumstances, the project manager, were authorized to establish basic workweek schedules for their employees. Therefore, in view of the clear documentary evidence pertaining to the "official work schedule", we must conclude that the

B-198436

unofficial tour does not satisfy the Sunday premium pay statutory requirement of being "regularly scheduled work," because it was not authorized by appropriate officials. Consequently, the Special Police Officers in question are not entitled to Sunday premium pay for work performed on Sundays that was not within the hours of their basic workweek as established by the project manager.

A handwritten signature in dark ink, appearing to read "Milton J. Aroskar". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

For the Comptroller General
of the United States