

Franklin

119041

DECISION



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

FILE: B-206397

DATE: July 23, 1982

MATTER OF: National Federation of Federal Employees -
Prevailing rate employees pay adjustment
limitation

DIGEST:

The National Federation of Federal Employees contends that the Office of Personnel Management (OPM) was incorrect in requiring the rounding down of all fractions of a cent under the pay adjustment limitation in the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, August 13, 1981, § 1701(b), 95 Stat. 357,754. OPM asserts that rounding down is required under that provision. We believe that the language in that provision mandating that any adjustment to any prevailing rate employee wage schedule or rate not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981, requires the rounding down of fractions of a cent when to do otherwise would result in an adjustment to a prevailing rate employee wage schedule or rate exceeding this statutory pay adjustment limitation.

Mr. James M. Peirce, President of the National Federation of Federal Employees (NFFE), has requested a decision from our Office under our "Procedures For Decisions On Appropriated Fund Expenditures Which Are Of Mutual Concern To Agencies And Labor Organizations," 4 C.F.R. Part 22 (1981). He has asked:

"Are the Federal prevailing rate employees, whose tabulated rates of pay were rounded down rather than rounded to the nearest cent, entitled to have their pay rates adjusted to the nearest cent with back pay to the date their FY '82 pay rates became effective?"

The interested parties were served with copies of that request in accordance with our regulations, and we have considered all comments and views provided to us by those parties.

We believe that the language of section 1701(b) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, August 13, 1981, 95 Stat. 357,754, mandating that any adjustment to any prevailing rate employee wage schedule or rate not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981, requires the rounding down of fractions of a cent when to do otherwise would result in an adjustment to a prevailing rate employee wage schedule or rate exceeding this statutory pay adjustment limitation. We conclude that the Office of Personnel Management (OPM) was correct in requiring the rounding down of all fractions of a cent under these circumstances because of that statutory pay adjustment limitation. Federal prevailing rate employees are not entitled--due to that OPM action--to have their pay rates adjusted to the nearest cent with backpay from the date their fiscal year 1982 (FY'82) rates became effective.

The Omnibus Budget Reconciliation Act of 1981, containing the pay adjustment limitation, was approved August 13, 1981. Implementing that limitation, OPM issued Federal Personnel Manual (FPM) Bulletin 532-42 on September 15, 1981, which provided in section 4.c that if any rate resulting from wage schedule adjustments for certain prevailing rate employees covered under section 5342(a)(2) of title 5, United States Code, exceeded the rate payable on September 30, 1981, by more than 4.8 percent due to rounding, that rate had to be reduced to the highest rate which did not exceed 4.8 percent. The NFFE subsequently submitted a motion to the Federal Prevailing Rate Advisory Committee (FPRAC) to rescind section 4.c, to insure that the rates calculated for the 4.8 percent increase follow the established procedure of rounding up when the digit following the last cent to be used in application is 5 or above, and to insure that this action would be retroactively applied to all wage grade rates established on or after October 1, 1981. This motion was rejected by FPRAC, apparently with some reliance upon a legal opinion from the OPM's General Counsel dated December 16, 1981, that:

"* * * in the case of prevailing wage employees Congress required that any adjustment to any wage schedule or rate applicable to a prevailing rate employee shall not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981. * * *"

The opinion concluded that the statutory language specifically limits such adjustments:

"* * * to absolutely no more than 4.8 percent above the schedule or rate payable on September 30, 1981. Accordingly, the rate cannot be increased by rounding, and any rate which exceeds the rate payable on September 30, 1981, must be reduced to the highest rate which does not exceed 4.8 percent."

In his request for a decision from our Office, Mr. Peirce asserted that the practice of rounding down to cents: 1) was not specifically required by the law that imposed the pay cap, and, unless the law specifically mandated a particular method of rounding tabulations, the proper and customary method is to round up or down to the nearest number that is to be used in practical application, 2) was not intended by Congress, 3) was a new practice, and 4) was discriminatory against Federal prevailing rate employees. Mr. Pierce's arguments will be addressed individually in the order set out above.

1. STATUTORY REQUIREMENT

Mr. Pierce asserts that section 1701(b) does not specifically require rounding down all fractions of a cent in computing the tabulated wage rates under the pay adjustment limitation. He contends that unless the law specifically addresses a method of rounding tabulations, the proper and customary method is to round up or down to the nearest whole cent that is to be used in practical application. We need not address this latter contention, since we conclude that section 1701(b) prohibits, in effect, the rounding up of any fractions of a cent which would result in a prevailing

rate employee wage schedule or rate exceeding the pay adjustment limitation contained in that provision. Section 1701(b)(1) provides that:

"Notwithstanding any other provision of law, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, * * *

* * * * *

"(B) any adjustment under subchapter IV of chapter 53 of such title to any wage schedule or rate applicable to such employee which results from a wage survey and which is to become effective during the fiscal year beginning October 1, 1981, shall not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981 * * *," (Emphasis added).

The plain meaning of section 1701(b)(1) is that each adjustment to each prevailing rate employee wage schedule or rate is prohibited from exceeding the pay adjustment limitation of 4.8 percent. The paragraph does not require that each adjustment be in the amount of 4.8 percent; it only requires that each adjustment shall not exceed 4.8 percent.

We conclude that the rounding down of fractions of a cent is a statutory requirement when to do otherwise would result in an adjustment to a prevailing rate employee wage schedule or rate exceeding that statutory pay adjustment limitation of 4.8 percent. The OPM was correct in requiring the rounding down of all fractions of a cent under such circumstances under that statutory pay adjustment limitation.

2. CONGRESSIONAL INTENT

Mr. Pierce states that it was not Congress' intent in enacting section 1701(b)(1) to have OPM use its rounding down procedure solely for the pay rates of Federal prevailing rate employees, while General Schedule employee's rates were being rounded to the nearest cent under 5 U.S.C. § 5504. Two letters from members of Congress to the FPRAC, also expressing that view, were submitted to us. Both letters were written after the legislation was passed.

There is not much legislative history on this point. The Conference Report on this legislation makes no distinction between these two types of employees with regard to the pay adjustment limitation, stating that the House and Senate versions, "provide that the fiscal year 1982 pay adjustment for both General Schedule and prevailing rate employees shall not exceed 4.8 percent." (Emphasis added). H.R. Rep. No. 208, 97th Cong., 1st Sess., Book 2, page 913 (1981).

However, legislative history is not used as an aid to statutory construction where the meaning of the language used in a statute is plain. The Supreme Court has expressed this principle thus:

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, * * * the sole function of the courts is to enforce it according to its terms. (Citations omitted).

"Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." Caminetti v. United States, 242 U.S. 470, 485 (1917).

As we concluded above, the meaning of the language used in section 1701(b)(1) is plain. Regardless of what legislative intent was expressed, the plain language of section 1701(b)(1) must be given effect according to its terms.

3. NEW PRACTICE OR CHANGE IN PRACTICE

Mr. Pierce also asserts that OPM is instituting a new practice. His position is that the pay adjustment limitation statutes of previous years are no different from the one governing the FY '82 increase for prevailing rate employees, yet OPM's rounding method under the FY '82 provision is a new practice that has never been applied to wage rates for pay adjustment limitations of previous years. The position in the OPM legal opinion is that even though

rounding up was used under similar legislative restrictions on wage rate increases in past years, the limitation in past years was on the salary or pay of any individual, rather than on any wage schedule or rate.

It is true that the pay adjustment limitations of the previous 3 years are not precisely the same as that for the current year in that they refer to the "individual" or "employee," while the pay adjustment limitation for FY '82 specifically refers only to the prevailing rate employee "wage schedule or rate." Compare section 1701(b)(1) of the Omnibus Budget Reconciliation Act of 1981 with: Continuing Appropriations, FY 1981, Pub. L. No. 96-369, October 1, 1980, § 114(a), 94 Stat. 1351, 1356; Treasury, Postal Service, and General Government Appropriations Act, 1980, Pub. L. No. 96-74, September 29, 1979, § 613(a), 93 Stat. 559, 576; and Treasury, Postal Service, and General Government Appropriations Act, 1979, Pub. L. No. 95-429, October 10, 1978, § 614(a), 92 Stat. 1001, 1018.

Additionally, under 5 U.S.C. § 5343(c), OPM is specifically given the authority to promulgate regulations governing all phases of the prevailing rate pay-setting process. While the Congress specifically set forth the manner in which rules of rounding should be applied to pay-setting for General Schedule employees in 5 U.S.C. § 5504, no similar statutory provision exists for prevailing rate employees. Therefore, establishing rules of rounding is within OPM's discretionary rule-making authority. We cannot say that discretion has been abused by the adoption of the rules of rounding for FY '82, even though the practice differs from prior years.

Mr. Pierce also points out, as a related matter, that the principle of rounding to the nearest whole number, counting one-half and over as the nearest highest whole number, is common to school textbooks as well as other Federal regulations and instructions. We note, however, that where statutory language requires a different practice, the practice required by the statute governs. We also note that the Congress itself has on occasion exercised its discretion to prescribe a different rounding principle for pay computation purposes, as when it required that, "All rates shall be computed in full cents, counting a fraction of a cent as the next higher cent." Federal Employees Salary Increase Act of 1958, Pub. L. No. 85-462, June 20, 1958, § 15, 72 Stat. 203, 215.

4. DISCRIMINATION

Mr. Pierce also asserts that OPM's rounding down practice is discriminatory against Federal prevailing rate employees. He states that:

"* * * It was not Congress' objective to treat Federal prevailing rate employees differently than General Schedule employees whose pay rates were rounded off to the nearest cent."

The OPM legal opinion notes that there is a difference in the language of section 1701(b)(1) and section 1701(a) of the Omnibus Reconciliation Act of 1981 which governs General Schedule employees. While section 1701(b)(1) places the pay adjustment limitation on each applicable wage schedule or rate, the OPM legal opinion notes that in section 1701(a):

"* * * Congress required only that the 'overall percentage' of the adjustment of the rate of pay not exceed 4.8 percent. Thus, so long as the total pay increase for all employees does not exceed 4.8 percent, OPM has some flexibility in 'rounding off' the increase for the respective grade levels."


We agree with the OPM legal opinion. As discussed above, the pay adjustment limitation in section 1701(b)(1) does apply to each adjustment to each schedule or rate individually. In contrast, section 1701(a) provides that:

"* * * [T]he overall percentage of the adjustment of the rates of pay under the General Schedule or other statutory pay system under section 5305 of title 5, United States Code, * * * shall not exceed 4.8 percent." (Emphasis added.)

The rounding up or down of rates under section 1701(a) would be permissible as long as they balanced each other out, not exceeding the overall pay adjustment limitation of 4.8 percent, and the rounding requirements of 5 U.S.C. § 5504 were observed.

There are many areas in which prevailing rate and General Schedule employees are treated differently. As noted above, 5 U.S.C. § 5504 sets out specific statutory requirements for rounding for General Schedule employees, while no similar provision exists for prevailing rate employees. The other distinctions between the groups of employees are too numerous to list here. It is sufficient to say, however, that there are so many distinctions between the groups, that we cannot say that the difference in the method of rounding is illegally discriminatory.

In summary, we believe that the language of section 1701(b) of the Omnibus Budget Reconciliation Act of 1981, mandating that any adjustment to any prevailing rate employee wage schedule or rate not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981, requires the rounding down of fractions of a cent when to do otherwise would result in an adjustment to a prevailing rate employee wage schedule or rate exceeding this statutory pay adjustment limitation. We conclude that the OPM was correct in requiring the rounding down of all fractions of a cent under such circumstances under that statutory pay adjustment limitation.

for 
Comptroller General
of the United States