PL I
24828

DECISION

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

FILE: B-211956 **DATE:** October 21, 1983

MATTER OF: Bureau of Engraving and Printing - Limitation on Wage Increase - Fiscal Year 1983

DIGEST:

Bureau of Engraving and Printing craft employees whose pay is set administratively under 5 U.S.C. § 5349(a), "consistent with the public interest," were properly limited to a 4 percent wage increase for fiscal year 1983. Although the pay increase limitation in the 1983 Appropriation Act did not apply to these Bureau employees, agency officials properly exercised their discretion by limiting pay increases consistent with the public interest in accordance with guidance issued by the Office of Personnel Management. See court cases cited.

Senator Paul S. Sarbanes has requested our decision as to whether the Department of the Treasury properly limited wage increases for craft employees of the Bureau of Engraving and Printing to 4 percent. This was based on the pay increase limitation for fiscal year 1983 contained in an appropriations measure and in guidance issued by the Office of Personnel Management (OPM) to the heads of executive departments and agencies. We hold that, although the pay increase limitation imposed by the Appropriation Act does not apply to the Bureau employees in question, officials of the Department of the Treasury properly exercised their discretion by limiting the employees' wage increases to 4 percent, consistent with the public interest in accordance with the guidance issued by OPM.

Since the issue involved in this case is of mutual concern to the Department of the Treasury and to labor organizations representing the affected Bureau employees, we have afforded the agency and the unions an opportunity to comment on the matter. The agency and 7 of the 15 unions served with our request for comments have submitted written responses.

122875
027225

BACKGROUND

Historically, craft employees at the Bureau have been divided into two groups: 1) employees in highly skilled crafts related to engraving, including designers, engravers, plate finishers, plate printers, die sinkers, plate hardeners, and siderographers; and 2) employees in printing and maintenance crafts, including pressmen, compositors, photoengravers, plate makers, bookbinders, carpenters and painters.

The Bureau does not negotiate wage rates and increases with the unions representing its craft employees. Instead, pursuant to the Treasury's pay regulations and long-established practice, the wages of highly skilled craft employees are set and adjusted administratively based on job-to-job comparisons with like positions within the American Bank Note Company (ABNC) in New York City, for which the pay is set through private sector collective bargaining. The wages of employees in printing and maintenance crafts are set by comparison to similar occupations within the Government Printing Office (GPO), for which the pay is set by negotiations under the Kiess Act, 44 U.S.C. § 305 (1976). See Treasury Personnel Manual, Chapter 532, paras. 2-2c and 2-2d (May 12, 1969).

The Treasury incorporates ABNC's and GPO's negotiated wage increases into its wage structure in the following manner. At the conclusion of ABNC's and GPO's wage negotiations, those entities will advise the Bureau of the wage increases (expressed as percentage rates) agreed upon for various printing and engraving occupations. Where the occupational matches between positions within the Bureau and positions within ABNC or GPO are inexact, the Director of the Bureau will, in some circumstances, add a "percentage premium" for jobs within the Bureau which require increased or more diversified skills and responsibilities. The Director of the Bureau then recommends approval of the wage adjustments to the Department of the Treasury. Approval of the adjustments is granted by the Treasury's Director of Personnel who, in some cases, obtains the concurrence of the Assistant Secretary for Administration of the Treasury.

The Treasury-approved pay system was implicitly sanctioned by Public Law 92-392, 86 Stat. 564, August 19,

1972, which provided a statutory basis for adjusting pay rates for prevailing rate employees of the Federal Government and was codified in Subchapter IV of Chapter 53, Title 5, United States Code. The definitional provisions of 5 U.S.C. §§ 5342(a)(1)(I) and (b)(2)(A) expressly exclude employees of the Bureau from the coverage of Subchapter IV, except for purposes of 5 U.S.C. § 5349. Section 5349(a) provides that the pay of the Bureau's craft employees and the craft employees of several other agencies shall be:

> "* * * fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay-fixing authority of each such agency may determine * * *."

The legislative history of section 5349 evidences Congress' intent to allow the Bureau to follow its existing pay practices. See S. Rep. No. 92-791, 92d Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Adm. News 2980, 2985; and H.R. Rep. No. 92-339, 92d Cong., 1st Sess. 19 (1971).

DISCUSSION

The first question to be addressed is whether wage increases for craft employees of the Bureau are subject to the 4 percent pay increase limitation for fiscal year 1983 contained in section 109 of the Continuing Appropriations Act, 1983, Public law 97-276, 96 Stat. 1186, 1191, October 2, 1982. Section 109 of the Act extends the President's 4 percent cap on pay increases for Federal "white collar" employees to certain prevailing rate employees, providing in relevant part that:

> "(a) * * * [N]o part of any of the funds appropriated for the fiscal year ending September 30, 1983, by this Act or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A)

of title 5, United States Code, or an employee covered by section 5348 of that title, in an amount which exceeds -

* * * * *

"(2) for the period * * * [beginning on the effective date of the next wage survey adjustment following October 1, 1982, and] ending September 30, 1983 * * * the rate payable under * * * [the prior fiscal year's wage survey adjustment] by more than the overall average percentage of the adjustment in the General Schedule during the fiscal year ending September 30, 1983.

"(b) Notwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of the Civil Service Reform Act of 1978, the provisions of subsection (a) of this section shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom section 9(b) applies, except that the provisions of subsection (a) may not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before the date of enactment of this Act."

It is clear that employees of the Bureau are not covered by section 109(a), the provisions of which apply the 4 percent pay cap to civilian mariners whose pay is fixed administratively under 5 U.S.C. § 5348, and to employees who are described in 5 U.S.C. § 5342(a)(2)(A) as "prevailing rate employees." Subsection 5342(a)(2)(A) includes within the term "prevailing rate employees" those individuals who are employed in or under an "agency" in trades or crafts, or in unskilled, semiskilled, or skilled manual labor. The term "agency," as defined in 5 U.S.C. § 5342(a)(1), expressly excludes the Bureau of Engraving and Printing, except for purposes of 5 U.S.C. § 5349. As indicated previously, section 5349(a) establishes for Bureau employees an administratively-controlled pay system which

is separate from the wage survey method generally applicable to the "prevailing rate employees" described in 5 U.S.C. § 5342(a)(2)(A).

It is equally clear that section 109(b) of the Act, extending the 4 percent pay cap to prevailing rate employees covered by section 9(b) of Public Law 92-392, August 19, 1972, 5 U.S.C. § 5343 note, does not apply to employees of the Bureau. Section 9(b) of Public Law 92-392 exempts from the pay-setting provisions of 5 U.S.C. Chapter 53, Subchapter IV, the establishment of wages and terms and conditions of employment through negotiations between Government agencies and organizations of Government employees. As discussed previously, the Bureau does not negotiate wage rates or increases with its craft employees.

The second question to be addressed is whether the Bureau's craft employees are subject to the 4 percent pay increase limitation set forth in a memorandum issued by OPM to the heads of executive departments and agencies. The guidance issued by OPM declared that it would be in the public interest to extend the pay increase limitation to all categories of Federal officers and employees, and cited the policy stated in the prevailing rate statute, specifically 5 U.S.C. § 5341(1), that there be equal pay for equal work in all Federal agencies within the same locality. To this end, OPM recommended that the 4 percent pay cap be extended to those employees whose wages are determined under administratively-controlled pay systems, stating that:

> "* * * [E]ach officer or employee in the executive branch who has administrative authority to set rates of pay for any Federal officer or employee should exercise such authority, to the extent permissible under law, treaty or international agreement, in such a way as to encourage the limiting of pay increases for any category of officers or employees to no more than 4.0 percent. * * *"

Relying on the guidance issued by OPM, the Department of the Treasury decided to limit wage increases for craft employees of the Bureau to 4 percent. In denying the

Bureau's request that the specified employees be exempted from the pay increase limitation, the Treasury explained that OPM's policy extending the pay cap to employees whose pay is fixed administratively applies to craft employees at the Bureau, since those employees are paid under a Treasury-approved system. Additionally, in comments submitted to our Office, the Treasury states that its determination to apply the pay cap to craft employees of the Bureau was based on our decision in 59 Comp. Gen. 240 (1980). In that decision, we held that the Treasury reasonably exercised its discretion by limiting pay increases for certain printing and maintenance craft employees of the Bureau to 5.5 percent for fiscal year 1979, based on the President's determination that it would be in the public interest to apply the pay cap to employees whose wages are fixed administratively.

The unions representing craft employees of the Bureau have challenged the Treasury's determination to apply the 4 percent pay cap to those employees on a number of grounds. Several unions contend that imposition of the pay cap contravenes the requirements of 5 U.S.C. § 5349(a), which, as discussed previously, provides that the pay of Bureau employees will be, "fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates." Local No. 32 of the Bank Note Engravers Guild suggests that 5 U.S.C. § 5349(a) requires the maintenance of wages for Bureau employees in line with prevailing levels for comparable work at ABNC and GPO, and that there is virtually no administrative discretion to establish schedules which differ from the prevailing rates. The Washington Plate Printers Union, Local No. 2, International Plate Printers, Die Stampers, and Engravers Union of North America, AFL-CIO (Plate Printers Union) asserts that, under the terms of 5 U.S.C. § 5349(a), the Treasury cannot establish wage schedules different from the prevailing rates unless such action is grounded on compelling public interest considerations. The Plate Printers Union maintains that, in this instance, public interest considerations are not sufficiently compelling to override the mandate in 5 U.S.C. § 5349, that the pay of Bureau employees be determined in accordance with prevailing rates.

The unions have accorded great weight to the "prevailing rate" language in 5 U.S.C. § 5349(a). However, the courts have consistently recognized that statutory

language requiring wage adjustments to be tied to prevailing rates "as nearly as is consistent with the public interest" affords the pay-setting authority discretion to establish schedules that do not precisely parallel wage rates prevailing in the private sector. See National Federation of Federal Employees v. Brown, 645 F.2d 1017, 1024 (D.C. Cir. 1981) (interpreting 5 U.S.C. § 5343); Daigle v. United States, 217 Ct. Cl. 376 (1978) (5 U.S.C. § 5348); and Daniels v. United States, 407 F.2d 1345, 1347 (Ct. Cl. 1969) (5 U.S.C. § 5348).

Recognizing that the "public interest" clause of 5 U.S.C. § 5349(a) provides the Treasury with flexibility to set wages for Bureau employees at rates different from those prevailing at ABNC and GPO, we held in 59 Comp. Gen. 240 (1980), that the Treasury properly limited wage increases for certain craft employees of the Bureau to 5.5 percent for fiscal year 1979. In that case, employees in printing and maintenance crafts contended that they were entitled to wage increases higher than the 5.5 percent ceiling imposed by the President and by the Congress since their wages are based on the rates prevailing at GPO, and since they are expressly excluded from the wage system established by 5 U.S.C. Chapter 53, Subchapter IV. Examining the terms of the appropriations measure limiting wage increases for certain prevailing rate employees to 5.5 percent for fiscal year 1979, we found that the Bureau employees in question were excluded from the statutory pay cap. Nevertheless, we determined that the Bureau employees were subject to a Presidential Memorandum declaring that, in order to control inflation, it would be consistent with the public interest to extend the 5.5 percent pay cap to all categories of Federal workers. On this basis, we held that the Treasury's action capping wage increases for Bureau employees at 5.5 percent, based on the President's anti-inflation policy, constituted a reasonable exercise of administrative discretion.

Our decision in 59 Comp. Gen. 240, above, was based in part on the District Court decisions in National Federation of Federal Employees v. Brown, 481 F. Supp. 704 (D.D.C. 1979), and American Federation of Government Employees v. Brown, 481 F. Supp. 711 (D.D.C. 1979). Those cases involved

nonappropriated fund employees whose salaries are fixed and adjusted under 5 U.S.C. § 5343 in accordance with prevailing rates "as nearly as is consistent with the public interest." The employees were not named in the Appropriation Act imposing a 5.5 percent pay cap for fiscal year 1979, but their fiscal year 1979 wage increases were capped at 5.5 percent pursuant to the President's Memorandum. In both cases, the District Court held that the nonappropriated fund employers' reliance on the President's anti-inflation policy to cap the employees' wage increases at 5.5 percent constituted a legitimate exercise of administrative discretion. The Court noted that the "public interest" language in 5 U.S.C. § 5343 affords executive branch officials discretion to determine the appropriate levels of wage increases in light of all relevant factors.

Subsequent to the issuance of our decision in 59 Comp. Gen. 240, above, the Court of Appeals in National Federation of Federal Employees v. Brown, 645 F.2d 1017 (D.C. Cir. 1981), reversed the District Court decisions upon which we relied. The court noted that, while the "public interest" clause of 5 U.S.C. § 5343 affords executive branch officials discretion to set wages which deviate from the prevailing rates, such discretion must be exercised within the framework of the four principles listed in 5 U.S.C. § 5341. Those principles require: (1) equal pay for equal work in all Federal agencies within the same locality; (2) differences in pay for substantial differences in duties, responsibilities, and qualification requirements; (3) rates of pay maintained in line with rates paid locally for comparable work in the private sector; and (4) rates of pay maintained at a level that attracts and retains qualified employees. While the court stated that extension of the 5.5 percent pay increase limitation to nonappropriated fund employees might have been justified under the first principle Congress enumerated--uniform treatment of all Federal employees within the same locality--the President's determination of the "public interest" did not reflect any consideration of the legislative guidelines. Accordingly, the court reversed the judgements of the District Court, declared that the pay cap determination was arrived at in a manner contrary to law, and remanded for further action. 645 F.2d 1017, 1026.

CONCLUSION

The Court of Appeals decision in National Federation of Federal Employees does not change the basis for our holding

in 59 Comp. Gen. 240. As noted previously, employees of the Bureau are expressly excluded from the coverage of 5 U.S.C. Chapter 53, Subchapter IV, by the provisions defining the term "agency" contained in 5 U.S.C. § 5342(a)(1)(I) and (b)(2)(A), except for purposes of 5 U.S.C. § 5349. The legislative history of section 5349 evidences Congress' intent that employees of the Bureau be exempt from, "the new provisions of sections 5341-5348," and sanctions continuation of the Treasury's pay practices with respect to Bureau employees. See H.R. Rep. No. 92-339, 92d Cong., 1st Sess. 19 (1971). Thus, it appears that the language in section 5349 granting the Treasury authority to set the wages of Bureau employees "as nearly as is consistent with the public interest" has a meaning independent from the principles listed in 5 U.S.C. § 5341. At the most, those principles add to and perhaps also clarify the "public interest" phrase contained in section 5349. See generally National Maritime Union of America v. United States, 682 F.2d 944 (Ct. Cl. 1982) (discussing the relationship between 5 U.S.C. §§ 5341 and 5348).

Even were we to determine that the Treasury's pay-fixing authority under 5 U.S.C. § 5349 is circumscribed by the principles stated in section 5341, OPM explained in its guidance to executive departments and agencies that its determination to extend the 4 percent pay cap to all Federal employees was grounded on 5 U.S.C. § 5341(1), requiring equal pay for equal work in all Federal agencies within the same locality. The Treasury was not required to independently balance different policy considerations to determine whether the 4 percent pay increase limitation should be applied to Bureau employees, but was entitled to rely upon OPM's determination that extension of the pay cap to all Federal employees would be consistent with the public interest. See National Federation of Federal Employees v. Brown, 645 F.2d 1017, at 1022.

Accordingly, regardless of the relationship between the principles listed in 5 U.S.C. § 5341 and the provisions of 5 U.S.C. § 5349, we hold that the Treasury legitimately exercised its discretion under 5 U.S.C. § 5349 to limit wage increases for craft employees of the Bureau to 4 percent, based on the "public interest" determination made by OPM.

The unions further challenge the Treasury's determination to apply the 4 percent pay increase limitation to craft employees of the Bureau based on a portion of OPM's guidance which excludes from the pay cap those wage increases which are required by the terms of a collective bargaining agreement entered into before October 2, 1982. The pertinent portion of OPM's guidance encourages extension of the pay increase limitation to wage rates negotiated through the collective bargaining process, "that are not already addressed" by section 109(b) of the Continuing Appropriations Act, 1983, Public Law 97-276, discussed above. More specifically, OPM's guidance provides that:

> "* * * [t]he provisions of Public Law 97-276 limiting pay increases for those negotiated rate employees covered by section 9(b) of Public Law 92-392 [should] serve as a model. Rates of pay negotiated under section 9(b) of Public Law 92-392 are subject to the 4 percent increase limitation unless an increase is required by the terms of a contract entered into before October 2, 1982. A negotiated increase is considered to be required by terms of a contract only if the contract dictates specific rates of pay or specific monetary or percentage increases or if it dictates a fixed pay-setting procedure which automatically computes such specific amounts without further negotiation on elements of the pay-setting procedure or the increase."

The unions assert that the above-quoted instruction provides a basis for excluding craft employees of the Bureau from the pay cap since the wages of those employees have traditionally been fixed and adjusted in tandem with wage rates negotiated by ABNC and GPO. Thus, the International Association of Machinists and Aerospace workers maintains that engraved steel plate finishers employed by the Bureau are entitled to an 8.6 percent increase during fiscal year 1983 because the collective bargaining agreement between ABNC and Local 29 of the Engraved Steel Plate Finishers of New York became effective before October 2, 1982. Similarly, the International Brotherhood of Electrical

Workers contends that electricians and stationary engineers employed by the Bureau are entitled to receive the same wage increases granted to comparable employees of GPO under a contract which was negotiated under the Kiess Act, 44 U.S.C. § 305, and consummated prior to October 2, 1982.

We find no basis for concluding that employees of the Bureau are exempt from the 4 percent pay cap by virtue of the Treasury's tandem-pay relationship with bargaining entities. The collective bargaining agreements entered into by ABNC and GPO serve merely as a frame of reference for the Treasury's wage-setting determinations, and do not independently "require" that Bureau employees be granted the negotiated wage adjustments. As noted previously, employees of the Bureau become entitled to wage increases only after the Treasury has approved, and in some circumstances modified, the percentage increases negotiated by ABNC and GPO.

While the unions have challenged the Treasury's determination to apply the pay increase limitation to craft employees of the Bureau on additional grounds, we have considered those arguments and have found no basis for overturning the Treasury's determination. Accordingly, we hold that the specified employees of the Bureau are not entitled to a wage adjustment in excess of 4 percent during fiscal year 1983.

Milton J. Socolar

for Comptroller General
of the United States