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**DECISION**



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

**FILE:** B-215268

**DATE:** March 24, 1986

**MATTER OF:** Reconsideration of Voice of America -  
Limitation on Pay Increases for Radio  
Broadcast Technician Foremen

**DIGEST:**

Supervisors of prevailing rate employees seek reconsideration of our prior decision, 64 Comp. Gen. 100 (1984), holding that the supervisors are subject to the statutorily-imposed pay limitation which does not apply to their subordinates, who negotiate their pay increases. We affirm our prior decision since the supervisors are clearly covered by the pay increase limitation and are not specifically excluded from the limitation. Prior decisions involving pay linkage between groups of prevailing rate employees are distinguished since they do not deal with specific statutory pay limitations. Prior court decisions involving prevailing rate employees who are not covered by the statutory pay limitation are also distinguished on the same basis.

ISSUE

The issue in this decision is whether pay increases for Radio Broadcast Technician Foremen may be excluded from the statutory pay increase limitation applicable to most prevailing rate employees. We hold that the Foremen are covered by the terms of the statute limiting pay increases and may not be excluded based on prior GAO decisions involving linkage between groups of prevailing rate employees or based on court decisions involving prevailing rate employees who were not subject to the statutory pay limitations.

BACKGROUND

This decision is in response to a request from Janet Cooper, Attorney at Law, on behalf of Philip Danaher, Michael Ostergard, and all similarly situated Radio

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Broadcast Technician Foremen at the Voice of America, U.S. Information Agency. The Foremen seek reconsideration of our prior decision in Voice of America, 64 Comp. Gen. 100 (1984), concerning limitations on their pay increases.

In our prior decision we stated that Radio Broadcast Technicians are prevailing rate employees who negotiate their wages under section 9(b) of Public Law 92-392, as amended, and section 704 of Public Law 95-454, October 13, 1978, 5 U.S.C. § 5343 note. The supervisors of these Technicians, Radio Broadcast Technician Foremen, are also prevailing rate employees, but since the Foremen are supervisors, they are excluded from the bargaining unit which negotiates wages.

A problem arises from the fact that the Technicians who negotiate their wages have been exempt from statutory limitations on pay increases while the Foremen are subject to these statutory pay increase limitations. Thus, the agency has been unable to maintain the 11.5 percent difference in wages between the Foremen and their subordinates which was established in 1981. We held in our decision in Voice of America that both the Technicians and the Foremen were subject to the express terms of the statutory provisions imposing pay limitations and that only the Technicians were specifically excluded from the pay limitation by an exception in the statute for salary increases negotiated before a certain date.

The Foremen request reconsideration of our decision citing four prior decisions involving employees whose pay rates are tied to the wages of other employees. The Foremen point to our decision in B-169686, May 22, 1970, holding that wage supervisors whose pay rates were linked to a rate under the General Schedule could receive the same retroactive pay increase provided to General Schedule employees. Next, they cite E. G. Walters, et al., B-180010.07, June 15, 1977, involving prevailing rate supervisors whose pay was established at 114 percent of the negotiated rate for their subordinates and who we held were entitled to the same retroactive pay increase provided to the subordinate employees. The Foremen also cite our decision in 59 Comp. Gen. 240 (1980) involving certain trade and craft employees of the Bureau of Engraving and Printing whose pay was "tied" to comparable positions at the Government Printing Office (GPO). The Foremen argue we held in 59 Comp. Gen. 240 that

since GPO wages were not subject to a pay cap, the Bureau employees were excluded from the pay cap imposed on prevailing rate employees. Finally, they cite Ableidinger and Walters, 60 Comp. Gen. 58 (1980), involving the payment of double overtime to supervisors of prevailing rate employees who negotiated a double overtime rate.

The Foremen argue that each of the four above-cited decisions establishes the practice of linkage between supervisors and subordinates which has been recognized by our Office. The Foremen also argue that the Congress neither excluded nor included under the pay limitation statutes wage supervisors whose salaries are linked to negotiated wages. Citing two court decisions, the Foremen contend that an agency should have the discretion to include or exclude a group of employees not specifically mentioned by a pay freeze statute.<sup>1/</sup> Therefore, the Foremen conclude that our Voice of America decision should be overturned based on prior decisions involving the linkage of wage employees and their supervisors or that, at the least, our decision should be modified to permit the agency to decide in its discretion whether or not to include these supervisors within the coverage of the pay freeze.

#### OPINION

Our prior decision in Voice of America held that both the Technicians and the Foremen were prevailing rate employees as described in 5 U.S.C. § 5342(a)(2)(A) and were thus subject to the express terms of the pay increase limitation for fiscal year 1984 contained in section 616(a) of H.R. 4139.<sup>2/</sup> We then examined two exceptions to the

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<sup>1/</sup> See National Maritime Union of America v. United States, 682 F.2d 944 (Ct. Cl. 1982); and National Federation of Federal Employees v. Brown, 645 F.2d 1017 (D.C. Cir. 1981).

<sup>2/</sup> See section 101(f) of Public Law 98-151, November 14, 1983, 97 Stat. 973, incorporating the provisions of H.R. 4139, as passed by the House of Representatives on October 27, 1983.

subsection 616(a) pay increase limitation. We determined that the Technicians were excluded under the first exception, contained in subsection 616(b), for section 9(b) employees who negotiate their wages and who negotiated their salary increases prior to a certain date. However, we held that the Foremen were not covered by the negotiated contract and were therefore not covered by the subsection 616(b) exception.

We also held that the Foremen were not excluded from the pay increase limitation under the second exception, contained in subsection 616(c), which excludes wage adjustments for prevailing rate supervisors who were covered by a supervisory pay plan established by the Office of Personnel Management, since the Foremen were not covered under this supervisory pay plan. Therefore, we concluded that the Foremen were subject to the pay increase limitation by the express terms of subsection 616(a) of H.R. 4139 and were not specifically excluded by either of the two exceptions to that limitation.

The Foremen contend that the Congress has neither excluded nor included under the statutory pay increase limitation wage supervisors whose salaries are linked to negotiated wages (such as Radio Broadcast Technician Foremen). We disagree since, as we held in our prior decision, both the Technicians and the Foremen are included within the scope of the pay increase limitation for prevailing rate employees and only the Technicians are specifically excluded under the two exceptions to that limitation.

The Foremen also argue that our decisions have recognized the linkage between the groups of employees which should prevail even over pay increase limitations. We disagree since our prior decisions involving the linkage of two groups of employees are distinguishable.

The Foremen first cite our decision in B-169686 involving a retroactive pay increase for wage supervisors whose pay rates were linked to a particular rate for General Schedule employees. We held in B-169686 that where the General Schedule employees received a retroactive pay increase, wage supervisors whose rates were based on the grade GS-14 rate were also entitled to a retroactive pay increase in the absence of specific statutory provisions to the contrary. This decision is clearly distinguishable from

the present case where a statute limits all pay increases to prevailing rate employees unless specifically excluded under the statute.

The next decision cited by the Foremen, E. G. Walters, B-180010.07, January 15, 1977, involved prevailing rate supervisors who, under a special wage schedule set forth in the Federal Personnel Manual, were entitled to a rate of pay set at 114 percent of the rate for their subordinates who negotiated their wage rates. We held in Walters that, in the absence of specific language to the contrary, the supervisors were entitled to the same retroactive pay increase as was provided to their subordinates. Again, however, our decision in Walters did not involve any statutes limiting or precluding pay increases and thus our decision in Walters is distinguishable from the present case.

The Foremen next cite 59 Comp. Gen. 240 (1980) involving the pay of certain Bureau of Engraving and Printing employees whose pay was linked to similar positions in the GPO. We held that although GPO wages were not subject to a pay increase limitation for fiscal year 1979 imposed by statute or Presidential order, the pay increase to Bureau employees could be limited under the agency's discretion to set wages consistent with the President's anti-inflation program. See also B-211956, October 21, 1983, involving the application of the pay increase limitation for fiscal year 1983 to certain Bureau employees.

Two points should be noted about our decision in 59 Comp. Gen. 240. First, that decision is distinguishable from the present case since the pay of the Bureau employees was set under 5 U.S.C. § 5349(a) and their pay increases were not subject to the statutory pay increase limitations which affect other prevailing rate employees. Second, this decision actually sustained the Bureau's action in limiting the employees' pay under section 5349(a). Therefore, contrary to the contention of the Foremen, the decision did not use the linkage between the Bureau employees and the GPO employees as a mechanism to remove the Bureau employees from the pay cap.

The last decision cited by the Foremen is Ableidinger and Walters, 60 Comp. Gen. 58, where we held that supervisors of Bureau of Reclamation employees who negotiate their wages could be paid double overtime since the supervisors' rates were based on the negotiated rates of

their subordinates. However, our prior decision in Voice of America distinguished this decision from the situation involving the Radio Broadcast Technician Foremen on the grounds that policy considerations for continuing a pre-existing prevailing rate practice could not apply in the face of the clear terms of a statutory pay increase limitation. 64 Comp. Gen. 100, 102-103. We are not persuaded that our prior analysis of Ableidinger and Walters is incorrect.

Finally, the Foremen cite two court decisions in support of their argument that an agency should have the discretion to include or exclude a group of employees not specifically mentioned by a pay freeze statute. The first case, National Maritime Union v. United States, involves civilian employees on Government vessels whose wages are adjusted under 5 U.S.C. § 5348 based on the prevailing rate in the private sector.<sup>3/</sup> The court held that the statutory pay increase limitations for the fiscal years 1979 and 1980 which generally applied to prevailing rate employees did not apply to these federal mariners but that an agency could limit pay increases within the discretion set forth in 5 U.S.C. § 5348 to adjust wages "consistent with the public interest." The second case, National Federation of Federal Employees v. Brown, involved the application of pay increase limitations on nonappropriated fund employees who were not covered by the statutory limitations.<sup>4/</sup> The Court of Appeals in this case reversed the decision of the District Court allowing the agency to apply the pay caps under the "public interest" language in section 5343 dealing with the pay of prevailing rate employees.

We note that both court cases involve federal employees who were not mentioned or covered by the statutes limiting pay increases, and both court decisions involve the agency's application of the pay limitation through the "public

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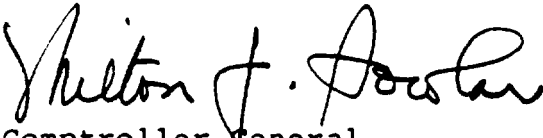
<sup>3/</sup> Cited in footnote 1, above.

<sup>4/</sup> Cited in footnote 1, above.

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interest" discretion vested in the agency's pay-setting authority. However, both court decisions are clearly distinguishable from the present case since, as we stated above, the Radio Broadcast Technician Foremen are covered by the terms of the statutes limiting pay increases.

Accordingly, we affirm our prior decision that Radio Broadcast Technician Foremen are subject to the statutory pay increase limitation.

  
Acting Comptroller General  
of the United States