



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interest on Late Payments of Mandatory Employee
Incentive Awards

File: B-239138

Date: September 25, 1991

DIGEST

Federal agency and labor union have adopted provisions in collective bargaining agreement that specify criteria for granting cash incentive awards, impose deadlines for the agency's payment of such incentive awards and require the agency to pay interest on late payments of awards. Under these circumstances incentive awards constitute "pay, allowances, or differentials" for purposes of the Back Pay Act, 5 U.S.C. § 5596, and the Act (including its interest provision) applies in the case of failure of an agency to comply with award payment deadlines it has agreed to in collective bargaining.

DECISION

This decision responds to a question presented to us by a joint submission from the Internal Revenue Service (IRS) and the National Treasury Employees Union (NTEU), Chapters 83 and 193, pursuant to 4 C.F.R. Part 22 (1991). The issue is whether a provision proposed to be included in a collective bargaining agreement between IRS and NTEU which requires IRS to pay interest if it makes a late payment of a mandatory award to an employee is legally supportable. For the reasons set forth below, we conclude that the provision is legally supportable.

BACKGROUND

The national collective bargaining agreement between IRS and NTEU contains a section, entitled "Mandatory Performance Awards," which requires that employees who attain an average score of "5.0" for all critical elements in their performance ratings shall receive a mandatory performance award of at least 2 percent of salary. According to the submission, these are incentive awards payable pursuant to 5 U.S.C. § 4503.

The national agreement required local negotiations as to the award amount and criteria for other mandatory awards. Pursuant to this mandate, IRS and NTEU entered into local negotiations but were unable to reach agreement. One issue the parties were unable to resolve, and which led to the submission to us, concerns the payment of interest on late payment of mandatory performance awards, as proposed in the following provision of the local agreement:

"Monetary awards shall be paid no later than 60 days from the date of discussion between the manager and the employee regarding the annual rating of record; but, in any event no later than 90 days after the employee's annual rating date.

"If determined to be legal, interest is to be paid on the late payment of cash awards beginning on the 61st day, per [the above] paragraph, and ending on the actual date of payment."

The submission indicates that both IRS and NTEU support the interest provision and believe that it is consistent with the Back Pay Act, 5 U.S.C. § 5596. In this regard, the submission cites our decision in Albert W. Lurz, 61 Comp. Gen. 492 (1982), holding that an agency may limit its discretion by accepting a mandatory policy in a collective bargaining agreement and thereby provide a basis for backpay under the Act. However, the submission raises the question of whether incentive awards constitute "pay allowances, or differentials" within the application of the Act.

ANALYSIS

The Back Pay Act provides for awards of backpay to an employee who is found by an appropriate authority "to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee." 5 U.S.C. § 5596(b)(1). A "personnel action" for purposes of the Act "includes the omission or failure to take an action or confer a benefit." Id., § 5596(b)(4). As amended in 1988, the Act provides that backpay shall be payable with interest, to be computed "for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 30 days before the date on which payment is made." Id., § 5596(b)(2)(A) and (B).

The Office of Personnel Management (OPM) prescribes regulations to carry out the Act. See 5 U.S.C. § 5596(c). The OPM regulations appear at 5 C.F.R. §§ 550.801 et seq. (1991). Based on the provisions of the Back Pay Act and OPM's

implementing regulations, as well as our discussions with OPM officials, we conclude that the interest provision proposed in the IRS-NTEU collective bargaining agreement is consistent with the Act.

While the Act does not define "pay, allowances, or differentials," the OPM regulations define this term expansively as meaning--

"monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function."

As noted previously, the awards are paid pursuant to 5 U.S.C. § 4503 (1988). Section 4503 provides:

"The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who--

"(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to his official employment."

While these awards are generally considered discretionary with the agency, here the agency has bargained away its discretion by agreeing to the specific criteria under which they will be granted. Therefore OPM's definition of pay, allowances, or differentials clearly covers the incentive awards here involved.

Likewise, when an agency has committed itself in a collective bargaining agreement to confer benefits or make payments within specific time limits, the agency's failure to comply with such commitments falls squarely within OPM's definition of an "unjustified or unwarranted personnel action" which results in a withdrawal or reduction of pay as follows:

"an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such

actions include personnel actions and pay actions (alone or in combination)."

Finally, we note that the IRS-NTEU collective bargaining agreement proposes that interest be paid until the actual date of payment of the award. This is not inconsistent with the Back Pay Act, which provides for interest to end "on a date not more than 30 days before the date on which payment is made." 5 U.S.C. § 5596(b)(2)(B)(i) (emphasis supplied). OPM interprets this language as leaving agencies discretion to fix the date at which interest will end within the 30-day outer limit. We concur with OPM's interpretation.

Accordingly, it is our opinion that the interest provision in the IRS-NTEU collective bargaining agreement is consistent with the Back Pay Act and may be given effect.

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for Comptroller General
of the United States