



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United States Secret Service Uniformed Division—Biweekly and Annual Pay Limitations

File: B-256157

Date: December 21, 1995

DIGEST

1. The compensation payable to members of the Uniformed Division of the United States Secret Service is subject to two independent limitations on the biweekly and aggregate annual compensation that each member is eligible to receive. The first limitation is that compensation shall not exceed the rate of basic pay for level V of the Executive Schedule. 4 D.C. Code, § 4-406 (1994). This limitation applies to basic pay, as adjusted, plus longevity pay, but does not include premium pay.
2. The compensation payable to members of the Uniformed Division of the United States Secret Service is subject to two independent limitations on the biweekly and aggregate annual compensation that each member is eligible to receive. The second limitation is that the aggregate rate of compensation for any pay period shall not exceed the minimum scheduled rate of basic compensation of the District of Columbia Chief of Police and Fire Chief. 4 D.C. Code, § 4-1104(h)(2) (1994). This limitation applies to basic pay, as adjusted, plus premium pay (overtime pay, compensatory time off, Sunday pay, and night pay), but does not include longevity pay. The ceiling to be applied is the unadjusted minimum scheduled basic pay rate of the Police Chief and Fire Chief in effect when the premium pay was earned.

DECISION

This decision responds to a request for an advisory opinion from the United States Secret Service, Department of the Treasury.¹ The questions asked involve the maximum biweekly premium pay and aggregate annual compensation that may be paid to members of the United States Secret Service Uniformed Division and the types of compensation that are subject to the limitations. We conclude that there are two independent limitations on the compensation which may be paid. Basic pay, as adjusted, longevity pay, and assignment or position pay are subject to one

¹Mr. David C. Lee, Assistant Director, Office of Administration.

limitation, and premium pay plus basic pay, as adjusted, are subject to the other limitation, as explained below.

BACKGROUND

Although members of the Uniformed Division, United States Secret Service, are federal employees, their basic compensation system was established by the District of Columbia Police and Firemen's Salary Act of 1958,² as amended, and is contained in sections 4-402 to 4-420 of title 4, District of Columbia Code (D.C. Code). The 1958 Act established the basic salary schedule structure for police and firefighters in the District of Columbia, including the United States Park Police and the then White House Police, comprising 10 different classes with 6 service steps, plus 3 longevity steps,³ in each class. The Chief of Police and the Fire Chief occupied class 10 of the salary schedule. In 1970, those salary classes were increased from 10 to 11. The Chief of Police and the Fire Chief occupied the newly created Class 11 and the Commanding Officer of the White House Police (redesignated the "Executive Protective Service" in 1970 for pay purposes,⁴ and further redesignated as the "United States Secret Service Uniformed Division" in 1980 for pay purposes⁵), occupied Class 10 of the newly restructured salary schedule.⁶

In the meantime, in 1965 Congress limited premium pay for officers and members by adding the following provisions to then section 4-904 of Title 4, D.C. Code.⁷ Subsection (h)(1) thereof provided that any officer or member whose rate of basic compensation equals or exceeds the minimum scheduled rate of basic pay for service step 1 of the class designation for the Chief of Police and the Fire Chief for the District of Columbia, may not be paid premium pay or receive compensatory time off. Subsection (h)(2) thereof provided that officers or members, whose rate

²Pub. L. No. 85-584, Aug. 1, 1958, 72 Stat. 480.

³These longevity steps were replaced by salary steps 7, 8, and 9 by section 103 of Pub. L. No. 92-410, Aug. 29, 1972, 86 Stat. 634.

⁴Section 202 of Pub. L. No. 91-297, June 30, 1970, 84 Stat. 354, 358. See also Pub. L. No. 91-217, Mar. 19, 1970, 84 Stat. 74, for official name change in the United States Code.

⁵Pub. L. No. 96-396, Oct. 7, 1980, 94 Stat. 1562. See also Pub. L. No. 95-179, Nov. 15, 1977, 91 Stat. 1371, for the official name change in the United States Code.

⁶Pub. L. No. 91-297, footnote 4 supra.

⁷Pub. L. No. 89-282, Oct. 21, 1965, 79 Stat. 1013, 1015. Currently section 4-1104 of title 4, D.C. Code (1994 Replacement Volume).

of basic compensation is less than that minimum scheduled rate, may receive premium pay "only to the extent that such payment would not cause his aggregate rate of compensation to exceed such minimum scheduled rate with respect to any pay period."

The first major revision of the salary schedule structure for District of Columbia Police, Fire Department, Park Police, and Executive Protective Service (Uniformed Division), occurred in 1972 with enactment of Pub. L. No. 92-410.⁸ Among the changes made, section 102 thereof amended section 101 of the 1958 salary act by inserting:

"(b) Compensation may not be paid, by reason of any provision of this Act, at a rate in excess of the rate of basic pay for level V of the Executive Schedule contained in subchapter II of chapter 53 of title 5, United States Code."

Another major revision occurred in 1980, whereby annual adjustments to the pay rates for members of the Uniformed Division were no longer to be governed by determinations of the Council for the District of Columbia. Thereafter, all adjustments to scheduled pay for members of the Uniformed Division are made by the Secretary of the Treasury based on changes made pursuant to 5 U.S.C. § 5305 for the rates of pay under the General Schedule.⁹

In late 1990, the Secret Service conducted a review of its pay regulations while preparing to implement the Federal Employees Pay Comparability Act (FEPCA).¹⁰ It discovered that, even though the pay for members of the Uniformed Division had been capped in 1972 at the salary rate for level V of the Executive Schedule, the premium pay limitation enacted in 1965 had not been changed. The Secret Service points out that, during the period 1980 to 1990, the minimum scheduled salary rate for the Chief of Police and the Fire Chief exceeded the rate of basic pay for level V of the Executive Schedule and that, from October 1980 to January 1991, the agency used the Executive level V rate as the biweekly premium pay limitation as well as the annual aggregate compensation limit for the members of the Uniformed Division.

⁸Footnote 3, supra.

⁹Pub. L. No. 96-396, Oct. 7, 1980, 94 Stat. 1562. See also section 4-416(b)(1) of title 4, D.C. Code.

¹⁰Pub. L. No. 101-509, Nov. 5, 1990, 104 Stat. 1429.

In January 1991, the rate of basic pay for level V of the Executive Schedule was raised to an amount which exceeded the minimum scheduled salary rate for the Chief of Police and the Fire Chief of the District of Columbia. As a result, the minimum scheduled pay rate for the Chief of Police and the Fire Chief of the District of Columbia is currently being used as the biweekly premium pay ceiling for members of the Uniformed Division who are eligible to perform compensable overtime, and the rate of basic pay of level V of the Executive Schedule is being used as the annual aggregate compensation limit.

Since the biweekly premium pay limit was not changed in the 1980 Act, the Secret Service believes that the way it used the Executive level V limitation from 1980 to 1991 was incorrect and that the biweekly limitation should have been used for premium pay. If so, the error may have resulted in compensation underpayments to some members of its Uniformed Division. Because members of the Uniformed Division are eligible to receive a number of adjustments and additions to their scheduled rate of basic pay (longevity pay, special salary rates, locality-based adjustments for law enforcement officers, technician pay, premium pay for overtime, compensatory time off for overtime, Sunday pay, and night pay), the Secret Service requests our opinion as to how the two limitations apply to biweekly premium pay and annual pay.

OPINION

Based on the foregoing history, it is clear that both of the pay limitations continue to apply to the compensation of Uniformed Division members, but they apply to different kinds of additional pay beyond the members' scheduled rates of basic pay.

Executive Schedule Level V Limitation

The pay limitation in 4 D.C. Code § 4-406 (compensation may not be paid in excess of the rate of basic pay for level V of the Executive Schedule) applies to compensation paid under any provision of the 1958 Salary Act, as amended. The legislative history of the 1972 amendment to that Act (adding the pay limit) shows that "compensation" as used therein means "the amount presented by the schedule plus any additional amount provided for total service longevity or particular assignments or positions."¹¹ Moreover, since members of the Uniformed Division are federal employees whose basic pay is prescribed and adjusted based on adjustments to the General Schedule, the definition of the term "basic pay" used in 5 C.F.R. § 550.103(j) (1995) is applicable. That provision states that "rate of basic pay" means:

¹¹H.R. Rep. No. 92-1180, 92d Cong., 2d Sess., at 3 (1972), and S. Rep. No. 92-994, 92d Cong., 2d Sess., at 7 (1972).

"the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 . . . before any deductions and exclusive of additional pay of any other kind."

Since premium pay is by definition additional pay, it is not covered by this limitation on basic pay.

Thus, the pay limitation in section 4-406 of title 4, D.C. Code, applies to basic pay, as adjusted (scheduled rate of pay for a member's position or assignment including technician pay, special salary rates, locality-based special pay adjustments for law enforcement officers) and longevity pay, but does not include premium pay. For that reason, we agree with the Secret Service that use of the Executive V limitation for premium pay from 1980 to 1991 was incorrect.

Premium Pay Limitation

The biweekly premium pay limitation in 4 D.C. Code §§ 4-1104(h)(1) and (2) (1994 Replacement Volume) as amended in 1972, was intended to continue the congressional mandate that the maximum aggregate compensation that may be paid to law enforcement officers and firefighters under the D.C. Code on a biweekly basis may not exceed the minimum scheduled basic pay rate for the Chief of Police and the Fire Chief.¹²

In that context, the term "rate of basic compensation," is defined in section 4-1104(a)(7) of title 4, D.C. Code, to mean "the rate of compensation fixed by law for the position held by an officer or member exclusive of any deductions or additional compensation of any kind."¹³ Premium pay, in turn, is defined in section 4-1104(a)(8) as "compensation not considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under

¹²H.R. Rep. No. 92-1180, 92d Cong., 2d Sess., at 5 (1972).

¹³Section 4-1104(a)(7) of title 4, D.C. Code (1994 Replacement Volume).

§§ 4-607 to 4-630¹⁴ and would include overtime work.¹⁵ Premium pay is also defined in section 550.103(i) of title 5, Code of Federal Regulations (1995), to mean:

"additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty, administratively uncontrollable overtime work, or availability duty."

Therefore, the premium pay limitation stated in section 4-1104(h)(2), D.C. Code, clearly applies to basic pay, as adjusted (scheduled rate of pay including technician pay, special salary rates, and locality-based special pay adjustments for law enforcement officers), plus premium pay (pay for overtime work, compensatory time off for overtime work, Sunday pay and night pay). The remaining question is whether longevity pay is included in the aggregate rate of compensation which may not exceed the minimum scheduled rate of basic compensation for the Chief of Police and the Fire Chief of the District of Columbia on a biweekly basis.

Although longevity pay is specifically mentioned in the Senate and House reports on the Executive level V limitation, it is not mentioned in either the statutory language or the legislative history pertaining to the biweekly premium pay limitation. Moreover, in U.S. Secret Service Uniformed Division, B-251235, May 28, 1993, we held that longevity pay authorized for members of the Uniformed Division under section 4-415 of title 4, D.C. Code is not a part of a member's rate of basic compensation for the purpose of computing overtime pay, holiday pay, night work, Sunday work, or Fair Labor Standard Act overtime.

Thus, longevity pay is not part of basic pay and is not used in computing overtime pay or other premium pay. Since the focus of this limitation is to limit premium pay plus basic pay so as not to exceed the minimum basic pay rate of the D.C. Police or Fire Chief, and in the absence of any contrary expression of intent, we conclude that Congress did not intend to include longevity pay in aggregate compensation for the purpose of the biweekly premium pay limitation in section 4-1104(h)(2) of title 4, D.C. Code.

Finally, since we have held that the Executive level V rate does not limit biweekly premium pay, the Secret Service asks whether biweekly premium pay is limited by the current rate for the Police Chief and Fire Chief, or by a rate that is adjusted

¹⁴Sections 4-1104(a)(8) of title 4, D.C. Code (1994 Replacement Volume). For purposes of §§ 4-607 to 4-630, "basic salary" is defined to exclude overtime, holiday, or military pay.

¹⁵Sections 4-1104(c)-(g) of title 4, D.C. Code (1994 Replacement Volume).

either by the percentage increases in the Uniformed Division salary chart or by the annual comparability increases, special salary rates, and special pay adjustments for law enforcement officers.

Since the Congress in 1972 made it clear that its intent was to limit premium pay so that aggregate compensation (basic pay plus premium pay as explained above) would not exceed the basic pay of step 1 at the salary class applicable to the Chief of Police and the Fire Chief, we see no basis to factor in any adjustments to that minimum basic pay rate. Thus, in our opinion, the biweekly aggregate of basic pay plus premium pay is limited to the unadjusted minimum scheduled rate of basic compensation for the Chief of Police and the Fire Chief of the District of Columbia in effect at the time the premium pay was earned.

CONCLUSION

In summary, effective the first day of the first pay period beginning on or after May 1, 1972,¹⁶ two independent pay limitations have been applicable to compensation which could be received by officers and members of the Uniformed Division. For the purposes of both limitations, the basic pay for members of the Uniformed Division consists of the scheduled rate of pay for their position or assignment, including technician pay, special salary rates, and locality-based special pay adjustments for law enforcement officers, if applicable. Therefore, for the purpose of the "level V of the Executive Schedule" limitation, a member of the Uniformed Division who is qualified for longevity pay, may receive that pay, in addition to his/her basic pay, as adjusted (not including premium pay), but only to the extent that longevity pay does not cause that compensation package to exceed the basic pay of level V of the Executive Schedule. For the purpose of the biweekly aggregate pay limitation, a member is entitled to receive premium pay or compensatory time off, but only to the extent that such premium pay, when added to his basic pay, as adjusted (not including longevity pay) does not cause the member's aggregate rate of compensation to exceed the unadjusted minimum scheduled rate of pay for the Chief of Police and the Fire Chief of the District of Columbia in effect when the premium pay was earned with respect to any biweekly pay period.

As the foregoing relates to Uniformed Division members who have been underpaid because of the error, clearly they should be compensated to the maximum extent permitted under the provisions of the barring act, 31 U.S.C. § 3702(b)(1) (1994), even though there is nothing in the file to suggest that any of them have filed a claim for such underpayment. Therefore, for the purpose of the barring act, we will consider the date of the earliest correspondence from the Secret Service to this

¹⁶Section 118 of Public Law 92-410, Aug. 29, 1972, 86 Stat. 634, 641.

Office concerning the matter (December 23, 1993), as the date of filing on behalf of all affected Uniformed Division members. Accordingly, all required adjustments to their pay which do not antedate December 23, 1987, may be paid, if otherwise correct.

/s/Lowell Dodge
for Robert P. Murphy
General Counsel