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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Calculating Overtime Pay Rates for Government Printing Office Employees

File: B-288992

Date: March 17, 2003

DIGEST

The Government Printing Office (GPO) asked if our 1979 decision at 58 Comp. Gen. 198 overruled two of our 1978 decisions, 57 Comp. Gen. 259 (1978) and B-191619 (1978). After reviewing our decisions, we conclude that our 1979 decision, applying the 1978 Civil Service Reform Act, did not overrule B-191619, which addresses GPO employees specifically, or 57 Comp. Gen. 259 to the extent that it pertains to GPO employees, because the section of the 1978 Civil Service Reform Act at issue in the 1979 decision does not apply to GPO. Our 1979 decision overruled 57 Comp. Gen. 259 only as it pertained to section 9(b) employees, and GPO employees do not fall within this category.

DECISION

The Controller of the Government Printing Office (GPO) has requested an advance decision regarding the status, as it pertains to GPO employees, of a 1978 Comptroller General decision, 57 Comp. Gen. 259 (1978). In that decision, we held that 5 U.S.C. § 5544, which addresses overtime entitlements for federal wage system employees, also applied to so-called section 9(b) employees. Section 9(b) employees are those employees whose wages are established through collective bargaining pursuant to section 9(b) of Pub. L. No. 92-392, 86 Stat. 564 (1972). Section 9(b) specifies that bargaining agreements that were in existence at the time Public Law 92-392 was enacted are exempt from the wage setting amendments in the Act. We also held in 57 Comp. Gen. 259 that section 5544 establishes overtime pay at not greater than one and one-half times the employee's basic hourly rate of pay. Even though GPO sets wages under different authority, 44 U.S.C. § 305, rather than

5 U.S.C. § 5544, GAO has consistently held that section 5544 governs the overtime compensation received by employees whose compensation is fixed pursuant to 44 U.S.C. § 305. 60 Comp. Gen. 431, 432-433 (1981); B-176365, Oct. 31, 1972. Shortly after we issued 57 Comp. Gen. 259, we extended to GPO employees its holding that section 5544 establishes overtime pay for hourly employees at not greater than one and one-half times the basic hourly rate for employees. B-191619, May 9, 1978.

GPO has asked about the status of our 1978 decisions because the Federal Labor Relations Authority (FLRA), in a matter involving GPO union employees, recently held that GPO's authority to calculate overtime is not so limited. U.S. Government Printing Office and Sheet Metal Workers International Association, Local 100, 57 FLRA 64 (2001). In reaching its conclusion, FLRA stated that the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (1978) (codified at chapter 7 of title 5, United States Code), and a 1979 Comptroller General decision, 58 Comp. Gen. 198 (1979), overruled our 1978 decisions. GPO had not understood our 1979 decision to have overruled our 1978 decisions, and so has asked us the status of those 1978 decisions.

At the outset, it is important to set out GAO's jurisdiction. The Comptroller General may not overrule a specific arbitration award or a decision of the FLRA made thereon. Civil Service Reform Act of 1978, title VII, Pub. L. No. 95-454, 92 Stat. 1111 (1978). See also 59 Comp. Gen. 527, 529 (1980); 58 Comp. Gen. 198, 200 (1979). The Comptroller General has the authority to settle the accounts of the United States government and thus ensure the legality of government expenditures. 31 U.S.C. § 3526(a). Also, the Comptroller General is required to respond to agencies' requests for decisions on questions involving payments the agency will make. 31 U.S.C. § 3529. Here, GPO does not ask us to address, and we do not address, FLRA's ruling in Sheet Metal Workers International Association, Local 100. Instead, GPO asks us to clarify our 1978 and 1979 decisions in the context of the 1978 Civil Service Reform Act.

In that regard, after reviewing our decisions, we conclude that our 1979 decision, applying the 1978 Civil Service Reform Act, did not overrule B-191619, which addresses GPO employees specifically, or 57 Comp. Gen. 259 to the extent that it pertains to GPO employees, because the section of the 1978 Civil Service Reform Act at issue in the 1979 decision does not apply to GPO. Our 1979 decision overruled 57 Comp. Gen. 259 only as it pertained to section 9(b) employees, and GPO employees do not fall within this category.

BACKGROUND

In June 1999, Sheet Metal Workers International Association, Local 100, filed a grievance claiming that GPO had improperly paid its members. The union claimed that the aggrieved employees, who were assigned to the dayshift during their regular 40-hour workweek, were improperly compensated when they were paid at 150

percent of the day rate of pay instead of 150 percent of the night rate of pay for overtime work on Saturday and Sunday nights.

GPO argued in response that, pursuant to 5 U.S.C. § 5544, overtime for GPO employees must be calculated based on the basic rate of pay of the employee, i.e., for employees who are regularly assigned to day duty, overtime should be calculated based on the rate of compensation received for working a regular 40-hour week during the day. For night employees, overtime should be calculated based on the rate of pay received for working a regular 40-hour week at night.

An arbitrator issued an award that upheld the union's grievance and GPO subsequently filed an appeal of the arbitrator's award. The FLRA issued a decision in the case of U.S. Government Printing Office and Sheet Metal Workers International Association, Local 100, 57 FLRA 64 (2001), upholding the arbitrator's award. The FLRA stated that because GPO employees negotiate their wages pursuant to 44 U.S.C. § 305, they may (1) establish basic rates of pay through negotiations that include an overtime differential that differs from an employee's basic rate of pay, and (2) negotiate bargaining agreements that provide pay in excess of the minimum entitlement provided by other statutes. 57 FLRA 64 (2001). FLRA also stated that the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1199 (1978) (codified at chapter 7 of title 5, United States Code), and 58 Comp. Gen. 198 overruled our decisions in which we held that overtime entitlement for GPO employees is limited by 5 U.S.C. § 5544.

Under the Civil Service Reform Act of 1978, the Comptroller General may not overrule a specific arbitration award or a decision of the FLRA. Civil Service Reform Act of 1978, title VII, Pub. L. No. 95-454, 92 Stat. 1192 (1978) (codified at chapter 71 of title 5, United States Code). See also 59 Comp. Gen. 527, 529 (1980); 58 Comp. Gen. 198, 200 (1979). However, we can clarify whether our 1979 decision, 58 Comp. Gen. 198, applying the Civil Service Reform Act of 1978, overruled B-191619, which addressed GPO employees specifically, or 57 Comp. Gen. 259 to the extent that it pertained to GPO employees, and whether B-191619 and other related decisions are viable precedent.

ANALYSIS

The wages of GPO Local 100 employees are negotiated pursuant to 44 U.S.C. § 305. GAO has consistently held that 5 U.S.C. § 5544 governs the overtime compensation received by employees whose compensation is fixed pursuant to 44 U.S.C. § 305. See, e.g., 60 Comp. Gen. 431, 432-433 (1981) (GPO security police are paid under the provisions of 44 U.S.C. § 305; therefore, the payment of overtime compensation to these employees is governed by the provisions of 5 U.S.C. § 5544); B-191619, May 9, 1978 (while the Public Printer may fix the rates of wages, salaries, and compensation under the authority of 44 U.S.C. § 305, the provisions of 5 U.S.C. § 5544 govern the payment of overtime to these employees); B-176365, Oct. 31, 1972 (compensation of

the employees of GPO is fixed under the authority of 44 U.S.C. § 305 and overtime compensation is governed by 5 U.S.C. § 5544).¹

In 57 Comp. Gen. 259, we held that employees whose wages were established through collective bargaining pursuant to section 9(b) of Pub. L. No. 92-392, 86 Stat. 564 (1972), were covered by section 5544(a), and then we concluded that 5 U.S.C. § 5544 does not provide authority to establish overtime pay rates at a figure greater than one and one-half times the basic hourly pay rate. Finding that GPO employees are covered by section 5544(a), we extended this holding to GPO in B-191619.

Section 9(b)(1) of Public Law 92-392 provides that

“The amendments made by the Act shall not be construed to—
(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act pertaining to the wages, the terms and conditions of employment, and other employment benefits, . . . , for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees.”²

Public Law 92-392 does not apply to GPO for two reasons. First, Public Law 92-392 defines “agency” as an “Executive agency.” Pub. L. No. 92-392, § 5342(a), 86 Stat. 564; 5 U.S.C. § 5343 note. GPO, which is a legislative branch agency, is not included within this definition. Thomas v. Sawyer, 678 F.2d 257, 264 (D.C. Cir. 1982). Second, GPO employees are not considered prevailing rate employees for purposes of title 5, chapter 53, subchapter IV: “Prevailing Rate Systems” of the United States Code, the subchapter which includes section 9(b) of Public Law 92-392. See 5 U.S.C. §§ 5342(a)(2)(A), 5342(b)(2), 5102(c)(9).³

¹ The United States Court of Federal Claims analyzed the legislative history of section 5544 and concluded that GPO employees are subject to 5 U.S.C. § 5544(a). Abramson v. United States, 40 Fed. Cl. 204, 209-211 (1998).

² A prevailing rate employee, as defined by 5 U.S.C. § 5342(a)(2)(A), is “an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement . . .”

³ The FLRA recently held that employees of one of GPO unions were not prevailing rate employees within the meaning of 5 U.S.C. § 5342(a)(2)(A), and therefore, section 9(b) was not applicable. International Brotherhood of Electrical Workers, Local 121 and U.S. Government Printing Office, 56 FLRA 609 (2000).

After our Office issued 57 Comp. Gen. 259, Congress enacted the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111. Section 704 of the Act provides that employees whose contract provisions are negotiated pursuant to section 9(b) may negotiate their pay and pay practices without regard to certain provisions in title 5 of the United States Code, including the overtime provisions of section 5544. Pub. L. No. 95-454, § 704, 92 Stat. 1218. Accordingly, we issued 58 Comp. Gen. 198, overruling 57 Comp. Gen. 259 as it pertained to prevailing rate employees who negotiated their wages pursuant to section 9(b) of Public Law 92-392.⁴

GPO employees, however, are not section 9(b) employees. GPO is not an executive agency and GPO employees are not considered prevailing rate employees for purposes of subchapter IV of title 5 of the United States Code. Thus, the section 9(b) exemption enacted in the 1978 Civil Service Reform Act does not apply to GPO employees. Accordingly, our decision, 58 Comp. Gen. 198, did not overrule B-191619, which addresses GPO employees specifically, or 57 Comp. Gen. 259 to the extent that it pertains to GPO employees.

/signed/

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General Counsel

⁴ We also overruled 57 Comp. Gen. 575 (1978); B-191520, June 6, 1978; and 56 Comp. Gen. 360 (1977), insofar as they pertained to prevailing rate employees who negotiated their wages pursuant to section 9(b) of Public Law 92-392.