

DECISION

M. Volpe
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

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FILE: B-191523

DATE: September 5, 1978

MATTER OF: Dorothy R. Greathouse - Pay Adjustment for Supervisors

DIGEST: Supervisor, who received one pay adjustment under 5 U.S.C. 5333(b), is not entitled to subsequent adjustments but may receive them within discretion of agency. Failure of agency to grant subsequent pay adjustments, absent mandatory agency policy, does not constitute administrative error which warrants retroactive compensation.

This action is in response to the appeal by Mrs. Dorothy R. Greathouse of our Claims Division settlement dated September 8, 1977, denying her claim for a retroactive pay adjustment as a supervisor of wage board employees.

The record indicates that Mrs. Greathouse was employed by the Department of the Air Force as a Supervisory Supply Clerk, grade GS-5, step 3, and that effective January 6, 1974, she received a salary adjustment to grade GS-5, step 8, since she was supervising one or more prevailing rate employees whose basic pay exceeded her rate. It appears that incident to a pay increase for prevailing rate employees effective May 12, 1974, Mrs. Greathouse sought an additional pay adjustment. The Air Force, by letter dated April 18, 1975, denied Mrs. Greathouse's request on the grounds that she exercised little or no supervision of prevailing rate employees, that only one prevailing rate employee received a higher rate of pay, and that a pay adjustment for Mrs. Greathouse would be unfair to another supervisor with essentially the same responsibility. Mrs. Greathouse filed a grievance with her agency, and the grievance examiner recommended that Mrs. Greathouse be granted the pay adjustment retroactively. The Air Force reviewed the record and determined that Mrs. Greathouse's work situation met the requirements for a pay adjustment to grade GS-5, step 10, which was implemented effective November 7, 1976. Mrs. Greathouse filed a claim for retroactive compensation for the period from May 12, 1974, to November 7, 1976.

The Claims Division settlement denied Mrs. Greathouse's claim since the applicable regulations governing pay adjustments for supervisors do not have retroactive effect. In addition,

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the Claims Division held that there was no basis for retroactive compensation in the absence of an administrative or clerical error. Finally, the Claims Division settlement noted that the grievance examiner's recommendation was not a determination that Mrs. Greathouse had undergone an unwarranted or unjustified personnel action.

On appeal, Mrs. Greathouse argues that the failure by the Air Force to follow her immediate supervisor's request for a pay adjustment constituted administrative error, and she argues further that the Air Force should be bound by the grievance examiner's recommendations.

Under the authority of 5 U.S.C. 5333(b) (1970), a General Schedule employee may be paid at step rates above those to which the employee is otherwise entitled when the employee supervises prevailing rate employees whose rate of basic pay is higher than the rate to which the supervisor is entitled. The implementing regulations promulgated by the Civil Service Commission are set forth in 5 C.F.R. Part 531, Subpart C, and provide, in pertinent part:

"531.303 Use of authority.

"In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the wage board employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between the supervisor and the wage board employee supervised by him.

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"531.305 Adjustment of rates.

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"(c) Effective date. The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart."

Under the above-cited authority, the supervisor is not entitled to a pay adjustment based solely on a determination that he or she supervises prevailing rate employees who have basic pay rates in excess of the supervisor's rate of basic pay. The decision to grant an employee a pay adjustment under 5 U.S.C. 5333(b) is within the discretion of the agency.

Based on the record before us, it appears that the Air Force exercised its discretion by granting Mrs. Greathouse a pay adjustment in January 1974, and by denying her a subsequent adjustment in April 1975, for the reasons stated above. We have held that where agency action is committed to agency discretion, the standard to be applied by the reviewing authority is whether the action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Harold E. Levine, 54 Comp. Gen. 310 (1974). Based upon the record before us, we find nothing which would establish that an administrative error was made in denying Mrs. Greathouse a pay adjustment during the period in question.


Other decisions of our Office have permitted retroactive pay adjustment for such supervisors where the agency has failed to follow a mandatory agency policy which mandates such a pay adjustment under certain circumstances. See Billy M. Medaugh, 55 Comp. Gen. 1443 (1973) and John O. Johnson, B-186896, November 2, 1976. However, there is no evidence in the record before us that during the period in question the Air Force had implemented any mandatory policy regarding pay adjustments for supervisors. In the absence of such a mandatory provision, the decision to grant or to increase a pay adjustment is within the discretion of the agency.

Finally, with respect to Mrs. Greathouse's argument that the agency should be bound by the grievance examiner's recommendation, we note that under the provisions of 5 C.F.R. Part 771, agencies are not bound by the recommendations of a

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grievance examiner, be they favorable or unfavorable to the employee. Furthermore, any determination granting the employee the relief requested in the present case would have to be based on a finding of administrative error which we have concluded, based on the record before us, would not be justified.

Accordingly, we sustain the determination of our Claims Division denying Mrs. Greathouse's claim for retroactive compensation.


Deputy Comptroller General
of the United States