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**DECISION**



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

FILE: B-194401

DATE: July 3, 1980  
AGC 20793

*[Authorization of Double Overtime for Power Plant Employees]*  
MATTER OF: Corps of Engineers, North Pacific Division--

DIGEST: In 1967, Corps of Engineers, North Pacific Division, and Columbia Power Trades Council, representing wage board employees at hydro-electric power plants negotiated a double overtime provision in their agreement. Double overtime was stopped by agency following our decision in 57 Comp. Gen. 259, February 3, 1978. In light of section 704 of Civil Service Reform Act which overruled our decision, and although wages are not negotiated, provision for double overtime is preserved by section 9(b) of Pub. L. 92-392.

Is double overtime pay authorized for wage board employees of the U. S. Army Corps of Engineers who are covered by the special Pacific Northwest Regional Power Rate Schedule? This question is presented by Mr. R. Loschialpo, Chief, Office of Personnel, Office of the Chief of Engineers, Department of the Army. AR00839

For the reasons stated below, we conclude that double overtime is authorized for the wage board employees of the Army Corps of Engineers who are covered by the special Pacific Northwest Regional Power Rate Schedule.

The letter requesting a decision from the Corps of Engineers provides us with the following background information. On January 30, 1956, the Army-Air Force Wage Board (now the Department of Defense Wage Fixing Authority) authorized all wage board employees at hydro-electric power plants operated by the Corps of Engineers, North Pacific Division, to be paid in accordance with the provisions of the special Pacific Northwest Regional Power Rate Schedule. The schedule was based on the wage

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rates and pay practices of the electric power industry in the area. Among other things, the schedule provided for an overtime rate of double time (twice the base hourly rate) for hours worked in excess of 40 hours per week and on holidays. When the first contract with the Columbia Power Trades Council, the union representing the employees, was approved on February 10, 1967, it included a provision stating that overtime would be paid at twice the applicable rate of compensation.

On August 19, 1972, Pub. L. 92-392, 86 Stat. 564, amended subchapter IV of chapter 53 of title 5, United States Code, to establish a statutory system for fixing and adjusting the rates of pay for prevailing rate employees. Section 9(b) of that law, 5 U.S.C. § 5343 note, provides in substance that the amendments shall not be construed to affect the provisions of contracts in effect on the date of enactment pertaining to wages and other employment benefits for prevailing rate employees and resulting from negotiations between agencies and employee organizations. Section 9(b) also preserves the right to negotiate for the renewal, extension or modification of such contract provisions.

On February 3, 1978, in Department of the Interior, 57 Comp. Gen. 259, we held that payment of overtime to employees covered by section 9(b) in excess of one and a half times their basic rates was precluded by 5 U.S.C. § 5544, notwithstanding the fact that their negotiated contracts contained provisions for double overtime. In view of this decision, the DOD Wage Fixing Authority on April 13, 1978, directed that the payment of double overtime previously authorized for Corps of Engineers employees be terminated.

However, because this decision overturned practices of long standing and to cushion its impact, we issued another decision on June 23, 1978, 57 Comp. Gen. 575, which stayed the implementation of the holding in 57 Comp. Gen. 259 until the end of the second session

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of the 96th Congress to give interested parties an opportunity to obtain statutory authority to negotiate double overtime.

On October 13, 1978, statutory authority to negotiate double overtime for section 9(b) employees was enacted in section 704(b) of the Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 1218, which provided that overtime could continue to be negotiated for such employees without regard to 5 U.S.C. § 5544.

In enacting section 704, the Congress made it clear that it was overruling our Department of the Interior decision and that it was providing "specific statutory authorization for the negotiation of wages, terms and conditions of employment and other employment benefits traditionally negotiated by these employees in accordance with prevailing practices in the private sector of the economy." Conference Report (to accompany S. 2640), House Report No. 95-1717, October 5, 1978, p. 159.

In light of the enactment of section 704, we reconsidered our February 3, 1978 decision regarding overtime pay in Department of the Interior, B-189782, January 5, 1979, 58 Comp. Gen. 198. Since section 704(b)(B) specifically provides that the pay and pay practices of employees covered by section 9(b) of Pub. L. No. 92-392 shall be negotiated without regard to subchapter V of chapter 55, title 5, United States Code (which contains section 5544 pertaining to overtime pay for prevailing rate employees), we overruled our decision of February 3, 1978, insofar as it had invalidated overtime contract provisions of Interior's prevailing rate employees.

The DOD Wage Fixing Authority, however, has not rescinded its order prohibiting double overtime and, as a consequence, these Corps of Engineers employees are the only employees working in the Pacific Northwest Region at hydro-electric power plants who are not being paid double overtime.

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The Corps of Engineers believes that section 704 of the Civil Service Reform Act was intended to include employees covered by the Pacific Northwest Power Rate Schedule in order to keep uniformity in the region and to continue a practice of 22 years which accords with practices of the electric power industry. Accordingly, the Corps of Engineers urges us to rule that double overtime is authorized for these employees.

Section 9(b) provided essentially for the preservation of the wage and benefit provisions contained in negotiated employment contracts covering Government prevailing rate employees. Prevailing rate employees of both the Department of the Interior and the Corps of Engineers were then covered by contracts calling for the payment of double overtime. The Department of the Interior's double overtime provisions were negotiated; the Corps of Engineers' contracts provided for double overtime on the basis of administrative wage determinations using prevailing practice as a guide.

In our earlier decisions we concluded that despite the double overtime contract provisions and the provisions of section 9(b), Department of the Interior employees and Corps employees by extension were not entitled to be paid double overtime. Those decisions were premised upon the lack of authority to have negotiated double overtime contract provisions in the first instance. The Congress, in enacting section 704 of the Civil Service Service Reform Act of 1978, overrode that interpretation.

In light of the Congressional action making clear that prevailing rate employee wage and benefit contract provisions were to be preserved without regard to any question as to the authority underlying those provisions, it is our view that there is no proper basis for distinguishing Corps of Engineers' prevailing rate employees from those of the Department of the Interior so far as the issue of double overtime is concerned.

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Therefore, we conclude that the wage board employees of the Corps of Engineers who are covered by the special Pacific Northwest Regional Power Rate Schedule are entitled to be paid double overtime.

A further question arises as to whether retroactive payments may be made to the Corps of Engineers employees affected by this decision since they have been paid time and a half for overtime since the implementation of the Department of Defense Wage Fixing Authority directive. In decision 57 Comp. Gen. 259 (1978), modified by 57 id. 575 (1978), we held that implementation by the Department of the Interior of our decision prohibiting double overtime should be delayed until Congress had time to act on the matter. There is no reason why the stay of implementation should apply to Department of the Interior employees and not to Department of Defense employees. As noted above, Congress by enacting section 704 has permitted the continued payment of double overtime under section 9(b). Therefore, we conclude that corrective payments shall be made to Corps of Engineers employees whose overtime pay was reduced pursuant to the DOD Wage Fixing Authority's directive of April 13, 1978.



Acting Comptroller General  
of the United States