



Comptroller General  
of the United States

Washington, D.C. 20548

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Easter Wood

## Decision

**Matter of:** Contracts for Students Providing Technical  
Support Under 10 U.S.C. § 2360

**File:** B-246974

**Date:** May 29, 1992

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### DIGEST

Although students at institutions of higher learning who provide technical support for defense research under contracts authorized by 10 U.S.C. § 2360 are not federal employees, there is no prohibition on including terms in the contracts to provide holiday pay and mileage payments for local business travel, which normally accrue to federal employees, without violating the intent of the statute.

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### DECISION

The question in this case is whether students at institutions of higher learning who provide technical support for military research under contracts authorized by 10 U.S.C. § 2360 may be paid holiday pay and mileage for business travel under the terms of those contracts.<sup>1</sup> We find no prohibition against including terms for such compensation in the contracts; however, settlement of individual claims under such contracts is a matter for the contracting officer under the Contracts Disputes Act, not our Office.

### BACKGROUND

Pursuant to 10 U.S.C. § 2360, the Department of Defense "may procure by contract" the temporary or intermittent services of students at institutions of higher learning to provide technical support for defense research. Two provisions contained in some of these contracts have been questioned by the Finance and Accounting Officer at the Picatinny Arsenal. One provision states that the student contractor may be reimbursed mileage costs associated with official business travel "not to exceed the limits set forth in the Federal

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<sup>1</sup>The question was submitted by the Finance and Accounting Officer, Army Armament Research, Development and Engineering Center, Picatinny Arsenal, New Jersey, involving claims by student contractors Aaron P. Schnatterly, Robert G. Kreisel, Jr., and Michael D. Bredehoeft.

Travel Regulations in effect at the time of travel." The other provision states that, while the student contractor will be reimbursed for his time and effort during the performance period at a set rate per hour, "(r) reimbursement shall also be made for those Federal holidays (8 hours while full time and proportionate hours while part time) during this period at the same hourly rate." The Finance and Accounting Officer asks if these contract terms are valid, since they appear to be granting mileage and holiday pay benefits that belong only to federal employees to student contractors who are not federal employees.

The Finance and Accounting Officer also questions whether the holiday pay provision allows the student contractor to be paid for a holiday without actually working on the holiday. He believes that since the contract is one for "time and effort" this would appear to preclude payment unless there is actual work performed on the holiday. Accordingly, he has approved payment for students who have actually worked on the holiday but denied payment for those who have not.

#### ANALYSIS

The statute specifically provides that the students shall be considered to be federal employees only for purposes of compensation for work injuries or tort claims and not for any other purpose. 10 U.S.C. § 2360(b). A stated concern of the legislators at the time the statute was enacted was that such student service contract arrangements not be used to circumvent civilian personnel ceilings or provide for an increase in the civilian work force. See H.R. Rep. No. 311 (Conference Report), 97th Cong., 1st Sess. 116 (1981); H.R. Rep. No. 71, 97th Cong., 1st Sess. 156 (1981). However, the statute and its legislative history are silent about the actual terms of the contracts.

Likewise, although the implementing regulations state that the contracts made directly with the students are nonpersonal service contracts and must contain certain general contract provisions, the regulations do not provide any specific guidance about the terms of the contracts, such as the terms at issue here. See Defense Federal Acquisition Regulation Supplement, Part 237 - Service Contracting, subpart 237.73 (1991).<sup>2</sup>

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<sup>2</sup>The three contracts presented for our review incorporate by reference the Federal Acquisition Regulations disputes provision stating that the contract is subject to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (1988). Under this provision, all claims by a contractor are to be submitted to the contracting officer who shall issue a

Accordingly, we find nothing that prohibits the agency from including compensation for holidays and mileage as part of the terms for compensation under the contract. In such a case the students would not be paid for the holiday or travel as federal employees entitled to such payments pursuant to statute and regulation, but rather as contractors under the terms of their contracts.<sup>3</sup>

We now turn to the individual invoices of the three contractors the Finance and Accounting Officer submitted.

Contractor Bredehoeft's invoice is for \$49.73 in mileage charges. That invoice is supported by a travel log showing the dates, distances and purposes of the travel, and it has been certified by the contracting officer's representative. The mileage rates used are the maximum rates for use of a privately owned automobile provided in the Federal Travel Regulations during the periods the travel was performed, as incorporated by reference in the contract. Accordingly, if otherwise correct, that invoice may be paid.

The other two invoices presented are for hours worked by contractors Schnatterly and Kreisel during the first two weeks in September 1991. Both invoices include 8 hours claimed for September 2, 1991, the Labor Day holiday, when according to the Finance Officer no time and effort was provided to the government by the contractors.

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decision on the claim, and his decision shall be final and not reviewable unless appealed by the contractor. 41 U.S.C. § 605. See Enrique Garcia, B-206352, Oct. 1, 1982; and 61 Comp. Gen. 568 (1982). In these three cases, however, as yet there appears to be no such dispute, but rather questions raised by the Finance Officer as to whether he may make payment for certain items, questions he has submitted to us pursuant to 31 U.S.C. § 3529.

<sup>3</sup>We note that if the contract also provided terms purporting to allow accrual of leave and retirement, payment of relocation, and health or life insurance benefits, there would be legitimate cause for concern that it would be a contractual attempt to make a federal employee where one was precluded by statute. That is not the case here. We do note an incongruity as to holiday pay we believe the agency should review for the purposes of future contracts. In the two cases where it is an issue here, the contracts provide for such pay, although no service is performed. In the third contract, where it is not an issue, pay is authorized only for hours of work on the holiday.

Both the Schnatterly and Kreisel contracts include the provision noted above providing for payment for federal holidays, that is, "8 hours while full time and proportionate hours while part time". Mr. Kreisel's invoice, in addition to the 8 hours for Labor Day, claims payment for 8 or more hours for each of the other 9 weekdays during the two-week period, except for Tuesday, September 3, for which 7.5 hours are claimed. Since we do not find the contract provision authorizing payment for the holiday to be improper, and since the other hours claimed for the period indicate that Mr. Kreisel could be considered "full time" for this two-week period, payment for the 8 hours claimed for Labor Day appears appropriate. Missing from the record furnished us in Mr. Kreisel's case, however, is the required certification of the invoice by the contracting officer's representative, without which payment may not be made. If such certification is provided to the Finance Officer, he may make payment for the hours Mr. Kreisel claimed for Labor Day, if otherwise correct.

In the case of Mr. Schnatterly, his invoice for the two-week period claims payment for a total of 14 hours, 8 hours for Labor Day and 3 hours each on September 3 and 12. Mr. Schnatterly's invoice has been certified by the contracting officer's representative. In Mr. Schnatterly's case, however, we do not think the record supports payment for the full 8 hours since, during the two-week period he provided services for only 3 hours on each of two days. As noted, the contract provides for reimbursement for holidays for "proportionate hours while part time." Since these contractors are not employees, it is not entirely clear what "full time" and "part time" mean; however, they appear to relate to the usual 80 work hours full-time federal employees are paid for over a two-week pay period. In this regard we note that the contracts provide that the contractors are to be paid based on biweekly invoices they submit "for all hours expected during the previous two-week period." Also, we have been informally advised by an agency representative that there is no set method of scheduling the work of these student contractors; apparently it is done on an individual basis by the organization using their services based on available work and the availability of the student. It is our view, therefore, that the language of the contract that payment for a holiday, while the contractor is part-time is limited to a proportionate number of hours, should be related to the two-week period in which the holiday falls. In Mr. Schnatterly's case the hours payable for the holiday can be derived by subtracting the 8 hours for the holiday from the 80 hours in the biweekly period, leaving 72 available hours. The part-time ratio then would be the 6 hours actually worked divided by 72 available hours, which may be expressed as the fraction  $6/72$  or  $1/12$ . For the holiday then Mr. Schnatterly would be entitled to payment

for 1/12 of 8 hours, or 2/3 of an hour. Accordingly, payment may be made to Mr. Schnatterly for 2/3 of an hour at his hourly rate for the Labor Day holiday.'

*for Milton F. Jester*  
Comptroller General  
of the United States

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'if Mr. Schnatterly disagrees with this basis, he may of course submit a claim to the contracting officer for resolution under the Contract Disputes Act procedures, 41 U.S.C. §§ 601-613.