



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** United States Information Agency -  
Compensatory Time

**File:** B-251636

**Date:** June 11, 1993

### DIGEST

Former USIA employees at the U.S. Pavilion, Expo 92, in Spain, claim compensatory time on the basis that they worked additional hours and that such time was informally authorized. However, no records of overtime work performed by the employees were maintained as required by regulations. Moreover, the overtime work was not ordered or approved or induced by Pavilion officials, but was left to the discretion of the employees with the understanding that, if possible, at the end of Expo 92 some "informal" time off with pay would be granted, but this was not possible. The time claimed does not qualify under applicable regulations as overtime for which compensatory time may be substituted.

### DECISION

This decision is in response to a request by the United States Information Agency (USIA), Department of State, for an opinion as to whether it must compensate certain agency employees for compensatory time they claim to have accumulated incident to their assignments to the United States Pavilion at Expo 92 in Seville, Spain.<sup>1</sup> Some of these employees have left USIA while others have returned to career civil service positions in the agency.

### BACKGROUND

The affected employees, who were on limited Foreign Service appointments at the time, were assigned to work at the U.S. Pavilion at Expo 92 in Seville. In January 1992, Mr. Philip Rogers, Associate Commissioner General of the U.S. Pavilion, issued a policy memorandum to the Pavilion staff members, through Mr. Frederick M. Bush, Commissioner General, Seville Expo 92, which stated, in pertinent part, that:

<sup>1</sup>The request was submitted by Mr. John Condayan, Associate Director for Management, USIA.

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"All staff members of the U.S. Pavilion at Expo '92 Seville must acknowledge and accept that this assignment is unique. . . . This will probably involve a number of additional hours of effort per week. Some will be time you want to put in because you want to be a part of the after hours activities. Some will be time you must put in to catch up.

"It is the policy of the U.S. Pavilion that each employee work only a normal work day and a normal work week (or regular shift). . . .

"However, when it is necessary for a staff member to work additional hours, the employee is responsible for recording those hours to be accumulated as informal compensatory time (comp time). Because this time is being accumulated by each employee on his/her own assessment of the requirements of the job, and not at the direction of the Pavilion management, this comp time is not eligible for conversion to overtime to be paid for if unused. Every effort will be made to allow for staff members to use accumulated comp time after Expo while they are still on the payroll of the U.S. Pavilion. It may not be possible to grant all the comp time, as take-down requirements will require staff presence and some persons may have more time than their assignments in Seville will allow them to use. When an employee leaves the U.S. Pavilion payroll for another non-government job, or to a government job in either USIA or another agency, the unused comp time is forfeited because it was informal and cannot be transferred.

"Being a professional on the Pavilion staff is an honor, and as a professional each employee will want to do what is necessary to get the job done well. The rewards will come not from strict accounting of time and compensation, but from the knowledge that you made a significant contribution to the Pavilion's success."

In a later memorandum dated September 21, 1992, the Associate Commissioner General reported that between the middle of March and May 17, 1992, nearly all of the Pavilion employees worked 6-day weeks with most days being 10 to 12 hours, with a few 16-hour days and/or 7-day weeks, for about 200 hours of overtime for each employee. The Associate Commissioner General stated that Pavilion employees also worked on four U.S. holidays during their assignment at Seville, which he considered as amounting to an additional 32 hours of compensatory time per employee. He requested

that each employee be given the opportunity to take 3 weeks of paid compensatory time before they returned to duty or separation in the United States. However, due to severe USIA budgetary constraints, the departure of Pavilion staff members from Seville was accelerated, commencing in October 1992. As a result, the employees were unable to use the informal compensatory time.

Neither the employees nor their superiors have written records of the actual overtime hours worked. The employees' primary contention is that they worked and operated in good faith under the compensatory time policy established in the January 1992 memorandum by the Associate Commissioner General and that no one at USIA ever questioned that policy prior to or during the Expo. The claimants feel that USIA should honor its commitment and grant them compensatory time.

USIA contends, however, that the informal arrangement made by the Associate Commissioner General for Pavilion employees to earn, record, and use compensatory time is not authorized by USIA and government-wide regulations. The agency states that the January 1992 memorandum was not cleared or approved by USIA management and that no time and attendance records, either formal or informal, were kept. The USIA asks whether the Associate Commissioner General's policy memorandum, cleared through the Commissioner General of the Pavilion, binds the agency to compensate the employees for compensatory time.

#### OPINION

Under the provisions of 5 U.S.C. § 5543(a)(1) (1988), on the request of an employee, the head of an agency has the discretionary authority to grant an employee compensatory time off from his or her scheduled tour of duty, instead of paying for time spent in performing irregular or occasional overtime work. With respect to an employee whose rate of basic pay is in excess of the maximum rate of pay for GS-10, the head of the agency may provide that the employee shall be granted compensatory time off from his or her scheduled tour of duty for performing irregular or occasional overtime work. Inasmuch as compensatory time is equivalent to overtime compensation,<sup>2</sup> and is granted instead of paying for irregular or occasional overtime work, claimed overtime work must have been officially ordered or approved by an official with competent authority to do so. 5 U.S.C. § 5542. Pursuant to 5 U.S.C. § 5548, the Office of Personnel Management has prescribed implementing regulations

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<sup>2</sup>See Department of the Army Civilian Payroll System, B-211286, Oct. 2, 1984.

at 5 C.F.R. § 550.114 (1992). The Department of State in the Foreign Affairs Manual (FAM), Volume 3, Chapter 230, October 26, 1988; and the USIA in its Manual of Operations and Administration (MOA), Section 600, August 14, 1987, have restated and prescribed further implementation for their employees.<sup>3</sup>

The statute and regulations cited above clearly give the head of an agency the discretionary authority to grant compensatory time off from an employee's tour of duty, instead of payment for an equal amount of irregular or occasional overtime work. The OPM regulations provide that overtime work means work that is in excess of 8 hours in a day or in excess of 40 hours in a workweek that is officially ordered or approved and performed by an employee. 5 C.F.R. § 550.111(a). The regulations also provide that any overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved "only in writing by an officer or employee to whom this authority has been specifically delegated." 5 C.F.R. § 550.111(c). Under these provisions, the head of the agency establishes procedures under which overtime is authorized or approved and recorded in order to be compensable or accumulated as compensatory time. Supervisors are responsible for maintaining records of overtime and special compensatory time off and for reporting on liquidation of compensatory time off. 3 FAM § 232.7-2. It is the responsibility of each employee to maintain an individual record of the overtime work he or she performs during each pay period and submit such record to his or her supervisor for certification and transmittal to the administrative officer. 3 FAM § 232.7-3; MOA § 602-6e(6).

As noted previously, the informal arrangement at issue in this case left the determination of whether and how much additional time to work to the discretion of the employees, with the understanding that an effort would be made after Expo 92 was over to allow some time off with pay. This informal arrangement does not meet the requirements for compensable overtime for which compensatory time may be

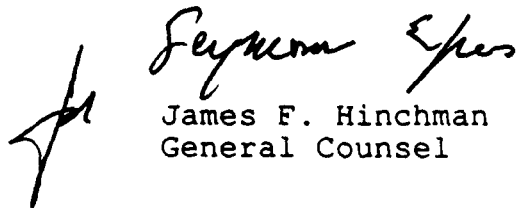
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<sup>3</sup>Although 5 U.S.C. § 5541(2)(xiv) (1988) excludes career Foreign Service officers from the premium pay and compensatory time provisions of 5 U.S.C. § 5543, the claimants here had only limited temporary appointments and were not commissioned Foreign Service officers, and, therefore, were covered by these provisions. See 3 FAM § 231.2.

granted under the OPM and agency regulations.<sup>4</sup> In any event, the record indicates that neither the employees nor their supervisors maintained any written record of the additional hours worked by the employees for which compensatory time off could be substituted.

In regard to work performed on the four holidays in question, generally, employees are entitled to holiday pay for work performed on holidays. 5 U.S.C. § 5546; 3 FAM § 233.2-2. While under 5 U.S.C. § 5543 an employee may be granted compensatory time off for time spent in irregular or occasional work, there is no statutory authority for granting compensatory time off in lieu of holiday pay.<sup>5</sup> Any work performed by the claimants on holidays, therefore, is compensable under 5 U.S.C. § 5546, if verifiable by their time and attendance records.<sup>6</sup>

Accordingly, on the present record in this case, there is no basis to grant compensatory time.

  
James F. Hinchman  
General Counsel

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<sup>4</sup>See 53 Comp. Gen. 489 (1974); Carl L. Haggins, B-216952, Oct. 18, 1985; Jim L. Hudson, B-182180, Jan. 6, 1982; Bordenkircher and Jew, B-188089, Oct. 31, 1977. See also, Ronald L. Barnhart, 68 Comp. Gen. 385 (1989).

<sup>5</sup>Under 3 FAM § 233.5, career Foreign Service officers are eligible for special compensatory time off for holiday work authorized. This regulation states that no other type of compensatory time off may be granted to any employee for holiday work. See also 53 Comp. Gen. 264 (1973); 39 Comp. Gen. 393 (1959); 26 Comp. Gen. 431 (1946).

<sup>6</sup>53 Comp. Gen. 264, supra.