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

PLM 2

FILE: B-180095 DATE: September 8, 1980

MATTER OF: Recoupment of Union Dues--Fort Stewart/Hunter Army Airfield & Addressee

DIGEST: Accounting and Finance Officer inquires whether Government is required to reimburse employees for union dues allotments which were continued after employees were no longer part of a bargaining unit. Reimbursement is not required even though not stopping the allotments in accordance with 5 C.F.R. 550.322(c) was an agency error because employees have a responsibility to notify agency of improper allotment withholding and because agency action merely paid dues for employees who were union members and owed dues. Employees are not entitled to reimbursement for allotment payments which inure to their benefit. B-194692, July 24, 1979. For same reason there is no requirement to recoup allotment payments from union. 54 Comp. Gen. 921 (1975) and B-180095, December 8, 1977, amplified.

This decision is in response to a request by a Finance and Accounting Officer at Headquarters, 24th Infantry Division and Fort Stewart, Fort Stewart, Georgia, regarding the recovery of dues paid to a union through allotments after union members were no longer a part of the bargaining unit represented by the union. We have concluded that the erroneously withheld allotments need not be paid to the employees since they have a duty to advise the agencies if an allotment is being erroneously withheld and since the dues payments were owed the union and inured to the benefit of the employees. Therefore, no action need be taken to recoup the erroneous allotments from the unions.

The facts of the case may be summarized as follows. Headquarters, 24th Infantry Division and Fort Stewart, the United States Army Medical Department Activity, and the United States Army Communications Command

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Detachment, all located at Fort Stewart/Hunter Army ~~Airfield~~, Georgia, and hereafter called employer, entered into a written Agreement pursuant to Executive Order 11491, as amended, with Local No. 1922 of the American Federation of Government employees, hereafter called union. The Agreement obligated the employer to withhold voluntarily alloted union membership dues in accordance with applicable regulations.

Under 5 U.S.C. 5525 Federal employees may make allotments of their pay under policies and procedures prescribed by the head of the agency. These policies and procedures are coordinated by the Office of Personnel Management under authority delegated by the President. See 5 U.S.C. 5527 and section 2(b), Executive Order No. 10982, December 25, 1961, as amended, 5 U.S.C. 5527 (note). Regulations relating to labor union dues allotments are contained in 5 C.F.R. 550.321 to 550.324 (1977). Under these regulations, particularly subsection 550.321(a), an employee is permitted to make an allotment for dues to a labor organization when the employee is a member of a labor organization which has exclusive recognition in the unit in which he is employed and the agency has agreed in writing to do so. Section 550.322(c) requires the agency to discontinue the allotment when the employee is reassigned or promoted outside the unit for which the labor organization has been accorded exclusive recognition. The problem here arises because the employer, through administrative error on its part, continued to deduct and transmit dues to the union on the basis of allotments of employees who were no longer in the bargaining unit covered by the Agreement. In total, $11,106.50 was erroneously transmitted to the union from the allotments of 71 employees between January 9, 1972, and June 18, 1977.

In light of our decision 54 Comp. Gen. 921 (1975), the finance and accounting officer has requested

answers to several questions dealing with allotments to labor organizations which have been continued after employees leave the bargaining unit. The holding in 54 Comp. Gen. 921 was upheld by the Court of Claims in Lodge 2424, International Association of Machinists and Aerospace Workers, AFL-CIO v. United States, 215 Ct. Cl. 125 (1977). In that case an employee's allotment had been continued after he left the bargaining unit. The agency, upon discovery of the error, refunded the erroneous deductions to the employee and recovered the funds by setting off the amount of $80.33 from the next payment of dues allotments to the union. The conclusion reached was that the Government could recoup erroneously deducted allotments from subsequent allotment payments due the union. It was determined that an arbitrator's award of $80.33 to the union in payment of money so withheld could not be implemented.

At the outset we note that the instant case differs from the situation in 54 Comp. Gen. 921 in that the agency has not paid the employees the erroneous allotment deductions nor recovered any money from the union. Further, the legal question involved has been the subject of a decision in the United States District Court for the Northern District of Alabama, American Federation of Government Employees Local 1858 (AFL-CIO) v. Clifford Alexander, Secretary of the Army, Civil Action No. 78-W-5023-NE, decided April 14, 1978, with final judgment entered February 12, 1979. In that case the union sued for and was granted an injunction to restrain defendant from setting off against current allotment checks to the union the dues of two union members who had been promoted out of the bargaining unit but whose voluntary dues allotment had been continued. In that case the allotments had not been returned to the employees.

In 54 Comp. Gen. 921 the employees concerned had been refunded the erroneous deductions of union dues and we did not question that action since the deductions

were clearly erroneous. Further, the Office of Personnel Management in its report to us on this case stated that "the agency is solely responsible for terminating allotments for employees who leave the bargaining unit covered by the agreement." The report concludes that the Government must refund the erroneous deductions unless recovery is waived by the employee.

Although we must agree that allotments were erroneously withheld in these circumstances, we do not believe that the Government is required to pay over the erroneously withheld allotments to the employees. It is the primary responsibility of an agency to cancel allotments of union dues when an employee is no longer in the bargaining unit, but the employee should not be relieved of the duty to advise the agency promptly if allotments are being improperly withheld.

We are particularly constrained to that view because employees may be members of a labor organization whether or not they are members of a bargaining unit covered by a written agreement. Therefore, when an employee leaves a unit covered by a bargaining agreement, only the right to have his union dues paid by voluntary allotment ends. His union membership continues until he takes some action to terminate it. If through administrative error the allotment continues to be paid to the union, the employee is presumed to have knowledge of the fact his allotment has continued since in most cases the allotment is shown on Leave and Earnings Statements each pay period. Thus, the employee is or should be aware that his union dues are being paid by allotment, and he is in a position to know that such deductions are improper. In any case the employee does not lose the money in question since it is owed to the union. Further, the union is not being unjustly enriched, since it is entitled to dues from its members. See Matter of Sergeant Richard C. Rushing, USA, B-194692, July 24, 1979,