DECISION

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

U1232

FILE: B-181467 DATE: JUL 29 1976

98792

MATTER OF: Clark Air Base - Premium Pay Overpayments to Employees

DIGEST: Air Force review showed that night differential and Sunday premium overpayments were made to local national employees at Clark Air Base in the Philippines from July 1969 to December 1973. No collection action is necessary since record indicates individual overpayments are small, cost of identifying them is excessive, and all overpayments would be eligible for waiver on individual case basis.

The Department of the Air Force, Headquarters Air Force Accounting and Finance Center, Denver, Colorado, has requested our concurrence in and comments on its proposed action to forego further action to collect certain overpayments to local national employees at Clark Air Base, Philippine Islands, which occurred as a result of administrative error.

The overpayments in question involve both Sunday premium and night shift differential payments made from July 28, 1969, to December 15, 1973. It appears that the local nationals in question were employed at Clark Air Base and were eligible for premium and differential payments pursuant to the Collective Bargaining Agreements of July 28, 1969, and September 27, 1972, as amended.

In regard to Sunday premium pay, the Air Force reports that, since July 28, 1969, it had been incorrectly paying the premium for the entire 8-hour shift that started on Saturday and ended on Sunday, and also for the entire 8-hour shift that started on Sunday and ended on Monday. In this connection, the applicable provisions of the Collective Bargaining Agreement of July 28, 1969 (Article VII, section 6, Sunday Pay), provided that all work performed on Sunday would be paid at 150 percent of the basic hourly rate. This rate applied to all work performed on Sunday regardless of whether it was overtime or within the basic workweek. This provision was supplemented by CINCPACREPPHIL Instruction 12000.1C, Filipino Employment Policy Instruction, May 7, 1970, which indicated that Sunday pay is for work performed on Sunday between 0001 hours and 2400 hours. The Air Force informs us that it now pays a Sunday

098792/U98792

premium only for the actual hours of work performed on Sunday, regardless of whether the shift requires work on either a Saturday or a Monday.

With respect to the overpayments of night shift differential (125 percent of the basic hourly rate), we are advised that the Air Force had incorrectly posted this differential as second shift for all hours of the shift when less than 4 hours of work were performed between 1800 hours and 0600 hours of the next day. For example, an employee's shift between 1200 hours and 2100 hours was posted as 8 hours second shift and accordingly allocated the differential. Such posting was an incorrect interpretation of the applicable provisions of the Collective Bargaining Agreement of July 28, 1969 (Article VII, section 5b), which indicated that employees with 4 hours or more of a regular tour of duty between 1800 hours and 0600 hours would receive night shift differential for their entire shift, and employees whose regular tour included less than 4 hours of work between 1800 hours and 0600 hours would receive the differential for actual hours worked between 1800 and 0600. This provision was clarified by section 4b of Article VIII of the Collective Bargaining Agreement of September 27, 1972, which provides that night shift differential shall be paid for work performed during the periods 1800 to 2400 or 0000 to 0600, and, if at least 4 hours of a shift occur between 1800 and 2400, the differential shall be paid for work during the period 1600 to 2400. Thus, before an employee can now be entitled to night shift differential for the full 8-hour shift, his shift must start at 1600 hours or later.

The Air Force reports that the administrative error occurred because the applicable Federal Personnel Manual provisions and Air Force manuals and regulations were applied, rather than the provisions of the above-referenced Collective Bargaining Agreements. The improper payments were terminated on December 15, 1973, immediately after discovery of these errors by the Air Force. We are also informed that the timekeeper instructions have been updated to reflect proper posting procedures.

After rectifying these errors, the Air Force sought to determine the estimated amounts of overpayments in question. With respect to Sunday premium pay, the Air Force selected the pay period March 27, 1973, through April 7, 1973, and its examination thereof reflected that 594 hours of the 9521 hours paid

for Sunday premium pay therein were erroneously posted and overpaid on the average of $.30 per hour. As the total overpayment for the pay period was $178.20, the Air Force estimates that the total overpayment for the 4 and 1/2-year period was $20,849.40 ($178.20 x 26 x 4.5). In regard to the night differential overpayments, the Air Force randomly selected two pay periods for examination (pay periods ending December 16, 1972, and October 6, 1973) in order to neutralize any unbalancing effects due to variations in shifts worked by an employee from pay period to pay period. A review of these two periods indicated that, on the average, 350 hours were overpaid for night shift differential (second shift), and that the overpayments averaged approximately $.08 per hour. As the total overpayment was therefore estimated to be $28 for the pay period, the Air Force calculates that the total overpayment for the 4 and 1/2-year period was $3,276 ($28 x 26 x 4.5).

While the Air Force believes that the above estimates are accurate, it advises this Office of the following circumstances:

> "An audit of approximately 702,000 time and attendance cards is necessary in order to determine overpayments on an individual basis. This monumental task would require many manhours and excessive administrative costs. As a result the benefits derived from an attempt to collect these overpayments would be severely limited by the total expense of processing the corrections. In addition, collection action would create financial hardships for the local nationals who were affected by these overpayments. The resulting problems are difficult to estimate; however, a serious labor union grievance concerning this matter would be inevitable. Collective action in many cases would be futile because the individuals involved no longer are employed at Clark Air Base. Due to the local employment situation, an attempt to collect would be nonproductive and would create an unpleasant atmosphere among local national employees throughout the base."

Accordingly, we are requested to approve the Air Force's proposal to terminate further action with respect to these overpayments.

Under the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953, the Comptroller General and the Attorney General are authorized to jointly promulgate standards regarding, inter alia, the termination of collection action where it appears that the cost of collecting the claim is likely to exceed the amount of recovery. Such standards for the termination of collection action are set forth in 4 C.F.R. Part 104 (1975). Section 104.4 of title 4, Code of Federal Regulations, instructs agencies to refer such matters to the General Accounting Office when it has doubts as to whether collection action should be suspended or terminated.

The GAO Policy and Procedures Manual for Guidance of Federal Agencies instructs agencies to consider the point of diminishing returns beyond which further collection efforts are not justified, giving consideration to the estimated recovery in relation to: (1) the cost; (2) the size of the debt; and (3) the apparent possibilities of collection. 4 GAO Manual § 55.3.

Here, the Air Force reports that (1) the administrative costs of identifying and collecting overpayments would be excessive; (2) the size of the debt in individual cases is minor; and (3) the possibilities of collection are minimal since many of the employees are no longer employed at Clark Air Base, a labor union grievance is inevitable, and all of the overpayments would be eligible for waiver consideration on an individual basis.

From our review of the Air Force request, it seems clear that the administrative costs of collection are likely to exceed the estimated recovery and would go beyond the point of diminishing returns. See B-176092, July 14, 1972, but cf. B-165743, May 11, 1973. Therefore, this case meets the standards for termination of collection set forth in the Federal Claims Collection Act and the implementing joint regulations of the Comptroller General and the Attorney General.

Moreover, it is equally clear that the overpayments were caused by an administrative error by the Air Force and there is no indication of fault on the part of the Philippine employees involved. Thus, terminating collection action would appear to be consistent with the principles of the waiver statute, 5 U.S.C. § 5584, since such payments presumably were accepted in good faith

by the employees and would be proper for waiver. See B-179191, March 25, 1974 (53 Comp. Gen. 701).

We concur with the proposal to forego further action on the overpayments to the employees involved and the Air Force's file on the debt claims may be closed.

R.F. KELLER

[Deputy] Comptroller General
of the United States