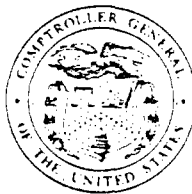


DECISION

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

50985

FILE: B-183083

DATE: AUG 19 1975

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MATTER OF:

Retroactive Wage Increases - Department
of the Interior

DIGEST:

Wage survey at Interior installation, commenced in time to be effective February 4, 1973, was not effected until May 7, 1973, because wage board rates were set by labor-management negotiated agreement and there was question of union representation. Wage adjustment may not be effective retroactively since the provisions in 5 U.S.C. § 5344 regarding the effective date of wage board pay adjustments are not applicable to labor-management agreements and no tentative agreement as to the effective date of the wage adjustment was made prior to May 7, 1973.

This is an advance decision requested by the Secretary of the Interior concerning the propriety of a retroactive pay adjustment for wage board employees at the Yuma Projects Office, Bureau of Reclamation. Consistent with a longstanding practice at the Yuma Projects Office, wage rates are determined through the collective bargaining process, normally in the month of January. In January of 1973, however, a representation issue arising out of an earlier reorganization and involving the International Brotherhood of Electrical Workers (IBEW) and the National Federation of Federal Employees (NFFE) was pending before the Department of Labor. The Bureau of Reclamation advised the IBEW that wage rates could not be negotiated until the representation issue was resolved. On May 7, 1973, however, while the representation issue was still unresolved, but with the written sanction of both disputants the Bureau approved a 3.5 percent pay adjustment. The Bureau has been requested by the IBEW to make the pay adjustment effective back to February 4, 1973, the date on which the adjustment would have been effective but for the representation dispute. The Secretary of the Interior, therefore, seeks a determination by this Office whether such an adjustment is permissible under the provisions of existing statutes and regulations.

It has long been the rule that in the absence of a controlling statute an increase in basic compensation authorized by a wage board or other wage fixing authority for employees, whose pay is fixed and

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adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates, may not be made effective prior to the date of final action by the wage fixing authority. 24 Comp. Gen. 676 (1945); 40 id. 212 (1960). Section 5344 of title 5, United States Code (Supp. II, 1972), however, in pertinent part provides:

"(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made."

However, it has been held that wage adjustments for Federal wage board employees which are determined through collective bargaining under labor-management agreements, as distinguished from those determined by wage surveys conducted by the administrative department or agency are not subject to the provisions of Public Law 85-872 (later codified in 5 U.S.C. 5343 (1970)) which was designed to eliminate undue delay in effecting wage adjustments when the administrative department was solely responsible for the wage determination. 38 Comp. Gen. 538 (1959). The provisions of 5 U.S.C. § 5343 were reenacted as 5 U.S.C. § 5344(a) by Public Law 92-392, approved August 19, 1972, 86 Stat. 568. The reenactment does not affect the holding in 38 Comp. Gen. 568 since section 9(b) of Public Law 92-392, 86 Stat. 574, provides that the amendments made by that act shall not affect current negotiated labor agreements or the renegotiation of such agreements in effect at the time that act became effective.

We also point out that in the past our Office has viewed tentative agreements between a competent wage fixing authority and a union which prospectively sets the effective date for wage increases as authorizing increased payments from that date even though the amount of the increase is not determined or agreed to until a later date. B-62932, B-75121, July 5, 1950. In B-126868, April 8, 1963, it was stated that:

"The reasoning behind that rule is that the compensation paid employees subject to such agreements after the date set for increase is merely an advance and that the Government knows it will be required to pay additional compensation to such employees at a later date under the terms of a final agreement between the employees' union and either the Government or private industry."

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The submission from the Department of the Interior does not indicate that any tentative agreement was reached on or before May 7, 1973. Therefore, on the basis of the information provided and in the light of past decisions, it must be concluded that a pay adjustment retroactive to February 4, 1973, would not be permissible.

R.P. KELLER

Acting Comptroller General
of the United States