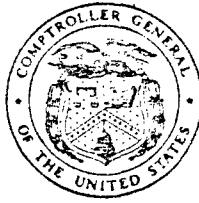


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**DECISION**



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

**FILE:** B-195406

**DATE:** May 11, 1981

**MATTER OF:** Buster Owens - Refund of Union Dues

**DIGEST:** Accounting and Finance Officer inquires whether Government may reimburse employee for union dues allotment which was continued after employee was promoted to foreman position. Since record shows that employee diligently attempted to have allotment terminated on several occasions after promotion, he is entitled to reimbursement of the improperly withheld allotment. B-180095, September 8, 1980, distinguished. Since union was without fault in continuing to receive what had been a properly authorized allotment, amount due Government under 54 Comp. Gen. 921 (1975) is waived under the provisions of 5 U.S.C. § 5584 (1976).

This decision is in response to a request by the Accounting and Finance Officer at Headquarters Armament Development and Test Center (AFSC), Eglin Air Force Base, Florida, regarding the ~~claim of Mr. Buster Owens~~ for refund of ~~\$125~~ in union dues which were withheld from his salary and transmitted to AFGE Local 1897 after Mr. Owens was promoted to a foreman position. We have concluded, for the reasons set forth below, that Mr. Owens is entitled to reimbursement of the \$125 which was erroneously withheld from his salary. The \$125 amount erroneously paid in his behalf to AFGE Local 1897 may be waived in accordance with 5 U.S.C. § 5584 (1976).

The facts of this case are as follows. On November 23, 1975, Mr. Buster Owens, an employee of the Department of the Air Force whose duty station is Eglin Air Force Base, was promoted to a foreman position. Prior to that time Mr. Owens had authorized a voluntary allotment from his pay for the purpose of paying dues to AFGE Local 1897 as is permitted under applicable regulations. See 5 C.F.R. §§ 550.312 to 550.324 (1975). Section 550.322(c) requires an agency to discontinue the allotment when the employee

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is reassigned or promoted outside the unit for which the labor organization has been accorded exclusive recognition. Mr. Owens' allotment should have been discontinued on November 23, 1975. Instead, it continued until February 5, 1977, although Mr. Owens made several attempts during that period to have the allotment terminated. He now claims a refund of \$125, the amount improperly withheld from his pay between November 23, 1975, and February 5, 1977.

The Accounting and Finance Officer, in light of our decision 54 Comp. Gen. 921 (1975), inquires whether he may certify a voucher for Mr. Owens in that amount. That decision concerned an employee whose 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. We held that an arbitrator's award of \$80.33 to the union in payment of money so withheld could not be implemented.

Our holding in 54 Comp. Gen. 921 was amplified recently in B-180095, September 8, 1980. Unlike 54 Comp. Gen. 921, that case was one in which the agency had not repaid the employees the erroneously withheld allotments nor recovered the money from the union. The employees in that case had made no attempt to terminate their allotments and continued to enjoy the benefits of union membership. We held that even though the allotments were erroneously continued through administrative error, where the allotments inured to the benefit of the employees and did not unjustly enrich the allottee, there was no requirement for the Government to reimburse the employees or to recoup the money from the union.

The situation in Mr. Owens' case differs from 54 Comp. Gen. 921 in that he has not been reimbursed for the erroneously withheld allotment and is distinguished from B-180095, supra in that Mr. Owens attempted on several occasions to have the allotment discontinued. Although in B-180095 we denied reimbursement to the employees involved, we pointed out that the employees

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were presumed to be aware of the allotments by virtue of the Leave and Earnings Statements each pay period and stated that an "employee should not be relieved of the duty to advise the agency promptly if allotments are being improperly withheld."

Since Mr. Owens did all that a reasonable person could do under the circumstances in that he promptly and repeatedly notified his agency of the improperly withheld allotment, he may be reimbursed the \$125 erroneously withheld from his pay after he was promoted out of the bargaining unit.

Under the rationale of our earlier decisions regarding union dues including B-180095, September 8, 1980, the union is legally obligated to repay the \$125 in erroneous allotments made to it. However, we are of the opinion that the overpayment may be considered for waiver under the provisions of 5 U.S.C. § 5584 (1976) and regulations promulgated thereunder at 4 C.F.R. Parts 91-93 (1980). Section 91.5 of 4 C.F.R. provides in pertinent part:

"Claims of the United States arising out of an erroneous payment of pay or allowances may be waived in whole or part in accordance with the provisions of § 91.4 whenever:

"(a) The claim arises out of an erroneous payment of pay and allowances made to or in behalf of an employee \* \* \*

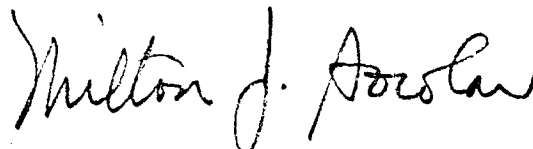
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"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is

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no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim \* \* \*."

In the instant case the voluntary union dues allotment was a payment of pay made in behalf of the employee. It continued to be made through administrative error after the employee's promotion. The payment, which was correct initially and became erroneous by operation of law, was received thereafter by the union in good faith and without fraud or misrepresentation. Accordingly, repayment of the \$125 amount due the Government from the union is waived under the provisions of 5 U.S.C. § 5584 and 4 C.F.R. Parts 91-93.



Acting Comptroller General  
of the United States