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**DECISION**

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

**FILE:** B-195785

**DATE:** February 6, 1980

**MATTER OF:** Bureau of Engraving and Printing - [Limitation  
on Wage Increase] Fiscal Year 1979

**DIGEST:** Bureau of Engraving and Printing trade and craft employees whose pay is set administratively under 5 U.S.C. § 5349(a), "consistent with the public interest," were properly limited to 5.5 percent wage increase in fiscal year 1979. Although pay increase limitation in 1979 appropriation act did not apply to these Bureau employees, agency officials properly exercised discretion to limit pay increases in the public interest in accordance with the President's anti-inflation program. See court cases cited. The fact that similar employees of Government Printing Office received higher wage increases is not controlling since they were not covered by appropriation act limitation or President's determination.

The issue presented for our decision is whether certain trade and craft employees of the Bureau of Engraving and Printing, Department of the Treasury, are entitled to a 6.8 percent wage increase effective June 18, 1979, or whether that wage increase is subject to the 5.5 percent pay limitation for fiscal year 1979 contained in an appropriation act and a Presidential Memorandum. This decision is in response to requests from the International Association of Machinists and Aerospace Workers and the Graphic Arts International Union. The Bureau employees in question received a 5.5 percent increase effective June 18, 1979, but the remainder of the 6.8 percent increase was delayed until October 1, 1979.

The employees involved in the request are those trade and craft employees of the Bureau whose positions are comparable to positions at the Government Printing Office for which the pay is set by negotiations under the Kiess Act, 44 U.S.C. § 305. Historically these employees of the Bureau have received the same wage increases as the comparable employees of the Government Printing Office (GPO). Pursuant to the Kiess Act, the GPO employees received a 6.8 percent wage adjustment effective June 18, 1979. This increase for the specified GPO employees was determined by a fact finder and approved by the Joint Committee on Printing after the unions and the Public Printer had reached a bargaining impasse. The Bureau of Engraving and Printing, however, has refused to allow a raise of more than 5.5 percent during fiscal year 1979. The unions

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argue that since the pay rates for Bureau and GPO employees have always been identical, the Bureau is required to grant the full increase, particularly since these Bureau employees are excluded from the pay setting provisions of Public Law 92-392, 5 U.S.C. § 5341 et seq.

The first question to be addressed is whether the pay increase of the specified Bureau employees is subject to the pay increase ceiling of 5.5 percent for fiscal year 1979 contained in section 614(a) of the Treasury, Postal Service, and General Government Appropriations Act, 1979, Pub. L. 95-429, 92 Stat. 1018, October 10, 1978. Section 614(a) provides, in pertinent part, that:

"No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under--

\* \* \* \* \*

"(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title)."

We have held that section 614(a)(3) applies only to wage adjustments made pursuant to wage surveys conducted under 5 U.S.C. § 5343 and, accordingly, that it is not applicable to pay adjustments made through negotiation under section 9(b) of Public Law 92-392. See Department of the Interior, 58 Comp. Gen. 251 (1979), and Saint Lawrence Seaway, B-193573, January 8, 1979. Similarly, we believe that section 614(a)(3) is not applicable to the pay adjustments of these employees of the Bureau provided under 5 U.S.C. § 5349(a).

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The pay of the trade and craft employees of the Bureau involved here is determined under 5 U.S.C. § 5349(a) which provides, in pertinent part, that the pay shall be:

"\* \* \*fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay fixing authority of such agency may determine \* \* \*."

Section 5349 was enacted by Public Law 92-392, approved August 19, 1972, 86 Stat. 564, which provided a statutory basis for adjusting pay rates for prevailing rate employees of the Federal Government and was codified in subchapter IV of chapter 53, title 5, United States Code. Trade and craft employees of the Bureau are clearly excluded from coverage under subchapter IV except for the purposes of section 5349. See 5 U.S.C. §§ 5342(a)(1)(I) and (b)(2)(A). In addition, the legislative history of Public Law 92-392 evidences a clear intent to exclude the Bureau from coverage under this subchapter and to allow the Bureau to follow its existing pay practices. See S. Rep. No. 92-791, 92d Cong., 2d Sess., reprinted in (1972) U.S. Code Cong. & Ad. News 2980, 2985, and H.R. Rep. 92-339, 92d Cong., 1st Sess. 19 (1971).

Since the wage adjustments of the Bureau employees are determined under an agency-controlled pay system pursuant to section 5349(a) and are not based on wage surveys under section 5343, we conclude that these wage adjustments are not subject to the pay limitation for fiscal year 1979 contained in section 614(a) of Public Law 95-429.

The second question to be addressed is whether the wage adjustment of these Bureau employees is subject to the 5.5 percent limitation set forth in the President's Anti-Inflation Program. On January 4, 1979, the President issued a memorandum to the Heads of Executive Departments and Agencies on Federal Pay and the Anti-Inflation Program. He stated that pay increases for most Federal employees--those in the General Schedule and related pay systems, members of the uniformed services, and

most of those in the Federal wage system--had been limited by the Administration and the Congress to 5.5 percent for fiscal year 1979. However, since many nonappropriated fund employees and other groups of workers were not covered by the same limitation, the President stated, in pertinent part, that:

"In order to ensure that proposed pay increases for other pay systems do not exceed the maximums for Federal pay that the Congress and I have set, the policy of this Administration is:

"In the public interest to control inflation, each officer or employee in the executive branch who has administrative authority to set rates of pay for any Federal officers or employees should exercise such authority, to the extent permissible under law, treaty, or international agreement, in such a way as to ensure that no rate of pay for any category of officers or employees is increased more than 5.5 percent during fiscal year 1979. \* \* \*"

Pursuant to the President's memorandum, the Treasury Department and the Bureau of Engraving and Printing issued memorandums dated January 17 and February 2, 1979, respectively, stating that the President's policy would cover Bureau employees paid under the Treasury approved system (described above). The President's 5.5 percent ceiling policy was also cited in the memorandum from the Under Secretary of the Treasury dated October 9, 1979, denying the request from the Director of the Bureau for higher wage increases for these Bureau employees retroactive to June 18, 1979.

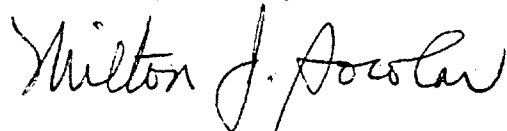
As shown above, the pay of the employees in question is set administratively in accordance with the prevailing rates and "consistent with the public interest." See 5 U.S.C. § 5349(a). The President and Treasury officials have determined it is in the public interest to limit pay increases to 5.5 percent and, as recent court decisions have held, this is a reasonable exercise of agency discretion. See National Federation of Federal Employees v. Brown, Civil Action No. 78-2252 (D.D.C. Nov. 20, 1979),  
Civ. Act.

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and American Federation of Government Employees v. Brown, Civil Action No. 78-2301 (D.D.C. Nov. 20, 1979). In these cases, the unions had argued that nonappropriated fund activity employees, who were not covered by the pay limitation contained in section 614(a) of Pub. L. 95-429, were entitled to a wage increase in excess of 5.5 percent. However, the District Court found that the wage increases were subject to the Presidential memorandum and were therefore properly limited to 5.5 percent for fiscal year 1979.

As noted above, despite the tandem relationship between certain employees of GPO and the Bureau, the GPO employees received a 6.8 percent wage increase effective June 18, 1979, while a similar increase was delayed for comparable Bureau employees until October 1, 1979. As was pointed out by the fact finder who recommended the 6.8 percent increase for GPO employees, the wage adjustment for GPO employees is not subject to the 5.5 percent ceiling contained in section 614(a) of Pub. L. No. 95-429 since GPO wage adjustments are determined through negotiation under 44 U.S.C. § 305 and 5 U.S.C. § 5349. In addition, since GPO is not an executive department or agency, it is not subject to the President's anti-inflation memorandum of January 4, 1979.

We find no basis upon which to overturn the "public interest" determination made by the Department of the Treasury. Accordingly, we hold that the specified employees of the Bureau of Engraving and Printing are not entitled to a wage adjustment in excess of 5.5 percent during fiscal year 1979.



For The Comptroller General  
of the United States