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DECISION

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

FILE: B-207491 DATE: December 30, 1982

MATTER OF: Severance Pay for Involuntarily Separated Employees

DIGEST: Former Federal employees were involuntarily separated as a result of a reduction in force but were subsequently offered employment by the private organization to which their former job function was transferred. Although most of them accepted the offer of employment within 90 days of the transfer, they now seek severance pay on the basis that their new employer did not offer them employment comparable to their Federal jobs. Since the differences in compensation and benefits are not sufficient to defeat the comparability between their new and former employment, they are not entitled to severance pay.

## Background

This action responds to a request submitted by the Controller, Department of Energy, for an advance decision concerning whether a group of the Department's former employees who were involuntarily separated under a reduction-in-force action are entitled to severance pay. Comptroller General decisions may be requested by heads of Federal agencies or their designees, and by authorized certifying or disbursing officers. This decision is rendered upon the request of the Controller as a designee of the Secretary of the Department of Energy.

We conclude that because the concerned employees were apparently offered comparable employment by the private successor firm, under valid regulations implementing 5 U.S.C. 5595, they are not entitled to severance pay.

The Department of Energy conducted a reduction in force at its Los Alamos, New Mexico, field office, effective October 3, 1981, which resulted in the termination of its employment of a number of agency

security guards. The agency then contracted the guards' function at that office to a private security firm, Mason and Hangar-Silas Mason Company, Inc., which then offered employment to the former Department of Energy security guards whose employment had been terminated. Of the former employees concerned here, all except one individual accepted the offer of employment as security guards with the private organization within 90 days of the date of the transfer of function.

The former Federal employees seek severance pay, which is authorized under 5 U.S.C. 5595 (1976). The Department of Energy has denied them severance pay on the basis that within 90 days of the date of the transfer of function to the private security firm, the company offered comparable employment to each of the former Federal employees.

The employees argue through their attorney that they are entitled to severance pay on the basis that they were not offered "comparable" employment, which under applicable regulations would preclude their entitlement to severance pay. They also challenge the validity of these regulations.

## Validity of the Regulation

Under 5 U.S.C. 5595 severance pay is authorized for employees who are involuntarily separated from Federal service. However, section 5595(a)(2) excludes from coverage under the statute various enumerated categories of employees ending with:

> "(viii) such other employees as may be excluded by regulations of the President or such other officer or agency as he may designate."

Pursuant to this statutory authority the President's designee, the Civil Service Commission (now Office of Personnel Management), issued regulations at 5 C.F.R. 550.701(b)(6) which exclude from entitlement to severance pay:

> "* * * an employee who, as the result of the transfer of the operation

> and maintenance responsibilities for a Federal project to a private organization, is offered comparable employment with the private organization or within 90 days of the date of transfer accepts any employment with the private organization."

As the employees' attorney in the present case is aware, we have previously considered the validity of this regulation and found it to be valid, at least in regard to the offer of comparable employment. See Matter of National Federation of Federal Employees, B-189394, February 10, 1978. As was indicated in that decision, our conclusion was supported by the Court of Claims decision in Akins v. United States, 439 F.2d 175 (1971), which involved similar issues and in which the court found a similar regulation to be valid in regard to both the provision concerning an offer of comparable employment and the provision concerning acceptance of any employment with the successor organization. Nothing has been presented in the present case to persuade us that the regulation is invalid.

Comparability of Positions

The employees also contend that when compared to the pay and benefits of their former Federal position, the pay and benefits offered by the Mason and Hangar Company are not comparable in any area, and are particularly incomparable in the area of pay and retirement benefits. Counsel for the employees points out that the term "comparable employment" has been defined by the Office of Personnel Management as follows:

> "For severance pay purposes, 'comparable employment' is employment in which pay and benefits, and the monetary value thereof, are similar enough, after weighing the advantages of the total pay and benefits packages, that the employment offered may be considered substantially equal to the individual's Federal employment. Pay and benefits, such as leave, paid holidays, health benefits, life insurance, and retirement, need not be compared on an individual basis, but should instead be

compared as a total pay and benefits package and include such other significant benefits as may be pertinent to the offer. When making a determination of 'comparable employment,' there is no requirement that pay rates or any individual benefit be identical or 'equivalent' to that offered by Federal employment." Federal Personnel Manual Letter 550-72, August 21, 1980.

Yet in the face of this definition the employees, in contending that their present employment is not comparable, single out two categories, pay and pension (retirement) for comparison on an individual basis, which is in direct contravention of the procedure prescribed by the Office of Personnel Management for determining comparability. Moreover, while the claimants charge that the benefits and pay package fails of comparability in all areas, the record contains no evidence, general or specific, to substantiate this charge. The claimants also complain that the rate of pay offered by Mason and Hangar is substantially less than they earned as Federal employees for work not scheduled during standard 8-hour workdays.

The agency, however, argues that the wages and benefits offered by the contractor are "as close to identical as the practical realities of the competitive process will allow." It is the agency's position that the contractor's offer was of "comparable" employment, and thus severance pay is not payable.

We recognize that the two compensation and benefits packages are not identical, but that is not the standard to be used in determining the comparability of private successor employment under 5 C.F.R. 550.701(b)(6). By definition the term "comparable employment" does not require that pay rates or any individual benefit be identical or equivalent to that offered by Federal employment. FPM Letter 550-72, cited above. Akins v. United States, 439 F.2d 175, 180.

On the basis of our examination of the "Comparison of Benefits" provided in the record, it appears that in most instances the benefits offered by Mason and Hangar

are substantially similar to (and in some instances, better than) those offered by the claimants' previous Federal employment. (We note, however, that the Mason and Hangar pension plan provisions appear indefinite and incomplete.)

## Conclusion

We conclude, therefore, that although the pay and benefits package offered to the claimants by the private successor organization is not identical to that of their former Federal jobs, the difference is not sufficient to defeat the comparability of the company's employment offer. Accordingly, these former employees are not entitled to severance pay as provided under 5 U.S.C. 5595.

Milton J. Socolar
for Comptroller General
of the United States