

**DECISION**



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

**FILE:** B-207732

**DATE:** July 13, 1983

**MATTER OF:** Bureau of Engraving and Printing -  
Paid Lunch Periods - GAO Jurisdiction -  
Labor Management Factual Dispute

**DIGEST:**

Under 4 C.F.R. § 22.8 (1983) GAO will not take jurisdiction over a labor-management matter which is "unduly speculative or otherwise not appropriate for decision." Since this case is based on factual issues which are irreconcilably in dispute, it would be more appropriately resolved through the grievance procedures set forth in the parties' negotiated labor-management agreement, or through negotiation. Therefore, under 4 C.F.R. § 22.8, GAO will exercise its discretion to decline jurisdiction in this matter.

The Department of the Treasury has asked us whether it may discontinue the longstanding practice at the Bureau of Engraving and Printing (BEP) and the Bureau of the Mint (Mint) of providing employees with a paid one-half hour lunch period during each 8-hour workday, in light of certain alleged changes in the working conditions at those agencies. However, since this case involves issues which would be more appropriately resolved through labor-management negotiations or through grievance and arbitration procedures, we decline to take jurisdiction over this matter. Furthermore, since the basic factual issues underlying this case are irreconcilably in dispute in the record before us, not only between management and the unions, but among different offices within the Department itself, the matter is not appropriate for a decision by our Office on the merits.

This decision is in response to a letter from Mr. Peter J. Wallison, General Counsel of the Department of the Treasury, requesting a review of our prior decision, B-56940, May 1, 1946, which authorized BEP and the Mint to provide their employees with a paid one-half hour lunch

026136  
121871

period. We upheld the paid lunch practice in that decision in light of the security requirement that employees associated with the production of money and stamps generally be restricted to their work areas throughout the workday, and because the employees were required to remain on call during their lunch periods to ensure the continuous operation of the production machinery. In light of such restrictions, we held that the half-hour lunch period designated for BEP and Mint employees reasonably could be viewed as time given by the employees for the benefit of the employer, and, thus, was compensable time.

The Treasury Department's decision to provide paid lunch periods for BEP and Mint employees has been questioned a number of times, both inside the Department and by our Office, since our initial authorization of the practice in 1946. In such cases, the validity of the practice has always been upheld. See B-56940-O.M., August 12, 1952; and 44 Comp. Gen. 195 (1964). Additionally, we note that the paid lunch period has existed at the BEP since 1862.

Now, however, Treasury is seriously questioning the propriety of continuing the paid lunch practice currently in effect at BEP and the Mint. The Department has specifically requested that we review our earlier decision in B-56940, May 1, 1946, "to determine whether changed conditions have affected the permissibility of the paid lunch practice."

The Department has apparently taken the position that the conditions of employment at BEP and the Mint have changed so substantially since the time of our prior decision that paid lunch periods no longer can be justified. In support of this position, Treasury has provided us with a number of documents discussing the current working conditions at the two Bureaus. In particular, it has submitted data from two recent Treasury Department studies--a Personnel Management Evaluation (PME) issued in February 1979, and a survey conducted by the Office of Audit and Internal Affairs at the request of the Inspector General in June 1981--both of which suggest that working conditions have changed dramatically at BEP and the Mint since the time of our 1946 decision.

The Personnel Management Evaluation team concluded, in part, that BEP has greatly relaxed its previously strict prohibition on employees leaving the premises at lunch, and that the agency no longer requires employees to perform

stand-by duty during lunchtime. The Audit of the BEP for the Inspector General generally confirmed the findings of the PME team. The audit report specifically stated that all BEP employees are normally given a work-free lunch period of 30 minutes, during which time they are generally free to enter all designated luncheon areas on Bureau premises. It also asserted that very few employees are required to perform work during their lunch periods, and that even those employees are subject to call only on an infrequent basis. Finally, the report stated that responsibility for product security now rests on only a few employees, "in marked contrast to conditions indicated in 1946 and 1952 when all production employees apparently remained in work areas while eating lunch to personally safeguard Bureau securities."

Treasury did acknowledge in its submission that the BEP strongly disagrees with the Treasury's position in this matter. Correspondence from the Director of the BEP, Harry R. Clements, which was contained in Treasury's submission to our Office, made numerous factual allegations which are in disagreement with the facts as determined through the Personnel Management Evaluation and the subsequent audit. The BEP generally maintains that the conditions of employment at BEP, in particular, the amount of freedom enjoyed by its employees at lunchtime, have changed little since the time of our prior decisions.

Specifically, the BEP has asserted that its employees are at all times still greatly restricted in their movements within the building, and are rarely given permission to leave the premises at noon. In addition, BEP maintains that because of production needs, employees do perform needed work during luncheon periods and are at all times subject to recall if the work load dictates. In light of these ongoing restrictions placed on BEP employees, the Director of the BEP has strongly disputed the Treasury's contention that BEP employees no longer are giving their luncheon time for the benefit of their employer, and, thus, no longer are entitled to paid lunch periods.

In addition to this factual dispute, in early December 1982, we learned that the Department had never served any of the unions representing BEP or Mint employees with copies of its submission to our Office in regard to this matter. Once we learned that 18 unions (all representing BEP employees) were interested in the case before us, we sent them copies of the Treasury's submission and agreed to consider their

written responses, provided that they were submitted within a designated time period, as authorized by 4 C.F.R. § 22.4 (1982). We received timely responses on behalf of all 18 unions in January 1983.

The unions' comments strongly support the position taken earlier by the Director of the BEP, that the current conditions of employment at BEP are substantially the same as they were when our decision B-56940 was originally issued, and thus justify continuation of the paid lunch practice at that agency.

In addition, the unions have taken issue with a recent decision by the United States Treasurer, directing BEP to implement an unpaid lunch policy for selected groups of employees. This change primarily affected supervisory and non-bargaining unit personnel. In December 1982, in an attempt to block implementation of the directive, one union filed an unfair labor practice (ULP) with the Federal Labor Relations Authority. This ULP, however, has since been withdrawn, and the unpaid lunch policy for supervisory personnel went into effect on January 9, 1983, as scheduled.

The Joint Council of Unions at BEP has also presented an additional argument in favor of continuing paid lunch periods. It asserts that in light of the longevity of the paid lunch practice, and its incorporation into collective bargaining agreements governing BEP employees, the agency is now required to continue the paid lunch policy under the terms of the negotiated collective bargaining agreements which cover 90 percent of the BEP's work force.

Finally, although discontinuance of the paid lunch practice would affect both BEP and Mint employees, Treasury appears to have collected little data concerning current working conditions at the various Mint offices throughout the country. Although the Treasury attempted to survey the working conditions of Mint employees in April 1981, that survey did not yield conclusive results. The responses of the Mint section chiefs were often directed toward the potential labor-management problems which might result from discontinuing paid lunch periods for Mint employees, rather than discussing the actual status and responsibilities of employees during their lunch periods. In addition, the factual information that was gathered was often conflicting. For example, some reports indicated that certain Mint employees were allowed to eat lunch in a non-standby status,

free of any work obligation except to report back at a specified time to resume work, while other responses pointed to employees who were required to perform substantial duties during the course of their lunch periods. In sum, the facts gathered through the Mint survey are both incomplete and inconsistent, and, therefore, cannot form a basis for any reasonable conclusion as to the current conditions of employment within the Mint.

Our procedures governing decisions on matters concerning appropriated fund expenditures which are of mutual concern to agencies and labor organizations are contained in 4 C.F.R. Part 22 (1983). Section 22.8 of those procedures provides that we will not issue a decision on any matter which we find to be "unduly speculative or otherwise not appropriate for decision."

In light of the provisions of 4 C.F.R § 22.8, we decline to issue a decision on the merits of this case. The main issue to be resolved here is primarily factual in nature-- whether the conditions of employment at BEP and the Mint have changed so substantially since our 1946 decision, B-56940, that the paid lunch practice no longer can be justified. This question cannot be resolved until a clear picture can be developed concerning the present working conditions at the BEP and the Mint.

The basic facts here are confused. Treasury's position that working conditions at the two Bureaus have changed significantly in recent years has been challenged not only by the unions representing aggrieved employees, but also by agency management itself, specifically by the Director of the BEP. The factual accounts offered by the various parties to this case concerning the present conditions at BEP are substantially different and often conflicting. On the basis of the record before us, we cannot say with any certainty what the current working conditions are at the BEP and the Mint and, therefore, we cannot say whether any changes in working conditions that may have occurred are sufficient to justify a retreat from paid lunch periods.

In light of the inconsistency and insufficiency of the facts before us, we are unable to satisfactorily resolve the factual conflicts and, therefore, the matter is not appropriate for the issuance of a decision on the merits by our Office under the provisions of 4 C.F.R. § 22.8.

Furthermore, since this case directly concerns the conditions and hours of employment of certain Treasury employees, and the outcome may affect certain entitlements that were bargained for in the collective bargaining process, we believe that this matter would be more properly resolved through grievance procedures or through negotiation.

Finally, we are also reluctant to assert jurisdiction in this matter in light of several labor-management problems that have arisen in connection with this case. The Treasury Department did not serve all of the unions representing employees concerned with the proposed change in policy with a copy of its request for decision, as required by 4 C.F.R. § 22.4, governing labor relations cases before this Office. Because of this failure to serve, and because we have not received comments from any unions representing Mint employees, we do not know whether the unions representing those employees have actual knowledge that this matter is now pending. The agency, through its inaction, thus, may have effectively denied an employee group of its right, under Part 22 of our regulations, to comment on an agency request for a decision.

In addition, we note that although the ULP filed by the craft supervisors' union in December 1982, has since been withdrawn, the agency filed a second ULP in regard to this matter in January 1983, charging that both NTEU and AFGE have refused to enter into collective bargaining procedures at the end of the stated contract term, in violation of provisions of the collective bargaining agreement. We understand that this ULP is currently pending before the FLRA.

In conclusion, in light of the irreconcilable factual dispute, we decline to issue a decision on the merits of this case, in accordance with the jurisdictional limits set forth in 4 C.F.R. § 22.8.

*for* *Nancy R. Van Cleave*  
Comptroller General  
of the United States