DECISION

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

FILE: B-208155 DATE: April 15, 1983

MATTER OF: Charles L. Steinkamp - Proper Step Placement - Backpay

DIGEST:

An employee hired by the Architect of the Capitol pursuant to 2 U.S.C. § 60e-2a is not entitled to have his salary calculated with reference to the "two-step increase" rule, 5 U.S.C. § 5334(b), when he is appointed to a General Schedule position with the Department of Energy. The "two-step increase" rule, 5 U.S.C. § 5334(b), pertains only to transfers and promotions within the General Schedule system, and employees hired by the Architect of the Capitol under 2 U.S.C. § 60e-2a are not within the General Schedule. Thus, employee's salary was correctly adjusted in accordance with the "highest previous rate" rule, 5 U.S.C. § 5334(a).

The issue in this decision is whether a reinstated career employee of the Department of Energy, formerly employed by the Architect of the Capitol, is entitled to have his salary determined by the "two-step increase" rule under 5 U.S.C. § 5334(b) or the "highest previous rate" rule under 5 U.S.C. § 5334(a) and governing regulations. For the reasons set out below, we hold that the employee's salary was properly set using the "highest previous rate" rule.

Background

Mr. Charles L. Steinkamp has appealed our Claims Group's Settlement, Z-2834504, November 24, 1981, denying his claim for a retroactive adjustment of his step placement within his grade, and backpay. Our Claims Group disallowed Mr. Steinkamp's claim on the basis that he was not entitled to have his salary calculated with reference to the "two-step increase" rule, 5 U.S.C. § 5334(b) and, therefore, his salary was properly set in accordance with the "highest previous rate" rule, 5 U.S.C. § 5334(a).

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Mr. Charles L. Steinkamp was employed by the Architect of the Capitol pursuant to 2 U.S.C. § 60e-2a, as a project manager. Subsequently, he was hired, effective November 5, 1978, by the Department of Energy as a supervisory general engineer at the grade of GS-15, step 3 ($40,704). On April 6, 1979, Mr. Steinkamp was informed that his salary was being adjusted from a GS-15, step 3, to a GS-15, step 1 ($38,160). The Department of Energy advised Mr. Steinkamp that this was necessary because his salary had been incorrectly based on the "two-step increase" rule. This rule only applies to an employee promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule. 5 C.F.R. § 531.204(a). Mr. Steinkamp's position with the Architect of the Capitol was not within the General Schedule. Therefore, the Department of Energy recalculated Mr. Steinkamp's salary in accordance with the "highest previous rate" rule, and changed his employment status from "transfer-career" to "reinstatement-career."

Mr. Steinkamp argues that the position he held with the Architect of the Capitol should be considered to be covered under the General Schedule. Moreover, he contends that although he was hired by the Architect of the Capitol pursuant to 2 U.S.C. § 60e-2a, that provision has no current validity. Thus, Mr. Steinkamp contends that his salary was properly set at GS-15, step 3.

Analysis

An employee's salary after transfer is determined by reference either to the "highest previous rate" rule, 5 U.S.C. § 5334(a), or to the "two-step increase" rule, 5 U.S.C. § 5334(b). Section 5334(a) provides:

> "(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when--
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> > "(1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;
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> * * * * *

> "(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch * * *."

Following the direction of this provision, the Office of Personnel Management promulgated the "highest previous rate" rule. See 5 C.F.R. § 531.203(c). Under this rule, the employee's salary is fixed at the lowest step of the grade into which the employee is being placed which is equal to, or greater than his highest previous rate. In Mr. Steinkamp's case, his highest previous rate was $35,875 which would fix his new salary at a grade GS-15, step 1.

The "two-step increase" rule is found in section 5334(b) and states:

> "(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. * * *"

The regulation implementing section 5334(b) specifically limits the rule to persons transferred or promoted within the General Schedule. 5 C.F.R. § 531.204(a). This interpretation of the "two-step increase" rule was upheld in a recent Supreme Court case. United States v. Clark, 454 U.S. 555 (1982). Therefore, an employee's salary after transfer is determined by reference to the "two-step increase" rule only when the transfer is within the General Schedule system.

Employees of the Office of the Architect of the Capitol whose pay is fixed "by other statutes" are specifically exempted from the General Schedule pay scale. 5 U.S.C. § 5102(d). Mr. Steinkamp was employed by the Architect of the Capitol as a temporary employee pursuant to 2 U.S.C. § 60e-2a. Thus, Mr. Steinkamp's former position was not within the General Schedule, and he was not entitled to have his pay based on the "two-step increase" rule. Under these

circumstances, the Department of Energy acted correctly in adjusting Mr. Steinkamp's salary in line with the "highest previous rate" rule.

However, Mr. Steinkamp questions whether the Architect of the Capitol has authority under 2 U.S.C. § 60e-2a to hire temporary employees. Section 60e-2a of Title 2 of the U.S. Code states:

> "The classes of employees whose compensation is authorized by section 3 of the Legislative Pay Act of 1929, as amended (46 Stat. 38; and 55 Stat. 613), to be fixed by the Architect of the Capitol without regard to Classification Act of 1923, as amended, are authorized to be compensated without regard to chapter 51 and subchapter III of chapter 53 of title 5."

Section 3 of the Legislative Pay Act of 1929, ch. 33, 46 Stat. 32, 38, June 20, 1929, was an amendment to the Classification Act of 1923, ch. 265, 42 Stat. 1488, March 4, 1923. That Act was repealed by section 1202 of the Classification Act of 1949, ch. 782, 63 Stat. 954, 972 October 28, 1949. Mr. Steinkamp contends that the repeal of 1923 Act affects the validity of 2 U.S.C. § 60e-2a since that provision refers to section 3 of the Legislative Pay Act of 1929, which was part of the Classification Act of 1923.

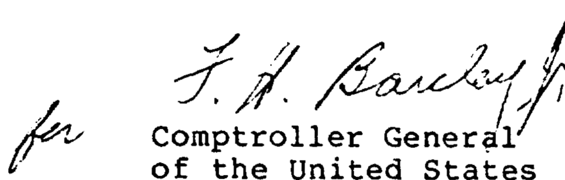
A statute may refer to another provision and incorporate part or all of it by reference. J. Sutherland, Statutes and Statutory Construction, Vol. 2A § 51.07 (4th ed. C. Dallas Sands, 1973). However, repeal of the statute referred to will have no effect on the reference statute unless Congress intended the reference statute to be repealed by implication. J. Sutherland, Vol. 2A § 51.08. The current version of 2 U.S.C. § 60e-2a was enacted as section 204(a) of the Classification Act of 1949, the same Act which repealed the Classification Act of 1923. Clearly, then, section 204(a) was meant to be effective beyond the repeal of the Classification Act of 1923.

This interpretation of section 204(a) is confirmed by its legislative history. In the House Report, H. Rep. No. 1264, 81st Cong., 1st Sess., reprinted in 1949 U.S. Code Congressional Service 2363, 2370, it states that:

"Section 204: The effect of this section is to continue, without change the exemptions of certain positions under the Office of the Architect of the Capitol; namely, professional and technical services on construction projects, employees whose tenure of employment is temporary or of uncertain duration, and the Assistant Architect of the Capitol."

Thus, the Architect of the Capitol had authority to hire pursuant to 2 U.S.C. § 60e-2a. Employees hired under this provision are not within the General Schedule. Mr. Steinkamp was hired pursuant to 2 U.S.C. § 60e-2a. Consequently, when Mr. Steinkamp was subsequently employed by the Department of Energy he was not entitled to have his salary calculated with reference to the "two-step increase" rule since he was moving from a position outside the General Schedule to one within the General Schedule.

Accordingly, we find that Mr. Steinkamp's salary was correctly readjusted, and we, therefore, deny Mr. Steinkamp's claim for retroactive adjustment in his step placement and backpay.



Comptroller General
of the United States