

DECISION

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

FILE: B-211381

DATE: August 2, 1983

MATTER OF: Panama Canal Employment System -
Retroactive Wage Increases

DIGEST:

The Assistant Secretary of the Army (Civil Works) questions whether he is authorized by section 1225(b)(2) of the Panama Canal Act of 1979 to retroactively implement an increase in the wages of employees of Federal agencies participating in the Panama Canal Employment System. We hold that the wage increase may not be effected retroactively because section 1225(b)(2) of the Panama Canal Act, authorizing annual wage increases, does not specifically provide for the retroactive implementation of such increases. Absent specific statutory authority, pay increases resulting from the exercise of discretionary administrative authority may be implemented on only a prospective basis.

William R. Gianelli, Assistant Secretary of the Army (Civil Works), has requested a decision as to whether the Panama Canal Act of 1979, Public Law 96-70, authorizes him to grant a retroactive increase in wages for certain employees of Federal agencies participating in the Panama Canal Employment System. We hold that the Assistant Secretary is not authorized to grant a retroactive wage increase for the affected employees because section 1225(b)(2) of the Panama Canal Act, authorizing annual wage increases, does not specifically provide for the retroactive implementation of such increases. Absent a specific statutory provision authorizing retroactive pay adjustments, an increase in compensation resulting from the exercise of discretionary administrative authority may be effected on only a prospective basis.

This decision has been handled as a labor-management relations matter under our procedures in 4 C.F.R. Part 22 (1983). Copies of the request were served upon seven labor organizations, but we received no comments from those groups.

026317

DISCUSSION

Prior to implementation of the Panama Canal Treaty of 1977 (TIAS No. 10030), employees of Federal agencies conducting operations in the Republic of Panama were paid under the Canal Zone Merit System in accordance with rates of basic pay for the same or similar work in the United States. See Canal Zone Code, title 2, §§ 144, 149 (1962). The Panama Canal Act of 1979, Public Law 96-70, chapter 2, 96 Stat. 468, 22 U.S.C. §§ 3601-3871 (Supp. III 1979), implementing the Panama Canal Treaty, directed replacement of the Canal Zone Merit System by the Panama Canal Employment System, and established a new schedule of wages applicable to certain employees hired on or after the effective date of the Act. The new wage schedule, implemented on October 1, 1979, by the Panama Area Wage Base, is prescribed by section 1225(b) (22 U.S.C. § 3665(2) (Supp. III (1979))) of the Act as follows:

"(b)(1) Effective October 1, 1979, each individual employed by an Executive agency or the Smithsonian Institution, whose permanent duty station is located within an area or installation in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, shall be paid basic pay at a rate of not less than \$2.90 an hour.

"(2) Effective on October 1 of each succeeding calendar year, the rate of basic pay for each individual referred to in paragraph (1) of this subsection whose basic pay is not fixed in relation to rates of basic pay for the same or similar work performed in the United States shall be increased by an amount equal to not less than 2 percent of the rate of basic pay for that individual in effect immediately before that date."

Under the "grandfather" provisions of section 1219 of the Panama Canal Act, individuals employed by Federal agencies operating in the Republic of Panama prior to the effective date of the Act are not subject to the wage schedule established in section 1225(b)(2), but, instead, continue to receive rates of basic pay comparable to United States wage rates. 22 U.S.C. § 3659 (Supp. III 1979).

Authority for administering the wage and employment provisions of the Panama Canal Act is vested in the President by section 1223(a) of the Act. 22 U.S.C. § 3663 (Supp. III 1979). By Executive Order No. 12173, 44 Fed. Reg. 69271 (1979), as amended, the President delegated his authority under the Act to the Secretary of Defense. Implementing regulations promulgated by the Secretary of the Army, set forth in Parts 251 and 253 of Title 35, Code of Federal Regulations (C.F.R.) (1982), establish the Panama Canal Employment System and prescribe rules governing wage and employment practices within the System. The mechanism for adjusting rates of basic pay for employees of Federal agencies participating in the System is established in 35 C.F.R. § 251.13, which provides as follows:

"Agencies that participate in the Panama Canal Employment System shall consult with each other concerning basic pay for employees and shall refer their recommendations for basic pay to the Panama Area Personnel Board. Upon approval by the Secretary of the Army or his designee of basic wage rates, the rates shall be adopted by the agencies."

The Assistant Secretary of the Army reports that the changes in wage rates effected by the Panama Canal Act have had an adverse impact on employee morale since employees hired on or after the effective date of the Act receive basic pay and annual cost-of-living allowances at a rate substantially lower than employees "grandfathered" at United States wage rates. Further, he states that the Government of the Republic of Panama and labor organizations representing employees stationed in Panama have charged that the

wage system is discriminatory as it violates the "equal work-equal pay" principle.

In order to respond to the concerns expressed by the Government of the Republic of Panama and labor organizations, and to improve the competitive posture of Federal agencies operating in Panama, the Panama Area Personnel Board revised the Panama Area Wage Base in January 1982 to conform in principle to the General Schedule, with 10 steps. This revision provided for regular within-grade increases, permitted supervisors to recommend deserving employees for quality salary increases, and authorized agencies to use the highest previous rate rule, which benefits employees by placing them in a higher step of their grade. These changes were to be reviewed after 1 year to determine whether further adjustments in the wage structure were required.

On October 1, 1982, the Assistant Secretary of the Army approved the minimum 2 percent increase in wage rates authorized by section 1225(b)(2) of the Panama Canal Act. We have been informally advised by a member of the Assistant Secretary's staff that the 2 percent increase was granted on an "automatic" basis, without discussion or consideration of possible enlargement of the increase before October 1, 1983, the date prescribed for the next annual wage adjustment.

In January 1983, the Panama Area Personnel Board completed its review of the January 1982 changes in the Panama Area Wage Base. The Board determined that, among a variety of other measures, an additional 2 percent wage increase was necessary to aid recruitment and retention of qualified personnel in Panama and to improve employee morale. Responding to these findings, the Assistant Secretary decided to grant an additional 2 percent wage increase retroactively effective on October 1, 1982. This determination, as part of a "package" of changes designed to reduce the disparity between the wages of pre-Treaty and post-Treaty employees, was separate from the Assistant Secretary's earlier determination on October 1, 1982, to grant the minimum 2 percent increase required by section 1225(b)(2) of the Panama Canal Act.

The Assistant Secretary now questions whether the additional 2 percent wage increase approved in January 1983 may be implemented retroactively in view of our decisions disallowing retroactive adjustments in pay absent specific statutory authority. It is the Assistant Secretary's position that section 1225(b)(2) of the Panama Canal Act allows retroactive implementation of the wage increases authorized therein. He has advised that, pending the issuance of a decision by our Office, the additional 2 percent increase will be paid prospectively but not retroactively.

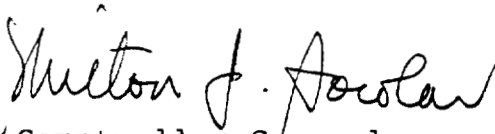
As indicated by the Assistant Secretary, we have held as a general rule that retroactive pay increases may be granted only by express authority of Congress. 31 Comp. Gen. 191 (1951); 25 Comp. Gen. 601 (1946). Applying this requirement to the terms of section 1225(b)(2) of the Panama Canal Act, we are unable to find specific authority enabling the Assistant Secretary to retroactively implement on October 1, 1982, an additional 2 percent wage increase approved in January 1983. Section 1225(b)(2) states that wage increases of not less than 2 percent of basic pay will be effective on October 1 of each calendar year following the effective date of the Act, and makes no provision for the retroactive implementation of annual wage increases approved subsequent to the specified date.

Absent statutory authority specifically providing for retroactive increases in compensation, we have allowed retroactive pay increases only where such increases do not depend upon the exercise of discretionary administrative authority. Thus, we have allowed retroactive compensation increases where the statute authorizing the increase is mandatory, directing the payment of additional compensation on a certain date without vesting discretionary authority in an administrative official to determine the amount of compensation payable. See 44 Comp. Gen. 153 (1964). In such circumstances, an employee's right to additional compensation arises by operation of law, and cannot be defeated by erroneous administrative action. See generally 24 Comp. Gen. 676 (1945). In contrast, an increase in compensation resulting from the exercise of discretionary administrative

authority is effective on the date the proper administrative official approves the increase or on such later date as he may specify, even though the conditions justifying the increase existed prior to the date of the administrative action. B-170113, July 13, 1970; 31 Comp. Gen. 462 (1952); and 24 Comp. Gen. 676, cited above.

While section 1225(b)(2) of the Panama Canal Act is mandatory in that it requires the affected employees' rates of basic pay to be increased by a minimum of 2 percent effective October 1 of each calendar year succeeding October 1, 1979, it vests discretion in the administrator of the Act to approve wage increases exceeding 2 percent. Thus, the Assistant Secretary's action in January 1983 approving a 2 percent increase in addition to the minimum 2 percent increase granted previously constituted an exercise of administrative discretion. Under these circumstances, the additional 2 percent increase may be implemented on only a prospective basis, even though the conditions justifying the increase may have existed prior to January 1983.

For the foregoing reasons, we hold that the 2 percent wage increase approved by the Assistant Secretary of the Army in January 1983 may not be retroactively implemented on October 1, 1982.


for Comptroller General
of the United States