



Comptroller General
of the United States
Washington, D.C. 20548

B-252215

March 24, 1993

The Honorable Wendell H. Ford
Chairman, Joint Committee on Printing
Congress of the United States

Dear Mr. Chairman:

This responds to the letter of February 2, 1993, from the prior Chairman of the Joint Committee on Printing, with enclosures, concerning whether a pay increase for certain employees of the Government Printing Office (GPO) may be implemented retroactive to January 10, 1993. As explained below, it is our view that the pay increase may be made retroactive.

By letter of January 8, 1993, the Public Printer notified the Chairman of the Joint Committee of pay decisions the Public Printer had made for GPO's "white collar" employees effective January 10, 1993. These decisions covered both bargaining unit and nonbargaining unit employees. Various increases were to be granted this latter group, which included Senior Level Managers, Mid-Level Managers, supervisory special policemen, non-bargaining employees paid under the same salary charts as their union counterparts, and non-bargaining employees paid under special occupational, interim geographic and locality based pay charts.

The Public Printer's pay decisions for the mid-level managers also would have established a separate pay band system for them. Under the plan, mid-level managers were to receive a 3.7 percent "COLA" increase to their existing pay, and that rate of pay would serve as the base for the new pay band system. By letter of January 8, the Chairman of the Joint Committee responded to the Public Printer, noting that the Joint Committee had not approved the mid-level managers pay system "which constitutes a significant alteration in the structure of GPO's workforce," and advising the Public Printer in part:

"In light of your resignation effective January 20, 1993, and the serious implications of this complex pay scheme to the morale and structure of the GPO workforce, I am compelled to

exercise my powers as Chairman of the JCP pursuant to Title 44, United States Code, and JCP resolution of May 11, 1982 (upheld in Lewis v. Sawyer) to order a stay of your proposed pay system for white collar workers pending a decision by the new administration's Public Printer or the approval of a more equitable proposal by the JCP.

"At such time as the new Public Printer or the JCP determines the appropriate pay increase for GPO white collar workers, such increase shall become retroactive to January 10, 1993. Please advise the employees of the GPO of this directive immediately."

By notice dated January 11, 1993, the Public Printer announced that, in accordance with the Chairman's letter of January 8, pay increases for all non-bargaining employees were being stayed until such time as the new Public Printer or the Joint Committee determined the appropriate pay increase, and that such increase would be made retroactive to January 10.

We understand that subsequently the Joint Committee and the current Acting Public Printer reached agreement on a revised pay increase in lieu of that which was stayed. The revised plan, implemented effective February 21, 1993, does not include the pay band system approved by the former Public Printer and limits the pay increase to GPO's non-bargaining unit employees to 1.7 percent. In view of prior decisions of our Office, a question has arisen whether the new increase may be made retroactive to January 10, as provided for in the Chairman's letter to the Public Printer and the Public Printer's notice to GPO employees.

On several occasions we have considered whether GPO employees could receive retroactive pay increases under various circumstances. Our decisions in B-170113, July 13, 1970, and B-106475, Nov. 15, 1951, held that the Public Printer lacked authority to grant employees retroactive pay increases by unilateral administrative action. We stated the general rule against such retroactive increases as follows in B-106475:

"When an employee has been paid the compensation lawfully fixed for his services by the head of the agency he is not legally entitled to claim more and the Government's obligation in the matter is fully satisfied. Payment to him of an additional amount solely upon an administrative determination that he is justly entitled thereto would be tantamount to granting him a gratuity or involve

the exercise of a power which the Congress generally has reserved to itself."

We approved a retroactive pay increase, however, in a 1977 decision involving GPO occupational craft employees who are subject to the wage conference and appeal provisions set out in 44 U.S.C. § 305(a). Under these provisions, wages for occupational craft employees are set by means of conferences between the employees' representatives and the Public Printer with appeal rights to the Joint Committee if the parties fail to agree. We held in this decision, B-190097, Nov. 11, 1977, that a wage increase established by the Joint Committee after the parties were unable to agree on the exact amount of the increase could be made retroactive to the date of the impasse.

Our 1977 decision applied a line of cases involving other agency negotiated wage procedures in which the parties had agreed in advance on an effective date for wage increases even though the exact amount of the increases had not yet been determined, or an arbitrator had set a date for the increase where the parties failed to agree on a date. In these cases, we allowed the increases retroactive to the agreed effective date, or the date set by the arbitrator, so long as the effective date was no earlier than the date of the preliminary agreement or the date of the impasse, as the case may be.¹ Thus, we observed in our 1977 decision:

"In such cases the requirement of final action by a competent wage-fixing authority is not violated because all parties concerned knew that future liabilities would be incurred at the new wage rate. Further, since current compensation is seen as an advance against the new rate, the subsequent payment of wages at the ultimately determined rate is a supplemental payment rather than the gratuity described in B-106475, supra."

Our most recent decision concerning retroactive pay increases at GPO, B-190097, June 12, 1978, involved groups of employees who were not covered by the wage conference and appeal provisions discussed above. In that case the Public Printer, acting at the request of the employees' representatives, delayed proposed pay increases for several days and then sought to implement the pay raises retroactive to the date on which they were originally proposed. We held that the raises could not be implemented retroactively.

¹See, e.g., 55 Comp. Gen. 1006 (1976); B-183083, Nov. 28, 1975.

Our 1978 decision noted that since the Public Printer simply **had agreed** to delay exercising his discretion to grant a pay increase at the request of the employees' representatives, **his later effort** to make the increase retroactive constituted nothing more than unilateral administrative action. Thus, the 1978 decision observed:

"In the present case, the consultative procedure afforded the two non-craft employee groups . . . should not be equated with the process of negotiation, agreement and approval manifest in the [cases allowing retroactive wage increases]. Furthermore, even if such an equation could be made, no preliminary agreement between the parties was effected, as in B-183083, November 28, 1975, nor was an impasse reached as in 55 Comp. Gen. 1006 (1976) or B-190097, November 11, 1977. Here, the employee representatives merely requested a delay in any final action."

While the instant situation does not fall squarely within either line of decisions discussed above, we believe it is more analogous to those decisions that permit retroactive pay increases. Here, the Public Printer acted on January 8, 1993, to grant a pay raise effective January 10. The Joint Committee stayed the Public Printer's action, based on its disagreement as to the amounts and types of the increases. However, in staying this action, the Committee explicitly recognized that a pay increase would be forthcoming and that it would be effective January 10. The Joint Committee acted to stay the pay increases pursuant to 44 U.S.C. § 103, which grants the Committee broad authority to "use any measures it considers necessary" to remedy neglect, delay, duplication, or waste in the public printing and binding and the distribution of Government publications.²

Clearly, more is involved here than a unilateral administrative determination on the part of the Public Printer to postpone a pay increase and later make it retroactive, as was the case in our 1978 decision. Here, the Joint Committee, acting pursuant to its statutory authority, directed the Public Printer to stay

²Pursuant to a Joint Committee on Printing resolution adopted May 11, 1982, the Committee's authority extends to "all matters involving GPO personnel including wages, salaries and compensation." See also Lewis v. Sawyer, No. 85-1515, slip op. (D.D.C. July 2, 1982), aff'd 698 F.2d 1261 (D.C. Cir. 1983), discussing Congress's traditional exercise of authority over GPO through the Joint Committee on Printing, which upheld the authority of the Committee to stay a furlough proposed by the Public Printer.

implementation of any final action pending the Joint Committee's review of the proposed actions in consultation with the new Public Printer. Thus, although the pay raise was not delayed as a result of actions taken under the wage conference and appeal provisions of 44 U.S.C. § 305(a), it was delayed pursuant to the directive of the Joint Committee acting under the broad authority of 44 U.S.C. § 103. That is, in both the 1977 case and the present case, the pay increase was delayed under statutorily authorized procedures by which the Joint Committee reviewed the proposed actions and ultimately authorized an increase, including authorization to make it retroactive to a previously determined effective date.

In these circumstances, as in our 1977 decision, the "subsequent payment of wages at the ultimately determined rate" can be regarded as "a supplemental payment" rather than a prohibited "gratuity".³ B-190097, Nov. 11, 1977.

On this basis, we would not object if the pay increase in this case is implemented as of January 10, 1993.

Sincerely yours,

Milton J. Dowser
for Comptroller General
of the United States

³We note that the 1.7 percent increase subsequently authorized resulted in increases for substantially all the affected employees that did not exceed the rates originally proposed by the Public Printer in January 1993.

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DIGEST

The Chairman, Joint Committee on Printing, asks whether a pay increase, may be effected retroactive to January 10, 1993, the date the outgoing Public Printer's pay plan for nonbargaining employees would have been effective had it not been stayed by direction of the Joint Committee on Printing. Because both the Public Printer and the JCP agreed prior to January 10, that the pay raise, once determined, should be effective on January 10, the increase may be made retroactive to that date.