

B-256991

March 1, 1995

Mrs.
Human Resources Office Site Manager
Section 6 Site Office
Department of the Navy
3308 John Quick Road, Suite 200A
Quantico, Virginia 22134-1702

Dear Mrs. :

This is in response to your letters, dated May 16 and August 30, 1994, concerning the claim of for retained pay in a higher amount than the Department of Defense granted him by administrative action. For the following reasons, we deny claim.

You advise that the Quantico Dependents' School System (QDSS), Department of Defense (DOD), operates Section 6 schools under the auspices of the Department of Defense.¹ Section 6 employees are in the excepted service and are generally exempt from coverage under title 5 U.S.C., including its reduction-in-force and retained pay provisions. See 5 U.S.C. §§ 5102(c)(22), and 5361 through 5366 (1988). Nevertheless, under an administrative regulation,² the QDSS has the authority to and did grant retained pay, but in a lower amount than he believes he is entitled to.³ This came about in the following manner.

¹Section 6 schools are authorized by 20 U.S.C. § 241 (1988).

²See Memorandum on Grade and Pay Retention, issued by the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), dated February 13, 1987.

³See Memorandum from Superintendent, Quantico Dependents' School System, to Dr. William A. Horn, dated August 17, 1993 (granting retained pay in the amount of \$39,925 per annum).

In 1992, the position of Administrative Coordinator of Special Education was created and QDSS hired _____ to fill it. At the end of the 1992-1993 school year, the QDSS determined that this position was not needed and abolished it at the beginning of the next school year. _____ was offered the position of teacher (Special Education) in lieu of separation, effective September 20, 1993, and he accepted the offer. In the position of Administrative Coordinator, _____ tour of duty schedule was 12 months (2,087 hours) per year. As a teacher, however, he was only scheduled to work during the 10-month school year (1,704 hours). There were no other vacant administrative positions available at the time the Administrative Coordinator's position was abolished.

The QDSS elected to retain _____ pay insofar as possible given the change of work schedule. In determining the retained rate, _____ annual compensation for 12 months as Administrative Coordinator, \$48,896, was divided by 2,087 to obtain an hourly rate of \$23.43. The DOD uses an hourly rate when paying teachers, and _____ school year compensation, \$39,925 was determined by multiplying this hourly rate by 1,704 hours based on the 10-month tour of duty schedule for teachers. _____ believes, however, that he is entitled to a retained salary of \$48,896, his former salary as an Administrative Coordinator.

_____ claim that he was improperly reassigned was rejected on jurisdictional grounds by the Merit Systems Protection Board since his position is not covered by title 5 U.S.C.⁴ The DOD dismissed his administrative grievance on grounds of untimeliness.⁵ Also, while _____ current position of teacher is covered by a collective bargaining agreement, it is our understanding, and that of both parties, that since the reduction in pay occurred while _____ was an Administrative Coordinator, which was a position not covered by the collective bargaining agreement, the procedures for dispute resolution in the collective bargaining agreement cannot be applied.

The statutory authorization for DOD Section 6 schools in 20 U.S.C. § 241(a) (1988) provides that personnel for the schools may be employed and their pay and other employment matters may be fixed without regard to the Civil Service Act and rules and chapter 51 and other provisions of title 5. The grade and pay retention authority in 5 U.S.C. §§ 5361-5366 (1988) apply to employees to whom chapter 51 of title 5 applies. Thus, _____ is not covered by the title 5 grade and pay retention provisions. Although not required to do so, DOD has provided administrative pay retention to its excepted employees.⁶ The QDSS provided retained pay to _____ consistent with his change from a 12-month tour of duty to a 10-month tour. By memorandum of August 17, 1993,

⁴Horn v. Department of Defense, Docket Number DC-0351-94-0041-I-1 (January 24, 1994).

⁵Letter from _____ to _____, dated March 8, 1994.

⁶See footnote 2, supra.

the Superintendent, QDSS, offered _____ a reassignment to a teaching position in lieu of separation and explained to him that he would retain his hourly rate of pay for the 10-month schedule. _____ accepted the offer.

Since _____ new teaching position only required him to work 10 months a year instead of 12 months, we find that the Quantico Dependents' School System acted reasonably in granting him retained pay based on the same hourly pay rate for the reduced schedule.

Accordingly, _____ claim for additional retained pay is denied.

Sincerely yours,

\s\ Seymour Efros
for Robert P. Murphy
General Counsel

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DIGEST

Resigned excepted service employee was granted retained pay, but claims additional retained pay. Since the Department of Defense granted a teacher retained pay by administrative action, rather than pursuant to 5 U.S.C. § 5363 (1988), that statute and the Office of Personnel Management's regulations promulgated pursuant to it, are not applicable to determine the rate of retained pay. When the Department of Defense (DOD) changed claimant's position from an Administrative Coordinator to a teacher, in lieu of separation, the DOD correctly granted him retained pay, by administrative action, based on the 10-month schedule of a teacher.