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DECISION



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

FILE: B-180010.07

DATE: ~~November~~ 7, 1980

MATTER OF: W. L. Ableidinger and E. G. Walters -
Foremen - [Double Time for Overtime Work]

DIGEST: Long-standing practice of paying double overtime to foremen whose pay is not negotiated but fixed at 112.5 percent of negotiated journeyman base pay was discontinued because 57 Comp. Gen. 259 held overtime limited by 5 U.S.C. 5544 to time and a half, notwithstanding section 9(b) of Public Law 92-392 preserving previously negotiated benefits. Foremen claim restoration of double overtime because section 704(b) of Public Law 95-454 overturned holding and permitted double overtime for nonsupervisory employees who negotiate wages. While not directly covered by sections 9(b) or 704(b), foremen may continue to receive double overtime since broad purpose of these statutory provisions was to preserve prevailing rate practices existing before their enactment.

Ms. Nedra A. Blackwell, an authorized certifying officer with the Bureau of Reclamation, Pacific Northwest Region, Department of the Interior, has requested a decision as to whether Mr. W. L. Ableidinger and Mr. Eldon G. Walters, employees of the Yakima Project, Bureau of Reclamation, may receive overtime compensation at double time rates.

FACTS

Messrs. Ableidinger and Walters are hourly Foremen II who directly supervise power plant workers whose hourly pay rates are determined through collective bargaining under an agreement between the Department of the Interior and the International Brotherhood of Electrical

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Workers, Local Union No. 77. This collective bargaining agreement, which is covered by section 9(b) of Public Law 92-392, August 19, 1972, 86 Stat. 54, provides that nonsupervisory workers shall receive double time compensation for overtime work. The two foremen, however, being supervisory personnel, are excluded from the bargaining unit of the workers they supervise and their pay is administratively established at 112.5 percent of the negotiated journeyman base rate.

Prior to March 14, 1979, it had been the practice of 20 years to pay the foremen double time for overtime work, based on the fact that foremen's wages were expressed as a percentage of compensation of the workers they supervised. The Bureau, however, has now denied Messrs. Ableidinger and Walters' request for double time. The Bureau's decision to deny double time to the foremen was apparently taken because a decision of the Comptroller General, 57 Comp. Gen. 259 (1978), limited overtime compensation under 5 U.S.C. 5544 to time and a half, section 9(b) of Public Law 92-392 notwithstanding. The question presented therefore is whether the foremen may be paid at double time rates for overtime work because their rates of pay are based on nonsupervisory rates which incorporate a double time provision.

OPINION

Public Law 92-392 amended subchapter IV of chapter 53 of title 5, United States Code, to establish a statutory system for fixing and adjusting the rates of pay for prevailing rate employees. Section 9(b) of that law, provides in substance that the amendments shall not be construed to affect the provisions of contracts in effect on the date of enactment pertaining to wages and other employment benefits for prevailing rate employees and resulting from negotiations between agencies and employee organizations. Section 9(b) also preserves the right to negotiate for the renewal, extension or modification of such contract provisions.

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On October 13, 1978, statutory authority to negotiate double overtime for section 9(b) employees was enacted in section 704(b) of the Civil Service Reform Act of 1978, Public Law 95-454, 92 Stat. 1218, which provided that overtime could continue to be negotiated for such employees without regard to 5 U.S.C. 5544. In enacting section 704, the Congress made it clear that it was overruling decision 57 Comp. Gen. 259 (1978) and that it was providing "specific statutory authorization for the negotiation of wages, terms and conditions of employment and other employment benefits traditionally negotiated by these employees in accordance with prevailing practices in the private sector of the economy." Conference Report (to accompany S. 2640), House Report No. 95-1717, October 5, 1978, p. 159.

In light of the enactment of section 704, we reconsidered 57 Comp. Gen. 259 (1978) regarding overtime pay. We held in 58 Comp. Gen. 198 (1979) that, since section 704(b)(B) specifically provides that the pay and pay practices of employees covered by section 9(b) of Public Law 92-392 shall be negotiated without regard to subchapter V of chapter 55, title 5, United States Code (which contains section 5544 pertaining to overtime pay for prevailing rate employees), our decision 57 Comp. Gen. 259 was overruled insofar as it had invalidated overtime contract provisions of Interior's prevailing rate employees whose wages were negotiated.

More recently in our decision B-194401, July 3, 1980, 59 Comp. Gen. _____, which was a case similar to that here, we held that certain Corps of Engineer employees who did not negotiate their wages but who had been for 22 years paid double time for overtime under the special Pacific Northwest Regional Power Rate Schedule which was itself based on prevailing wage practices, could continue to be paid double time. We concluded that even though these employees were not specifically covered under section 9(b) of Public Law 92-392 as implemented by section 704(b) of Public Law 95-454, the broad purpose of these provisions was

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to preserve prevailing rate practices existing before their enactment.

Here, as in the case of the Corps of Engineers employees, the foremen are not specifically covered by section 9(b) nor by section 704(b), since they do not negotiate their wages. The foremen's wages, however, have for a long time been based on rates established by employees who do negotiate their wages and who are therefore covered by the savings provisions in the above cited laws. Moreover, it has been the practice for 20 years to pay these foremen double overtime. The two foreman who have filed claims for double overtime in the instant case were also involved in E. G. Walters, et al., B-180010.07, June 15, 1977. We found that, since the foremen's salary is assimilated without limitation to the rate of pay negotiated for journeymen, the foremen were entitled to a retroactive pay increase based on a retroactive pay increase which the journeymen had received.

Since the broad purpose of section 9(b) and section 704(b) was to preserve pre-existing prevailing rate practices, and since there is no sound basis for distinguishing the foremen's situation from that presented in B-194401, July 3, 1980, 59 Comp. Gen. _____, we hold that the payment of double time for overtime to the foremen of the Yakima Project is proper. Therefore, Messrs. Ableidinger and Walters are entitled to double time compensation for overtime work, including corrective payments for the period when double time was discontinued.

Harry R. Van Cleave

For the Comptroller General
of the United States