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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

IN REPLY
REFER TO:

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-189782

AUGUST 1, 1978

The Honorable
The Secretary of the Interior

Dear Mr. Secretary:

Our Federal Personnel and Compensation Division recently completed a survey of labor management agreements subject to the savings clauses of Public Law 92-392 and Executive Order 11491, as amended. The survey was undertaken to determine the extent of such agreements and how the savings clauses were being interpreted and applied.

Executive Order 11491 sets forth the framework for the Federal labor-management relations program. Public Law 92-392 established the Federal prevailing rate pay system. The Executive Order contains a savings clause which permits the renewal or continuation of lawful, negotiated agreements in effect at the time of the original executive order in 1962. Similarly, Section 9(b) of Public Law 92-392 nullifies the effect of various provisions in instances where there were already negotiated agreements or understandings in effect as of August 1972.

We identified 35 such agreements nationwide and made a limited examination of 7 of them. All seven were Department of Interior agreements in the Seattle Region. Although we do not plan to make a detailed review at this time, we noted several agreements which warrant management attention. Three agreements contain provisions which are in apparent violation of law and three contain provisions which may not be in the best interests of the Government.

PROVISIONS THAT RAISE
MANAGEMENT QUESTIONS

Supervisory personnel may be members of the union bargaining unit at the Grand Coulee Dam and Central Snake/Minidoka Area. Supervisors generally share responsibility for interpreting, applying, and enforcing Federal collective bargaining agreements. Thus, Executive Order 11491 precludes supervisors' inclusion in labor organizations' bargaining units.

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In addition, agreements at the Grand Coulee Dam and Bureau of Indian Affairs ship "North Star III" contain provisions that somewhat restrict the assignment of certain work to various categories of employees. Although the Grand Coulee Agreement contains another provision allowing escape from restricted work assignments, there still appears to be potential to adversely affect mission accomplishment. Further, the "North Star III" agreement contains no such escape clause and therefore has even more potential for impact on efficiency and mission accomplishment.

We recognize that a question exists as to whether certain of these agreements are subject to the Executive Order; however, we believe the cited provisions raise questions as to whether they are in the best interest of the Government.

Since the provisions will likely be the subject of delicate renegotiations, we believe it improper for us to make specific recommendations particularly without the benefit of additional review work. We do suggest that the Department review the advisability of continuing them before beginning new negotiations.

PROVISIONS THAT RAISE LEGALITY QUESTIONS

The law (5 U.S.C. 5546) states that holiday pay will be paid at twice the base rate of pay. The agreements negotiated for the Grand Coulee Dam, the Central Snake/Minidoka Area, and the Yakima project provide for holiday pay at either two and a half times or three times base pay. Management officials who negotiated these agreements believe that holiday pay is a negotiable issue under the savings clause of Public Law 92-392. On February 3, 1978, the Deputy Comptroller General issued a decision on overtime provisions (B-189782) which stated that this savings clause exempts agreements only from the provisions of Public Law 92-392 and not from the operation of other laws. Consequently, we do not believe that holiday pay which is covered under another law is a negotiable issue under the Public Law 92-392 savings clause.

The Grand Coulee Dam, Grand Coulee Recreational Area, and Yakima Project agreements also contain overtime provisions which were ruled illegal in the February 3, 1978, decision. To cushion the impact, we authorized the Department of the Interior to delay implementation of that decision until the end of the Second Session of the 96th Congress (B-189782, June 23, 1978). The February decision also stated that the Department could consider requesting special legislative authority if the overtime provisions were needed in order to remain competitive in the labor market.

Recommendation

We recommend that you amend all negotiated holiday pay provisions in the same manner used to resolve the problem with overtime pay provisions.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of this report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of our report.

We are sending copies of this report to the above mentioned Committees, the House Committee on Post Office and Civil Service, the Chairman of the Civil Service Commission, and the Director of the Office of Management and Budget. We would appreciate receiving your comments on these matters and any actions you plan to take.

Sincerely yours,

Henry Eschwege

Henry Eschwege
Director