Agazarian PLM-II

30316

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

FILE: B-216112 **DATE:** January 29, 1985

MATTER OF: Prevailing Rate Employees at Barksdale A.F.B., Louisiana

DIGEST:

The cap on wage increases for prevailing rate employees during fiscal year 1982 and similar provisions for fiscal years 1983 and 1984 are applicable to prevailing rate employees at Barksdale A.F.B., Louisiana, even though that wage area was initially covered by the Monroney Amendment, 5 U.S.C. § 5343(d), in fiscal year 1982. Higher wage rates which resulted from considering wage rates from another area as required by the Monroney Amendment must not be implemented to the extent that they exceed the statutory increase cap. There is nothing in either the language or the legislative history of the Monroney Amendment or the pay increase cap provisions which would support the view that the pay increase caps are not applicable to the initial establishment of wages under the provisions of the Monroney Amendment.

The matter before us concerns whether the maximum salary increase for prevailing rate employees in effect for fiscal year 1982, and similar pay increase maximums or caps for fiscal years 1983 and 1984 are applicable to wage schedules which are established pursuant to the initial application of the Monroney Amendment, 5 U.S.C. § 5343(d), to a wage area.[1/] Wage schedules and rates which are set in accordance with the provisions of the Monroney Amendment are subject to the pay increase caps in effect for fiscal years 1982, 1983, and 1984.

1/ This matter has been presented by Mr. James M. Peirce, President, National Federation of Federal Employees, under our procedures set forth at 4 C.F.R. Part 22 for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. The General Counsel, Office of Personnel Management, submitted the comments of that agency on January 11, 1985.

The National Federation of Federal Employees as the representative of prevailing rate employees at Barksdale Air Force Base, Louisiana, contends that those employees were erroneously denied their proper rates of pay during fiscal years 1982, 1983 and 1984. The Federation advises that the pay rates of these prevailing rate employees are set in accordance with the provisions of the Monroney Amendment. Ordinarily, the wage schedules of prevailing rate employees are based upon a survey of wages paid by private employers in the local wage area for similar work performed by regular full-time employees. See 5 U.S.C. § 5343. However, under the Monroney Amendment when, for a principal type of federal wage position, there is an insufficient number of comparable jobs in private industry in the local wage area, the pay for comparable positions in private industry in the nearest similar wage area must be considered. The wage schedules and rates are then determined on the basis of both the local private industry rates and the rates for the nearest similar wage area.

The Shreveport, Louisiana area, which includes Barksdale Air Force Base, first qualified for the application of the Monroney Amendment in fiscal year 1982. However, in establishing the wage schedules for the Shreveport area, after complying with the data gathering requirements of the Monroney Amendment, the lead agency (the Department of Defense)[2/] applied the pay cap of 4.8 percent which was applicable to federal employees in fiscal year 1982. The Office of Personnel Management concurs with the lead agency's view that the pay cap was applicable to the employees in question. The National Federation of Federal Employees contends that the application of the 4.8 percent pay cap denies the employees involved the benefits intended to be conferred by the Monroney Amendment.

2/ The lead agency is the agency designated by the Office of Personnel Management to plan and conduct a wage survey, analyze the survey data and issue the required wage schedules for a wage area. See 5 C.F.R. § 532.201.

During fiscal years 1982 through 1984 there were caps on the pay increases which could be allowed prevailing rate employees.[3/] The pay increase cap in effect in fiscal year 1982 at the time the Monroney Amendment first became applicable to the wage area which includes Barksdale Air Force Base, provided:

> "(b)(1) Notwithstanding any other provision of law, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, or an employee covered by section 5348 of that title--
>
> * * * * *
>
> "(B) any adjustment under subchapter IV of chapter 53 of such title to any wage schedule or rate applicable to such employee which results from a wage survey and which is to become effective during the fiscal year beginning October 1, 1981, shall not exceed the amount which is 4.8 percent above the schedule or rate payable on September 30, 1981 * * *." Section 1701(b), Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, August 13, 1981, 95 Stat. 357, 754.

Similar restrictions on increases in wage rates of prevailing rate employees were enacted each year since fiscal year 1979. The legislative history of the first of

---

3/ See section 2202 of the Deficit Reduction Act of 1984, Public Law 98-369, July 18, 1984, 98 Stat. 494, 1058; section 202(b) of the Omnibus Budget Reconciliation Act of 1983, Public Law 98-270, April 18, 1984, 98 Stat. 158, 159; section 110 of Public Law 98-107, October 1, 1983, 97 Stat. 733, 741; section 107 of Public Law 97-377, December 21, 1982, 96 Stat. 1830, 1909; section 109 of Public Law 97-276, October 2, 1982, 96 Stat. 1186, 1191; and section 1701(b) of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, August 13, 1981, 95 Stat. 357, 754.

this type of cap on wage increases for prevailing rate employees shows that the cap was enacted so that prevailing rate employees would be subject to a pay cap similar to that applicable to General Schedule employees. See S. Rep. No. 939, 95th Cong. 2d Sess. 55-56 (1978).

The National Federation of Federal Employees contends that the pay rates which result from the initial application of the Monroney Amendment to a wage area are not to be regarded as wage survey adjustments for purposes of the pay caps on prevailing rate pay increases. The basis for this view is the decision 50 Comp. Gen. 266 (1970), in which we held that retroactive adjustments made when the Monroney Amendment was initially put into effect were not adjustments made pursuant to wage surveys, but were adjustments required to bring the wage rates involved in line with the requirements of law as contained in the Monroney Amendment.

Wage schedules under the Monroney Amendment were first issued almost 2 years subsequent to the effective date of that amendment because the method of computing wage rates under the new requirements had not been resolved. It was not until July 14, 1970, that the Civil Service Commission issued its regulations implementing the amendment although it had been effective and applicable to all surveys ordered or in process on or after the date of enactment, October 12, 1968.

The question was whether the provision in 5 U.S.C. § 5344, authorizing retroactive increases in pay when adjustments resulting from wage surveys are delayed, was to be applied to the initial retroactive adjustments under the Monroney Amendment. If that section had been applicable, retroactive payments to employees no longer employed would not have been allowed by the specific terms of the section. However, we held that these initial retroactive increases did not result from an "order granting the increases" in terms of that section, but that the wage schedules originally applied were invalid since they had not been computed in accordance with the Monroney Amendment. Thus, employees paid under the original schedules were not properly compensated under the law, and the retroactive increases in pay resulting from the adjusted schedules implementing the Monroney Amendment were to be regarded as corrections required by the Monroney Amendment and not the

result of an order granting an increase in pay pursuant to a wage survey.

The National Federation of Federal Employees argues that the implementation of a new wage survey following a wage area's initial qualification for the application of the Monroney Amendment is to be distinguished from the ordinary wage survey process since the Monroney Amendment requires a new survey which, unlike the prior surveys, uses data from both the wage area in question and from another wage area. Its view is that the pay increase for the initial year in which an area qualifies under the Monroney Amendment is not an increase which results from wage survey adjustments, but results from the fact that the employees in that area qualify for use of a new pay schedule. In the circumstances under consideration in 50 Comp. Gen. 266, the pay adjustments initially made pursuant to wage surveys had been erroneous because those adjustments did not take into consideration the elements required to be considered by the Monroney Amendment. The retroactive revisions in those pay adjustments, to make pay comply with the Monroney Amendment, were corrections required by law and all persons who had been paid at the incorrect rates were entitled to retroactive pay. However, the holding in that decision does not support the proposition that pay adjustments which are established pursuant to the initial application of the Monroney Amendment--which involves a wage survey--are not to be regarded as adjustments in pay rates or schedules which result from a wage survey for the purpose of the application of the pay cap to prevailing rate employees.

In the situation under consideration no erroneous pay rates were implemented. A survey was concluded and pay adjusted as a result thereof. There is nothing in either the express language or the legislative history of the Monroney Amendment which would support the view that the initial pay rates or schedules established in a particular wage area pursuant to the Monroney Amendment are not to be regarded as pay adjustments which result from a wage survey. Furthermore, neither the language nor the legislative history of the provisions caping the pay increases of prevailing rate employees for fiscal years 1982 through 1984 indicate that pay established pursuant to the initial application of the Monroney Amendment is not deemed to be a wage survey adjustment. Furthermore, the language and legislative history of prevailing rate employees' pay caps for

fiscal years 1979 through 1981[4]/ provide no basis to distinguish schedules established pursuant to the initial application of the Monroney Amendment to a wage area.

The National Federation of Federal Employees contends that it would be contrary to the doctrine disfavoring repeals by implication[5]/ to hold that the caps on the annual pay adjustment of prevailing rate employees also apply to initial adjustments under the Monroney Amendment. They argue that a measure intended to equalize the annual cost-of-living increases of wage grade and General Schedule employees should not be interpreted in a manner that repeals a measure which is intended to ensure a fair rate of pay for workers in certain areas.

We note, however, that although the pay increase caps may modify the effect of the Monroney Amendment, the caps do not repeal the provisions of the Monroney Amendment. Employees previously covered continue to benefit from the application of the Monroney Amendment, and wage increases of newly covered employees may be enhanced because of that amendment if the local wage data would have produced an increase of less than the maximum allowable under the cap. We note that the Office of Personnel Management has apparently determined that, in the absence of the Monroney Amendment, the average pay schedule increase in the Shreveport wage area for fiscal year 1982 would have been approximately 4.3 percent rather than the average wage

---

4/ Section 114 of Public Law 96-369, October 1, 1980, 94 Stat. 1351, 1356; section 613 of the Treasury, Postal Service, and General Government Appropriations Act, 1980, Public Law 96-74, September 29, 1979, 93 Stat. 559, 576; and section 614 of the Treasury, Postal Service, and General Government Appropriations Act, 1979, Public Law 95-429, October 10, 1978, 92 Stat. 1001, 1018.

5/ See Tennessee Valley Authority v. Hill, 437 U.S. 153 at 190 (1978).

schedule increase of 4.74 percent, the maximum allowable under the pay ceiling after rounding of the pay increase.

In view of the above, we conclude that an adjustment of pay resulting from the initial application of the Monroney Amendment in a wage area was not exempt from the pay caps in effect during fiscal years 1982 through 1984.

for Milton J. Socolar
Comptroller General
of the United States