



512544 15225 Tucker NCHH

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20540

OFFICE OF GENERAL COUNSEL

B-200018

October 20, 1980

Do not disseminate to public relations

Mr. Andreas W. Evans
Assistant Executive Director
Federal Managers' Association
2300 South 9th Street - Suite 511
Arlington, Virginia 22204

Dear Mr. Evans:

We refer to your letter of August 12, 1980, requesting the Comptroller General's informal views concerning the cases of two of your members who are seeking retroactive pay increases based upon their supervision of prevailing rate employees.

We are providing the following for your information. If, after considering what is set out below, you believe that your members are entitled to the backpay sought, formal claims should be filed with the employing agency and then forwarded to our Claims Section if you feel that the agency's initial decision is incorrect.

In your submission you contend that the decision Matter of Billy M. Medaugh, 55 Comp. Gen. 1443 (1976), is controlling, in that the applicable regulation is essentially the same as that governing your members. That regulation, in pertinent part, provides that:

"* * * Operating officials, insofar as practicable and in accordance with good management practices, will avoid making or continuing work assignments which result in a situation where Classification Act employees supervise Wage Board employees receiving a higher basic rate of compensation. Where this is not practicable, they must initiate a request for pay adjustment. This recommendation must state the basis for the determination of supervision of one or more Wage Board employees receiving a higher rate of compensation." (Emphasis supplied.)

B-200018

The pertinent portion of the Navy regulation in the case you present provides that:

"To the extent that it is practicable and in accord with good management, work assignments should be made in such manner as to avoid situations where employees under the General Schedule supervise wage employees receiving a higher rate of basic compensation. Before adjusting the pay of a General Schedule employee under this authority consideration will be given to possible changes in organization or assignment to eliminate necessity. Where this is not possible, the pay of a supervisor in a position under the General Schedule who regularly has responsibility for supervision over one or more wage employees will be adjusted when justified, in accordance with the provisions of this authority."
(Emphasis supplied.)

You seem to contend that both of these provisions mandate adjustment of the supervisor's pay; that "must" in the first regulation and "will" in the second are equivalent in meaning. However, that contention fails to deal with the conditional phrase in the Navy regulation, "when justified, in accordance with the provisions of this authority." No similar qualifier is present in the first quoted regulation. The qualifying phrase seems to preserve discretion to the local authority to determine which supervisors require wage adjustments. This element of discretion would seem to make the situation distinguishable from the Medaugh case. This appears to be the interpretation given to its regulation by the Navy in the correspondence included with your letter.

We trust that the foregoing will assist you.

Sincerely yours,

David F. Poynter
for Edwin J. Monsma
Assistant General Counsel