DECISION

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

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FILE: B-182575 DATE: JUL 28 1975

97341

MATTER OF:

DIGEST: Bobby F. Cutright--Overtime Compensation-Fair Labor Standards Act Rate versus Columbia Power Trades Council Collective Agreement Rate

Federal employee was eligible for overtime payments under Fair Labor Standards Act (FLSA) but not under union collective bargaining agreement which provides for payment of overtime as double time. Employee should be paid overtime at one and one-half times base pay as provided by the FLSA since his entitlement arises under the FLSA, not the union agreement.

This action concerns a request for an advance decision from an Authorized Certifying Officer of the Disbursement Audit Section, Bonneville Power Administration (BPA), as to whether overtime compensation due Bobby F. Cutright, a Senior Substation Operator of BPA, should be paid at the time and one-half rate of the Fair Labor Standards Act (FLSA) or the double time rate of the Columbia Power Trades Council (CPTC) collective agreement.

Mr. Cutright is one of approximately 150 substation operators who work rotating shifts to maintain continuous operation of the Bonneville Power transmission system. Work schedules and compensation for these employees are fixed pursuant to a collective bargaining labor agreement between the Administrator of BPA and the CPTC. The council, composed of 16 craft unions including the International Brotherhood of Electrical Workers, is recognized as the exclusive bargaining unit for most BPA hourly employees. The current agreement requires payment of overtime as double time.

Before the FLSA became applicable to the public sector, substation operators often worked schedules that included work in excess of 40 hours per week. A typical work schedule called for 2 cycles of 10 days of work followed by four days off, then a cycle of 11 days of work followed by four days off. Under the CPTC collective agreement the hours of work for which the voucher was submitted are not overtime hours. After the advent of the FLSA these schedules were discontinued due to excessive overtime costs under the FLSA. However, the old schedules were continued through June 16, 1974, 6 weeks after the effective date of the FLSA, May 1, 1974.

The question before us is whether overtime worked by substation operators between May 1, 1974, and June 16, 1974, should be paid at the rate of one and one-half times the basic pay rate as required by the FLSA or at the double time rate in the CPTC collective agreement.

The Fair Labor Standards Amendments of 1974, Public Law 93-259, which brought Federal employees under the coverage of the FLSA, were not intended to decrease an employee's compensation. Instead, inter alia, they set a minimum standard of payment to which an employee is entitled. If an employee receives greater benefits under the FLSA then his compensation should be computed under the FLSA. If he receives greater remuneration under existing pay rules, then the employee continues to receive that benefit. The FLSA is only used if it provides greater compensation.

The Civil Service Commission issued "Interim Instructions for Implementing the Fair Labor Standards Act," Federal Personnel Manual Letter No. 551-1 on May 15, 1974. Paragraph 2 of that letter states:

> "While the FLSA does not modify any existing pay laws, it does establish a minimum standard to which nonexempt employees are entitled. To the extent that the FLSA would provide a greater pay benefit to a nonexempt employee (e.g., a higher overtime rate) than the benefit payable under other existing pay rules, the employee is entitled to the FLSA benefit. If other existing pay rules provide a greater benefit, of course the employee continues to receive that benefit."

In discussing the history of the FLSA and the 1974 amendments, we stated in 54 Comp. Gen. 371, 373 (1974):

> "The FLSA was first enacted into law on June 25, 1938, and has been amended several times to raise the minimum wage provisions of the original act as well as to expand the coverage of the act to encompass additional groups of employees. It is clear, however, throughout its 36 year history, that the benefits provided were always regarded as minimums, not maximums; a floor and not a ceiling. * * *"

It can thus be seen that the minimum wage and overtime rates of the FLSA apply only if they operate to give the employee a greater benefit than his existing pay rules. In the present case the CPTC collective agreement calls for overtime compensation at double time whereas the FLSA minimum standard is time and one-half. However, the hours of work for which the voucher was submitted are not overtime hours under the CPTC collective agreement. It is only through the operations of the FLSA that overtime compensation is payable in this case. Therefore, Mr. Cutright's overtime should be paid at the rate of one and one-half times basic pay in accordance with the FLSA provisions.

The voucher submitted is returned for payment in accordance with the foregoing.

R.F. KELLER

Deputy Comptroller General
of the United States