



The Comptroller General
of the United States

Washington, D.C. 20548

Heitzman - PHM

Decision

Matter of: Navy Department - Reduction In Force -
Administrative Leave During 30-Day Notice Period
File: B-226397
Date: September 8, 1987

DIGEST

The Assistant Secretary of the Navy (Financial Management) proposes to provide by regulation that employees subject to reduction-in-force (RIF) procedures be placed on administrative leave during the 30-day RIF notice period. The Secretary is advised that there is no authority to grant administrative leave under these circumstances. Further, the Office of Personnel Management regulations state that an employee should remain in a duty status during the advance notice period.

DECISION

BACKGROUND

The Assistant Secretary of the Navy (Financial Management) on behalf of the Secretary of the Navy has requested our decision on the issue of whether the Navy may, by regulation, authorize administrative leave up to 30 days to employees who are notified of a reduction in force (RIF). For the reasons that follow, we conclude that there is no authority to issue such regulations.

The Navy has been evaluating its personnel policies and practices in a number of areas in order to operate its industrial facilities in a more cost effective and productive manner. Thus, the Navy is concerned that employees who are given 30 days advance notice of a RIF and who remain on duty may cause morale problems or become a disruptive influence on the workforce. Therefore, the Navy wishes to place the employees on administrative leave for the 30-day RIF notice period prescribed by 5 C.F.R. § 351.807 (1986), instead of retaining them on active duty.

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The Navy believes that it has the authority to issue such regulations since no statutes or Office of Personnel Management (OPM) regulations govern the grant of administrative leave. Further, the Navy cites to OPM guidance and to numerous decisions of this Office which recognize that agencies have discretion to determine the situations in which administrative leave may be granted as well as the duration of such leave. Thus, the Navy concludes that its proposal to grant administrative leave for a definite period not exceeding 30 days is consistent with OPM guidance and decisions of this Office.

We requested comments from OPM since it has been delegated the authority for prescribing regulations in the areas of RIF and attendance and leave. 5 U.S.C. §§ 3502, 6101(c) (1982). In response, OPM points out that the Navy proposal is inconsistent with OPM's RIF regulations in 5 C.F.R. § 351.807 (1986), which state that: "When possible, the agency shall retain the employee on active duty during the notice period." The OPM notes that a change in this regulation would be required.

The OPM also does not believe that the Navy can establish a case for the use of such an extreme measure as the mass granting of extended administrative leave in RIF situations. The OPM states that, based on past Government experiences, it knows of no basis for concluding that Federal employees generally would be disruptive and interfere with agency operations when notified of a RIF. In fact, OPM says that such a presumption would reflect badly on the character of Federal employees and OPM's expectations as to their behavior. In its view, the burden would be on the Navy to document such occurrences.

The OPM also refers to alternative actions that could be taken to remove disruptive employees in lieu of placing them on 30 days administrative leave. In fact, OPM states that any action against an employee with retention rights who becomes disruptive should be taken under the adverse action provisions of 5 C.F.R. § 752.404(b)(3) (1986), which sets out various alternatives to be followed in lieu of the employee remaining in a duty status.

OPINION

There is no general statutory authority for what is popularly referred to as administrative leave, that is, an excused absence from duty without loss of pay and without charge to other paid leave. Nevertheless, it has been recognized that, in the absence of specific statutory authority, the head of an agency may, in certain situations, excuse an employee for brief periods of time without a charge to leave or loss of pay. Some of the more common situations in which agencies generally excuse absence without a charge to leave are discussed in the Federal Personnel Manual (FPM) Supplement 990-2, Book 630, Subchapter S11. See also 5 C.F.R. § 610.304 (1986), which provides certain standards for excused absences by administrative order for Government employees paid at a daily, hourly or piecework rate. None of the examples, however, in either the FPM Supplement or 5 C.F.R. § 610.305, are applicable here.

It is true, as the Navy states, that each agency has the responsibility for determining situations in which administrative leave will be granted. 54 Comp. Gen. 706 (1975); 53 Comp. Gen. 582 (1974). However, our decisions and OPM's guidelines limit an agency's discretion to grant administrative leave to situations involving brief absences. Elmer DeRitter, Jr., 61 Comp. Gen. 652 (1982). Where absences are for a lengthy period of time, a grant of administrative leave is not appropriate unless the absence is in connection with furthering a function of the agency. 63 Comp. Gen. 542, 544 (1984); DeRitter, supra, at 653.

We do not agree with the Navy's contention that granting administrative leave for the 30-day notice period furthers its functions by alleviating potentially serious problems. The Navy would be expending duly appropriated funds without receiving any benefit in kind since employees would be paid to stay at home. Compare 63 Comp. Gen. 542, supra, where the granting of administrative leave to employees for the purpose of providing advice and support to Federal Credit Unions was held to be in furtherance of an agency's function. In addition, we agree with OPM that the Navy has raised a presumption that its employees would become disruptive during the 30-day notice period without any factual basis in support of such a presumption.

This Office has long held that, in the absence of statutory authority, we would not be warranted in approving a proposal under which absences would be granted for extended periods of time. 44 Comp. Gen. 333 (1964). Thus, in 53 Comp. Gen. 1054 (1974), we held that there was no authority to implement an arbitration award that granted 30 days administrative leave to an injured employee who was not offered a limited duty assignment. In B-156287, June 26, 1974, we held that an employee was not entitled to 6 weeks administrative leave for the purpose of engaging in voluntary, humanitarian work for a private support organization. In Frederick W. Merkle, Jr., B-200015, November 17, 1980, we held that there was no authority to substitute 42 days of administrative leave from a like number of days an employee was on leave without pay pending a decision as to his eligibility for discontinued service retirement. See also Gladys W. Sutton, B-209652, August 12, 1983; Edward McCarthy, B-192510, April 6, 1979.

Therefore, we find no authority that would allow an agency to place its employees on administrative leave during a 30-day RIF notice period, and we do not believe that an exception should be made to the general rule that administrative leave can only be granted for brief periods of time.

Furthermore, as OPM points out, it has regulations in effect that apply to reductions in force and to any adverse action against an employee that may be necessary. 5 C.F.R. §§ 351.807, 752.404(b)(3). Both provisions state that an employee should remain in a duty status in his regular position during the advance notice period. The proposal by Navy would require an amendment to these OPM regulations governing reductions in force and adverse actions, and we agree with OPM that such an amendment is not warranted.

Accordingly, we conclude that there is no authority for the Navy to issue regulations permitting its activity heads to grant administrative leave for the 30-day RIF notice period.

for 
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of the United States