

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**VOIPR  
RHM-T  
29846**FILE:** B-215268**DATE:** November 26, 1984**MATTER OF:** Voice of America - Limitation on  
Pay Increase for Radio Broadcast  
Technician Foremen**DIGEST:**

Supervisors of prevailing rate employees who negotiate their pay increases are subject to statutorily-imposed pay limitation which applies to most prevailing rate employees. These supervisors are within the express terms of the pay increase limitation and are not covered by the specific exclusions from the limitation. 60 Comp. Gen. 58 (1980), distinguished.

The issue in this decision is whether the pay increase for Radio Broadcast Technician Foremen may be excluded from the pay increase limitation imposed by law on most prevailing rate employees. We hold that the pay increase for these supervisors is subject to the statutorily-imposed pay increase limitation even though their subordinates negotiated higher wage increases and were excluded from the pay increase limitation.

**BACKGROUND**

The decision is in response to a request from William E. Carroll, Director of Personnel, Voice of America, United States Information Agency.

The agency request states that Radio Broadcast Technicians are prevailing rate employees who negotiate their wages as provided under section 9(b) of Public Law 92-392 (August 19, 1972) and section 704 of Public Law 95-454 (October 13, 1978), 5 U.S.C. § 5343 note (1982). While Public Law 92-392 established a statutory basis for the prevailing rate system, section 9(b) of that law preserved the provisions of negotiated contracts in effect on the date of its enactment, as well as the renewal, extension or modification of such provisions. Section 704(b) of Public Law 95-454, the Civil Service Reform Act, clarifies the rights of employees covered by section 9(b) of Public Law 92-392 to negotiate their wages. 58 Comp. Gen. 198 (1979).

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The first-line supervisors of these employees, Radio Broadcast Technician Foremen, are also prevailing rate employees, but as supervisors they are excluded from the bargaining unit which negotiates wages. Since 1981, the Foremen have had their wages set at 111.5 percent of the journeyman rate for Radio Broadcast Technicians. However, by applying the statutory pay limitation to the Foremen but not to the Technicians who negotiate their wages, the agency has not been able to maintain the 11.5 percent difference between the Foremen and their subordinates.

The agency asks whether the Foremen may be excluded from the statutory pay increase limitation since their wages are directly based on a negotiated rate which is exempt from the limitation. The agency cites our decision in Ableidinger and Walters, 60 Comp. Gen. 58 (1980), where we held that the supervisors of Bureau of Reclamation employees who negotiate their wages could be paid double overtime since the supervisors' rates were based on the negotiated rates of their subordinates. The agency states that the pay setting procedure for the Foremen is analogous to the one considered in our decision in Ableidinger and Walters since the Foremen wage rate is established directly from a negotiated pay rate; it attempts to preserve prevailing rates in the private sector economy; and it is based on a past practice which first existed 25 years ago.

Finally, the agency suggests that while the intent of the pay limitation was to treat white collar and blue collar employees equitably, it was not foreseen that application of the pay limitation would allow the pay rates of subordinates "to reach virtual parity" with supervisory rates, thereby causing adverse effects on morale and recruitment for these supervisory positions.

#### OPINION

The agency refers to the pay increase limitation of most prevailing rate employees imposed by section 101(f) of Public Law 98-151 (November 14, 1983), 97 Stat 973, which incorporated the provisions of H.R. 4139, as passed by the

House of Representatives on October 27, 1983.<sup>1/</sup> Section 616(a) of H. R. 4139 provides in part:

"Sec. 616.(a) Notwithstanding any other provision of law, no part of any of the funds appropriated for the fiscal years ending September 30, 1984, or September 30, 1985, by this Act or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code \* \* \* in an amount \* \* \*"

Subsection 616(a) goes on to specify formulas for determining the amounts payable which, in effect, limit pay adjustments for prevailing rate employees to comparable adjustments for General Schedule employees.

Both the Radio Broadcast Technicians and Foremen are considered prevailing rate employees as described in 5 U.S.C. § 5342(a)(2)(A) as follows:

"an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement \* \* \*"

Thus, both the Technicians and the Foremen are covered by the terms of subsection 616(a) of H.R. 4139.

Section 616 then makes two exceptions to the pay increase limitation imposed by subsection 616(a). The first exception is contained in subsection 616(b) as follows:

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<sup>1/</sup> We note that this pay increase limitation language is substantially the same in section 202 of Public Law 98-270, 98 Stat. 158, April 18, 1984 (fiscal year 1984), and in section 101(j) of Public Law 98-473, October 12, 1984 (fiscal year 1985).

"(b) Notwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of Public Law 95-454, the provisions of subsection (a) of this section shall apply (in such manner as the Office of Personnel Management shall prescribe) to any prevailing rate employee to whom such section 9(b) applies, except that the provisions of subsection (a) may not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before October 1, 1983." (Emphasis supplied).

This exception removes the Technicians from the limitation since, according to the agency, their salary increases are required by the terms of a contract entered into before October 1, 1983. On the other hand, the Foremen are not covered by the contract and, therefore, are not subject to the subsection 616(b) exception.

The second exception is contained in subsection 616(g) of H.R. 4139 as follows:

"(g) Notwithstanding the limitations imposed on prevailing rate pay pursuant to subsection (a) of this section, such limitations shall not apply to wage adjustments for prevailing rate supervisors provided by the supervisory pay plan published in the Federal Register on March 30, 1983 (48 Fed. Reg. 13384)."

The agency advises that the Foremen are not covered by the cited supervisory pay plan; thus the subsection 616(g) exception likewise does not apply to them.

In essence, therefore, the Foremen are subject to the pay increase limitation by the express terms of subsection 616(a) of H.R. 4139, and they are not covered by either of the exceptions to that limitation. We do not believe that our decision in Ableidinger and Walters, cited previously, provides a basis for removing the Foremen from the limitation.

Ableidinger and Walters concerned a statutory provision, 5 U.S.C. § 5544 (1982), which limits overtime

compensation for prevailing wage employees to one and one-half the basic rate. In an earlier decision we had held that, notwithstanding 5 U.S.C. § 5544, prevailing rate employees could negotiate double overtime pay pursuant to section 9(b) of Public Law 92-392 and section 704(b) of Public Law 95-454. See 58 Comp. Gen. 198 (1979). We also had allowed double overtime pay for many years even though it was not based on negotiation under section 9(b) and 704(b). See 59 Comp. Gen. 583 (1980). Ableidinger and Walters extended these decisions to approve double overtime for certain prevailing rate foremen who had received double overtime for 20 years and whose basic pay was tied to the rates negotiated by the employees they supervised. While these foremen were not subject to section 9(b) and 704(b), we concluded:

"Since the broad purpose of section 9(b) and section 704(b) was to preserve pre-existing prevailing rate practices, and since there is no sound basis for distinguishing the foremen's situation from that presented in 59 Comp. Gen. 583, supra, we hold that the payment of double time for overtime to the foremen \* \* \* is proper. \* \* \*" 60 Comp. Gen. 58, at 60.

The considerations underlying our decision in Ableidinger and Walters do not apply in the face of the clear terms of the statutory pay increase limitation here involved. As noted previously, section 616 of H.R. 4139 expresses quite specifically both the basic coverage of the limitation and the exceptions to it. The limitation applies by its terms to the Radio Broadcast Technicians and the exceptions do not.

Moreover, subsection 616(b) of H.R. 4139 states that "[n]otwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of Public Law 95-454," the limitation applies to any prevailing rate employees to whom section 9(b) applies except as inconsistent with contracts entered into before October 1, 1983. Thus, the basic approach of the limitation is to cover section 9(b) employees along with other prevailing rate employees. In view of this, the analogy to section 9(b) and section 704(b) relied on in Ableidinger and Walters is unavailing here.

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Accordingly, we find no basis to exclude the Radio Broadcast Technician Foremen from the statutory pay increase limitation.

*for* *Milton J. Fowler*  
Comptroller General  
of the United States