

DOCUMENT RESUME

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[Environmental Differential as Basic Pay upon Conversion from Wage Grade to General Schedule Position]. B-186977. May 18, 1977. 7 pp.

Decision re: Donald B. Foulks; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Air Force: Tinker AFB, OK.

Authority: P.L. 92-392. 5 U.S.C. 5342(c). 5 U.S.C. 5342(c)(4). 5 U.S.C. 5101(c)(7). 5 C.F.R. 539.202-3. F.P.M. ch. 511, subch. 7-1.a. F.P.M. Supplement 532-1, para. S-8.2a(3). F.P.M. Supplement 532-1, para. S8-7. F.P.M. Supplement 831-1, para. S14-3d(ii). F.P.M. Letter 532-60. 50 Comp. Gen. 332. 50 Comp. Gen. 66. 52 Comp. Gen. 748. 36 Comp. Gen. 482.

Major C. T. Woolsey, Accounting and Finance Officer, USAF, requested a decision on whether environmental differential paid to Wage Board employees should be considered in fixing the "rate of basic pay" when they are converted to General Schedule positions. Environmental differential is part of an employee's basic rate of pay according to Civil Service Regulations. Date of conversion may not be retroactively changed, despite inequity to employees converted before adjustment. (Author/DJM)

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DECISION



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

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FILE: B-186977

DATE: May 18, 1977

**MATTER OF: Donald R. Foulks -- Environmental differential
as basic pay upon conversion from Wage Grade
to General Schedule position**

DIGEST:

1. Employees whose positions are converted from Wage Grade to General Schedule may have environmental differential considered as included in definition of "rate of basic pay" for the purpose of establishing their compensation in General Schedule under 5 C. F. R. Part 539. Civil Service Regulations state that environmental differential is part of employee's basic rate of pay and that it is used in computation of premium pay, retirement benefit and life insurance.
2. Effective date of conversions of employees' positions from Wage Board to General Schedule may not be retroactively changed even though some employees were converted prior to effective date of Wage Grade pay adjustment, thus losing benefit of adjustment, while other employees were converted after pay adjustment and had General Schedule pay set on basis of higher wage. Federal Personnel Manual, Subchapter 7-1. a, sets effective date of classification actions as date action is approved or later date specified by agency and prohibits retroactive effective date.

This action is at the request of Major C. T. Woolsey, Accounting and Finance Officer, Tinker Air Force Base, Oklahoma. Major Woolsey requests our decision whether the environmental differential paid to Wage Board employees should be considered in fixing the rate of basic pay when the employees' positions are converted to the General Schedule under the regulations set forth in 5 C. F. R. Part 539. Major Woolsey also questions the propriety of a retroactive change in the effective date of conversions under Part 539 in the circumstances described hereinafter. Major Woolsey has submitted as an illustrative case the claim of Mr. Donald R. Foulks.

Mr. Foulks' position as Electronic Quality Control Inspector, Wage Grade-12 step 5, was converted to a General Schedule position, grade GS-8 step 7, effective July 13, 1975. At the time of the conversion, Mr. Foulks was receiving a night shift differential and an Explosives

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and Incendiary Materials, low degree hazard, environmental differential. Mr. Foulks rate of basic pay for conversion purposes was determined to include the night shift differential but the environmental differential was excluded. It is argued that since the term "rate of basic pay" is defined for other purposes as including night shift and environmental differentials (see Federal Personnel Manual Supplement 532-1, para. S-8. 2a(3)), and since such differentials are used in computing annuities pursuant to FPM Supplement 831-1, para. S14-3d(ii), the environmental differential should be included in computing the "rate of basic pay" for conversion purposes.

The regulations pertaining to the conversion of a position from the Wage Board to the General Schedule are contained in Part 539 of Title 5 of the Code of Federal Regulations (1975). "Rate of basic pay" is defined at section 539.202(c) as follows:

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind."

This Office has held that a Wage Board employee's "rate of basic pay" for the purpose of 5 C. F. R. Part 539 includes night differential (50 Comp. Gen. 332 (1970)). In that decision we noted that the night differential had consistently been held to be a part of basic pay, citing several decisions of this Office, and approved of an interpretation of 5 C. F. R. 539.203 to include night differential as a "rate of basic pay fixed by * * * administrative action." Thus, we held that:

"for the purpose of preserving an employee's rate of basic pay under section 539.203, the 'rate of basic pay' in a wage position includes the night differential paid him in that position."
(Emphasis added.)

Also, 5 U. S. C. §5343(f) provides that in establishing wage schedules of prevailing rate employees a night differential is a part of the basic pay.

Environmental differential for Wage Board employees is authorized by 5 U. S. C. §5343(c), which provides in pertinent part:

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"The Civil Service Commission, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide -

* * * * *

"(4) for proper differentials, as determined by the Commission, for duty involving unusually severe working conditions or unusually severe hazards."

Implementing regulations are contained in FPM Supplement 532-1, para. S8-7. Paragraph S8-7h explains the relationship of environmental differential to other pay:

"Environmental differential is included as part of the employee's basic rate of pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work), the amount from which retirement deductions are made, and the amount on which group life insurance is based."

This is in agreement with our decision 50 Comp. Gen. 66 (1970), wherein we considered the question whether environmental pay differential was part of the employee's rate of basic pay. In that decision we stated:

"In B-53383, November 29, 1945, we pointed out that a wage fixing authority in the exercise of its normal function may authorize night differential or other elements of a wage program--not otherwise in contravention of law or established rule applicable to Federal employees--to conform with commercial practices generally without obtaining special authorization therefor. As to whether differentials are basic compensation, we have ruled that the night rate of compensation of an employee occupying a prevailing rate or wage board position is basic compensation (23 Comp. Gen. 982 (1944); 24 id. 39 (1944), and 34 id. 708 (1955)). Also, that night differential, post differential, and cost-of-living

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allowances which are saved by Civil Service regulations or by administrative action to employees whose positions are converted from classified to wage board schedule are regarded as 'basic compensation,' 38 Comp. Gen. 482. We find no basis to reach a contrary decision with respect to an environmental differential for dirty work, whether stated separately or included in the scheduled rates."

This rule also permits consistent treatment under section 5 C. F. R. 539.203 of the environmental differential with other elements of a Wage Board employee's basic compensation, e. g., night differential and cost-of-living allowances.

While our decision 50 Comp. Gen. 68, supra, was rendered prior to the effective date of Public Law 92-392, August 19, 1972, which amended 5 U. S. C. §5343, by establishing the Federal Wage System in place of the Coordinated Federal Wage System, we believe that the holding is still for application. The legislative history of the 1972 Act indicates that its purpose was to enact into law established principles and policies related to blue collar employees of the Federal Government which were previously handled administratively. See 52 Comp. Gen. 748 (1973).

In view of the above, we conclude that the environmental differential authorized by 5 U. S. C. §5343(c)(4) constitutes part of a Wage Board employee's "rate of basic pay" for the purpose of setting employees' pay incident to the conversion of employees' positions from wage system to the General Schedule under 5 C. F. R. Part 539.

The second question presented is whether the effective dates of conversions under Part 539 may be retroactively changed to a later effective date.

It appears that a determination was made by the appropriate administrative authority that certain Wage Board positions would more appropriately be classified under General Schedule Standards. Accordingly, after completion of classification surveys, the majority of the appropriate personnel actions were implemented prior to the October 1975 change in pay schedules for both the General Schedule and Wage Grade employees. However, some of the positions were not converted to the General Schedule until after the effective date of the pay adjustments.

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The significance of the time difference in the conversions is described by the administrative office as follows:

"The General Schedule pay raises were limited to approximately 5% last year, but no limit was applied to Wage Grade (WG) salaries which are established on a locality wage basis. Significant differences in salaries resulted with Wage Grade (WG) receiving an average of 15.44% increase. An unfortunate delay in effecting the personnel actions in the Industrial Products Division did afford those employees the benefit of the increased Wage Grade salaries while the employees who had been converted were afforded only the 5% raise, as they were General Schedule (GS) at the time of the pay increase."

Notwithstanding the disparity in salaries created by the above-described situation, the agency position is that:

"While it is regrettable that this situation has occurred, it must be pointed out that the action taken to effect the changes from Wage Grade (WG) to General Schedule (GS) prior to the pay schedule changes were appropriate legal actions. We find no legal basis to alter the effective date of these actions. A reduction-in-force was accomplished in October 1975 and these employees were considered in the GS-1960 positions for placement. The benefits received by the employees where conversion actions were delayed, while regrettably late, are still actions taken in accordance with existing regulations. It is recognized that some inequity among employees' salaries will result. However, under the circumstances described above and the requirements imposed, we feel we must honor effective dates of actions as taken."

In a letter to this Office dated October 19, 1976, the Tinker Air Force Base local of the American Federation of Government Employees (AFGE), representing certain affected employees, requested that the

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effective date of all conversions be changed so as to become effective after the October 19, 1975, wage grade pay adjustment. The main thrust of their argument is that the provisions of Federal Personnel Manual (FPM) Letter 532-60, dated October 26, 1973, were violated.

The FPM Letter 532-60 provided conversion instructions and job-grading standards for inspectors incident to the conversion from agency special wage schedules to the regular locality Federal Wage System nonsupervisory wage schedule. The third paragraph of FPM Letter 532-60 states that:

"The effective date of the pay systems change from the special schedule to the regular schedule will be the first pay period beginning on or after April 21, 1974. All conversion actions at a given activity will be effective on the same date (regardless of pay period variations)."

The AFGE believes that this language requires that all conversions from Wage Grade to General Schedule be on the same date, although they argue that the effective date should be after October 19, 1975, instead of the first pay period beginning on or after April 21, 1974.

The FPM Letter 532-60 clearly states that it pertains to the conversion of wage grade personnel from agency special wage schedules to the regular locality Federal Wage System nonsupervisory schedule. This was to cover all nonsupervisory inspector positions and established a consistent pay relationship among inspector jobs in all agencies which heretofore did not exist because of the dissimilar pay practices used by the different agencies. Attachment 1 to FPM Letter 532-60 states that the job grading standards contained therein should not be used for:

"Specialized technical work primarily concerned with the inspection of goods and services for acceptability of materials or processes and not involving, as a paramount requirement, the application of trade, craft, or laboring skills and knowledges. (See Quality Inspection Series, GS-1960.)" (Emphasis added.)

From the information furnished it appears that Mr. Foulks occupied positions in the GS-1960 series. Thus, the April 21, 1974, date is relevant only with regard to the conversion from the

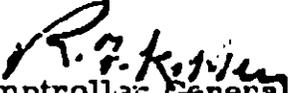
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special schedule to the regular schedule, the correctness of which has not been challenged. April 21, 1974, is not the controlling date for the purpose of conversions under 5 C. F. R. Part 539 from a wage board position to a position under the General Schedule. Rather, the decision to change a position from a wage system to the General Schedule is essentially a classification matter, the timing of which is governed by Civil Service regulations.

The authority to determine whether a position is exempt from the General Schedule classification system under 5 U. S. C. §5102(c)(7) (1970), which exempts wage system employees from the General Schedule classification laws, has been delegated by the Civil Service Commission to the agencies. Under its delegated authority, an agency may change a position from a wage system to the General Schedule classification system when it considers such a change appropriate in accordance with Commission guidelines and standards. See, generally Subchapter 2, Chapter 511, Federal Personnel Manual. With regard to the effective date of such change, FPM chapter 511, Subchapter 7-1. a sets the effective date as follows:

"An agency classification action takes effect on the date the action is approved unless the agency specifically sets a later effective date. * * * The agency may not make the action effective retroactively."

There is no indication that effective dates later than the approval dates were set for the conversions from Wage Grade to General Schedule positions. Although the timing of the conversion actions may have resulted in the granting of benefits to some employees and not to others, retroactive change in the effective date of the conversions is not permissible.


Deputy Comptroller General
of the United States