

DOCUMENT RESUME

02900 . [A1953023]

[Retroactive Temporary Promotions to Higher Grade General  
Schedule Positions for Prevailing Rate Employees]. B-187509.  
July 11, 1977. 4 pp.

Decision re: Burrell Morris, et al.; by Robert P. 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: National Federation of Federal  
Employees; United States Information Agency.

Authority: Back Pay Act of 1966 (5 U.S.C. 5596); 5 C.F.R. 550. 5  
U.S.C. 5535. F.P.M. Supplement 532-1, subpara. 8-3(g) (2).  
F.P.M. ch. 335, subch. 4-4. 5 C.F.R. 335.102(f) (1). 5 C.F.R.  
531.203. 5 C.F.R. 550.804. *Tedford v. Peabody Coal Co.*, 533  
F.2d 952 (1976).

Edward J. Nickel, Assistant Director (Administration  
and Management), United States Information Agency, requested a  
ruling on whether prevailing rate employees who were temporarily  
assigned to perform the duties of higher paying positions under  
the General Schedule could be paid the appropriate higher level  
pay rate for that work. The employees involved could not be paid  
for details, but they could be temporarily promoted to the  
higher grade positions with higher pay. Prior denials of such  
pay could be corrected, and the employees could receive  
retroactive temporary promotions and backpay. (Author/SC)

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**DECISION**



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

**FILE:** B-187509

**DATE:** July 11, 1977

**MATTER OF:** Burrell Morris, et al. - Retroactive temporary promotions to higher grade General Schedule positions for prevailing rate employees

**DIGEST:** United States Information Agency questions whether bargaining agreement provision providing higher pay for employees temporarily assigned to higher grade positions would provide a basis for paying higher rates to prevailing rate employees while temporarily assigned to higher grade General Schedule positions. Such employees may not be paid for details. However, they may be temporarily promoted to higher grade General Schedule positions with higher pay. Prior denials of such pay may be corrected under Back Pay Act, 5 U.S.C. § 5596, and such employees may receive retroactive temporary promotions and backpay.

This action involves a request from Mr. Edward J. Nickel, Assistant Director (Administration and Management), United States Information Agency (USIA), for a ruling on whether prevailing rate employees, who are temporarily assigned to perform the duties of higher paying positions under the General Schedule, may be paid the appropriate higher level pay rate for hours actually employed in such work.

The record in this case contains the following relevant information. Mr. Burrell Morris, a Master Control technician, grade WB-4/3 with an hourly pay rate of \$11.29 per hour was temporarily assigned as Acting Operations Manager from April 20 to April 28, 1976. The Operations Manager position is a grade GS-13 position which at that time had an hourly pay range of \$11.01 to \$14.32. The National Federation of Federal Employees (NFFE) Local 1418, the employees' representative, contends that Mr. Morris and all other technicians who have been temporarily assigned to higher level General Schedule positions since October 1, 1974, should be paid the hourly rate of the position incumbent. The union finds support for its contention in a provision of an ancillary agreement between the parties arrived at in the middle 1960s that was incorporated by reference in their current collective-bargaining agreement. This provision reads as follows:

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"Section 2 - 10: Assignment Pay

"Employees qualified to perform higher level work may be required by proper authority to perform such work and will be paid the appropriate higher level pay rate for hours actually employed in such work."

The USIA contends that past practices and circumstances surrounding the agreement on the above-quoted provision limit its application to assignments to higher level prevailing rate positions and that Federal law prohibits assignment pay to prevailing rate employees when temporarily assigned to General Schedule positions. The agency finds support for its position in subparagraph 8-3(g)(2), subchapter 8, Federal Personnel Manual (FPM) Supplement 532-1, General pay-fixing guides. The USIA also refers to FPM guideline on temporary promotions contained in subchapter 4-4, chapter 335, which states that when an employee is required to serve temporarily in a higher grade position, he should be temporarily promoted, "except when the service is for a brief period." Relying on this exception, USIA contends that Mr. Morris' 8-day temporary assignment was of too short a duration to warrant a temporary promotion.

We are unpersuaded by the agency's contentions. With regard to the scope of the agreement provision, it is a general principle of law that a unilateral interpretation of a collective-bargaining agreement by the employer is not per se binding on the parties. Tedford v. Peabody Coal Co., 533 F.2d 952 (1976). Where the meaning of an agreement provision is clear and unambiguous in its meaning, no construction is necessary. Local 783, Allied Industrial Workers v. General Electric, 471 F.2d 751, 756 (1973). We think that the above-quoted provision is clear and unambiguous. We can attach but one meaning to it, which is that employees assigned to higher level positions are to be paid at the higher rate of pay. If USIA desired to restrict the application of this provision to prevailing rate positions, such restriction should have been clearly stated in the provision. Hence, the only question that remains is whether the applicable statutes and regulations will permit the payment of higher level pay to employees temporarily assigned to higher level positions under the facts in this case.

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A review of applicable statutes and regulations reveals that an employee may not receive additional pay or allowances for: (1) performing the duties of another employee; (2) acting for or instead of an occupant of another position; or (3) being detailed to perform the duties of another job. See for example 5 U.S.C. § 5535 and FPM Supplement 532-1, subparagraph 8-3(g)(2). However, an agency may temporarily promote an employee to meet a temporary need for a definite period of 1 year or less. 5 C.F.R. § 335.102(f)(1). In this connection subparagraph 4-4a, chapter 335 of the FPM, provides guidance as to the use of temporary promotions by stating that: "[e]xcept when the service is for a brief period, a temporary promotion generally is the most appropriate means of meeting a situation requiring the temporary service of an employee in a higher-grade position." This guidance should not be construed as precluding temporary promotions for brief periods. Neither should it be interpreted as indicating that temporary promotions for brief periods are inappropriate. Rather, this guidance suggests that a temporary promotion is the most appropriate procedure for obtaining the temporary services of an employee in a higher grade position for extended periods.

Accordingly, USIA has a mandatory duty under the terms of the agreement provision to temporarily promote otherwise qualified prevailing rate employees when they are temporarily assigned, even for brief periods, to perform the duties of higher grade General Schedule positions. The violation of a nondiscretionary provision of a collective-bargaining agreement entitling an employee to additional pay and allowances is an unjustified or unwarranted personnel action under the Back Pay Act of 1966, 5 U.S.C. § 5596, and implementing regulations contained in 5 C.F.R. Part 550, subpart H. Mr. Morris and other similarly situated employees would therefore be entitled to corrective action in the form of retroactive temporary promotions to the higher grade positions in which they were assigned for brief periods from October 1, 1974, to the present, provided they were qualified to be appointed to these positions. Hence such employees would be entitled to backpay for the pay differential between rate of pay for their permanent position and the pay of the position to which they are temporarily promoted. Computation of backpay should conform to the provisions of 5 C.F.R. §§ 531.203 and 550.804, which indicate that temporarily

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upgraded employees are to receive a rate of pay based on the higher position rather than receive the rate of pay of the occupant of the higher position.

*Atkinson*  
Deputy Comptroller General  
of the United States