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B-164786, Oct 7, 1970, 50 Comp Gen 253

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COMPENSATION - POSTAL SERVICE - RATES - HIGHEST PREVIOUS RATE - POSTAL REORGANIZATION ACT INCREASES THE INCREASE IN RATES OF BASIC COMPENSATION AUTHORIZED BY THE POSTAL REORGANIZATION ACT, APPROVED AUGUST 12, 1970, TO TAKE "EFFECT ON THE FIRST DAY OF THE FIRST PAY PERIOD WHICH BEGINS ON OR AFTER APRIL 16, 1970," AND TO PROVIDE 108 PERCENT OF THE COMPENSATION RATES IN EFFECT PRIOR TO THE ENACTMENT OF THE ACT, MAY BE EXTENDED BY REGULATION TO EMPLOYEES WHO TRANSFERRED TO THE POST OFFICE DEPARTMENT PRIOR TO AUGUST 12, 1970, WITHOUT REGARD TO THE "HIGHEST PREVIOUS SALARY RULE" STATED IN SECTION 531.203(C) OF THE CIVIL SERVICE REGULATIONS ISSUED PURSUANT TO 5 U.S.C. 5334(A) AND 5338 THUS PRESERVING THE SALARY RATES OF THE TRANSFERRED EMPLOYEES IN ACCORD WITH THOSE SALARY INCREASE ACTS THAT OVER THE YEARS CONTAINED PROVISIONS TO OVERCOME THE RESTRICTIONS OF THE "HIGHEST PREVIOUS SALARY RULE" - A RULE THAT CONTINUES TO APPLY TO EMPLOYEES TRANSFERRED ON AND AFTER AUGUST 12, 1970.

TO THE POSTMASTER GENERAL, OCTOBER 7, 1970:

ON SEPTEMBER 10, 1970, THE DEPUTY POSTMASTER GENERAL REQUESTED OUR ADVICE CONCERNING THE EXTENT OF AUTHORITY GRANTED THE POSTMASTER GENERAL UNDER SECTION 9(A) OF THE POSTAL REORGANIZATION ACT, PUBLIC LAW 91-375, APPROVED AUGUST 12, 1970, 84 STAT. 719, 784, 39 U.S.C. 1003 NOTE, WHICH PROVIDES:

THE POSTMASTER GENERAL, UNDER REGULATIONS MADE BY HIM, SHALL INCREASE THE RATES OF BASIC PAY OR COMPENSATION OF EMPLOYEES IN THE POST OFFICE DEPARTMENT SO THAT SUCH RATES WILL EQUAL, AS NEARLY AS PRACTICABLE, 108 PERCENT OF THE RATES OF BASIC PAY OR COMPENSATION IN EFFECT IMMEDIATELY PRIOR TO THE DATE OF ENACTMENT OF THIS ACT. SUCH INCREASES SHALL TAKE EFFECT ON THE FIRST DAY OF THE FIRST PAY PERIOD WHICH BEGINS ON OR AFTER APRIL 16, 1970.

THE POST OFFICE DEPARTMENT PROPOSES TO ISSUE REGULATIONS UNDER THE ABOVE PROVISION WHEREBY AN EMPLOYEE WHO TRANSFERS OR HAS TRANSFERRED TO THE POST OFFICE DEPARTMENT FROM ANOTHER GOVERNMENT AGENCY AFTER THE FIRST DAY OF THE FIRST PAY PERIOD BEGINNING ON OR AFTER APRIL 16, 1970, MAY BE EMPLOYED AT A GRADE AND PAY STEP COMMENSURATE WITH THE GRADE AND PAY STEP HE HELD IN HIS PREVIOUS POSITION WITH HIS BASIC COMPENSATION INCREASED BY 8 PERCENT EFFECTIVE AT THE TIME OF TRANSFER.

THE QUESTION IS RAISED AS TO WHETHER THE EXISTING "HIGHEST PREVIOUS SALARY RULE" PRECLUDES THE ISSUANCE OF REGULATIONS AS PROPOSED.

AS POINTED OUT IN THE SUBMISSION SECTION 531.203(C) OF THE CIVIL SERVICE REGULATIONS - ISSUED PURSUANT TO 5 U.S.C. 5334(A) AND 5338 - PROVIDES:

*** WHEN AN EMPLOYEE IS TRANSFERRED *** THE AGENCY MAY PAY HIM AT ANY RATE OF HIS GRADE WHICH DOES NOT EXCEED HIS HIGHEST PREVIOUS RATE; HOWEVER, IF HIS HIGHEST PREVIOUS RATE FALLS BETWEEN TWO RATES OF HIS GRADE, THE AGENCY MAY PAY HIM AT THE HIGHER RATE ***

THE SUBMISSION REFERS TO 26 COMP. GEN. 368 (1946) WHICH, AS MODIFIED BY 26 COMP. GEN. 530 (1947), IS TO THE SAME EFFECT AS THE ABOVE-CITED REGULATION. ADDITIONALLY, WITH RESPECT TO THE APPLICATION OF THE HIGHEST PREVIOUS RATE IN THE CONTEXT OF A RETROACTIVE SALARY INCREASE THE SUBMISSION REFERS TO 31 COMP. GEN. 166 (1951), ID. 320 (1952); 34 ID. 691 (1954); 38 ID. 188 (1958); 44 ID. 171 (1964) AND B-169686, MAY 22, 1970. THOSE DECISIONS HOLD, CONCERNING THE RETROACTIVE PROVISIONS OF SALARY INCREASE ACTS, THAT SUCH ACTS BE APPLIED - IN THE ABSENCE OF STATUTORY PROVISION TO THE CONTRARY - TO REFLECT THE SALARY STATUS OF EACH EMPLOYEE UNDER THE INCREASED RATES AS IF SUCH RATES HAD BEEN IN FORCE AND EFFECT AT THE TIME OF ANY CHANGE IN HIS STATUS.

THE DEPUTY POSTMASTER GENERAL STATES THAT IF SECTION 9(A) OF THE POSTAL REORGANIZATION ACT DID NOT CONFER AUTHORITY ON THE POSTMASTER GENERAL TO MAKE THE PROPOSED REGULATION TO IMPLEMENT THE PAY INCREASE, SOME EMPLOYEES WHO TRANSFERRED TO THE POST OFFICE DEPARTMENT AFTER APRIL 16, 1970, MIGHT BE REQUIRED TO HAVE A REDUCTION IN THEIR PAY STEPS AND THUS LOSE PART OR ALL OF THE 8 PERCENT INCREASE. THE SUBMISSION NOTES THAT THE PROBLEM AS SUCH WILL CEASE ON OR BEFORE AUGUST 12, 1971, 1 YEAR AFTER APPROVAL OF THE POSTAL REORGANIZATION ACT. AT SUCH TIME THE POSTAL SERVICE WILL HAVE AUTHORITY TO CLASSIFY AND FIX PAY OF POSTAL EMPLOYEES WITHOUT REGARD TO 5 U.S.C. 5334 AND OTHER PROVISIONS OF THE CLASSIFICATION ACT. SEE 39 U.S.C. 410, 1003 AS CONTAINED IN SECTION 2 OF THE POSTAL REORGANIZATION ACT.

THE PROPOSED REGULATION WOULD PUT NEWLY TRANSFERRING EMPLOYEES IN A POSITION OF EQUALITY WITH PERSONS EMPLOYED BY THE POST OFFICE DEPARTMENT PRIOR TO THE FIRST DAY OF THE FIRST PAY PERIOD BEGINNING ON OR AFTER APRIL 16, 1970, AS WELL AS PERMITTING THE DEPARTMENT TO AVOID THE NECESSITY OF REDUCING THE PAY STEP OF ANY EMPLOYEE BECAUSE OF A POST-APRIL 16TH TRANSFER.

WE NOTE THAT OVER THE YEARS SEVERAL SALARY INCREASE ACTS HAVE CONTAINED SPECIFIC PROVISIONS TO OVERCOME THE GENERAL RULE AS STATED IN OUR DECISIONS PREVIOUSLY REFERRED TO. THE PURPOSE OF SUCH PROVISIONS HAS BEEN TO PRESERVE STEPS IN GRADE OR SALARY RATES WHICH WOULD HAVE PREVAILED IF THE PERSONNEL ACTIONS, SUCH AS TRANSFER AND PROMOTION, HAD OCCURRED PRIOR TO THE EFFECTIVE DATES (RETROACTIVE PERIOD) OF THE SALARY INCREASE ACTS. IN OTHER WORDS THE ACTS PRESCRIBED THE RULES TO BE FOLLOWED IN CERTAIN SITUATIONS IN CONVERTING FROM ONE PAY ACT TO ANOTHER. FOR EXAMPLE SEE THE PROVISIONS OF THE POSTAL REVENUE AND SALARY ACT OF 1967, 81 STAT. 613-648, 39 U.S.C. 4252.

ACCORDINGLY, OUR VIEW IS THAT THE REGULATIONS PROPOSED ARE SIMILAR TO RULES PREVIOUSLY SET FORTH BY STATUTE AND ARE CLEARLY AUTHORIZED WITHOUT REGARD TO THE "HIGHEST PREVIOUS RATE RULE" BY REASON OF THE DELEGATION OF AUTHORITY TO YOU IN THAT RESPECT.

HOWEVER, WE WISH TO POINT OUT THAT IN CONCLUDING YOU ARE AUTHORIZED BY VIRTUE OF THE REGULATORY AUTHORITY VESTED IN YOU TO GRANT A FULL 8 PERCENT PAY INCREASE TO EMPLOYEES TRANSFERRING TO THE POST OFFICE DEPARTMENT AT THE BEGINNING OF THE FIRST PAY PERIOD ON AND AFTER APRIL 16, 1970, WITHOUT REGARD TO THE HIGHEST PREVIOUS RATE RULE, WE ARE REFERRING ONLY TO THOSE EMPLOYEES WHO HAVE TRANSFERRED PRIOR TO AUGUST 12, 1970, THE ENACTMENT DATE OF THE ACT. WE DO NOT

CONSIDER THE AUTHORITY TO REGULATE WITH RESPECT TO INCREASING THE PAY OF POSTAL EMPLOYEES ON THE ROLLS OF THE DEPARTMENT PRIOR TO THE ENACTMENT DATE OF THE ACT AS BEING SUFFICIENTLY BROAD TO REACH THE QUESTION OF DETERMINING THE MANNER IN WHICH THE PAY OF THOSE PERSONS TRANSFERRING TO THE DEPARTMENT ON AND AFTER AUGUST 12, 1970, WILL BE ESTABLISHED. FOR SUCH PERSONS, THE HIGHEST PREVIOUS RATE RULE WOULD BE APPLICABLE.