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United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Government Printing Office--Recruitment & Relocation Payments and Retention Allowances

File: B-301837

Date: April 28, 2004

DIGEST

In view of the broad authority under the Kiess Act, 44 U.S.C. § 305, to set the pay of Government Printing Office (GPO) employees, GPO may use appropriated funds to pay recruitment and relocation bonuses and retention allowances. Because of the close relationship between GPO and the Joint Committee on Printing (JCP), we suggest that GPO consult with JCP on its decision to make such payments.

DECISION

The General Counsel of the Government Printing Office (GPO) has requested an advance decision under 31 U.S.C. § 3529 on whether GPO may use appropriated funds to provide recruitment and relocation payments and retention allowances to GPO employees hired under the Kiess Act, 44 U.S.C. § 305.[1] As we explain below, GPO's broad authority to set wage and salary rates under the Kiess Act permits the Public Printer to make recruitment and relocation payments and retention allowances. Because of the close relationship between GPO and the Joint Committee on Printing (JCP), we suggest that GPO consult with JCP on its decision to make such payments.

BACKGROUND

GPO's authority to employ and pay employees is found at 44 U.S.C. § 305 (the Kiess Act). That statute states, in part:

> "The Public Printer may employ journeymen, apprentices, laborers, and other persons necessary for the work of the Government Printing Office at rates of

[1] To the extent that GPO may have employees whose compensation is not fixed under the Kiess Act, this decision may not apply.

wages and salaries, including compensation for night and overtime work, he considers for the interest of the Government and just to the persons employed, except as otherwise provided by this section."

The salaries of GPO employees are paid from two appropriations. Most GPO employees are paid from the GPO Revolving Fund. 44 U.S.C. § 309. See Budget of United States Government, Fiscal Year 2005 Appendix at 44 (Government Printing Office, Intragovernmental Funds, Government Printing Office Revolving Fund). A small number of GPO employees are paid from annual appropriations for salaries and expenses for the Office of the Superintendent of Documents. Id. at 43. See Legislative Branch Appropriations Act, 2004, Pub. L. No. 108-83, Tit. I, 117 Stat. 1007, 1032 (2003).

The GPO General Counsel believes that the Kiess Act, when coupled with the Public Printer's mandate "to take charge and manage the Government Printing Office,"[2] allows the Public Printer to use these appropriated funds to provide recruitment and relocation bonuses and retention allowances to GPO employees.[3] Letter from Anthony J. Zagami, General Counsel, Government Printing Office, to Anthony H. Gamboa, General Counsel, General Accounting Office, Sept. 26, 2003.

ANALYSIS

The Congress has authorized the Office of Personnel Management (OPM) to permit the heads of executive branch and certain other agencies to make recruitment, relocation, and retention payments to federal employees. 5 U.S.C. §§ 5753 (recruitment and relocation bonuses), 5754 (retention allowances).[4] However, sections 5753 and 5754 only authorize such payments for employees and positions that are subject to subchapter III of Chapter 53 of Title 5. 5 U.S.C. §§ 5753(c)(2) and 5754(c)(2). Subchapter III of Chapter 53, in turn, applies only to employees and positions to which Chapter 51 of Title 5 applies. 5 U.S.C. § 5331(b). Employees of GPO whose pay is fixed under 44 U.S.C. § 305 (the Kiess Act) are excluded from

[2] 44 U.S.C. § 301.

[3] For purposes of this decision, and as defined in Title 5 of the United States Code, "recruitment and relocation bonus" is a lump-sum payment offered to a prospective employee by an agency that has determined that in the absence of such a bonus, the agency would encounter difficulty in filling the position. The bonus is contingent upon the employee entering into an agreement with the agency to complete some period of employment. See, e.g., 5 U.S.C. § 5753. Similarly, a "retention allowance" is a lump-sum payment to a highly qualified employee by an agency that has determined that the employee would be likely to leave in the absence of the allowance. See, e.g., 5 U.S.C. § 5754.

[4] OPM has delegated to agency heads the authority to provide recruitment and relocation payments and retention allowances to applicable employees. See 5 C.F.R. §§ 575.102 (delegation of authority, recruitment bonuses); 575.202 (delegation of authority, relocation bonuses); 575.302 (delegation of authority, retention allowances).

coverage under Chapter 51,[5] and are therefore excluded from coverage under Subchapter III.[6] Since GPO employees who are governed by the Kiess Act are not covered by Chapter 51 or subchapter III of Chapter 53, they are ineligible to receive recruitment, relocation, or retention payments under sections 5753 and 5754.[7] We note Judge Miller's observation that "the overall statutory scheme addressing the compensation of GPO employees belies a paradigm of clarity . . . ." Abramson v. United States, 40 Fed. Cl. 204, 214 (1998) (holding that 5 U.S.C. § 5544(a), which governed the rate of overtime pay, applied to certain GPO employees paid on an annual basis). OPM's authority, therefore, to permit heads of agencies to make these payments does not extend to the Public Printer.[8]

Most agency heads operate under strict pay statutes and regulations and have little or no authority to set compensation; consequently, they require specific authority to offer recruitment, relocation, and retention payments to federal employees. See 5 U.S.C. Chapters 51, 53, and 55; 5 C.F.R. Parts 511, 530, 531, 532, 534, and 536. See also H.R. Conf. Rep. No. 101-906, § IV, Pay Flexibilities, at 89 (1990) (explaining the inclusion of special authorities to pay recruitment and relocation bonuses and travel and transportation expenses for new job candidates and new hires in H.R. 5241, which became Pub. L. 101-509 (1990)). See further *Treasury, Postal Serv., and Gen. Gov't Appropriations for Fiscal Year 1991, Hearings Before the House Subcomm. on the Treas., Postal Serv. and Gen. Gov't Appropriations*, Part 4, Office of Personnel Management, 101st Cong. 653-4, (1990) (statement by Office of Personnel Management Director Constance Berry) ("We propose to authorize the payment of bonuses to recruit and retain or relocate workers with critical skills.")[9]

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[5] 5 U.S.C. § 5102(c)(9).

[6] Curiously, but not relevant to the matter before us, sections 5753 and 5754 both state that the term "agency" has the meaning given by 5 U.S.C. § 5102, which explicitly includes GPO. 5 U.S.C. § 5102(a)(1)(D).

[7] This conclusion is consistent with earlier decisions interpreting Title 5 of the U.S. Code as applied to GPO employees. See B-196053, Feb. 29, 1980, holding that the highest previous rate rule established in 5 U.S.C. § 5334(a) did not apply to a Kiess Act employee. That decision, as here, turned on whether the employee was covered by Subchapter III of Chapter 53. As here, we explained that because Kiess Act employees are not covered by Chapter 51, they are excluded from Subchapter III coverage.

[8] Through this same analysis, OPM regulations authorizing agency heads to provide recruitment and relocation payments and retention allowances do not cover GPO employees hired under the Kiess Act. See 5 C.F.R. §§ 575.102(a), 575.202(a) and 575.302(a).

[9] Cf. Fed. Pers. Manual, Ch. 332-A-1, Recruitment Methods (Office of Pers. Mgmt. July 13, 1981) (superceded); Ch. 530-7, Special Salary Rates for Recruitment and Retention (July 31, 1986) (superceded); Ch. 572-3, Travel Expenses for Preemployment Interviews (July 14, 1989) (superceded). Although superceded, OPM's *Federal Personnel Manual* (FPM) offered comprehensive guidance to federal agencies on recruitment, relocation, and retention. No discussion of bonuses or

Because GPO's Kiess Act employees are not covered by the authorities available to most federal agencies to provide recruitment and relocation payments and retention allowances, the question arises whether GPO may use appropriated funds to make such payments to its employees. Unlike most agency heads, the Public Printer has pay authorities specific to GPO -- the Kiess Act. To determine whether the Public Printer possesses independent authority to make these payments, we look to that Act. The language of 44 U.S.C. § 305 is broad and general; it grants the Public Printer wide discretion to fix compensation rates for GPO employees. The Public Printer may employ persons necessary for the work of GPO "at rates of wages and salaries, including compensation for night and overtime work . . . he considers for the interest of the Government and just to the persons employed . . ." 44 U.S.C. § 305 (emphasis added).[10] We have on previous occasions recognized the broad authority vested in the Public Printer under the Kiess Act. See, e.g. B-191619, May 9, 1978. See also 36 Comp. Gen. 163 (1956) (broad provisions of the Kiess Act place no limitation on the Public Printer's authority to fix workweeks of less than 40 hours and pay overtime for work in excess of that workweek).[11]

Prior to passage of the Kiess Act, the Congress annually set the pay for various positions at GPO. See, e.g. Pub. L. No. 67-431, 42 Stat. 1264, 1277-78 (1923) (fiscal year 1924 legislative branch appropriations setting salaries for various clerks, secretaries, delivery men, messenger boys and other positions). The Kiess Act was enacted, in part, to delegate such pay-setting authority to the Public Printer.

> "It would be a difficult task for Congress to fix by law from time to time such wages as would be just to the score or more of trades and the numerous groups of each trade employed in the Government Printing Office. Therefore it was decided [by the Joint Committee on Printing] that the wages of all the work forces in the Government Printing Office be determined by the Public Printer. . . . To secure an adequate number of efficient workmen at all times it is necessary for the Government as

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allowances for such purposes appears in the relevant sections of the FPM, further supporting the conclusion that most executive branch agencies did not have authority to make such payments prior to the enactment of 5 U.S.C. §§ 5753 and 5754.

[10] Compare, e.g. the more limited authority of 5 U.S.C. § 3101, granting executive agencies, military departments and the government of the District of Columbia general authority to "employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year," and Chapters 51 (Classification), 53 (Pay Rates and Systems), and 55 (Pay Administration) of Title 5 generally with 44 U.S.C. § 305.

[11] Cf. 41 Op. Att'y Gen. 282 (1956). In view of Congress' intent to permit the Public Printer to compete with private industry for the services of persons skilled in printing trades, the Attorney General concluded that the Kiess Act conferred very broad employment authority on the Public Printer, subject to congressional supervision through the Joint Committee on Printing, and that the Act should not be narrowly construed.

> it is for the private employer to be able to meet changing conditions with corresponding readjustments to wage scales. . . . Accordingly, the Public Printer . . . should have the authority to readjust wages for the Government Printing Office from time to time, the same as can now be done for every other industrial plant . . ." 65 Cong. Rec. 10,552 (1924) (Statement of Rep. Kiess).

The flexibility that Representative Kiess sought for the Public Printer is found in the language of the legislation that was enacted: to employ persons at wages and salaries "he considers for the interest of the government and just to the persons employed." 44 U.S.C. § 305. The Congress constrained the Public Printer's exercise of discretion not by reference to pay statutes and regulations applicable to other federal employees but "except as otherwise provided by this section." Id.

We believe that payment of recruitment and relocation bonuses and retention allowances can be reasonably viewed as incidental to wages and salaries.[12] Recruitment and relocation payments and retention allowances are commonly viewed today as important tools in recruiting, maintaining, and managing an effective, dynamic workforce.[13] See, e.g. *Hearings on Treasury, Postal Serv., and Gen. Gov't Appropriations for Fiscal Year 1991,* 101st Cong. 653-4 ("We also are interested in building an additional flexibility in order to help the government recruit and retain the best . . .") Indeed, the flexibility to offer recruitment and relocation bonuses and retention allowances today seems to be the same sort of flexibility that Representative Kiess sought for the Public Printer in 1924: "to secure an adequate number of efficient workmen at all times, it is necessary for the government as it is for the private employer to be able to meet changing conditions . . ." 65 Cong. Rec. 10,552 (1924). Exercising his discretion to offer wages and salaries that he "considers for the interest of the Government and just to the persons employed," the Public Printer, for example, might reasonably consider it in the government's interest and just to the employee, or prospective employee, to provide a recruitment or relocation bonus or retention allowance for a hard to fill GPO position.

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[12] In some instances, we have defined the terms "wages" and "salaries" as having narrower definitions than the term "compensation." See, e.g., B-205284, Nov. 16, 1981 ("salary" as used in the Tennessee Valley Authority Act means employee's basic compensation or annual rate of compensation, not including overtime compensation, occasional bonuses, retirement fund contributions, and miscellaneous fringe benefits). We note, however, that the three terms are used synonymously throughout 44 U.S.C. § 305. See, also 41 Op. Att'y Gen. 282 (1956) (establishment of regular hours of work and workweek generally recognized as part of wage negotiations and Public Printer required to conduct such negotiations); Pub. L. No. 67-431, 42 Stat. 1264, 1278 (1923) (appropriating funds to Public Printer for "salaries, compensation, or wages of all necessary employees").

[13] Cf. 68 Comp. Gen. 127 (1988) (finding outplacement assistance a necessary expense to enhance attractiveness of employment in public service and to recruit dynamic, talented workforce).

While the Kiess Act, broadly read, permits the Public Printer to use appropriated funds to make recruitment, relocation, and retention payments, we suggest that the Public Printer consult with the Joint Committee on Printing (JCP) on its decision to make such payments. JCP has a close relationship with GPO, a legislative branch agency. See, e.g., 44 U.S.C. § 103 (JCP power to remedy neglect, delay, duplication, waste); § 502 (JCP approval of contract work); § 505 (JCP regulation of sale of duplicate plates); § 509 (JCP fixing standards for paper); § 512 (JCP approval of paper contracts); § 1914 (JCP approval of measures taken by the Printer to implement the depository library program). See also Lewis v. Sawyer, No. 85-1414, slip. op. (D.D.C. July 2, 1982), aff'd 698 F.2d 1261 (D.C. Cir. 1983) (Public Printer lacked authority to furlough workers because JCP passed resolution forbidding GPO furloughs); B-252215, March 24, 1993.

CONCLUSION

The Kiess Act, 44 U.S.C. § 305, provides the Public Printer with broad authority to set wage and salary rates of GPO employees covered by that Act. Recruitment and relocation payments and retention allowances are necessary to recruiting and managing an effective, dynamic workforce. Therefore, the Public Printer, acting under his broad Kiess Act authority, may make such payments and allowances available to GPO employees. Because of the close relationship between GPO and the Joint Committee on Printing, we suggest that the Public Printer consult with JCP on its decision to pay recruitment and relocation payments and retention allowances. We would also note that it would be advisable for the Public Printer to set criteria under which such bonuses or allowances are given in particular circumstances.

/signed/

Anthony H. Gamboa
General Counsel