

DECISION



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

FILE: B-212486

DATE: October 31, 1983

MATTER OF: Compensatory Time Off for Regularly Scheduled Overtime

DIGEST:

Joint submission from agency and union asks whether employees may receive compensatory time off for regularly scheduled overtime work. We hold that both law, 5 U.S.C. § 5543, and regulations, 5 C.F.R. § 550.114, preclude the granting of compensatory time off for overtime other than that which is irregular or occasional.

This matter comes to us as a joint submission from the Norfolk Navy Shipyard, Department of the Navy (agency), and the International Federation of Professional and Technical Engineers, Local 1 (union). It involves the question as to whether certain General Schedule (GS) employees have the right to choose between overtime pay and compensatory time off for all regularly scheduled overtime work they perform. No grievance has been filed in this matter.

This request has been handled as a labor-relations matter under 4 C.F.R. Part 22 (1983), and pursuant to 4 C.F.R. § 22.7(b), the Comptroller General will issue a decision to the parties on their joint request.

FACTS AND CONTENTIONS OF THE PARTIES

On November 3, 1977, a negotiated agreement between the agency and the union became effective. The contract was scheduled to remain in effect for a period of two years, at which time it expired. Since then, the agency and union have been complying with the terms and conditions embodied in the contract. In this connection Article 28 of the contract provides:

"* * * This Agreement shall remain in effect for a period of two years from the date of its approval and, by mutual agreement of the parties, may be extended from year to year thereafter."

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The provision at issue here is Article 8 of the contract concerning overtime which states as follows:

"Section 1.

- "a. Unit employees will receive overtime compensation in accordance with applicable laws and regulations.
- "b. Unit employees may choose between over-time pay and compensatory time off for all regularly scheduled overtime work performed. To constitute 'regularly scheduled work' the work must be duly authorized in advance and must be scheduled to recur on successive days or after specified intervals."

The joint submission states that certain GS employees, who are members of the bargaining unit covered by the above provisions, are regularly scheduled by name to weekend over-time tours of duty. These overtime assignments are usually made one to two weeks in advance of the administrative work-week, and the assignments last from six weeks to three months.

The agency argues that even though the above contract provisions were approved by the agency, the language in Article 8, Section 1.b, quoted above, is contrary to the provisions in 5 U.S.C. § 5543 and 5 C.F.R. § 550.114. Accordingly, the agency states that Article 8, Section 1.b, being contrary to law and regulation is null and void.

The union states that the policy in Article 8, Section 1.b, was of a benefit to both the employees and the agency. By allowing the use of compensatory time off in lieu of overtime compensation payments, management had greater flexibility to work employees overtime without having to pay for the overtime. The employees benefitted because they had a greater choice in the use of compensatory time.

ANALYSIS AND OPINION

The circumstances under which a GS employee may take compensatory time off in lieu of overtime pay are stated in 5 U.S.C. § 5543 (1982), which reads as follows:

"(a) The head of an agency may -

"(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

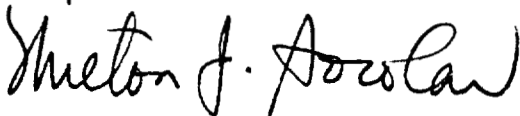
"(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title." (Underscoring supplied.)

Section 550.114 of Title 5, Code of Federal Regulations, prescribes regulations concerning the granting and use of compensatory time off, but only for irregular or occasional overtime work. It is apparent, therefore, that by specifically stating that compensatory time off may be used for irregular or occasional overtime work, both the law and the regulations have precluded the use of compensatory time off for regularly scheduled overtime. See 53 Comp. Gen. 264, 268 (1973). We are aware of no other law providing for compensatory time off for overtime work which would be applicable here.¹ While it may be true that both the agency and the employees might benefit from the arrangement expressed in Article 8, Section 1.b, the fact remains that there is no legal basis for this provision. The plain wording of 5 U.S.C. § 5543, excludes the practice of granting compensatory time off for overtime work which is not irregular or occasional. Accordingly, the unit employees may not choose to take compensatory time off for regularly scheduled overtime work performed.

¹ Section 5550a of Title 5, United States Code, which is not applicable to this situation, provides that compensatory time off may be taken for overtime work when an employee's personal religious beliefs require the abstention from work during certain periods of time. That overtime work need not be irregular or occasional.

Moreover, it is clear under the Office of Personnel Management's regulations, that the overtime work actually performed in this case is not irregular or occasional. Irregular or occasional overtime work means overtime work which is not regularly scheduled. 5 C.F.R. § 550.103(f) (1983). Since the overtime work here is included within the regularly scheduled administrative workweek under 5 C.F.R. § 610.111(a)(2) (1983), that overtime work may not be considered irregular or occasional.

Our conclusion, therefore, is that the concerned employees may not take compensatory time off for regularly scheduled overtime work.

for 
Comptroller General
of the United States