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OGC 71-1318

3 September 1971

MEMORANDUM FOR: Deputy Director for Support

SUBJECT: Request for Exception to Agency Regulations

REFERENCE: 22 Jul 71 Memo fr FMSAC for DDS, Same Subject

1. As you are aware, for many years the Agency has taken the position that its employees are not subject to the various laws relating to overtime, hours of work, holiday pay, etc. These various provisions were originally in the Federal Employees Pay Act of 1945. Having once reached the position that we are not subject to these laws, the Deputy Director for Support is authorized to establish appropriate regulations regarding these matters.

2. In the past the Deputy Director for Support has exercised his authority to establish exceptions to existing regulations in special situations where they seemed warranted. Two cases come to mind, namely, Vietnam and Laos. Consequently, a decision whether to approve FMSAC's request is a pure policy question within the authority of the Deputy Director for Support.

3. It is noted that there are other situations in the Agency where the actual hours of work do not correspond to prescribed regulations. Apparently, in some of these situations the time worked is reported in accordance with Agency regulations but not in accordance with the actual hours worked. In our view, each of these situations should be examined so that if a work week is at variance with the regulations it would receive, if warranted,

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express Deputy Director for Support approval as an exception. Reporting hours worked on a basis different from the actual facts could result in claims for additional overtime, holiday, or night pay. Were such claims presented, they would have to be adjudged on the basis of the policy expressed in existing regulations.

4. In summary, it is believed that all hours worked and the reporting of them should be in accordance with Agency regulations or as otherwise approved by the Deputy Director for Support.



Acting General Counsel

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[Redacted Signature]

Acting General Counsel

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FEDERAL EMPLOYEES' NEWS DIGEST

EDITED BY JOSEPH YOUNG
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FRINGES VS. PAY—The Nixon administration has let it be known that any improved fringe benefits won by federal employees this year may come at the expense of the size of their next scheduled pay raise. The Postal Service is expected to take the same attitude in bargaining with postal employees.

Administration officials say that annual industry adjustments, upon which comparable federal salaries are based, often involve both salary raises and fringe benefits in one single compensation package.

Therefore, they contend, it is too much of a bonanza to give federal employees pay raises in the total amount of compensation received by private sector workers, plus liberalized fringe benefits.

The administration feels that fringe benefits should be figured as part of the total federal compensation package.

Thus, for example, if government employees this year should secure improvements in retirement and insurance benefits, the amount of their next scheduled pay raise—either in October or Jan. 1, 1974—would be reduced accordingly. For example, if improved fringe benefits totaled 1 percent and federal workers were in line for a pay raise of 5 percent next January, then the pay raise would be reduced to 4 percent.

Actually, federal blue-collar workers already face the prospect of having their scheduled pay raises this year reduced as a result of a law enacted by Congress last year.

The new law goes into effect in April and adds two additional automatic in-grade pay steps. It's estimated that this will increase the payroll cost by at least 1-1/2 to 2 percent.

Thus, the Civil Service Commission and the Office of Management and Budget are now studying whether the amount should be deducted from this year's round of pay raises for blue-collar workers.

Also involved in the situation is the economic controls program which limits national pay raises to 5.5 percent. Another 0.7 percent has been allotted for fringe benefits. In a few cases a combination of pay raises and fringe benefits totaling 7 percent has been allowed. The amount of federal blue-collar pay raises, plus their new liberalized pay structure, will have to be determined by the CSC and OMB to see if they can get the full amount of their scheduled pay raises this year.

HEALTH INSURANCE AND OTHER ISSUES—Rep. Jerome Waldie, D-Calif., chairman of the House Civil Service Insurance subcommittee, has sponsored legislation to increase the government's contribution to the cost of group health insurance for federal employees, including postal workers.

The bill would boost government's present 40 percent of contributions to 45 percent upon enactment, and thereafter in annual 5 percent increments to a total of 75 percent.

The House passed a similar bill last year. The Senate passed a less generous version, raising government contributions to 50 percent and excluding postal workers.

It was the dispute over whether or not to include postal workers that killed the bill in House-Senate conference. The Senate would not yield in its insistence that postal workers be excluded.

Now, Waldie has again sponsored his bill with postal workers included. Unless the Senators change their minds, this once again could be a great stumbling block against the bill's chances of enactment into law during this session of Congress.

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In fact, the entire issue of whether postal workers should be treated as federal employees when it comes to fringe benefits is one that is going to have to be eventually decided by Congress. The last session of Congress never resolved the issue, with the result that virtually all fringe benefits bills went down the drain. The only thing the House and Senate are agreed on is that postal workers should be included in all retirement benefits legislation.

But even on retirement, there is discord. The House wants the Postal Service to reimburse the civil service retirement fund for the cost of all future retirement liberalization costs pertaining to

postal workers as well as the added cost to the retirement fund resulting from postal pay raises. To this end, the first week of the new Congress saw top members of the House Post Office and Civil Service Committee sponsor such legislation. They included Chairman Thaddeus Dulski, D-N.Y. and Rep. H. R. Gross, R-Iowa, the ranking minority member. In contrast, the Senate Post Office and Civil Service Committee is opposed to such legislation.

CSC CONTROVERSY—After Gordon Rule was bounced from his job as the top Navy civilian procurement office after criticizing President Nixon for picking the head of Litton Industries, the giant conglomerate, as the new director of the Office of Management and Budget, he appealed to the Civil Service Commission. To his surprise he found that the vice chairman of the CSC, Mrs. Jayne Baker Spain, is a member of the board of directors of Litton and that she also receives \$7,500 a year from Litton.

The propriety of a CSC commissioner serving as a director for a company that does a huge business with the federal government, particularly with the Defense Department and its more than 1 million civilian employees who have to appeal to the CSC on adverse personnel actions, has created considerable controversy.

Mrs. Spain has indicated that she would withdraw from the consideration of Rule's appeal if it reaches the commissioners' level. But the larger issue of the propriety of a CSC commissioner serving as a member of the board of directors of a private company dealing with government and drawing a salary has not been resolved.

PUBLIC HEARINGS—The Supreme Court has cleared the way for an open public hearing for A. Ernest Fitzgerald before the Civil Service Commission in his appeal of his dismissal by the Defense Department for disclosing cost overruns in the C5A cargo plane project. The U.S. Court of Appeals had given Fitzgerald the right to a public hearing at which the press would be present. The government asked the Supreme Court to delay the effect of the decision pending a possible appeal to the high tribunal. However, the government last week notified the Supreme Court that it would not contest the appeals court decision and the Supreme Court ratified the order. The action also opens the way for open public hearings for other government employees in appeals to the CSC if they want them.

FOUR-DAY EXPERIMENT DROPPED—The Nixon administration has torpedoed plans to test the feasibility of a four-day week in government.

There had been reports emanating from a government conference on a four-day workweek that the Civil Service Commission was planning to enter into agreements with selected federal units to experiment with a shorter workweek. The object was to determine whether this would result in greater employee productivity and thus benefit the government.

However, CSC Chairman Robert Hampton says the whole thing was a misunderstanding.

PRODUCTIVITY EMPHASIS—There's increasing evidence that the Nixon administration means business in its goal to increase the productivity of federal workers.

Roy L. Ash, appointed by President Nixon as the new director of the White House's Office of Management and Budget, said that since government can't operate on a profit and loss basis as does industry, productivity results can be substituted instead.

Ash, who is resigning his \$195,000 a year job as president of Litton Industries, said the productivity of individual federal workers as well as programs will be measured.

AGAINST IT—The National Right to Work Committee says it will wage all-out war to defeat legislation that would establish a federal agency shop in government in which all employees in a unit represented by a union would have to pay the equivalent of union dues if they weren't members.

Such a system would destroy the merit system "and would mean a return to the spoils system, except instead of buying favors from politicians, employees would be forced to buy favors from union officials who then do the dealing with the politicians", the right to work group said.

The right to work group said that federal unions had sought the right to represent all employees in units where they won exclusive recognition rights and thus should not complain when required to represent non-members as well as members. . . . complain that representing non-members is very costly and that these employees should be re... ay for these services.

SOCIAL SECURITY—Rep. Joel Broyhill, R-Va., says he will seek approval in the House Ways and Means Committee next year of legislation to give federal and postal employees the option of securing full social security coverage in addition to their retirement benefits. Broyhill is a member of the Committee.

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Apparently what shelved the project was the high cost of the overtime that would be involved. The plan apparently had been for federal workers in selected units to work a 10-hour day, four days a week.

But this would necessitate time-and-one-half overtime, because all work in excess of 8 hours a day is considered to be overtime.

And the Nixon administration is now engaged in an intensive economy program to reduce federal costs. The contemplated project therefore would have been directly contrary to administration policy and hence had to be scrapped.

What the CSC would like to do is test the feasibility of a 4-day 40-hour workweek or variations of this without having to pay overtime to federal employees involved in this experiment.

However, the law forbids government employees to waive their overtime rights, even if they want to do so for a limited period in order to test the feasibility of a 4-day week.

Consequently, any such test would involve the payment of overtime, a very costly item. And it definitely does not fit into the Nixon administration's scheme of things.

POSTAL CRACKDOWN—Postmaster General T. E. Klassen has ordered involuntary reassignment of “ineffectual postmasters and supervisors.”

In a memorandum to the five regional postmasters general throughout the country, Klassen said “The responsibility of postal managers is too critical to be left in the hands of those who do not provide strong, effective leadership.”

He cautioned, “On the other hand, nothing could be more self-defeating for postal management than the widespread and capricious transfer of postmasters or other managers against their wishes, for that would destroy the morale of a key group whose performance is essential to postal success.”

However, Klassen said that marginal postmasters and supervisors whose work is “inadequate” but not “hopeless”, require special treatment. Presumably those in the “hopeless” category will be fired.

The marginal supervisors and postmasters will be transferred to less-demanding jobs, probably at a cut in salary.

Klassen said that “voluntary” movement is desirable, but “if necessary” the transfers will be made on an involuntary basis.

Spokesmen for groups representing supervisors and postmasters fear the Klassen order will be abused, with competent managers being removed. They feel it could lead the way to a postal service “buddy” system whereby high officials will place their friends in choice jobs.

TAX CASE—The federal district court for the eastern district of Michigan has placed on its April docket the test suit challenging the government's right to tax the 7 percent of salary that federal and postal employees pay for their retirement benefits.

The suit is being brought by the National Association of Internal Revenue Employees and the National Association of Letter Carriers.

VA RUMOR—The Indianapolis Star and several other midwest newspapers have reported that the White House is considering replacing Veterans Administrator Donald Johnson with assistant deputy VA administrator Richard Roudebush. Roudebush is a former member of Congress from Indiana.

RETIREMENT MEASURES—Rep. Joel Broyhill, R-Va., has sponsored a bill to increase retirement annuities of government investigative and law-enforcement employees and to permit them to retire earlier.

The measure would increase the present 2 percent annuity computation factor for these employees to 2-1/2 percent of high-three-year salary for the first 20 years of service and 3 percent for each year over 20. Also, they could retire after 20 years service at any age instead of the present age 50 requirement. Involved would be Secret Service and FBI agents, U.S. Marshals, corrections officers, Immigration and Customs inspectors, etc.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

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DD/S 230275

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19 JAN 1973

TO: (Officer designation, room number, and building)

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment)

1. Deputy Director for Support

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Note article on 4-day week
This, of course, is not new to u
Based on OGC opinion and my
recommendation, you approved
amendment to regulations to
provide for 4-day week and 10 or
12 hour day (without overtime).

Thus far experiment has
been successful and I am not now
recommending we back off. But
I guess we should be aware that
an employee working a 10 hour
day could file claim for overtime.
I wonder if we would pay off or
fight claim.

[Handwritten signature]

Harry B. Fisher
Director of Personnel