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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: United States Capitol Police—Cost of Living Payments

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DIGEST

The United States Capitol Police (USCP) was authorized to make a lump sum payment on April 12, 2007, for a cost of living adjustment effective the first pay period of 2007. USCP regulations specifically authorize such payments following approval by the House Committee on House Administration and the Senate Committee on Rules and Administration. USCP received approval from these committees prior to making the payment. The delay in implementing the adjustment was due to the fact that the Senate Committee withheld its approval pending enactment of funding for the remainder of fiscal year 2007. The Senate Committee, however, recognized that the adjustment was forthcoming and would be effective as of the first pay period of 2007.

DECISION

The Inspector General for the United States Capitol Police (USCP) has requested a decision regarding USCP's payment of a cost of living adjustment (COLA) for its uniformed members and civilian employees (eligible employees). Letter from Carl W. Hoecker, Inspector General, USCP, to Gary L. Kepplinger, General Counsel, GAO, *Subject: Request for Comptroller General Decision*, Aug. 8, 2007 (Hoecker Letter). Specifically, the Inspector General (IG) asks whether USCP properly made a lump sum COLA payment to eligible employees on April 12, 2007, effective January 7, 2007, the first day of the first pay period of 2007. We conclude that the payment was authorized.

BACKGROUND

The Capitol Police Board (Board) is responsible for establishing and maintaining rates and schedules of basic pay for eligible employees.¹ 2 U.S.C. § 1923(a)(1). Pursuant to this duty, the Board maintains the *Capitol Police Board Resolution for Unified Schedules of Rates of Basic Pay for Members and Civilian Employees of the United States Capitol Police* (Board Resolution). The Board may adjust the Board Resolution as it sees fit to reflect changes in the cost of living and to maintain pay comparability. 2 U.S.C. § 1923(a)(2). Such changes may take effect only after approval by the House Committee on House Administration and the Senate Committee on Rules and Administration (the committees). 2 U.S.C. § 1923(a)(3). The Board Resolution provides that, subject to committee approval, the Board may adjust basic pay for eligible employees “effective at the beginning of the first applicable pay period beginning on or after the first day of the month in which an adjustment becomes effective [for federal employees under a statutory pay system] under section 5303 of title 5, United States Code.”² Board Resolution, §§ (a)3(A), (b)3(A).

On December 21, 2006, President Bush instituted a COLA for, among others, federal employees covered under 5 U.S.C. § 5303, to be effective on the first day of the first pay period in January 2007. Exec. Order No. 13420, *Adjustments of Certain Rates of Pay*, 71 Fed. Reg. 77,571 (Dec. 26, 2006). This order effected a 1.7 percent across-the-board COLA for civilian executive branch employees, as well as a locality-based increase for the Washington, D.C. area, for a total increase of 2.64 percent for employees in the Washington, D.C. area. *Id.* See also USCP, Memorandum from Chief Phillip D. Morse, Sr., to the Capitol Police Board, *2007 Cost of Living Increase and Comparability Pay*, Dec. 27, 2006.

On December 27, 2006, the Board submitted to the committees a proposal to increase pay for eligible employees by 2.64 percent, consistent with the President’s order under 5 U.S.C. § 5303, in accordance with sections (a)3 and (b)3 of the Board Resolution. Letter from Wilson Livingood, Chairman, Board, to the Honorable Vernon Ehlers, Chairman, House Committee on House Administration, Dec. 27, 2006 (Livingood Letter); Letter from William H. Pickle, Sergeant at Arms and Member of

¹ The Board’s purpose is to oversee USCP and coordinate USCP’s law enforcement activities with the Sergeants at Arms of the House and Senate. Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, § 1014, 117 Stat. 11, 361 (Feb. 20, 2003). The Board consists of the Chief of the Capitol Police, the Architect of the Capitol, the Sergeant at Arms of the House, and the Sergeant at Arms and Doorkeeper of the Senate. *Id.* The Chief of the Capitol Police is a nonvoting member. *Id.*

² Section 5303 provides for yearly COLAs for civilian executive branch employees.

the Board, to the Honorable Trent Lott, Chairman, Senate Committee on Rules and Administration, Dec. 27, 2006 (Lott Letter). The House Committee approved the proposal on January 2, 2007. Livingood Letter. At the time the Board submitted its proposal, many federal agencies, including USCP, were operating under a continuing resolution. According to the IG, the Senate Committee held its approval in abeyance pending enactment of funding for the remainder of fiscal year 2007. USCP Office of Inspector General, *Review of United States Capitol Police FY 2007 Cost of Living Adjustment*, at 4 (Aug. 8, 2007) (IG Report). The Revised Continuing Appropriations Resolution, 2007, enacted on February 15, 2007, provided appropriations for the remainder of fiscal year 2007. Pub. L. No. 110-5, 121 Stat. 8 (Feb. 15, 2007). On February 28, 2007, the Senate Committee approved the Board's proposal for a COLA, which the Board had officially resubmitted on February 23. Letter from Phillip D. Morse, Sr., Chief of Police, USCP, to the Honorable Dianne Feinstein, Chairman, Senate Committee on Rules and Administration, Feb. 23, 2007 (Feinstein Letter); IG Report, at 5.

On April 12, 2007, USCP made a COLA payment to eligible employees effective January 7, 2007, the first day of the first pay period of 2007. Telephone conversation between Carl W. Hoecker, IG, USCP, and Wesley Dunn, Senior Staff Attorney, GAO, Aug. 27, 2007. The payment totaled \$986,428.75. *Id.*; IG Report, at 5. The IG asks whether this payment was proper.³

DISCUSSION

As a general matter, employees' pay adjustments are prospective. B-252215, Mar. 24, 1993; B-170113, July 13, 1970. This rule is based on the premise that when an employee has already received compensation fixed by the head of an agency for the employee's services, the employee is not entitled to an additional amount. B-252215; B-106475, Nov. 15, 1951.

However, when implementation of an otherwise prospective pay adjustment is delayed under statutorily authorized procedures, the pay adjustment may cover past pay periods so long as there is recognition of the effective date, notwithstanding the delay, and payments do not cover pay periods preceding that effective date. For

³ Our practice when rendering decisions is to obtain the views of the relevant federal agencies. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal.htm. In this regard, the IG provided us a legal memorandum detailing the views of USCP's Office of General Counsel. USCP, Office of the General Counsel Memorandum for Phillip D. Morse, Sr., Chief of Police, USCP, *Subject: Request for Review of 2007 Pay Adjustment Retroactivity*, May 25, 2007 (GC Memo), submitted with Hoecker Letter.

example, on January 8, 1993, the Public Printer set a pay adjustment for Government Printing Office (GPO) employees effective January 10, 1993. B-252215, Mar. 24, 1993. By statute, GPO pay adjustments were subject to approval by the Joint Committee on Printing. *Id.* The Chairman of the Joint Committee stayed approval due to concerns about the adjustment's impact on certain GPO employees. *Id.* In the stay, the Chairman recognized that upon approval the adjustment "shall become retroactive to January 10, 1993." *Id.* The Chairman did not approve the pay adjustment until February 21, 1993. *Id.* We concluded that the Public Printer could make the adjustment effective as of January 10, 1993, the date originally set for the adjustment. *Id.* We explained that the Public Printer had acted to grant the adjustment effective January 10 and that, while the Committee had stayed the action, it had recognized that an adjustment would be forthcoming and effective as of January 10. *Id.* See also B-190097, Nov. 11, 1977 (pay adjustment properly implemented in August effective in June after delay imposed by Joint Committee on Printing).

As discussed above, Congress has charged the Board with responsibility for establishing and maintaining the pay system for eligible employees, and specified that the Board may make changes to the pay schedules as the Board sees fit to reflect changes in the cost of living. 2 U.S.C. § 1923(a). Pursuant to this duty, the Board established and maintains the Board Resolution. The Board Resolution provides that when a COLA becomes effective for federal employees under a statutory pay system, the Board may grant a similar adjustment to eligible USCP employees, subject to committee approval. Board Resolution, §§ (a)3(A), (b)3(A). An approved COLA becomes "effective at the beginning of the first applicable pay period beginning on or after the first day of the month in which an adjustment becomes effective" for statutory pay system employees. *Id.*

Following the President's grant of a COLA to federal employees under 5 U.S.C. § 5303, the Board submitted its proposed COLA to the committees via letter on December 27, 2006, as discussed above. The letters requested, "Under section (a)3 [of the Board Resolution], Basic Pay Adjustments, a net increase in annual pay of 2.64% for sworn personnel. This increase will provide for the COLA and comparability at rates approved by the President" in his December 21, 2006 Executive Order. Livingood Letter; Lott Letter. The letters included an identical request under Board Resolution section (b)3, which deals with the pay of civilian USCP employees. See Feinstein Letter. In referring to sections (a)3 and (b)3, which clearly set out that a COLA would become effective on the first day of the first pay period on or after the first day of the month in which the adjustment for executive branch employees under the President's order became effective, the Board's letter can be read as requesting approval for a COLA payment effective on January 7, 2007.

The House Committee returned the letter to the Board stamped "approved," initialed by the Chairman, and dated January 2, 2007. Livingood Letter. According to the IG, the Senate Committee, at that time, held its approval in abeyance pending enactment of final funding for fiscal year 2007. IG Report, at 4. The Senate Committee

implicitly recognized that the adjustment would be effective as of January 7, 2007, pursuant to Board Resolution sections (a)3 and (b)3 referenced in the Board's letter to the Committee.⁴ Lott Letter. As we explained in our 1993 decision (discussed above), when implementation of a pay adjustment is delayed under statutorily authorized procedures, the pay adjustment may cover past pay periods so long as there is recognition of the effective date at the time of the delay. *See* B-252215, Mar. 24, 1993. We conclude, therefore, that USCP was authorized to make its COLA payments effective January 7, 2007.⁵

USCP's General Counsel raised concerns whether USCP had authority to make the payments effective January 7, because the Board's letters to the committees requesting approval of the COLA payment did not explicitly advise that payment would be effective January 7, 2007. GC Memo. Consequently, the General Counsel questioned whether the payment could be effective earlier than February 28, 2007, the date by which the Board had received approval from both committees. *Id.* at 3.

As noted above, the letters themselves indicated that the Board planned to make pay adjustments "[u]nder section (a)3" and "[u]nder section (b)3" of the Board Resolution. Livingood Letter; Feinstein Letter. These sections of the Board Resolution provide that adjustments to USCP pay schedules, such as COLAs, become "effective at the beginning of the first applicable pay period beginning on or after the first day of the month in which an adjustment becomes effective" for statutory pay system employees. Board Resolution, §§ (a)3(A), (b)3(A). We think that because the letters referred to these specific provisions of the Board Resolution, the committees were alerted that, with their approval, the Board would make the COLA payments effective January 7, 2007.

CONCLUSION

USCP was authorized to make COLA payments effective January 7, 2007. The Board is authorized by statute to make COLAs. The Board Resolution provides that COLAs may be made effective the first day of the first pay period following a COLA for statutory pay system employees, subject to committee approval. The Board

⁴ Based on interviews with Committee staff, the IG in his August 2007 report determined that, in fact, the Committee had understood that the adjustment would be effective in January. IG Report, at 2, 4.

⁵ On February 28, subsequent to enactment of the Continuing Resolution for the remainder of fiscal year 2007, the Chairman of the Senate Committee signed "approved" on the February 23 letter from USCP to the Committee regarding the COLA. Feinstein Letter. This letter, too, referred to sections (a)3 and (b)3 of the Board Resolution. *Id.* Nothing in the Committee's approval suggests that the Committee expected the payments to be calculated as of February 28.

requested and received committee approval under these authorities to make COLA payments effective January 7, 2007. The delay in implementing the COLA was due to the fact that the Senate Committee withheld its approval pending enactment of funding for the remainder of fiscal year 2007. In doing so, however, the Committee recognized that the adjustment was forthcoming and would be effective January 7, 2007.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Kepplinger
General Counsel