

Digest

4-30-45

L-45-261

Director of Personnel

The General Counsel

Within-grade salary advancements to war service appointees

I am attaching hereto a copy of my memorandum to Mr. Landesman dated April 11, 1945 and of his reply dated April 23, 1945 on the above subject, concerning which you inquired recently. Since Mr. Landesman's memorandum covers the matter thoroughly, no comment seems necessary.

Myles F. Gibbons
General Counsel

Attachments (2)

LT:mjl

(Copy)

Washington 25, D.C.
April 23, 1945

The General Counsel

B. M. Landesman

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Within-grade salary advancements to war service appointees

Please refer to your memorandum of April 11, 1945, relative to the above subject.

I discussed this matter informally with Mr. A. Banks Thomas, Attorney Conferee, in the Comptroller General's office. The precise question has never been considered by that office. Please note that Mr. Thomas supervised the writing of the two Comptroller General opinions enclosed with your memorandum and will, undoubtedly, handle the instant question if it is formally submitted to the Comptroller General for a ruling. He advised that the Comptroller General's decision of March 16, 1945 (B-48144) must be restricted to the particular facts there involved, namely a situation in which a war service appointee was reinstated before January 3, 1945, and actually received the within-grade salary increase before that date. According to Mr. Thomas, the equities inherent in the factual setup confronting the Comptroller General in the March 16, 1945 decision are wholly lacking in our situation, and therefore, the January 3, 1945 Comptroller General's decision (B-46335) should be applied retroactively. In his opinion, the Board's bookkeeping, or as he termed them, paper transactions, although effected before January 3, 1945, are meaningless.

I also checked with the Treasury, Labor, Commerce, War, Agriculture, and Navy Departments, Veterans' Administration, Civil Service Commission, and the Social Security Board. These agencies, with the exception of Navy, Commerce, and the Civil Service Commission, do not record any automatic within-grade salary increases while their employees are in the armed forces, but rather complete all such transactions upon the employee's reinstatement. Consequently, the specific problem has never arisen in those agencies. However, both the Navy Department and the Civil Service Commission, up until approximately a year ago, did make such bookkeeping entries on their records while the war service appointee was still in the military service. The Department of Commerce, up until January 3, 1945, recorded similar entries for such

Memorandum to the General Counsel

war service appointees. Consequently, these three agencies are confronted with the very same problem now before your office. All three have not rescinded the recorded entries which they have made or taken any other action in connection therewith, each feeling that the question may be submitted by some other agency to the Comptroller General for a ruling or that legislation will solve the problem.

For your information, the Civil Service Commission has drafted proposed legislation which will credit the period of time spent in military service by war service appointees toward within-grade salary advancements. This bill is now being cleared with the Bureau of the Budget. In view of the January 3, and March 16, 1945 Comptroller General decisions, Mr. David F. Williams, Assistant Director of Personnel, Civil Service Commission, advised that if the proposed legislation does not become law, he would be inclined to rescind the recorded entries of such salary increases.

Since I note from your memorandum that the war service appointees in question are still in the military service, it occurs to me that there is no current audit problem which would be considered by the Comptroller General. I understand that it is not that office's practice to render decisions in the nature of "declaratory judgments", but rather to rule only on audit questions of immediate concern to the General Accounting Office and the agency involved.

B. M. L.

(Copy)

April 11, 1945

B. M. Landesman

The General Counsel

Within-grade salary advancements to war service appointees

A number of war service indefinite appointees who at present are in the armed forces have been granted within-grade salary advancements by the Board while in military service. In view of two recent opinions of the Comptroller General,* copies of which are hereto attached, there has been presented a question whether such advancements must now be rescinded.

Although there is a factual distinction between the attached opinions and the submission made to me in that the employees in the former were reinstated whereas those in the latter are still in military service, I am nevertheless wondering whether, as in the case of the Treasury Department decision, the Comptroller would refuse to apply his ruling retroactively to the Board's action taken during such service and before reinstatement. In this connection, I should like to find out if other agencies or departments may have been faced with a like problem, and, if so, how it has been met by the General Accounting Office or by such agencies or departments. The General Accounting Office may be able to advise you informally as to its position on this question. Further, it is quite possible that Treasury itself has had similar cases and will be able to inform you of the action taken by that department.

Attachments

Myles F. Gibbons
General Counsel

* B-46335
B-48144