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

B-175430

December 19, 1973

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Mr. John T. McDonough
35 Jersey Street
Dedham, Massachusetts 02026

Dear Mr. McDonough:

Reference is made to your letter of September 24, 1973, with enclosure, concerning your claim that you are entitled to a higher rate of pay in connection with your reassignment from a wage board position to a General Schedule position incident to a reduction in force. Your claim was the subject of our advance decision, B-175430, June 1, 1972, which held that you are not entitled to a higher rate of pay since your rate of pay was fixed in accordance with departmental regulations and policies and within the allowable administrative discretion of the agency.

At the time of your reassignment, the annual equivalent salary of your wage board position was about \$11,690, but due to a night differential you were receiving an annual equivalent salary of \$12,168. You believe that night differential should have been included in the salary used to determine the compensation of your new position and that, accordingly, your rate should have been fixed at grade GS-9, step 8, \$12,164 per annum, instead of the rate at which your salary was administratively established, GS-9, step 7, \$11,855 per annum.

Our decision of June 1, 1972, supra, stated that for the purpose of determining the highest previous rate in a wage board position where the employee is transferring from a wage board position to a General Schedule position, the night differential of the wage board position should be included as part of the rate of basic pay. Our decision further stated that this meant that your agency had the authority to fix your salary at the rate for GS-9, step 8, but that your rate was not fixed on the basis of your highest previous rate. You believe that your agency did not recognize night differential as part of basic pay and therefore incorrectly computed your rate of pay for your new position. Also, on the basis of a statement of the Employment Division that you were being promoted because your new hourly rate would be higher than your previous scheduled hourly rate and the statement on the Notification of Personnel Action, effective September 13, 1970, that the action was a "Promotion RIF", you believe that the intent of the personnel

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action was to promote you. You have requested clarification of these issues.

Our decision of June 1, 1972, stated in effect that the agency had authority to fix your rate of pay on the basis of your highest previous rate by giving you step 8 of grade GS-9, but that your rate of pay had not been fixed so as to give you the benefit of your highest previous rate. However, in the context of the decision, these statements do not indicate that your rate of pay was improperly computed by the agency. In connection with these statements our decision explained that when an employee is reemployed, transferred, reassigned, promoted or demoted section 531.203(c) of the Civil Service Regulations (title 5, Code of Federal Regulations) provides that his highest previous rate determines the maximum rate of his grade to which the agency may pay him but does not require an agency to pay him his highest previous rate in these circumstances. Under this section an agency is given discretion to pay an employee at any rate of his grade that does not exceed his highest previous rate by one within-grade step or more. In this regard, we noted that within the discretion allowable by section 531.203(c), the Department of the Navy has established a policy against the use of an employee's highest previous rate except in certain circumstances. See CMI 531.2-4a(1).

In the present circumstances the regulations of the Department of the Navy, CMI 531.2-4a(2), provided that an employee's rate of pay in a new position will be fixed to preserve, so far as possible, his last earned rate. We were advised that "last earned rate" has been interpreted by the Department of the Navy to mean the "scheduled" rate for the employee's wage grade and step which would not include a night differential or environmental pay. Thus, the Navy does not establish the rate of pay of wage board employees upon transfer to General Schedule positions in relation to their basic rates of pay in the wage board positions but uses the "scheduled" rates for the wage board position. Since your rate of pay was fixed in accordance with the Department of Navy regulations and policies which are within the discretion authorized by law and Civil Service regulations, you are not entitled to a higher rate of pay.

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The present record indicates that the intent of the agency was to offer you the General Schedule position at a salary of GS-9, step 7, as an alternative to separation due to the reduction in force. Although the Employment Division characterized the personnel action as a promotion because you would receive a higher rate of pay in the General Schedule position than you had received in the wage board position, excluding night differential, this does not demonstrate an intent to promote you or to give you a rate of pay other than that offered. Further, the term "promotion" which was used on the form which effected the change in your appointment is not considered as entitling you to an increase in compensation because terms used on Notification of Personnel Action forms to describe the nature of the action must be interpreted in the light of all the circumstances involved. Even if the use of that term were considered inappropriate by us it would not entitle you to additional compensation in view of the established intention of the agency in connection with that action.

Accordingly, we do not find that you are entitled to the additional compensation you seek.

Sincerely yours,

PAUL G. Dembling

For the Comptroller General
of the United States

cc: Mr. E. D. Johnson
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