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

B-200617

November 13, 1980

[Impact of Air Traffic Controllers' Pay Increase]

The Honorable Harry F. Byrd, Jr.
United States Senate

Dear Senator Byrd:

CNG000171

This replies to your letter of September 22, 1980, on behalf of Thomas Pesnicak, President of the Professional Air Traffic Controllers Organization of Leesburg, Virginia, concerning the impact of the limitations on night, Sunday, and holiday premium pay on Air Traffic Controllers as a result of the October 1980 comparability increase.

In his letter of September 15, 1980, a copy of which was enclosed with your submission, (Mr. Pesnicak states that Air Traffic Controllers will lose large amounts of compensation as a result of the October 1980 pay increase.) Mr. Pesnicak contends as follows:

"This condition exists because the Federal Aviation Administration has chosen to interpret a Comptroller General's decision that restricts an employee's pay to not exceeding a Level V Executive in a bi-weekly pay period. Controllers work all hours and all days. This decision as now interpreted will preclude many controllers from receiving all the pay raise due them. Controllers of a pay grade GS 14 step 5 or above will be precluded from receiving their premium pay for working holidays, nights, and Sundays. AGC00030

"This condition is unfair and should be corrected as soon as possible. Exclusion for premium pay is one solution. The Federal Aviation Administration could also look at the yearly salary for comparison to the Level V Executive."

We can understand Mr. Pesnicak's position. (In fact, this Office has voiced concerns about compensation limitations to the Congress on a number of occasions. However, this problem is not unique to Air Traffic Controllers, and it does not result from a decision

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of the Comptroller General. On the contrary, the "condition", as Mr. Pesnicak describes it, is created by several provisions of law having Governmentwide application.)

Pursuant to 5 U.S.C. 5102 and 5331, Air Traffic Controllers are paid under the General Schedule. Night, Sunday, and holiday premium pay authorized for General Schedule employees by title 5, United States Code, is limited on a biweekly pay period basis by 5 U.S.C. 5547 which provides:

"An employee may be paid premium pay under sections 5542, 5545(a)-(c), and 5546(a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15."

The maximum rate payable for GS-15 is in turn limited by 5 U.S.C. 5308, which reads:

"Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

Finally, level V of the Executive Schedule is presently limited to \$50,112.50 by a provision of section 101(c) of the recently enacted continuing resolution - Pub. L. 96-369, October 1, 1980 (H. J. Res. 610) - which provides:

"* * * the provisions of section 306 of H. R. 7593 (the Legislative Branch Appropriation Act, 1981, as passed by the House of Representatives July 21, 1980) shall apply to any appropriation, fund or authority made available for the period October 1, 1980, through December 15, 1980, by this or any other Act."

Section 306 of H. R. 7593 provides:

"(a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by

this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is--

"(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or--

"(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

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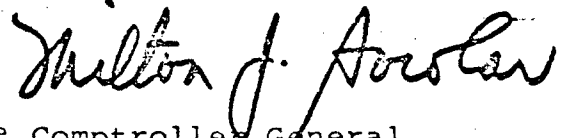
"(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay."

(We can find in these laws no basis for excepting Air Traffic Controllers or any other General Schedule employees from their provisions. Moreover, the General Accounting Office has no authority to waive or modify the application of statutory requirements. Accordingly,

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it is our view that if there is to be any relief from these limitations it will have to come through legislation enacted by the Congress.)

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For the Comptroller General
of the United States