

Alert!

Chapter 52
National Treasury
Employees Union

December, 2003

Pay Bill Hits Snag

FedWeek, November 25, 2003

Legislation (HR-2989) carrying a 4.1 percent January 2004 federal raise has hit a snag in Congress because of Bush administration objections to language restricting its contracting-out program. Congressional leaders had been hoping to pass the bill, the Transportation-Treasury appropriations measure, as separate legislation, but have been unable to bring the bill to final floor voting because of White House dissatisfaction with several provisions added in a House-Senate conference aimed at adding greater protections to employees--including a clause to allow employees to challenge agency decisions at various stages, a guarantee that in-house functions would be allowed to reorganize before being put up for bid, and a requirement that to win, the contractor bid must be at least 10 percent or \$10 million less. One approach being considered was to apply those provisions, or at least some of them, only to agencies covered by the Transportation-Treasury bill. In addition to those two departments, the bill covers some independent agencies, but such a move would have the restrictions apply to only a small percentage of federal jobs subject to contracting-out reviews. The bill might become part of a catchall funding bill for the rest of the current fiscal year.

Pay Raise Situation Could Be a Repeat

Edited from FedWeek, December 2, 2003

Congress has delay final action on the continuing resolution measure until January 31, 2004; a repeat of the scenario that played out last year appears to be in store. Because there would be no formally appropriated raise, the administration's proposed 2 percent would kick in as the default raise, to be paid effective with the first full pay period of January. When the bill containing the 4.1 percent figure is enacted later, the higher raise would be effective retroactive to that date and likely would be split as 2.7 percent across the board and 1.4 percent as locality pay. Much the same thing happened a year ago, when a default 3.1 percent raise kicked in at the start of January 2003, only to be overridden by a later budget measure adding an additional percentage point.

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Time Line

- Use your "use or lose" annual leave by January 10, 2004
- December 26th has been declared a Federal Holiday by Executive Order
- TSP Open Season to run through the end of the calendar year

Early Marker Set for 2005 Raise

FedWeek, December 9, 2003

An early marker has been set for the January 2005--not 2004--federal pay raise, as the Bureau of Labor Statistics reported that the employment cost index measure used for determining the across-the-board component of that raise was 3 percent in the pertinent measuring period. Under federal pay law, a half percentage point is supposed to be shaved off that amount in order to keep employees roughly apace with private sector wage growth, and locality pay is supposed to be paid on top of it in order to close locality pay gaps. That system has never been implemented as designed, however, and in many years the reduced ECI figure--in this case, 2.5 percent--has been proposed as the total raise. However, the Bush administration broke with that formula earlier this year when it proposed a 2004 raise of 2 percent based on consumer price inflation, not private sector wage growth.

Military Figure a More Reliable Indicator

FedWeek, December 9, 2003

Under a separate pay law for the military, the starting point for raises for uniformed personnel is a half percentage point above the pertinent ECI figure. In recent years the federal raise has been pegged to the military figure in the name of "parity" between federal civilian and uniformed military personnel. For the last several years the average military raise actually has been a bit higher than the "parity" figure because of targeted higher raises for certain military personnel. However, the parity figure for purposes of the 2005 raise would start at 3.5 percent, if recent practice were followed. In any case, the actual raise is determined in the annual federal budget process.

The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) requires agencies to compensate federal employees at one and-one-half time the regular pay rate for any work performed in excess of 40 hours per week. 29 U.S.C. §207(a). This provision, however, does not apply to "exempt" employees, such as those employed "in a bona fide executive, administrative, or professional capacity." Id. §213(a). Any employee in a position classified at GS-4 or below is always nonexempt and entitled to overtime. Any employee in a position classified at GS-5 or above is exempt only if the employee is an "executive, administrative, or professional employee."

Under 5 C.F.R. § 551.202, employees are presumed to be FLSA nonexempt, and thus entitled to overtime. The burden of proof rests with the agency that asserts an employee is exempt. Federal employees may also request compensatory time off in lieu of overtime payment. An agency, however, may not require that an employee be compensated for overtime work with compensatory time off.

An "executive" employee is a supervisor or manager who manages an agency or subdivision and customarily and regularly directs the work of subordinate employees and 1) has authority to make personnel changes, i.e., selecting, removing, and promoting subordinate employees, or has authority to recommend such actions, and 2) customarily and regularly exercises discretion and independent judgment. See 5 C.F.R. § 551.205.

An "administrative" employee is an advisor, assistant, or representative of management and 1) significantly affects the execution of management programs or policies, provides supporting services of substantial importance, or substantially participates in the executive or administrative functions of a management official; 2) performs office or other predominantly non-manual work which intellectual, specialized, or technical; and 3) frequently exercises discretion and independent judgment, under only general supervision. See 5 C.F.R. § 551.206.

A "professional" employee is an employee whose work 1) requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, 2) is in a field of artistic endeavor that is original or creative in nature, or 3) requires highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The employee's work must also be predominantly intellectual in nature and the employee must frequently exercises discretion and independent judgment, under only general supervision. See 5 C.F.R. 551.207.

Under the FLSA, if an agency wrongfully denies overtime compensation, an employee is entitled the owed wages and to liquidated damages, i.e., damages equal to the amount of overtime pay due (thus a "double" recovery). 29 U.S.C. § 216(b). If, however, an agency can show "to the satisfaction of the court" that its action was in "good faith" and with "reasonable grounds," then the court may, "in its sound discretion," award less than the full amount or no liquidated damages at all. 29 U.S.C. § 260. The agency, however, bears the burden of proof. An employee is also entitled to liquidated damages if an agency retaliates against an employee for enforcing his or her rights under FLSA.

If you are a bargaining unit employee and you want to file a FLSA claim for unpaid overtime compensation, then you are required to use a negotiated grievance procedure. If you are not a bargaining unit employee, then you may either file a FLSA claim with the agency or with OPM. If you get an unfavorable decision from the agency, you may still file a claim with OPM, but the reverse is not true. OPM will ask both the employee and the agency to submit evidence, and then will make a determination based on that evidence. An OPM decision on a claim is final and is not subject to further administrative review. Federal employees may also raise FLSA claims in the Court of Federal Claims.

Overtime Pay Cuts Proposed

Excerpts from a Memorandum from NTEU National President Colleen Kelley

While all of the dust has not yet settled, it appears that the Congressional Leadership and the President will prevail in their plan to let the Department of Labor (DOL) adopt new rules cutting the overtime pay for as many as eight million employees. Language to block this White House initiative was supported by bipartisan majorities in both the House and the Senate. However, caving into strong pressure from the White House, the Republican Congressional leadership plans on presenting an Omnibus Appropriations bill allowing finalization of the drastic cutback of overtime protections.

This action could put the overtime pay cuts into effect as soon as DOL issues final regulations, which could be as early as January 2004. The overtime pay cuts are aimed at the private section and will not immediately affect federal employees. OPM is, however, expected to follow DOL's

lead. As a result, anyone making \$65,000 or more a year doing office or non-manual work is virtually certain to lose the right to overtime pay under the Fair Labor Standards Act. Also, millions of public and private salaried workers making between \$22,100 and \$65,00 could be reclassified as “executives” or “administrative” employees and would no longer qualify for overtime pay under FLSA.

Outsourcing Protections Stripped from Appropriations Bill

Excerpts from a Memorandum from NTEU National President Colleen Kelley

Both federal employees and federal taxpayers are victims of an outrageous action taken at the insistence of the Administration and its allies among corporations seeking to take government work. A broad, bipartisan group of Members of Congress had won support for reasonable standards concerning the outsourcing of government work. Pro-federal employee and moderated Members of Congress wanted to allow both sides – federal employees and private contractors – the right to appeal a decision to either contract out or deep in government work. The Administration believes on one side – private contractors – should have this right.

Despite earlier congressional action to allow a level playing field giving both sides the right to appeal, in a back-room deal the Congressional Republican leaders caved into demands from the White House and the contractor lobby and eliminated the employee right to appeal. Congress was also forced to drop a requirement that decisions to outsource be based on a meaningful savings to the government. In a small victory, a provision to require agencies to put together a Most Efficient Organization for the in-house bid (which should help the competitiveness of NTEU represented agencies) was not totally dropped but will be applied only to agencies funded by the Treasury/Transportation Appropriation. This proposal had been government wide. The Omnibus Appropriations bill without the anti-privatization language will now be voted on by the House on December 8th.

I have no intention of walking away from the effort to stop this unwarranted assault on our job and I hope I can count on you to continue to stand with me.



THE FUNDS – TSP Rates of Return

Rates of Return were updated on **December 1, 2003.**

	G Fund	F Fund	C Fund	S Fund	I Fund
November 2003	0.30%	0.30%	0.91%	3.47%	2.22%
Last 12 Months* (12/1/2002 - 11/30/2003)	4.00%	5.22%	14.99%	34.01%	23.91%

* The G, F, C, S, and I Fund returns for the last 12 months assume unchanging balances (time-weighting) from month to month, and assume that earnings are compounded on a monthly basis.

Around the Office

By Alert! editor Mick Eskew

- The move to the new San Antonio Post of Duty has been announced.
 - Phase 1: TPS/TAC, manager and staff, forms room will move January 16, 2004.
 - Phase 2: Mail Room, TEC, CR Assistant, SPEC, TE/GE will move March 12, 2004.
 - Phase 3: Territory Managers and staff, Revenue Officers, TCOs and NTEU office will move March 12 & 19, 2004.
 - Phase 4: Revenue Agents (LMSB & SB/SE), Industrial Specialist, Appeals will move March 26, 2004.
- The Chapter continues to file grievances on appraisals, higher graded duties, non-selection and reassignment. We are now preparing for an arbitration hearing to be held soon regarding management's attempt to hold stewards to a higher standard of performance, lowering their appraisals for performing their Union duties and fulfilling their steward obligations.

TOM'S HUMOR PAGE



Dumb Laws in Texas

- When two trains meet each other at a railroad crossing, each shall come to a full stop, and neither shall proceed until the other has gone.
- It is illegal to take more than three sips of beer at a time while standing.
- It is illegal for one to shoot a buffalo from the second story of a hotel.
- It is illegal to milk another person's cow.
- A recently passed anticrime law requires criminals to give their victims 24 hours notice, either orally or in writing, and to explain the nature of the crime to be committed.
- The entire Encyclopedia Britannica is banned in Texas because it contains the formula for making beer at home.
- It is illegal to sell one's eye.
- No person shall throw trash from an airplane.
- Houston: Beer may not be purchased after midnight on a Sunday, but it may be purchased on Monday.
- Mesquite: It is illegal for children to have unusual haircuts.
- San Antonio: It is illegal for both sexes to flirt or respond to flirtation using the eyes and/or hands.
- Clarendon: It is illegal to dust any public building with a feather duster.
- Beaumont: Collegiate football is banned at Lamar University.
- Austin: Wire cutters cannot be carried in your pocket.

Chapter 52 *Alert!*, all the news that is fit to be copied!

This **Chapter 52 *Alert!*** along with all other ***Alerts!*** since January 2001, can be found on our Chapter Web Page at <http://www.nteu52.org/>

You can e-mail any Chapter officer, staff member or steward from the site.

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