

24 AB 707-1
P.D.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



January 18, 1973

This is in reply to your letter of January 9, 1973,
wherein you requested, on behalf of [REDACTED] and the associated
[REDACTED],^{1/} the opinion of the Administrator
of the Wage and Hour Division as to whether certain pro-

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WH-1

visions of a proposed Consent Decree concluded between [REDACTED], the Equal Employment Opportunity Commission and the United States Department of Labor (hereinafter Decree), comply with the equal pay provisions of the Fair Labor Standards Act.^{2/} Although it is not customary for this office to issue an opinion in a case which is in process of legal resolution, the unique circumstances of this case make such an opinion appropriate.

Specifically, you have asked our opinion with respect to the following items:

1. Whether wage rates established pursuant to the new Promotion Pay Program provided in Part A, Section VI. of the Decree will comply with the equal pay provisions of the Fair Labor Standards Act. Part A, Section VI. provides as follows:

PROMOTION PAY PROGRAM

Each employee promoted from one job in AAP classifications 5 through 15, to another job in AAP classifications 5 through 15 with a higher basic maximum rate of pay, shall have his or her rate of pay in the higher rated job determined as follows:

1/ (CONT'D)

2/ 29 U.S.C. § 206(d).

The employee shall be placed on the step of the new wage table as determined by allowing the employee full wage experience credit, both in progression and at maximum, on the old wage table, but not to exceed the step down from maximum on the new schedule as listed below:

| <u>AAP CLASSIFICATIONS</u> | <u>STEP FROM MAXIMUM</u> |
|---|--------------------------|
| 15. Service Workers | 0 |
| 14. Operators | 0 |
| 13. Office Clerical - Entry Level | 0 |
| 12. Office Clerical - Semiskilled | 0 |
| 11. Office Clerical - Skilled | 6 months |
| 10. Telephone Craft - Semiskilled-Inside | 6 months |
| 9. Telephone Craft - Semiskilled-Outside | 6 months |
| 8. General Services - Skilled | 12 months |
| 7. Telephone Craft - Skilled-Inside | 12 months |
| 6. Telephone Craft - Skilled-Outside | 12 months |
| 5. Sales Workers | 12 months |

Notes

1. "Wage experience credit" is defined as the "number of months" step on the wage schedule at which an employee is paid.
2. Moves within an AAP classification shall be at full wage experience credit.

3. Net credited service shall be used instead of the wage experience credit allowance defined above if its use is more favorable to the employee; provided, however, that if the more favorable condition is solely a result of the length of the progression schedule having been shortened in 1970 or 1971 collective bargaining, then the wage experience credit allowance shall be used.
4. Current promotion pay practices which provide more favorable treatment than either procedure outlined above shall continue in effect, provided however that such treatment will not result in discrimination based on sex.
5. Modification of Plan for Promotion from Simple to Complex Line Assigning Employees who have work experience in simple plant line assigning (not including clerks whose duties do not require that they use cable books to locate available cable pairs) and are promoted to complex line assigning (Top or Second Craft) will be treated as follows:

- a. Those with over four years of wage experience credit or net credited service (as provided in Note 3 above), at least one year of which is simple plant line assigning experience, upon promotion will receive wage experience credit on the new wage schedule equal to their wage experience credit or their net credited service (as provided in Note 3 above).
- b. Employees to whom paragraph (a) is not applicable will be accorded promotion pay under the basic promotion pay plan described above.

2. Whether, following implementation of the new wage schedules by [REDACTED] described in PART A, Section VIII, B, (1), b) of the Decree, the salary range for the job of Switchroom Helper at [REDACTED] will comply with the equal pay provisions of the Fair Labor Standards Act.

The opinions expressed herein are based on the information set forth in the Decree, furnished by you and acquired through investigations of the various [REDACTED] which have been conducted by Compliance Officers of the Wage and Hour Division.

The equal pay provisions of the Act make it unlawful for an employer to pay wages "at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions" A differential is permitted, of course, if the employer can show that it is paid pursuant to "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex"

Because of the unique circumstances which merit this opinion, it is necessary to describe the factual background of the Decree provisions referred to above.

1. THE PROMOTION PAY PROGRAM

In his Complaint, the Secretary of Labor alleges that,

- (a) The wage or salary of any employee of defendants who is promoted from one non-management position to another non-management position with a higher basic maximum rate of pay is determined with reference to the employee's wage or salary in the position from which the employee is promoted. Since female employees predominate in positions which are paid at rates which are lower than the rates paid for positions in which males predominate, this promotion pay procedure results in females and males of the same length of service with the company occupying the same position following transfer or promotion but with the female employees compensated at a lower rate of pay than the males.

In their Answer [REDACTED] and the associated [REDACTED] deny this allegation, but you desire my opinion as to whether any possible equal pay problems which are created by the operation of the present promotion pay policies of the [REDACTED] will be remedied by the institution of the Promotion Pay Program provided in PART A, Section VI of the Decree and quoted above. The Department of Labor has concluded that the Promotion Pay Program as set forth above accomplishes equality in the pay of male and female workers in the [REDACTED] following promotion. Having been fully informed on these facts, and having studied the above Promotion Pay Program, I concur, and it is my opinion that

wage rates established pursuant to the Promotion Pay Program will comply with the equal pay provisions of the Fair Labor Standards Act.

2. SWITCHROOM HELPERS AT [REDACTED]

In the same Complaint the Secretary further alleges:

- (d) Switchroom Helper is a position at defendant [REDACTED] which has duties substantially the same as the Frameman position at other defendant companies. The Switchroom Helper position, occupied exclusively by women, is paid at a rate substantially lower than the rate paid to Frameman, which is predominately occupied by males.

While Section 6(d)(1) of the Act requires that the prohibited discrimination in compensation must occur within the same establishment, and while you assert that this limitation prevents the comparison of the Switchroom Helpers employed by [REDACTED] with the Framemen employed by other [REDACTED] for equal pay purposes, you have asked for my opinion as to the compliance of PART A, Section VIII, B, (1), b) of the Decree with the equal pay provisions of the Act, should your position not be sustained.

Having reviewed the appropriate Frameman wage schedules supplied by [REDACTED] and having compared them to the minimum and maximum salaries set forth in PART A, Section VIII, B, (1), b) of the Decree, it is our opinion that [REDACTED] will be in compliance with the Equal Pay Act as to Switchroom Helpers following implementation of PART A, Section VIII, B, (1), b) of the Decree.

Sincerely,



Ben P. Robertson
Acting Administrator for Wage
and Hour Division