

1981 WL 158063 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 3, 1981

*1 Jack S. Mullins, Ph.D.

Director

State Personnel Division 1205 Pendleton Street

Columbia, South Carolina 29201

Dear Dr. Mullins:

In your letter dated December 2, 1981, addressed to the Attorney General, you asked this office to render opinions concerning the following questions:

1. If an agency places all of its employees upon a temporary reduced work schedule and pays them a correspondingly lower salary, would such an action be grievable? For example, can an agency place all employees on a work schedule that is 90% of the normal workweek and pay the employees 90% of their normal salary? Also, if such a plan were placed into effect, would the employees be entitled to use accrued annual leave in order not to suffer a loss in salary?
2. Can an agency require its employees to take leave without pay rather than to use accrued annual leave?
3. Does either the Budget and Control Board or an agency have the authority to reduce salaries of classified or unclassified employees?
4. Can employees voluntarily accept a pay cut? If so, must all employees within the agency have to take a corresponding cut to preclude grievances?
5. In regard to questions 3 and 4 above, what limitations would exist for later reinstatement of the original salary? E.g., would pay actions occurring during the period of reduced salary, such as merit increments, reclassifications, or reallocations, be computed on the original or reduced base salary? Can reinstatement of the salary reduction extend into a prior fiscal year?
6. Can employees of educational institutions who are now on twelve-month work schedules, with or without formal contracts, be placed during the course of the academic year on ten—or eleven-month schedules without recourse to the grievance process?

Your questions will be addressed seriatim:

1. If an agency were to place all of its employees on a temporary reduced work schedule and pay those employees a correspondingly lower salary, the agency's action would be grievable under the State Employee Grievance Procedure Act of 1974 (§ 8-17-10, South Carolina Code, 1976, as amended). Such action would constitute a reduction in the employee's pay, and reductions in pay are explicitly made grievable by the Act. See § 8-17-20, id. (Cum.Supp. 1980). Additionally, since a minimum workweek of 37.5 hours is prescribed both by statute (§ 8-11-650, Code), and by regulation (Section 3.02A, State Personnel Rules and Regulations), an agency head could not lawfully reduce the workweek of the agency to less than 37.5 hours. Moreover, reduction of a full-time employee's workweek to less than 37.5 hours would constitute an involuntary change of status from permanent full-time to permanent part-time employee (see Sections 3.02B and 3.03A, State Personnel Rules and Regulations) and as such would be grievable under the Grievance Act.

1a. If a temporary reduced workweek with commensurate reduction in pay were instituted, an affected employee would be entitled to use any accrued annual leave to offset his reduction in pay. The explanation for this is set forth in my answer to your next question.

***2** 2. An agency may not require employees who have accumulated annual leave to take leave without pay instead of using accrued annual leave. An employee has a vested entitlement to any accrued annual leave. Thus, upon an employee's termination, retirement, or death, he or his legal representative is entitled to a lump sum payment for any unused annual leave. See § 8-11-620, South Carolina Code, 1976 (Cum.Supp. 1980).

3. The Budget and Control Board has the authority to reduce salaries of classified employees and those unclassified employees who are not exempted, under § 8-11-260, Code, from coverage under the State Personnel Act (§ 8-11-210 et seq., South Carolina Code, 1976). The Board's authority to reduce the salaries of these employees is implicit in the authority granted the Board in § 8-11-230(1) of the State Personnel Act. Agency heads are without authority to reduce the salaries of either classified or unclassified employees unless the Board has delegated such authority to the agency head pursuant to § 8-11-230(11) of the Act. If the Board does delegate this authority to an agency head, the agency head may reduce salaries only to the extent of the authorization and in no event could an agency head reduce the salary of employees exempted from coverage under the State Personnel Act.

It should be noted, however, that although the Board has the authority to reduce the salaries of those employees covered by the State Personnel Act, a reduction in pay is grievable under the Grievance Act, regardless of whether the reduction is authorized by the Budget and Control Board. Moreover, non-uniform reductions in pay within an agency or department would be grievable as discriminatory compensation. See § 8-17-20, South Carolina Code, 1976 (Cum.Supp. 1980).

4. There is no prohibition on employees voluntarily accepting a reduction of pay. However, as Section 2.02E of the State Personnel Rules and Regulations provides that 'All employees shall be paid in accordance with the rates shown in the official Pay Schedule and the provisions of this Section [i.e., Section 2 of the State Personnel Rules and Regulations]', Budget and Control board approval should be obtained before effecting any such voluntary pay reduction.

All employees within an agency would not have to agree to a voluntary reduction of their salaries to preclude grievances. Although reductions in pay as well as inequitable compensation within an agency are both grievable matters (§ 8-17-20, Code, as amended), the only employees entitled to grieve would be those whose salaries have been reduced-the volunteers. Presumably, an employee would not volunteer for a salary reduction and then attempt to grieve the agency's reduction of his salary. The risk of this unlikely event transpiring could be eliminated by securing from any volunteer for salary reduction a written waiver of his right to grieve the reduction. This would help avoid later claims by the employee that he did not volunteer to take a pay cut but was coerced into doing so.

***3** 5. Pay actions occurring during a period of voluntary or involuntary salary reduction authorized by the Board of Budget and Control would be determined on the basis of the reduced salary base, and the employee could not lawfully be compensated for this salary reduction at some future date through retroactive payment of the difference between the prereduction salary and the reduced salary. Article III, § 30 of the South Carolina Constitution as construed in State ex rel. McLeod v. McLeod, 270 S.C. 557, 243 S.E.2d 446 (1978) would prohibit legislative authorization of any such 'extra compensation.'

6. As to those employees not exempted from coverage by § 8-17-50(10) of the State Grievance Procedure Act of 1974, the answer to your sixth question is negative. A mid-year reduction of the employee's work year from 12 to 10 or 11 months would presumably entail a commensurate reduction in pay. As previously noted reductions in pay are specifically made grievable by § 81-17-20.

In coping with the current budget crisis, agency heads are authorized to freeze hiring and to freeze reclassifications and promotions. If, after implementing these procedures, further cuts must still be made from the personal services budget to realize the required savings, it is recommended that the agency implement its approved reduction-in-force plan. In our opinion, use of these devices (freezing hiring and reclassifications and promotions and RIF) is least likely to expose the agency to adverse grievance actions.

I trust the above sufficiently answers your questions.

Sincerely,

Vance J. Bettis
Assistant Attorney General

1981 WL 158063 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.