

DECISION



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

FILE: B-207187

DATE: July 7, 1982

MATTER OF: Lawrence L. Longsdorf - GAO jurisdiction -
Party objects to GAO review under 4 C.F.R. § 22.

DIGEST: GAO will not take jurisdiction of an agency request filed under 4 C.F.R. Part 22, even though the union's objection to GAO consideration of the claim, because it was the subject of a pending grievance, was submitted more than 20 days after the union was served with agency request. The 20-day period for submission of written comments guarantees consideration of comments received within that period but does not nullify GAO's discretion to consider comments received after that time period has expired. To consider a claim subject to a negotiated grievance procedure after one of the parties objects would conflict with jurisdictional limits set forth in 4 C.F.R. Part 22, which are intended to ensure smooth functioning of the procedures of the Federal Service Labor Management Relations statute.

By letter dated March 26, 1982, Mr. Robert B. Wassall, Director of the National Weather Service's Central Region requested our decision concerning Mr. Lawrence L. Longsdorf's claim for 28 hours of compensatory time for travel and work he performed outside of normal working hours.

This claim is also the subject of a pending grievance filed under a negotiated grievance procedure on behalf of Mr. Longsdorf by his union, the National Weather Service Employees Organization. Since Mr. Longsdorf's union has objected to the submission of this matter to the General Accounting Office, we will not take jurisdiction. See 4 C.F.R. § 22.7 (1981)

Because a grievance has been filed, we have decided to treat this request under 4 C.F.R. Part 22, which outlines our procedures for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. Therefore, on May 6, 1982, we wrote to the Director of the Central Region advising him that in accordance with 4 C.F.R. § 22.4, he was required to serve the

appropriate union official with a copy of his request and submit a statement of service to this Office. Although he did not submit a certificate of service with his March 26 request, the Director advised us by a letter dated May 19 that he had sent the Union a copy of his request on April 12, which had been received on April 15. By a letter also dated May 19, the Union objected to the submission of this claim to GAO because it is subject to a negotiated grievance procedure.

Section 22.4(c) of our regulations concerning procedures for labor-management cases provides that responses to a request for a decision, "should be submitted within 20 calendar days after the date of service of the request in order to ensure that it will be considered." Section 22.4(a) provides that when a party is served by mail, the date of service is the date the document served is deposited in the United States mail. Thus, the Union's response to us was not submitted within 20 calendar days after the date of service of the request. Even so, we will consider the Union's objections, and we will not assert our jurisdiction here.

We do not view the 20-day time period for submission of responses as a rigid limitation. When our rules concerning labor-management decisions were first published in the Federal Register we made the following comments concerning the time period for filing written comments:

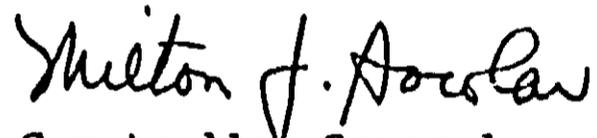
"Some suggested that the time in § 21.5(b) for filing written comments be extended, or the regulations provide for extensions of time in certain circumstances. In response to these comments, the 15 day period has been extended to 20 days, but it was not considered necessary to provide formally for extensions of time. The final rule insures consideration of comments received within 20 days, but does not preclude consideration of comments received at a later date." 43 Fed. Reg. 32395 (1978).

The purpose of the establishment of the 20-day period was to assure the parties to the dispute that we would not decide

the issue for 20 days and would definitely consider any comments submitted to us within that time period. However, we have retained our discretion to consider comments received after the 20-day period.

We have decided to exercise that discretion in this case and consider the Union's comments even though they were not submitted within the 20 day period. We do so because the circumstances of this case fall within the restrictions we have placed on our jurisdiction. Section 22.7(a) of our regulations provides that the Comptroller General will not review or comment on the merits of an arbitration award which is final and binding pursuant to 5 U.S.C. § 7122(a) or (b). Since the negotiated grievance procedure is an integral part of the arbitration process, we determined that it would be inappropriate for GAO to respond to requests from either management or labor to review any matter subject to a negotiated grievance procedure if the other party objects. See section 22.7(b).

Therefore, since Mr. Longsdorf's union has objected to our review of his claim on the basis that it is subject to a negotiated grievance procedure, we will not assert our jurisdiction.



Acting Comptroller General
of the United States