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DECISION



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

FILE: B-208145

DATE: August 31, 1982

MATTER OF: George E. Morris - GAO Jurisdiction - Claims on Matters Subject to a Negotiated Grievance Procedure

DIGEST:

The General Accounting Office (GAO) will not take jurisdiction of a union request filed under 4 C.F.R. Part 22 when the agency objects to the submission on the grounds that the claim had originally been filed under its negotiated grievance procedures. Although the agency objection was not submitted within 20 days after receipt of the union request, the GAO will exercise its discretion to consider comments received after the 20-day time period has expired, and will not assert jurisdiction in this matter because to do so would disrupt grievance procedures authorized by 5 U.S.C. §§ 7101-7135.

The issue in this case is whether the General Accounting Office (GAO) should assert jurisdiction over a claim filed pursuant to 4 C.F.R. Part 22 (1982), where a grievance has been filed by the union under a negotiated grievance procedure and the agency objects, after the expiration of the 20-day period set forth in 4 C.F.R. Part 22, to the submission to the GAO. We hold that the GAO will not assert jurisdiction in such circumstances.

Mr. George E. Morris, a WG-10, employee of the Naval Air Rework Facility, Jacksonville, Florida, claims that he was performing WG-11 work from January 3, 1980, to December 3, 1981, when he submitted a grievance pursuant to the collective bargaining agreement. Mr. Morris requested in the grievance that he be granted a retroactive temporary promotion since he had been detailed to and performed WG-11 duties. The grievance was denied at the step 1, 2, and 3 levels by appropriate agency personnel. The union, however, did not file for arbitration within the required time limits according to the collective bargaining contract but instead requested an extension in order to submit the case to arbitration. The agency denied the requested extension.

After the agency denied the extension request, Mr. Morris, through his authorized representative, filed a request for a decision with the General Accounting Office which was received on May 27, 1982. The agency filed an objection to GAO's jurisdiction in this matter on July 21, 1982. In its memorandum, the agency stated that 4 C.F.R. § 22.7(b) (1982) prohibits the GAO from issuing a decision on a matter which is subject to a negotiated grievance procedure if one of the parties objects to the submission of the matter to the GAO. The memorandum also states that the issue of timeliness is one that should be decided by the Federal Labor Relations Authority.

Our Office has considered whether we should assert jurisdiction in a similar situation where the agency objected to jurisdiction within the 20-day period established in 4 C.F.R. § 22.4(c). Ira Schoen and Melissa Dadant, B-199999, October 9, 1981, 61 Comp. Gen. _____. In that case we held that after having elected to invoke the negotiated grievance procedure, neither the claimants nor the union should now be permitted to seek redress in another forum over the agency's objection. Therefore, we declined jurisdiction in the case to ensure smooth functioning of the Federal Service Labor-Management Relations Statutes, 5 U.S.C. §§ 7101 to 7135.

In the present case, the agency did not object to the submission of the matter to the GAO within the 20-day period set forth in 4 C.F.R. § 22.4. However, in a recent case, we held that the purpose of establishing a 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 still retained our discretion to consider comments received after the 20-day period. Lawrence L. Longsdorf, B-207187, July 7, 1982, 61 Comp. Gen. _____. In that case we exercised our discretion and declined jurisdiction even though the union did not object to the submission within the 20-day period.

We have decided to exercise that discretion in this case and consider the agency's comments even though they were not submitted within the 20-day period. We do so

because to assert jurisdiction in the face of the agency's objection would be disruptive to the negotiated grievance procedures established by the parties.

Accordingly, under 4 C.F.R. § 22.7(b), the GAO will not take jurisdiction in this matter.

Milton J. Fowler

Acting Comptroller General
of the United States