

**DECISION**

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

Blatch  
24627

**FILE:** B-210565

**DATE:** March 25, 1983

**MATTER OF:** American Federation of Government  
Employees, Local 2459 - Implementation  
of Arbitration Award

**DIGEST:**

Union's request for a determination as to the amount of overtime due employees as a result of an arbitration award, as modified by the Federal Labor Relations Authority, is more appropriately resolved under the procedures authorized by 5 U.S.C. Chapter 71. The agency has objected to submission of the matter to GAO and there are a number of factual issues in dispute. Accordingly, GAO declines to assert jurisdiction over this matter.

Local 2459, American Federation of Government Employees, Federal Correctional Institution, Texarkana, Texas, has requested a decision pursuant to 4 C.F.R. Part 22 (1982) concerning implementation of an arbitration award. A portion of the award was set aside by the Federal Labor Relations Authority (hereinafter the Authority) in Federal Prison System and American Federation of Government Employees, Local No. 2459, 8 FLRA 103, February 10, 1982. The Department of Justice has filed timely objections to the union's submission of the matter to GAO. For the reasons stated below, we decline to assert jurisdiction in accordance with 4 C.F.R. Part 22 (1982).

On March 21, 1980, Arbitrator Preston J. Moore issued an award finding, in pertinent part, that the preshift and postshift activities of the employees involved could not legally constitute hours of work. On this basis, the employees' grievance for overtime pay was denied. The union appealed the award and the Authority set aside that portion of the award. It held that the preshift and postshift activities of employees at Texarkana were hours of work within the meaning of 5 U.S.C. § 5542. However, the Authority made no determination as to the amount of compensation, if any, due employees and stated that such a determination " \* \* \* must be made in accordance with

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B-210565

applicable laws and regulations and is for resolution in a manner deemed appropriate by the parties." 8 FLRA 103, 105 at note 4.

On January 14, 1983, AFGE Local 2459 submitted the matter to GAO, noting that the parties had been unable to reach agreement as to the amount of compensation, if any, due employees. The two questions submitted for our decision were:

- (1) What amount of overtime pay per day are the employees at F.C.I. Texarkana entitled to?
- (2) Are the employees entitled to overtime compensation, retroactive to March 8, 1979?

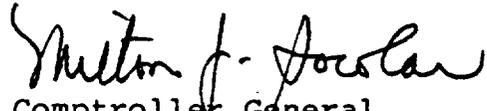
By letter dated January 31, 1983, the Department of Justice has objected to submission of this matter to GAO and has shown that a number of factual issues must be resolved before a determination can be made as to the amount of overtime pay due employees, if any. For example, neither the award nor the decision of the Authority in 8 FLRA 103 addresses the questions of which employees in the unit are affected by the award; how much overtime is claimed by affected employees; how to treat time spent in the towers allegedly performing preshift duties, etc.

It is clear, therefore, that this matter concerns a dispute over the implementation of the decision of the Authority. In the absence of a request for an advisory opinion pursuant to 4 C.F.R. § 22.5, or a joint request from the parties based upon a mutually agreed upon statement of facts, the matter is not appropriate for decision by this Office. See 4 C.F.R. § 22.7(a); Gerald M. Hegarty, 60 Comp. Gen. 578 (1981). 4 C.F.R. § 22.7(b); Lawrence L. Longsdorf, B-207187, July 7, 1982. If the parties cannot reach agreement, the matter is more appropriately resolved through the procedures authorized

B-210565

by 5 U.S.C. Chapter 71. See 4 C.F.R. § 22.8; Headquarters, U.S. Army Communications Command, et al., Fort Huachuca, Arizona, 2 FLRA 785, 789 (1980); U.S. Army Health Clinic, Fort Richie, Maryland and NFFE Local 1153, 9 FLRA 935 (1982).

Accordingly, in the absence of a request for an advisory opinion from an arbitrator or other neutral pursuant to 4 C.F.R. § 22.5, or a joint request from the parties for a decision based upon a mutually agreed upon statement of facts pursuant to 4 C.F.R. § 22.7(b), we decline to assert jurisdiction at this time.



Acting Comptroller General  
of the United States