

**DECISION**



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

**FILE:** B-209754

**DATE:** April 20, 1983

**MATTER OF:** Customs Service Employees - GAO  
Jurisdiction - Party Objects to GAO Review  
under 4 C.F.R. § 22

**DIGEST:**

GAO will not take jurisdiction of a union request filed under 4 C.F.R. Part 22 when the agency objects to the submission, even though the objection was not submitted within 20 days after receipt of the union request. GAO will exercise its discretion to consider comments received after the 20-day time period has expired, and in light of the agency's objection, will not assert jurisdiction in this matter because to do so would disrupt labor-management procedures authorized by 5 U.S.C. §§ 7101-7135.

By a letter dated October 29, 1982, Mr. William P. Milton, Jr., National Field Representative of the National Treasury Employees Union (NTEU), requests that we review an August 27, 1982, determination by the United States Customs Service (Customs), to deny the overtime claims of 46 Customs Inspectors employed in the Portland, Maine, district of that agency. Customs has objected to our consideration of these claims. Therefore, since the issues to be resolved are subject to negotiated grievance procedures, we will not take jurisdiction.

The claims of these Inspectors were based on an arbitrator's decision issued on February 2, 1982, concerning the overtime entitlements of a small group of Customs Inspectors employed at the Port of Portland, Maine. The arbitrator found that the agency, in violation of both the negotiated labor-management agreement, and certain provisions of the Customs Manual Supplement, had regularly assigned overtime work to supervisors in the Portland District, despite the fact that members of the bargaining unit were ready, willing and able to perform such work. He issued a cease and desist order, directing Customs to discontinue its practice of

regularly assigning overtime work to supervisors in lieu of available bargaining unit employees and, in addition, awarded backpay to the aggrieved Port of Portland Inspectors, to run from September 1, 1980, to the date of the agency's compliance with the cease and desist order.

Although the arbitrator limited the backpay award to the Port of Portland employees who were the actual parties to the arbitration, he concluded generally that the agency was assigning overtime work to supervisors in lieu of available bargaining unit employees throughout the Portland District. It was due to this finding that the union submitted additional claims to the agency, on behalf of other Portland District Inspectors who claimed that they, too, had been improperly denied the opportunity to work overtime. The 46 Inspectors sought backpay, in various amounts, for the period from September 1, 1980, through February 2, 1982.

Customs denied the employees' claims, stating that the arbitration award, "as it applied to backpay, was limited to the employees assigned to the Port of Portland," and thus did not concern the employees in question.

Our procedures governing decisions on matters such as this, concerning appropriated fund expenditures which are of mutual concern to agencies and labor organizations, are contained in Title 4, Code of Federal Regulations, at Part 22. Paragraph 22.7(a) of those procedures provides that we will consider payments made pursuant to a final and binding arbitration award to be conclusive on the General Accounting Office (GAO), and that we will not review or comment on the merits of such an award. That paragraph provides further that payments made pursuant to such an award do not constitute precedent for payment in other instances not covered by the award. Thus, questions as to how to treat other employees similarly situated but not covered by the award may be submitted by anyone authorized to request a decision from GAO, but if the matter concerns employees covered by the same collective bargaining agreement or is otherwise of mutual concern to the agencies and labor organizations, it must be submitted in accordance with the procedures of Part 22.

Therefore, on November 23, 1982, we wrote to NTEU's National Field Representative and advised him that in accordance with 4 C.F.R. § 22.4, he was required to serve

the appropriate agency official with a copy of his request for decision, and submit a statement of service to this Office. In a letter dated December 13, 1982, Mr. Milton advised us that he had sent the agency a copy of his request on that date.

By a letter dated February 4, 1983, the Customs Service objected to the union's submission of the matter to GAO on the grounds that the grievance procedure set forth in the labor-management agreement between Customs and NTEU is the exclusive procedure available for resolving grievances falling within its coverage. Customs also informed us that it had appealed the arbitration award to the Federal Labor Relations Authority on February 26, 1982.

Paragraph 22.7(b) of Part 22 provides that the Comptroller General will issue a decision on a matter which is subject to a negotiated grievance procedure only upon the joint request of an agency and a labor organization. Thus, except in certain circumstances not pertinent here, we will not take jurisdiction of a claim where one of the parties to the agreement objects to our doing so.

We note that Customs 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 several recent cases, we have 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. George E. Morris, B-208145, August 31, 1982; Lawrence L. Longsdorf, B-207187, July 7, 1982, 61 Comp. Gen. \_\_\_\_\_.

As we did in the cited cases, we have decided to exercise our discretion and consider the agency's comments even though they were not submitted within the 20-day period. We do so because the negotiated grievance procedure is an integral part of the arbitration process and we have determined that it would be inappropriate for GAO to respond to requests from either an agency or a union to review any matter subject to a negotiated grievance procedure if the other party objects. See 4 C.F.R. § 22.7(b).

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Therefore, in light of the jurisdictional limits we set in paragraph 22.7(b), we will not assert jurisdiction over the claim presented by NTEU.

for *Harry R. Van Cleave*  
Comptroller General  
of the United States