

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

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**FILE:** B-211954**DATE:** October 3, 1983**MATTER OF:** American Federation of Government  
Employees, Local 916

- DIGEST:**
1. An Air Force civilian payroll office through administrative error failed to deduct union membership dues allotments from the pay of certain employees and to remit the dues to their union. The union filed a grievance under its collective bargaining agreement with the Air Force and received a favorable arbitration award directing the Air Force to pay over all the unremitted dues. The General Accounting Office has no authority to review or comment on the merits of the award, or to interpose any objection to its payment.
  2. Certain civilian employees of the Air Force received overpayments of salary or wages because union dues allotments were not withheld from their pay. The General Accounting Office will not determine whether the employees are eligible to keep the overpayments, since in the circumstances presented the issue also involves questions concerning the implementation of an arbitration award which should be resolved under Federal labor-management relations procedures prescribed by chapter 71, title 5 of the United States Code.

This action is in response to a request from the Accounting and Finance Officer, Tinker Air Force Base, Oklahoma, for an advance decision concerning the propriety of approving a voucher in the amount of \$311.49 to implement an arbitration award of membership dues to a union. A decision is also requested on the propriety of approving a second voucher in the amount of \$1,781.12, as a refund of amounts previously collected from some of the civilian employees involved who received overpayments of salary or wages as the result of payroll underdeductions of union dues. The Air Force served the

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union with copies of the Accounting and Finance Officer's request and related documents and the union has not presented comments or other response. See 4 C.F.R. §§ 22.4 and 22.7(b).

We are without jurisdiction to review or comment on the merits of the arbitration award in favor of the union in this case. We decline to accept jurisdiction on issues presented which concern the implementation of the arbitration award and which relate to the employees' eligibility to keep the overpayments they received.

#### Background

Between July 1981 and April 1982 the civilian payroll office at Tinker Air Force Base failed through administrative error to deduct union dues allotments from the pay of 18 employees for remittance to American Federation of Government Employees, Local 916. As a result the employees were overpaid in a total aggregate amount of \$2,092.61, and the union was underpaid membership dues in the same aggregate amount.

After the error was discovered the Air Force proposed to the union that it would collect the dues arrearages from the employees involved and then remit the amounts collected. The union disagreed with this proposal and filed a grievance on April 7, 1982, under the terms of its Master Labor Agreement with the Air Force. The union contended that the Air Force was directly liable for the dues arrearages and should not be allowed to act as a mere collection agent in the matter. On January 24, 1983, the arbitrator announced the following award:

#### "AWARD

"The grievance is sustained. The Employer is hereby directed promptly to remit to the Union the dues it failed to collect and remit, in the amount of \$2,092.61."

During the time that the grievance proceedings were pending between April 1982 and January 1983, the Air Force had collected dues arrearages owed from the

current pay of 15 of the employees involved and had remitted the amount collected, \$1,781.12, to the union. Efforts to collect the remaining balance of \$311.49 from the other 3 employees were unsuccessful, apparently because they had left Government employment and declined to pay their dues arrearages voluntarily.

### Issues

The Accounting and Finance Officer expresses certain doubts concerning the propriety of paying the union the remaining unpaid balance of \$311.49 on the amount awarded in arbitration. In an attachment to the submission the Staff Judge Advocate, Air Force Accounting and Finance Center, notes that regulations of the Comptroller General contained in part 22 of title 4, Code of Federal Regulations, prescribe procedures to be followed in cases involving requests for advance decisions concerning the legality of appropriated fund expenditures in matters of mutual concern to Federal agencies and labor organizations, and that subsection 22.7(a) of those regulations provides:

"(a) \* \* \* Payments made pursuant to an arbitration award which is final and binding under 5 U.S.C. 7122(a) or (b) will be considered conclusive on GAO in its settlement of the accounts involved, and the Comptroller General will not review or comment on the merits of such an award. However, payments made pursuant to such an award do not constitute precedent for payment in other instances not covered by the award." (Emphasis added by the Staff Judge Advocate.)

The Staff Judge Advocate also suggests that the statutory right of the accountable officer to advance decisions under 31 U.S.C. § 3529 should be recognized as requiring our review of the aspects of the arbitration award he considers doubtful, and that this would be consistent with the above-quoted provision of regulation since there have not yet been "payments made" in full satisfaction of the award. Rather, an unpaid balance of \$311.49 to implement the award in full remains due on one of the vouchers presented for decision.

In addition, the Accounting and Finance Officer questions whether he has an obligation to approve the second voucher representing \$1,781.12 in refunds of overpayments previously collected from 15 of the employees involved, or to cease recoupment action for the recovery of the uncollected balance of \$311.49 from the other 3 former employees, because of the arbitration award. In effect, it is suggested that waiver of collection action in this case may be inappropriate under 5 U.S.C. § 5584, since the employees were furnished Leave and Earnings Statements showing that union dues were not being deducted from their pay, and they may thus have been partially at fault in the matter for failing promptly to notice the errors and bring those errors to the attention of the civilian payroll office for corrective action.

Payment of Final Arbitration Award  
in Favor of the Union

The Civil Service Reform Act of 1978, Public Law 95-454, approved October 13, 1978, 92 Stat. 1111, 1191, revised chapter 71 of title 5, United States Code, which now governs Federal labor-management relations, and which contains provisions for collective bargaining agreements (5 U.S.C. §§ 7103(8) and (12), and 7111-7120) and grievance procedures (5 U.S.C. §§ 7103(9) and 7121-7123). Under 5 U.S.C. § 7122(a) requests for the review of arbitration awards in grievance proceedings are for submission to the Federal Labor Relations Authority and not to our Office. Under 5 U.S.C. § 7122(b) arbitration awards are "final and binding" unless review by the Federal Labor Relations Authority is sought within prescribed time limits. Thus, we consider an arbitration award which is final and binding under 5 U.S.C. § 7122(a) or (b) as conclusive, and we will not review or comment on the merits of such an award regardless of whether any payment has been made under the award. See 4 C.F.R. § 22.7(a), quoted above; and Matter of Hegarty, 60 Comp. Gen. 578 (1981). We therefore conclude that we have no jurisdiction to review the final arbitration award in favor of the union in this case. It would follow from the clear terms of that award that the \$311.49 voucher prepared in the union's favor should be paid.

Collection of Overpayments from Employees

Each of the 18 employees involved in this matter received overpayments of salary or wages at some time during the period July 1981 through April 1982 because payroll deductions were not made for their union membership dues. Although it appears that the union suggested in the course of the subsequent grievance proceedings that the collection of the overpayments from the employees would unfairly "impose an additional financial burden on [them], disruptive of their budgeting," the arbitration award which is quoted above did not specifically cover that aspect of the controversy. Furthermore, in the "discussion and findings" portion of his opinion immediately preceding the announcement of the award, the arbitrator concluded that the Air Force was directly liable to the union for the unpaid dues arrearages and should not be allowed to delay payment to the union until the arrearages were first collected from the employees, but the arbitrator did not specifically state in his opinion that the 18 employees had an unqualified right to keep all the overpayments they had received. That opinion also does not reveal whether the arbitrator was aware of the fact that \$1,781.12 had been recouped from the employees and remitted to the union.

As indicated, we will not comment on the merits of the arbitrator's award. However, while some arguments were apparently raised in the grievance proceedings concerning the employees' ultimate repayment obligations, it is not entirely clear to us whether this subject is within the scope of the award. In any event, our view is that this issue involves questions concerning the implementation of an arbitration award, and we therefore conclude that it is not appropriate for decision by our Office. Rather, the provisions of 5 U.S.C. chapter 71 appear more appropriately to apply to the controversy in its present stage. Concerning the application of chapter 71, the Federal Labor Relations Authority specifically stated in Headquarters, U.S. Army Communications Command, et al., Fort Huachuca, Arizona, 2 FLRA 785, 789 (1980), that:

\* \* \* \* There are ready means available under the Statute for resolving this type

of dispute. If a question of clarification or interpretation of the arbitrator's award arises in connection with compliance therewith, the parties may jointly request a clarification or interpretation of the award from the arbitrator or the parties may jointly submit the question of compliance to arbitration for resolution. In addition, where appropriate, the unfair labor practice procedures under section 7116 of the Statute may be used when there is a dispute concerning an alleged failure of a party to abide by a final and binding arbitration award. 6/ \* \* \*

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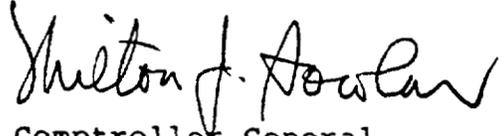
"6/ Judicial review and enforcement of orders issued by the Authority in such proceedings may then be sought under section 7123(a) and (b) of the Statute."

We may not properly interfere with these procedures prescribed by 5 U.S.C. chapter 71, and we therefore decline to accept jurisdiction in this controversy. However, the matter may be submitted for our advisory opinion under 4 C.F.R. § 22.5 by an arbitrator or other neutral authorized to administer the provisions of 5 U.S.C. chapter 71, since the recoupment or waiver of overpayments of pay and allowances is otherwise within the jurisdiction of our Office. See, for example, Matter of National Treasury Employees Union, 58 Comp. Gen. 721 (1979); Matter of Department of Labor, 60 Comp. Gen. 93 (1980); and Matter of National Federation of Federal Employees, Local 1239, 61 Comp. Gen. 218 (1982). Compare also Lodge 2424, International Ass'n of Machinists and Aerospace Workers, AFL-CIO v. United States, 215 Ct. Cl. 125, 135 (1977); and Price v. United States, 224 Ct. Cl. 58 (1980).

Accordingly, the voucher in the amount of \$311.49 in favor of the union is returned for payment. The

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second voucher in the aggregate amount of \$1,781.12 which has been prepared in the employees' favor is also returned for further consideration in accordance with the above.

*for*   
Comptroller General  
of the United States