





Office of the General Counsel

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January 21, 1994

Jan W. Miller  
Assistant General Counsel  
for Employee and Public Affairs  
U.S. Agency for International Development  
320 Twenty-First Street, N.W.  
Washington, D.C. 20523

Dear Mr. Miller:

We refer to your letter of August 13, 1993, in which you request the views of this Office on our jurisdiction to consider matters which are subject to the grievance procedures of the Foreign Service Act of 1980, as amended, 22 U.S.C. chapter 52 (1988).

You refer to the 1992 amendments to our regulations in 4 C.F.R. Parts 22 and 30, relinquishing GAO's jurisdiction over claims subject to negotiated grievance procedures.<sup>1</sup> You state that the repeal of Part 22 in its entirety seems to indicate that the General Accounting Office wanted to take away jurisdiction for labor relations cases generally, although the amendatory language is restricted to grievance procedures under 5 U.S.C. § 7121(a).

As you point out in your letter, our decision to amend our regulations was based on the exclusivity provision of 5 U.S.C. § 7121(a) (1988), as interpreted by the courts. See \_\_\_\_\_, et al., 71 Comp. Gen. 374 (1992); Carter v. Gibbs, 909 F.2d 1452 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 46 (1990). The so-called "exclusivity" provision makes collective bargaining grievance procedures under 5 U.S.C. chapter 71 the exclusive means for resolving disputes falling within their coverage.

We find no similar "exclusivity" provision in the grievance procedures of the Foreign Service Act of 1980. The current provisions continue the major provisions for the resolution of grievances by individuals within the Foreign Service that existed prior to the 1980 Act. See, H.R. Rep. No. 96-992,

<sup>1</sup>57 Fed. Reg. 31272, 33392, No. 135, 145 (July 14 and 28, 1992).

96th Cong., 2d Sess. 4 (1980), reprinted in 1980  
U.S.C.C.A.N. 4419, 4506. See also, 22 U.S.C. §§ 1036-1037c  
(1976).

The current statutory authority pertaining to grievances for FSO's, 22 U.S.C. §§ 4131-4140, provides the grievant with a choice of remedies, either to (1) file a grievance with the Foreign Service Grievance Board, or (2) seek relief under another provision of law, regulation, or Executive Order. And once the grievant decides which path to follow, that choice becomes his exclusive remedy. 22 U.S.C. §§ 4139(a), and (b).

We believe that the statutory language in 22 U.S.C. § 4139(a), which permits a FSO to seek relief under another provision of law or regulation, provides the authority for this Office to adjudicate a monetary claim under the provisions of 31 U.S.C. § 3702 (1988) or to issue an advance decision under 31 U.S.C. § 3529.

Also, unlike the federal employees in Carter v. Gibbs, 909 F.2d 1452, supra, who were denied a remedy in court because of the "exclusivity" provision in 5 U.S.C. § 7121(a), the FSO's who decide to file a grievance with the Foreign Service Grievance Board are entitled by law to a judicial review of the final action of the Board. 22 U.S.C. § 4140. Likewise, a FSO who receives an unfavorable decision from this Office would not be precluded from filing an action at law in the appropriate court.

Accordingly, we find nothing in the language of the Foreign Service Act of 1980, as amended, that would preclude this Office from taking jurisdiction over monetary claims of FSO's, provided that they have not previously elected to seek a remedy before the Foreign Service Grievance Board.

Sincerely yours,



Robert P. Murphy  
Acting General Counsel