DECISION

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

FILE: B-208399 **DATE:** June 3, 1983

MATTER OF: Eleanor Mickelson - Labor Relations - Objection to GAO review

DIGEST:

In accord with 4 C.F.R. Part 22.7 (b), GAO will not take jurisdiction of a union request for our review of an employee's claim where the agency objects to GAO's consideration of the claim. Nor will we take jurisdiction under 4 C.F.R. Part 31 since the claim was the subject of a grievance.

Mr. Craig Kokkeler, Chief Steward of Local 1199, American Federation of Government Employees (AFGE), has requested our decision concerning the backpay claim of Ms. Eleanor Mickelson, an employee at Nellis Air Force Base, Nevada. For the reasons explained below, we will not assume jurisdiction over this claim.

Ms. Mickelson's claim for backpay arose because she allegedly performed the duties of a WG-5 position while officially occupying and receiving the pay of a WG-4 position. According to the union, in December 1979, Ms. Mickelson interviewed and was hired for the position of Meatcutter Worker WG-7407-05. Because she did not have the necessary health card, however, she was brought on board in a Store Worker, WG-7602-04 position. She was informed that she would be placed in the Meatcutter position as soon as she obtained the health card. Although she did begin work in the meat department upon receipt of the card, she was not officially transferred to that department until several months later. The date of that transfer is not entirely clear, but it appears to have been either June 1 or July 1, 1980.

Ms. Mickelson filed a grievance on this matter in December 1980. In April 1981, she was informed she was to receive a retroactive temporary promotion and backpay from the 121st day of her service in the meat department to the date of her official transfer. That award was made

in accord with our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977) (overruled in Turner-Caldwell III, 61 Comp. Gen. 408 (1982)), in which we established the rule that where an agency has failed to obtain prior Office of Personnel Management approval to detail an employee to a higher-graded position beyond 120 days and has kept an employee on overlong detail, the employee is deemed to have been temporarily promoted and is entitled to receive backpay from the 121st day of the detail to its end.

On May 12, 1981, the union filed an unfair labor practice charge with the Federal Labor Relations Authority (FLRA) on behalf of Ms. Mickelson. The FLRA took no formal action, however, for the union agreed to a settlement with the agency whereby, in accordance with the provisions of Article 13.7 of their Negotiated Agreement, Ms. Mickelson was to receive backpay from the 61st day of her service as a meatcutter.

Mr. Kokkeler has requested our ruling on Ms. Mickelson's claim of entitlement to backpay from the first day of her service to the 61st day.

Our procedures found in Title 4, Code of Federal Regulations, Part 22, govern requests for Comptroller General decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. We issued those procedures in order to inform both labor and management in the Federal sector of our policies in light of the enactment of the Civil Service Reform Act of 1978, Public Law 95-454. They give labor organizations and Federal agencies equal access to GAO on any matter of mutual concern involving the expenditure of appropriated funds and extend the right to request an advisory opinion on such matters to arbitrators and other neutral parties. They also provide guidance as to when GAO will defer to procedures established pursuant to Chapter 71 of title 5, United States Code.

In that connection, section 22.7 (a) of our regulations provides that the Comptroller General will not review or comment on the merits of an arbitration award which is final and binding pursuant to 5 U.S.C. § 7122(a) or (b). Since the negotiated grievance procedure is an integral part of the arbitration process, we also determined that it would be inappropriate for GAO to respond to requests from either management or labor to review any matter subject to a negotiated grievance procedure if the other party objects. Section 22.7(b) of Part 22, therefore, provides that the Comptroller General will only issue a decision on a matter which is subject to a negotiated grievance procedure upon the joint request of an agency and a labor organization.

We do not have a joint request for a decision on this matter since the Air Force has objected to our review of Ms. Mickelson's claim. As a result, in accordance with 4 C.F.R. § 22.7(b), we will not take jurisdiction over this claim.

We will also not accept jurisdiction of a claim filed under 4 C.F.R. Part 31 when a grievance has been filed since we believe that, when the negotiated grievance procedure has been invoked, neither the agency nor the union should be permitted to abandon that procedure over the other party's objection and seek redress in another forum. See Schoen and Dadant, 61 Comp. Gen 15 (1981).

Therefore, since a grievance was filed in this matter, and the agency has objected to our jurisdiction, we will not consider Ms. Mickelson's claim under either 4 C.F.R. Part 22 or 4 C.F.R. Part 31.

for Milton J. Socolar
Comptroller General
of the United States