



The Comptroller General  
of the United States

Washington, D.C. 20548

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PUM-I

## Decision

Matter of: Valerie Pannucci Reynolds - Backpay

File: B-225918

Date: March 19, 1987

### DIGEST

GAO will not assert jurisdiction of a request filed by an authorized certifying officer pursuant to 4 C.F.R. Part 22 which questions the legality of a payment ordered by a step III negotiated grievance decision where the union has objected to submission of the matter to GAO and has already initiated procedures under 5 U.S.C. Chapter 71 to resolve the issue.

### DECISION

This is a request for a decision pursuant to 4 C.F.R. Part 22 (1986) from an authorized certifying officer as to whether he can award backpay pursuant to the decision of management at step III of the negotiated grievance procedure. The certifying officer argues that the payment would be illegal, and the union objects to submission of the matter to GAO. We decline to assert jurisdiction.

### FACTS

As of April 1983, Valerie Pannucci Reynolds occupied the position of GS-12 Budget Analyst at the U.S. Department of Housing and Urban Development. She apparently had been expecting a promotion to the GS-13 level for some time but none was forthcoming. On January 17, 1985, as a part of an office-wide position management review, her position description was revised and certified as accurate, but she was still not promoted to the GS-13 level. She and her supervisors continued to communicate on this issue and finally on August 7, 1986, Ms. Reynolds filed a grievance requesting retroactive promotion with backpay.

After the grievance was filed, management advised Ms. Reynolds that there was no position established and classified at the GS-13 level and so a desk audit of her duties would have to be performed. The desk audit was

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conducted on August 13, 1986, and resulted in her position being classified at the GS-13 level. The position description upon which the GS-13 determination was based is admitted to be, for all practical purposes, identical to the position description certified as accurate on January 17, 1985. Ms. Reynolds was promoted to a GS-13 on September 14, 1986, but continued to pursue her grievance seeking backpay.

Her grievance requesting backpay was denied at steps I and II of the negotiated grievance procedure because there was no position classified at the GS-13 level during the relevant period, and therefore, there was no entitlement to backpay. However, on October 28, 1986, at step III of the negotiated grievance procedure, the then Assistant Secretary for Community Planning and Development found for the grievant and directed backpay retroactive to January 17, 1985, the date of the earlier position description.

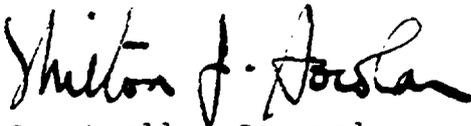
On December 15, 1986, the Director, Personnel Systems and Payroll Division, Harold I. Morrison, an authorized certifying officer, requested the Comptroller General to issue a decision as to whether payment can be made based upon the step III grievance decision. On December 17, 1986, the Chief Steward of AFGE Local 476 filed an objection to the submission of the matter to GAO. AFGE also advised that the agency's failure to make payment in accordance with the step III decision is the subject of an arbitration hearing scheduled for January 1987. On January 5, 1987, this Office received a copy of a letter dated December 16, 1986, addressed to the President of AFGE Local 476, from the Chief, Labor Relations Branch, HUD, stating that, in their view, the question of implementing the decision on the grievance of Ms. Reynolds had not been presented through proper channels and therefore management did not agree that the arbitrator would have jurisdiction to consider this issue in the proceedings scheduled for January.

#### DISCUSSION

It is the policy of the Comptroller General in all cases, including requests from certifying and disbursing officers, to refuse to assert jurisdiction when to do so would be disruptive to the labor management process authorized by 5 U.S.C. Chapter 71, 4 C.F.R. § 22.8 (1986); 45 Fed. Reg. 55690 (August 21, 1980). Since the union has objected to our assertion of jurisdiction, and has already initiated procedures to resolve the issue under the negotiated grievance procedure, it would be disruptive to the grievance arbitration process for us to assert jurisdiction. Although management has objected to the union's efforts to arbitrate the

issue, the fact remains that the union has demonstrated that it prefers to resolve this issue pursuant to the procedures authorized by 5 U.S.C. Chapter 71. Since these statutory procedures are designed to provide outside review of the legality of the payment, it would be inappropriate for us to intervene or interfere in that process. See, National Federation of Federal Employees Local 1437, B-220119, December 9, 1985, and cases cited therein.

For the reasons stated above, we decline to assert jurisdiction.

*for*   
Comptroller General  
of the United States