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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paul D. Bills, et al. —GAO Jurisdiction—Matters Subject to a Negotiated Grievance Procedure

File: B-260475

Date: June 13, 1995

DIGEST

Former members of a collective bargaining unit who had been employed under intermittent appointments claim backpay and other benefits on the ground that they should have been appointed as regular full-time employees. Although a negotiated grievance procedure was available to them at the time the claims arose under which other similarly situated employees grieved their employment status and received a settlement from the agency, these employees did not do so. Subsequently, after leaving the bargaining unit, the employees sought resolution of their claims in the General Accounting Office (GAO) asserting that the grievance procedure is no longer available to them. GAO has no jurisdiction over claims by employees covered by a negotiated collective bargaining agreement containing grievance procedures. The negotiated grievance procedures in this case represented the employees' exclusive remedy at the time the claims arose, and the fact that the claimants did not avail themselves of this remedy when it was available does not provide a basis for GAO to take jurisdiction of their claims.

DECISION

Mr. Paul Bills on behalf of himself and eight other members of American Federation of Government Employees (AFGE) Local 1138, seeks reconsideration of our Claims Group's declination of jurisdiction over their claims.[1] Their claims are for backpay for holidays, annual and sick leave and other benefits to which they would have been entitled if they had received appointments as regular full-time employees for several periods of time when they served as intermittent employees. We affirm the Claims Group's determination.

The claimants here served as intermittent employees in the Civil Engineering Group at Wright-Patterson Air Force Base, Dayton, Ohio, under appointments made at various

[1]Claims Group's letter Z-2869283, July 12, 1994, to Senator Howard M. Metzenbaum, who had inquired on the claimants' behalf.

times beginning in the 1970s with the last extending into January 1990. Their names and the last day on which they served under their intermittent appointments are shown below:

Name	Last Day of Intermittent Appointment
Paul Bills	October 1, 1988
Larry G. Lykins	July 1, 1987
Ted E. Beegle	October 30, 1987
Thomas J. Bachman	September 26, 1986
Ronald L. Coburn	January 22, 1989
Joseph D. Geiger	January 6, 1990
Gary C. Smith	August 7, 1977
Ben A. Rice	March 4, 1989
Kevin L. Jones	September 20, 1986

At the times when they served as intermittent employees, these individuals were covered by a collective bargaining agreement with the agency and were represented by the International Association of Machinists and Aerospace Workers (IAM & AW) Local 2333. There is no dispute that the employees could have challenged their employment status under the grievance procedures of that collective bargaining agreement. However, they did not do so during their tenure as intermittent employees. Subsequently, the employees received regular permanent appointments to positions represented by a different labor organization, the AFGE. On March 31, 1993, these employees submitted grievances to the agency seeking to have their prior intermittent appointments retroactively changed to regular full-time appointments with entitlement to backpay, leave, and other benefits. In submitting their grievances, the employees named AFGE Local 1138 as their authorized agent.

In an April 13, 1993, memorandum, the agency denied the grievances on two grounds: (1) the AFGE could not represent them on the matter because, at the time their claims arose, the IAM & AW was the employees' exclusive representative, and (2) under the agreement with the IAM & AW, any grievance they had terminated when they left the bargaining unit, and therefore their grievance was untimely filed.

The agency also noted that in October 1992, the IAM & AW on behalf of other similarly situated intermittent employees, had filed a group grievance raising the same issues, and the agency entered into a negotiated settlement with the IAM & AW in March 1993 resulting in a number of concessions to the employees included in the group grievance.

By its terms, this settlement applied only to the 55 employees who joined the group grievance. Although not required to, the agency agreed to honor the claims of any present and former temporary intermittent employees who chose to join in the settlement. The nine claimants here did not join in the grievance and thus were not covered by the settlement.

Subsequently, when the agency denied the grievances of Mr. Bills and the other eight employees, Mr. Bills appealed to our Claims Group, which as we noted, declined to consider the claims because the General Accounting Office's jurisdiction does not cover claims that are subject to a negotiated grievance procedure. In his request for reconsideration, Mr. Bills asserts that, because the agency has stated that he and the other employees no longer have the right to grieve their former status as intermittent workers, their claims are not subject to the jurisdictional bar cited by the Claims Group.

OPINION

As the Claims Group noted, we do not have jurisdiction to settle claims of members of a collective bargaining unit on a matter that is not specifically excluded in the collective bargaining agreement. Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992); and 4 C.F.R. § 30.1(b). The rationale for this limitation on our jurisdiction is contained in a line of court cases holding that the exclusivity provision in the Civil Service Reform Act of 1978, 5 U.S.C. § 7121(a), makes the negotiated grievance procedure under the collective bargaining agreement the exclusive remedy for claims that are subject to that procedure. See Carter v. Gibbs, 909 F.2d 1452 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 46 (1990).

Neither our Riggs decision nor our subsequent cases have considered claims by employees who were members of a collective bargaining unit covered by a negotiated grievance procedure at the time the claims arose, but who no longer were members of that bargaining unit at the time they asserted the claims, as is the case here. However, the courts have considered this issue and have determined that it is the employee's status as a member of the bargaining unit at the time the claim arose that is dispositive of the issue; that is, if the employee was a member of a bargaining unit covered by such an agreement, the Civil Service Reform Act's exclusivity provision is applicable to the claim. Muniz v. United States, 972 F.2d 1304 (Fed. Cir. 1992); and Aarnodt v. United States, 22 Cl. Ct. 716 (1991), affirmed 976 F.2d 691 (Fed. Cir. 1992). This holding has been applied even where the employees have left the bargaining unit and may no longer bring their grievances under the collective bargaining agreement. Brammer v. United States, 24 Cl. Ct. 487, 494 (1991).

In the present case, under the facts presented to us, and applying the decisions cited above, where the negotiated grievance procedure was available to the nine employees when their claims arose (during their tenure as intermittent employees) that grievance procedure was their exclusive remedy. The facts that they may have failed to take advantage of that procedure when it was available, and the grievance procedure may no

longer be available to them to pursue these claims, would not create jurisdiction in our Office to consider such claims over which we had no jurisdiction when they arose.[2] Riggs, supra. Accordingly, we have no jurisdiction to settle these claims.[3]

Robert P. Murphy
General Counsel

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[2]We note that at least in some circumstances courts have held that termination of an employee's status under a collective bargaining agreement would not exclude a dispute that arose while the employee was covered under the agreement from the grievance and arbitration process although the employee was no longer covered under the agreement. See, Muniz v. United States, 972 F.2d 1304 (Fed. Cir. 1992); and Albright v. United States, 26 Cl. Ct. 1119 (1992). It is not within our province to review the agency's decision to deny the employees' grievances; that would be a matter for the employees to pursue via arbitration and appeal procedures provided under the Civil Service Reform Act, 5 U.S.C. §§ 7121, 7122.

[3]We also note that even if the claims fell within our jurisdiction, many would be at least partially time barred by our 6-year statute of limitations under which the claim must have been received by our Office or by the department or agency out of whose activities the claim arose within 6 years from the date the claim accrued. 31 U.S.C. § 3702(b), as implemented by 4 C.F.R. § 31.5(a). Since these claims were originally submitted as grievances to the agency on March 31, 1993, to the extent any amounts claimed accrued before March 31, 1987, they would be time barred.