

B-260902

April 24, 1995

Mr.
President, Columbia Basin Trades Council
1766 Fowler, Suite B
Richland, Washington 99352

Dear :

This replies to your letter of March 22, 1995, asking whether our Office would render an opinion regarding an unresolved issue relating to the wage rate for certain Bureau of Reclamation employees at the Grand Coulee Dam Facility who are represented by the Columbia Basin Trades Council. The correspondence you furnished with your letter indicates that you have been discussing with Bureau of Reclamation management representatives whether to submit a joint request to us for such an opinion. It is your position that even if we render such an opinion, your organization would retain the right to take the matter to arbitration under the terms of the existing collective bargaining agreement.

Prior to April 1992, it was our policy to issue a decision in response to a joint request of an agency and a labor organization on a question of mutual concern to them involving the expenditure of appropriated funds.¹ However, we reassessed our jurisdiction in such matters in view of several decisions of the federal courts holding that the courts lack jurisdiction to consider claims of federal employees covered by negotiated collective bargaining agreements authorized under the Civil Service Reform Act of 1978, if the matter in dispute is not excluded from coverage by the grievance procedures included in the collective bargaining agreement. As a result, we concluded in our decision Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992), copy enclosed, that the same rationale adopted by the courts as to the exclusivity provision of the Civil Service Reform Act, 5 U.S.C.

¹E.g., 60 Comp. Gen. 668 (1981), also involving the Bureau of Reclamation and the Columbia Basin Trades Council. See also, our procedures published at 4 C.F.R. Part 22 (1992), subsequently repealed.

§ 7121(a), applies to our jurisdiction to consider claims of employees covered by such negotiated grievance procedures. Accordingly, we held that we would no longer accept a request for a decision from members of a collective bargaining unit on a matter that is not specifically excluded in the collective bargaining agreement, and we repealed our procedures for accepting joint requests on such matters from agencies and labor organizations. See 57 Fed. Reg. 3172, July 14, 1992.²

The employees your organization represents in this matter apparently are employees whose pay and pay practices are negotiated pursuant to authority provided by section 9(b) of Public Law 92-392, August 19, 1972; and section 704 of the Civil Service Reform Act of 1978, Public Law 95-454, October 13, 1978.³ It is our understanding that such employees' negotiated agreements include grievance procedures covering resolution of disputes arising under the agreements, and that they are covered by grievance, arbitration and review provisions of the Civil Service Reform Act, 5 U.S.C. §§ 7121-7123.⁴ Therefore, as explained above, unless the issue you wish to have resolved is specifically

²We continue to accept requests for decisions on matters with respect to federal employees not covered by a collective bargaining agreement, and with respect to bargaining unit employees where the collective bargaining agreement specifically excludes the issue we are asked to consider from the negotiated grievance procedures. We also continue to accept requests for decisions from federal agency officials on issues of general application which do not involve specific employee claims covered by negotiated grievance procedures. Riggs, 71 Comp. Gen. at 377-378.

³These provisions are set out as notes to 5 U.S.C. § 5343 (1988).

⁴See, Columbia Power Trades v. U.S. Department of Energy, 671 F.2d 325 (1982); and U.S. Department of the Interior v. Federal Labor Relations Authority, 1 F.3d 1059 (1993).

excluded from coverage under the grievance procedures in the collective bargaining agreement, we would not accept your request for a decision on the matter.

Sincerely yours,

/s/ Davis F. Engstrom

for David F. Engstrom
Assistant General Counsel

cc: Mr.
Regional Human Resources Officer
Pacific Northwest Region
Bureau of Reclamation
1150 North Curtis Road
Boise, Idaho 83706-1234
(with enclosures)

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DIGEST

Union representative is advised that GAO no longer accepts joint requests for decisions from agencies and labor organizations on matters covered by grievance procedures under negotiated collective bargaining agreements since, under the "exclusivity" provision of the Civil Service Reform Act of 1978, such procedures are considered the exclusive means for resolving disputes for matters covered by the negotiated agreements. The employees this union represents at the Bureau of Reclamation Grand Coulee Dam Facility negotiate their pay and pay practices pursuant to § 9(b), Pub. L. No. 92-392, and § 704 of the Civil Service Reform Act, Pub. L. No. 95-454, and court cases cited show that resolution of disputes for such employees is subject to the grievance, arbitration and review procedures provided by the Civil Service Reform Act.