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

FILE: B-212632 **DATE:** October 4, 1983

MATTER OF: Portsmouth Naval Shipyard

DIGEST: A disbursing officer requests a decision concerning the propriety of payment of overtime and the charging of leave incident to an arbitration award. The arbitrator found that the agency violated the agreement by changing employees' work schedules without the requisite 3 days' notice and for a period less than the 3-week minimum specified in the agreement. In the absence of a request for an advisory opinion or a joint request from the parties on a mutually agreed upon statement of the facts, this matter is more appropriately resolved under the procedures authorized by 5 U.S.C. chapter 71. Thus, the Comptroller General declines jurisdiction.

The Disbursing Officer, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, requests an advance decision concerning the payment of overtime and the charging of leave incident to an arbitrator's award. The arbitrator found that the shipyard management violated an agreement with the Federal Employees Metal Trades Council when it changed the hours of work of unit employees for a period less than the minimum specified in the agreement. While not questioning the finding of a violation of the agreement, the disbursing officer presents questions concerning the implementation of the award. For the reasons stated below, we decline to assert jurisdiction in this matter in accordance with 4 C.F.R. § 22.8 (1983).

The issue presented to Arbitrator Milton J. Nadworny was whether the shipyard management violated a labor-management agreement with the Metal Trades Council when it changed the hours of work for unit employees for a period of less than 3 weeks. The arbitrator found that the unit employees, who were assigned to overhaul and install equipment on a submarine, were asked to work 12-hour shifts beginning on November 30, 1981, instead of their normal shifts of 8 hours. This schedule continued for 9 days, at which time the employees apparently returned to their regular schedules. The Council

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filed a grievance on behalf of the employees with the shipyard on the basis that a provision of the Agreement between the parties provides:

> "Section 4. When an employee's shift and/or shift hours are changed, the Employer agrees to:
>
> "a. Give the employee at least three calendar days' notice prior to the first administrative workweek on which the change occurs.
>
> "b. Make the change for three consecutive weeks or more."

Management rejected the Council's grievance, relying on a separate provision of the Agreement that allows shifts and/or shift hours to be changed due to "unpredictable occurrences." Management referred to unspecified contractor deficiencies as having provided an unpredictable occurrence that prevented the shift change from being scheduled in advance.

Following a hearing held at the shipyard on December 6, 1982, the arbitrator found for the Council in an award dated March 9, 1983. Specifically, he found that the shipyard had not established that an unpredictable occurrence, or an emergent operation existed justifying a shift change without the required 3-day notice and for a period less than the 3-consecutive-week period. He therefore awarded the unit employees the difference between their actual earnings and the earnings which they would have achieved on 12-hour shifts during the 3-week period beginning on November 30, 1981.

Although the file submitted to this Office contains a draft of an agency appeal to the Federal Labor Relations Authority of the arbitrator's decision, we have been advised that the Authority's records do not show that the appeal was ever filed.

The disbursing officer requests an advance decision on the legality of paying employees overtime for work not performed, and whether employees who were on leave

during the award period should be charged 12 hours' leave, charged 8 hours' leave and paid 4 hours' overtime, or charged 8 hours' leave.

It is clear that this matter concerns a dispute over the implementation of an arbitration award. In the absence of a request for an advisory opinion pursuant to 4 C.F.R. § 22.5, or a joint request from the parties based upon a mutually agreed upon statement of facts, the matter is not appropriate for decision by this Office, but is more appropriately resolved through the procedures authorized by 5 U.S.C., chapter 71. See 4 C.F.R. §§ 22.7 and 22.8; and Matter of American Federation of Government Employees, Local 2459, B-210565, March 25, 1983, 62 Comp. Gen. 274.

Accordingly, we decline to assert jurisdiction in this matter.

for Milton J. Socolar
Comptroller General
of the United States