



United States
Office of
Personnel Management

Washington, DC 20415-0001

In Reply Refer To:

Your Reference'

Date: March 25, 2003
Matter of: [name]
File Number: 03-0008
OPM Contact: Deborah Y. McKissick

The claimant is employed as [GS-5 position] with the Department of the Air Force. The claimant is requesting a retroactive temporary promotion to [GS-6 position] with back pay, effective July 2002. The Office of Personnel Management (OPM) received the compensation claim on November 14, 2002 and the agency administrative report on December 26, 2002. For the reasons stated below, we do not have jurisdiction to consider this claim.

Based on the information provided by the agency, the claimant was covered by a collective bargaining agreement during the time of the claim. The claimant's issues, retroactive temporary promotion and back pay, were not excluded from the negotiated grievance procedures under the agency's collective bargaining agreement. *See Article 19, Section 4, of the Agreement between Headquarters, 910th Airlift Wing and Local 1952 of the American Federation of Government Employees.*

OPM cannot take jurisdiction over the claim of Federal employees that are or were subject to a negotiated grievance procedure under a collective bargaining agreement between the employee's agency and labor union, unless that matter is or was specifically excluded from the agreement's grievance procedure. This is because the courts have found that Congress intended that such a grievance procedure is to be the exclusive remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 9M F.2d 1452, 1454-55 (Fed. Cir. 1990). That Act mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive remedy for matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992). Accordingly, OPM cannot assert jurisdiction over, or issue a decision concerning, this matter.

This settlement is final. No further administrative review is available within the Office of Personnel. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.

