



United States
**Office of
Personnel Management**

Washington, DC 70415

Date: September 27, 2004

Claimant: [name]

File Number: 04-0037

OPM Contact: Robert D. Hendler

The claimant represents 51 employees of the 55th Civil Engineering Squadron and 55th Transportation Squadron at Offutt Air Force Base (AFB), Nebraska. He is filing a claim requesting the Office of Personnel Management (OPM) to direct Offutt AFB to compensate the employees for "Stand-By On-Call Duty" since January 2003. The claimant states that he asserts these claims are authorized under 31 U.S.C. 3701 and 5 CFR 551.431. OPM received the compensation claim on June 8, 2004, and a copy of the applicable collective bargaining agreement on June 18, 2004. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

During the claim period, the employees represented by the claimant were in positions covered by a collective bargaining agreement between the American Federation of Government Employees (AFGE) Local 1486 and the Department of the Air Force. OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of 31 U.S.C. 3702. OPM also is responsible for adjudicating Fair Labor Standards Act (FLSA) claims under the provisions 5 CFR Part 551. However, OPM cannot take jurisdiction over the compensation, leave, or FLSA claims of Federal employees *that are or were subject* to a negotiated grievance procedure (NGP) under a collective bargaining agreement between the employee's agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. (Emphasis added). This is because the courts have found that Congress intended that such a grievance procedure is to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). 5 U.S.C. 7121(a)(1) mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive administrative procedures for resolving 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). Because compensation, leave, and FLSA issues are not specifically excluded from the NGP, they must be construed as covered by the NGP that the affected employees were subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation or FLSA claims for the affected employees during the claim period.

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