

**Compensation Claim Decision**  
**Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** [agency component]  
National Credit Union Administration  
[city & State]

**Claim:** Retroactive locality pay adjustment

**Agency decision:** Denied

**OPM decision:** Denied; Lack of subject-matter  
jurisdiction

**OPM file number:** 07-0053

/s/ for

---

Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability

8/21/2008

---

Date

The claimant is employed in a Credit Union Examiner, CU-580-12, position with [agency component], National Credit Union Administration (NCUA), in [city & State]. He seeks a locality adjustment to his basic rate of pay retroactive to January 1, 2005. The U.S. Office of Personnel Management (OPM) received his claim request on August 27, 2007, and the agency administrative report (AAR) on April 7, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

In his August 21, 2007, claim request, the claimant's representative states that although the claimant is represented by an exclusive representative, the National Treasury Employees Union (NTEU), there is currently no collective bargaining agreement and no negotiated grievance procedure. He states the agency's own grievance procedure expressly precludes grievances related to compensation, and a grievance on this matter was rejected by NCUA. The claimant's representative asserts NCUA has failed to follow its own published rules with regard to setting locality pay, citing *Robert Becker and Jeffrey Simcox*, B-233214.2, March 8, 1990; and *Jack Mohl and Jerry W. Elliott*, B-213816, May 22, 1984. He states:

Since the President's Pay Agent expanded the Miami-Ft. Lauderdale pay locality area on January 1, 2005 to include Palm Beach County, the NCUA should have followed its own regulations and included it in their Miami/Ft. Lauderdale locality areas as well. By failing to do so the Agency is unjustly enriched and wrongfully withholding compensation from the Claimant.

In its AAR, NCUA states the NCUA Board has statutory authority under section 1766(j) of title 12, United States Code (U.S.C.) to fix the compensation of employees and rates of basic pay without regard to chapter 51 or subchapter II of chapter 53 of 5 U.S.C. NCUA states it has established a performance-based compensation program under that authority. The AAR describes the NCUA pay-setting process, and states:

In July 2004, NCUA's employees voted to be represented by the National Treasury Employees Union (NTEU). Since the NCUA Board has the authority to set pay, a change in locality pay rates would constitute a change in working conditions and by law NCUA was required to negotiate this change with NTEU.

On January 11, 2008, NCUA signed a three-year collective bargaining agreement (CBA) with NTEU. Article #9 of the CBA provides for locality rates to be increased or decreased by 3% for each year of the contract. On March 17, 2008,...[the claimant's] locality rate was adjusted to 7.73%, in accordance with the CBA.

The AAR cover letter lists the claimant's representative as receiving a copy with attachments. OPM did not receive comments on the AAR from the representative.

The general authority to settle compensation and leave claims under 31 U.S.C. § 3702(a)(2) does not permit OPM to insert itself into the negotiation by NCUA and NTEU over conditions of employment as provided for in 5 U.S.C. § 7101(1)(C). Once afforded exclusive recognition under 5 U.S.C. § 7111, conditions of employment (see 5 U.S.C. § 7103(a)(14)), including bargaining unit employee compensation matters unencumbered

by the statutory restrictions of 5 U.S.C. chapters 51 and 53, became subject to the negotiation provisions of 5 U.S.C. § 7114. Thus, the matter at issue in this claim is removed from OPM's subject-matter jurisdiction and may not be settled under 31 U.S.C. § 3702(a)(2).

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