

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs

Office of Merit Systems Oversight and Effectiveness
1900 E Street, NW
Washington, DC 20415-6000

Fair Labor Standards Act Decision
Under section 4(f) of title 29, United States Code

Appellant: Claimant

Agency classification: Airway Transportation Systems Specialist
FG-2101-13

Organization: Federal Aviation Administration
Department of Transportation
Bangor, ME

Claim: Exemption status.

OPM decision: Denied. Bargaining unit position.

OPM decision number: F-2101-13-01

Deborah Y. McKissick
FLSA Claims Officer

July 30, 2002

Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which Office of Personnel Management administers the Fair Labor Standards Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in 5 CFR 551.708 (address provided in 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[claimant's name and address]

[name]
Manager
Human Resources Management Division
Federal Aviation Administration
U.S. Department of Transportation
[address]

Introduction

On September 26, 2001, the Office of Merit Systems Oversight and Effectiveness (OMSOE) of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. The claimant works with the Federal Aviation Administration of the Department of Transportation as an Airway Transportation Systems Specialist, FG-2101-13. We have accepted and decided his claim under section 4(f) of title 29 (FLSA), United States Code.

As is customary with our analysis of an FLSA claim, we reviewed the position description of record and other information provided by the claimant and the agency. We also interviewed the claimant.

General issues

The agency designated the claimant's position, Airway Transportation Systems Specialist, FG-2101-13, as exempt. The claimant believes the FLSA exemption status of his position is incorrect. The claimant also believes the duties and responsibilities as described in the position description are inaccurate.

The claimant referenced the duties accomplished by the Technical Support Office. However, we must make our decision solely by comparing the claimant's duties and responsibilities to Federal regulations and other Federal guidelines. Since comparison to Federal guidelines is the exclusive method for making exemption decisions, we cannot compare the claimant's position to others as a basis for deciding his claim.

Based on the information provided by the agency and the claimant, the claimant is in a bargaining unit position. Moreover, this matter was not excluded from negotiated grievance procedures (NGP) under the agency's collective bargaining agreement. *See Article 5, Section 6 of the Agreement Between the Professional Airways Systems Specialists District No. 6 – NMEBA/AFL-CIO and the Federal Aviation Administration Department of Transportation. Section 6* states that the NGP is not applicable:

In matters *relating to overtime entitlement* under the Fair Labor Standards Act, as amended, the compliance and complaint system shall be administered in accordance with Office of Personnel Management regulations. *Emphasis added.*

The issue of this claim was the claimant's exemption status, and not entitlement to overtime. Therefore, the Office of Personnel Management (OPM) cannot take jurisdiction over the claim of a Federal employee who is or was 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*, 909 F.2d 1452, 1454-55

(Fed. Cir. 1990) (*en banc*), *cert. denied*, 498 U.S. 811 (1990), construing therein the provision in the Civil Service Reform Act codified at 5 U.S.C. § 7121(a). 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.