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GAO

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-180021 (MGB)

April 7, 1981

Mr. James H. Michel  
Deputy Legal Advisor  
Department of State  
Washington, D.C. 20520

Dear Mr. Michel:

*Proposed Amendments to*

This is in further response to your request that our "Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations" (4 C.F.R. Part 21, as amended by 45 F.R. 55689-92, August 21, 1980); be amended to cover the statutory labor relations program established by the Foreign Service Act of 1980, Public Law 96-465, October 17, 1980, 94 Stat. 2071.

We point out that [except for sections 21.5 and 21.7] the procedures do now cover requests for decisions from agencies and labor organizations participating in the labor relations program established by the Foreign Service Act. Our original labor-management relations procedures published in 1978 specifically covered only those participating in the labor-management program established by Executive Order 11491, and we had received suggestions that this coverage be expanded to include those participating in other Federal sector programs. Accordingly, in the proposed amendments published on March 24, 1980, we revised section 21.1, Purpose and scope, and specifically noted in the Supplementary Information that the proposed rule covered those participating in the labor-management program established by 5 U.S.C. Chapter 71, as well as those participating in other Federal sector programs. See 45 F.R. 18940, March 24, 1980, copy enclosed. The final rule published on



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August 21, 1980, does cover requests for decisions from those participating in other Federal sector programs. 4 C.F.R. § 21.1, as amended.

The only provisions in the final rule which do not specifically apply to the program established by the Foreign Service Act are section 21.5, Request for an advisory opinion, and section 21.7, Deference to grievance and arbitration procedures established pursuant to 5 U.S.C. Chapter 71. Since the Foreign Service Act was not passed until October 17, 1980, and the effective date of our procedures was August 21, 1980, we did not have the opportunity to consider application of these sections to the relevant portions of the Foreign Service Act.

In now considering your request to apply the provisions of sections 21.5 and 21.7 to the program established by the Foreign Service Act, we note that any amendments to our procedures must, of course, be preceded by publication of proposed amendments and the opportunity to comment by all interested parties.

We have, however, reviewed the relevant portions of the Foreign Service Act and its legislative history, and recognize the similarities between the program established by 5 U.S.C. Chapter 71, and Chapters 10 and 11 of the Foreign Service Act. While the grievance-arbitration systems established by those Chapters differ in many respects from those authorized by 5 U.S.C. Chapter 71, the Congressional intent to assure the administrative finality of decisions under section 1014 and section 1107 of the Act is evident. 94 Stat. 2071 at 2137 and 2146-47. Accordingly, we will apply the policies expressed in section 21.7 to matters grievable under the Foreign Service Act.

Given the obvious intent of Congress to model the Foreign Service program after the program established by 5 U.S.C., Chapter 71, we will also respond as appropriate to requests for advisory opinions from the Foreign Service Grievance Board, the Foreign Service Labor Relations Board or its General Counsel, or other

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neutrals authorized to administer the provisions of Chapters 10 and 11 of the Foreign Service Act in a manner consistent with section 21.5 of our procedures with one exception. That is, under section 21.5 service of a request for an advisory opinion on the parties to the dispute and on other interested parties is discretionary with the requesting party. In the absence of published amendments extending section 21.5 to the Foreign Service program, we believe a request for an advisory opinion from a neutral administering the provisions of the Foreign Service Act should in each instance be served on the parties to the dispute and on all other interested parties.

We expect at a future date to propose amendments to our Procedures to expressly cover the Foreign Service labor relations program.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve  
Acting General Counsel

Enclosure

DIGEST

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[ Except for sections 21.5 and 21.7 which apply only to the labor relations program established by 5 U.S.C. Chapter 71, GAO's Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, 4 C.F.R. Part 21, as amended, do apply to the labor relations program established by the Foreign Service Act of 1980 (FSA). In recognition of the similarities in the two programs and the clear Congressional intent to assure the administrative finality of decisions, we will apply the policies expressed in section 21.7 to matters grievable under the FSA. Similarly, we will respond to requests for advisory opinions from neutrals administering the FSA in a manner consistent with section 21.5 of our procedures, except that service on the parties should be made in each instance. ]