

National Council Digest

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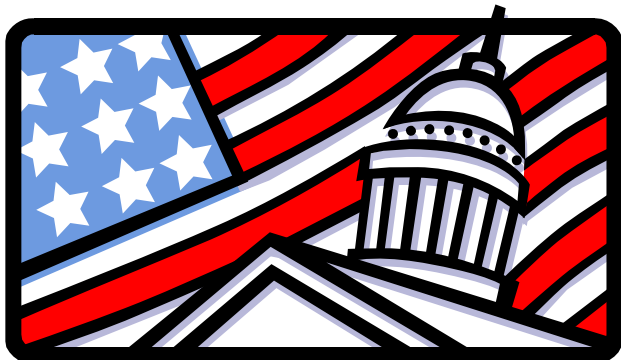
AFGE Legislative Conference

AFGE has scheduled its next national legislative conference for March 5 – 9, 2006. Delegates from Locals around the country will be asked to convene at the nation's capital to meet with members of congress and their staffs regarding legislation affecting federal employees, their work places and their agencies.

The online newsletter *FedSmith* reports that support for a change in federal retirement calculations from high three to high five may be gaining some momentum (see: <http://www.lfedsmith.com/articles.showarticle.db.php?intArticleID=735>) and the authors also predict that other pay and benefits issues are vulnerable.

It is clear, therefore, that now more than ever, federal workers need a voice in Washington as federal budget deficits lead to these calls for reductions in pay and benefits including pensions.

We are advised that the Holiday Inn across from the Hyatt where the conference will be held does accept the government rate.



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Pablo Hernandez Retires

Pablo Hernandez, veteran union activist from McAllen, Texas, retired from the agency. He has been the AFGE Council 220 Regional Vice President for the Dallas Region and President of AFGE Local 3388.

Pablo said he retires with “mixed feelings as I have had the distinct honor of being amongst some really great people. I wish to thank each and every one of you for the help, support, respect and kindness always shown to me.”

He also promised to remain an active, retired member of AFGE and “will stand ready to help the Local employees that want help or advice.”

Pablo handed the reins of leadership of Local 3388 to Nora Buchholz, who succeeded him as president of the Local after a special election.

We all wish Pablo well.

Lollie Driulini, President of AFGE Local 3184 (Houston) is the acting Regional Vice President until further notice.

MSPB Mitigates Suspension from 20 Months to 120 Days

The Merit Systems Protection Board (MSPB) reviewed an arbitrator's reduction of a removal penalty, but in so doing, found that the arbitrator had acted in violation of established case law on mitigation authority and further reduced the length of the suspension from 20 months to 120 days.

In this case, the employee had received a proposed 14-day suspension for sleeping on duty. Because the employee demonstrated that his sleeping was caused by his narcolepsy, the agency entered into a settlement whereby the proposal would not be effectuated as long as the employee did not have a recurrence of sleeping on duty in three years. When the employee had a recurrence, the agency effectuated the prior 14-day suspension. The agency also issued a proposed removal based on the new incident.

The employee grieved and arbitrated his removal. The arbitrator ruled that the removal penalty was too harsh because the employee's sleeping on duty was not intentional, was related to his illness, he had 27 years of employment with the agency and no prior disciplinary action. In mitigating the penalty, however, the arbitrator ordered the employee back to work and that the time he had been off since the removal -- 20 months -- would be the length of his suspension.

On appeal, the employee argued that the agency was disciplining him twice for the same conduct when it effectuated the prior 14-day suspension and also initiated the removal action based on the same incident of sleeping on duty. The employee also argued that the arbitrator did not properly analyze the mitigation of penalty when he ordered that the length of the penalty should be equal to the time from his removal since that time was based on how long it took to litigate the case and not an analysis of what the proper penalty should be.

The MSPB reiterated that an employee cannot be disciplined twice for the same misconduct. However, it rejected the employee's argument that such was the case here. Rather, the Board held that, through a settlement agreement, the agency was permitted to

effectuate a previously proposed suspension because of a recurrence of sleeping on duty.

Also, the specific terms of the settlement noted that the employee could be disciplined for a future occurrence of sleeping on duty. Therefore, the Board held that the employee was not being disciplined twice for the same act.

The MSPB agreed with the employee that the arbitrator improperly violated his authority to mitigate penalties. The Board noted that the arbitrator conducted a proper analysis of the Board's *Douglas Factors* in determining that removal was too harsh and that the penalty of removal should be mitigated to a suspension.

However, the Board overturned the arbitrator's decision to the extent that it did not critically analyze the length of the suspension, but merely tied it to the time that had transpired from the date of removal to the date of the arbitrator's decision, i.e. a "time served" suspension.

The Board referred to such calculation as a determination of penalty "by accident." The Board overruled any prior cases that allowed such a calculation. The Board held that it would not overturn the arbitrator's decision that the removal should be mitigated, because such decision is not clearly inconsistent with law.

Regarding the length of the penalty, on review of the facts in this case, the Board held that the maximum reasonable penalty in this case was 120 days -- considerably shorter than the 20 months imposed by the arbitrator.

This case represents one of the rare instances where a penalty selected by an arbitrator has been reduced on review by the MSPB.

Fulks v. Department of Defense, MSPB Doc. No, CB-7121-04-0016-V-1 (September 30, 2005) This article is from FedWeek and the attorneys at Passman & Kaplan, P.C., a law firm dedicated to the representation of federal employees worldwide.

AFGE Council 220 Grievances, Updates & Status

Official Time

Discussions between the AFGE General Committee and SSA continue over the proposed settlement of the national official time grievance. This grievance alleged numerous violations of Article 30 of the national agreement.

The agency has proposed specific schedules for use of official time by those authorized to use 50 percent official time and is requiring union representatives to provide additional explanations in excess of that required in the contract for time used outside of the schedules.

In exchange, Local Presidents would regain the right to allocate time to Local Representatives, EEO time would be removed from OUTTS and management would acknowledge that one-for-one time (e.g., 1 hour official time for 1 hour agency work) is not required.

AFGE is preparing a counter-proposal and the six union components are evaluating their options with some urging the union not to settle but force the case to arbitration.

Restricted Holiday Leave

Counsel Representative Kirk Bigelow is handling the Council 220 grievance over the agency's restricted holiday leave policy that reduced leave percentages from 50% to 40% of Field Office staff off for the holidays this year. The agency policy further limited time-off at the Teleservice Centers to 25 percent of staff.

He reports that SSA does not appear very interested in promptly moving this case to conclusion. "SSA made it clear they were adamantly opposed to expediting this case," Bigelow said.

The union had hoped to present this case to an arbitrator in time to resolve leave issues so all employees who wanted time off during the holidays could get it. To date, SSA is not cooperating.

"I told [SSA's] labor relations that instead of making this decision on abstract projections, that leave should be based on actual work loads," Bigelow said. SSA had predicted that the numbers of employees on holiday leave should be reduced because of anticipated Medicare Part D work. However, this work is not materializing in the Field as predicted.

Bigelow posed another question to SSA's arbitration representative: If we hired all of these new people to help address the Medicare Part D workload, why do we need to cut back on holiday leave? Not surprisingly, the SSA rep could not answer the question.

The union learned that some managers disagree with the leave limitations. In Washington State a manager offered to give up his leave in order to allow other employees to have off. Hats off to him!

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Arbitration Assignment Changes

Vince Tumminello is the AFGE representative to whom we have been sending our invocations for arbitration. He is now in training and is therefore unavailable to assign any cases to arbitrators. Therefore, the General Committee has transferred arbitration assignment duty to Jan Shpiegelman until Vince returns from training.

Please direct any communication regarding arbitrators to Jan at:

Phone: 410-966-1448

Fax: 410-965-3892

jan.shpiegelman@ssa.gov

Addenda

Schedule Your Arbitration Cases Now

The new national contract established time limits for processing arbitrations. Any grievance that was elevated to arbitration prior to April 6, 2000 must be scheduled for arbitration within six months. Therefore, these cases *must* be scheduled for arbitration by February 15, 2006. Cases that are not scheduled by then will be dismissed.

Council 220 is reviewing its backlog of arbitrations to assess if any should be expedited. All Locals and regions should similarly

Grievance Updates (Continued from pg 3)

The union has suggested the parties agree to use the selected arbitrator to mediate the dispute since it is apparent that the workload concerns envisioned by the agency are not as imposing as previously predicted.

Union Rep Training Grievance

The Council 220 grievance over SSA's training class/official time usage by former 50%ers was filed on November 7, 2005. It charges that the agency has denied union representatives their right and ability to work official time to represent employee interests.

SSA has assigned former union reps who used 50% or more of their work day on official time to training classes. Despite negotiating a provision that allowed many of these representatives to continue to use official time, SSA now states that no official time may be used *and* is refusing to grant any leave to these representatives, despite approving leave to other bargaining unit employees attending the same training classes.

The agency places itself in the untenable position of negotiating a national contract that establishes the right of employees to act and serve as union representatives with a guarantee of specific hours of official time, but denying these representatives *any* official time and preventing the reps from using the hours SSA agreed to in the first place.

AFGE attempted to accommodate management's training schedule, but, all counter-proposals were rejected by SSA.

Council President Witold Skwierczynski has promised to expedite processing of this grievance.

review any pending cases to determine if they should be scheduled for arbitration.

Council 220 recommends that any cases involving back pay should be submitted to Patti McGowan at the Legal Representation Fund. Call Patti at 410-965-3813 if you have any questions about cases to be submitted to the LRF.

Service Observation in TSCs

SSA is implementing a *National Service Observation Process* at its 800-number sites in the Teleservice Centers, Payment Centers and Office of Central Operations. This monitoring program will begin on December 1, 2005.

AFGE requested bargaining and Council 220 will be represented by David Sheagley, President of Local 3239. He will be joined by Richard Evans of Local 1923 and former Teleservice Representative Joy Riley from Atlanta.

SSA's program includes unannounced and unrestricted monitoring. A standard report form will be used to assess performance, quality, training, and improvement needs. These forms may be used in performance evaluations.

National Council Caucus

Council 220's next caucus will be held at the Wyndham Hotel in Baltimore, Maryland on Friday, March 10 and Saturday, March 11 (travel days before and afterward). Rooms are guaranteed for March 9 and checkout is Sunday, March 12. Commissioner Jo Anne Barnhart will be invited to attend.