

# National Council Digest

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## President's Message

By Witold Skwierczynski

Every year, AFGE Council 220 conducts a national caucus and brings together the members of our executive committee and a few invited guests.

This year we held our caucus in Baltimore, MD at the downtown Wyndham Hotel and because of the proximity to SSA Central Office, we believed that Commissioner Barnhart would accept our invitation to address us. But, not only did she refuse to attend, as she has done every year she's been commissioner, but she didn't even bother to respond to our invitation.

Courtesy must not be a strong suit. After all, it has been her practice to avoid the union at every opportunity and her underlings have adopted the same attitude. In fact, the "don't talk to the union" dictum has now trickled down to the field office level—even at offices that previously had good labor-management relationships (and not talking to the union means not willing to talk to employees, either).

Adopting the Wal-Mart approach to labor and employee relations may be indicative of the times. After all, the Bush administration is one of the most anti-labor, anti-employee regimes to occupy the White House. But, it is also a misinformed and unproductive policy.

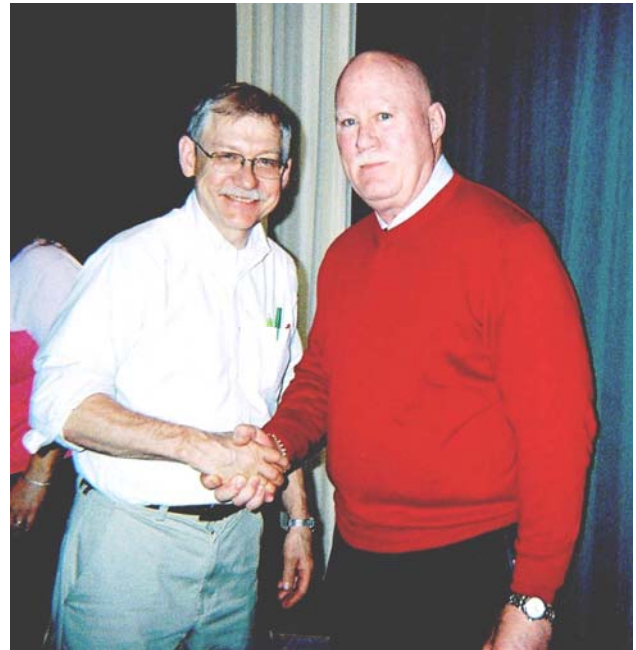
Employees and their union representatives know how to get the work done and this is especially true at the public contact level. To refuse to meet with employee representatives and obtain feedback on policy and work changes denies management a valuable tool that can lead to improved performance. But, for the last six years we have been burdened with an administration that micromanages from the top, not to create a more productive workplace, but to effectuate a political agenda.

The union obtained some verification of this from an uncharacteristically truthful remark made by the Deputy Commissioner of Labor and Employee Relations, Milt Beever. At a union-management consultation meeting in Central Office, Beever told the union representatives assembled that "The national contract is a direct result of management taking advantage of a political situation."

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AFGE Council 220 President Witold Skwierczynski (l.) thanks AFGE National Vice President Joe Flynn for addressing the Council's 2006 annual caucus in Baltimore, Md.

## In Memoriam

Don Jones, retired SSA employee and former president of AFGE Local 1935 and the Payment Center Council, passed away on March 16, 2006. He is survived by his wife Dorothy. He was a mentor to Council President Witold Skwierczynski and an advocate of the consolidation of SSA Locals that led to the first AFGE-SSA national contract in 1982.

## ***President's Message*** *(cont'd from page 1)*

Unfortunately, that's what we have come to expect at the Social Security Administration: politics first. That's why there's an anti-labor and anti-employee attitude. This has not just been evident in the way the national contract was negotiated, but in the way the agency handled the Hurricane Katrina disaster. Claimants come first. Employees come last if they are considered at all!

That's why Medicare Part D is such a mess. This program was pushed through without any union involvement that would allow us to address adverse impact on employees. Although the agency was not adequately staffed to handle the workload and Deputy Commissioner for Operations Linda McMahon admitted to employees that there were hard times ahead, she testified to Congress that "all was well" –only 120 days after promising employees she would do everything in her power to obtain more resources. Even Congress was shocked by these conflicting messages and demanded an explanation from Barnhart.

Now more work has been added to the pile: needs-based Medicare Part B premiums for which SSA workers will have to make eligibility determinations. But, if we already had to give up on RZs and CDR workloads because we can't get to them, how do we take on an additional Part B assignment without more staff? Again, the union was not consulted as SSA pretends that it can simply add more work and somehow, magically, it will all get done.

You don't do more with less at SSA. You do less work with fewer employees and those numbers are continuing to decline as workers reach retirement age or simply get fed up with the mismanagement of the agency and quit. As more and more SSA workers leave, less and less work will get done. That's politics, too. This administration has made no bones about its interest in reducing the ranks of federal employees and if government programs suffer, so what?! After all, the budget is blown anyway, so there's no money for programs or services or more federal workers.

### **WHAT COUNCIL 220 WILL DO**

One of the reasons why we hold a caucus each year is to assess where we have been. Another is to make plans for where we are going. It's one thing to say that Barnhart is doing a lousy job as commissioner. It's another to do something that will have a positive impact on employees.

To that end, we are planning to provide additional assistance to our Legal Representation Fund attorney to expedite processing of affirmative litigation against SSA. This will expedite employee arbitrations and generate greater income from attorney fees that will allow us to consider hiring another attorney to represent employees in their appeals against SSA. SSA may not want to provide employees with some relief; but Council 220 will surely try to find a way to remedy those cases that find their way to arbitration and to do so more effectively.

We are continuing to make inroads with Congress. Council 220 has a lobbying firm on retainer that has contacts with both sides of the political aisle. In fact, we met with Senator Trent Lott and other Republicans who voiced concern when we complained about SSA's failure to provide timely employee assistance during Hurricane Katrina. We were promised prompt action. In fact, shortly after our visit to Capitol Hill, SSA reversed itself and agreed to follow OPM regulations governing natural disasters. Unfortunately, SSA limited relief to Hurricane Katrina victims. Hurricanes Rita and Wilma victims have still not been properly compensated. Still, these congressional contacts enable us to get a sympathetic ear from elected officials who may not have heard our message in the past and can help us obtain remedies when SSA leadership refuses to properly manage the agency.

Council 220 has an active legislative presence and has been asked to testify about policies affecting SSA and its workers. This gives us more opportunities to stress the need for more staff, promotions and employee input.

Employees and union representatives have asked for more communications from the Council and we will improve the way those communications are delivered to you. We hope to redesign our web site ([www.afgec220.org](http://www.afgec220.org)) to ensure current content. We are also looking at ways to provide more frequent notices to members about issues that affect them as well as develop a forum for feedback and responses to members' questions or concerns.

There is much work to be done and this year is an especially important year. The 2006 congressional elections are pivotal. If federal employee-friendly candidates are elected, then our future will look considerably brighter than it looks today.

Council 220 and AFGE will certainly be doing its part to help achieve that end. I hope you will volunteer to do your part as well.

## Updates

### *Official time for Reps in Training*

Council 220 arbitrated its dispute with SSA over the agency's refusal to allow union representatives to use official time or annual leave during training classes. Kirk Bigelow represented the Council and advises that the arbitrator assigned to this case, Arthur Horowitz, has an excellent background having previously worked for the Federal Labor Relations Authority and also argued cases before the Supreme Court. He expects a fair decision.

In addition to a make-whole remedy, the union is asking the arbitrator to declare that the agency engaged in an unfair labor practice by its refusals to abide by the clear language of the national contract. The union asked for a nationwide posting signed by commissioner Barnhart. Of course, the union is also looking for a favorable interpretation of Article 30 from arbitrator Horowitz.

Council 220 Third Vice President Jim Campana was the union's Technical Assistant for this arbitration hearing.

The following appeared as witnesses for the union: Council First Vice President Charlie Estudillo, Vice President of Local 2505 Ralph de Juliis, EVP Local 1164 Susan Conrad, Council Rep. John Riordan, District 2 Fair Practices Coordinator John Ward, Council 220 Rep Jackie Burke, Council 220 President Witold Skwierczynski and Council 220 EVP Debbie Fredericksen.

Briefs are being prepared by both sides and we expect an arbitration decision some time in June, 2006.

### *Gradual Retirement*

SSA discontinued letting employees use LWOP in their gradual retirement programs and blamed OPM for issuing a directive that required this change. However, at this point, no directive can be found.

The AFGE General Committee made a request to negotiate over the change in policy and its impact on employees and, in response, SSA made overtures to meet with the union in an attempt to settle the matter.

The union is prepared to pursue grievances that have been held in abeyance while the parties discuss settlement options.

### *TeleService Center Phone Monitoring*

Dave Sheagley, chief union negotiator over the agency's TSC phone monitoring procedures, reports that the FSIP ordered the parties back to the bargaining table when negotiations were originally sent to impasse because there were 21 outstanding issues remaining to be addressed. AFGE and SSA did meet to discuss these differences, but, as usual, the agency's negotiators did not appear empowered to bargain, but rather, sent to "just say NO!"

Nevertheless, some progress was made on minor issues. Little was achieved, at this stage, however, on the major issues of monitoring announcements and an explanation of performance standards.

The union argued that it was seeking the same thing that management said it wanted: consistency. But, SSA proposals would allow different performance standards to be used at each and every office or call center.

The parties are again at impasse and will send their differences to the Federal Service Impasses Panel, which will impose a settlement upon the agency and the union.



AFGE National Vice President Jim Davis is flanked by Council 220 1<sup>st</sup> Vice President Charlie Estudillo (l.) and Atlanta Regional Vice President Gary Sanders. Davis addressed Council 220 officers and guests at the 2006 Caucus in Baltimore, Md.

## Decisions

### ***No Indefinite Suspension for “Attempted Murder”***

Arbitrator William Holley found that SSA did not have reasonable cause to believe that an Alabama claims representative had committed a crime that would result in imprisonment and ordered the agency to cancel his indefinite suspension.

The grievant admitted that he shot the victim, who was previously arrested for shooting the CR’s former wife, but that he did so in self-defense. The local magistrate issued a warrant for his arrest on the charge of attempted murder and the agency relied on this, in part, to justify placing the CR on an indefinite suspension.

Federal statute authorizes an agency to indefinitely suspend an employee if 1) there is reasonable cause to believe the employee committed a crime for which a term of imprisonment may be imposed; 2) the suspension has an ascertainable end; 3) there is a nexus between the criminal charge and the efficiency of the service; and 4) the penalty is reasonable.

SSA and AFGE both cited *Earl Dunnington v. Department of Justice, 956 F.2d 1151 (1992)* at arbitration. The Court concluded in *Dunnington*:

The process by which arrest warrants are issued is typically *ex parte*. They are often based on information from confidential informers, or other sources not subject to testing for credibility. Given the reality of the manner in which arrest warrants are often issued, it is incumbent upon the agency when an arrest warrant is a major part of the case to assure itself that the surrounding facts are sufficient to justify summary action by the agency.

The Social Security manager for whom the CR worked said that he based his decision to suspend on the arrest warrant, a newspaper article about the shooting, an incident report and statements by the CR and other employees. However, neither the grievant nor the other employees testified at the hearing.

Although the article identifies the CR, the paper in which the article appears is from another town 35 miles away and it did not identify his place of employment. The agency did not call the author of the article to testify at the hearing.

The office manager said that an employee brought this newspaper article to his attention. But, once again, SSA did not ask for this employee’s testimony nor did it ask other employees who alleged concern to appear

as witnesses at the hearing.

Management did not seek the corroboration of the police officer who arrested the CR, the district attorney’s office, nor did it bring forward the alleged contact person for the incident report recording the shooting.

Arbitrator Holley, raising concern about this lack of affirmative evidence, said, “The questions in this matter are whether the Agency had sufficient evidence to have reasonable cause to believe that [Grievant] *committed a crime for which a sentence of imprisonment could be imposed* and whether the *suspension promotes the efficiency of the service* (a nexus between [Grievant’s] alleged acts of misconduct and the efficiency of the service). The key to this analysis is *evidence*; not suspicion—not possibilities,” Holley said.

Based on the absence of corroborative evidence and the agency’s lack of an investigation (e.g., Holley noted that no employees testified nor even signed any statements and even the manager admitted that the grievant returned to work for a few days after the incident without any noticeable impact on his performance), nexus between the grievant’s alleged actions, arrest and efficiency of the service could not be established.

A make-whole remedy was ordered including back pay and benefits with interest and attorney fees. *SSA and AFGE Local 3438, Case No. BR-2004-R-0053; Jordan Bickell, Council 220 Legal Representation Fund Attorney, for AFGE C220.*

### ***Two-day Suspension Upheld***

A Claims Rep, hired in 2000, was suspended for two-days for accessing her former brother-in-law’s DEQY and sending him a PEBEs statement. The union argued at arbitration that the claimant was not a current relative, but the arbitrator did not agree and found that the systems access requirements applied to friends and acquaintances. He also ruled that the agency’s table of penalties and system’s access policies “do not in any way change or modify the just cause standard for discipline.”

Arbitrator Charles Krider, nevertheless, decided that the systems violation was *serious* enough to warrant a two-day suspension noting that had her good work record for SSA been more than two years at the time of the violation, the agency would have been expected to give it greater weight.

*SSA and AFGE Local 836, Case No. KC-2003-E-0001; Kirk Bigelow represented AFGE.*