

National Council Digest

Volume 19 Issue 4 • August, 2006 • Warren Fretwell, Editor
An official publication of the National Council of SSA Field Operations Locals

Visit our new web sit at: www.AFGEC220.org

email the editor at: AFGEWCF@aol.com

President's Message

By Witold Skwierczynski

What's Behind Commissioner Barnhart's Furlough Threat

Last month SSA Commissioner Barnhart testified before the House Ways and Means Social Security Subcommittee regarding her new disability plan, Disability Service Improvement (DSI). In response to a question from Chairman McCrery, Ms. Barnhart stated that if Congress made any further cuts in the budget she would have to respond by furloughing SSA employees.

In FY 06 Congress cut work years (WY) in SSA by 2368. The President's budget for FY 07 proposes additional cuts of over 2400 WY. The projected two-year cut is 4700 WY. The commissioner suspended CDRs and redeterminations due to the cuts. ST2DW workloads were also delayed. Barnhart is threatening a furlough if Congress reduces SSA's budget as it did for many agencies last year.

Some managers in the field jumped the gun telling employees they would be furloughed for four days in 2007. Management in Baltimore, SSA headquarters, denied that any such decision has been made by SSA.

Besides suspending CDRs and RZs, Barnhart initiated a new replacement policy for employees who leave the agency. For every eight employees who leave field offices, only one will be replaced. Hearings and Appeals and TSC s retain a 1:1 replacement rate. The rest of SSA has a 1:3 replacement rate.

The commissioner's reaction to budget cuts enacted by Bush and the Congress is outrageous. While cutting staff in the field, she is planning a massive attorney hiring program in order to fully implement her Disability Service Improvement (DSI) initiative. The agency projects it will need 3,000 new attorneys to fill the Reviewing Official (RO) position who will replace the reconsideration in disability appeals. Most of these attorneys will be out-side hires and they will need additional support staff, necessitating the hiring of additional thousands of outside hires or personnel shifts from other parts of SSA.

The commissioner also illegally declared the RO position outside of the union bargaining unit, so the agency could avoid contractual requirements on merit promotion, payment of relocation expenses and employee rights. AFGE will challenge her decision.

This massive infusion of resources into the disability appeals process, while stripping field office staff and threatening furloughs, appears insane until one takes a closer

INSIDE THIS ISSUE

Barnhart's Furlough Threat	1
Arbitration Invoked on TSC Leave Restrictions	2
FSIP Ruling on Service Observation	2
General Committee Bargaining Requests	2
Bad Boss—Get a Union	3
Can't Stand IVTs	4
Performance Evaluation Guidance	6

look at the commissioner's strategy.

One of the economic barriers to successful implementation of President Bush's private investment account proposal is the existence of the SSA disability program. Disabled people don't work and, therefore, don't pay taxes. They have nothing to invest. Continuing to pay them while implementing private accounts would just lead to even more massive borrowing and long term debt. Most people aren't in favor of that scenario as evidenced by the fact that the President's privatization scheme received almost no public support.

However, if somehow fewer people are added to the disability rolls and current disability beneficiaries are removed, then the economics for private investment accounts become less problematic. Less money paid out in disability benefits results in less borrowing to pay current overall benefits while private investment accounts can be implemented. It becomes easier to divert taxes into private accounts if there are fewer people receiving benefits.

The DSI rules appear designed to make it much more difficult to approve a claim for benefits.

- Attorney ROs will not be able to reverse an initial denial without the concurrence of a medical expert.
- An ALJ can only reverse a disability denial by rebutting the RO's required written legal justification of their decision.
- The Appeals Council review, which currently results in a 30% remand/reversal rate, is being eliminated.
- The rules requiring closing of the record 5 days before an ALJ hearing with limited exceptions will result in many appellants who are legitimately disabled being denied disability benefits due to a technicality.

Continued on page 5

Grievances, ULPs and More

Arbitration Invoked

Council 220 sent a TSC grievance over leave policies to arbitration. The agency denied the union's grievance that charged it with imposing severe limitations on employees' right to use leave in violation of contractual language that requires management to maximize opportunities for leave usage. Despite contractual provisions that say SSA will "make every reasonable effort" to allow employees to use leave, management insists that operational considerations enable it to impose the restrictions in place at the TSCs. A hearing will be scheduled before an independent arbitrator.

Bargaining Requests Submitted

The AFGE General Committee, which represents all SSA bargaining unit employees, identified several key impact areas in its demand to bargain over the work changes associated with the new Disability Service Improvement Plan (DSI). These include systems modifications (development and training), policy changes and training due to introduction of the Federal Reviewing Official positions and elimination of the reconsideration process, training for TSC workers, "in-line" review procedures, new rules affecting when records are being closed in the appeals process, and public relations needed to educate the SSA constituency about this major overhaul of the disability process.

The union requested a formal notice identifying the work changes and indicated that the agency should cease and desist from implanting any aspects of the DSI plan until it has fulfilled its bargaining obligations.

The General Committee also received management's proposals concerning new *Federal Salary Offset* provisions. A bargaining demand was submitted to OLMER on July 21, 2006. It should be noted that the parties already negotiated a memoranda of understanding about debt collection (see MOU archives).

FSIP Rules on Monitoring

The Federal Services Impasses Panel rendered its decision on the bargaining dispute between AFGE and SSA. The issue concerned SSA's service observation program and affected over 10,000 employees who worked primarily in the 45 Teleservice Centers and Program Services Centers answering the agency's 1-800 number.

SSA implemented the new monitoring procedures that now are unannounced and could also be conducted via recordings of conversations with claimants. The results of these observations, although previously used for training purposes, would now be used to assess performance.

The union submitted several issues to impasse:

- The type of employee notice
- Access to recordings
- Definition of what constitutes "needs improvement" interviewing techniques
- Definition of "misconduct"
- Training for those conducting service observations
- Information to the union
- Availability of service observation schedules

Instead of taking each impasse item and ruling on its merits, the FSIP made a decision on, what it referred to as, a *package basis* and ordered that the employer's proposals be adopted. The FSIP said, "we are persuaded that [SSA's] package more appropriately balances the interests of employees...and those of management...."

Council President Witold Skwierczynski reacted to the decision negatively. "Unfortunately, this is an example of the FSIP's all or nothing approach to bargaining and demonstrates the futility of going to the Panel to resolve disputes," he said.

The union is considering its options since it believes the FSIP decision about recordings may violate the Privacy Act.

Bad Boss? Get a Union—If You Still Can

By John Sweeney, President, AFL-CIO

Unpaid overtime. Vicious intimidation. Manic behavior. Sexual harassment. Dangerous working conditions. Fired for being sick. Denied family leave.

This is what working men and women of America are going through today. Just read the Bad Boss stories at Working America's website, www.workingamerica.org. They're a real insight into the daily nightmares far too many working people endure.

Most people suffering with Bosses from Hell have two choices: Put up with intolerable conditions or quit. If the situation is egregious enough, file a complaint with a state or federal rights agency or take your case to court. Either way, you'll spend years fighting.

The single best inoculation against Bad Boss disasters is union membership. Not all bosses in union workplaces are great to work for—but with union membership, workers have contract guarantees and grievance procedures that enable them to protect their rights and, when necessary, fight back and win.

Just as Working America's Bad Boss Contest is surfacing story after story of incompetent, deranged and pretty much evil bosses, America's workers are facing a huge threat to their freedom to form and join unions.

The Bush-appointed National Labor Relations Board is poised to issue a series of decisions (collectively known as the "Kentucky River" cases) that could reclassify hundreds of thousands of workers as "supervisors" who are not eligible for union membership.

Who is vulnerable? Any skilled or experienced worker who sometimes directs or assigns the work of less-skilled and less-experienced co-workers is. Some examples are head or "charge" nurses who sometimes direct nursing aides, building trades workers who take apprentices under their wings and port workers—basically, anyone whose Bad Boss wants to block a worker from joining a union by claiming he or she is a "supervisor."

The Kentucky River decisions are coming at a critical time in history for America's workers. Big Business has exploited our nation's weak labor laws, and its allies in Congress and the White House are complicit.

When workers try to form unions, a quarter of employers fire pro-union employees, more than half threaten to shut down and three-quarters hire professional union-busters to suppress workers' will. Rather than protect workers' rights, as it was created to do, the Bush-appointed NLRB has been an active partner in denying workers' freedom to form and join unions, for example, taking union rights from or severely weakening them for graduate teaching and research assistants, workers with disabilities and temp agency employees.

Adding grave insult to injury, the Bush NLRB has refused to allow oral arguments in any of its cases—including the vitally important Kentucky River cases.

In a democracy, the people have the right to be heard. In America, workers are supposed to enjoy basic freedoms and rights—including the freedom to form unions. The unholy alliance of Bad Bosses, the Bush administration and their allies in Congress are now engaged in an all-out assault on one of the too-few protections working people have left.

Across America, working people are demanding better. We're marching and rallying to tell the NLRB not to roll back workers' rights. I urge you to take a moment right now to let your members of Congress know we won't be silenced. We won't be ignored by Bush's NLRB as it decides cases vital to the future of workers. Tell Congress to demand that the NLRB reverse its arrogant refusal to hear oral arguments in the Kentucky River cases.

[Editor's Note: Although federal sector labor law is governed by the Federal Labor Relations Authority and not the NLRB, the Kentucky River decisions may still reverberate through government employee unions. Private sector labor law has influenced the direction of collective bargaining statutes affecting federal workers. Therefore, an expanded definition of "supervisors" in private industry would, in most likelihood, soon find its way into the federal realm. Technical Experts beware!]

Addenda

IVTs: "I can't stand them anymore!"

Dwight Jenkins, Treasurer of AFGE Local 3343, sent these words to management and the producers of a recent EDCS interactive video:

I write having just endured "IVT EDCS 10.0." I didn't have the opportunity to watch it live and give my evaluation, so I write to let you know that you are killing me. Your productions take the life out of me. If starting the day off with IVT is like starting the day with intestinal cramps, EDCS 10.0 is dysentery. Stop it. Please, just stop it. You stole 30 minutes from me—30 minutes I need to process stacks of claims and post entitlement actions. How many tens of thousands of others were likewise robbed? We truly don't have time for anything less than a professional, absolutely necessary production. You need to maximize the time you take from us. You minimized it. I'm sure the presenters are nice people. Nice people don't belong in front of a camera: effective people do. I am not alone in my sentiments.

Public Employees Speech Not Protected

Richard Ceballos, who worked in the LA district attorney's office, was told by a defense lawyer that a sheriff might have lied in a search warrant affidavit that had been filed as evidence in a murder case. Ceballos investigated the matter himself, concluded that the sheriff had misrepresented facts in the affidavit, and sent a memorandum reporting the misrepresentation to a deputy district attorney. The memorandum recommended that the case be dismissed, which the deputy declined to do. Ceballos later testified for the defense about the validity of the subpoena and also submitted the memorandum he had sent to the deputy.

Ceballos later alleged that his employer retaliated against him for his recommendation and testimony, by asking him to transfer to another branch or to accept being reassigned to filing misdemeanors, not allowing him to work on murder cases, and in denying him a promotion.

The District Court determined that the memo was not protected speech because Ceballos wrote it pursuant to his employment duties. The Ninth Circuit held Ceballos' statements were protected under the First Amendment. But, the Supreme Court ruled in a

5-4 decision that public employees' speech pursuant to duties *has no constitutional protection* and that does not insulate them from employer discipline.

Federal employees had raised concerns that this Supreme Court decision may affect their own statutory protections. But, AFGE advises that federal employees are covered by the Whistle-blower Protection Act and labor laws and the *Ceballos* decision does not change that. Therefore, federal agencies are still prohibited from engaging in reprisal against workers for their disclosures if the employee reasonably believes there is evidence of "a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety."

AFGE does remind federal workers that communications made as part of an employee's *normal duties* are not protected. This means that if you are going to disclose wrongdoing in the work-place, you are better off doing it outside normal work channels.

To give yourself even more protection, blow the whistle to your union representative who has even greater protections. When union officials communicate in their official capacity, retaliation is illegal.

Material for this article was obtained from the Duke University and Law Memo websites and from AFGE.



President's Message

Cont'd from page 1

- And, despite the public demand for a disability program that includes interaction with a decision maker, DSI provides the opposite--a more litigious system with adjudicators at the State DDS and RO levels who never communicate with the claimant.

In addition to creating a system that is difficult to navigate and will apparently result in significantly fewer successful appeals, the agency is initiating demonstration projects that pilot *time limited benefits*. Applicants are offered immediate Medicare with no two-year waiting period in return for short term benefits that end in a time certain. SSA is also busy hiring nurses who specialize in getting disabled people off the rolls under the theory that they should go back to work. In Great Britain's social security system, one million beneficiaries were unceremoniously informed they should go back to work. SSA appears to be developing a similar strategy for reducing disability rolls.

As for the 1:8 field replacement strategy, SSA appears to be fundamentally changing service delivery. Commissioner Barnhart's chief architect of this plan is Linda McMahon, Deputy Commissioner for Operations. When she was Regional Commissioner (RC) in San Francisco, McMahon was responsible for closing more offices than the other nine RCs combined. Recently, the union obtained the minutes of an SSA executive meeting where McMahon was quoted **encouraging a national policy of office closings**.

Certainly service can be delivered more cheaply by telephone and the Internet! No need for all that office space--just house everyone in a few massive buildings and put them on the phone. Getting the public used to poor service at their community field office may very well be part of the strategy to shift public opinion about the type of service that they want. But, the public has consistently expressed a desire in survey after survey of maintaining community based field offices that deliver face to face service. However, if forced to wait hours for service in an office stripped of staff and left with overworked, stressed out employees, the public might opt to contact SSA by telephone or on the Internet.

Despite her claims to the contrary, Commissioner Barnhart has made very weak efforts to convince Congress that SSA's administrative expenses should be increased to allow the agency to do all the work that Capitol Hill demands. For example:

- No resources were provided for EDCS, which results in longer initial disability interviews and, therefore, requires more staff.
- The additional staffing that the agency received for implementing the subsidy portion of Medicare Part D

was gone by the time the prescription drug program was implemented in January, 2006. By then work year cuts had stripped the field of the benefits the additional staff would have provided.

- In January, 2007, new regulations kick in regarding massive new Medicare Part B premiums for those earning over \$80,000. Appeals of premium increase determinations will be processed in field offices and SSA expects millions of such appeals. No staff has been provided for this workload.
- Both the House and Senate versions of Immigration reform legislation require SSA to verify the SSNs of employees. This will be a massive workload requiring thousands of additional employees. Unfortunately both Congress and SSA are silent about any additional resources.

The commissioner has the authority under the Independent Agency legislation to submit a separate budget to Congress. This would allow her to assess the agency's budgetary needs without OMB's political spin. Commissioner Barnhart refuses to utilize this authority. As a loyal Bush appointee, she submits her budget to OMB which slices and dices her request and sends it back with insufficient resources to enable SSA to do its work.

Barnhart doesn't use the media to educate the public about the agency's inability to do its job with the budgets that are provided by Congress. Instead, SSA orders employees to take unnecessary disability claims for those who are clearly ineligible in order to artificially reduce processing times and project a false image of increased productivity and accomplishment.

The end result is an agency that is reeling from lack of resources, dangerous schemes to "reform" the disability system and misleading performance data. It is evident that SSA's current *leaders* are intent on implementing fundamental changes. These changes will result in reduced benefits for the American public, diminished access to services and fewer SSA workers. As a result, the union has expressed *No Confidence in Commissioner Barnhart*. We think her continuing reign as commissioner will result in irreparable damage to the agency. She should step down so that SSA can regroup and concentrate on its mission, which is to provide a high level of accurate and timely service to the American public in processing benefit claims, appeals and post entitlement actions. Hopefully, a new Commissioner who cares about the programs that SSA delivers will rescue the agency from the destruction wrought by the present Bush political appointees.

Witold Skwierczynski is President, of American Federation of Government Employees, Council 220, representing SSA Field Operations employees.

Performance Appraisal Survival Information

The new performance appraisal plan includes an alignment statement and performance expectations that include numerics. This is a change from our old Pass-Fail system that specifically forbade the use of numerics—and with good reason: numbers can be easily manipulated.

SSA is well-versed in mathematical machinations. After all, by taking unnecessary claims that result in easy technical denials, we produce numbers that give the appearance we are doing more work than we actually are. Unfortunately, we are also spending more time on make-work rather than real work. That is why the union believes numbers do not tell the real story; nor can we depend on them to represent the hard work that our Field Operations employees do every day.

Additionally, not everyone does exactly the same work, which is particularly true if you are in a specialized unit. Nor does everyone have the same level of expertise or training. So, will everyone be held to the same standards?

That depends on which management official you are talking to.

We will be learning more about PACS (Performance Assessment and Communications System) in the coming months. Managers and supervisors will soon conduct meetings during which employee performance expectations will be discussed. The only way you are likely to leave these meetings with a clear understanding of what performance will generate an *outstanding* rather than a *successful* rating is if you **ask many questions**. Even then you may not know what level of work you will have to perform to get an award.

But, if you don't know, then management has not done its job and you should be talking to your union representative. After we have a little experience with PACS, we will be in a better position to know if we should make institutional challenges to the whole system or file individual grievances. So, take plenty of notes and ask for an explanation of terms, numbers, and expectations so that you could explain the system to someone else. If you can't do that, then you don't understand what management requires of your on-the-job performance in order for you to receive an award, qualify for a detail or promotion, or to just retain your job!

PERFORMANCE APPRAISAL: NOT MERIT
BUT BELL CURVE

SSA has already indicated that a bell-curve will be in place when it acknowledged that the vast majority of

workers will be rated *successful* with a small percentage rated *not successful* and a similar amount rated *outstanding*. This does not bode well for most of our employees who apparently will be shut out of awards as a result! Workplace stress increases substantially when there are few prizes to share while others fear they will fall one step and wind up in the *not successful* zone. Remember, you have to be rated outstanding in all performance elements to obtain an *outstanding* rating; but you don't have to fail in all elements to get canned for poor performance.

So, you may be thinking, "I'll just fudge some of this work. Who's checking anyway?"

Not a good idea. Employees who cut corners, engage in inappropriate work processing or manipulate work measures may be rewarded if they can get away with it; but, they may also be fired if they get caught—especially if one of our claimants is disadvantaged.

Case in point: When we had numeric measures in the past, at least one SSA worker was fired for cheating. His supervisor confirmed that he had directed the employee to cheat; but the arbitrator who heard the appeal was unmoved and maintained that the employee should have followed the order, but then reported it to higher management. Since the Supreme Court now says that public employers can legally retaliate against workers who report wrongdoing internally, it looks like AFGE may have to protect workers by going to Congress and to the press.

Those who want to survive the new appraisal system need to understand it. Review the alerts that have been distributed (they are also available on the Council 220 web site: www.afgec220.org). Ask questions at staff meetings and at the individual performance expectations discussions. If management cannot answer these questions to your satisfaction, tell your union representative. Take notes of these meetings and be sure to specifically identify what management could not explain.

Note: Management will tell you that your signature or initials mean only that you received the PACS plan. However, they will later argue should a case go to arbitration that your signature means you understood and accepted what was expected of you. So, if you don't know exactly where management is coming from, you need to document any misunderstandings or concerns that you have.

This article was written by Steve Kofahl, RVP Seattle, and Warren Fretwell, Digest Editor.