

American Federation of Government Employees

AFFILIATED WITH THE AFL-CIO

Local 2505

Ralph C. de Juliis
President



Carol A. Lewis
Executive Vice President

29 January 2009

Ms Ramona J. Schuenemeyer
Regional Commissioner - Dallas Region
Social Security Administration
1301 Young St., STE 130
Dallas, Texas 75202

BY FAX: (214) 767-4259

Dear Regional Commissioner Schuenemeyer:

By this letter, AFGE Local 2505 files a Section 10 grievance concerning SSA's continuing usage of Internet Vacancies On-Line.

SSA implements IVOL despite the Union's demand to bargain and its demand that bargaining be completed prior to implementation.

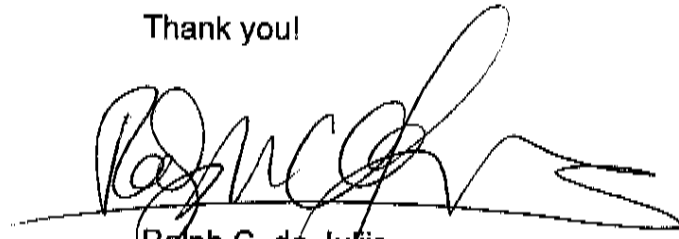
SSA's implementation of IVOL violates Article 1, Sections 1 and 2, Article 2.A and B, Article 3, Sections 1, 2 and 10, Article 4, Sections 1 and 3, Article 7, Section 3, Article 10, Section 3, Article 26, Sections 7, 8 and 13.

The remedies the Union seeks are: a priority consideration of all employees improperly excluded from the Well-Qualified lists because of the changes which resulted from the implementation of IVOL. Those employees include but are not limited to: Rachael Ravion (Pine Bluff, AR), Shawna Passman (Muskogee, OK), Johnie Dandridge (Moore, OK), Kassie Pierce (Moore, OK) and Staci Grammar (Tulsa, OK).

c/o Social Security Administration
4750 South Garnett Road ♦ Tulsa, Oklahoma 74146-5233
CELL: (918) 781-3096 ♦ SSA FAX: (918) 641-2446
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The Union requests an extension of time in which to make the oral presentation of this grievance pending the arbitration decision on GC-UMG 07-06 which is scheduled for arbitration the week of February 19, 2009.

Thank you!



Ralph C. de Julis
AFGE Local 2505

cc: Local 2505 Executive Board

TRANSMISSION REPORT

(THU) JAN 29 2009 11:13

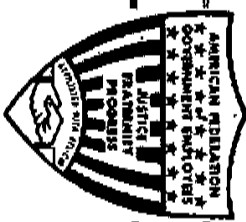
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SSA GENERAL COMMITTEE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

*Representing over 50,000 SSA employees across the nation, Puerto Rico and
Pacific Islands*

PO Box 47638
Baltimore MD 21244-7638
(410) 965-8863
(410) 966-7151 fax

November 19, 2007

Michael J. Astrue, Commissioner
Social Security Administration
6401 Security Blvd, Suite 900 Altmeyer
Baltimore, MD 21235

SUBJECT: Grievance- GC UMG 07-06
Internal Vacancies On Line (IVOL)

Dear Mr. Astrue:

In accordance with Article 24, Section 10 of the National Agreement, the AFGE General Committee hereby files a Union-Management grievance. This grievance concerns the Agency's decision to unilaterally implement changes to the contract regarding vacancy announcements.

The Agency's actions violate the SSA-AFGE National Agreement as follows:

Article 7, Section 3 whereas, the Agency unilaterally implemented changes, which constitutes an amendment or modification to Article 26 of the National Agreement.

These changes include, but are not limited to-

- the elimination of the applicant's signature;
- the elimination of the method to verify time limits for a submitted application (e.g., post mark);
- elimination of the open continuous process;
- mandated completion of an unrelated agency survey;
- implementation of an electronic rating and ranking system; and,
- the elimination of promotion committee documentation relied upon for audits.

Ans 2/19

Such changes cannot be made without bargaining and may only be bargained by mutual consent of the parties. Upon receipt of the Agency's notice of September 21, 2007, the AFGE SSA General Committee spokesperson, Witold Skwierczynski, notified Milt Beever, Associate Commissioner of OLMER, that the Union would not agree to reopen the contract and that the Agency may not implement its proposed change. On October 17, 2007, Milt Beever responded to the Union's request and declared the changes to be de minimus.

The Union contends these changes are in fact more than de minimus as they clearly modify and eliminate key provisions of Article 26, harm the employee with respect to promotion and pay, and they treat employees unfairly and inequitably.

During term negotiations, the parties discussed the automation of the application and provisions for submitting such applications through traditional, non-electronic methods (e.g., Article 26, Section 8 (E)). The parties did not discuss or contemplate the automated transmission of an application or an automated application rating and ranking system. Article 26, Section 8 (E) clearly provides for automated applications and the process for submitting the application.

Article 3, Sections 1, 2, whereas, the unilaterally implemented policy requires employees to apply on-line for *all* vacancies. Such actions disadvantage employees who do not have access to an agency computer or the Internet. Therefore, the unilaterally implemented procedures treat employees unfairly and inequitably.

Article 10, Section 3, whereas the unilaterally implemented IVOL policy encourages employees to complete applications and apply for vacancies from home. Article 26, Section 8 (E)(1), provides bargaining unit employees with access to a reasonable amount of time during an employee's working hours to prepare or modify his/her application, clearly defining such activities as appropriate work to be accomplished on duty time.

Article 26, Sections 7, 8, 13 whereas, the Agency's unilateral changes do not comply with negotiated procedures.

Section 8 (A) requires the applicant "to file and sign" the appropriate application. The Agency's IVOL policy unilaterally eliminates these provisions. Additionally, the parties are in litigation over grievance disputes involving unsigned applications.

Section 7 (C) (1) (q) requires a postmark on submitted applications as a method of determining the timeliness of the applications. Section 7 (D) (1) (b), establishes provisions in the event an application is received after the

cutoff date for applicants. The provisions contained in Section (c) (1) (q) state the postmark is to be used to resolve disputes. The Agency's IVOL provides no alternative to address timeliness issues. Therefore, the Agency has implemented a policy that is unfair and harmful to employees.

Section 7 (D)(1)(b) provides for an open continuous vacancy announcement process; the language also acknowledges that a future change may occur, but it does not waive the Union's right to notice and an opportunity to bargain in accordance with 5 USC 71. The Agency's unilateral change eliminates the open continuous provisions in Section 7.

Section 10 provides for the establishment of promotion committees that are responsible for rating and ranking applicants. The Agency's unilateral change to automate the rating and ranking of employee applications clearly eliminates pertinent records that the Union would rely upon when auditing promotion packages, in accordance with Section 13 of Article 26.

Section 7 (c) (1) does not provide for an applicant to complete agency surveys as a condition of filing an application. The instructions for IVOL make clear that the employee must complete an Agency survey as a last step in the application process. The requirement to complete the survey to be considered for a promotion clearly corrupts the process and compromises the outcome of the answers.

Additionally, the Union considers the actions taken by the Agency in this matter to be a violation of the statute in accordance with 5 USC 2302, 5 USC 2301, 5 USC 7116 (a) (1) and (5) and 5 USC 7117, constituting both prohibited personnel practices and unfair labor practices.

Relief Sought:

- 1) The Agency shall rescind implementation of "Internal Vacancies On Line" (IVOL) and re-establish vacancy announcements which comply with the negotiated provisions set forth in Article 26 of the parties National Agreement.
- 2) If the Agency continues to proceed with IVOL, the Union requests that *all* selections resulting from vacancies announced through IVOL be rescinded and vacated.
- 3) Employees will be made whole.
- 4) Any employee suffering lost wages, including overtime, will be reimbursed, including appropriate interest in accordance 5 USC 5596.
- 5) Any and all fees, damages or personnel record adjustments relating to or arising from issues in this case.
- 6) The Agency will post a notice on all agency bulletin boards where bargaining unit employees represented by the American Federation of Government employees, AFL-CIO are located; the notice shall be signed

by the Commissioner of SSA and shall be posted and maintained for a minimum of 60 consecutive days thereafter; reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material; and the notice shall state:

Pursuant to section 5 USC 7102 and 5 USC 7116, the Social Security Administration, shall:

1. Cease and desist from:

(a) Interfering with bargaining unit employees' rights protected by the Federal Service Labor-Management Relations Statute to engage in activity protected by the Federal Service Labor-Management Relations Statute.

(b) Communicating to the American Federation of Government Employees, AFL-CIO, and its entities and/or its representatives in a manner which violates the rights protected by the Federal Service Labor-Management Relations Statute to engage in activity protected by the Federal Service Labor-Management Relations Statute.

(c) Refusing to consult or negotiate in good faith with the American Federation of Government Employees, AFL-CIO, and its entities and/or its representatives as required by the Federal Service Labor-Management Relations Statute.

(d) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

I will be the Union's representative for this grievance. You may reply to me at the mailing address or phone number shown below or at my agency e-mail address.

Sincerely,

**Dana Duggins, Litigation Chair
AFGE SSA General Committee
C/O SSA, 2195 Larkspur Lane
Redding, CA 96002
530-246-5334 x3047**

CC: AFGE SSA General Committee

SSA GENERAL COMMITTEE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PO Box 47638
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(410) 966-7151 fax

December 19, 2007

Eddie Taylor, OLMER
Social Security Administration
6401 Security Blvd, Suite 2170 Annex
Baltimore, MD 21235

SUBJECT: Grievance- GC UMG 07-06
Internal Vacancies On Line (IVOL)

Dear Mr. Taylor,

I am submitting the Union's written presentation of GC UMG 07-06. The Union waives its right to an oral presentation on this matter.

In accordance with Article 24, Section 10 of the National Agreement, the AFGE General Committee filed a Union-Management grievance on November 19, 2007. The grievance was filed to contest management's violation of the collective bargaining agreement when it implemented the Internal Vacancies On Line (IVOL), and to redress the adverse impact on bargaining unit employees caused by this new vacancy-announcement and application process. The grievance alleged that management violated Articles 3, 7, 10, 26 of the National Agreement, and the statutory provisions spelled out at 5 U.S.C. 2301, 5 U.S.C. 2302, 5 USC 7116, and 5 USC 7117.

SSA and AFGE entered a collective bargaining agreement (CBA) on August 15, 2005. The parties agreed to specific merit promotion procedures including the method for announcing vacancies, applying for positions, and for evaluating candidates for positions.

On September 21, 2007, the Agency informed AFGE's General Committee of its plan to implement a new on-line job application system, the Internal Vacancies On Line (IVOL). SSA told AFGE that employees could no longer submit paper applications and they would instead be required to submit applications online. Additionally, IVOL would result in "automating," and thus eliminating, the Promotion Committee process. The announcement process also became automated with the use of IVOL.

On September 27, 2007, AFGE General Committee Spokesperson Witold Skwierczynski declined to bargain with management over its plan to implement IVOL based on the provisions of Article 7 of the National Agreement. AFGE maintains that under Article 7, a change in working conditions not required by law could be implemented only upon the agreement of **both** parties.

On October 17, 2007, the Agency responded that it provided a courtesy informational notice to the Union and that the foreseeable adverse impact on bargaining unit employees' conditions of employment was not beyond that of a speculative or *de minimis* nature. Thereafter, management unilaterally proceeded to implement the IVOL initiative. Despite AFGE's disapproval, IVOL became effective November 15, 2007.

The Agency's implementation of this policy is in conflict with provisions of the collective bargaining agreement and the Union's refusal to bargain over the new policy. The FLRA has determined that neither party to a collective bargaining agreement is required to negotiate during the term of the agreement matters "covered by" or "contained in" a collective bargaining agreement. See *Social Security Administration*, 47 FLRA 1004 (1993); see also *Dept. of Navy, Marine Corps Logistics Base, Albany, Georgia v. FLRA*, 962 F.2d 48, 53 (D.C. Cir. 1992) ("[W]here a matter that would otherwise be a mandatory subject of bargaining is 'covered by' or 'contained in' a collective bargaining agreement, the parties are absolved of any further duty to bargain about that matter during the term of the agreement."). As the FLRA has stated when discussing this "covered by" doctrine, "if a party seeks to bargain over a matter that is expressly addressed by the terms of the parties' collective bargaining agreement, the other party may properly refuse to bargain over the matter." *National Treasury Employees Union and U.S. Customs Service*, 59 FLRA 217, 218 (2003).

The implementation of rules in conflict with conditions of employment contained in the Agreement also violates Article 7, Section 3 of the National Agreement. That provision states, "*Negotiations during the term of this Agreement to add to, amend or modify this Agreement may be conducted only by mutual consent of the parties.*" According to this article, where a new policy conflicts with working conditions already contained in the Agreement, but it is not required by law, management must receive agreement by the Union before implementing the policy.

Article 7 of the National Agreement requires management to obtain agreement from the Union before applying new rules or regulations to bargaining unit employees that are in conflict with the working conditions specifically contained in the Agreement. This Article simply supports prevailing labor law; it is well settled that neither party to a collective bargaining agreement is required to negotiate during the term of the agreement a matter that is "covered by" or "contained in" the agreement. See *Dept. of Navy, Marine Corps Logistics Base*,

Albany, Georgia v. FLRA, 962 F.2d 48, 53 (D.C. Cir. 1992); *National Treasury Employees Union and U.S. Customs Service*, 59 FLRA 217, 218 (2003). As a result, an agency is prohibited from making unilateral changes in "covered" subjects.

The implementation of IVOL conflicted with working conditions specifically contained in Article 26 of the National Agreement in at least five ways. First, the parties agreed to announce vacancies through SSA's Intranet. The parties agreed that "to be considered for an announced vacancy, an employee must file and sign the appropriate application." IVOL ignores these requirements. With IVOL, vacancies are "announced" only to the extent that an employee can discover them if he or she searches on the IVOL website.

Second, the parties agreed in the National Agreement that applicants for positions would use the SSA-45. Under IVOL, applicants no longer submit paper applications. They can only apply electronically, on the IVOL website. Therefore, IVOL has substantially altered the contractually agreed upon application method.

Third, the parties agreed to the method for evaluating candidates. Article 26 required the evaluation of candidates by Promotion Committees. The National Agreement also established the procedures to be used by the Promotion Committees in evaluating, rating and ranking the candidates. IVOL eliminates the promotion committees. Instead of promotion committees evaluating candidates, applicants are qualified and rated and ranked electronically.

Fourth, the parties agreed that time spent preparing applications for vacancies is appropriate agency work. The Article noted that bargaining unit candidates would be afforded "access and instructions so that they may use SSA's personal computers to complete automated applications and related forms under this article." Additionally, "access will be granted to the extent that computers, related computer equipment and computer time are available and such use will not impede Agency operations," and "access includes a reasonable amount of time during an employee's working hours to prepare or modify his/her application." IVOL procedures de-emphasize the ability to complete applications during work hours and instead, give instructions for the employee to access and complete applications from home.

Fifth, the parties agreed to provisions which allow the Union to audit promotion packages evaluated, rated and ranked by Promotion Committees. IVOL procedures eliminate the paper trail necessary to perform such audits. Therefore, this renders Section 13 of Article 26 void.

The Federal Service Employees Labor-Management Relations Statute mandates that labor and management negotiate conditions of employment.

Once the parties have signed a collective bargaining agreement, both parties are held to the provisions upon which they have agreed. Here, as specified above, SSA unilaterally changed the merit promotion procedures from those to which the parties agreed contractually, when it unilaterally implemented IVOL. This not only violates the collective bargaining agreement's provisions covering merit promotion but it violates Article 7 that requires changes to working conditions in the National Agreement be agreed upon by both parties. Furthermore, the FLRA has stated that neither party is obligated to bargain over matters already covered by the CBA during the term of the contract.

As a result, management is incorrect in its assertion that it had the right to implement this supposed "new technology" without agreement by the Union when the Union declined to bargain. Accordingly, all employees who were adversely affected by the new, non-negotiated merit promotion process should be given priority consideration for the next appropriate position for which they are qualified and apply in the Social Security Administration.

Relief Sought:

- 1) The Agency shall rescind implementation of "Internal Vacancies On Line" (IVOL) and re-establish vacancy announcements which comply with the negotiated provisions set forth in Article 26 of the parties National Agreement.
- 2) If the Agency continues to proceed with IVOL, the Union requests that *all* selections resulting from vacancies announced through IVOL be rescinded and vacated.
- 3) Employees will be made whole.
- 4) Any employee suffering lost wages, including overtime, will be reimbursed, including appropriate interest in accordance 5 USC 5596.
- 5) The Agency shall pay any and all fees, and/or damages and make personnel record adjustments relating to or arising from issues in this case.
- 6) The Agency will post a notice on all agency bulletin boards where bargaining unit employees represented by the American Federation of Government employees, AFL-CIO are located; the notice shall be signed by the Commissioner of SSA and shall be posted and maintained for a minimum of 60 consecutive days thereafter; reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material; **and** the notice shall state:

Pursuant to section 5 USC 7102 and 5 USC 7116, the Social Security Administration, shall:

1. Cease and desist from:

(a) Interfering with bargaining unit employees' rights protected by the Federal Service Labor-Management Relations Statute to engage in activity protected by the Federal Service Labor-Management Relations Statute.

(b) Communicating to the American Federation of Government Employees, AFL-CIO, and its entities and/or its representatives in a manner which violates the rights protected by the Federal Service Labor-Management Relations Statute to engage in activity protected by the Federal Service Labor-Management Relations Statute.

(c) Refusing to consult or negotiate in good faith with the American Federation of Government Employees, AFL-CIO, and its entities and/or its representatives as required by the Federal Service Labor-Management Relations Statute.

(d) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

Respectfully submitted,

**Dana Duggins, Litigation Chair
AFGE SSA General Committee
C/O SSA, 2195 Larkspur Lane
Redding, CA 96002
530-246-5334 x3047**

CC: AFGE SSA General Committee