

American Federation of Government Employees

AFFILIATED WITH THE AFL-CIO

Local 2505

Ylita Edd
President



Ralph C. de Juliis
Executive Vice President

March 27, 20067

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

BY FAX: (214)767-4259

Dear Regional Commissioner Schuenemeyer:

By this letter, AFGE Local 2505 files an Article 24, Section 10 Union-Management Grievance.

On or about March 14 (Attachment 1) and again on March 19 (Attachment 2), the Social Security Administration denied at Step 1, the grievance filed by Ms XXXX (Attachment 3) of the Tulsa, OK SSA Field Office.

Therein SSA asserted that

...denial of outside activities is not subject to the negotiated grievance procedure. ... Although this grievance was filed under the negotiated procedures, SSA will consider it as a timely filed grievance under SSA's grievance procedures and will respond under SSA procedures.

...

If the grievant is not satisfied with this decision, she may appeal to the Step 2 official within (14) calendar days after receipt of this decision. Information regarding SSA's grievance procedures is located in the Personnel Policy Manual (PPM), S771.1.

c/o Social Security Administration
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Ms XXXX clearly stated in her grievance that she was alleging reprisal and retaliation for protection activities, reprisal and retaliation for having requested a reasonable accommodation and having filed a request for EEO Counseling, sex discrimination and a violation of her Privacy Act rights. In sum, she alleged violations of Articles 1, 2, 3 and 18.

SSA's reliance on *IFPTE, Association of Administrative Law Judges and Social Security Administration*, 57 FLRA No. 191 (2002) is misplaced. The issue there was not a violation of the parties' negotiated agreement, as in Ms XXXX's grievance; it was, as framed by the arbitrator, "...Whether the denial of the ALJ's request to participate in the "Private Judge" program was a violation of existing law, rule, or regulation?" There was nothing about contract violations (e.g., "fair and equitable in all aspects of personnel management"); nothing about reprisal for protected activities; nothing about sex discrimination.

In Ms XXXX's grievance, there were questions of contract interpretation which could legitimately be resolved by an arbitrator. See *Director of Administration Headquarters, U.S. Air Force and AFGE-GAIU Council of Headquarters USAF Locals and OPM*, 17 FLRA 372 (1985). Accordingly, the EXCLUSIVE means for addressing violations of any article of the SSA-AFGE National Agreement is found ONLY in Article 24 (Grievance Procedure).

By its actions and mishandling of Ms XXXX's grievance, SSA has violated Article 24. In addition, SSA's refusal to process Ms XXXX's grievance under the negotiated grievance procedure is an Unfair Labor Practice, a violation of Articles 1, 2 and 3.

SSA's sole option to respond to grievances brought under Article 24, which SSA believes are procedurally or substantively non-arbitrable, is to raise the issue pursuant to Article 24, Section 6:

In the event either party should declare a grievance nongrievable or nonarbitrable, the original grievance shall be amended to include this issue...All disputes of grievability/arbitrability shall be referred as threshold issues in the related grievance...

SSA has engaged in extra-contractual and illegal self-help by refusing to follow Article 24 and instead substituting the Agency Grievance Procedure (which does not in binding arbitration before an impartial arbitrator mutually selected by the parties).

Before 5 USC 71 became law, refusing to process a grievance under the negotiated grievance procedure was NOT always an Unfair Labor Practice. See *Pennsylvania Army and Air National Guard and Pennsylvania State Council, Association of Civilian Technicians, Inc.*, 20-06214(CA); A/SLMR No 1087; 8 A/SLMR 804 (1978). Since 5 USC 71 became law, refusing to process a grievance under the negotiated grievance procedure IS an Unfair Labor Practice. See *Department of the Air Force, 35th Combat Support Group, George Air Force*

Base, CA and National Federation of Federal Employees, Local 977, 4 FLRA 22 (1980). The FLRA found not only that

...the Respondent violated section 7116(a)(1) of the Statute by failing and refusing to process and employee's grievance filed under the parties' negotiated grievance procedure...and by stating that the employee had no rights or recourse under the negotiated grievance procedures...the Administrative Law Judge concluded that the Respondent's conduct clearly discouraged or interfered with the employee's right under the Statute to file a grievance under the negotiated grievance procedures and therefore interfered with, restrained or coerced the employee in violation of section 7116(a)(1) of the Statute.

Furthermore, even though the Union and employee are satisfied with the relief granted under the Agency grievance decision, the Union believes that "...a cease and desist order is appropriate in this case to vindicate AFGE's right under the Statute and prevent similar illegal conduct in the future." *Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Coast and Geodetic Survey, Riverdale, MD and AFGE, Local 2640. WA-CA-20566 (1994)*

It is the Union's statutory and contractual right to bring grievances and have them processed through arbitration. That does not mean that the Arbitrator will not find a matter substantively or procedurally non-arbitrable if the Agency raises such arguments; it merely means that the Union has a statutory and contractual right to have an arbitrator ultimately make that decision; SSA does not unilaterally have that right as the above FLRA decisions, for the past quarter century since 5 U.S.C 71 became the law of the land, clearly establish. When SSA attempts to usurp that right, the Union must and will challenge that action.

I am the Union's representative in this matter. The Union waives its right to an oral presentation.

As remedy, the Union seeks the attached posting which shall be posted in all SSA Field Offices in the Dallas Region for not less than 60 days.

Sincerely,

Ralph C. de Juliis

4 Attachments

cc: AFGE Local 2505 Executive Committee

NOTICE TO ALL EMPLOYEES

POSTED

**PURSUANT TO A GRIEVANCE
SETTLEMENT BETWEEN**

AFGE Local 2505 and Social Security Administration

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally refuse or fail to process a grievance filed by bargaining unit employees under Article 24 of the parties' negotiated grievance procedure.

WE WILL NOT unilaterally substitute the agency's grievance procedure for place the negotiated grievance procedure which ends in arbitration before a neutral arbitrator chosen by AFGE and SSA..

WE WILL NOT, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the collective bargaining agreement between SSA and AFGE and the Federal Service Labor-Management Relations Statute.

WE WILL NOT violate of Articles 1, 2, 3 and 24 of the SSA-AFGE National Agreement.

WE WILL follow the provisions of the negotiated grievance procedure found in Article 24 of the SSA-AFGE National Agreement when responding to employee grievances, even we when allege that such

grievances are procedural or substantively non-grievable and / or non-arbitrable.

WE WILL abide by the provisions of Articles 1, 2, 3 and 24 of the SSA-AFGE National Agreement.

Social Security Administration

Dated: _____

By: _____ (Signature)

_____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.