

# National Council Digest

National Council of SSA Field Operations Locals

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## Timeliness an issue on oral grievance presentations

By Charlie Estudillo  
C220 First Vice President

We received a bad decision from an arbitrator in which he ruled that a grievance was not arbitrable because the union failed to make a timely oral presentation. Oral grievance presentations are optional, and if you want to make one, check "oral presentation requested" on the standard grievance form (SSA 2048). The time frames for an oral or written grievance presentation are in the contract, and must be made as follows for Article 24 Section 9 (employee) grievances:

- Step 1: within 10 working days after receipt of the grievance.
- Step 2: within 5 work days if the management official is in the same facility and 10 work days if the official is in an offsite facility.
- Step 3: same as Step 2 above, within 5 work days if the management official is in the same facility and 10 work days if the official is in an offsite facility.

For grievances filed under Article 24, Section 10, the parties will meet and/or discuss the matter within 10 working days after receipt of the grievance, unless the union waives the meeting discussion.

Management is really having fun with this recent decision and some managers are claiming the grievance dies and is non-arbitrable because the union did not make the oral or written presentation within the contractual time frames. AFGE has filed an exception on this aberrant decision, but expect the usual managers to play these games until we prevail before the MSPB or in court. Thereason-

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able managers will probably continue to be reasonable.

**REMEMBER:** Per Article 24 Section 7C, "All time limits in this article may be extended by mutual consent". If you are having trouble making your oral or written grievance presentation within the contractual time frames (including a pending data request), request an extension in writing by email or call the deciding official and request an extension and confirm the agreed-upon extension by email.

Don't let yourself be out-maneuvered by management because you missed a deadline without getting an extension. If you miss the time frame for the grievance presentation and didn't get an extension, don't let that stop you from moving the grievance up through the various steps of the grievance procedure, including invoking arbitration timely.



## Agency attempt at dress code is 'Mickey Mouse'

By Howard Egerman, Local 3172

"M - I - C - K - E - Y"

Remember those days when many baby boomers learned to spell as part of the Mickey Mouse club? Or, think of those later day Mouseketeers whose number included one Brittany Spears in the days before she could drive and shave her head.

Yes, Mickey Mouse is and has long been a part of American culture with two theme parks on opposite coasts and various organizations offering discount tickets to these parks.

But while Mickey may be up there as part of Americana along with the flag, motherhood, apple pie and Chevys, one manager in a California field office had a different view, threatening to send an employee home because she wore a shirt with a picture depicting Mickey.

This was threatened despite the fact that SSA is an agency with no dress code.

According to National Field Council President Witold Skwierczynski, "Management put up a dress code in contract negotiations and lost it. There is no dress code in SSA.

"In fact, it was compromised at the bargaining table. Any write up in a progress review criticizing

an employee's dress should be grieved. Any allusions to dress codes don't apply in SSA since they were lost at the negotiations of the contract by SSA."

Think of the implications. If it starts with Mickey, where could things

end? The Agency replaced a pair of Liz Clairborne jeans damaged on a defective desk for an employee in another California field office.

If Mickey is banned, what could happen with other logos? People in Central Office were seen wearing shirts with the SSA eagle on them. Could

these future SSA leaders be sent home, too, for wearing a logo?

And what about those other designers? Consider Gloria Vanderbilt, mother of Anderson Cooper and his 360 CNN program. Could people be sent home for wearing her swans?

Some folks wear alligators and other types of so-called preppy wear. If people cannot wear a mouse, would it be necessary for the Agency to start meeting with the World Wildlife Federation or People for the Ethical Treatment of Animals?

Clearly, things are going too far. What do you call this threat to send someone home for wearing Mickey? Is it a "Mickey Mouse" move?

### Stealth dress code pushed by management not in contract

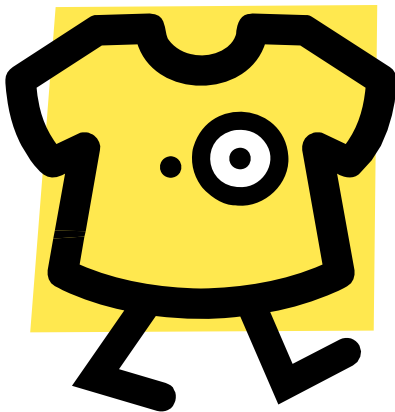
Since Kansas City Regional Commissioner Michael Grochowski sent a "Dear Colleague" letter to management in May, *Digest* is hearing about a flurry of "dress code advisories" to employees by their supervisors from around the nation.

Growchowski passed along an internet article by Steve Oppermann, management consultant and retired federal employee (30 years management experience in federal agency human resource departments, according to an on-line biography).

The article refers to a win by management in the contract negotiations of the Center for Medicare and Medicaid (CMS). A dress code proposal by management was effectuated by the Federal Service Impasses Panel (FSIP) back in 2005 when the Union and CMS could not reach agreement.

In fact, FSIP ruled in favor of management in almost all of the proposals submitted. The panel, whose members are appointed by the President, makes the final decision on disputed contract language. FSIP's overwhelming favoritism shown to management in the CMS contract colored AFGE-SSA's negotiations on its current contract.

What the Kansas RC did not share was that his team lost the dress code article at negotiations between SSA and AFGE. Grochowski should know this since he was SSA's chief negotiator for management.



## Credit hours available before tour in TSCs

By Suzanne Moseman, Local 3129

Employees in the teleservice centers (TSCs) can work credit hours before the daily tour of duty begins according to a May arbitration decision.

Charlie Estudillo and Jim Campana represented Council 220 employees at arbitration.

The case started with negotiations between Union and management in May 2004. The parties disagreed on whether TSC employees could work credit hours before their daily tour and on Saturdays. Management decided it was illegal to work morning credit hours, advising teleservice centers that credit hours could only be worked at the end of an employee's tour. The Union filed a grievance, citing violation of Article 10, Appendix B, of the National Agreement.

In his decision, Evans chided management: "SSA failed to fulfill its contractual and statutory obligations to bargain in good faith over the substance of its decision to discontinue the pre-shift credit hours practice at issue here."

Evans continued, "I specifically do not find that, for Appendix B [TSC] employees, the Union acquiesced in any way in SSA's legal position or that it bargained away its 'substantive' bargaining rights during the 'impact' negotiations that the parties engaged in during the course of their term negotiations... There is no persuasive evidence that for Appendix B employees the Union surrendered the past practice at issue."

The arbitrator directed management to reinstate morning credit hours. Employees who would have been able to work pre-tour credit hours except for management's action will be "made whole"; compensation for employees will be determined.

The Agency complied by establishing core schedules in each TSC, allowing employees to flex-in as soon as their office opens, essentially ending multiple shifts. Although credit hours will still be earned at the end of an eight-hour tour, employees may sign-in as early as needed to earn credit hours later that day.

However, Evans declined to overrule management's decision to deny Saturday credit hours to teleservice representatives.



## Have you been Norq'd?

Norq'd means you can't do your job right because the agency is understaffed and starved for funding.

The phenomenon is named for Grover Norquist, a conservative activist who said "I don't want to abolish government. I simply want to reduce it to the size where I can drag it into the bathroom and drown it in the bathtub."

Federal agencies are leaner, meaner, and less competent because politicians buy into that philosophy.

"Cutting the government in half in one generation is both an ambitious and reasonable goal," Norquist stated in May 2000. "If we work hard we will accomplish this and more by 2025. Then the conservative movement can set a new goal. I have a recommendation: to cut government in half again by 2050."

So, how does it feel on the way to the tub?

Outsourced! Lots of government tasks have been sold to the lowest contractor to hide the size of government. If the politicians can brag about how they've reduced government staffing, they get a cheer from the small-government crowd. Never mind that contractors, unfamiliar with our programs, frequently drop the ball.

Outraged! Those of us at SSA who deal directly with the public know this small-government idea is being hatched on the backs of the poor and the vulnerable.

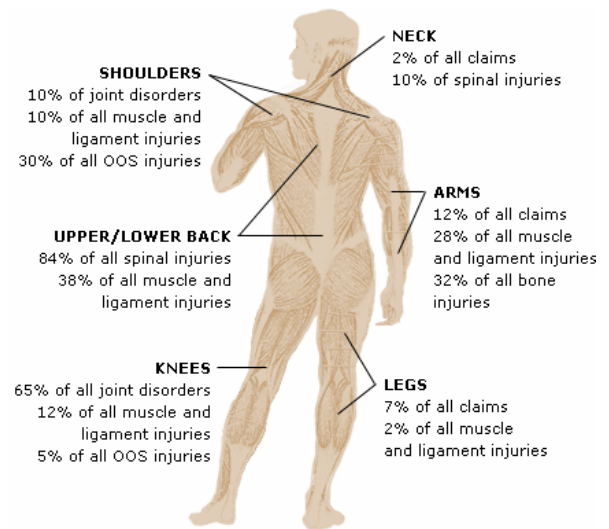
Outmaneuvered! Automation is taking the place of people. Computer screening of past overpayments results in arbitrary deferred payments, suspended benefits, and re-posting of overpayments long since repaid or waived. The automated phone system is a barrier to the old, the impaired, and the impatient. Fewer calls but more traffic at the field offices or more people knocking on their congressional representatives' doors.

This didn't start with Grover Norquist. Ronald Reagan took a chainsaw to federal agencies (except defense) and SSA lost a quarter of its staff. The Air Traffic Control union was smashed. The deficit didn't go down, in spite of Reagan's colorful expressions such as "Government is like a baby: An alimentary canal with a big appetite at one end and no sense of responsibility at the other." Or, "Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."

When politicians can make points by labeling the government as the enemy, your job is in peril. Tell them how important federal employees are. Today.

## How to File For Workers Compensation

- A Claims Representative (CR) works through lunch, avoids breaks and takes interview after interview. She can't sleep at night and seeks medical treatment for stress.
- Another CR gets physically ill every time he goes to work in the morning, knowing that no matter how many claims are cleared, there will just be more pressure to get more done in less time. He goes to a psychologist for treatment of anxiety and related stomach problems.
- A Service Representative trips over an exposed telephone cord in the office and sprains an ankle, requiring a visit to the hospital.
- The landlord sprays insecticide in the office during duty hours. An employee inhales the chemical and runs to the bathroom to vomit.



What should all of these employees do?  
All should file Workers Compensation claims.

Workers Comp benefits are payable when an injury arises out of the course of employment. Employers guarantee that workers injured on the job will receive medical treatment and replacement of lost wages. All SSA workers who sustain injuries on-the-job are encouraged to file a claim and obtain all compensation due. **Injuries** include stress and anxiety-related illnesses for which you obtain medical/psychological remedies.

### How to File

If you have a traumatic injury (broke your ankle tripping over a box), file a **CA-1**. You will be eligible for administrative leave for the day of the injury and up to 45 days of continuation of pay. You will need to see a doctor and indicate that the injury is Workers Comp-related.

For non-traumatic injuries (e.g., repetitive strain injuries, stress), you must complete a **CA-2**. This will require a narrative about what led to the injury and how work affected your condition.

In all cases, medical documentation is required.

The SSA office is becoming a less healthy place as fewer staff try to meet management's unrealistic goals. If employees seek medical treatment to deal with the stress of the workplace for or on-the-job accidents, they should invoke their Workers Compensation rights and file claims as soon as possible.

For more information, contact your Local AFGE Representative or Council 220's Health and Safety Coordinator, Howard Egerman at <mailto:Howard.Egerman@ssa.gov>.

## Steps for union reps responding to PACS problems

1) Have the employee contacting you request time to meet with the union.

2) Copy the Mid Term PACS discussion.

3) Review the 7-B file with the employee. Have the employee initial and date each piece of material in the 7-B file. This will help to know if material is added after review of the file.

4) Go over the discussion with the employee and identify concerns. Summarize the concerns.

5) Look for use of numerics. Contact your local president and Council 220 immediately if numerics are used.

6) Look to see if references are made to material which the employee has not seen. If complaints are used to document interpersonal skills and the employee has not seen them, the employee needs to ask where they are kept. The same can be applied to other performance elements. They can request parametrics, desk audit data, interview audit data, anything their supervisor refers to as being used to assess his/her performance.

7) Have the employee summarize the meeting with the supervisor in email, request a read receipt, and ask the supervisor if that is correct. Save everything in a paper file and electronically.

8) Have the employee ask questions. An employee can ask where the complaints or other material are stored. An employee can request to see the material since it has been raised as a performance issue.

9) Have the employee ask questions of management about the difference in levels for each element. There are samples of questions for each of the performance elements on the Council 220 website. Keep responses.

10) An employee can rebut his mid-year PACS discussion. He/she can request and must be given agency time to do so.

11) Depending on responses to the questions asked of the supervisor, a grievance may be necessary. Please contact your local president about filing and follow established local procedures for your union local.

12) Employees need to question and contact us as soon as they feel there is a problem.

13) The union can assist, but the employee must be willing to be involved. Encourage employees to contact the union early, not when they are being put on a performance plan or have received a notice of termination or demotion.

### Union official has advice about 'Acknowledgement Statement'

If it hasn't already happened in your office, management will soon start to circulate an "Acknowledgement Statement" that will read something like this:

*"This is to acknowledge that I have read and understand the attached document entitled 'Sanctions for Unauthorized System Access Violations.' I understand that the sanctions identified in the statement will be imposed for violations, including those sanctions stated for the first offense."*

Dana Duggins, the Third Vice President of AFGE Council 220, has this advice for all members of the bargaining unit about that statement:

**"DON'T SIGN IT!"**

Duggins also says no action can be taken against an employee who refuses to sign the document.

"I have never done it and I still have a job with the agency. This is not a condition of employment and the terms used in that statement are so vague, they're bound to cause problems later.

"The agency has never come up with a clear definition for 'friend' or 'relative' or similar terms. We think we know what they mean, but management may not agree with us."

Duggins pointed out a few problem areas:

"Do you consider former volunteers (seniors or those in a sheltered workshop) to be an 'employee'? Do you think the spouse of a distant cousin whom you've never met is a 'family member'? The agency can and it has as a way to discipline employees.

"The bargaining unit should also understand that the local bank teller, grocer, pizza delivery driver, and church members are also considered to be a 'friend' or 'acquaintance.'"

Duggins offered this advice as well:

**"NEVER, EVER** take an interview from someone you remotely know, unless you have management's approval and YOU document their approval in advance."

## Bipartisan effort underway to “save” Social Security

It’s been more than two years since President Bush unveiled his plan to privatize Social Security, but those ideas didn’t just die – they were murdered! At town-hall meetings across the country, the public wasn’t shy about expressing its outrage to members of Congress. Large numbers of people turned-out to say that privatization wasn’t in their best interest and they wanted the idea scrapped immediately. Thankfully, the politicians listened.



Now – according to *Fortune* magazine – two members of the House are “on a mission to rescue Social Security from bankruptcy.” Congressman Charlie Rangel (D-NY) is chairman of the Ways and Means Committee; the ranking GOP member is Jim McCrery of Louisiana.

In a recent article, *Fortune* said these two men from opposite ends of the political spectrum have been meeting privately over the last couple of months to work-out a compromise that will ensure Social Security’s long-term financial health.

Democrats have traditionally looked at some type of tax increase to fund the system, while Republicans called for private accounts. Neither of them liked what their opponents had to say and the result has been a stalemate that showed no signs of ending.

Those days may be over, but the magazine also pointed out that many politicians have decided not to get involved in the Rangel-McCrery negotiations because Social Security is still considered a controversial subject and the next election is just 14 months away.

That doesn’t seem to matter to either lawmaker.

“To me it’s a no-brainer,” McCrery told *Fortune*. “We can’t stick our heads in the sand and then hope ten years from now it’ll go away. It will only be worse.”

## United States still not friendly to most families

A recent study showed the United States still lags behind many other countries in family-oriented workplace policies.

This report – prepared by researchers from Harvard and McGill University – looked at 173 countries and discovered the U.S. is one of just five nations that doesn’t guarantee some type of paid maternity leave. The others are Papua New Guinea, Swaziland, Lesotho, and Liberia.

In 65 countries, fathers are given paid paternity leave or paid parental leave. The U.S. does not have that benefit, and there is no maximum work week or a limit on mandatory overtime that has ever been established here.

Fortunately, AFGE has been able to negotiate a contract that promotes better working conditions for the bargaining unit – but management can be reluctant or downright hostile when employees want to use the benefits they’ve been guaranteed.

For additional information about your rights, consult the 2005 National Agreement. It’s available at [www.afge220.org](http://www.afge220.org) and by clicking on “Library” in the top left corner. Article 20 deals with child care and Article 31 concerns leave issues (including maternity and adoption). Additional questions or concerns can always be directed to your local Union representative.

## Good news outside SSA

The U.S. Department of Labor (DOL) did an about face, deciding not to contract out 250 jobs.

Labor Secretary Elaine Chao said in June those positions would be filled by GAP Solutions, Inc., but her idea was greeted with a firestorm of protest.

Alex Bastani, the president of AFGE Local 12, called Chao’s most recent decision “not only a victory for the workers, but also for the taxpayers.” He also warned that the fight against privatization is not over because there are still several contracting-out proposals being considered by the DOL.

In a related story: the *Los Angeles Times* has reported that because of the Bush Administration’s push to contract out as many jobs as possible, there are now more private contractors in Iraq than U.S. military personnel.

## *Discourtesy a matter of perception*

**By Ken Keillor, Local 3272**

I have heard comments from around the country about managers coming down hard on employees for discourtesy – to the public and to co-workers (often meaning managers). There is a law that says that management has to discipline you if there are 4 proven cases of discourtesy to the Public in 12 months.

One example is an arbitration case I just read where a “customer” (sorry, I still find it hard to use that word) called the 800 number and later complained that the TSR had her on hold and told her to “be quiet, I’m reading” and thus was rude. The arbitrator overturned the 3 day suspension saying SSA did not prove its case since no one but the two participants in the call witnessed the event. SSA had originally proposed a 7 day suspension to this 28 year employee claiming she also called the “customer” back and called her a “bitch.” The employee had no history of being counseled or disciplined before this incident. SSA did prove that the “customer” called into SSA, was in que for 16 minutes and was only on line at the TSR’s phone for less than 10 minutes. SSA had no signed complaint, just a Report of Contact. The “customer” did not come to the hearing in person. SSA did not even have a witness at the arbitration who had talked to the “customer.”

TSC managers do a lot of service observation, listening in on calls. This capability can be added into field office phones and we hear rumblings they are doing this. Otherwise, in a case like this, they would have to have overheard you or have testimony from someone who had.

If SSA thinks you have been discourteous, they can come at you a couple ways. They can propose to discipline you for the misconduct. This would be under Article 23 of our National Agreement. Or, they can deal with it as a performance issue under Article 21 – as part of your appraisal under PACS. Interpersonal Skills is one of our 4 critical elements. There are different rules for evidence and proof for each of these approaches. There are also different ways for you to respond. It is very important that you contact your union rep. The earlier we can get involved, the better we are able to help.

The issue of conduct versus performance is the subject of PACS Alert #8.

We would like to hear from you, too, if you are asked questions about a co-worker. We are concerned

about your rights when you are asked such question as well as when you are the target.

I have represented employees charged with discourtesy. And, I have read a number of case decisions on this topic and other alleged misconduct that led to discipline. It always amazes me that SSA trusts you to make decisions every day involving thousands of dollars. Yet, at the slightest complaint against you, they don’t believe a word you say and want to throw the book at you. Even the arbitrator in the case here found it astonishing that SSA believed the word of the “customer” over that of a 28 year employee with a good record.

*(Reprinted courtesy of Local 3272 News & Views, July 19, 2007).*

### *Union members give Congressional staffer problems of staff shortage*

**By Howard Egerman, Local 3172**

A Congressional aide recently got first-hand knowledge of how Social Security employees are treated and what improvements need to be made to the agency.

Exodie Roe III, a field representative for Congressman Jerry McNerney (D-Calif.), attended a meeting of Local 3172. Rep. McNerney was elected to the House in November 2006 and his district includes a large portion of the San Francisco Bay Area.

During the meeting Roe listened to the employees’ concerns, which focused on a lack of staffing. He was told that as members of the bargaining unit retire, quit, or take an “early out,” they’re not being replaced. At the same time, management positions are always filled.

Roe also learned that employees are routinely called at home when they’re sick or grieving the loss of a family member. Managers and supervisors want to know when the employees will return to work, and in some cases, men and women are told *they should be at work* despite the stress they’re having to endure.

Individuals are also harassed when they want to take leave, and some people have been asked by their managers when they intend to retire.

Roe took extensive notes and he also met with employees before and after the meeting. He promised to send a report to Congressman McNerney about the problems that were brought to his attention and he also said his boss is committed to getting Social Security the resources that it needs.

## Employee reinstated; Douglas factors cited

In a mostly good news decision, an arbitrator reinstated a Mississippi claims representative 18 months after he was terminated, but without back pay and benefits.

Council 220 attorney Patricia McGowan won the CR his job back, arguing the Agency did not consider mitigating factors before firing the employee for unauthorized use and taking of government property, violating the Privacy Act and insubordination.

“The arbitrator did a very thoughtful Douglas Factor analysis,” McGowan said. “The grievant is back at work in his old office and is extremely happy to have his job back.”

Citing the twelve *Douglas* factors, arbitrator William H. Mills sided with the Union, stating that “no harm has resulted and no significant potential for harm arose from the disclosures” and there was no evidence of substantial monetary loss to the government.

The grievant’s misfortunes began when he took his temporary promotion to the Management Support Specialist seriously, reporting the problems of a probationary employee to the temporary district manager. When the manager did not take action to correct the employee, the grievant pursued the issue, resulting in a “less than cordial” relationship between the grievant and upper management.

Unfortunately, the grievant also processed a delayed claim for the probationary employee without “adequate proof of age from secondary sources.” He was slapped with a 14-day suspension while still serving in the MSS role, a non-bargaining unit position. Unable to file a grievance under the contract, he pursued other avenues to remove the suspension, including filing a claim under the “whistleblower” protection act, which were unsuccessful.

“As the arbitrator rightly held, he did not have a valid Whistleblower cause of action, so he should not have released that [personally identifiable information],” McGowan said.

During those attempts to clear his record, the grievant included copies of client records and copied documents on Agency equipment to support his case. He did not use either an attorney other representative to assist him with his appeals. That activity was then used by the Agency to support its action to terminate the grievant.

In spite of the short term suspension, the arbitrator concluded that the grievant’s disciplinary record “is not such that it supports severe discipline in this case.”

However, the use of the government photocopier bothered the arbitrator so much that he refused to reinstate the grievant with back pay and benefits.

“In fact, the Arbitrator considers this charge to be so serious that if there were proof that actual value of the property taken was any significant amount the Arbitrator would be inclined to conclude that the discipline imposed by the Agency was not within the parameters of reasonableness,” Mills wrote in his conclusion.

### *The Douglas Factors*

Discipline must be consistent. Management must establish that the penalty selected does not clearly exceed the limits of reasonableness. A well known Merit Systems Protection Board (MSPB) case (*Douglas v. Veterans Administration*) cites a number of factors which management must weigh in deciding disciplinary actions. These factors are often referred to as the Douglas factors. Some factors may not be applicable to a given case; relevant factors must be considered.

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee’s past disciplinary record.
4. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon the supervisor’s confidence in the employee’s ability to perform assigned duties.
6. The consistency of the penalty with those imposed upon other employees for the same offense in like or similar circumstances.
7. The consistency of the penalty with agency guidance on disciplinary actions.
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. The potential for the employee’s rehabilitation.
11. The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.