

American Federation of Government Employees, Council 220
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Bush's failed attempt at privatization was costly

The Bush Administration's attempt to privatize Social Security cost taxpayers at least \$2.8 million, according to a report from the Government Accountability Office (GAO).

The 24-page study, which was requested by Congress, also showed that former Deputy Commissioner James B. Lockhart III crisscrossed the country over a four-and-a-half month period in 2005 talking about the Bush plan. He appeared at 47 public speaking events, while former Commissioner Jo Anne Barnhart went to just four.

"Maybe she saw the handwriting on the wall and knew this idea was doomed to failure. That's why she sent Lockhart," said Steve Kofahl, Regional Vice President of the Seattle region and a member of the Council 220 Executive Committee.

"This money certainly could have been spent on better things, like increased staffing at Social Security," he continued. "Ultimately, of course, the public stood up and rejected the plan. Now we just have to hope it's not resurrected in some other form."

Kofahl and Debbie Fredericksen (the Executive Vice President of Council 220) testified in front of the Senate Democratic Policy Committee in January 2005 about this same issue; they alerted lawmakers to the fact that Government employees were being used to advance the Bush Administration's political agenda.

The GAO stated there were a total of 228 events involving the privatization proposal, with many featuring President Bush, Vice President Dick Cheney, and a long list of others from a number of agencies. The \$2.8 million paid for staging, travel, and other costs.

The report also pointed out that Lockhart did dozens of interviews with the media when he was-

n't appearing at public events. Other SSA officials, including Mike Korbey, also spoke on the privatization proposal. He is now a Senior Advisor to the Deputy Commissioner, but Social Security contends "the involvement of SSA representatives and the funds spent on those activities were to provide *solvency education* to the public rather than to promote any particular plan to achieve solvency."

GAO rejected that notion, stating "the events identified in the report were, among other things, used to promote the President's reform agenda."

"I'm glad the Government Accountability Office saw this effort for what it was," Kofahl said. "The White House used federal employees to push a particular idea and that's just wrong."

GAO noted the \$2.8 million figure is just an estimate because the Bush Administration would not release certain information, citing security concerns and other issues. The agency did not challenge that refusal, but did make this rebuke:

"We disagree with (the) decision to withhold this information and believe that it is inconsistent with current law. GAO has a statutory right of access to this information and our work often involves reviewing information that is sensitive or classified and we have procedures for handling and protecting such information."

It also stated that Congress will have to decide whether to pursue the matter further as part of its oversight and investigative agenda.

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Employee gets another chance at reinstatement

A former Claims Representative may eventually get her job back, thanks to a recent decision from the Merit Systems Protection Board (MSPB).

The case involves Sonia Morales, who worked in the Waltham, Mass. District Office. She was fired for alleged “unsatisfactory performance” in September, 2005 but Union officials have long claimed the agency wanted to get rid of her because she is hearing impaired, has chronic health problems, and has a young daughter who needs frequent attention.

“The agency actually said: it didn’t know she’s hearing impaired, even though it’s in her personnel file,” says attorney Patti McGowan, who represented Morales in front of the MSPB. “How do you ‘not know’ something like that? How do you ‘not notice’ it? The agency’s people also testified that they didn’t think she had a chronic health problem (asthma) because she didn’t walk around with an inhaler!”

The manager of the Waltham District Office at the time was Mary E. Robinson. The Area Director was Colleen Brady, who denied the grievances which had been filed. She said that because the Union had not made its oral presentations in a timely manner, the issue was closed.

An arbitrator later ruled in favor of the agency, stating the issues were not subject to arbitration. McGowan then took the case to the MSPB, which reversed the earlier decision and sent it back to the arbitrator for his review. The Board ruled that Area Director Brady did not have the authority to terminate the grievance process and a decision on the merits of the case was required.

“This is very unusual,” McGowan said. “The board rarely overturns an arbitrator’s decision.”

Louetta Keene, the Area 2 Vice President and a member of Local 1164 in Boston, says Morales continues to work as a substitute teacher. Keene helped McGowan with the case and she’s confident the former CR will return to Social Security because the merits of the case are very strong.

“Sonia is anxious to come back,” Keene said, “but we may not get another decision from the arbitrator for several months.”

During arbitration, the agency claimed it did not consider Keene’s arguments during earlier presentations “because she was a Union official.” Ironically, she also has 20 years of experience as a Claims Representative. (REF: BN-2006-R-0011, CB-7121-07-0020-V-1)

Arbitrator backs Union over space issue

AFGE Local 836 has scored a decisive victory against the Social Security Administration.

In November, 2006, the agency took away space that the Union had been using for more than six years in the Des Moines, Iowa, office. The Local filed a grievance and Arbitrator John Baker recently ruled in its favor. He pointed to contract language which guaranteed Union representatives designated as 50% “official time” users the right to retain their additional agency-provided space, and this included Local 836 Chief Steward Jeremy Maske.

Management said it needed the Private Interview Room (where the Union was located) because of a change it had made, but the result of the change was visitors to the office waited longer.

Judy Stefani, the President of Local 836, says they will not be able to regain the space that was taken from them because the agency is still using it, but “maybe we can find something offsite. That would be really nice. Whatever happens, we’ll get a private area where we can talk to employees, instead of having to do it at our desks.”

The Local was represented by Kirk Bigelow during the arbitration process:

“The Union has been completely vindicated by Mr. Baker’s decision,” Bigelow said. “What happened is that Kansas City Regional Commissioner Michael Grochowski and Baltimore’s chief negotiator, Ralph Patinella, decided to seize the Union’s space and shut it down. Our members should be outraged because these two management officials wasted our dues money and taxpayers’ money in forcing us to litigate this issue for the third time.” (REF: KC-2007-R-0004)

Weingarten ruling protects employees

By Dwight Jenkins
Staff Writer

February 19, 2008, will mark the 33rd anniversary of a landmark Supreme Court decision for unionists everywhere, but it's an anniversary surrounded by great misunderstanding and one that will most certainly not be celebrated by SSA management. On February 19, we're calling on all on-site representatives to inform your constituents of their right to Union representation at investigatory meetings with management.

"Sounds like Weingarten rights to me," those of you in the know say.

Do you even know who Weingarten was? An employee whose rights were trampled? The notorious OIG investigator infamous for getting the most out of his investigations? The judge who ruled in favor of employee representational rights?

None of these. Weingarten, Inc. was a retail chain of over 100 stores, complete with lunch counters and lobby food operations. Members of Retail Clerks Union Local 455 worked there, including Leura Collins.

A fellow employee noticed Ms. Collins putting a dollar into the register in exchange for a large-size box of chicken, a box that should have sold for \$2.98!

The "whisper walls" did their dirty work, and out from the shadows crawled an undercover "Loss Prevention Specialist" named Hardy, who summoned her to a closed door meeting with the store manager.

Ms. Collins' requests for Union representation at this meeting were repeatedly rebuffed, but the ham-handed investigation subsequently vindicated her defense that the store was in fact *out of* the small, \$1 containers for 4-piece chicken dinners, forcing her to put this church supper donation meal into a larger box!

Welllllll, alrighty then, that explains everything, and the good manager solicitously asked that Leura keep this matter just between them. No harm no foul, right?

Wrong. Ms. Collins spilled the beans about the chicken to her shop steward, who then filed an Unfair Labor Practice charge with the National Labor Relations Board. The NLRB sided with the Union, the Court of Appeals for the Fifth Circuit sided with the chickens at Weingarten Inc., and the dinner was set for a showdown in the highest court in the land. Just deserts went to the Union on February 19, 1975, upholding employee rights to Union representation at those creepy "let's chat behind closed door" meetings.

You know the type: the way around Union representation is for management to pretend it's no big deal!

"Hey look, we just wanna find out what happened here, you know, this one says this, that one says that..." Sometimes they don't even mention the word "Weingarten."

Don't be taken in by this faux Southern hospitality. Ask for your Union rep before proceeding.

The Elements of a Weingarten Discussion

The examination is in connection with an investigation. Note the following factors of an examination:

- It entails a meeting in which the employee is questioned regarding his/her own conduct.
- It may include a meeting where the employee questioned is not the subject of the investigation.
- It does not include performance evaluation.
- It does not include meeting where discipline is merely announced.
- The employee is in the bargaining unit.
- The meeting is conducted by the agency's investigators (management or OIG inspectors).
- The employee reasonably believes discipline will occur.
- Objective factors will determine reasonable belief.
- Labeling a meeting a "counseling session" or "inquiry" and stating that no discipline will result does not necessarily remove the meeting from protection if elements of a Weingarten meeting are present.
- Management must inform the employee of the general purpose of the meeting. The employee may make the request to the person conducting the investigation or to another responsible official.
- The Union may make the request for the employee.
- ***The employee must request representation.***

Note: Once the employee requests Union representation, no further questioning or action should take place until the Union representative is present.

Role of Union Representative in a Weingarten Meeting

- The Union may be an active participant.
- The Union can help the employee express his/her views and suggest alternatives.
- It is a ULP for management to prevent the Union from actively representing the employee in the meeting.
- It is a ULP for management to discipline a Union representative for attempting to effectively represent an employee in the meeting.

Reps' Corner: Getting the information you need to make your case

(Taken from Council 220 training resources: "Data Requests: Particularized Need," by Andy Krall.)

Knowledge is power. When preparing to negotiate, present a grievance or investigate issues relating to representational functions, it is important for any Union rep to obtain as much information as possible.

Under the Federal Labor Relations Statute 5 U.S.C. 7114 (b)(4), the duty of a federal agency to negotiate in good faith includes the obligation to provide the Union "upon request and, to the extent not prohibited by law, data—

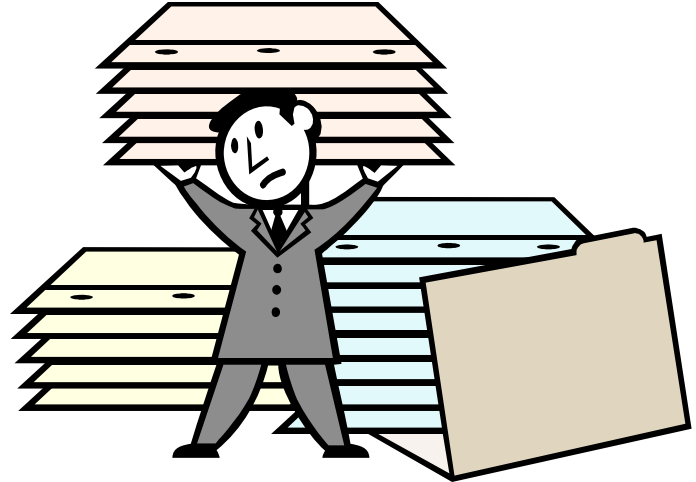
(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and the negotiation of subjects within the scope of collective bargaining; "which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, related to collective bargaining"

The Federal Labor Relations Authority (FLRA) follows a stringent approach to interpreting the statute when analyzing whether an agency is required to provide a Union with data. Dubbing this the "particularized need doctrine," the FLRA looks to three factors in deciding whether information is *necessary* to the Union:

1. Why the Union needs the information,
2. How the Union will use the requested information, and
3. How the articulated use of the information relates to the Union's representational responsibilities under the statute.

It is not enough for the Union to offer the conclusion or bare assertion that the information is or would be relevant or useful. The Union's request must be sufficient to permit an agency to make a reasoned judgment as to whether the information must be released. We have a better case if there is a related grievance already filed or a bargaining session pending.



The agency, in turn, cannot just say "no" without some justification or refuse to respond. It must first assert a countervailing anti-disclosure interest, then actually establish that interest. When there is a dispute, Union and management representatives are supposed to discuss alternative forms of disclosure that could satisfy both the Union's need for information and the agency's interest in keeping all or part of the information confidential.

In some cases, the Union is obligated to request information in sanitized form, with the employees' names or other identifying information edited to protect individual privacy.

It is important for Union representatives to have these discussions and to document them in the event an unfair labor practice charge becomes necessary.

Keep in mind that there are other laws which affect the extent and type of information which the Union can obtain from an agency. The Privacy Act bars the release of some data, unsanitized appraisals for example. Other information (management awards, for example) can be obtained through the Freedom of Information Act when we cannot get it through demonstrating a particularized need under 5 U.S.C. 7114 (b)(4).

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Rep's Corner

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Information requests must be tailored to the aspects of your case: what information do you need in order to present your argument? You generally won't find a fill-in-the-blank form letter, but here are some examples of how you can get information the agency has compiled.

First, determine what kind of information will help your case. Brainstorm with other representatives, including your Union's officers, as to what types of data the agency might use to make its decisions. Once you have a list, you have your "what" - then you need your "why."

Next, determine why particular information will help your case.

Knowing how the data and records will affect your case is not always clear at the outset of an information request. But data gathered over a period of time in different ways is the only way of determining if employees are treated fairly and equitably. The data may actually help you decide that the Union does not have a good case.

Finally, prepare the written formal information request. A formal

information request should first give the overall reason for the request, being very specific in the representation action taken by the Union to:

This is a request for information pursuant to 5 USC 7114(b)(4). This information is needed to properly represent employees in a grievance filed on critical elements received in performance appraisals.

The Union should then provide an overview of what information is necessary to represent .

The purpose of this request is to obtain the evidence used and available to support the agency's



decision to rate the grievant on his/her current year PACS appraisal.

The Union should then list what it needs, summarizing its "particularized need" below each piece of information needed.

1. Copies of the current PACS appraisals for all employees by unit, indicating the rating level given in each critical element (Level 1, Level 3, Level 5), showing the narrative description of each employee's performance in each critical element.

The particularized need for this information is to demonstrate the merit of the grievance and that the performance appraisal currently on record is inaccurate and contains misapplications of the performance appraisal system, law, regulation, and

the National Agreement.

In part, the data is needed to support the conclusion that the grievant was not treated fairly and equitably:

- *comparing the performance data of the grievant and other employees in the unit will show that the levels of performance given in each of the grieved critical elements were not applied fairly and equitably;*
- *the agency failed to comply with the National Agreement, as well as all other applicable law, rules and regulations;*
- *the grievant is the victim/target of discrimination and/or retaliation.*

Ask for what you need and why you need it, and be willing to discuss the request with management. Don't take management's refusal to provide the information, file it away in the grievance and expect to gain an arbitrator's understanding. Take your case to the FLRA by filing an unfair labor practice if the agency doesn't budge and you have given clear reasons for the need to access data.

Mid-year discussion must be one-on-one

Employees may no longer have to face multiple management officials for their mid-year performance appraisal discussion.

Arbitrator Gail Smith ordered the agency to cease and desist from having a second management official sit in on an employee's mid-year performance review. She noted "...that if the parties, jointly had intended to allow for more than one 'supervisor' to attend, or for there to be more than one representative of 'management' present, that would have been said in unambiguous language."

Smith also found that the agency was the moving party in putting its proposal on the table, but it did not bargain for clear language on the matter. However, she would not order a reopening of the 2007 performance evaluations where more than one manager was involved in the mid-year discussion, as no harm to employees was established.

Richard Couture, New York Regional Vice President for Council 220, litigated the grievance. He considered the decision a clear win for employees:

"Employees are accustomed to meeting with their supervisor about their performance, because that's the way it's always been done. So when the Agency started double-teaming employees in performance discussions, employees rightly felt anxious or fearful that they would be pressured into signing performance plans they didn't agree with or understand."

He continued, "This arbitration win is good for our members because it reestablishes the one-on-one employee/supervisor relationship we're used to, and prevents management from having more witnesses about discussions than an employee who is fighting an unfair appraisal or other performance-based actions like removal."

The Agency filed exceptions with the Federal Labor Relations Authority, delaying implementation of the arbitrator's award. Report multiple-management performance discussions to your Union representative. (REF: BW-2007-R-0035)

Agency loses case at arbitration

The Social Security Administration has been told to reinstate a Union President's access to the agency's computer system.

Jim Armet retired from SSA in September, 2006 after more than 40 years of service but he continued as President of AFGE Local 1760 in Jamaica, New York. Shortly after he left, the agency terminated his use of the intranet, e-mail, and the Official Union Time Tracking program.

Armet filed a grievance over the issue and an arbitrator recently ruled in his favor.

"The Agency agreed to provide the Union access to and use of its system," the decision stated. "Section 9 (of the 2005 National Contract)...is clear on its face. It is not subject to differing readings or interpretations. It gives Local Presidents the right to use the Agency's E-mail system to communicate with employees in their Local. I find it covers Armet."

Arbitrator John Dorsey also wrote:

"The Agency maintained the security of its entire electronic communications could be compromised by permitting Armet limited use of the system. It presented no proof to back up that assertion. It is undisputed that over his many years as a full time Union official he had limited access to the system. There was not a single claim it resulted in a security breach."

Armet said he wasn't surprised by the Arbitrator's ruling or the agency's decision to file "exceptions" (meaning it disagrees with all or part of the order).

"They have already spent more money on this whole thing than it's really worth to them," Armet told **Digest**. "That's nothing unusual."

Because "exceptions" were filed, Armet will not get access to the agency's computer system until those issues are resolved. (REF: NY-2007-R-0005)

CYBERFEDS: To read the full decisions on cases listed in the **DIGEST**, go to www.cyberfeds.com/cf3/splash.jsp and type in Username: **ssa9710cf**, with a Password: of **ccssa255**; search the REF.

SSA's idea of public service is to *reduce* office hours

By John Oertel
Staff Writer

Beginning in early March, Social Security field offices throughout the country will be participating in a "pilot" program that already has members of Congress very upset.

The plan calls for offices in the Kansas City and Indianapolis metropolitan areas to be closed to the public on Wednesday. They will keep their regular hours the rest of the week.

Offices in the Buffalo, New York and Denver areas will limit their hours on Wednesday only; they will be open from 9 a.m. to 1 p.m., while field offices in the Fresno, Calif. metropolitan area will keep their doors open from 9 a.m. to 2:30 p.m., Monday through Friday.

The idea was first unveiled in October but was quickly withdrawn after high-ranking SSA officials briefed Congressional lawmakers, who were highly critical of the proposal.

"I hope that the Social Security Administration takes the time to reexamine their policy and recognize the people in this region can't afford more cuts in service," said Congressman Brian Higgins (D-NY) after hearing about the plan.

Members of Council 220 echoed those same sentiments.

"In January, the first baby boomers started to turn age 62. There are more than 76 million of them, and this agency's answer is to cut service. It doesn't make any sense," said Executive Vice President Debbie Fredericksen.

The agency claims these reduced hours will give field office employees more time to work on their backlogs, but Fredericksen and other Unionists remain skeptical.

"I have no doubt the agency will consider this 'pilot' a success, no matter how badly it goes," Fredericksen predicted. "Then other offices will be brought on-board and before we know it, all of them will be open fewer hours.

"This sounds like a good thing, but eventually the people who run Social Security will say: if we can get along with fewer hours, we don't need as

many employees. Then they'll start to close more offices and demand that our clients either call the 800-number or file their claims on-line."

Fredericksen is also concerned that offices in Kansas City and Indianapolis will see a tremendous increase in business on Tuesdays and Thursdays (the days before and after they're closed).

"Those lobbies will be packed with even more people than usual and employees will spend their so-called 'down days' catching up on that work," she said. "So what does this plan accomplish?"

Change the leave roster for office changes

Welcoming an employee transferring into your office? Consolidating units or offices for work and leave purposes?

Article 31, Section 2.D., of the National Agreement states the roster will be used twice yearly to determine the order in which employees will be granted annual leave for days immediately preceding or succeeding a federal holiday, or for extended leave requests, defined as one calendar week or longer.

How employees are added to existing office rosters, however, was defined in 1990 memos from the Office of Management Relations (now Office of Labor Management-Employee Relations) after consultation with AFGE representatives. Employees new to the agency, or transferring from a non-AFGE office or non-bargaining unit position are placed at the bottom of their respective roster.

But a formula is used to place employees transferring units within an office or from the AFGE bargaining unit of a different facility that used a roster. For example, if an employee was placed second out of four (2/4) in his old office and transferred to a unit that would become eight, the formula is $2/4 = X/8$ or fourth on the new roster.

Staff reductions in field offices and changes in assignments have resulted in roster changes that need to take into consideration relative position on the employees' prior roster, not just service computation dates of affected employees.

Union can respond to office closings

**By Terry Duncan
Editor**

“SSA’s goal is to deliver service to the public in the most effective, efficient and caring way possible. SSA strives to tailor that service to the needs of the community through local field offices (FOs).”

OLMER responded back in 1999 to a Local president’s request for an explanation on how the agency decides to close offices.

My, how times do change. Take away the word “caring” and add the word “cost” in front of *effective*, and you might come close to the agency’s actual goal: downsizing as quickly as possible. Everything can be done on the Internet, according to the top brass, in spite of studies that show those who use might use the Internet to file for disability and retirement are 40 or younger—years away from needing either a field office or www.ssa.gov.

A 2006 survey conducted by the Pew Internet & American Life Project concluded that the group least likely to use technology “is the oldest – the median age is 64 – and has the lowest reported levels of household income of any group. They are more likely to be women (57%) and are more ethnically diverse than some other groups. Three quarters are white and 18% are African American.”

Although 50 percent of American households are connected to the Internet, the study found that the use of technology was almost always inversely proportional to age. A whopping “49 percent of the American public only occasionally use modern gadgetry” the study’s author John Horrigan concluded.

But this administration is bound and determined to shutter offices.

The agency has already moved to close Auburn, NY, Parkside, CA, and Bristol, CT. The Minneapolis Teleservice Center is being closed, replaced by a Social Security Card Number Center. Oskaloosa, IA, and Euclid, OH, are facing extinction.

Office employees and the Union generally get little notice of agency plans to close an office, but if your management staff is filled with not-to-exceed (NTE) placements, employee vacancies are generally not filled

with transfers from another office and your office lease is month-to-month, your Field Office or Teleservice Center may be history under the current administration.

Steps to take in response to a potential office closure:

Start with gathering information:



- Determine if employees support or oppose the closure.
- Poll all employees (your regional Council representatives have copies of suggested surveys) affected by the potential closure and consolidation.
- Obtain responses in writing.

If employees oppose closure:

- Obtain information from management regarding service area statistics and demographic changes within the service area of impacted offices.
- Mobilize community groups and local media, providing them with information gathered; give them a contact name and phone for additional information.
- Mobilize your staff: this is not just a Union issue. Employees have contacts in the service area—encourage them to act on the information. Have meetings to write letters and gather petition signatures.

If office closes anyway:

- If not successful in preventing the closing, or employees do not oppose the closing, immediately provide the agency with a written demand to bargain all aspects of the closure/relocation.
- Recruit a bargaining team; don’t attempt negotiating an agreement on your own.
- Identify areas where employees would be adversely impacted by relocation and address these in any agreement with management. Use Council resources on bargaining demands, available through your Council 220 representatives.

