

American Federation of Government Employees, Council 220
Witold Skwierczynski, President

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Union wants 'work at home' option

Will more Social Security employees ever be able to work from home?

Witold Skwierczynski, the President of Council 220, thinks it's a possibility and one that could be discussed during the next round of contract negotiations.

"If employees put that high on the list of their preferences, it will be high on the list," he told the **DIGEST**.

The contract doesn't expire until August, 2009 but the Union is already preparing for the next set of labor/management negotiations.

"It would appear that the current Commissioner of Social Security is not inclined to expand telework (or working at home) to employees who work in field offices and teleservice centers," Skwierczynski said. "Hopefully a new Administration which will take office in January will have a different attitude when this issue is addressed in contract negotiations next year.

"During the last round of negotiations the agency wanted to virtually eliminate telework in parts of SSA that have the benefit but we were able to stop that."

Some SSA employees are able to do their jobs without leaving the comfort of their homes, but Skwierczynski believes the number is rather limited.

"Employees who work at home cherish that benefit," he said. "It's one of their biggest issues. Once you get it, it becomes a very important part of your work life. The Agency allows people to work in non-secure contact stations with computer access to the SSA database, so what's the difference?"

One potential problem, he noted, is that Social

Security does not pay for the phone lines that employees use while they're at home.

AFGE and the General Services Administration (GSA) recently agreed to a nationwide policy which allows for the broadest possible use of "telework" by GSA staff.

"I'm very pleased we've signed the agreement," said Acting Administrator David Bibb. "Telework reduces energy use, cuts down on greenhouse gases, eases traffic, reduces America's dependence on foreign oil, increases worker productivity, saves taxpayer dollars, makes us better prepared for national emergencies, and helps persuade talented individuals to build long careers in public service."

"We are sensitive to the increased costs our employees are experiencing at the fuel pump," said Gail Lovelace, GAO's Chief Human Capital Officer, "and we are a green agency, so we want to do everything we can to lower the employees' expenses while reducing global warming by cutting CO2 emissions from cars and trucks.

"With AFGE joining forces with the agency on this telework effort, we should reach 30 percent by the end of this calendar year, and be well positioned to achieve the next scheduled benchmark of 40 percent by the end of calendar year 2009."

The policy also allows employees to combine telework and alternative work schedules with management approval. There is proposed legislation in the Senate (S-1000) which would require each agency of the federal government to make telework available to all its employees. Unfortunately, the bill would permit agency heads to exclude certain personnel "whose functions are ... inappropriate for teleworking."

Grievance alleges SSA ignores linguist skills

A grievance has been filed with the Social Security Administration, alleging discrimination against bilingual and multilingual employees.

Witold Skwierczynski, the President of Council 220 and spokesperson for the AFGE/SSA General Committee, wrote to SSA Commissioner Michael Astrue that the agency fails “to consider the amount of additional time, effort and skill required for these employees to perform duties related to their language abilities.”

Skwierczynski also claimed those members of the bargaining unit were discriminated against in five specific ways: adverse disciplinary and performance actions; awards; performance; training; and, upward mobility. He believes that in each category, bilingual and multilingual employees are treated differently than their colleagues who speak just one language.

“Moreover,” he wrote in his grievance, “the Union believes that, because of the high concentration of Hispanic bilingual/multilingual employees within SSA who occupy formal and *de facto* Spanish-speaking bilingual positions, SSA’s policies regarding its treatment of its bilingual and multilingual bargaining unit employees cause a particularly negative and disparate impact upon SSA’s Hispanic bargaining unit employees.”

Skwierczynski pointed out that several sections of the National Agreement are being violated, including Articles 3, 16, 19, 27 and 38.

For bilingual/multilingual employees who have been harmed by the agency’s contract violations and discriminatory conduct, the Union is asking that several steps be taken:

- The Agency will establish a process where individual claims can be adjudicated, and the payment of back pay, attorney’s fees and/or damages are awarded.
- Social Security would bargain with the Union to establish a language differential program for all bilingual employees within the agency.
- SSA would also modify its training initiatives to ensure that bilingual and multilingual employees receive formal and on-the-job instruction in

their assigned language.

The agency will supplement its affirmative action and upward mobility programs with a plan that specifically addresses its Spanish-speaking bilingual bargaining unit members.

“This grievance is an important first step in rectifying the situation,” Skwierczynski told the **DI-GEST**. “The Union will not stand by while the Social Security Administration treats its bilingual and multilingual employees so unfairly.”

Milt Beaver, the Associate Commissioner of the Office of the Labor-Management and Employee Relations (OLMER) in Baltimore, denied the grievance. In his response, Beaver stated several times that the “Union failed to provide the agency with a clear and specific description of the matter being grieved.” The matter will now go to arbitration.

Office deals with lice brought in by clientele

Employees in the Southeast Fresno, Calif. Social Security office recently had to deal with body lice that was brought in by one of their claimants.

“This is considered an infectious disease,” says Howard Egerman, the Health and Safety Chairman of Council 220. “Any employee who came in contact with this claimant – along with anyone else around him – could have been impacted.”

The Centers for Disease Control (CDC) was notified and a representative of that agency visited the office to conduct an inspection and hold a staff meeting. Bargaining unit employees were also notified of their right to file a CA-1 (Workers Compensation claim).

According to the CDC, body lice are “parasitic insects that live on the body and in the clothing and bedding of infested humans...In the United States, body lice infestations are found only in homeless, transient populations who don’t have access to changes of clean clothes or bath.”

For more information about this issue or any other health and safety matter, call Howard Egerman at (510) 273-6009.

Bill could send 3.6 million more into FOs

Union officials have been working hard over the last several months to defeat H.R. 4088 (The SAVE Act of 2007).

“On the surface, this sounds like a great idea – but it’s not,” says Dana Duggins, the Third Vice President of Council 220. “What it will do, is significantly increase the number of Americans who *have* to go into a Social Security office or worse yet, into a Card Center, without really offering any benefits to the public.”

Supporters claim the bill would provide substantial immigration reform and a more comprehensive employer verification system, but other members of Congress strongly disagree.

“The current discussion about a national employment verification program to prevent the hiring of illegal immigrants lacks basic information about how well the existing pilot system works,” wrote Congressmen Michael McNulty and Charles Rangel in a letter to their Democratic colleagues.

“SSA simply cannot handle the massive new workload that expansion of this pilot would impose, especially given the current backlog in disability claims processing and the impending wave of retirement claims from the Baby Boom generation,” they also stated.

The two lawmakers believe H.R. 4088 would cost Social Security more than \$1 billion to implement during its first year. That’s about ten per cent of the agency’s administrative budget, and this legislation does not offer any additional funding or even authorize Congress to appropriate the necessary monies.

“Congress should ensure that our immigration laws are enforced, but we can do so without jeopardizing Americans’ ability to obtain the Social Security retirement, survivors and disability benefits which they have earned,” Reps. Rangel and McNulty stated in their letter.

Quoting numbers from the Bureau of Labor Statistics, they also pointed out there are 60 million new hiring decisions made in the United States every year.

“Thus, 3.6 million Americans would have to

visit an SSA field office each year in order to keep their jobs. This number increases if the already-hired workers were also required to be verified.”

Council 220 encourages all SSA employees (bargaining unit and management) to oppose H.R. 4088.

“They should contact their U.S. Senator or Congressional representative and ask them to vote against the bill,” Duggins suggested. “Employees can only do this on their own time and they have to use either their home phone or their cell.

Agency equipment *can never* be used for any kind of lobbying.”

Hispanic work group launched

“The federal government must tap into the valuable resources provided by the Hispanic community, the most rapidly expanding population in America,” said Naomi C. Earp, chairwoman of the U.S. Equal Employment Opportunity Commission (EEOC), in announcing the formation of a Hispanic Work Group.

The EEOC will partner with the Social Security Administration in putting the group together and its preliminary recommendations should be released this month at a national conference.

“The composition of the work group is diverse in race, ethnicity and gender, and is comprised of persons from various agencies, grade levels, occupational categories, levels of management, and professions,” Earp explained.

Those members will include employees from SSA, as well as the U.S. Department of Commerce, the Broadcasting Board of Governors, the Air Force, the Department of Justice/Drug Enforcement Administration, as well as several other agencies.

“We are very excited to begin this effort to benefit the Hispanic community and the federal agencies whose workforces will be strengthened through broader participation,” said Veronica Villalobos, chair of the work group and an attorney advisor to Earp.

Reps' Corner: What to do when your supervisor 'wants to talk'

Be honest: do you ever *really* want to talk to your supervisor? Aside from the occasional “good morning” or “have a nice evening,” staying silent is often an employee’s first (and best) line of defense. After all, if you keep your mouth shut and do a good job, management will probably leave you alone.

However, there will come a time when your supervisor needs or wants to talk to you. What should you do? The first reaction of most long-time employees is ‘I want my Union Rep to be there.’ Good thinking – but you may not be entitled to it.

“Case law from the Federal Labor Relations Authority (FLRA) has said that when an employee is talked to by management about their performance, there is no ‘*per se*’ right to representation,” says Charlie Estudillo, the First Vice President of Council 220.

The Weingarten right was designed for disciplinary situations (for example, when an employee believes management might discipline them based on what they say in response to questions). But in the last few years, agency officials have been disciplining employees for pure performance matters (e.g., not following POMS, not clearing a case by a certain deadline, allegations of discourteous behavior during an interview, etc.)

Because management might discipline you for your performance and your answers to their questions could result in discipline, you have reason to be cautious before answering such questions.

“If management starts asking questions and the employee has a *reasonable belief* that disciplinary action could result from that discussion about their performance or conduct – then the Weingarten right applies,” Estudillo said.

Estudillo describes the Weingarten right as “the federal employee’s version of the Miranda right.” The case takes its name from a 1975 U.S. Supreme Court decision; it ruled the Union has the right to be present and to play a representational role dur-

ing the questioning of an employee, and the employee can refuse to answer questions until the Union representative is present. The Union rep and employee also have the right to confer prior to the questioning.

According to Estudillo, Weingarten only applies when four criteria are applied:

1. *There is an “examination” (that is, questions are being asked)*
2. *Management has undertaken an investigation (they are looking into something; it doesn’t have to be a formal investigation)*
3. *The employee has a reasonable belief that disciplinary action could result*
4. *The employee invokes the right to Union representation*

If you find yourself in this situation, invoke your right to a Union representative and inform management that you are going to call the Union. The questioning should stop at that point. If questions continue or management won’t let you call the Union, document this in detail.

Don’t disobey an order. Instead, obey and contact the Union immediately afterwards. The Union will follow-up and file an Unfair Labor Practice, if appropriate. In a true Weingarten situation, your responses to the questions cannot be used in any disciplinary action.

Unions Reps can take an active role during Weingarten interview

The Union decides which representative to assign to such questioning. The Local President may want to assign a more experienced representative from another office if the local onsite rep is new or inexperienced.

“There are some managers and supervisors who will say things like ‘you’re only making this worse for yourself’ after you’ve asked for your Union rep, or ‘you don’t need a Union rep,’” Estudillo said. “Don’t believe it and don’t be intimidated.

Continued on next page

Reps' Corner, cont'd: *Right to a Union rep*

Most importantly, don't give up your rights. This is your career that's on the line – not theirs."

An employee cannot be punished after they have asked for representation. If management refuses to allow the presence of the Union, the employee should take detailed notes of the questions and their responses.

Management must tell the Union rep the purpose of the investigation, if asked. During questioning, the Union official can ask for clarification of a question or clarify the employee's answer. They will also make sure the employee understands the question before answering.

"Some managers have told our reps they can't speak during a Weingarten investigation," Estudillo remarked. "That's certainly not true and we've filed Unfair Labor Practices (ULPs) when that was done and we won those cases."

AFGE gives advice regarding Weingarten rights with OIG

The following advice is not a substitute for individualized legal advice based upon an employee's specific circumstances. But if faced with inspectors from Office of the Inspector General (OIG), you have the right to Union representation.

In order to carry out its mission to eliminate fraud, waste and abuse within the Agency, the OIG has the authority to interview employees under oath and review agency documents. The OIG does not have legal authority to place employees under arrest or physically threaten or intimidate employees.

Individual employees may become "casualties" of overly aggressive OIG investigations. It is your decision as to the level of cooperation you choose to give OIG investigators, but remember to use extreme caution when talking to OIG investigators.

For instance, do not let yourself be drawn into an extended conversation with the OIG investigator or any management official at the interview. Keep all of your answers to OIG questions short, simple, truthful, and responsive.

If called in for an OIG interview, you must attend the interview or face possible discipline. However, as a federal government employee, you have rights

if called for an interview with the OIG.

In a very significant case, AFGE argued successfully before the Supreme Court that the OIG acts as a representative of the agency, when examining its employees, finding that "OIG Investigators are employed by, act on behalf of, and operate for the benefit of their [employing agency]." *NASA v. FLRA and AFGE, 119 S. Ct. 1979 (1999)*.

If union representation is denied for any reason, attempt to get, ON THE RECORD, the following statements [if the OIG is recording the interview, make sure the tape recorder is running when you exercise all of your rights]:

- "I request a Union rep."
- "My Union rep is here (or is just outside this room)"
- "May I call in my Union rep?" [If the OIG continues to deny you your Union rep.]
- "After repeated requests, you have denied me my statutory right to a Union rep."
- "I am continuing this interview but have not been given my right to have my Union rep present and do not waive any right I may have to Union representation."

If the OIG refuses your right to a Union representative, you cannot refuse to continue the interview without placing yourself in jeopardy of possible discipline for refusing to be interviewed. You should ask your Union representative to consider filing an unfair labor practice charge if you are denied the right to Union representation.

The employer [including the OIG] always retains the right to:

- 1) grant the employee's request for representation;
- 2) discontinue the interview, or
- 3) offer the employee a choice to continue the interview without representation or have no interview.

Moreover, an employee can be compelled to participate in an examination without a representative if they are given written administrative immunity [in essence, no reasonable belief of discipline].

Employees impacted by Midwest flooding

Social Security employees across the Midwestern United States could spend months or even years digging out from the Floods of 2008.

Iowa was among the hardest hit areas this summer, along with parts of Missouri, Wisconsin, Minnesota and Illinois. Cheryl Hainkel, the Regional Vice President for Kansas City, said the Des Moines teleservice center was shutdown for awhile, along with the offices in Iowa City, Cedar Rapids, and Mason City.

“Mason City should have probably been closed for a week because the city could not guarantee that the water was safe,” Hainkel told the **DIGEST**. “A number of employees in Decorah, Iowa also had to be evacuated. The biggest issue was that regional management thought local managers should decide what to do about leave.”

A Section 10 grievance is being filed on behalf of bargaining unit employees who were not offered administrative leave or information about lodging and other benefits which could have been

provided by the agency.

“Managers do not offer anything to employees,” Hainkel said. “In the past, they’ve required people to work in ice storms and blizzard-like conditions. That gives you an idea of what their attitude is.”



The effects of this summer’s flooding can be seen in the picture above. It shows the old library parking lot in Des Moines, Iowa, near the Federal Building (where the District Office and teleservice center are located).

Employees’ leave restored for day following ice storm

Nine employees in the Ashtabula, Ohio, Social Security office were finally given administrative leave at the third step of the grievance process.

Half of the Ashtabula office employees did not report to work March 5 because an ice storm the previous evening had knocked out power county-wide, including to the office. The few who did manage to make it in chose to return home rather than travel through hazardous conditions when the manager officially closed the office at 9:15 am.

“By (that) morning, much of Ashtabula County resembled a war zone,” according to the Ashtabula County Sheriff, quoted in the local *Star Beacon* newspaper. Yet the manager chose to redeploy her employees to the nearest office 37 miles away because it was “within my rights as manager.”

Employees who called in to find out if the office

was open were told to stay home. It was after 9 am when they were finally called back and given the choice to go to Painesville. All chose to stay home, but were charged with a full day of annual leave.

“She didn’t even bother to tell employees they had a right to mileage reimbursement and travel time,” said Victoria Carter, Local 3448 Vice President for Labor Management Relations. “Not one employee—not even management—chose to travel to Painesville that morning.”

Carter stated in the grievance:

“The roads were covered in ice; tree limbs and power lines blocked roads; traffic lights were not working. It was neither reasonable nor responsible to request employees travel 37 miles under these circumstances.”

Grievance filed over official Union travel time

Richard Couture, the President of AFGE Local 1164, has filed a grievance concerning restrictions that have been imposed on the Union's right to travel while on official time.

In a letter to Manuel Vaz, the Regional Commissioner in Boston, Couture wrote these new restrictions violate Articles 2 and 30 of the national contract. He cited three specific problems which have occurred:

- "If traveling to another SSA facility other than one's regular duty station, the agency requires the representative to sign-in at an SSA facility before engaging in any travel on official time. Otherwise, the representative is required to arrive at their destination within the morning flex-band, and then sign in, before starting their workday. Unless signed-in first at an SSA facility, travel cannot be done on official time, meaning representatives in some instances must travel on their own time."
- "Likewise, if a representative was performing representational work at an SSA facility, the agency requires representatives to sign-out at an SSA facility at the end of the business day. This forces Union representatives to either travel back to their duty station for the sole purpose of signing-out before going home, or spending the entire day at their non-duty station SSA location before signing-out then traveling home on their own time."
- "If traveling to a non-SSA location, the agency requires Union representatives to travel to-and-from the location on their own time."

Couture also wrote that other AFGE Local presidents across the United States can travel between their home and their non-duty stations on official time, and that the Boston Region observed this same practice until the 2005 contract was implemented.

"The SSA Managers Labor Relations Handbook guidance for (Article 30, Section 4) of the contract

does not direct such restrictions as have been enacted unilaterally by the Boston Region," Couture stated in his grievance. "As such, arrangements to travel between home and a non-duty station location on official time can be made in advance with supervisors, as is the case with Union representatives nationwide and was the case here in the Boston Region."

Check your personnel records on a regular basis

By Howard Egerman
Local 3172

It is always important to double-check your personnel records and encourage other members of the bargaining unit to do the same. All of us at Social Security handle large amounts of paperwork and we know that accidents happen (checks are sent to the wrong address and someone who's alive suddenly turns up dead). We just can't let these mistakes happen to us.

When you receive a "50" for a personnel action, take a close look at it and see if all the information is correct. If there is a problem, let personnel know about it immediately.

I know of one employee who received a suggestion award and then got his "50" in the mail from Richmond, Calif. A close inspection of the form revealed that the box for Veterans Status showed "N" for none. He asked for an explanation and it turned-out that the Veterans block on his record never indicated military service, even though he received credit for it in terms of his Service Comp Date (SCD) and his annual leave eligibility.

You should also be aware that if something important happens in your personal life (marriage and divorce occur most often), you should also change your beneficiaries. One federal official divorced his spouse and later remarried, but he never changed his beneficiary. Unfortunately, he later died and his ex-wife (*not the current spouse*) received his benefits.

Retired employees can receive Workers Comp

Social Security employees deal with work-related injuries every day – but generally the person who’s been hurt is on the phone or has come into the office wanting to file for benefits.

Many of our fellow employees can also become disabled while working for the agency or they have a pre-existing condition which gets worse as they sit, stand, and move around the office all day.

I know of a Claims Representative who had a chronic back problem but she got little or no help from her employer (the Social Security Administration). Finally– after several surgeries and learning to live with the pain – she retired.

But this CR did not go away quietly. She knew that she had rights under the Federal Workers Compensation program, which is administered by the Department of Labor (DOL).

The woman filed a claim and was later approved for a “temporary aggravation.” Under the law, a person can have a pre-existing condition when they begin their federal service, but if their work aggravates that condition, they can receive benefits.

The retired CR also filed a hearing request because she believed her disability was permanent. A hearing is often the best option because if it is denied, the employee has one year to file a reconsideration.

During her testimony at the hearing, she said that she had undergone back surgeries and one of the fusions had crumbled as the result of her job duties and a lack of ergonomic furniture. She also mentioned that during a consultative examination paid for by Workers Compensation, the doctor worked very quickly and did not consider other factors.

Another problem was that the medical evidence she submitted did not agree with the judgment of the Workers Comp doctor. Because of those discrepancies, the case was remanded to DOL for additional action.

Employees (current and retired) who file for Workers Compensation must recognize there are similarities and differences between the benefits they can receive and the payments they deal with every day.

A major similarity deals with “credentials.” A

person can describe an illness or injury, but there has to be enough medical evidence to prove that a disability exists.

If you find yourself in a situation where you have been injured on-the-job or your pre-existing condition is getting worse, contact AFGE immediately. *Don’t go to management* with your questions or problems, as they sometimes try to talk an employee out of filing for benefits. In their world, an injured member of the bargaining unit can still produce work units and that is their only concern.

For more information on Federal Workers Compensation, go to:

<http://www.dol.gov/esa/owcp/index.htm>

From Agency computers, visit: http://ssahost.ba.ssa.gov/ope/pms/Workers_Comp/wc.htm

Union activist meets with California legislator



Howard Egerman, a member of AFGE Local 3172 and Chairman of the Council 220 Health and Safety Committee, meets with Congressman Mike Honda (D-Calif.) Legislation introduced by Congressman Honda would give “premium pay” to Federal employees whose official duties require the use of one or more languages besides English. HR 3727 (One America, Many Voices Act) has been referred to a House subcommittee for consideration.