

# UNITY

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Warren Fretwell, Editor

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## Discrimination Charge Against SSA Sustained

**T**wo SSA attorneys were no match for AFGE Local 1164 Area Representative Bill Ross, who successfully represented Roslindale, Massachusetts Claims Representative Marie Wilson in her EEO complaint against the agency.

SSA was defended by two lawyers during the hearing before Administrative Law Judge Kathleen Clark, who issued a bench decision finding that former Roslindale manager Charles Stringer discriminated against the complainant. Ross, a Teleservice Representative since 1991, who obtained his law degree in 2002 by attending the New England School of Law at night, said that SSA's attorneys abruptly left the hearing after the judge issued her decision.

In 2002, Wilson filed a discrimination complaint because she was not granted an award. In 2003, she was given a \$300 CAS award for her translation and interpretation work; but all other claims representatives were issued awards averaging \$685. The decision about issuing 2003 awards was made about the same time as the 2002 EEO complaint was being investigated. Stringer testified during the EEO hearing that he didn't give a higher award because the complainant's work was "barely acceptable."

Stringer also claimed that Wilson's desk was "messy" and had a problem receipting records (a problem also attributable to other workers who got higher awards). When asked by Ross to explain why Wilson was-

n't on a performance improvement plan (PIP) if her work was barely acceptable, Stringer responded that PIPs were only for serious performance problems.

ALJ Clark did not find Stringer a credible witness. "I thought to myself...that if barely acceptable performance isn't serious, what is?" Clark wondered. Her bench decision adds this assessment: "It's part of my job to make credibility determinations, when I listen to someone testify. That's why I have a hearing. I want to hear whether they are telling the truth or they're not telling the truth," Clark said. "And listening to Mr. Stringer, I was not con-

vinced that he was telling the truth."

Judge Clark also questioned why the complainant received a ROC award from her new manager for the same period of time that Stringer found her work to be "barely acceptable." She concluded that the main difference, for Stringer at least, was that Wilson had filed a previous EEO complaint and, as such, the denial of the award was pretext for retaliation.

Judge Clark said that "a *prima facie* case of retaliation is established by showing that an individual was engaged in protected activity, EEO-related activity; the responsible management were aware of this activity;

*(Continued on page 4)*



**HAPPY  
HOLIDAYS  
TO OUR  
AFGE  
MEMBERS  
FROM  
COUNCIL  
220**



\$100K in Back Pay Ordered*Visually-impaired Service Rep Wins Job Back*

**A**n EEOC administrative law judge determined that the Social Security Administration was guilty of disability discrimination when it fired a visually-impaired New York City service representative. The judge also ordered SSA to offer to reinstate the employee and give her almost \$100,000 in back pay.

AFGE argued that SA fired Andrina Wilkinson on June 28, 2002 due on her disability. The agency claimed that it was justified in taking this action because it terminated the employee during her special two-year probationary period.

Wilkinson is legally blind, but was hired in July, 2000, with accommodations, and was put on a probationary period that successfully concluded on July 2001. SSA contests this and testified that the Complainant had a

two-year probationary period and was terminated for unsatisfactory work performance.

ALJ Andree Peart Laney rejected SSA's claim citing office manager Gina Dionf's statement that she only became aware of the two-year probationary period "a significant time" after the employee was hired and could not recall who provided that information.

"This fact alone is unusual enough," Laney said, "however, taken in conjunction with the Agency's failure to proffer any testimonial or documentary evidence describing the terms and legal scope of the Complainant's special two-year probation and appointment renders the entire explanation incredible."

Wilkinson received a within-grade salary increase at the end of her first year of employment, indicating, according to the ALJ,

that she could perform in her job with accommodations. But, Wilkinson testified that not only was she not provided the full range of accommodations and specialized equipment that she was originally trained on, but that SSA failed to give her adequate training, did not provide her with a mentor, required her to work at desks without assistive devices and where assistive devices were provided, they did not operate properly. Laney credited the Complainant's testimony.

Wilkinson also said that when she went to her supervisor, Yolanda Modest, for help, she was told that "she should already know what to do because she had just been trained." This kind of response was complicated by the agency's prohibition against Wilkinson from going to others for training and mentoring, as corroborated by other witnesses.

"While the Agency's objective might not have been to isolate the Complainant from the same informal benefits of co-worker help and mentoring that her sighted colleagues received, that was the clear and foreseeable effect of its actions," Laney said.

The ALJ determined that Wilkinson was "treated less favorably than others who are not disabled under the same circumstances" and ruled that SSA discriminated against her based on her disability.

*Andrina Wilkinson v. Jo Ann Barnhart, SSA; EEOC Hearing No. 160-2005-0013X, May 6, 2005. Dan Kravitz, AFGE Local 3369, represented the Complainant.*



# From Around The Nation

## *California Manager Shows Home Movies*

(Yreka, Ca.) Lisa Williams is the manager of the Yreka, California SSA office. On October 26, 2005 she planned to show a slide presentation of her vacation during a staff meeting to discuss awards criteria. Williams directed employees to attend from 8:00 to 9:00 AM. The first 15 minutes addressed official agency business. The 45 minute vacation slide presentation ended at approximately 9:00.

Flextime schedules were interrupted. A Yreka employee was charged with AWOL for failing to timely attend the staff meeting/vacation slide presentation. The affected employee filed a grievance.

AFGE Council 220 Third Vice President Dana Duggins also filed a grievance seeking an apology from management for inconveniencing employees by interrupting flextime as well as taking appropriate actions against Williams for violating the Standards of Conduct.

Duggins requested a copy of the slide presentation, minutes of this mandatory staff meeting and other information that will assist in the presentation of the grievance.

The agency has alleged that the slide presentation wasn't just about Williams' vacation, but concerned diversity.

The union has been advised that the slide presentation didn't contain any photos of reptiles. However, there certainly is a crock in the agency's explanation.

## *2006 Pay Raise: 3.1%*

(Washington, DC) Federal employees will receive an average 3.1 percent pay raise for 2006. President Bush signed the spending bill that contained the raise, despite White House opposition to the pay increase. Bush supported a 3.1 percent increase for the military, but his ver-



sion of the spending measure contained only a 2.3 percent raise for federal workers.

Congress continued the practice of "pay parity" between the military and civilian sectors of the government with several members working as a team to reject the White House pay proposal. They include Steny Hoyer (D-Md.), Frank Wolf (R-Va.), Tom Davis (R-Va), James Moran (D-Va.) and Sen. Paul Sarbanes (D-Md.).

We should thank all of them for their efforts on our behalf.

## *National Grievance Filed*

(Baltimore, Md.) AFGE Council 220 filed a grievance over the agency's practice of denying union representatives *any* opportunity to use authorized official time during their retraining periods. In at least one case, a union official who is scheduled to participate in the second day of an arbitration hearing has been refused official time to complete the case.

The union charges numerous contractual violations but acknowledges that these actions are part of the agency's and the administration's anti-labor attitude.

There is additional support for a finding of SSA's anti-union animus in the Atlanta and New York regions.

Labor and management routinely met for regional consultations numerous times every year with representatives from AFGE Locals and SSA's regional offices, including the regional commissioners (RCs). The New York region had been conducting these meetings, that averaged four to six

yearly, since the 1970s. However, both the Atlanta and New York RCs discontinued the meetings earlier this year.

Subsequently, NY and Atlanta RCs, Bea Disman and Paul Barnes, received presidential rank awards for "distinguished executives." Each received approximately \$30,000.

## *AFGE Offers Online Degree Program*

(Washington, DC) AFGE is offering an online degree program in conjunction with Grantham University for programs in Business Administration, Computer Science, Criminal Justice, Engineering, General Studies and more.

AFGE members and their families can earn associate, bachelor's and master's degrees completely through our partnership with Grantham, which has been accredited by the Accrediting Commission of the Distance Education and Training Council (DETC) a national accrediting agency recognized by the U.S. Department of Education, since 1961.

No classroom attendance is required and you can study at your own pace. Go to [www.grantham.edu/afge.htm](http://www.grantham.edu/afge.htm) for additional information.

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# Agency Expands TSC Monitoring

(Baltimore, Md., December 9, 2005)  
AFGE negotiators met with SSA last week to exchange proposals over the agency's expansion of phone surveillance of Teleservice employees. SSA had already implemented a plan that included unannounced and unrestricted phone monitoring, no guarantee of timely notice of feedback reports, and lacked specific protections for employees adversely affected by the new policy.

David Sheagley, President of AFGE Local 3129 (Minnesota), is the union's chief negotiator. He provided this interim report:

*The second day of the three day bargaining period is drawing to a close.... Management's response to the union's first proposal, one where we sought notice for surveillance, arrangements surrounding data-gathering on employees, a de-emphasis on conduct-heavy language in the agency notice to AFGE, and a limit on the number of service observations, was a curt counter that paid no respect to the union's concerns for impact on employees.*

## Agency Bias Leads to Award

(Continues from page 1)

that the individual was subjected to adverse treatment; and that the adverse treatment followed the protected activity within such a time period that retaliatory motivation may be inferred."

In this case "it's you filed [an EEO complaint] and you got something less than you were entitled to," Clark said ruling that the agency was guilty of discrimination by retaliating against an EEO complainant. Her remedy included make whole relief with interest and compensatory damages to be considered.

Marie Wilson, Complainant, v. JoAnne Barnhart, SSA, Agency; Docket Nos: 160-2005-00370X & 04-0064-SSA,

*In response to the agency's assertion of the need for unannounced monitoring, your AFGE bargaining team proposed that notice be given to employees for the secret service observations. The union proposed that notice be given to an employee for a specified period of time (one week). We proposed this arrangement so an 800-number agent would not have to labor under secret monitoring every day, every week, and every month of the year.*

*Management's response to this proposed arrangement was an emphatic "No!" They insist on subjecting employees to surveillance continuously. When asked why, they claimed it to be a "common business practice."*

*The union's understanding of that is that management wants to reduce the traditional standards of public service to a*

*corporate model more fitting to the for-profit sector; one that exchanges quality of service for efficiency measurements and treats professional employees as if they have no legitimate rights to have fair, equitable and decent working conditions.*

*We meet tomorrow morning at 9 AM for a final day of bargaining. We have the assistance of a mediator. Your support is needed. We will keep you informed.*

The union and the agency met again on Thursday, December 8, with the mediator, who did not declare that the parties were at impasse. However, the agency did provide the union with its last, best offer and the AFGE negotiators expect the mediator to declare an impasse. Since the parties cannot reach an agreement, the matter will be referred to the

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## Contract Guidance: *Phone Calls & Travel Status*

**A** FGE Council 220 President Witold Skwierczynski recommends that employees file grievances over any denied reimbursements for phone calls home during travel status because the agency's stated policy is at odds with what was negotiated in the new national contract.

On December 1, Dale Sopper, Deputy Commissioner for Finance, Assessment and Management, issued a memo that interprets the section of the AFGE-SSA contract that covers phone call reimbursements for employees in travel status. Sopper's instructions say that the new reimbursement amount of \$3.00 is a *maximum* and not a per day guarantee; that travelers should only claim actual costs.

Anyone who travels knows that phone calls from the hotel routinely cost double figures even for short durations. But, the penny-pinchers at SSA are doing their best, if not to make work life miserable, at least to make it difficult. In fact, Sopper claims that because of the availability of cheaper cell phones and availability of government phones, that managers should consider these before approving any actual phone costs (under \$3.00) for reimbursement. What if you don't have a cell phone?

Seattle Regional Vice President Steve Kofahl responded to the Sopper memo with these comments:

*It wasn't bad enough for the SSA Scrooges to reduce the maximum payment for travelers' calls home by \$2/day. Now it appears that they will even question a \$3 claim, despite the fact that costs per item up to \$75 don't even need to be documented with receipts!*

*I can just imagine the grilling: Why didn't you call home long distance from a government phone, a government-provided cell phone, or*

*using a government-provided phone card (as if that doesn't cost the taxpayers and could potentially lead to discipline)? Why don't you use your pre-paid phone card or, better yet, not bother putting it on the voucher at all?*

Council President Skwierczynski, a chief negotiator on the new national agreement, responds that SSA management is wrong about phone call reimbursements and offers the following guidance:

*Article 8, Section 9 (B) states that employees will be reimbursed \$3.00 per day to make personal*

*calls. There are no exceptions listed other than additional reimbursement in emergencies. There is no up to \$3.00.*

*There is no language that allows the agency to argue that a traveler should have used government phones.*

*There is no language denying the payment if the employee is issued a government cell phone or travel card.*

*Management guidance completely violates the contract.*

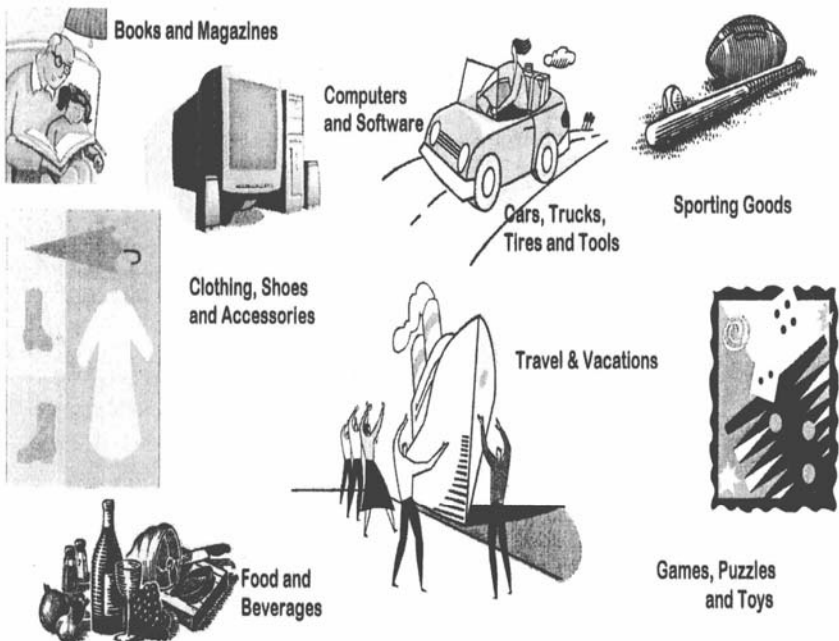
*Grievances are welcome for phone voucher denials.*

### Support Good Jobs:

## [www.ShopUnionMade.org](http://www.ShopUnionMade.org)

Can't find what you're looking for, union-made? Looking for ways to support good jobs, but you don't know what to do? [www.ShopUnionMade.org](http://www.ShopUnionMade.org) was made for you!

Here's just a *sample* of what you'll find on this new, all-union, easy-to-use web site.



**What else does [www.ShopUnionMade.org](http://www.ShopUnionMade.org) offer?** Flowers, artwork, greeting cards, candy, hardware, housewares, jewelry, watches, lawn and garden equipment, music, office gifts, personal care products, telephone and internet services and much, much more!

Official Web Site of the Union Label & Service Trades Department, AFL-CIO  
opelu#2

# Wal-Mart: Before You Shop, Know the Facts

**W**hat's all the fuss about Wal-Mart? Why should federal workers care? Shouldn't I have a right to low prices?

Our members ask these questions and wonder why we should devote any space in a federal union publication to this particularly private sector concern.

But, the Wal-Mart philosophy and economy (do more with less, contract out to the lowest bidder, anti-union and anti-worker attitudes, discriminate if you can get away with it) has been adopted by our nation's *leaders* and has already affected the SSA work place. So, we should appreciate the *high price of low costs* (which is also the name of a documentary film about Wal-Mart that may be playing in a theater near you. To find out more, go to [www.walmartmovie.com](http://www.walmartmovie.com)).

Wal-Mart has an impact in a number of areas:

**Low wages:** Wal-Mart's average full time pay lands a four-person family in poverty. (*Businessweek*, 10/6/03)

**No wages:** Thousands of documented cases charge that Wal-Mart has forced hundreds of thousands of workers to work "off the clock." (U.S. Securities and Exchange Commission)

**Poor Benefits:** Because of long waiting periods for eligibility and high costs, less than 50 percent of Wal-Mart's workers are covered by the company's health plan. Wal-Mart deliberately works employees less than 32 hours a week so they won't be eligible for health coverage. (2004 Wal-Mart Associate Guide; [www.walmartfacts.com](http://www.walmartfacts.com); Open Enrollment News, 9/03)

**Taxpayer Burdens:** Wal-Mart's low wages and poor benefits force many workers to rely on public aid. Taxpayers spend about \$420,750 a year

on public aid programs for each Wal-Mart store with 200 workers because Wal-Mart workers often can't afford health insurance or food for their children. (University of California Berkeley Center for Labor research and Education, 8/04)

**Discrimination:** Women at Wal-Mart earn an average of \$5,000 less a year than men for doing the same jobs. Some 1.6 million women are eligible to join a class-action lawsuit charging Wal-Mart with discrimination. Wal-Mart also has had to pay hundreds of thousands of dollars to workers across the company who were subject to race discrimination. (University of California Berkley Center for Labor Research and Education)

**Destroying U.S. Jobs:** By squeezing them for impossibly low prices, Wal-Mart forces its suppliers to move operations and jobs to low-wage countries such as China. In 2004 alone, Wal-Mart purchased \$18 billion worth of Chinese goods. (*San Francisco Chronicle*, 12/29/04; *The Washington Post*, 2/13/04; PBS

*Frontline*, 11/06/04; *China Business Weekly*, 11/29/04)

**Union Busting:** Wal-Mart fights to keep wages and benefits low by battling workers' attempts to form unions. The company closed a Quebec store in 2005 rather than negotiate with workers who formed a union there. ([www.washingtonpost.com](http://www.washingtonpost.com), 4/14/05)

**Child Labor:** Wal-Mart recently agreed to pay \$135,540 to settle federal charges that it broke child labor laws by having teenage workers use hazardous equipment such as a chain saw, paper bailers and fork lifts. (*New York Times*, 2/12/05)

But, most of these issues affect Wal-Mart employees, not me, you say.

That's not necessarily true. Forcing its workers onto the welfare and Medicaid rolls does affect you and the taxes you pay. Compelling suppliers to obtain product from 3rd world countries eliminates U.S. jobs and as plants transfer operations overseas, communities increase

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## QuickNotes

► *Though we remain unhappy with the agency decision to reduce the number of employees who can use leave this holiday season, we must give credit to Commissioner Barnhart for fighting off Administration attempts to contract out TSC work. This is inherently government work and contracting it out would not only cost federal workers their jobs, but compromise beneficiary and claimant privacy.*

► *AFGE Council 220 has filed a national grievance over the agency's imposition of restrictions on Teleservice Representatives ability to earn credit hours in the mornings and on Saturdays.*

► *Don't forget to obtain your bi-weekly earnings statement from Employee Express. If you don't have a PIN, use agency time to get one. Also use agency time to review your statement and make a copy.*

*The agency's beef about the pay statement was over postage. Case law and our national agreement (Article 3, Section 9A) establish that employees have a responsibility to review their earnings statements for accuracy and to notify supervisors of any unexplained changes.*

*So, take the time —agency time; don't do it on your break or lunch—to ensure accurate information is reflected on your earnings statement.*

► *Agency employees displaced by Hurricane Katrina have been informed that they must report back to their home offices by December 31st. Problem is: many are still without homes to go back to. SSA's budget director told the union that such a policy did not comport with the agency's budget priorities. He promised to investigate.*

### **Wal-Mart** *(Continued from page 6)*

residential taxes to replace lost business taxes.

The City of Los Angeles reports that stores like Wal-Mart reduce consumer choice due to their tendency to “cannibalize competing retail business.”

A study in Barnstable, Mass. found that stores like Wal-Mart cost the town \$794 per 1,000 square feet due to higher road maintenance and greater demand for public safety services.

Wal-Mart cost Cathedral City, Calif. \$1.8 million in tax rebates only to have the store relocate to another nearby town just after it began paying full sales taxes!

Wal-Mart says that its inventory of products made in China hit \$18 million in 2004. More than 70 percent of items sold at Wal-Mart are made in China, according to the *China Business Weekly*. But, the AFL-CIO contends that Wal-Mart's support of foreign-made goods on such a massive scale—by a company that trumpets its All-American image—is creating incentives for corporations to destroy good jobs in the United States.

Wal-Mart's anti-union attitude and activities are well-known. From

1998 to 2003, nearly 300 unfair labor practices have resulted in 100 federal complaints.

Beth Maxwell, director of American Rights at Work (ARW) said, “Wal-Mart's willingness to break labor law sends the wrong message to America's workers and employers. When the world's largest employer dominates the market by slashing wages and benefits and violating worker's rights, it legitimates and accelerates similar behavior among its vendors and rivals.”

ARW conducted a study of how Wal-Mart's business practices wreak havoc on labor standards for U.S. workers besides those they employ. “As the debate on the social ramifications of Wal-Martization continues, the practice of union busting must be included in the conversation,” said ARW Board Chair David Bonoir. “Unless we examine union busting at Wal-Mart and the current labor law system that tolerates its practice, we resign ourselves to do more with less — less security, less time, less health care, and less hope.”

Do you really need any more reasons to stop shopping at Wal-Mart?

*Research for this article was derived from the AFL-CIO website at [www.aflcio.org](http://www.aflcio.org).*



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## Phone Surveillance at the TSCs

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Federal Service Impasses Panel for final resolution.

Earlier this year, the General Accounting Office issued a report to the Senate Committee on Finance, entitled *Additional Actions Needed in Ongoing Efforts to Improve 800-Number Service*. The report found that about 51 million of the more than 71 million callers requested to speak with an SSA employee rather than use the agency's automated services. But, 17 percent of these calls did not get through to an agent—a 2 percent increase over the previous year.

GAO recommended that SSA take steps to 1) increase callers' access rates, 2) determine why agents fail to comply with SSA requirements when handling calls, and 3) establish uniform procedures for documenting and assessing customers' agent-related complaints.

SSA disagreed with recommendation #3 that calls for procedures to document and assess customer complaints. GAO acknowledged SSA's high level of courteous service indicated by the agency's own service monitoring and customer satisfaction surveys.

But, the GAO report also said, "SSA's high call volume means that even with low rates of discourtesy, agents may be treating potentially tens of thousands of callers discourteously. Good customer service stresses the importance of paying attention to

customers' complaints, and establishing a simple user-friendly and comprehensive complaint management system."

It would appear that the agency's new phone surveillance program is an attempt to establish this *comprehensive complaint management system*.

A union concern is that this monitoring plan will put emphasis on the negative, since it is GAO's conclusion that 60,000 calls per year result in discourteous service. "By not systematically collecting and analyzing information on alleged agent discourtesy, SSA is unable to identify service issues that may warrant corrective action," GAO concluded.

Some workers wonder if Field offices are next in line for expanded monitoring. Therefore, it is important for AFGE negotiators to include strong language to protect employees rights in this initial expansion of phone monitoring at the TSCs.

Employees who are concerned about these developments should contact SSA's Deputy Commissioner for Operations at [Linda.S.McMahon@ssa.gov](mailto:Linda.S.McMahon@ssa.gov) to inform her that unannounced and unrestricted phone monitoring is unfair and stressful. Although the agency has a right to monitor, its plan promotes employee harassment and diminishes the work environment.