

Administrative Law Judge Union Accuses Social Security of Bad Faith Bargaining

By Erich Wagner

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The president of a union representing the administrative law judges who adjudicate disability claims has accused the Social Security Administration of bargaining in bad faith. The accusation follows news that federal mediators declared the agency and union to be at impasse in negotiations over a new collective bargaining agreement.

Association of Administrative Law Judges President Melissa McIntosh said her union has filed an internal grievance with the agency over its negotiating practices as they discuss a new contract. She said she believes management is focused on standardizing contracts with disparate bargaining units, rather than on improving efficiency for taxpayers.

“I think what’s most obvious would be their aggressive posture in mandating contracts that are the same for all bargaining units at SSA,” McIntosh said. “You have a bargaining unit that’s made exclusively of judges, and then there’s [the American Federation of Government Employees], which is a bargaining unit of 45,000 employees with diverse positions, and then there’s a [National Treasury Employees Union] bargaining unit. It’s not bargaining in good faith to say, all three times, that we want the contracts to look the same.”

AALJ and Social Security have been negotiating provisions of a new collective bargaining agreement since March, culminating in two weeks of mediation by the Federal Mediation and Conciliation Service last month. At the end of those two weeks, FMCS Commissioner Randall Mayhew declared the parties to be at an impasse.

The agency’s “last best offer” to the union, which was reviewed by *Government Executive*, includes several proposals that have become standard in the Trump administration, including shifting telework policies to be entirely at the discretion of the agency and a drastic reduction in the amount of official time the union can use. In this case, SSA proposed a 90% cut to official time, from an annual bank of 22,000 hours in the current contract to only 2,000 hours.

“We simply cannot function as a union and meet our statutory requirements [to represent employees] on only 2,000 hours,” McIntosh said. “And they’ve done the same thing to try to aggressively eliminate official time for AFGE and NTEU.”

Equally troubling to the administrative law judges are proposals throughout the contract to remove references to the Administrative Procedures Act and an article affirming the “judicial function” of ALJs at the agency. The judicial function article lays out several key duties of administrative law judges, including the power to call for expert witnesses and ensure due process rights of claimants.

“That’s so critical to us, because the Administrative Procedures Act ensures the due process rights of claimants that come before us, and ensures our judicial independence,” McIntosh said. “[We] can only speculate [on the removal of the judicial function article], but they have repeatedly attempted to give our hearings to non-ALJs at the appeals council. So our concern is that they would ultimately like to have non-ALJs hear these cases, which would be easier if the judicial function article was removed.”

The Social Security Administration declined to comment, citing ongoing negotiations.

Although McIntosh said she expects that management will request the intervention of the Federal Service Impasses Panel, she hopes that newly installed SSA Commissioner Andrew Saul will put a pause on further negotiations, at least until the agency can introduce a new organization structure to the administrative law judge corps. The recent *Lucia v. Securities and Exchange Commission* Supreme Court decision labels ALJs to be “inferior officers,” and to comply with the Constitution, they now must report to a Senate confirmed presidential appointee.

“We have a new commissioner, and I’ve reached out and we’d like to reboot the relationship and have a better relationship with the agency,” McIntosh said. “We’re committed public servants. We’ve increased our productivity since fiscal 2017 by about 20%, and we’ve lost around 40,000 hours of leave every year over the last three years trying to meet production standards. We’re committed and trying very hard, and we think we’ve got to turn this around.”

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