

Labor Authority Preliminarily Finds Social Security Illegally Intimidated Union Officials

By Erich Wagner

November 1, 2019

An investigator with the Federal Labor Relations Authority has preliminarily concluded that the Social Security Administration illegally attempted to intimidate officials with the Association of Administrative Law Judges earlier this year.

In June, the union filed an unfair labor practice complaint alleging that in January, management officials verbally threatened to “discipline” union officials after they took official time and left the workplace to prepare for a collective bargaining negotiation session, despite the fact that the practice is spelled out in an existing union contract and a memorandum of understanding.

“We don’t have union offices like other unions, so we need more flexibility to do union-related work, both for obviously practical reasons and for confidentiality concerns,” AALJ President Melissa McIntosh said. “We were preparing for contract negotiations, and [management] knew that because the period was negotiated in our ground rules.”

McIntosh said that the agency officials did not specify how they would discipline union representatives who continued to use official time off-site, and they refused to submit the warning in writing.

“So I contacted the acting commissioner [Nancy Berryhill by email], and a meeting resulted,” McIntosh said. “There, we were admonished [by Deputy Commissioner Theresa Gruber] to ‘adhere to the chain of command,’ to be patient and that the incident was a small matter.”

This week, the FLRA informed the union and the agency that an investigator has determined that the complaint “has merit,” meaning there is sufficient evidence to indicate that management interfered with employees’ rights to engage in union activity.

However, the determination currently lacks any enforcement mechanism, as the FLRA’s general counsel position remains vacant. President Trump’s nominee for the post, Catherine Bird, still awaits confirmation despite being recommended out of committee in July.

In a statement, Social Security Administration spokesman Mark Hinkle said the agency would address the issue per the FLRA’s rules, but disputed the union’s account of events, describing the meetings as a “routine discussion of labor-management issues.”

“Social Security was perplexed by AALJ’s interpretation of the meeting six months after the meeting,” Hinkle said. “Social Security will follow appropriate FLRA processes to address this matter. The procedural determination of the FLRA regional director is but one step in a longer administrative process.”

The unfair labor practice complaint is not the only dispute between the judges union and Social Security. AALJ has filed an internal grievance accusing the agency of [bad faith bargaining](#), effectively rushing the process to the Federal Service Impasses Panel. McIntosh said she expects that matter to go before a third-party arbitrator “in the next few months.”

Additionally, the union contract is currently before the impasses panel, but McIntosh said the union's position in those proceedings is that the panel cannot assert jurisdiction because the law governing how members are appointed is unconstitutional. The union's argument echoes those laid out in a recent [lawsuit](#) filed by the American Federation of Government Employees, which contends that members of the impasses panel should be confirmed by the Senate, given their duties.

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