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Administrative Law Judges Union Accuses Social Security of Illegal Implementation of Contract

SSA on Monday moved ahead with a partial collective bargaining agreement with the Association of Administrative Law Judges, despite the fact that nine articles remain in dispute, and the agency unilaterally rewrote an article without the union's input.

ERICH WAGNER | AUGUST 11, 2020

UNIONS



The Association of Administrative Law Judges accused the Social Security Administration of breaking federal labor law when it implemented a partial union contract on Monday.

Union representatives said that the agency's move flies in the face of the ground rules the parties reached earlier in the negotiation process, and that a decision by management to unilaterally rewrite one provision to implement a new rule on how it will withhold union dues is flatly illegal.

Negotiations over a new collective bargaining agreement between Social Security and the administrative law judges date back over a year. During discussions last year, the parties reached agreement on 20 of 29 proposed contract articles, but went to impasse over the final nine. The Federal Service Impasses Panel issued a largely pro-management

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decision in April, prompting the union to sue the panel, arguing that the manner in which members were appointed violates the Appointments Clause of the Constitution.

In April, the agency indicated that it would [implement](#) a partial contract, arguing that provisions decided by the impasses panel are not subject to ratification. But it relented and indicated it would delay implementation pending the lawsuit after the Federal Labor Relations Authority took the [rare step](#) to stay the panel's order.



“What they agreed to do was not to proceed with the panel’s orders, in light of the [U.S.] District Court case that’s pending before Judge [Amy Berman] Jackson,” said Melissa McIntosh, president of the Association of Administrative Law Judges. “Then they clarified to us that they didn’t mean they’d delay indefinitely . . . We had a robust disagreement in correspondence exchanges about the legality of implementing a partial contract when there was no legal way to do so in the ground rules, but they implemented anyway as of yesterday.”

McIntosh said that in order to ratify and implement a partial collective bargaining agreement, the parties must agree to a severability clause as a part of the ground rules for negotiations, which did not happen in this case.

In a statement to *Government Executive*, Social Security Administration spokesman Mark Hinkle maintained the agency’s actions were in keeping with the ground rules and insisted that impasses panel orders are not subject to ratification.

“On March 3, 2020, SSA provided [the union] notice that the union had 60 days to complete the ratification process for the 20 signed articles, consistent with the parties’ ground rules memorandum of understanding,” Hinkle wrote. “On May 4, [the union] notified the agency that it did not submit the 20 articles to its membership for ratification. [The union] agreed upon and made commitments to 20 complete articles during negotiations; however, the union chose not to engage in a ratification process with its membership on those articles. For the other nine articles, the union does not have the right to seek ratification by its membership for the [impasses panel]-imposed articles.”

But not even the impasses panel agrees with Social Security’s claim that panel orders are not subject to ratification. Last year, the panel [removed language](#) from a contract proposal offered by the Defense Department Education Activity in its dispute with the Federal Education Association seeking to exempt panel-imposed articles from the ratification process.

“Finally, the agency’s language concerning non-ratification of panel imposed language is rejected,” the panel wrote. “The agency claims that this language enshrines established [labor authority] precedent. However, the only authority it offers is a non-published [labor relations authority administrative law judge] decision that was ultimately dismissed by the authority because the parties reached a settlement. Thus, its precedential value is questionable. Indeed, the panel is unaware of any binding FLRA decisions that actually capture management’s position.”

McIntosh said that the partial contract that was implemented on Monday does not actually reflect what the union agreed to last year. The agency unilaterally rewrote a provision on union dues withholding to reflect [controversial regulations](#) recently issued by the FLRA making it easier to cancel dues. Those regulations were officially implemented on Monday.

“They just rewrote the article and included that with the other tentatively agreed-to articles and illegally implemented them yesterday,” McIntosh said. “Their theory was that because there’s a new regulation, they had the right to do it, but that’s absolutely not the case. This is a change in the conditions of employment in addition to illegal implementation of an article. They had no right to make such a change without negotiating it.”

Although federal agencies are entitled to ensure that new collective bargaining agreements reflect new governmentwide rules and regulations, federal labor law requires them to “consult with” unions and negotiate over how those rules are implemented. Hinkle did not respond to detailed questions about the unilaterally rewritten contract article.

McIntosh said she believes the decision to move forward with contract implementation—and to unilaterally alter the dues withholding provision—is an intentional effort by Social Security Commissioner Andrew Saul and Deputy Commissioner for Hearings Operations Theresa Gruber to engage in “union busting.”

“I’ll say this. Waiting to implement this until the day this regulation came into effect was designed to maximize the harm that the Social Security Administration could do to this small union of judges,” McIntosh said. “They have relentlessly sought to take disability hearings away from [administrative law judges] and to the appeals council, and Gruber has sought to eliminate all references to the Administrative Procedures Act as well as our judicial function from our contract. And these issues don’t even relate to anything in [President Trump’s] 2018 executive orders. This is Gruber’s attempt to weaken our decisional independence.”

The union has filed a grievance against the agency, which McIntosh said will go to arbitration, and then likely the Federal Labor Relations Authority. But the process likely will take at least a year. [G](#)

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FBI headquarters in Washington. S-F/SHUTTERSTOCK.COM

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FBI Will Relocate 1,500 Staff to Alabama Next Year

The moves will take place regardless of what the future holds for the bureau's Washington headquarters.

[COURTNEY BUBLÉ](#) | AUGUST 11, 2020

LAW ENFORCEMENT

BUDGET



The FBI plans to relocate about 1,500 employees and contractors to Alabama by the end of next year with possibly more to follow, according to bureau officials. The moves are independent of plans to update the bureau's headquarters in Washington.

Almost a dozen FBI divisions and offices, which the agency declined to specify, will move to [Redstone Arsenal](#), an Army installation in Huntsville, under plans spearheaded by Sen. Richard Shelby, R-Ala., the powerful chairman of the Senate Appropriations Committee.

While Senate Republicans, at the request of the White House, [included](#) \$1.75 billion for renovating the dilapidated and overcrowded FBI headquarters in their proposed [\\$1 trillion stimulus package](#) last month, Democrats oppose the funding. Even if Congress were to approve the headquarters upgrade, the relocations would still take place, an FBI official told *Government Executive*.

“You’ve got the manpower here. You’ve got the brain trust and you’ve got the security of the arsenal,” Shelby told the online publication [Al.com](#) at an event in Huntsville last year. “I’m bullish on the FBI here. I think it will be one of the biggest presences for the FBI outside of Washington.” The senator has secured \$1.1 billion in funding over the past four years for the initiative, *The Washington Post* [reported](#) on August 4.

The relocated employees will include individuals transferred from headquarters and new hires.

Construction of the largest facility, the [Terrorist Explosive Device Analytical Center](#), is expected to be completed in 2021. It will include an operations support building to house up to 1,400 employees and

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contractors, a building for network operations and enterprise security, and a commons building with a gym and other amenities.

An innovation center for cyber-focused training is planned to be ready by late 2023 or early 2024, depending on appropriations. More than the initial 1,500 personnel could be relocated, depending on negotiations between Congress and the administration and future funding, the FBI said.

The FBI's cramped, outdated headquarters office in downtown Washington has long been a source of frustration for the bureau, which had planned to move to a new facility in the Washington suburbs before President Trump took office. But in July 2017, the Trump administration [scrapped a decade-long plan](#) to relocate the headquarters. Democratic lawmakers [accused](#) the administration of wanting to keep the bureau in its current location near the Trump International Hotel to prevent commercial developers from constructing a new property on the site that would compete with the hotel.

An August 2018 [investigation](#) by the General Services Administration's inspector general on the administration's [proposal](#) to update the building raised questions about the White House role in the decision. The Justice Department IG subsequently initiated its own investigation, which is still underway, according to the *Post*.

Democratic lawmakers in the Washington metropolitan area have been highly critical of the scrapped plans and they were further outraged when Senate Republicans included funding for renovating the FBI building in the stimulus package meant to address the ongoing pandemic and recession.

"The plan to move certain FBI employees to Alabama predates President Trump's erratic decision related to the FBI headquarters," said Sen. Mark Warner, D-Va. "I continue to be concerned about the president throwing away years of work—and millions of dollars—that have gone into selecting a location for a new FBI HQ, and by his attempt to sneak funding to renovate the existing location into the pandemic relief package."

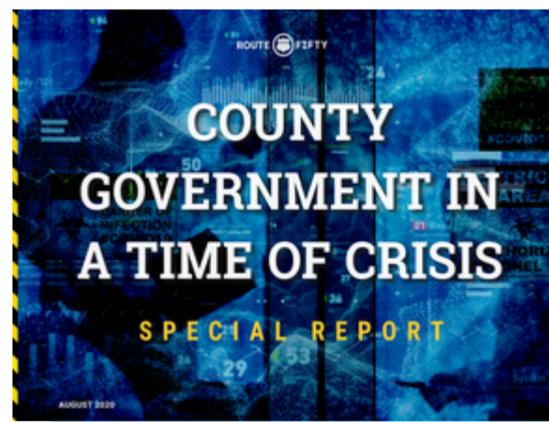
He added that Trump "doesn't have a sound strategy here, and the men and women of the FBI deserve better."

A spokesperson for Sen. Ben Cardin, D-Md., also emphasized the need for a new and technologically advanced FBI headquarters. "Moving some employees to alternate locations, does not negate the imperative for a consolidated, secure, modern headquarters in the National Capital Region," said the spokesperson. "The Alabama movements were in the works prior to the Trump administration derailing efforts for a new headquarters, so it was never intended as a replacement. To that end, the numbers currently being discussed would not change the structural and security inadequacies of a downtown location."

Similarly, a spokesperson for Sen. Tim Kaine, D-Va., said the senator "believes we still need a new Washington Capital-area FBI HQ at a new site in the region [and] will continue to push for a new facility in the area."

Shelby's office did not respond to *Government Executive* for comment. [G](#)

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