

Marilyn Zahm, Administration Law Judge, on her own behalf, and the Association of Administrative Law Judges, IFPTE, AFL-CIO

Grievants

Vs.

**AMENDED
GRIEVANCE
STEP THREE**

Social Security Administration, Office of Hearings Operations

Respondent

This is Step Three grievance filed by the Association of Administrative Law Judges (AALJ) and Marilyn Zahm, Administrative Law Judge, pursuant to Article 10 (“Grievance Procedure”) of the SSA-AALJ Collective Bargaining Agreement (CBA) and the Federal Service Labor-Management Relations Statute (FSLMRS), subchapter III, 5 U.S.C. 7121, et seq. It amends the grievance filed on July 14, 2018.

AALJ is the duly certified exclusive bargaining representative for non-supervisory federal administrative law judges who have been appointed to serve as Administrative Law Judges (ALJs) within the Social Security Administration (hereinafter SSA, OHO, and Agency). Under the CBA, the AALJ is the exclusive representative of SSA’s rank-and-file ALJs. Marilyn Zahm is an Administrative Law Judge employed by the Respondent in the Buffalo hearing office.

Social Security Administration, Office of Hearings Operations (OHO or Agency) is a component of the Social Security Administration. Respondent is responsible for the fair and equitable treatment of the Administrative Law Judges in the AALJ bargaining unit and for the implementation of the terms of the CBA and federal law, including the FSLMRS.

PROCEDURAL HISTORY

This grievance is being filed at step three of the grievance procedure because it involves actions by the Agency at the national level.

FACTS

The facts supporting this grievance are as follows:

1. I am an Administrative Law Judge employed by the Agency and am the duly elected President of the AALJ.

2. The AALJ and the Agency are parties to a CBA that, by its terms, is to expire on September 30, 2018. Article 1, Section 2 of the SSA- AALJ IFPTE CBA states as follows:

This Agreement shall remain in effect for a period of four (4) years from September 30, 2013 and shall automatically renew from year to year thereafter except where changes in the law, rule, or regulation mandate modification of the Agreement. In addition, the Parties may extend for a longer period by mutual consent. However, either Party may give notice to the other Party, in writing, at least sixty (60) days, but not more than one-hundred-five (105) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this Agreement.

3. The CBA automatically renewed for one year, pursuant to Article 1 above, on September 30, 2017, as neither party provided timely notice to reopen, amend, modify or terminate the CBA. Accordingly, the CBA is in effect until September 30, 2018.
4. On June 15, 2018, SSA sent a notice to me of its intent to implement the three Executive Orders issued by President Trump on May 25, 2018 (the "Executive Orders"). The notice stated:

In accordance with the Federal Service Labor-Management Relations Statute, Article 1, Section 2 of the SSA-IFPTE National Agreement (National Agreement), and the three Executive Orders, this is notice of the Agency's decision to implement all three Orders effective July 9, 2018. Therefore, effective July 9, 2018, the Agency proposes to revise the following Articles, as well as any other Articles implicated by the Executive Orders, in the National Agreement to adhere to the Executive Orders.

Articles 1, 2, 5, 7, 8, 9, 10, 11, 14, 15, 18, and 23 were thereafter listed below the above paragraph. The notice was signed by Ralph Patinella, Associate Commissioner, Office of Labor-Management and Employee Relations.

5. On July 6, 2018, Associate Commissioner Patinella sent me a memorandum entitled "Technical Guidance for Union Officials, Implementation of the Executive Orders, Actions Effective July 9, 2018." The memorandum states, among other provisions:
 - Union representatives will not be authorized any payment for union travel (including local travel) starting July 9, 2018.
 - Union reps will be permitted to use a maximum of 100 hours of Taxpayer Funded Union Time between July 9 and September 30, 2018.
 - The AALJ will have a bank of 400 hours to use between July 9 and September 30, 2018. If the 100-hour limit is reached or the bank is exhausted prior to any representative reaching his/her 100 hour limit, the representative will not be authorized any additional taxpayer funded union time except for purposes covered by 5 USC 7131(a) or (c).

- Time will not be authorized for filing union-management grievances or for representing an employee in grievance presentation.
- Time will not be authorized for serving as the principle union representative or technical assistant in an arbitration hearing.
- All union space and equipment provided by the Agency will return to the Agency by COB July 31, 2018.
- Union reps will only be allowed to use Agency equipment for representational activity in response to a management initiated action, e.g. union response to a management notice of formal discussion or union response to a call from an employee in a Weingarten interview.

The above changes were implemented on July 9, 2018.

6. The implemented changes outlined in the Agency's July 6, 2018 memorandum violate multiple provisions of the parties' CBA, including but not limited to Articles 8, 9, 10, and 11. The CBA has no such limitations on the use of official time as stated in the memorandum. The CBA also provides that the Agency shall pay for union travel and provides for the Union's use of the Agency's email server, telephones, computers, fax machines, copiers, and other equipment.
7. Neither the Executive Orders nor the parties' CBA allows for SSA to implement any changes to the CBA during the pendency of the contract absent a change in law, rule or regulation that mandates such change. The Executive Orders are not new laws, changes to existing laws, rules or regulations. They are simply policy guidance to federal agencies and there is no provision in the Executive Orders that mandates any change to an existing collective bargaining agreement. Moreover, the Executive Orders themselves prohibit such changes, as they state that "Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order," and "[t]his order shall be implemented consistent with applicable law."
8. Pursuant to Article 1, Section 3 and Article 2 of the CBA, the parties are not governed by changes to government wide-rules or regulations issued after the effective date of the CBA. Although the Union does not concede that the Executive Orders are government wide-rules or regulations, even if they were, the CBA specifically states that "[w]here the terms of this Agreement conflict with government-wide rules and regulations issued after the effective date of this Agreement, the terms of this Agreement shall be controlling." Article, 2, Section 2(A).
9. Furthermore, federal law prohibits making changes to any collective bargaining agreement without bargaining, including up to and through the impasse procedures..
10. Thus, under the terms of the parties' CBA and the Executive Orders themselves, the AALJ is not required to negotiate any mid-term changes in the CBA under these Executive Orders.

11. On July 5, 2018, Regional Chief Aaron Morgan advised me that the Agency had cancelled my reservation – made through the government’s travel bureau – for a trip to Boston to represent a grievant at an arbitration hearing from July 10 to 13. Under the CBA, the Agency pays 50% of the travel costs for AALJ representatives and witnesses who participate in arbitrations (Article 11, Section 7C). In addition to representing the grievant, I was a witness in the arbitration. The Agency has refused to pay 50% of my travel costs of \$1,568.29 for the trip. In addition, because the Agency cancelled the reservation when it did, my plane fare was significantly more expensive when I had to re-book the flight on the open market.

12. Following the implementation of the Executive Orders, the Agency refused to allow me to use official time to represent a grievant, Judge Hurley, at an arbitration hearing from July 9 to July 13, 2018. Accordingly, I had to take personal leave (credit hours and travel compensatory time) from July 9 through July 13 to represent Judge Hurley at the arbitration hearing. The CBA provides that official time can be used for this purpose (Articles 9).

13. The Agency also refused to allow Judge William Ramsey, a union representative, to use official time to represent Judge Hurley in the same arbitration hearing. Judge Ramsey was required to use his personal time (annual leave and credit hours) from July 9 through July 13 to represent Judge Hurley at the arbitration hearing. The CBA provides that official time can be used for this purpose (Articles 9).

14. Because of the Agency’s actions in refusing to allow union officials to use official time to represent employees in arbitration hearings, Judge Janet McEneaney and Judge Som Ramrup, union representatives, were required to use personal leave time on July 13 to represent a grievant, Judge Moises Penalver, at an arbitration hearing. The CBA provides that official time can be used for this purpose (Articles 9).

15. The Agency is failing and refusing to comply with the terms of Articles 1 and 2 in violation of the CBA and has violated Articles 8, 9, 10, and 11 of the CBA by implementing the Executive Orders.

16. The Agency’s implementation of the Executive Orders is also a violation of Section 7116(a)(1) and (a)(5) of the Federal Service Labor-Management Relations Statute. The Agency has unilaterally changed conditions of employment on matters that are covered

by the existing CBA.

Relief Requested:

That SSA be ordered to comply with Articles 1 and 2 of the CBA and refrain from seeking to make changes in the current CBA, pursuant to the Executive Orders, outside of the negotiating process for term negotiations;

That SSA be ordered to keep the terms of the current CBA in effect until the parties have negotiated a new CBA or the negotiations have fully proceeded through the federal labor statutes' impasses procedure;

That SSA be ordered to revert all terms and conditions to the status quo under the CBA, and that any ALJ affected by the implementation of the Executive Orders be made whole, including but not limited to Judge Zahm, Judge Ramsey, Judge McEneaney, and Judge Ramrup; and

Such other and further relief as may be just and proper.

Judge Marilyn Zahm will serve as the AALJ representative in handling this grievance.

s/ Marilyn Zahm

Dated: July 16, 2018