

LEGAL RIGHTS VICTORIES – BACK PAY FOR AFGE MEMBERS

Saturday Premium Pay – Council 53 filed a national grievance challenging VA's exclusion of certain Title 5 VA occupations from Saturday Premium Pay. Following a series of arbitration hearings, awards, and a ruling on agency exceptions by the FLRA, the union won but still had to file a ULP to force a resolution. To date the VA has paid out well over \$105.6 million to over 30,000 employees.

(Attorneys: Judy Galat, Andy Grajales, April Fuller, Ibdun Roberts, Cathie McQuiston).

EO Implementation – The Arbitrator sustained AFGE's grievance and found: the Agency's implementation of the EOs was a breach and repudiation of AFGE's Ground Rules MOU; the Agency's implementation of the EOs and refusal to bargain violated the Statute. Arbitrator ordered JMC to cease and desist from further unilateral implementation of the EOs, refusing to negotiate with the and restore all CBA provisions struck or amended by the Agency. The award also provided a make-whole remedy, including backpay and restoration of benefits, remove all AWOLs from their files and rescind all discipline.

(Attorney: Mark Vinson).

BOP Reasonable Accommodation – Won a reasonable accommodation case after the agency denied an accommodation to the Grievant, who was pregnant at the time, and placed her on LWOP until she gave birth. The Arbitrator held that the agency's decision inappropriate. Grievant made whole, including all lost earnings, backpay, annual sick leave, and retirement benefits.

(Attorney: Ryan Saunders)

Coast Guard Suspension Rescinded – GCO secured the full rescission of a suspension taken against a US Coast Guard firefighter in Kodiak, Alaska. The grievant was suspended after a heated verbal altercation with a deputy chief after a contentious and disorganized drill was conducted by management during the government shutdown. The grievant was award full backpay and benefits.

(Attorney: Greg Watts)

COVID Protections – Won grievance on behalf of Local 1042) regarding alleged violations of the VA Master Agreement related to health and safety protections, telework, and leave usage since the onset of the COVID-19 pandemic.

(Attorney: Michael Pazder).

Removal/Whistleblower – Won an arbitration for an optometrist that was terminated on fabricated charges. The discipline was rescinded in its entirety, resulting in approximately two years of back pay and an additional award of \$178,000 in compensatory damages for whistleblower retaliation.

(Attorney: Matthew Gunn).

Official Time – Won an arbitration award ordering the agency to retroactively grant official time for several of the Local's members and officers to attend the AFGE February 2019 Legislative Conference. The agency granted official time to some, but not all of the members, that the Local requested to attend. All grievants were made whole.

(Attorney: Evan Greenstein).

VA Accountability Act – After the Accountability Act was passed in 2017, the VA claimed it no longer had to provide workers with PIPs before taking performance-based disciplinary action under the Act. In 2018, an Arbitrator ruled in our favor. The arbitration ruling was upheld in November 2020 in a 2-1 ruling by the Federal Labor Relations Authority (FLRA) -- yet the VA still refused to comply. GCO then won a ULP to force the agency to comply. Implementation is still underway.

(Attorney: Thomas Dargon).

Housekeeping Aids – Won environmental differential pay for Housekeeping Aids that resulted in an 8% pay increase going forward and 6 years of back pay for those employees. These are some of the lowest paid employees and they are now finally being paid what the law entitles them to receive for the hazardous conditions on the job.

(Attorney: Michael Pazder).



AFGE LEGAL RIGHTS ATTORNEY PROGRAM



GCO'S ATTORNEYS ARE ON YOUR SIDE

The AFGE Legal Rights Attorney Program in the General Counsel's Office (GCO) offers free attorney representation in back pay cases brought by AFGE Locals and Councils on behalf of AFGE members. From discipline to adverse actions, demotions to removals our office wants to represent your members. Our attorneys are experienced litigators with a winning track record. And, we are committed to providing the best possible representation.

Since 2005, the GCO attorneys have handled thousands of cases and we've won hundreds of millions of dollars in back pay for our members. In each of the past 10 years AFGE attorneys brought in an average of well over \$1 Million in attorney's fees when we win your cases. This helps us to expand the program and help more members when they need an attorney. If we accept your case, we provide an attorney at no fee to your local and AFGE's Legal Representation Fund will pay for the attorney's travel and expenses. And if we win the case and collect attorney's fees, the Council or Local will be reimbursed for all or part of the arbitrator's fee.

We want to work with locals and councils, we want to take your cases, and we want you to be successful. Bring your cases to GCO first and give our attorneys a shot at them. If you haven't worked with GCO recently, you need to know this: the AFGE National Executive Council has made it easier for your cases to be accepted into the Legal Rights Program. If your local is willing to pay the arbitrator's fee, we will take your case unless it's barred by statute, regulation, caselaw or contract. So, while we're not going to take, for example, a probationary removal, we're going to work with you to make sure we're providing an attorney when you have a legitimate case.

Every day we save AFGE locals and councils thousands of dollars that would be spent on outside lawyers. If your case meets the NEC criteria, our representation is free. I am confident you will see that GCO representation is a great value to your local, your council, and your members.

David A. Borer, General Counsel

QUESTIONS? For more information about GCO's Legal Rights Attorney Program, call 202.639.6424

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

THE TYPE OF CASES THAT WE TAKE

We take administrative cases such as removals, suspensions, reductions in grade, reductions in pay, and furloughs – cases that will be brought to arbitration, the Merit System Protection Board (MSPB), or other review boards where both back pay and attorney’s fees are available.

THE TYPE OF CASES WE DON’T TAKE

Under criteria revised by the AFGE National Executive Council (NEC) GCO now accepts all cases for which the Local or Council is willing to front the cost of the arbitrator, except cases that are barred by statute, regulation, contract or case law. For example, a probationary removal is barred by statute and we therefore cannot take such cases.

Cases that involve solely unlawful discrimination issues such as age, race, sex, religion, disability, national origin and retaliation to the Equal Employment Opportunity (EEO) process should be referred to AFGE’s Departments of Women and Fair Practices. GCO does, however, accept mixed cases involving a discrimination claim together with other disciplinary issues if brought directly to arbitration or the MSPB, not the EEOC.

CASE EVALUATION CRITERIA TO RECEIVE REPRESENTATION:

- The employee must have valid appeal or arbitration rights (e.g. not a probationary employee), and the subject matter must be appropriate (e.g. not a classification appeal or other non-grievable matter).
- The type of case must be appropriate, that is, arbitration, appeal to the MSPB, or appeal to another administrative review board (not the EEOC or the Federal Labor Relations Agency), which has the authority to order back pay and attorney’s fees.
- The case must be arbitrable or appealable. There must be a reasonable chance the case can be resolved to the satisfaction of the Council or Local. A chance of obtaining fees must exist.
- All time limits must have been timely met.
- The Council or Local must have provided case documents and contact information required by the GCO.



HOW TO SEEK THE ASSISTANCE

Step 1: Once you decide to go to arbitration or file an appeal, simply send us the following via email (to: backpay@afge.org), fax, or overnight: The Local’s address, telephone number, fax number, and email address that will allow us to immediately contact you. Also send us a copy of the discipline/grievance file with all documentation, a copy of the pertinent collective bargaining agreement, the dates and details of any scheduled hearing should be clearly indicated. or if your case records are already in AFGE’s Casetrack system, just notify us of that. GCO will then conduct a complete evaluation of your case and determine whether it meets the criteria established by the NEC.

Please Note: Until GCO notifies the Council or Local that GCO will provide representation, the Council or Local is responsible for meeting all grievance and/or case deadlines.

Step 2: Once we receive all the documents and information required in Step 1, we will notify your National Vice President and assign an attorney to evaluate the case. You should call the GCO at **202.639.6424** to confirm that we have received the case file and that the case has been assigned. Normally, the evaluation takes 5 to 30 work days.

Step 3: Once our evaluation and legal analysis is complete, if a case is accepted or denied for representation, the Council or Local will be notified in writing with a copy provided to your National Vice President.

Step 4: If we accept your case, you’re required to keep GCO updated on the case documents and on all communications regarding the case. You will also continue to handle communications about scheduling the arbitration, including requests for arbitration panels. Generally, GCO will not begin the evaluation of a case until after a decision has been made by a Council or Local to proceed to a third-party arbitration/appeal.

Until you receive a written offer of representation from GCO you and the grievant remain responsible for meeting all filing deadlines and other requirements.

And, we expect a commitment up front to work with GCO to see the case through the end. Our attorneys will interview witnesses and thoroughly review evidence. We’ll prepare for opening and closing arguments and cross examination. And, best of all, we will provide legal representation at no cost to the Council or Local, including travel to the location for a hearing.

PRAISE FROM OUR LEADERS AND MEMBERS FOR THE AFGE LEGAL RIGHTS PROGRAM

Attorney Hampton Stennis - Thank you for everything! It's hard to truly express my gratitude in this email, but I really do appreciate everything you've done for me. Once again, THANK YOU!

- BOP Member

Thank you Attorney Evan Greenstein. You are an awesome Attorney, and I'm so grateful for all the work and time you spent ensuring the grievant received justice and the settlement he deserved.

- Tammy Wilson
President AFGE Local 3601

Attorney Chad Harris, On behalf of this local, we thank you and the General Counsel Office for the excellent service that you all have always given us. Your professionalism and expertise are very much appreciated.

- Abner Merriweather, President
AFGE Local 1858