



*(November 5, 2015)*

In order to further improve the lines of communication and to respond to the concerns between the National VA Council and you our members, I have established a National VA Council Briefing. This NVAC Briefing will bring you the latest news and developments within DVA and provide you with the current status of issues this Council is currently addressing. I believe that this NVAC Briefing will greatly enhance the way in which we communicate and the way in which we share new information, keeping you better informed.

**Alma L. Lee**  
National VA Council, President

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**In This Briefing: GPS Negotiations, FMLA, and Union Retaliation**  
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**FEDSMILL** - *"Respect for Employee Rights, Ideas, Insights, Participation and Unions Generates the Power to Improve Government"*

Posted on [November 5, 2015](#) by [AdminUN](#)

## **IS AGENCY USE OF GPS MONITORING I&I NEGOTIABLE?**

*FLRA has not stepped up to this question yet, but sooner or later an agency is going to use this equipment to monitor employees conduct, if not performance. But it is fair to ask even now what right will the union have to demand that the agency first bargaining procedural and appropriate arrangements before flipping the switch on this technology? Often the courts and Authority itself look to NLRB case law for guidance and the Board's Office of Advice just issued a memorandum recommending that the agency not file a ULP charge when a private employer unilaterally implemented GPS. Check out the posting entitled, "[Employer Had No Duty to Bargain Over Use of GPS Tracking Device](#)," by the McGuireWoods law firm summarizing the*

*Board's position. As with any legal decision, do not fixate on the bottom-line holding. It seems to us that had the employer actually changed working conditions by using GPS, e.g., gathered new data on employees never before captured, the outcome might have been different. Nonetheless, practitioners should tuck this one away in the back of their mind for the inevitable day they encounter workplace GPS monitoring.*

Posted in [Bargaining Law](#) | Tagged [GPS Monitoring](#) | [Leave a comment](#)

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## **MSPB REVERSES REMOVAL FOR UNION ANIMUS**

*While we rarely think of MSPB as a place to slug out a dispute over whether an agency's unacceptable performance removal of an employee was due to union animus, the Board just reminded us that it will consider that defense in any action appealable to it, e.g., adverse action, unacceptable performance action. (See [Ayers v. Dept. of Army](#), 2015 MSPB 58 (2015).) This employee had apparently filed nine grievances as well as some ULP's and information requests in a little over four months, triggering a long-term retaliation campaign by her manager. Summarized below via excerpts from the Judge's 250+ page opinion, is what the Board says is needed if an employee alleges union animus or an agency has to defend against the charge. It is worth reading if only to get a sense of the wide range of evidence the Board will consider when examining animus claims. [Continue reading →](#)*

Posted in [ULPs](#), [Unacceptable Performance](#) | Tagged [Union Animus](#) | [Leave a comment](#)

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## **AMAZON CREATIVELY EXPANDS FMLA RIGHTS**

*AMAZON sent a message around the cyberspace community as well as our little brick and mortar world by allowing parents of newborn children, who both work for Amazon, to transfer their time off days from one to the other. It is a great idea and in many cases will yield substantial benefits for an employer, e.g., only one employee's position is disrupted, in some cases savings from a salary difference between the couple, a happier pair of employees, etc. This might be something to consider at all those union legislative conferences targeting changes they want out of Congress.*

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Posted on [October 26, 2015](#) by [AdminUN](#)

## **BEWARE AN ARBITRATOR'S BACK PAY "COMPROMISE"**

*In late August a case came rolling out of FLRA that has the potential to confuse lots of practitioners. The arbitrator found that the agency had not properly compensated an employee for 12 years of stand-by/call-in work he had performed. However, the arbitrator then wrote that he had “no way of placing a monetary value” on the work performed. Consequently, he threw out a figure of \$24,000 in back pay as a compromise between the parties. See (**AFGE, 68 FLRA 852** (2015)) If practitioners on either side of the table are thinking of asking an arbitrator to do the same in some future case, we recommend that you not. Although FLRA upheld this award, it appears that this back pay compromise is a fluke. [Continue reading →](#)*

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