(June 17, 2016)

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: FEDSMILL ARTICILES

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"Respect for Employee Rights, Ideas, Insights, Participation and Unions Generates the Power to Improve Government"

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Posted on June 16, 2016 by AdminUN

AFGE GETS MEMBERS MORE TIME OFF

Long ago the Social Security Administration scheduled employees' lunch periods for them and some people did not get 30 minute unpaid lunch until seven hours into their

shift. Their union, AFGE, came up with an ingenious way to soften the blow for those folks. It negotiated a deal with management to let people go home 90 minutes before the end of their shift while charging them only for 60 minutes of leave. (The hour of leave was added to the 30 minute lunch to let them go 90 minutes early.) That worked fine for years until recently when SSA management said it wanted to terminate the arrangement because employees were now free to take their lunch period whenever they wished. The union fought back hard against the change, but the bargaining dispute went to the FSIP for a decision. Continue reading →

Posted in Bargaining | Tagged Stay of change | Leave a comment

Posted on June 14, 2016 by AdminUN

CBP WOMEN TURN TO LAWFIRM RATHER THAN NTEU

Customs and Border Protection requires that in order to physically qualify to be a CBP Officer applicants must pass the push-up requirements in each of three rounds of tests. Between 2012 and 2014 1.1% of the men who took those tests failed the push-up requirement while 16.9% of the women did. As a result, over 350 women were turned away during that time. Nothing happened with that enormous disparity until one woman, who was terminated late in her probationary period for failing only the push-up test, decided to pushback by contacting a law firm for help. The firm promptly filed an EEO class action complaint on behalf of all women and just last week the EEOC certified the case as a class action. That is a very, very big deal not just for CBP women, but all CBP officers. The complaint could lead to hundreds of the women being offered retroactive appointments with back pay, interest, income tax supplements, and damages. It could also mean that this law firm will have a great deal to say over what changes, if any, will be made to the push-up requirements of new hires as well as current employees. The firm could wind up having more control over the physical fitness requirements for CBP Officers than NTEU, the exclusive representative of CBPOs. The union's influence is limited by the management rights clause of the labor law—unless it is in charge of an EEO case. Once designated the representative in an EEO case, especially a class action, the management rights clause does not apply to the union's settlement negotiations. (See Candice B. v. Jeh Johnson, DHS, CBP, EEOC No. 0120160714, June 2016) Continue reading →

Posted in Gender/Sex | Tagged Disparate Impact | 2 Comments

Posted on June 14, 2016 by AdminUN

$17,000 SLIPS THROUGH NTEU HANDS

No union likes to have its mistakes laid out for all the public to see, especially costly ones due to staff errors. But bad publicity is the price those errors often come with when the FLRA gets involved in assessing who did the right thing and who did the wrong thing. Not long ago we wrote about how NTEU lost its attorney fee claim of about $40,000 in a post entitled, "NTEU Trips Itself Up." Then, last Friday FLRA published a decision rejecting another NTEU attorney fee claim due to technical mistakes. $17,000 is almost insignificant for a union with an annual budget approaching $30 million, e.g., the cost of three more arbitrations, the tab for sending a staff members to work in the field for political candidates/goals this election season, etc. But a loss like this does not help any union promote itself as providing top professional legal representation to members. While FLRA did not say anything new about the technical requirements for claiming fees, apparently it is worth reminding folks what the rules are. Continue reading →

Posted in Attorney Fees | Tagged NTEU Loss | Leave a comment

Posted on June 14, 2016 by AdminUN

TEN REASONS TO BE A UNION REPRESENTATIVE

There are lots of good reasons to be a union rep, whether you get involved in grievances, negotiations, arbitrations, employee meetings, or information gathering & analysis. Here are ten that we hope lead you to think about getting involved. Continue reading →

Posted in Union Administration | Tagged Union Representatives | Leave a comment

Posted on June 9, 2016 by AdminUN

DO YOUR MEMBERS A "LEAVE" FAVOR

Decades ago the federal employee leave rules were simple. If you want a vacation take annual. If you are ill, take sick leave. If you are out of annual or sick, ask for LWOP. And if you do not want to come in on time, the agency will gift you with some AWOL. But thanks to a more sensitive culture and a few flexibilities, there are now leave rules for adopting a child, caring for an injured veteran, caring for a newborn, mourning a family member, and tending to your mom's broken hip–not to mention leave transfers, banks, and set-aside accounts. Most federal employees move through their careers with only a superficial understanding of all the rules, but wouldn't it be great if there was some thing or place that would help them easily understand all the leave options they have. Well, there is. Continue reading →

Posted in Leave | Tagged OPM Leave Handbook | Leave a comment

Posted on June 9, 2016 by AdminUN

A QUIZ: WHEN UNIONS' RIGHTS COLLIDE

Who is right and who is wrong in this situation where the bargaining rights of two unions collided in the parking lot? IFPTE/NAIL reached a deal with the Navy Shipyard in Newport News over revised agency instructions reassigning parking priorities. The agreement was signed, approved by the agency head, and became effective. However, as soon as the agency began reassigning parking spaces it realized that the agreement would result in fewer parking spaces for another union. That union, AFGE, represented employees in a different Navy component that shared a parking lot with the employees working in the component represented by the two unions unaffiliated with AFGE. So, what happens next? Does the agreement reached by the two unions trump AFGE's rights to bargain over any change before implementation? Did AFGE lose any right to bargain over the change because it was made pursuant to an agreement negotiated with another union? Did AFGE's rights void the other union's agreement?

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Posted in Bargaining Law | Tagged Vitally Effects | 1 Comment

Posted on June 4, 2016 by AdminUN

"VAGUE" REASONS TO DENY LEAVE ILLEGAL

Employees are denied leave requests all the time and generally no one on either side of the labor relations arena thinks twice about it because FLRA has held that management has a right to deny leave, approve and then change its mind by denying leave, or even let an employee go on leave and call him/her back no matter how much money the employees loses in hotel reservations, flight costs, etc. But do not forget that this management right has to be exercised consistent with laws and among them are the civil rights acts. Despite FLRA's decision to hold firm to an interpretation of the "right to assign" that likely can be traced back through the annuls of Plantation Management 101 all the way to the Divine Right of Kings, EEOC has crafted a way for employees denied leave to challenge management's decision and get compensated. Here is how Rebecca Padilla did it. Continue reading →

Posted in Leave | Tagged Leave denial | Leave a comment

Posted on June 2, 2016 by AdminUN

OVERCOMING LR INCOMPETENCE

Here is our hypothetical. Assume that the union files a grievance alleging a violation of regulation or contract, wins a big back pay award at arbitration, and it is upheld by FLRA when LR files exceptions. Since the courts have no jurisdiction to review an FLRA decision on contract, regulatory or most statutory violations, the case is closed. No more appeal options? Or is it over? Continue reading →

Posted in Arbitration, Back Pay | Tagged Sovereign Immunity | Comments Off on

Posted on June 2, 2016 by AdminUN

FLRA'S CONFLICTING BACK PAY CRITERIA

Assume that the head of a large federal employee office somewhere in the Midwest suddenly decided to change employee shift hours. Instead of everyone's shift being 8 to 5:30 every day, she announced that on Monday and Friday of each week their shift would be 7 to 4:30. When the union gets ahold of that information the wheels will start turning identifying how it can challenge that decision and the remedy it wants. If the change was made unilaterally, it is a ULP. But if the change also violates a federal regulation or contract provisions it is a grievance unrelated to a ULP. What too many practitioners do not realize is that the decision to file a ULP or grievance has a very big impact on whether the employees will get back pay—thanks to a rarely talked about clash of FLRA precedents. Continue reading →

Posted in Back Pay | Tagged Back Pay Act | Comments Off on

Posted on May 15, 2016 by AdminUN

ABA LABOR LAW UPDATE & THE CBP MUSHROOM CLOUD

For those of you out in our blogosphere who like to stay up with the latest twists and turns in federal sector labor law we recommend reading through the American Bar Association's, "Update on Significant FLRA and Labor and Employment Decisions, 2015-16." One of the more interesting cases it is following is NTEU'S fight with CBP. Several arbitrators have already ruled the agency owes employees tens, if not hundreds, of millions in back pay for overtime hours they never worked but should have been allowed to work, even though often no one was assigned to work for the times the union claims back pay. The agency appealed to FLRA but lost. Then it took most of those decisions to the U. S. Court of Appeals, only to be turned away. Most recently, NTEU has asked the arbitrators who issued the original decisions to rule on whether the agency is in compliance with their decisions, which brings all of us fed sector practitioners to the brink of some interesting potential case law developments. For example, Continue reading →