

FOR IMMEDIATE RELEASE:
October 7, 2005

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AFGE BEATS BACK AGENCY BID TO IMPLEMENT NEW WORK RULES

AFGE, Other Unions Score Major Victory as Judge Denies DHS Motion to Gut Collective Bargaining

WASHINGTON--In a major victory for Department of Homeland Security (DHS) employees across the nation, a federal court has denied a motion by DHS to allow virtually full implementation of its new personnel system, known as MaxHR. For the second time in two months, Judge Rosemary Collyer of the U.S. District Court for the District of Columbia has upheld AFGE's position that DHS's new regulations concerning collective bargaining so circumscribe the negotiating process as to virtually eliminate it.

After hearing oral argument from AFGE and other unions in opposition to the Department of Homeland Security's request to implement new work rules that will impede whistleblower and other employee protections, Judge Rosemary M. Collyer of the U.S. District Court for the District of Columbia declined the agency's bid, accepting the unions' argument.

In August, Judge Collyer issued a memorandum opinion that forbade DHS from implementing the labor-relations portion of its new personnel system, MaxHR, which is designed to replace the current General Schedule (GS) civil service system. DHS countered with a motion for an amendment to the judge's opinion that would permit the agency to go ahead with the new collective bargaining rules.

"The court cannot oblige," wrote Judge Collyer. "After thorough consideration of the Agencies' proposed order, the Court concludes that the [Agencies'] proposal is insufficient...As a result, the motion must be denied."

In January, the American Federation of Government Employees (AFGE) and four other unions filed suit challenging significant parts of the proposed personnel system on the basis that they violated the Homeland Security Act (the legislation that created DHS), among other issues. In June, the unions filed a motion to stop the implementation of the rules. On August 12th, the court issued an opinion that forbade the agency from implementing those parts of the MaxHR that address collective bargaining, mitigation of disciplinary actions, and the role of the Federal Labor Relations Authority (FLRA) as an arbiter of disputes between management and employees.

DHS promptly responded to the court's decision by filing a motion to amend the judge's order on the collective bargaining portion of the regulations, essentially asking her to allow the agency to proceed with implementation after making only minor changes. In today's decision, the court declined the agency's motion. "As demonstrated by the unions," Judge Collyer writes, "a number of provisions in [the collective bargaining portion of the rules] either permit or contemplate DHS's unilateral repudiation of pre-existing collective bargaining agreements." "AFGE made every effort to design a fair and efficient personnel system in collaboration with DHS," Gage added. "Unfortunately, our efforts and concerns virtually were ignored, which left us with no choice but to file suit."

"It is indeed a triumph to be vindicated by the District Court on the critical issue of collective bargaining," said AFGE Deputy General Counsel Charles Hobbie. "If the current human resource management system is to be improved, I urge DHS to listen to its employees in the 'renewed rulemaking effort' urged by Judge Collyer."

In her opinion, Judge Collyer suggested that the agency and unions renew discussions on how best to resolve the issues in contention.

“DHS should respond to their concerns,” Hobbie continued, “rather than shutting them out of the deliberative process by eviscerating collective bargaining and employee protections.”

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AFGE is the Homeland Security Union representing the largest constituency of DHS employees, comprising Border Patrol, Customs & Border Protection, Immigration & Customs Enforcement officers; FEMA workers; and civilian Coast Guard employees.

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The American Federation of Government Employees (AFGE) is the largest federal employee union, representing 600,000 workers in the federal government and the government of the District of Columbia.