



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

John Gage
National President

J. David Cox, Sr.
National Secretary-Treasurer

Andrea E. Brooks
National Vice President for
Women and Fair Practices

March 16, 2007

Rob Stamerra
Senior Labor Relations Policy Advisor
Chief Human Capital Office
Department of Homeland Security
1201 New York Ave NW, # PH
Washington, D.C. 20528
BY MAIL and e-mail to Robert.stamerra@dhs.gov

Re: Adverse Actions and Appeals Proposals

Dear Mr. Stamerra:

President Gage has asked my office to respond on behalf of AFGE. We were surprised, disappointed, and insulted to receive your letter dated March 7, 2007 regarding your proposal to extend coverage under Subparts F and G of 5 C.F.R. Part 9701 (Adverse Actions and Appeals) to all bargaining unit members. During our meeting with Marta Perez on February 13, 2007, it was indicated that DHS was planning to move forward with a new performance management system, but we were not given any notice whatsoever that the Department would shortly be re-visiting these other controversial and discredited MAX HR proposals. Ms. Perez indicated DHS wanted to establish a new working relationship with the employees' union. This action seems to undercut the Department's credibility and to erase the benefit of the doubt we were giving to the new CHICO.

As you know, AFGE has previously challenged these very provisions in court, and the Court agreed in no uncertain terms that the provisions were patently unfair: as Judge Collyer explained, "the Regulations put the thumbs of the Agencies down hard on the scales of justice in [the agency's] favor." The Court of Appeals did not disagree, but merely found that the issue was not yet ripe for adjudication. The Department should not take encouragement in the fact that an employee must be victimized by these unfair proposals before the Court can award a remedy, which will surely include back pay and attorney fees.

DHS has the lowest morale in the federal government, when it needs to be the highest. Deputy Secretary Jackson said the top leaders took notice and would do something about it. The press quoted Ms. Perez as saying the new plan would be reassuring to employees. What part of imposing an illegal and unfair adverse action system is reassuring?

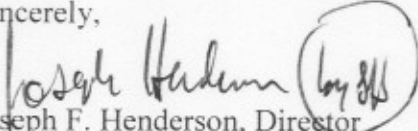
DHS has again demonstrated its disdain for its employees. Hurricane Katrina demonstrated the failure of politicization. The recent accounts of the firings of federal prosecutors are another example of abusive political interference into the proper administration of government. The adverse action and appeal regulations are yet another example of the politicization of public service.

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If DHS intends to proceed, we expect a more meaningful notice and opportunity to digest the full implications of such proposed broad personnel transformations. Under its National Consultation Rights, as a start, AFGE needs to be provided with a complete set of documents first, followed by an opportunity for a briefing. Next, a meeting should be held for follow-up questions, and a process established for future discussion of the issue of concern.

I look forward to being provided with copies of all relevant material and to setting up a prompt schedule. Please call me at your earliest convenience at 202 639-6482.

Sincerely,


Joseph F. Henderson, Director
Field Services Department

cc: Marta Perez