



## **Initial Review Finds Another Unfair Labor Practice Committed by Social Security Administration Against Its Disability Judges**

WASHINGTON — Aug. 28, 2020 — The Federal Labor Relations Authority (FLRA) has issued another initial merit determination against the Social Security Administration in its dealings with the [Association of Administrative Law Judges](#) (AALJ). The union represents 1,200 Social Security disability judges who hear cases across the country; this marks the fifth time in less than a year that FLRA has cited SSA for unfair practices.

In latest example, FLRA found that SSA’s refusal to bargain the impact and implementation of its shortening of administrative law judges controlled case statuses (previously called benchmarks and now called “service delivery targets”) is [an unfair labor practice](#). The FLRA notified the AALJ last week that the agency would not settle.

The Trump Administration has yet to appoint an FLRA general counsel, therefore it can’t officially issue unfair labor practice complaints. However, FLRA regional directors are still making initial merit determinations, and ask the unions and agencies if they are interested in settling.

AALJ believes aggressive union-busting is motivating Deputy Commissioners David Black and Theresa Gruber, with the assistance of Associate Commissioner James Julian, to engage in the “unprecedented” activity.

AALJ President Judge Melissa McIntosh says, “We fully understand Deputy Commissioners David Black and Theresa Gruber are intent on eliminating this small union of judges. What is still extraordinary is that they continue to ignore federal independent findings that they are violating labor law.

“This is a shameful expenditure of taxpayer time and resources, especially in the face of a pandemic. These public employees do not have the right to substitute their anti-union biases in place of the law.”

### **Growing Instances of Unfair Labor Practices-Initial Determinations Since October**

SSA and AALJ have been engaged in a protracted contract dispute for over two years and disability judges continue their duties under the last agreement. Since October 2019, FLRA has issued the additional “initial determinations” against Social Security:

- The Social Security Administration, including Joy Bryan, John Kuhn and Kimberly Hudson in the Division of Quality Services, as well as Deputy Commissioner Theresa Gruber, Chief Judge Patrick Nagle, and Deputy Chief Judge Chris Dillon, attempted to [illegally intimidate union officials](#).

- The Social Security Administration's Office of Hearing Operations committed an unfair labor practice by denying the union's right to participate in the Weingarten investigatory interview of a bargaining unit judge. The agency agreed to a [settlement posting](#).
- Regional Chief Judge [Sherianne Laba](#) of the Social Security Administration's Office of Hearing Operations was found to have committed an [unfair labor practice](#) when she discriminated against Judge Joseph Heiman for his protected union activity.
- SSA's refusal to negotiate their mandatory use of the electronic decision writer instructions tool was found to be an [unfair labor practice](#). While the FLRA submitted a [settlement draft](#) to the agency earlier this month, and to the union's knowledge, the agency never responded with an answer.

### **Independent Arbitrators Also Found Unfair Labor Practices**

In addition, this year, [an independent arbitrator](#) found that the agency committed [bad faith bargaining](#) by withholding information related to contract negotiations. Another independent arbitrator found that the agency violated labor law when the agency entirely ignored the judges when it revamped the way their hearings were scheduled. [Arbitrator Mulligan stated](#), "I think the Agency did a great disservice to its ALJs when it cavalierly dismissed them when the Union raised legitimate concerns about the [Centralized Scheduling Units]. The ALJs at least deserve this respect."

### **Independent Survey Shows Troubled Office of Hearing Operations**

As further indication of the troubles at SSA, the union points to a drop in scores from employees about Deputy Commissioner Gruber's Office of Hearing Operations.

The [hearing operations score](#), calculated by the Partnership for Public Service and Boston Consulting Group, demonstrates a serious morale problem in her unit, which now ranks 375 out of 420 and is a drop from the previous year.

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