

Senators, Labor Are Eyeing Adding More ALJs to the Social Security Administration Union

By Erich Wagner

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A group of Democratic senators have revisited a long-dormant effort to broaden the bargaining unit of administrative law judges at the Social Security Administration, buoyed by recent guidance from the Biden administration aimed at encouraging collective bargaining at federal agencies.

In 2007, then-Social Security Commissioner Michael Astrue created the agency's National Hearing Center, a cadre of administrative law judges who would parachute into regions with a long backlog of disability claims, but he left the component's employees outside of the ALJ bargaining unit at the Office of Hearing Operations, which is represented by the Association of Administrative Law Judges.

In 2011, the Federal Labor Relations Authority sided with Astrue, finding that although National Hearing Center judges had nearly identical job duties, they were management officials because they supervised decision writers. That said, the FLRA also found that the agency committed unfair labor practices by exhibiting hostility toward the union and failing to notify the group of the component's creation.

In a letter to Acting Social Security Commissioner Kilolo Kijakazi last month, five Democratic senators, led by Sen. Sherrod Brown, D-Ohio, [urged the agency to consider classifying judges](#) in the National Hearing Center as bargaining unit employees and granting them access to the Association of Administrative Law Judges. They cited the fact that in the years since the FLRA's decision, the differences in the responsibilities of ALJs in both agency components have disappeared.

"Indeed, the position description for NHC judges was and remains nearly identical to the position description for hearing office ALJs with the exception that the NHC ALJs' position description indicates that these judges may have supervisory tasks," the senators wrote. "[Since] the creation of the NHCs, the purported 'supervisory' duties of NHC judges have essentially been eliminated, and the position of NHC ALJ is for all purposes the same as the position of bargaining unit ALJ."

And AALJ President Som Ramrup told *Government Executive* that her union has learned in recent years more about National Hearing Center judges' duties as some of those judges have accepted positions at traditional hearing offices and joined the bargaining unit. What they found is much of those judges' supervisory authority was a mirage.

"They've told us that they don't really have any supervisory authority," she said. "Even when they tried to take some authority, they've been told that they can't do that by higher level management. So it's really just a falsehood—supervisory authority in name only—only to keep them out of the bargaining unit."

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Ramrup called the dichotomy between traditional Social Security administrative law judges and National Hearing Center judges a "double breasted" operation, akin to anti-union practices in the private sector, where a company effectively runs

two operations: one unionized, in order to compete for contracts that prioritize bids from organized workforces, and another non-unionized for everything else.

“Even as the FLRA issued that decision excluding the National Hearing Center from the bargaining unit, even in that decision they found the agency was exhibiting anti-union animus,” she said. “That’s the context we’re dealing with here. This all came about to avoid dealing with the union and using the backlog at the time as a subterfuge to create this double-breasted system.”

The union and the senators both highlighted a [February report](#) from the White House Task Force on Worker Organizing and Empowerment that, among other things, recommended agencies and OPM review prior determinations about which positions should be excluded from bargaining units. Social Security spokesman Mark Hinkle declined to answer questions about whether the agency would review its exclusion of National Hearing Center judges from the ALJ bargaining unit and said Kijakazi would respond directly to the lawmakers.

And last month, the Social Security Administration posted a [job announcement](#) on USAJOBS.gov seeking 1,000 applicants to become new administrative law judges within the Office of Hearing Operations. But, contrary to [OPM guidance](#) issued last fall, the posting did not mention whether the jobs were eligible for union membership or that the positions would be represented by the Association of Administrative Law Judges.

Hinkle declined to answer questions about why the agency failed to mention the positions’ bargaining unit status.

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