

**United States Senate**  
WASHINGTON, DC 20510

April 5, 2022

Dr. Kilolo Kijakazi  
Acting Commissioner  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235

Dear Acting Commissioner Kijakazi:

We are writing to raise questions regarding the exclusion of certain Social Security Administration (SSA) Administrative Law Judges (ALJs) from the bargaining unit represented by the Association of Administrative Law Judges (AALJ), IFPTE Judicial Council 1, the duly certified bargaining unit representative of SSA ALJs since 1999.

In 2007, SSA began soliciting ALJ applicants for newly created National Hearing Centers (NHCs). The purpose of the NHCs was to help alleviate the growing backlog of claims by allowing remote video hearings at centralized sites. SSA recruited bargaining unit ALJs to fill the NHCs and continues to fill NHC positions with bargaining unit ALJs. The duties performed by NHC ALJs are the same as duties performed by bargaining unit ALJs, and primarily involve adjudication of hearing requests in connection with claims filed under the Social Security Act. However, SSA took the position that NHC judges were non-bargaining unit judges because, to some extent, they exercised supervisory authority over their assigned decision writer. The AALJ aggressively advocated for the inclusion of these ALJs in their bargaining unit and argued that these judges did not exercise the type of supervisory authority contemplated by the Federal Service Labor-Management Relations Statute (FSLMRS). 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.

Over the past 15 years, the AALJ has sought to address the hiring of non-union ALJs at NHCs. In 2008, the AALJ obtained a favorable arbitrator's decision that SSA improperly removed bargaining unit work and should recognize the AALJ as the bargaining representative of the NHC judges. However, that decision was overturned in 2011 by the Federal Labor Relations Authority (FLRA), which upheld the Regional Director's decision that NHC judges should be excluded because they ostensibly supervised their assigned decision writers. At the same time, however, the FLRA found that SSA committed an unfair labor practice by exhibiting a hostile demeanor toward the AALJ, failing to notify AALJ of their intention to establish the NHCs and the decision to unilaterally create them. 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.

We continue to have questions whether SSA committed an anti-union hiring practice when it created NHCs in 2007 and placed nonsupervisory ALJs into NHCs for the purpose of excluding them from the

AALJ bargaining unit even though all of the ALJs at SSA, both in hearing offices and NHCs, perform identical tasks and duties. As you know, the White House Task Force on Worker Organizing and Empowerment recently issued its report to President Biden recommending that agencies work with OPM to address “whether non-bargaining unit positions are correctly excluded from bargaining unit coverage” and to “correct the bargaining unit status of federal sector positions.” Acting on this recommendation is an opportunity to finally correct the anti-union exclusion of NHC ALJs from the AALJ bargaining unit.

We are encouraged that, under your leadership, SSA is prioritizing productive engagement with the agency’s federal employee unions. We also welcome President Biden’s commitment to making the federal government a model employer. With this in mind, we ask you to provide the following information regarding the NHC ALJs and the AALJ bargaining unit:

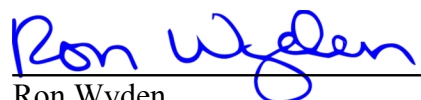
1. What administrative barriers exist to accreting nonsupervisory ALJs working at the NHCs into the existing AALJ bargaining unit?
2. It is hard to imagine any financial or other costs associated with moving NHC judges into the AALJ bargaining unit. If there are costs, please provide an explanation of those costs.

We look forward to your response and to working with you to support harmonious labor-management relations at SSA. We are confident that the agency and its union-represented workforce can work together to ensure a fair and effective system that fulfills the solemn promise of Social Security, meets the needs of the American people, and protects the rights of claimants, beneficiaries, recipients, and all who use SSA’s services.

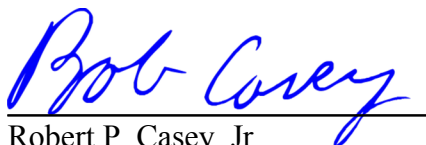
Sincerely,



Sherrod Brown  
United States Senator



Ron Wyden  
United States Senator



Robert P. Casey, Jr.  
United States Senator



Benjamin L. Cardin  
United States Senator

A handwritten signature in blue ink, appearing to read "Chris Van Hollen", written over a horizontal line.

Chris Van Hollen  
United States Senator