

USPS Seeks to Thwart Landmark FMLA Ruling

The Postal Service has filed a petition seeking to overturn a recent court ruling that invalidated USPS return-to-work requirements for employees with absences of more than 21 days. The APWU had hailed the July 19 ruling as a major victory in the fight to preserve workers' rights under the Family and Medical Leave Act (FMLA).

The USPS motion, filed Sept. 6 in the U.S. Court of Appeals, requests "reconsideration and rehearing" before the full Seventh Circuit Court, contending that a three-judge panel "erred" in a July 19 decision overturning a Postal Service return-to-work policy.

After concluding that USPS regulations are in conflict with the FMLA, the three-judge panel annulled the requirement that employees provide detailed medical documentation or submit to a medical examination by a physician selected by the Postal Service before being allowed to return to work from approved FMLA absences. (*See APWU News Bulletin #11-05.*)

"The provisions of the FMLA simply require an employer to rely on the evaluation of the employee's own health-care provider," the court said. "The FMLA and its regulations simply prevent an employer, including the Postal Service, from denying a return to work by an employee who has been absent on FMLA leave and who presents, upon his return, the requisite certification from his physician."

Employers who are party to collective bargaining agreements may establish different requirements than what is prescribed by the act, but such requirements must provide equal or greater protection than the law, the court ruled.

A week after this ruling, on July 26, the Postal Service issued a memorandum to its managers informing them that it would comply with the decision (*Rodney Harrell v. USPS, No. 03-4204*) only in those postal facilities within the three

states (Indiana, Illinois, and Wisconsin) subject to the Seventh Circuit Court's jurisdiction.

The APWU filed a national-level grievance on Sept. 2, protesting management's failure to apply the decision nationwide. "It violates the National Agreement," said Greg Bell, APWU's Director of Industrial Relations. "The Postal

Employers who are party to collective bargaining agreements may establish different return-to-work requirements, the July court ruling held, but only when such requirements provide equal or greater protection than the FMLA.

Service is trying to apply FMLA regulations differently from one state to another, from one postal facility to another."

"The Postal Service has an obligation to administer its leave policies, including FMLA leave policies, on an equitable basis for all employees," he said.

The petition for a rehearing is being supported by the Bush Administration, with Secretary of Labor Elaine L. Chao filing a brief in support of the USPS petition.

"It is the APWU's belief that the clear, consistent language of the Family and Medical Leave Act supports the panel's ruling," said APWU President William Burrus. APWU attorneys, who are representing the plaintiff in this case, have filed a response to the Postal Service's petition.

The parties are awaiting the appeals court's decision. As soon as more information becomes available, it will be posted to the APWU web site, www.apwu.org.

2000-2006 Agreement Available

The 2000 Collective Bargaining Agreement has been reprinted and now includes both the 2003 and the 2005 contract extension agreements.

The 2000-2006 APWU-USPS Collective Bargaining Agreement is available online from the APWU Store at www.apwu.unionwarehouse.com.

The price is \$3, and includes shipping and handling. Items ordered from the APWU store are shipped parcel post unless expedited shipping is ordered.

For expedited shipping, call (703) 631-4200, ask for APWU Insignia Products, and provide the method of payment.