



Vol. LXXIII, No. 3

THE GOVERNMENT STANDARD

May/June 2006

for current and retired government workers and their families since 1933
American Federation of Government Employees, AFL-CIO

AFGE Urges Congress to Change DHS Personnel System Rule

Rules Stripped DHS Employees of Collective Bargaining Rights

A FGE is urging Congress to modify the Department of Homeland Security's new proposed personnel system, saying department employees have a "great deal of anxiety and mistrust" about the measures DHS put in place.

In testimony before the House Homeland Security Subcommittee on Management, Integration, and Oversight about issues and procedures at the agency, National President **John Gage** said that the DHS personnel system, known as Max^{HR},

undermines collective bargaining and erodes civil service protections.

AFGE maintains that the process that led to the rules' development has served to undermine employees' confidence in the agency and left employees demoralized. The

union cited a survey conducted by the Center for American Progress that rated DHS at the bottom of 30 federal agencies for employee satisfaction, adequate resources, leadership, working conditions, and many

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AFGE Closely Watching Defense Department on Limited NSPS Implementation

Core of Controversial Personnel System Declared Illegal By Federal Judge in Early 2006

The Department of Defense has begun the process of converting a limited number of federal employees to its new personnel system, known as the National Security Personnel System (NSPS), and AFGE is watching the process closely.

DoD started its limited conversion April 30. It was prevented from a more exten-

sion conversion by a federal judge, who ruled in February in a lawsuit brought by AFGE and other unions belonging to the United DoD Workers Coalition that major provisions were illegal and could not be implemented.

U.S. District Court Judge Emmet G. Sullivan issued a ruling gutting NSPS provisions
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ELECTIONS NOTICE

AFGE will hold nominations and elections for the offices of National President, National Secretary-Treasurer and National Vice President for Women and Fair Practices at its 37th National Convention, which is being held on Monday, August 7, through Friday, August 11, 2006, at the Hyatt Regency Atlanta Hotel. The Hotel is located at 265 Peachtree Street, N.E., Atlanta, Georgia 30303-1294.

Nominations and elections will be conducted, and protests filed, in accordance with the "AFGE Rules of Conduct for an Election" as provided in Appendix A of the AFGE National Constitution, and with the Convention Rules, the current version of which is set forth in Appendix C of the AFGE National Constitution. All offices are for a three-year term.

NOMINATIONS: The Convention will convene on Monday, Aug. 7, at 10:00 a.m. Nominations shall be made by delegates in writing, stating the name of the candidate and signed by the delegate making the nomination. Under current Convention Rules, nominations shall be received by the chair of the Election Committee before 4 p.m. on Monday, Aug. 7. No person may be a candidate for more than one office.

QUALIFICATIONS: No person shall be a candidate for, or be elected to, national office unless he or she: has been a government employee for three consecutive years; has been a member in good standing of the Federation for the three consecutive years immediately prior to the date of nomination; and is not a member in any labor organization not affiliated with the AFL-CIO.

ELECTION: Under current Convention Rules, the polls will open to delegates for the election of officers from 7:30 a.m. through 11:30 a.m. on Wednesday, Aug. 9. Any required run-off election will be held immediately following the tally of votes.



John Gage

A Message from National President John Gage

Needed: A DHS System That Works for Everybody!

The following is an excerpt from President Gage's May 18 testimony before the House Homeland Security Subcommittee on Management, Integration, and Oversight.

The Office of Personnel Management (OPM) conducted its Human Capital Survey of Federal Agencies in 2004. An analysis of the results of that survey by the Center for American Progress found that the Department of Homeland Security came in dead last of the 30 agencies for employee satisfaction, adequate resources, leadership, working conditions and many other factors. DHS employees have the lowest morale of any group of federal employees.

This does not come as a surprise to AFGE. Since its inception, DHS has not been straightforward or honest in its dealings with its employees, the public, or the Congress.

On Nov. 25, 2002, President Bush signed the bill creating the Department of Homeland Security. This law has combined 22 federal agencies and 170,000 employees, over 30,000 of whom are represented by AFGE. Most of these employees had been working for the Immigration and Natural-

ization Service (INS) as Border Patrol Agents, Immigration Inspectors, Special Agents, and Detention and Deportation Officers.

A contentious issue during the debate on homeland security in 2002 concerned the supposed need for additional personnel flexibilities in connection with managing employees of the DHS. Section 841 of the Homeland Security Act authorized the establishment of a new Human Resource Management System and provided the administration with the ability to modify Chapter 5 of the United States Code in each of the following areas: pay, classification, performance, disciplinary actions, appeals, and labor-management relations.

The new law created a process for employee collaboration in the development of the new system but left the secretary of DHS with the final authority to impose changes over objections from unions or other employee representatives. In 2003, AFGE and representatives from the Office of Personnel Management and DHS spent six months exploring options and debating proposals to address pay, classification, performance, disciplinary actions, appeals and labor-management relations.

This was followed by a statutory "meet and confer" process over the regulations DHS proposed. DHS published its final regulations on Feb. 1, 2005. AFGE and others sued to block implementation, and in August 2005, federal Judge Rosemary Collyer ruled that major portions of the DHS regulations, including those involving collective bargaining, were an illegal violation of the terms set forth in the Homeland Security Act. DHS has appealed the judge's rulings, and thus the fate of the DHS personnel system remains unknown.

DHS has claimed that it created a new personnel system that ensured collective bargaining, as required by Congress. But the court has ruled that it has not ensured collective bargaining but rather eviscerated it.

AFGE has no confidence that DHS will do a better job with the other parts of MAX^{HR}

and create and implement fair, credible, and workable pay, performance management, and classification systems. DHS employees also have no confidence and a great deal of anxiety and mistrust about these new systems.

Our disappointment with the process of developing MAX^{HR} goes back over three years now. We participated energetically on the design team, the field review team, focus groups, town hall meetings, and the senior review committee, only to find proposed regulations published in the *Federal Register* that ignored almost all of the research, our ideas, and the views expressed by management and non-management employees alike.

We participated vigorously in the Meet and Confer process required by the law, only to find our proposals almost entirely ignored in the final regulations.

In our view, the administration needs to make fundamental changes in its approach to managing its employees: both in hiring new employees and in keeping valuable, experienced workers on the front lines.

As a first step, AFGE urges this committee to take a hard look at legislation introduced last year by Rep. Sheila Jackson Lee (D-Texas). This bill, H.R. 4044, the Rapid Response and Border Protection Act of 2005, would address long-standing problems that have hampered the effectiveness of front line Border Patrol Agents, Customs and Border Protection officers, and other federal law enforcement employees.

The courts and Congress should restore to DHS employees the important rights and protections eliminated by the new personnel regulations promulgated by the department. In particular, they should restore due process and collective bargaining rights to DHS employees. In addition, they should ensure that the new pay system to be developed by the department will not reduce overall pay levels for employees compared to those under the General Schedule in other federal agencies.

AFGE—The Government Standard

Vol. LXXIII, No. 3

May/June 2006

AFGE—The Government Standard (USPS 003-219, ISSN 1041-5335) is published bimonthly and is the official membership publication of the American Federation of Government Employees, AFL-CIO, 80 F Street, NW, Washington, D.C., 20001 Phone: (202) 737-8700, www.afge.org. John Gage, **National President**, Jim Davis, **National Secretary-Treasurer**, Andrea E. Brooks, **National Vice President for Women and Fair Practices**. **National Vice Presidents:** District 2-Derrick F. Thomas, (732) 828-9449; NY, NJ, CT, MA, ME, NH, RI, VT. District 3-Jeffrey R. Williams, (610) 660-0316; DE, PA. District 4-Joseph Flynn, (410) 480-1820; MD, NC, VA, WV. District 5-Charlotte Flowers, (770) 907-2055; AL, FL, GA, SC, TN, Virgin Islands, Puerto Rico. District 6-Arnold Scott, (317) 542-0428; IN, KY, OH. District 7-Dorothy James, (312) 421-6245; IL, MI, WI. District 8-Jane Nygaard, (952) 854-3216; IA, MN, NE, ND, SD. District 9-Michael Kelly, (405) 670-2656; AR, KS, MO, OK. District 10-Roy Flores, (210) 735-8900; LA, MS, TX, NM, Panama. District 11-Gerald D. Swanke, (360) 607-3735; AK, CO, ID, MT, OR, UT, WA, WY, Guam, Okinawa. District 12-Eugene Hudson, Jr., (760) 233-7600; AZ, CA, HI, NV. District 14-Dwight Bowman, (202) 639-6447; District of Columbia, Montgomery and Prince George's Counties in Maryland; Arlington and Fairfax Counties and the City of Alexandria in Virginia.

Produced by the AFGE Communications Dept.: Director, Enid Doggett; Web Site Developer, Rodrigo Munera; Communications Specialists, Kurt Gallagher, Emily Ryan & Jemarian Jones; Staff Assistant, Kim Kennedy. Union-designed by GO! Creative and union-printed by Mount Vernon Printing Co. Periodicals Postage Paid at Washington, D.C. **Postmaster:** send change of addresses to AFGE—The Government Standard, ATTN: AFGE Data Processing Dept., 80 F St., NW, Washington, D.C. 20001.



DHS Personnel System Rule

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other factors. AFGE also said that DHS, since its inception, has not been straightforward or honest in its dealings with its employees, the public, or the Congress.

When DHS was created in 2002, the rationale was to put all 170,000 of the agency's employees under one set of rules and policies. However, 60,000 of those employees who were Transportation Security Administration screeners were left outside of the system.

During the process for developing Max^{HR}, AFGE participated on the design team, the field review team, focus groups, town hall meetings, and the senior review committee. AFGE representatives also participated in the "meet and confer" process required by the law that created the Department of Homeland Security. And DHS employees, their unions, other employee organizations, and the public sent over 3,500 comments in response to the proposed regulations—the vast majority of which were negative.

In all cases, the views of AFGE and DHS employees "were almost completely ignored" in the proposed regulations published in the *Federal Register*. The proposed regulations ignored almost all of the

research, ideas, and views expressed by AFGE's professional and non-management members.

AFGE said also that since the final regulations were published, the union still has not been allowed to assume the role that Congress had intended when it wrote the law creating the agency.

In response to the regulations, AFGE and four other unions filed a lawsuit in early 2005 to block Max^{HR}. In August 2005, federal Judge Rosemary M. Collyer prohibited DHS from implementing the labor-relations portion of its new personnel system. DHS has appealed that decision.

AFGE said the court and Congress must intervene to restore the rights and protections eliminated by the new personnel regulations promulgated by the department, especially provisions guaranteeing due process and collective bargaining rights.

In addition, they should ensure that the new pay system to be developed will not reduce overall pay levels for employees compared to those under the General Schedule in other federal agencies, according to AFGE.

Limited NSPS Implementation

(continued from page 1)

pertaining to labor relations, collective bargaining, independent third party review, adverse actions and DoD's proposed internal labor relations panel, the National Security Labor Relations Board.

As a result, DoD could only implement the performance management, compensation and classification, staffing and workforce shaping provisions of the system's human resources component for 11,000 Spiral 1.1, non-bargaining unit employees.

DoD planned to implement NSPS in the spring of 2005, but legal challenges from AFGE and other unions forced several delays, culminating in Judge Sullivan's February ruling.

AFGE May 1 filed an appeal with the U.S. District Court for the District of Columbia to broaden its victory against DoD's planned personnel rules. AFGE's action was a counter appeal to DoD's appeal of Judge Sullivan's February ruling. A hearing is expected this fall.

"Judge Sullivan issued a fair decision affirming the basic labor law principle that a union contract binds all parties to it," said AFGE Assistant General Counsel **Joe Goldberg**. "This principle is essential for labor contracts to be enforceable. However there are provisions of NSPS that are allowed to stand under the decision. DoD's appeal provides an opportunity for a judicial reconsideration of those remaining provisions."

AFGE will challenge a provision of NSPS limiting the issues subject to contract negotiations. AFGE also will argue that DoD did not engage unions in a meaningful consultative process to develop NSPS.

"There were lots of meetings, but the unions received virtually no feedback from DoD representatives at any of them," said Goldberg. "Those meetings don't qualify as a consultative process because DoD representatives refused to engage union representatives in any sort of exchange of ideas or meaningful discussion of proposals."

If fully implemented, NSPS would affect more than 700,000 DoD employees.



Photo by David Alexander

AFGE members joined other unions' representatives in a week-long institute held at the George Meany Center on the Department of Defense's National Security Personnel System and other labor relations issues affecting unions representing workers in the federal sector. The AFGE members were Bryce Davis, Brenda Dawson, and Ben Robins.

AFGE's Social Security Council Opposes New Rules on Disabled Persons

Union Analysis Finds Thousands Could Be Denied Benefits

New Social Security disability regulations could increase the number of Americans with legitimate disabilities who are denied their benefits, according to AFGE's National Social Security Council

"The new rules play games with organizational charts but fail to get serious about improving service to disabled Americans," said **Witold Skwierczynski**, council president. "Right now the biggest problem of the current process is the first step, which involves a medical decision by state Disability Determination Services (DDS). The current process involves very little contact or interaction with the disabled applicant, which is frustrating for the disabled and

results in inconsistent outcomes from state to state. Unfortunately, Commissioner Jo Anne Barnhart did not address any of the problems that plague the state DDS system."

Skwierczynski said the failure of the Social Security Administration (SSA) to address these problems makes the appeals process necessary. These problems have been highlighted in testimony to Congress by AFGE, countless disability organizations and advocates, and the Government Accountability Office. Instead the rules implement changes that will make the appeals process more litigious while failing to protect the rights or financial well being of people with disabilities.

"These new rules will make the Social Security Administration operate like an HMO when it comes to processing disability claims: deny, deny, deny," said Skwierczynski. "The result of these new rules will be simple: Fewer disabled Americans will get the benefits they deserve, and more people will be forced to hire a lawyer in an attempt to secure those benefits."

AFGE's National Social Security Council, officially known as the National Council of SSA Field Operations Locals (AFGE Council 220), represents about 28,000 employees of the Social Security Administration who work in field offices and national calling centers.

AFGE Wins Arbitration Ruling on Behalf of Local President

AFGE has won an arbitration ruling on behalf of Local 2113 President **Lorraine Tuliano** and nullified the 30-day suspension imposed against her by the Naval Air Systems Command (NAVAIR) in Orlando, Fla.

Arbitrator James Sherman fully sustained the American Federation of Government Employees' (AFGE) grievance on Tuliano. Her 30-day suspension was proposed as a removal, although it began as a proposed suspension of 14 days; specious charges were added to make it appear more serious. Tuliano is the vice-chair of the Defense Conference (DEFCON) Steering Group Caucus for the Navy and the principal spokeswoman for Navy locals represented by AFGE on issues related to the Department of Defense's planned personnel system, known as the National Security Personnel System.

Sherman found that with respect to an "inappropriate behavior" charge, investigators were biased, the supervisors conducted an incomplete and biased investigation, and Tuliano acted reasonably and responsibly in protecting the interest of a bargaining unit employee being escorted

from the facility and deserved a civil reply to what was happening to him.

On a charge of failing to follow orders regarding a time card, the arbitrator said Tuliano entered her time card properly and in a timely manner and said the supervisors in this case focused on "minutiae." The arbitrator added that they easily could have resolved any confusion regarding her authorization to use official time with one phone call. Finally, on an "insubordination" charge, the arbitrator said the supervisor's order was not specific or clear and Tuliano's conduct was not willful or deliberate.

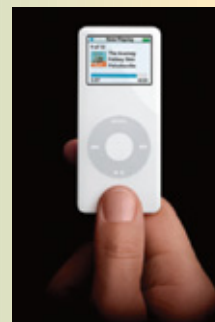
According to AFGE District 5 Assistant General Counsel **Stuart Kirsch**, "NAVAIR brought frivolous charges against Tuliano, motivated by vindictiveness and anti-union animus for her participation in NSPS and partnership meetings. In demonstrating its bad faith, NAVAIR had the audacity to take a proposed suspension and elevate it to a proposed removal after AFGE interceded on her behalf."

NAVAIR is required to pay in full for the arbitration, Tuliano is to be made whole for all losses, and AFGE will seek attorney fees for its involvement in this case for over 18 months.

And the Winner of the iPod nano Is:

The Membership and Organization Department (M&O) is pleased to announce that **Pedro A. Miranda**, member of AFGE Local 3369 in New York City, has won the free iPod, courtesy of the Member Benefits program and Apple computer.

Pedro's name was drawn by computer from a total of 1,236 members who had entered the drawing. Pedro had this to say: "Thanks, AFGE; my daughter can now have her pink mini iPod back! No more sharing; I finally got one of my own!"



Union Member Rights and Officer Responsibilities under the Civil Service Reform Act

The standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA), among other statutes, guarantee certain rights to members of unions representing Federal employees and impose certain responsibilities on officers of these unions to ensure union democracy, financial integrity, and transparency. The Office of Labor-Management Standards (OLMS) is the Federal

agency with primary authority to enforce many standards of conduct provisions. If you need additional information or suspect a violation of these rights or responsibilities, please contact OLMS at 1-866-4-USA-DOL. You should also refer to 29 CFR 457.1 - 459.5, and your union's constitution and bylaws for information on union procedures, timelines, and remedies.

Union Member Rights

Bill of Rights—Union members have:

- equal rights to participate in union activities
- freedom of speech and assembly
- voice in setting rates of dues, fees, and assessments
- protection of the right to sue
- safeguards against improper discipline

Collective Bargaining Agreements—Union members (and certain nonunion employees) have the right to receive or inspect copies of collective bargaining agreements.

Constitutions, Bylaws, and Reports—Unions are required to file an initial information report (Form LM-1), copies of constitutions and bylaws, and an annual financial report (Form LM-2/3/4) with OLMS. Unions must make these documents available to members and permit members to examine the records necessary to verify the financial reports for just cause. The documents are public information and copies of reports are available from OLMS and on the Internet at www.union-reports.dol.gov.

Officer Elections—Union members have the right to:

- nominate candidates for office
- run for office
- cast a secret ballot
- protest the conduct of an election

Officer Removal—Local union members have the right to an adequate procedure for the removal of an elected officer guilty of serious misconduct.

Trusteeships—A union may not be placed in trusteeship by a parent body except for those reasons specified in the standards of conduct regulations.

Protection for Exercising CSRA Rights—A union or any of its officials may not fine, expel, or otherwise discipline a member for exercising any CSRA right.

Prohibition Against Violence—No one may use or threaten to use force or violence to interfere with a union member in the exercise of his or her CSRA rights.

Union Officer Responsibilities

Financial Safeguards—Union officers have a duty to manage the funds and property of the union solely for the benefit of the union and its members in accordance with the union's constitution and bylaws. The union must provide accounting and financial controls necessary to assure fiscal integrity.

Prohibition of Conflicts of Interest—A union officer or employee may not (1) have any monetary or personal interest or (2) engage in any business or financial transaction that would conflict with his or her fiduciary obligation to the union.

Bonding—Union officers or employees who handle union funds or property must be bonded to provide protection against losses if their union has property and annual financial receipts that exceed \$5,000.

Labor Organization Reports—Union officers must:

- file an initial information report (Form LM-1) and annual financial reports (Forms LM 2/3/4) with OLMS.
- retain the records necessary to verify the reports for at least five years.

Officer Elections—Unions must:

- hold elections of officers of local unions by secret ballot at least every three years.
- conduct regular elections in accordance with their constitution and bylaws and preserve all records for one year.
- mail a notice of election to every member at least 15 days prior to the election.
- comply with a candidate's request to distribute campaign material.
- not use union funds or resources to promote any candidate (nor may employer funds or resources be used).
- permit candidates to have election observers.

Restrictions on Holding Office—A person convicted of certain crimes may not serve as a union officer, employee, or other representative of a union for up to 13 years.

Loans—A union may not have outstanding loans to any one officer or employee that in total exceed \$2,000 at any time.

Homeland Security Union Puts CBP Officer Back to Work

AFGE Wins Wrongful Termination Case

A Customs and Border Protection officer is back on the job thanks to the efforts of AFGE, which recently won an arbitration involving the officer's removal from his position.

The officer was a legacy Immigration and Naturalization Service employee working at a border crossing station in Vermont. During a routine vehicular check, the CBP officer was asked to conduct a secondary inspection of a car with two men: one a permanent resident, the other not.

Using CBP computers, the CBP officer uncovered material regarding prior criminal activity of one of the men. The officer printed the material and placed it, along with other printed information that described the nature of the offense and copies of the men's driver's licenses, into a folder. He returned to the public waiting areas where he had left the men and interviewed them there.

Six months later, the CBP officer was served with a proposal for his removal from the service based on unauthorized disclosure of law enforcement sensitive information. The agency charged that the officer printed "law enforcement sensitive records" and showed them to the men being questioned.

AFGE Local 2076 President **Maureen McManus** contacted CBP Director of Field Operations Steven Farquharson and demanded arbitration on behalf of the officer. CBP rejected and returned the demand for arbitration, at which point McManus took advantage of AFGE's attorney services. AFGE Attorney **Angelia Wade** re-invoked arbitration when she argued on behalf of the CBP officer and sought reinstatement of the grievant and back pay with interest to the date of termination.

During the arbitration, two witnesses said that they saw the officer showing the subjects paperwork but admitted they could not confirm that the materials were the sensitive records and not the other printed information. The arbitrator found for AFGE, stating that there was "no direct proof that the material [the grievant] showed the aliens was protected information," so the charge

must be set aside. The arbitrator ordered that the officer be reinstated within two weeks with full back pay and benefits.

"This decision should cause DHS to rethink how it treats its employees and that effect on the public," Wade said. "If you have employees accusing one another of very serious misdeeds, without proper jus-

tification, and the agency acting on those accusations but without proper investigation, then that translates to a confused and chaotic workplace. The public has to question the integrity of an agency that is quick to believe and prosecute such serious allegations but slow to properly investigate them."



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AFGE Launches Ad Campaign to Increase Staffing, Funding at EEOC

A FGE recently launched a national awareness campaign to highlight the crisis in staffing and funding at the Equal Employment Opportunity Commission (EEOC), the agency charged with protecting employees and job applicants from workplace discrimination.

"The EEOC is in a state of crisis because it doesn't have the tools it needs to do its job," said AFGE National Vice President **Andrea Brooks**. "If the EEOC doesn't have the staff or funding to investigate and litigate workplace discrimination cases, the jobs of millions of Americans are in jeopardy."

AFGE's national awareness campaign includes radio and newspaper advertisements targeted to adults 35 years and older in major U.S. cities. The radio ads will be broadcast on Radio One radio stations, while the newspaper advertisements will appear in a variety of daily and weekly newspapers.

The radio ads describe the EEOC crisis while the newspaper ad features the slogan "What are you going to do when they come for you?" above a picture of a group

of multiethnic men and women with the word "Fired" written across the faces of some group members.

AFGE believes workplace discrimination is still running rampant in some organizations and will use its EEOC campaign to show that the problem encompasses more categories than just gender and race. In addition to highlighting staffing and funding issues, the AFGE campaign will also stress the agency's role in fighting against other types of workplace bigotry such as ageism, religious intolerance, and disability bias.

The EEOC is experiencing significant staff attrition and has a backlog of cases numbering in the tens of thousands. The agency's own budget projections estimate that the backlog will grow to nearly 48,000 in fiscal year 2007. Additionally, the EEOC has lost 20 percent of its workforce, and a hiring freeze has been in effect since 2001. Despite this situation, the administration

still wants to cut the EEOC budget for next year by \$4 million.

AFGE's EEOC radio and newspaper ads were broadcast and published in the following cities: Atlanta; Austin, Texas; Baltimore; Birmingham, Ala.; Cheyenne, Wyo.; Chicago; Dallas; El Paso, Texas; Los Angeles; Miami; Montgomery, Ala.; New York; San Francisco; and the Washington, D.C., metro area.

In addition to the advertising piece, the campaign features a new Web site, www.protectyourjob.org. The Web site features information about the campaign, AFGE and its Women's and Fair Practices Department, and the campaign advertisements. Additionally, the Web site hosts an EEOC campaign blog and links to letters demanding more funding for the EEOC that can be sent directly to members of Congress with the touch of a button. The Web site also features a list of civil rights organizations representing a variety of interests and issues.



DELL FLAT SCREEN TV SWEEPSTAKES

We're giving away a Dell 32-Inch LCD HDTV!

AFGE members are invited to enter a sweepstakes for a chance to win a new Dell™ 32-inch LCD HDTV 27-inch **Dell Flat screen TV**, courtesy of the Member-Only Benefits program and Dell Computer.

Enter online or by mail. Go to the Member Benefits section of the AFGE Web site: www.afge.org, or send your name, address and Local number to: AFGE, M&O Department, 80 F Street, NW, Washington, DC 20001. **Entries must be received by August 1, 2006.** The winner will be announced at the AFGE Convention in Atlanta.

The Dell Employee Purchase Program (EPP) offers AFGE members 10% discount on all Dimension™ and Inspiron™ systems. The EPP discounts are taken on top of most generally advertised Dell Home Sales prices and promotions (some consumer special offers and coupons may be excluded). Members also receive 3-5 day shipping and 24/7 telephone technical support. Order online or by phone. Call 1-866-257-4711 or visit www.afge.org. To receive your AFGE discount, use member ID: CS33585924 and coupon code WQ0SP4CNHCRFLN at checkout.

At-home service provided via third-party contract with customer. Technician will be dispatched if necessary following phone-based troubleshooting. Availability varies. Other conditions apply.



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AFGE

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