

-----Original Message-----

From: Friedman, Howard
Sent: Friday, July 26, 2002 1:58 PM
To: Bargaining Unit
Subject: FW: Anne Chasser's Letter

Here is Frank Ferris' response to Commissioner Chasser's letter of yesterday. I think it speaks for itself. We will be in touch today or early next week with additional thoughts on our game plan.

Howard

-----Original Message-----

From: Fferr@nteu.org [mailto:Fferr@nteu.org]
Sent: Friday, July 26, 2002 11:48 AM
To: Howard.Friedman@uspto.gov
Cc: Shump@nteu.org; Sqhar@nteu.org
Subject: Anne Chasser's Letter

Thanks for sending over a copy of Anne's "huff-and-puff" piece. Letters like this are typical from management at this stage of bargaining as they try to convince employees that their union is run by Weird Al Yankovich while management is working at the right hand of God--or at least her chief of staff. I guess she is hoping that if she can shift the conversation to the issue of blame employees will miss the fact that under the "great management offer" they will still be fired on September 30.

Experience tells me that the way to assess these kinds of communications is based on the number of misstatements (lies) and omissions. Let's try it to see how high a score she gets.

First, there is that comment about the workload being down again that we heard them chant throughout bargaining. As we both know, that is clearly wrong. Their own projections show workload going up as is the pendency rate and other key measures. We may be down from some historical peak, but this place is not as productive as it used to be or promised to be. Firing people is only going to make a mess of things.

Second, she seems pretty confident that this RIF will take place on their schedule as she so eloquently threatens employees to plan on it. Of course, this ignores the fact that the FLRA might insist that they complete bargaining before they do anything with this RIF. A few years ago the Court of Appeals dealt with a unilaterally implemented agency RIF done prior to completing bargaining and announced that the standard remedy in the future will be status quo ante orders. My favorite words were that "federal agencies... should not think that they can disregard...collective bargaining obligations at the risk of no more than a slap on the wrist." (See 785 F2d. 333.) In short, even if management carries out this RIF, the odds are that they have to rehire and/or pay people for all monies they would have received up until we actually get an agreement. I notice Anne did not bother to include this major liability in her assessment of how the UNION screwed-up.

Third, speaking of cases to be filled, she also conveniently left out that the union's statistical analysis shows that this RIF adversely impacts women and minorities. The agency has certain obligations in the face of this evidence and its liabilities only go up if they ignore the data and the procedural requirements that follow. I wonder if they even suspect that this is another possible source of a temporary relief order being issued?

Fourth, how about that bold-face lie (sorry, Anne, but a lie is a lie even when it comes from executives who like to mention God a lot) that we would not talk about anything but ground rules. We spent hours talking about our information request and the impact of the adverse impact on the issues before us. We spent hours reviewing or listening their three offers or "non-offers". I guess they think that if they repeat their version of what they hoped would happen it will actually come true.

Fifth, I notice that she omits any mention of managers being RIF'd. Do you think she believes that no one has noticed that 40% of the employees are unneeded, but that all the manager are still vital to success? I wonder how they sustain an argument in front of an arbitrator that this is a workload driven RIF, but that they still needed the same overhead staff? Their day is coming and I bet it is by the New Year--or as soon as someone points out to OMB that there is a lot of cash to be saved by cutting managers.

Sixth, I think the thing I resent the most is Anne hiding the fact that this great management offer required employees to waive all legal rights to challenge the RIF--even their civil rights. In other words, even if this RIF is littered with violations of law, employees have to give up the right to do anything to get relief in return for agreeing to be fired the same day management originally said they would be fired. If management were so sure they were doing everything correctly, demands for waivers of legal rights would not be on the table.

Seventh, there was no mention of the fact that this RIF is a smoke screen to replace lawyers with paralegals on the theory that much of what you do is no longer the practice of law. It is not about workload, but getting away from the assumption that trademarks involve the practice of law. I totally understand why given that there are many employees and supervisors today who withdrew from their bars on the advice of a certain high-level manager. Since it appears that you need to be a member of a bar to hold yourself out as an attorney, it is arguable that a lot of trademarks were signed off by people actually engaging in the unauthorized practice of law--at management's prompting. As I said, I understand why she wants to cover this up, but it is still a cover-up that we know they know about. It will be interesting to see the fallout from this Pandora box they have opened.

Eighth, oddly, Anne never mentioned that their big offer appears to be illegal. Does anyone else know of a regulation that permits management to give employees 60 days of administrative leave? We don't. So, if we took the offer giving employees the leave, any fool off the streets could file a claim with OPM or the Comptroller General demanding

employees repay the money and they would have to do so. I wonder where they would get the money to repay the 60 days of salary? Maybe there is a special unemployment insurance fund I do not know about.

Ninth, she conveniently omits from her tale of the facts that her management team refused to bargain with us for one of the three days we spent at the table. As she sees it, the union is at fault for exercising the contract clause that permits it to declare impasse early, but management is not at fault for refusing to meet with the union for more than a third of the time we set aside to bargain.

Tenth, I will stop before I get to double digits with more and more abuses of the true, complete story. It is obvious that some management spin-doctor is working her like a hand puppet having her sign whatever is put in front of her. That's too bad. There are only a few defining moments in life where we get to brightly show our true character, our ethical core, and our moral center. This is Rogin's and Anne's. The least employees are entitled to expect is the truth, fair dealings, and a little compassion. Let me know if you find any coming from them. Look particularly closely at the references Rogan constantly makes to God to see if this guy "walks the talk" or just hopes that if he genuflects enough in life he will get a water-side lot in heaven.