

July 15, 2002

Via FAX and E-mail

Joyce Ong,
Chief, Labor Relations Division
Office of Human Resources
U.S. Patent and Trademark Office
Washington, D.C. 20231

re: RIF Bargaining

Dear Ms. Ong:

At the outset, let me thank you for your prompt response as well as for your substantive responsiveness. Your willingness to schedule the bargaining during the period of July 23-25 is acceptable to us. However, given some of the issues you raised in your response, I feel a need to respond.

First, I disagree with your characterization that NTEU is “stalling” bargaining. Article 6, Section 3 of the contract required us to be involved in any significant reorganization much earlier than you did involve us. Because the leadership of TMS chose to ignore that provision, we are months behind in our discussions. Beyond that, it was your staff that incorrectly refused to recognize me as a representative of the unit and, as a result, another two weeks of delay were added to the process as we sought to reschedule a clarification session. As I look down the road at the likely pace of bargaining, the most probable cause of delay will be your team’s decisions--

- not to give us at the outset of discussions in June a management bargaining proposal to which we could respond,
- not to be prepared to discuss with us the inextricably RIF-related reorganization of work that will occur co-terminus with the RIF,
- not to respond to our information request in advance of bargaining, and
- not to avoid the potential delay a ground rule dispute could have by simply discussing ground rules with us to see if agreement is even possible.

Second, I want to formally disagree with your interpretation of the contract clause, “Unless the parties agree otherwise.” While I see the words as recognition of a likely need to negotiate, you apparently see them as a waiver of

our right to negotiate despite the past practice of doing so and despite the fact that the current contract words do not address key ground rule questions. While we agree to move forward on July 23, we reserve the right to challenge that decision as you will see below. We also will continue to keep the ground rule issues on the table. I am willing to meet for some portion of Wednesday July 17 at your offices (or at the FMCS offices) to try to address ground rule issues to get them out of the way. If you continue to refuse to even discuss them, we will participate in your unilaterally imposed ground rules for bargaining under protest.

Along these lines, you should be aware that we do not think bargaining is limited to just three days. The contract says that three days or one week is appropriate, and we certainly believe we will need more time than three days. Moreover, you assume that this change involves just one change of working conditions. We do not agree. We see several change issues on the table and we plan to take the time the contract allows us.

Third, we are not refusing to bargain as you allege. If anything, we are eager to begin bargaining over the core of the dispute. That is why we have asked for certain information before bargaining even begins and suggested that you give us counter-proposals even before we get to the table. There are steps management can take to expedite bargaining, yet your team seems to be ignoring all of them.

Fourth, while I am willing to meet during the period of July 23-25, it will require that I cancel up to seven meetings, one of which is at the request of the Comptroller General. I will ask again that your staff be encouraged to meet with us to develop a bargaining schedule (including location) that is realistic. While it appears that Tuesday through Thursday may be our designated bargaining days, nothing says that they have to be in the same week or in a row. Moreover, nothing says where we have to bargain, what facilities must be available to the parties, etc.

Finally, I want to address the not-so-veiled-threat that you plan to take RIF-implementing steps on July 31 and September 30 because you expect bargaining to be completed by that date. While I admire your optimism, I ask that you recognize that no changes are to be implemented until we have finished bargaining. In addition to the law, our own contract makes it clear that bargaining must be completed, “. . . prior to implementing any changes in employment.” (See Article 33, Section 1) I am sure you know that NTEU will insist on a status quo ante remedy, including back pay and attorney fees, if the agency prematurely implements. Consequently, if speed is your goal, I think the wisest course of action would be for the agency to instruct its management team to respond to all reasonable union requests early and take whatever steps it can to avoid time-wasting side disputes. We will not accept “bargaining out” violations of law or contract as part of the pending substantive RIF negotiations as other management representatives recently suggested we might do. We insist that the

agency comply with its obligations as a matter of law and contract (as opposed to some agreement you might let us negotiate in the future) or risk the consequences. As I am sure you can tell, NTEU is taking all necessary steps to make sure the record is clear as to what we have requested and what we have put you on notice of on what dates.

Sincerely,

Frank D. Ferris
Designated Representative
National Executive Vice President