

July 26, 2002

Via Fax @ 703-308-9395 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:

I received a memo yesterday from your bargaining team over an unreadable signature. It alleged that we refused to bargain over anything but the ground rules. Since you were not there and are likely relying only on what your team chose to tell you, let me give you another perspective on this issue of whether NTEU “refused” to deal with substance.

First, the first three hours of bargaining were devoted to us reviewing and caucusing over a management “settlement document” that dealt with the substance of this RIF. We did not have to read this at that time since no one in management had yet addressed the proposals we gave you two weeks ago. But, we “agreed” to do so when your consultant promised that if we read it, he would immediately begin talking about the ground rules and information request. We read it, but he refused to open discussions on the ground rules or information until we responded. We did not owe him a response under the contract, law, or our ad hoc table agreement. So, we further listened to him withdraw that offer we had just spent time on. That had nothing to do with the ground rules.

Second, there was a conversation wherein we told the consultant that we believed much of his “settlement” was illegal and that was why we needed more time to consider it. He then explained why parts were legal, but not to our satisfaction. We even talked about his characterization of the settlement as a “non-collective bargaining offer” since we had never heard that term before and challenged his view of the law. That had nothing to do with the ground rules.

Third, we then received another written offer from management and took time to review that in caucus. That had nothing to do with the ground rules.

Fourth, we invited your team to meet with us at NTEU headquarters on the second day of bargaining, but they refused to show up—arguably in violation of the contract. So, we took a caucus to identify what we would need in a final deal if we ever got to talk about one. That had nothing to do with the ground rules.

Fifth, we jointly talked about our information request and responded to management’s request for more justification on one issue by preparing a statistical analysis and giving it to them along with an oral explanation of what they were reading. That had nothing to do with the ground rules.

Sixth, we listened to your consultant's offer to put the "Settlement" document on the table once again if we agreed to do certain things. That had nothing to do with the ground rules.

Seventh, we told management that we were prepared to give them a substantive response to their "settlement document" on Thursday afternoon at NTEU headquarters. We spent time telling them that they should not be optimistic, but that we would tell them where their effort was lacking and that there might be "potential." In fact, I believe I told them that having seen what our team would ask for, I would sign the deal if I were management. Management refused to come to NTEU where we had caucused only a day earlier. That had nothing to do with the ground rules.

Eighth, we talked for quite a while about the "ins-and-outs" of particularized need. That had nothing to do with the ground rules.

Ninth, we talked about how the parties would talk about the various proposals since our contract does not address whether you have to respond to our proposals before we comment on yours. We also talked about where to meet and other ground rule issues not addressed in the contract. **This was about ground rules.**

So, I hope you will ask your staff how they reached the conclusion that NTEU ". . . insisted as a precondition that the parties bargain ground rules." We spent a lot of time on subjects other than ground rules, and you had my letter agreeing that I would bargain under protest if you did not address our ground rule proposals. I assume that you can give that letter to FMCS or FSIP to hold me to that promise, although I will pursue other legal remedies. (Of course, without answers to some ground rule issues not addressed in the contract, it will be harder to get a smooth flow to discussions, which is precisely what we saw.) Your team's July 25 letter correctly stated that as the NTEU team went to lunch I communicated that we ". . . might return or take some other action." We took the action provided for in our contract and the law of declaring an impasse.

I hope that you will join us at FMCS as the contract and law require. As I notified you yesterday, I have petitioned FMCS to give us assistance with the dispute over particularized need as well as the substance of the proposals. Attached is the petition. It would indeed be ironic if you violated the contract ground rules concerning FMCS on the grounds that NTEU availed itself of another contract provision, i.e., declaring an early impasse. We could have done that in the first minutes of our Tuesday meeting and not have had any of these conversations or exchanged any of the documents that went back and forth between the parties.

Sincerely,

Frank D. Ferris
National Executive Vice President

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