

June 13, 2002

VIA HAND DELIVERY

Joyce Ong, Chief  
Labor Relations Division  
U.S. Patent and Trademark Office  
2011 Crystal Drive, Suite 612 (CPK1)  
Arlington, VA 22202

RE: Bargaining over the RIF at the U.S. Patent  
and Trademark Office

Dear Ms. Ong:

This letter is written to formally request that the Office rescind several unilateral changes already made in connection with the RIF because NTEU was not given advance notice of these changes nor an opportunity to bargain in advance of the changes. There are two primary changes that we wish to address at this time.

First, it was improper to unilaterally impose a freeze on promotions and other personnel actions in anticipation of the RIF. A freeze is a change in working conditions. As such, we were entitled to notification and the opportunity to bargain in advance of the freeze. (AFGE and FLRA, 785 F.2d 333 (D.C. Cir. 1986)) I recognize that regulations might advise the Office to impose a freeze at some point, but those regulations do not override our statutory right to notification and the opportunity to bargain in advance of such changes. The Office can meet its obligation to bargain and impose the freeze at a later date pursuant to an agreement or if it is so required by law.

Aside from the argument that the unilateral implementation of the freeze violates law, it also violates the contract and past practice. A career ladder promotion is a ministerial act implementing an agency's earlier decision to place employees in a career ladder position with the intention of preparing the employee for successful noncompetitive promotions when the conditions prescribed by agreement or regulation are met. Once an agency agrees to the conditions pursuant to which a career ladder promotion will be granted, the promotion cannot be withheld without a lawful reason. (U.S. Department of Housing and Urban Development, Regional Office, Atlanta, Georgia and AFGE, Local 1568, 41 FLRA 520, 526 (1991)) Pursuant to the contract and past practice, our bargaining unit members have nondiscretionary rights to be promoted to the

next level in their career ladder once they satisfy certain conditions. Where those conditions have been met we expect that the promotions will be timely made.

The second change I specifically want to address at this time is the verification of employee records. This process must be negotiated with NTEU. (Department of the Treasury, Internal Revenue Service, Washington, D.C. and NTEU, 97 FLRR 1-6526 (1997)) Indeed, you will find the matter addressed in our pending proposals. Consequently, I ask that the Office rescind the current process and give us the opportunity to bargain over the issue. To do less would be a violation of law.

Terminating an employee is a very serious matter that will not soon be forgotten by that employee nor those who remain after the RIF. While we may have different goals as we go through this process, I hope that the Office will rigorously avoid any violations of law or other requirements. Employees are entitled to a fair process. During this difficult time it would provide great comfort to those faced with the prospect of losing their jobs if the Office would communicate its intent to respect all requirements.

Sincerely

Frank Ferris  
National Executive Vice President  
and  
Designated NTEU Chapter 245  
Representative

Howard Friedman  
President, NTEU Chapter 245  
A Designated NTEU Representative