

From: Friedman, Howard [Howard.Friedman@USPTO.GOV]
Sent: 02/19/2009 8:18 AM
Subject: FW: Filings/Work Load
Attachments: Quality Proposals (3).doc; DETAILS AND WORK PROJECTS.doc; Training Time Proposals.doc; Bonus cap projections 2.doc

This is what we sent to the 10th floor a few minutes ago ahead of our meeting with them at 8:30. Thanks for your input. Thanks also to the E-Board, listed on the cc line.

As a reminder, our Executive Board will be meeting with you at 1:30 today in the Madison North Auditorium. We can let you know then what was discussed this morning.

Bottom line: The office needs to take action now. The attachments are our suggestions for how that can be done.

Howard

From: Friedman, Howard
Sent: Thursday, February 19, 2009 8:10 AM
To: Cohn, Debbie; Williams, Ron (TM); Hershkowitz, Meryl
Cc: Beresford, Lynne; Marsh, Sharon; Vasquez, Jennifer; Friedman, Howard; Estrada, Linda; Sapp, Heather; Biddulph, Heather; Tripi, Cynthia; Severson, Karen; Feldman-Lehker, Dawn; Faint, Catherine
Subject: Filings/Work Load

Attached are documents that we think will aid our discussion.

The attachment entitled Quality Proposals outlines bonus proposals that will encourage greater focus on quality. We have tailored some of the proposed programs for immediate introduction this quarter.

The attachment entitled Details and Work Projects lists suggested details and work projects that will facilitate inventory management.

The attachment entitled Training Time Proposals lists training activities for which we feel an adjustment should be provided. While this is close to what we have provided to you before, we thought it would be helpful to send this all together.

We believe the Office should be taking additional action now to build up inventory so that the current downturn in filings does not result in an unacceptably low inventory of unexamined classes. As we all know, the current PAPs are more heavily weighted toward production than were the PAPs in force in 2001; and we have about the same number of attorneys now as we had then. We are experiencing a precipitous decline in filings compared to FY 2008, and all indicators point towards the economy getting worse for some time, which will lead to a further decline in filings. Just a few weeks ago the Office represented to the entire examining corps that bonuses

were secure. But the Office abruptly did an about-face last Friday due to the drop in the Gross Domestic Product (GDP) for the 4th quarter of 2008 (1st quarter of FY 2009). It is our belief that the Office needs to take further action now and not wait for monthly filing numbers or the GDP numbers for the first quarter of calendar 2009, which seems to be the intended course of action.

In support of this approach, we have undertaken our own economic analysis. See the attachment entitled Bonus cap projections. While I know the Office does not like to talk about 2001-2002--or hear us lament about how we got where we are today --one of the primary reasons our attorneys are reliving the anxiety of 2001-2002 is the current pendency range target (2.5 - 3.5 months from filing to first action). In 2001, the Office saw about a 21% decrease in filings. Pendency then dropped from 5.7 months at the end of 2000 to 2.7 months at the end of 2001-- a 3-month drop in one year. The last RIF occurred when we hit 2.7 months pendency at the end of FY 2001 (though we were at 4.0 months in May 2002, 4.3 months at the end of FY 2002, and 5.4 months at the end of FY 2003). That is exactly where we were at the end of January...2.7 months. Further, the present bottom range of the Office's current pendency mandate is 2.5 months. That is actually .2 months lower than where we were at the end of FY 2001 -- a level which then precipitated the RIF. In view of how low the pendency range is set, it leaves very little room for the Office to address volatile economic cycles that result in a recession, let alone a severe recession. In spite of lessons hopefully learned in 2001-2002, when your pendency target is so low and you have hired this many attorneys, the economy does not have to go south too long before you deplete your supply of unexamined cases. **Our projections show that the best way-- maybe the only way, depending upon how filings shake out, how many attorneys will be put on detail, etc.-- to keep examination rates in line with projected filings is to reduce production.** The Office should not blindly adhere to their model and ignore suggestions designed to ensure that catastrophe is averted.

There are many ways production can be reduced. The simplest and, we believe, the most effective way, is to simply to change the standard. But the Office could also provide adjustments for training time and give time off for sick and annual leave. We could also give attorneys adjustments for working on SOU's, final office actions, etc.

Since the Office seems unwilling to guarantee that a RIF will not occur, we think it only fair that the Office explain how letting 100 of our attorneys go, then hiring above pre-RIF levels, and then possibly letting people go **again** compares to a solution that, while possibly resulting in paying the same amount of money for slightly less production, results in a marked increases in other beneficial activities to the Office--like improving quality--as discussed in more detail in the attachments. In concert with a reduction in production and/or adjustments to production requirements, we can achieve improved levels of quality. So, there is a benefit that accrues to the Office, our attorneys. and our customers.

Turning back to our proposals, we sought the unit's input on all of these matters. Regardless of where our discussions may land, there are a few dominant themes that I wanted to raise that would reap immediate dividends.

1. Give an adjustment for annual leave taken this quarter. This presents one quick way to build up inventory. Those who have "use or lose" time (as well as others) have interests in taking some of their leave now. Giving an adjustment will immediately pay dividends by reducing examination hours and reducing the financial burden on the Agency caused by carrying all of that leave on the books.

Unless and until you grant adjustments for annual leave, we think there's a good possibility folks will work compensatory time. This means more cases will be examined inasmuch as we assume they will not use this time until another quarter.

2. Grant an adjustment to production for the upcoming mandatory customer service training. This step would send the right message to the bargaining unit about the value of the training. Moreover, it would be consistent with your agreement to provide adjustments for the Open House.

3. Grant an adjustment for sick leave. If you are sick, you should get the time off. Though you maintain that such steps cannot be taken because of the model, you saw fit to strip the bonus program --which was tied to the model-- and eliminate the first action requirement, which is also related to the model. The "model" must not be allowed to impede our efforts to react to the current state of affairs. Saving jobs must trump the model.

We remain very concerned that the Office has underestimated the magnitude of the problem. We would like nothing more than to be wrong. But we think it is much more prudent to take steps immediately than to find ourselves in worse shape in the very near future. Finally, because of your about-face on the bonuses in such a short time, we have further doubts that the Office's current modeling projections will result in solutions that will stop the bleeding of our cases.

We look forward to discussing all these issues. See you at 8:30 this morning.

Howard