

Over the past three months, the Trademark Work at Home (TWAH) Partnership Working Group, made up of three union representatives, two law office managers and the TWAH Coordinator (Sr. Mgt.), have been working diligently on and negotiating new TWAH Guidelines. Like the previous version, these Guidelines set forth the parameters of the TWAH program, such as: detailing qualifications/selections for TWAH participants, outlining both management's and employees' responsibilities, providing notice for TWAH participants' required attendance at the Office, setting forth the steps to follow for employee termination from the program, requiring that when ISP connectivity *is* provided by the Office to TWAH participants that it meets the Office's technical requirements, etc.

As many of you may be aware, there are three significant issues that the TWAH Partnership Working Group have been discussing and negotiating with respect to these Guidelines. The following chart provides a quick preliminary summary of the disputed issues. A detailed summary follows this chart.

Disputed Issues	Your Interests	Management's Interests
<b><u>No cap on Internet Costs</u></b>	The union is trying to maintain the status quo, which has been in affect for the past 12 years. The union does not want a cap because this will affect employees later down the road.	Management wants to add a cap, but the reasoning is a moving target. First, they argued it was too expensive, now they are arguing that it would be fiscally irresponsible.
<b>Bi-Weekly Reporting Requirement</b>	In November, 2008, 5 CFR Section 31.605(d) was amended. This amendment permits an employee to report twice a bi-week instead of once every week of a bi-week. The union wants to proceed and implement this federal rule.	Management is trying to bargain for the cap by posturing that this rule will not be implemented unless the cap is accepted. Nevertheless, they have had the authority to implement it and have chosen not to do so.
<b>Part-time TWAH Program</b>	Details of the program have been decided. The union wishes to proceed and implement the program.	Management is trying to bargain for the cap by posturing that this program will not proceed unless a cap is accepted by the union.

The following details the preliminary summary above:

First, the implementation of a new structure that requires reporting on-site for work twice a bi-week instead of once a calendar week, was made available by federal rule as of November, 2008 when 5 CFR Section 531.605(d)(determining an employee's official worksite) was amended. This rule is in effect now but has not been adopted by the Office. When pressed to implement this change in November, 2008, the Office declined stating that they will adopt it as part of the new Guidelines.

The second issue is the creation and implementation of a TWAH Part-time Program. Here again, when pressed to implement this program separate and apart from the Guidelines, the Office declined. In fact, the Office has insisted and continues to insist that this program will not be instituted without an agreement on the new Guidelines.

Turning to the third issue, the Office now insists that employees agree to a financial cap on the monthly costs the Office will pay for ISP connectivity. Note that the Office determines the technical requirements for TWAH participants. Under the Office's proposed cap, if ISP connectivity costs exceed the cap, the TWAH participant will have to reimburse the Office for the difference over the cap. No formal plan has been presented about how these fees will be recovered from the employees.

NTEU 245 disagrees with the inclusion of this cap language. We asked for the reasoning behind such a requirement. To date, the reasoning from the Office has been elusive.

We were told that *one* TWAH participant on the Geographic Expansion Pilot has a monthly ISP connection cost around \$180.00. ISP connection costs are usually obtained at a bulk rate deal from local providers at around \$75.00, but Geographic Expansion Pilot participants do not bring a sufficient number to their local providers to qualify for a bulk rate deal. However, we have found that this amount is the going rate for an ISP connection that meets the Office's technical requirements in that examining attorney's geographic area. (Note: We have been told by management that with the exception of this one TWAH participant, everyone's ISP connection expenses are in line with local connections costs for business grade services.)

As a result of the costs of this *one* TWAH participant's ISP connection, we were told that the costs of ISP connectivity could become a serious budget issue when, and if, TWAH participants are allowed to ever relocate and work where they so choose. Thus, at the onset of negotiations on the cap, management cited a prospective budgetary issue as the primary reasoning behind the cap. NTEU 245 disagreed on two major points. First, NTEU 245 disagreed by citing that the Office was saving millions of dollars in rent, utilities, furniture, and other on-site costs by having such a large part of its workforce teleworking. Specifically, the Office publicly states that it saves approx \$1.5 million a year in rent alone (i.e., \$13,636.36 per TWAH participant per year and these savings do not include any patent work at home participants) and that a couple of outliers on the average ISP costs would not have any effect on the average cost of ISP connectivity or the Office's overall bottom line. Second, NTEU 245 disagreed by stating that basing budgetary concerns on *one* single instance of a perceived higher than normal connectivity

cost was not a reality, and would only be appropriate when, and if, such a reality existed. For weeks, the Office persisted that the reasoning behind the cap was solely a budgetary issue.

Recently, the Office revised their reasoning and we were informed that the proposed cap was not a budgetary issue. Instead, they were worried that without a limit to the cost of ISP connectivity per TWAH participant, the program would look fiscally irresponsible and open to paying “excessive” costs when reviewed by the general public, the media, Congress, and counterparts creating work at home programs in other government agencies. The Office takes this position despite routinely recognizing the huge cost savings of the TWAH program, and the successful history of the program without any such cap.

For the twelve years since the inception of the TWAH program, this program has operated efficiently and economically as evidenced by the numerous awards the program has received. Moreover, the TWAH Partnership Working Group agrees that when, and if, such an instance occurs where TWAH participants are free to relocate where they so choose the entire TWAH Guidelines will have to be revisited. NTEU 245’s stance is that if there is ever a time when all TWAH participants are allowed to relocate and work wherever they so choose, it would be appropriate to engage in discussions about some type of arrangement that protects against wild variations in ISP connectivity costs. But that time is not now and should not be at the expense of TWAH participants who would benefit from a bi-weekly reporting requirement and/or a TWAH Part-time program. We have had this discussion with management and they disagreed.

The Office did suggest that the cap could apply to employees deployed after March, 2009 and to anyone who relocates, even locally, while working on the TWAH program. We rejected this offer for all of the reasons cited above and the fact that such a cap would eventually apply to everyone on TWAH.

NTEU 245 continues to keep the negotiations open, and continues to urge the Office to explore other options to resolve this issue in partnership, although the Office takes the stance that without incorporating some type of cap in the current Guidelines, there will be no agreement and no new Guidelines with beneficial changes to all TWAH employees.

While holding up these programs in order to leverage a cap based on questionable and elusive reasoning, the Office now appears to have taken the tactic of suggesting to some of you, as bargaining unit members, that you should pressure NTEU 245 representatives to accept this language so that you may immediately enjoy the benefits of the bi-weekly reporting requirement and TWAH Part-time program. However, please keep in mind that the Office can immediately institute these programs and has chosen not to do so. In addition, the Office has sole discretion to determine what the technical requirements are for your ISP connection, and agreeing to a cap would subject the bargaining unit members to the potential of paying costs it has no say in determining, while the Office would have no burden to seek lower ISP connection costs. ***These ISP connection services are essential to the huge cost savings the Office enjoys, and subjecting the***

***bargaining unit to yet another loss of potential income based on an unwillingness to pay the full cost for a basic and essential service is not acceptable. However, if it is acceptable to you, please let us know.***

NTEU 245 also continues to spearhead the effort to have legislation introduced and passed that would allow the Office to pilot a program that would only require reporting on-site for mandatory meetings/events. NTEU 245 has made a huge concession in the effort to have this legislation passed with language that puts the travel costs on the telework participant for an as yet to be negotiated amount of mandatory Office visits per year, and any mandatory visits in excess of this amount being an Office's expense. NTEU 245 feels this is a win-win situation for the Office and the bargaining unit members. However, footing the bill for travel costs is a significant expense that the Office would avoid under the proposed legislation that NTEU 245 supports. We are only asking that the Office conduct the TWAH program as it has for the past twelve years without a cap on the cost it is willing to pay for ISP connectivity, which is the most essential service necessary for a telework program.

We also continue to urge the Office to eliminate the weekly reporting requirement for those within a 50 mile radius of the Office, which we feel, is within their authority under the current regulations. Management appears to be waiting on a definitive opinion from the Office of General Counsel on this issue, but we have yet to be informed of their opinion or be privy ***to the contents of management's request.***

Regardless, we will continue to work and find viable alternatives with the Office on the Guidelines and other TWAH issues. Please feel free to contact John Dalier, Jay Besch and/or Nakia Henry with questions and/or concerns you have about this issue and any other TWAH matters that affect you as a participant.