

February 5, 2008

## **Update on Collective Bargaining Negotiations**

Dear Bargaining Unit Members,

Negotiations between POPA and the USPTO on a new Collective Bargaining Agreement (CBA) are coming to a close. The bargaining teams will meet for another 4 to 6 days and then proceed to mediation using the Federal Mediation and Conciliation Service (FMCS). Mediation is the last step before going to the Federal Service Impasses Panel (FSIP) on any remaining disagreements – and, unfortunately, while we have reached agreements on some issues there are many critical issues still in dispute.

When Director Jon Dudas or Commissioner of Patents John Doll says that we, the employees of the USPTO, are the agency's greatest asset, just remember their unwillingness to agree to any real substantive rights for us in these negotiations.

- **Fair and Equitable Treatment** – Management remains steadfastly opposed to committing to treating all employees fairly and equitably. They refuse to apply performance standards uniformly for all employees under the same performance appraisal plan. In disciplinary matters, they refuse to treat similarly situated employees in a similar manner. The USPTO's position is that it cannot and should not be expected to train its 450+ supervisors to act similarly in given situations. They want to have 450+ different disciplinary policies, one for each art unit. Hope you don't end up in a bad one!
- **Reviewing/Counting Work** – Management will expect examiners to complete their work in time for review and correction before receiving any credit for the work. In other words, no work will be counted until it is ready to mail. Management, however, is not willing to put any burden on supervisors to review and return work for correction in a timely manner. If the supervisor doesn't review your work in time for counting, tough luck for you. This will allow management to target any examiner they want to get rid of simply by not reviewing and counting the examiner's work. Then they can fire the employee for production and workflow problems. POPA has already seen this happening around the agency, and we've been successful in addressing this in many cases under our current contract.
- **Telework** – Management is refusing to expand the One-Day-A-Week Telework program to two days per week – a program much desired by employees. POPA offered a compromise of 24 hours/bi-week that employees could use when they wanted or needed to, rather than as single days. Management refused. They have told us they are intentionally holding back on offering more flexibility because they want employees to give up their offices and work full time from home instead.

In addition, while POPA has presented significant data showing the production and retention benefits of extending the agency's telework programs to part-time employees,

management has refused to make this change. Management does not want to offer part-time employees any additional scheduling/telework flexibility.

- **Grievance/Arbitration Procedures** – Management wants to make as many of their actions non-reviewable as possible. With the huge number of actions taken against employees in a year by this agency (900+ in 2005), we believe that its decisions need to be reviewable and correctable by a truly independent third party.

Management wants to eliminate the choice of a grievance/arbitration procedure wherever employees have a government-provided alternative, e.g., the Merit Systems Protection Board (MSPB) for terminations or the Equal Employment Opportunity Commission (EEOC) for discrimination issues. For employees, this means that you will have virtually no way of having incorrect decisions reviewed until after you are fired from Federal service. In addition, they want many issues to be non-grievable including: adverse signatory authority program decisions, oral warnings and written warnings.

The agency wants to stack the deck even further in its favor. It refuses to commit to requiring managers to give employees written reasons for their actions because those written reasons could later be used as evidence of the error of management's action. Without written justifications of management's actions, it will be very difficult for an employee or POPA to prove that management acted in error – or worse – acted arbitrarily and/or capriciously. Management does not want to be limited to its original rationale, or to what was conveyed to the employee. Unlike employee determinations which are all reviewable, management determinations will not be subject to review if they have their way.

- **Performance Appraisal Plans** – The agency is refusing to discuss the current performance appraisal plan because they say they want to change the plan. But they are also saying that, when they do change the plan, they still don't want to negotiate because it will delay implementation of their changes. **THINK FLAT GOAL!** This leaves the employees with no remedies for unfair performance appraisal systems.

POPA will continue to fight for your rights and benefits as these negotiations continue. But if you think the USPTO's position on these issues will negatively impact your work life, you need to make your feelings known.

Mr. Dudas and Mr. Doll state constantly that we, the employees of the USPTO, are its most valuable resource. Ask them to prove it by treating us accordingly!

Robert Budens, President  
Patent Office Professional Association