

Patent Office Professional Association

Box 25287, Alexandria, VA 22313

October 18, 2010

Dear Colleague,

I am contacting you today because, as you are probably aware by now, the Patent Office Professional Association (POPA) has filed a “Clarification of Unit” (CU) petition to determine whether you and a number of other employees in various positions at the U.S. Patent and Trademark Office (USPTO) should be properly classified as being within the POPA bargaining unit. I would like to take this opportunity to explain what this may mean to you.

A Clarification of Unit petition is a petition under the Federal Service Labor-Management Relations Statute that provides a means for a Federal labor union and/or a Federal agency to determine whether a particular job position within the agency is a bargaining unit position. CU petitions are decided by the Federal Labor Relations Authority (FLRA) Office of General Council (OGC) through the various Regional Director offices under the OGC. In this case, POPA is requesting clarification of a number of job positions that the USPTO has classified as non-bargaining unit positions. We believe these positions are properly within the POPA bargaining unit. The petition is before the Regional Director for the Washington, D.C. area.

When POPA was formally recognized as an employee union in September, 1965, its bargaining unit was defined as covering all professional employees at the USPTO with the following exclusions:

- All Trademark professionals – Trademark attorneys are covered by a separate professional union, NTEU Local 245;
- Supervisors – those who actually supervise and rate employees, not just a team leader or other employee who may advise a rating supervisor on an employee’s performance;
- Management Officials who make USPTO policy – Advising management on policy decisions without actually making policy should not exclude an employee from POPA;
- Confidential Employees – employees who make Labor Relations/Employee Relations decisions regarding USPTO employees and those who provide support services for those who make such decisions, e.g., a secretary for a Group Director or an executive assistant for a senior USPTO manager.
- Employees who do Federal personnel work in other than a purely clerical function; and
- All non-professional employees – technical support personnel who, like Trademark attorneys, are covered by a separate union, NTEU Local 243.

Since 1965, two major Clarification of Unit petitions have made additional changes to POPA’s bargaining unit definition as follows:

- Patent attorneys in the Office of the Solicitor were specifically included in POPA except for two specifically-named individuals who were found to be heavily engaged in Federal

personnel work, i.e., they were handling the vast majority of Labor Relations/Employee Relations cases in the USPTO (8 A/SLMR No. 856, 1977);

- A Personnel Psychologist was specifically excluded from POPA (8 A/SLMR No. 856, 1977); and
- Examiners-in-Chief (now Administrative Patent Judges) at the Board of Patent Appeals and Interferences were specifically excluded from POPA (FLRA Case 3-CU-40012, 1984).

Recently, POPA became aware that some employees, whose positions fall within the definition of POPA's bargaining unit as discussed above, had been specifically excluded from the bargaining unit, i.e., their positions were classified as non-bargaining unit positions within the USPTO. As POPA investigated this issue, we discovered that the issue was much larger than originally thought – with about 200 employees' positions reclassified by the agency as non-bargaining unit positions without proper notification to POPA. Once we had identified as many employees as we could, with their respective job positions, POPA filed a Clarification of Unit petition to determine the proper bargaining unit status of these employees. You are receiving this letter because your status as a POPA bargaining unit member is at issue in the CU petition.

The current CU petition identifies employees, mostly patent attorneys and/or attorney advisors as well as some other professionally-graded employees, in the following business cost centers at the USPTO:

- Office of the Solicitor;
- Board of Appeals and Interferences (not including APJs);
- Office of General Law, other than those employees specifically engaged in personnel work;
- Office of Enrollment and Discipline;
- Office of External Affairs;
- Office of Congressional Affairs
- International Liaison Staff;
- Office of Petitions;
- Office of Patent Cooperation Treaty Legal Administration;
- Office of Patent Quality Assurance;
- Patent employees identified as SPEs but who are no longer assigned to supervise employees;
- Patent employees designated as TQAS or SPRE; and
- Search and Information Resources Administration.

We believe that the vast majority of employees at issue in the CU should properly be within POPA. We recognize, however, that some employees included in the petition may truly be in supervisory or policy-making positions and, therefore, properly excluded from the POPA bargaining unit.

The USPTO has been required by the Regional Director's office to provide position descriptions and performance appraisal plans for the employees included in the petition to both the Regional Director and POPA. When we receive these documents, POPA will review them and withdraw particular employees from the petition where the agency has

provided sufficient evidence that the employees should be properly excluded from the bargaining unit.

Being within the POPA bargaining unit will provide you with benefits you do not currently enjoy as a non-bargaining unit employee:

- You would be accorded the protections of POPA's collective bargaining agreements including our negotiated grievance procedure – a significant benefit compared to the agency's current "Administrative Grievance Procedure" which precludes you from seeking redress from an impartial third party such as an outside arbitrator;
- You would be covered by our contractual awards programs, a benefit I believe some of you became acutely aware of last fiscal year when the agency chose to only pay out awards to those employees covered by contractual award agreements; and
- POPA bargaining unit members have one of the most progressive flexible and family friendly work environments anywhere in the Federal government – the telework programs negotiated between the USPTO and POPA have become the "gold standard" against which other Federal telework programs are compared.

I hope this letter helps you better understand what is going on right now between POPA and the USPTO involving your bargaining unit status and how it may affect you. At such time as the CU petition is adjudicated or, alternatively, the USPTO and POPA reach agreement on the bargaining unit status of you and the other employees affected by the CU petition, we will inform you of that decision. If you have any further questions, please feel free to contact POPA at any time. You can find a complete list of POPA representatives at our web site, www.popa.org.

Sincerely,

Robert D. Budens

Robert D. Budens, President
Patent Office Professional Association
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