

09/25/2007

To: IRS Chapter Presidents

Re: **MAJOR ARBITRATION VICTORY**

Although I will send you a more complete memorandum about this case later today, I wanted to get this good news to you as soon as possible. When management refused to extend the term of the national agreement on June 30, 2006, it also unilaterally terminated several provisions of that agreement as well as all national and local partnership agreements. In response, we set in motion several national grievances to challenge the legality of management's actions. We received the first of those three cases in July when an arbitrator ruled that management had engaged in "bad faith" bargaining by repeatedly violating the law during negotiations over ground rules for a new contract. At least one IRS executive has described that as a "horrific" decision for management and I cannot disagree. It virtually destroyed any plans they had to rush our contract before the Federal Service Impasses Panel to have "every sentence" rewritten by the highly anti-union appointees that the Administration has put on the Panel. All that remains of that management effort is to hear from the Panel that it is rejecting jurisdiction of the ground rules dispute—or from the FLRA that it is barring FSIP from taking any action at all on management's petition.

Late yesterday, we received a decision in the second case that is also likely to be characterized as "horrific" for management. A different arbitrator than the first one ruled that management was wrong to have unilaterally terminated the partnership agreements as well as the contract clauses it deemed permissive. Consequently, he ordered management to immediately reinstate the provisions giving the union 30 minutes after "certain" formal meetings, the union's right to designate which employees fill the slots on work teams staffed by bargaining unit employees, and all other provisions of the national and local partnership agreements. Stated differently, we now have two highly respected and independent arbitrators ruling that the decisions management made in structuring its term bargaining strategy were illegal from beginning to end. It is hard to imagine a clearer indictment of those who led management into this strategy. The latest decision also requires management to make whole any employees who were economically harmed by these illegal actions, and we will soon begin finding each one of those cases and undoing any damage done the employees.

The third case we filed deals with our refusal to let management propose changes in term contract matters by using its right to initiate mid-term changes. When management proposed in a quarterly notice to change AWS and Incentive Pay rules, we refused to bargain and filed a grievance alleging that we could not be forced to bargain midterm over issues that management was simultaneously attempting to bargain at the term table. Our position is that NTEU has to go to the bargaining table over these issues if management wants to change them, but we only have to go to one table, i.e., the term table. Any demand that we bargain term contract issues one at a time in the midterm arena is a demand for "piecemeal" bargaining, which is also illegal. We expect that decision in about two weeks.

Management has filed exceptions to the first decision and I will be very surprised if they do not file exceptions to the second decision—if only to buy themselves more time before they have to comply with the law. You would hope that someone in management will decide that it is time to terminate the bargaining strategy management so deliberately and confidently implemented in 2006, and to now try to find a way to deal reasonably and legally with NTEU once again.

A more detailed chapter president memo on this major arbitration victory will follow.

Colleen M. Kelley
National President