



# The Force

Chapter 73's Award Winning Hard Hitting Newsletter

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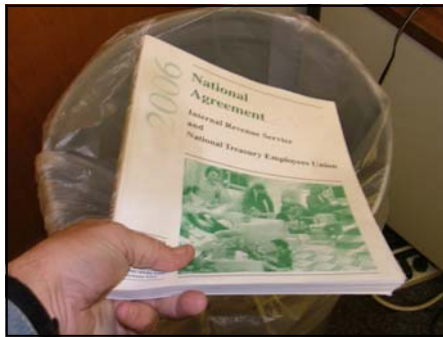
September, 2007

## Employees Continue to Report Inaccurate Information Being Given About The Status of Their Contractual Rights

Over a year has passed since the National Agreement (commonly called simply "the contract") expired in June, 2006. Both IRS management and NTEU have written numerous memos and flyers explaining that almost all employees rights held under the expired agreement remain status quo. Despite this, NTEU73 leaders and stewards continue to hear from employees in various post of duties throughout CIRSC that managers tell them that rights they enjoyed in the contract are no longer valid. This is completely erroneous information.

As was recently explained in a letter widely distributed by National NTEU President Colleen Kelley, which we have reprinted on Page 7 of this issue of the Force, all the rights enjoyed by employees today remain in place. What is unclear to us is whether the managers who continue to tell their employees

their contractual rights have expired are doing so out of ignorance to the facts or if they are doing so out of an attempt to



Some managers continue to try and trash our contract

be malicious and make NTEU appear to be weak and unable to assist their employees. It is certainly possible that both scenarios could be correct.

Employees can rest assured that NTEU, both locally and at National Headquarters is still here and still has every ability prescribed under the National Agreement to assist them in addressing their workplace issues. If anyone tells you otherwise, we encourage you to keep a copy of Colleen Kelley's letter we have reprinted on Page 7 handy and share it with them. Some people may not like what is said there, but they are the true and accurate facts.

## Performance Award Payout Delayed by IRS Errors

Shortly after announcing that this year's bargaining unit performance awards would be paid out on the September 27, 2007 pay date, the IRS announced that, due to a processing error, the pay out of performance awards would not occur on that date. In an email sent out on September 19, 2007, the IRS' Human Capital Officer Robert Buggs states, "We regret the inconvenience of this situation and our objective is to process these award payouts by the October 11 pay date."

Mr. Buggs is essentially saying to employees that he really has no idea when the problem will be fixed, but you will get your money when and if it is fixed. NTEU73 finds this completely unacceptable. Many employees, especially those who work at lower graded

jobs and in seasonal positions, count on their performance awards as a piece of their annual salary. People plan purchases around when they are told the money will be paid out to them. Keep in mind that they earned this money. They worked very hard all year to get and maintain the ratings needed to receive an award. We question how it is the IRS can simply say to its employees, "You'll get your money when we get around to it." Would the IRS tolerate that response from an employee who owed the Agency money?

National NTEU President Colleen Kelley also had some harsh words about the current state of affairs of the National Performance Awards system. On September 17, 2007 she released a

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## Straight from the *Vice* President's Desk



By Eric Johns,  
NTEU73 Vice  
President

It has been a very busy month here in the NTEU73 offices.

Since our President, Jackie Huff, had too much on her plate to write her "From the President's Desk" column this month, she invited me to offer up my column instead.

I can't believe we are half way into our three year term and I believe this is the first time I have addressed our members in my own column. Many folks stop me in the halls and ask what I have been up to. I often have employees inquiring as to why I was no longer writing for this very publication, anymore.

Well, the good news is that, as of last month's edition, I am back on board as the editor and creative director of the Force. I must say it is good to be back. I had missed writing and putting it together every month.

As to what took me away from working on the Force, that is a long story. It really began with the IRS changing its managerial direction when Mark Everson was appointed as IRS Commissioner. As those of you who have

worked here for some time know, the IRS is driven from the top down. When the Commissioner and his highest levels of management of the Agency exude an attitude of negativity toward NTEU and labor/management partnerships, it is quick to trickle down to all levels of management.

Here at NTEU73, we found ourselves fighting harder for the rights of our members than in any time I can remember during my tenure as a steward. In the past year and a half, we have invoked more cases for arbitration than ever in the history of our Chapter.

Because I am the member of the NTEU73 Office Staff who handles the majority of oral replies for employees facing disciplinary or adverse actions, most of my time has been spent working one case after another trying to protect employees from being unjustly suspended or even fired. (*See related story, page 3*)

While there are still plenty of cases waiting to be worked, I can finally start to see some light at the end of the tunnel. Both nationally and locally, NTEU is winning many of its battles against management's unfair practices.

Through our diligence and persistence, I am hopeful that management is

finally starting to see that the posture they were taking toward NTEU was only costing them time and resources that could have been much better spent furthering the goals of the Agency.

Thankfully, some of the IRS highest level offenders have recently decided to jump ship, en masse. Commissioner Everson recently decided to leave prior to the end of his five year term to head the Red Cross. Beverly Ortega Babers, who was the Chief Human Capital Officer and Kevin Brown, who was most recently acting Commissioner, followed him shortly after and are now working with Mr. Everson at the Red Cross. All I can say about that is that I hope there is never a disaster or public emergency near me where I am in need of the Red Cross. If they run that Agency like they ran the IRS, we are all in a lot of trouble.

I feel like I have a great team in place to assist me in writing this newsletter each month. They are an articulate and enthusiastic crew and having them to assist takes a lot of pressure off me. We are working to get the Force back on a monthly schedule. As always, I appreciate any comments and welcome your story ideas. I can be contacted at the numbers and addresses below.

### **The Force**

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***"To Organize Federal Employees To Work Together To Ensure That Every Federal Employee Is Treated With Dignity and Respect."***

## NTEU73 Wins Arbitration Decision in a 1203 Tax Case That Allows a Data Transcriber to Return to Her Job

On October 15, 2006, DeAngela Smith was issued a memo from Cincinnati Submission Processing Director Sue Hansen terminating her employment from the IRS for failure to timely file her 2003 federal income tax return. DeAngela, a seasonal Data Transcriber in Data Conversion Operations, had worked here for nearly 20 years.

The IRS charged her with a violation of Section 1203 (b) (8) of the IRS Reform and Restructuring Act of 1998, claiming that she willfully failed to timely file her 2003 federal tax return after the due date of April 15, 2004. DeAngela contested her removal through the oral reply process detailed in Article 39 of our National Agreement. As an NTEU73 member, she requested union assistance in this matter and was represented by NTEU73 Vice President Eric Johns, who is widely regarded to be a Chapter expert in preparing oral replies.

In the oral reply hearing, Mr. Johns presented compelling evidence that DeAngela's failure to have her return in on time was clearly not a willful act. Instead, he argued that she simply relied upon a friend who prepared her return to mail it for her. Her friend forgot about the return being in her car and it sat there in its envelope, waiting to be mailed for several days. When DeAngela's friend found the return in her car, she immediately put it in the mail. Unfortunately, by then it was too late and the return was received after the April 15, 2004 deadline.

The return was actually received by the IRS on May 10, 2004. It was a refund due return with which DeAngela was to receive a very substantial refund. As seasonal employee, her tax refund would actually amount to equivalent to 20% of her earnings for that year. NTEU raised the question as to why anyone would willfully delay the receipt of such a substantial amount of money.

Despite strong arguments at the oral reply, the IRS sustained its decision to remove her. The union invoked arbitra-

tion and NTEU Attorney Eric Bruce, from the Chicago Field Office worked



**DeAngela Smith with NTEU73 Vice President Eric Johns**

the case. The case was heard by Arbitrator Ruth Kahn, who issued her decision on September 7, 2007.

Arbitrator Kahn found that DeAngela did not violate 1203 (b) (8), that her removal would not promote the efficiency of the IRS, and that a lesser penalty of a seven day suspension would be the appropriate penalty. The Arbitrator ordered DeAngela be returned to her job with full back pay minus the seven day suspension with no loss of

seniority. When the seasonal data transcribers are called back to duty, DeAngela will be among them.

Arbitrator Kahn further ruled that NTEU had substantially prevailed in the case and, therefore, pursuant to Article 43, Section 4 of our National Agreement, the IRS shall be forced to pay 75% percent of all expenses related to the hearing of the case. Normally, NTEU and the IRS split arbitration costs, 50% each.

This was a huge win for both DeAngela and for NTEU73. However, employees reading this should see it as both a testament to the legal prowess of NTEU, but also as a cautionary tale. While we were able to get this employee's job back, the process took nearly a year. That was a year she was out of work with no guarantee she would return. A strong lesson to be learned here is that as IRS employees, we must all be as cautious and vigilant as we possibly can to timely file and accurately report our income. Failure to do so could cause any one of us to face a similar nightmare as the one DeAngela faced.

### *Continued from Page 1, Awards*

memo to Chapter Presidents throughout the country stating her displeasure.

"When (IRS) management insisted in 2002 that we replace the local awards system with a national program, we told them they would not be able to run it correctly," she said. "However, even I expected that after three years they would finally get it down right. They now have a five year record of being unable to avoid even the huge mistakes."

Many mistakes were reported with the awards data such as: employees being placed into the wrong division, employee placed into the wrong awards pool, and, as has happened in every other payout since 2002, employees being paid the wrong amounts. It is inexcusable that the same Agency that

collects hundreds of billions of dollars each year in taxes to fund our country cannot administrate its own employee awards compensation system.

NTEU has filed and won national grievances each year since 2002 over mistakes made in the awards payouts. It is all but a foregone conclusion that another grievance will be filed over the 2007 awards payout that may well result in employees receiving additional awards money as they have in previous years. The sad fact, though, is that employees should not have to wait for this money. It is ironic that the very program management implemented to reward exceptional performance and build good morale, is seen by most employees as yet another slap in their face that further tears down morale.

## **DON'T WORRY! YOU'RE SAFE** *(As long as you don't mind waiting alone in a stairwell)*

By Lona Rackley,  
NTEU73 Steward

Recently there have been several evacuations of our buildings including one for a fire and one for a bomb threat in the Gateway Center. After the fire evacuation, NTEU called for a "lessons learned" session after employees with disabilities (who wait in the stairwells of the building for assistance) expressed some concerns about their safety. The request was denied by various management officials and representatives who stated "a lessons learned is not always done." As a point of employee information, when they do a drill or evacuation test based on a pre-arranged script, management does a "lessons learned" to discuss what went right and what could be improved.

At a recent meeting of the Health and Safety Committee, this issue was discussed by the members at the request of numerous employees. There were specific concerns as to why employees in the stairwells were not evacuated with other employees and why there is not a physical check of the stairwells after an

emergency to ensure that all employees are accounted for.

According to Safety Officer, Roy Turvey every stairwell is equipped with a camera, however there is no visual check when an "all clear" is issued. It is assumed that everyone goes back to their work area because the stairs may be used by employees reentering the building. In fact, at least one known employee was missed with this process.

Safety Officer, Roy Turvey offered repeated assurance that there are plans in place and that there are effective measures with available resources focused on dealing with the immediate emergency. This position was supported by Todd Adams, from the Site Coordinators office. Both management representatives stressed repeatedly that employees, although uncomfortable, are safe in the reinforced stairwells. They felt it was a comfort factor issue because, depending on duration of the emergency, these employees do not have access to restrooms, water or the same information circulated to evacuated employees. It is our contention, however, that the employees in the

stairwell have a greater concern for their physical safety and mental well being than restrooms and water. The FOH nurse who was also present at the meeting briefly touched on the issue of stress and panic for the employees in this situation.

There was also the question of who is "responsible" for employees in the stairwell. Assistor's are usually volunteers who assure the employee with disabilities are in a safe place then report that location after leaving the building themselves. Management representation in the meeting first indicated that it would be an assistor's responsibility to verify the safety of the employee to be accounted for. NTEU's representative asserted that this would not be a responsibility of a bargaining unit employee. Employee safety and accountability in an evacuation or other emergency are clearly defined management responsibilities. The comment was rephrased within the context of the meeting to acknowledge that management, not peers and co-workers, bear

*Continued on Page 5... Safety*

## **Time to get your ducks in a row. Your income is Important - protect it.**

Don't miss out on our income protection plan during open Enrollment. Enrolling now, you can qualify for:  
Up to 60% of your income - Max. \$2,000 monthly.  
Choose a plan that will pay benefits up to 24 months.  
Starts after 14 days of disability, (First day if hospitalized).  
Does not offset for other benefits.  
Pays 50% of the benefit if hurt on the job, in addition to workers compensation.  
Guarantee Issue if actively at work full-time.  
With NO medical examination or health questions.  
Schedule a meeting at your office today by calling:

**Nathan at American Insurnet 513-505-4488.**



## Get Insured — Join your local Union!

By Courtney Jung, NTEU73 Steward

All IRS employees are strongly encouraged to be insured. When you first became employed you signed up for health insurance and life insurance. What about work insurance?

Are you insured by your job? While the IRS does offer an Equal Employment Opportunity office, and a Labor Relations organization, can you afford to depend on them? When the time comes and you need to legally obtain your rights; who will do your paperwork, hire your attorney and pay for all the people involved? Your employer will not, and that is a well known guarantee!

Why spend another day thinking: "It will never happen to me!" or "Why should I care?" Instead you can get in-

sured!

Insurance is defined as: the act, system, or business of insuring property, life, ones' person, etc., against loss or harm, in consideration of a payment proportionate to the risk involved. Is it a risk to work for the IRS? Well, yes, but it's a risk to work anywhere! Your best answer is to join you local Union.

The dictionary defines Union [labor] as: "an organization of workers for mutual aid and protection, especially by collective bargaining." Several incidents occur everyday in regards to the average American being uninsured when they need it the most. Would you drive your vehicle or own a home without it being insured?

Being insured is what the NTEU is all about. Every one joins for a small fee;

everyone is equally provided with mutual aid and protection. Why work for an employer known to make numerous errors in regard to their employee relations without a Union by your side? The possibilities in your need for a Union, in your future, are indefinite.

Prevent future hassles by join NTEU today! Contact your Chapter 73 office and ask to sign up. If you hurry, you can even reap a financial reward for doing what you should be doing anyway. Every new member who signs up before September 30, 2007 is eligible to receive \$45 for joining. That amount includes \$25 from National NTEU and \$20 from Chapter 73. But, hurry, time is running out!

**\$25 + 20 = \$45**

**That's Easy Money for the Great Protection  
NTEU provides!**

**Hurry, though, because our Summer Recruitment  
Campaign ends September 30, 2007!**

### *Continued from Page 4, Safety*

the responsibility for assuring and documenting employee safety.

There are procedures in place and they can be effective. What is lacking here is the seeming disregard for the need to communicate and provide in an equal manner to these impacted employees. Management fails to allot the time for necessary reviews of procedures. The NTEU representative pointed out to the safety committee that she had attended two sessions in training rooms that day and in neither meeting was the evacuation procedure addressed before or at anytime after beginning business, which is supposed to be required at the begin-

ning of any class. All the "effective" plans and procedures in the world are worthless if they are not utilized.

In fairness, there is some ongoing management response to this issue. NTEU was invited to meet with Rafael Gonzalez of the Site Coordinators office on September 14<sup>th</sup>. Some employees have informed us that Accounts Management Director Jim Rogers has contacted them directly at their desks to express his concern for the problem. The Department Manager in Centralized Excise has stated our Compliance Director, Renee Mitchell is also greatly concerned by the situation. We will keep our employees informed of any

progress on this issue.

In the meantime please continue what you have always done. Follow the rules and instructions during an emergency and look out for your co-workers. You have always done a great job for each other.

We are about to spend a vast amount of time reviewing the management sponsored Survey. One of the questions each year is "How safe do you feel?" Unfortunately, the current answer for many employees forced to wait, often alone, for help to come to them in a stairwell is: *not so much!*

# An Introduction to Reasonable Accommodations and the Family Medical Leave Act (FMLA)

*(Editor's note: This article begins an ongoing series by Lona Rackley. Lona, as a steward, specializes in assisting employees with these type of issues and is widely recognized as a subject expert.)*

By Lona Rackley, NTEU 73 Steward

With this edition we will begin sharing information with members on a variety of topics and issues. Members are invited to submit questions, which will be answered on a space available basis.

## **REASONABLE ACCOMMODATION (RA)**

A reasonable accommodation in simplest terms is an equal playing field. If you can perform the essential duties of a job with a reasonable adjustment to how the work is performed there are legal provisions requiring an employer to make the effort to assist you in obtaining and retaining your job. A reasonable accommodation covers a broad range of potential solutions. A reasonable accommodation can be as basic as the need for a specific pen or pencil, a keyboard or monitor, a specialized workstation or chair, hearing or visual adaptive equipment, a flexible tour of duty or additional break. These are only a few solutions that are available to you.

Reasonable Accommodations are unique to individual need. There is a specific process, forms and potentially the requirement to supply written medical support for the request. The process begins when you inform your manager of what you need. It is the manager's responsibility to perform a job assessment and to set up a meeting with an EEO specialist.

An RA cannot be used to promote to a higher grade nor is the employee ex-

cluded from performing the duties of their job.

## **RA PARKING**

RA parking accommodations are available to employees on both permanent and temporary basis. Employees for with various medical conditions, which may include respiratory, heart or orthopedic limitations, may request them. RA Parking also has a specific procedure and forms to be completed.

## **FAMILY MEDICAL LEAVE ACT (FMLA)**

The Family Medical Leave Act is a legal entitlement. This means it is the law. It has specific guidelines, applica-

tions and the potential for legal penalties for failure to correctly administer the process. Under the provisions of FMLA an employee may use up to 12 additional weeks of leave for their own serious medical condition or for family members as provisioned by the law. This leave may be used in addition to other leave available to the employee. The 12 weeks may be taken LWOP. Employees may also request advance sick or annual as provided by contract in Article 32, Article 33 and Article 34. Employees may now use up to 30 days of their own sick leave to care for a family member.

If you have questions on these or other topics please forward them via email to [Lona.L.Rackley@irs.gov](mailto:Lona.L.Rackley@irs.gov)

## **Writers Wanted**

Do you have writing skills? Do you have information that is newsworthy?

Submit your article to *The Force*.

If it is accepted, we will print your article with or without your name attached to it; your choice.

Email your submission to [NTEU73mailbox@aol.com](mailto:NTEU73mailbox@aol.com)

or bring it to the Union office.

Identify it as "article for The Force".

### **NTEU73 Union Office Hours**

#### **Fourth Street Office**

Monday—Friday 6:00 A.M. –1:00 A.M.

(859)669-5370

#### **Gateway Center Office Room 511**

Monday-Friday 6:00 AM—4:00 PM and 7:30 PM—11:00 PM

(859)669-5700

#### **Industrial Road Retention Center**

Monday-Friday 12:30 PM –2:30 PM

(859)669-5024

### ***Not a Union Member?***

***Missing out on all the benefits Union membership brings?***

***Join Today!***

# A Message from the NTEU National President

**NTEU**  
Powerful Force For Am

Colleen M. Kelley



August 31, 2007

## Your Contract Rights Remain — That's the Law!

No matter how many times your managers claim it is not so, and no matter how many different ways he or she tries to tell you it is not so, the fact is that the terms and conditions of your employment—along with your workplace rights—remain firmly in place.

That is the reality, despite the expiration in June 2006 of the NTEU-IRS labor agreement. At that time, the IRS refused to follow longstanding tradition and roll over the existing contract while a new one was negotiated.

But even after the agency did that, the vast majority of your rights, benefits and protections contained in the 2006 contract are still in place, and will be until we work out a new contract with the IRS. And what I said then—that the contract has expired, but your rights remain—is as true today as it was then. That is the law!

Here is some of what this means to you:

- ◆ You have the right to NTEU representation
  - You have the right to file a grievance
  - You have the right to alternative work schedules
  - You have the right to fair performance appraisals
  - You have the right to sick leave
  - You have the right to flexi place
  - You have the right to an incentive awards program
  - You have the right to leave under the Family and Medical Leave Act

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**you still have every right and benefit you had under the expired agreement...**

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In fact, you still have every right and benefit you had under the expired agreement, except for a very few minor or technical matters that law requires to be terminated unless both parties agree to extend them.

So what is the status of contract talks at the moment?

It is slow going. The first step is to try to reach agreement on fair ground rules that provide, among other procedures, for the use of third-party professional mediators and arbitrators to address bargaining disputes.

The IRS did not want to do that; instead, it pushed hard for ground rules that would have allowed it to put the entire contract in front of political appointees, who—the IRS hoped—would turn back the clock on 30 years of gains for IRS employees negotiated by NTEU.

But we won an arbitration decision preventing that from happening. Under that decision, the IRS has to restart bargaining for these ground rules.

Our hope is now that the IRS has seen its scheme to get your contract in front of politically-motivated appointees who have, over the past six years, sided in a lopsided fashion with federal agencies over federal employees thwarted, the agency will be open to a more professional discussion of the ground rules needed so the parties can begin their work of updating your contract.

Our membership is our strength in this important battle. The way to fight the IRS effort to strip away your rights and benefits is to lend your voice and energy to NTEU through your membership in your union.



Colleen M. Kelley  
National NTEU President

***“To Organize Federal Employees To Work Together To Ensure That Every Federal Employee Is Treated With Dignity and Respect.”***



# Chapter 73

Is Proud To Present Our Annual  
**Labor Recognition Week Celebration**

In order to accommodate schedules for employees on the phones, this year there will be two grill-out days for our members working at the Fourth Street Center & the Gateway Center/Gateway West.

Tuesday, September 25, 2007 — 11:00 AM until 2:00 pm (dayshift)  
Tuesday, September 25, 2007 — 8:00 PM until 11:00 pm (nightshift)

Wednesday, September 26, 2007 — 11:00 AM until 2:00 pm (dayshift)  
Wednesday, September 26, 2007 — 8:00 PM until 11:00 pm (nightshift)

There will also be a grill-out for our members in Florence at the Industrial Road Retention Center. Our members at the Florence Annex building are also invited to attend.

Thursday, September 27, 2007 — 11:00 AM until 1:00 pm

There will be information and activities available for all employees. However, a free lunch will only be provided to NTEU73 members.  
After all, it is their dues that pay for it.

We ask all members to pick up a ticket for your free lunch at any NTEU73 office in advance of the grill-outs during your lunch or break.

**Tickets are available now.**

