

## Files Management Strikes Out! "On Opening Day"

By Dwight Cornett,  
NTEU73 Acting Vice President

YES! On 10-01-2008 Files work returned to the IRS at the IRRC building in Florence. Not without management striking out along the way. We had hoped this time management would at least play the game fairly and the unfair limitations of employee's rights beyond that afforded by the National Agreement. While NTEU had hoped that with this "history in the making" event occurring locally that things would return at least at some level to a neutral ground. Management quickly made it abundantly clear they will continue to avoid NTEU, ignore the contract and continue to harm employees (collateral damage) as they see fit. While these employee's were thinking of returning to the Files to work management was thinking of way to slip the employee's in new

innovative ways.

### Strike 1/ Grievance 1

Management failed to notify NTEU they were having a 7114 meeting at the files area on the opening day 10/01/2008. Management dealt directly with the bargaining unit employees instead of allowing NTEU their exclusive right to bargain on behalf of all bargaining unit employees creating a Unfair Labor Practice (ULP).

### Strike 2/ Grievance 2

Management failed to brief or negotiate a significant change in working condition, policy, practice and/or past practice by discouraging employees to apply for jobs at the Files Function if they had a Reasonable Accommodation (RA) or Family Medical Leave Act (FMLA) documents on file. These are PROTECTED FEDERAL PROGRAMS that management continues to violate. Not without NTEU putting them in check whenever possible. This creates a Unfair Labor Practice (ULP) by Failing the Negotiate a change in working condition.

### Strike 3/ Grievance 3

A mass grievance was filed on the behalf of the employees of files. Management again ignored the contract pushes changes into place in the Files area based on different grades and PD numbers. It seems that management can't seem to even deceive the employees

properly and established the following different requirements to qualify for:

- a GS-3 you must be able to lift up to 50 lbs.
- a GS-2//3/4 you have no lifting qualifications or restrictions.
- The USA Jobs positions state qualifications at 25 lbs or more.

This creates disparate treatment of employees within a division, doing the same work in the same area and is otherwise ILLEGAL.

Now you decide! If you're a member and been harmed by any of this you may want to contact your NTEU steward. **If you're a non-member this might be one more reason to join NTEU** and help us in our daily fights to save employee's rights at every opportunity we can. A form 1187 can be obtained from any steward and we would love to have your support!

Hansford (Dwight) Cornett the acting Vice President a previous steward for the Files area familiar with management's constant violations and some of the work process has been assigned as NTEU's Files Coordinator. Please feel free to contact me direct via email or phone on (859) 669-5370. Margaret (Peggy) Liver resides in the Innocent Spouse side of the IRRC building and can reached on days for more immediate issues.

While NTEU works daily improve your work life and protect your rights

### Inside this issue:

Straight from the President's Desk	2
NTEU Member Benefits	4
Leave Issues	5
Diversity at the IRS	6
Whose Bull is Being Gored?	7

# Straight from the President's Desk



By Jackie Huff,  
NTEU73 President

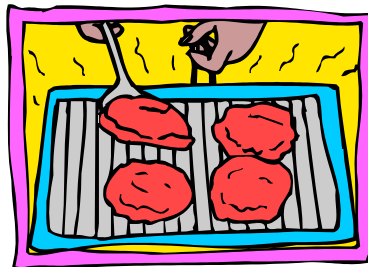
## IRS moving to Hebron?

It is my understanding that the moving of the 4<sup>th</sup> street office to Hebron was mentioned on the news. We had many employees contacting the union office to ask what will happen to their jobs and how moving to Hebron would cause a hardship to many of our employees. IRS has not contact NTEU locally or at the national level to discuss this so we do not know all that will be happening. Please know this, the union has a right under the contract and law to negotiate this move. The IRS is obligated under the law to do this. IRS can put together all they want on this BUT when it comes to the actual Impact on the BU employees NOTHING is to take place until negotiations have been completed. If management is contacting you regarding this change please stop in the union office and let us know. I have notified national NTEU on this matter and they will be looking for the notification from IRS and will react appropriately and handle this matter directly.

## Labor Recognition Week

It is my understanding that many of our employees were not aware they received 59 minutes of administrative leave to attend

Labor Recognition Week at our campus. Regardless of the BU membership status they were all to receive this time. For our members we provided them with a free lunch of their choice of grilled hot dog, mett, or bratt, chips and a drink. We had a very good turn out again this year. I did hear many employees talking about how they did not know this was going on. I would like to let all know that NTEU did put out flyers on this in all canteen's, put notice in all of our bulletin boards and mentioned it in our news letter. We also provided each director with notification of this event in August. If anyone was denied or did not get their 59 minutes ask your manager why and make sure you get it. LRW is going on September to October. NTEU did contact all three directors to remind them that ALL employees are to receive 59 minutes and that there will be grounds for filing grievances if not given. After those calls I found that managers were releasing the employees at the last minute. Please know that this is no fault of NTEU, seems management didn't want to give the time to employees as they did when management gave when they had THEIR employee appreciation. I want to thank all that attended our LRW grill out and all that donated their time to help out. It was a great success.



The cooked food from Tuesday night went to the drop in center

located in Over the Rhine n Cincinnati, Ohio. Thy were very appreciative of the food. Jacqueline Burch was very kind enough to take it over for us. We have left over meat, chips and soft drinks that were not used. The board will be meeting to decide what will be done with it. In the past the board did not decide what happens to these items and it was left to be taken by whoever decided to take it. Last year it seemed to be a issue for some that I decided to sell the leftover items (other then what was already cooked or could not be kept such as buns) to members and the canteen and put the money back in the bank so this year to avoid this I have decided to let the board decide what will be done.

## CSA Update

I was in DC last week to negotiate the new CSA for national NTEU. The old CSA is still in effect until a new one is negotiated. I do not see a new one coming anytime soon. There are MANY things that IRS wants to take away and have more control that will not only adversely impact employees but taxpayers as well. Just remember NTEU is fighting very hard to make sure our employees are taken care of while keeping the taxpayers best interest at heart. It is an honor for me to be asked to sit on this national team to represent our employees. I know the current agreement and the contract very well which helps tremendously when negotiating. Frank Ferris our national VP is heading our team and is giving them a run for their money. NTEU will keep you informed as much as we can legally do on what is going on.

## Writers Wanted

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

Submit your article to **The Force**. If your article is accepted, we will print it with or without your name attached; 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" **The Force** reserves the right to edit all articles it prints.

## 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 A.M.—4:00 P.M. & 7:30 P.M.—11:00 P.M.  
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### Winners of the NTEU Labor Recognition Week table pull

1st prize—Andrea Sebastian, NTEU sweatshirt and sweat pants

2nd prize—Cathy Dowers, NTEU golf shirt

NTEU73 raised \$67.04 to go toward the Charities fund for IRS employees!

## **The Force**

**"NTEU73's Hard Hitting Newsletter"**

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## **Leave Issues:AWOL, Sick Leave Restrictions, LWOP, and Standards for Acceptable Medical Documentation—Part I**

By Ron James  
Regional Director, DC Field Office, NTEU

Among the most common employee complaints that stewards handle are issues involving absence without official leave (AWOL), sick leave restrictions, leave without pay (LWOP), and standards for acceptable medical documentation. This issue of the Steward Update will include a review of the law and provide some guidance on handling these matters. Requests for sick leave, LWOP, and medical documentation standards under the Family and Medical Leave Act (FMLA) are somewhat different from those that occur in the general employment setting and will not be covered in this issue. (For more information on FMLA see the Steward Updates of January 1999, February 1999, June 2000, and October 2003). Also, you should consult your NTEU collective bargaining agreement for other applicable requirements and rights for AWOL, sick leave restrictions, LWOP, and standards for acceptable medical documentation.

### **AWOL**

An absence from duty that is not authorized by the agency-or for which a request for leave has been properly denied-may be recorded as AWOL. It is well established that in the absence of a valid excuse, it is the employee's responsibility to report to work when expected.

- 1) However, employees and their managers often disagree over whether an employee's excuse is indeed "valid." The determination of whether an employee's excuse is valid must be made on a case-by-case basis evaluating all the pertinent facts, e.g., the reason the employee was absent, documentation of the reason for the absence, how other similarly situated employees have been treated, etc. Although AWOL might serve as a valid basis for discipline, under most circumstances, AWOL is not itself considered discipline. The placement of an employee on AWOL instead of on approved leave is not a constructive suspension or enforced leave unless the agency prevents the employee from returning to work.
- 2) Generally, AWOL charges that have not otherwise resulted in an adverse action can be appealed only through grievances under collective bargaining agreements. But, if an AWOL charge is alleged to be an unfair labor practice or a prohibited personnel practice, it may instead be appealed to the Federal Labor Relations Authority or the Office of Special Counsel respectively. In all instances, the employee must show that the absence from duty was legitimate.
- 3) However, in order to prevail on an AWOL charge after the employee has established the legitimacy of the absence, the agency must show both that the employee was absent and that either the absence was not authorized or that a request for leave was properly denied.
- 4) Thus, in order for the agency to properly charge an employee with AWOL, it is not enough to show that an employee was absent from work without approval; the agency must also show that its denial of the leave was proper.

Employees are sometimes charged with AWOL because they failed to follow the procedures for requesting leave. However, agencies must grant leave requests when employees provide proper evidence of incapacitation due to illness or injury and may not properly charge AWOL for such periods, regardless of whether employees complied with leave procedures.

- 5) The same is true for absences without advance approval due to documented family emergencies.
- 6) Further, an agency may not charge an employee AWOL for dates on which he/she receives or is entitled to receive benefits from the Office of Workers' Compensation Programs.
- 7) If an agency does discipline an employee for failure to follow leave request procedures, the agency (in order to prevail) must also identify the adverse impact(s) caused by the employee's absence.
- 8) Sick Leave Restrictions

Generally, under OPM's government-wide regulation, 5 CFR 630.401, agencies must grant sick leave to an employee when the employee:

- 1) receives medical, dental, or optical examination or treatment;
- 2) is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
- 3) provides care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;

*Leave Issues continued on page 6...*

...*Leave Issues* continued from page 5

- 3) Provides care for a family member with a serious health condition;
- 5) makes arrangements necessitated by the death of a family member or attends the funeral;
- 6) would, as determined by a health care provider, jeopardize the health of others by his/her presence on the job because of exposure to a communicable disease; or
- 7) must be absent for purposes relating to the adoption of a child.

Normally, medical documentation for purposes relating to the use of sick leave is not required unless the absence is more than three (3) consecutive days. However, sick leave restrictions usually requires an employee to justify each period of sick leave absence and/or to abide by special reporting requirements for such absences. Sick leave restrictions can institute these requirements even in the case of absences of less than three (3) consecutive days. The basis for such restrictions is usually for so-called "leave abuse." Because there is no standard definition of leave abuse, it is especially important that sick leave restriction letters be carefully reviewed and the events that resulted in them thoroughly investigated on a case-by-case basis. Sick leave restrictions that are not justified by the circumstances or were issued in violation of the requirements of applicable rules and/or collective bargaining agreements should be challenged with timely grievances if informal efforts fail. Waiting until discipline has resulted under the restriction letter might present timeliness issues that prevent a successful challenge to either the appropriateness of the employee having been placed on restriction or any deficiencies in the leave restriction letter.

Unless there is some contract language or agency policy to the contrary, a sick leave restriction letter can be extended for an additional period, if justified by the employee's record during the initial restriction period.

- 9) If, at the end of the initial term, a good case can be made for the discontinuance of the leave restriction because of the employee's good attendance and observance of reporting requirements, the steward should advocate for the discontinuance. If the agency disagrees and extends the restrictions, a grievance should be filed challenging the extension. If the leave restriction is for a set duration and it expires without any notice to the employee that it will be extended, it is no longer in effect.

It is important to note that just because an employee uses sick leave regularly or usually has a zero leave balance, these circumstances are not necessarily proper grounds for the imposition of sick leave restrictions. If an employee or qualifying family member has a documented covered condition that necessitates the employee's absence, sick leave can properly be used in such situations. This is its intended usage. Therefore, such leave usage is not by definition abusive and should not be used to justify sick leave restrictions.

*Look for the rest of this article in the next edition of The Force...*

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## **Diversity at the IRS—Is it Real or a Political Correct Appearance?**

By Mary Bjelland & Heather Phillips  
NTEU73 Stewards

Special Emphasis Programs (SEP) are offered most months covering various ethnic groups and persons with disabilities. They are for the sole purpose as to enlighten employees as to promote understanding of our fellow employee who may be different from us. There was a time when the Service Center celebrated Diversity Week. This dwindled to a day then seemed to disappear. The SEP may be headed for the same fate. At one point any employee could attend the live programs. Now it is limited to each operation getting a limited number of slots to the live program. Attendance is shrinking to the point that most programs are half of the total number of the number of slots available. What has happened? Why have these programs lost their audience? Putting these programs together takes a lot of work and time by the committees. It also involves expense both for the live program and to tape it for replay; a replay that is viewed by even fewer employees than the live presentation.


Over the last three or four years, the committees have taken their plight to upper management only to see attendance drop even more. Part of the Director' rating is the fact that the Center has these programs, not the attendance at the program. Part of the frontline manager's annual evaluation rating is on EEO. Apparently, promotion of the SEP events by the frontline manager is no longer a priority item.

As bargaining unit employees lets not be so smug. Some of the problems are with management's lack of notification; however there are some teams where that is not the problem. In these teams employees are not requesting to go. Is it workload or apathy? If it is workload shame on management; and if it is apathy shame on us.

# Whose Bull is Being Gored?

By Heather Phillips  
NTEU73 Steward

Hurricane Ike pounded the coast of Texas laying waste to many areas in Galveston and Houston. Outpour of concern spilled forth from many IRS Officials from the Commissioner on down. Locally many employees and managers expressed concern for Federal employees in the effected area. September 14, 2008, Kentucky, Ohio and Indiana were hit with category one hurricane winds from Ike with its unprecedented invasion of Middle America. Initially, over 700,000 consumers were without power. Some of those consumers were IRS employees here at the Service Center. What type of compassion and concern was shown for these employees? In an e-mail response to a question from NTEU 73 President Jackie Huff, Senior Commissioner's Representative Susan Hansen stated "the heavy winds occurred between noon and early evening on a Sunday, there was no shift during that time. The severe weather had subsided before the beginning of night shift. The campus had not lost power at any time and the building was open for work on all shifts. No Liberal leave was announced." Is the Covington Campus operating in a vacuum? Are we not and do not our people reside in the surrounding communities? How can we ignore what is happening on our door step? Just because it is not our bull which is being gored; does this relief us of our responsibility toward our fellow man? Obviously, the building and its equipment are of more concern of management than the employees who occupy it. How can upper management ever express their concerns for their employees when by their actions they showed a total disregard? Liberal leave should have been granted at least for Monday if not the entire week. Power was out day care centers and schools were closed. The communities found themselves paralyzed by the aftermath of the storm. Employees' homes were damaged and some even destroyed. With a blink of an eye they were plunged into a severely stressful scenario. How did management show their concern? They did it by charging those with insufficient leave AWOL. It is this total lack of human concern and compassion for CIRSC employees that has earn the three directors this award.

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