POPA NEWS
Patent Office Professional Association
www.popa.org
PROFESSIONAL REPRESENTATION FOR PATENT PROFESSIONALS
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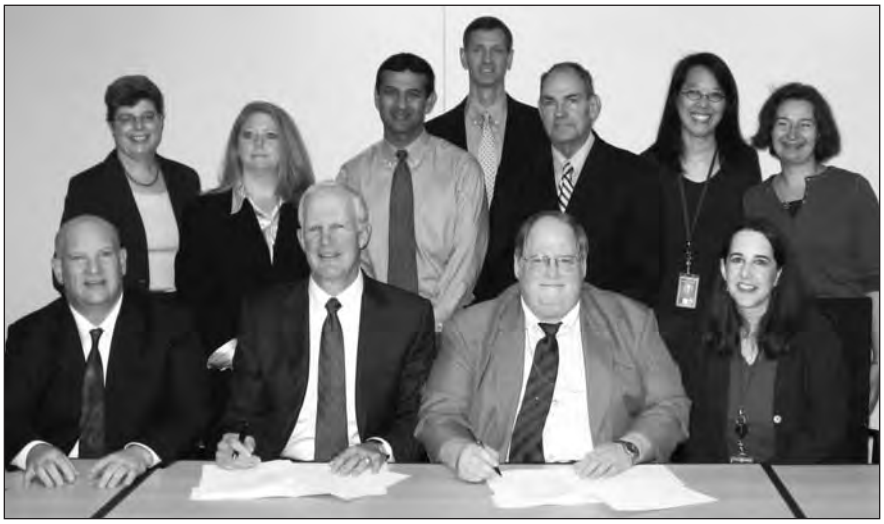
POPA-USPTO Agreement Expands Telework and Part-time Benefits

POPA had for years prodded the USPTO to expand the offer of telework options beyond full-time examiners to include other patent professionals and part-time examiners. For years the USPTO resisted expanding existing programs until last month, when POPA and the USPTO signed a new agreement including a new "Part-Time Program" that expands availability of part-time schedules and allows part-time employees to participate in the Patents telework and hoteling programs.

In addition, the agreement includes a new "Telework Program B" that provides expanded telework opportunities to POPA bargaining unit members who are not patent examiners, central reexamination unit (CRU) examiners, petitions employees or Patent Cooperation Treaty (PCT) employees. The agreement became effective Nov. 9, 2008, and will be incorporated into the parties' next collective bargaining agreement.



POPA and USPTO representatives sign the Part-time and Telework Programs Agreements. Sitting, left to right: USPTO Chief Negotiator David Dalke, USPTO Chief Administrative Officer Stephen S. Smith, POPA President Robert D. Budens, POPA Chief Negotiator Pamela Schwartz. Standing, left to right: USPTO negotiators Kathy Matecki, Michelle Picard, Rupal Dharia and Bob Oberleitner, POPA negotiators Larry Oresky, Melanie Tung and Julie Anne Watko.

"Telework Program A," affecting patent examiners, CRU examiners, petitions employees and PCT employees, remains under negotiation, but POPA believes progress is being made in this area also.

The highlights of the agreement include:

■ Expanding the telework program that is now available to POPA bargaining unit employees in the Office of Search and Information Resources Administration, the Office of Patent Legal Administration, Office of the Chief Information Officer, and Office of the Chief Finance Officer. These employees will now be eligible to telework one, two or three days per week depending on their duties.

(*continued on page 2*)

POPA Members to Vote on Amendments to POPA Constitution

The changing geography of patent professionals' work locations—resulting from the USPTO's increasing variety of telework programs—translates into many POPA bargaining unit members no longer being physically present at the USPTO offices at the time of POPA elections. The POPA Executive Committee aims to make the election process easier and more cost efficient by proposing amendments to the POPA Constitution, which will be on the ballot in this month's union election.

The constitution currently calls for elections to be held every two years in November of even-numbered years. POPA members have the opportunity to vote during at least two consecutive days onsite at the agency.

With fewer employees working onsite, carrying out POPA's bi-annual election of officers and area delegates has become logistically difficult and hence more expensive. For each election, POPA must recruit an Election Committee of union members and expend significant resources to hire temporary workers to run the election impartially. To maintain the integrity of the secret ballot voting system, POPA representatives cannot perform election duties.

Maintain Costs and Election Integrity

In the foreseeable future, POPA will need to explore other means of holding elections, such as mail-in ballots or some form of online voting that will meet the legal requirements for union elections. Such changes will further complicate logistics and increase the cost of carrying out POPA elections. Therefore, to maintain the costs of future elections within POPA's budget, the Executive Committee recommends that POPA members approve proposed

(*continued on page 2*)

POPA-USPTO Agreement

(*continued from page 1*)

■ For the part-time program, adding additional slots in both components of the program for a total of 100 slots for the Childcare/Eldercare component and 25 slots for the Retention component.
■ More flexible schedules for part-time employees, including the ability to work on Saturdays. Employees in either part-time program component can work between 4:30 a.m. and 11:30 p.m. after meeting a minimum of 16 hours on Monday through Friday, 5:30 a.m. to 8 p.m.
■ The Retention component still requires a fully successful rating, but managers have the ability to waive that requirement.
■ Part-time patent professionals can participate in telework and hoteling programs.

"These new policies hold a lot of benefits for employees," said POPA Delegate Kathy Duda, who has been the union's expert and chief negotiator on part-time provisions for years. "POPA and the agency worked hard to come up with this package of part-time and telework enhancements."

To see the full POPA-USPTO agreement, go to *www.popa.org* and click on Agreements.

Proposed POPA Amendments

(*continued from page 1*)

Amendment I (listed below), which would change association elections from every two years to every three years.

In addition, a recent review of the POPA Constitution revealed the need for a technical correction to Article VII with regard to filling a vacancy for the officer position of Assistant Secretary. The Executive Committee recommends that POPA members approve proposed Amendment II, which would allow the Executive Committee to appoint an Assistant Secretary using the same methods prescribed for other officers.

In the amendments below, proposed text deletions are shown in brackets and proposed text additions are underlined. Please remember that you must be a member in good standing, i.e., a dues-paying member, to vote in POPA elections for delegates, officers and amendments to POPA's Constitution.

Proposed Amendments to POPA Constitution

I. It is proposed that the POPA Constitution be amended as follows to change the election of officers and area delegates from every two years in even-numbered years to every three years.

Amend Article V, Section 5 to read as follows:

"**Section 5.** At a meeting to be held in September of each [even numbered year] Association election year, the Executive Committee shall define the organizational areas and determine the number of Executive Committee delegates to be elected at the next election of Executive Committee delegates. A special meeting of the Executive Committee for such purposes as set forth in Sections 3 and 4 of this Article shall be called by the President upon written petition of at least 15% of the members in good standing of the Association."

Amend Article IX, Sections 1 and 4 to read as follows:

"**Section 1.** The election of officers and Executive Committee delegates shall be held every three years in November [of even numbered years] of the election year. All candidates for these positions shall be Association members in good standing."

"**Section 4.** All newly elected officers and Executive Committee delegates shall be installed at the first annual December meeting of the Association following an election, and their terms shall run until the [following] next December meeting of the Association which occurs [in an even numbered year] after an election."

II. It is proposed that the POPA Constitution be amended as follows to allow the Executive Committee to appoint an Assistant Secretary in the event that the elected Assistant Secretary is removed from office, resigns or is otherwise unable to perform the duties of the office.

Amend Article VII, Section 2, paragraph F to read as follows:

"F. In the event that any of the Vice President, Secretary, Assistant Secretary or Treasurer be removed from or resign the office or become incapacitated to perform the duties of the office, the Executive Committee shall appoint someone to perform that officer's duties."

Discuss Patents Issues for the New Administration at

THE POPA ANNUAL MEETING

December 4, 12-1 p.m.
Madison Auditorium

PLUS an update on collective bargaining agreement negotiations and other association news.

1-3 p.m. Retirement reception for outgoing POPA Vice President Larry Oresky — all welcome.

POPA Negotiated Grievance Procedure Protects Good Employees from Bad Practices

If you ever question the value of the protections you receive from your POPA representation, consider the following case of a USPTO employee not covered by the POPA contract.

An administrative coordinator in the Global Intellectual Property Academy (GIPA), who had always met or exceeded expectations in job performance, had an altercation with a contracted GIPA worker. The contractor testified that the employee shoved first; the employee testified the contractor pushed first. The employee received a Notice of Proposed 14-day Suspension for improper conduct from her first-line supervisor.

The employee filed a grievance according to the USPTO administrative grievance system (AGS), which pertains to all agency employees not covered by a union contract. (POPA bargaining unit employees follow the procedures of the POPA-negotiated grievance procedure.) As part of the AGS grievance, the employee submitted statements from two other neutral employees—who had no personal relationship with the grievant—who had experienced similar hostility from the contractor on separate occasions. The grievance also called into doubt the testimony of a witness who had weeks in which to confer with the contractor prior to giving testimony to USPTO management.

Crucial Differences for Bargaining Unit Employees

The next steps in the administrative grievance system most sharply show how it differs from the POPA negotiated grievance procedure. In the AGS:

- USPTO Human Resources forwards the grievance to an internal USPTO deciding official. In this example case, the deciding official was the USPTO office director.
- The USPTO deciding official may designate an individual to make recommendations concerning the disposition of the grievance. In this case, the office director assigned the employee's second-line supervisor to review the case.
- The USPTO deciding official or designee conducts whatever fact-finding he or she deems necessary.
- The USPTO deciding official evaluates all evidence in the grievance file and issues a written decision within 90 calendar days insofar as practicable.
- The USPTO deciding official's decision on the grievance is final and not subject to further review. In this case, the deciding official's designee recommended a five-day suspension, which the official upheld and the employee obeyed, losing several days of pay.

The AGS has no provision for consideration of a grievance by an independent, impartial third party such as an arbitrator—only a management-appointed, agency official reviews the case. The right to bring a grievance to an impartial, third-party arbitrator is only accorded, under federal labor law, to an exclusive bargaining representative or union, such as POPA, and to the federal agency.

Only an adverse action of more than a 14-day suspension, a demotion, or a removal of a non-bargaining unit employee may be appealed to the Merit Systems Protection Board, which can refuse to hear the case. Non-bargaining unit employees may also file cases alleging discrimination to the Equal Employment Opportunity Commission.

Federal labor law *requires* a union-negotiated grievance procedure containing provisions allowing third-party, impartial arbitration to be a part of every federal collective bargaining agreement. Deciding whether to take a case before an arbitrator is the right of the union and the agency, not the individual bargaining-unit member's right, again according to law.

POPA weighs every grievance arbitration decision very seriously. The POPA Executive Committee votes on whether or not to arbitrate a grievance. The costs to POPA to pursue arbitration generally range from $3,000 to $15,000 per arbitration—major grievances, such as the flat-goal grievance or Millennium Agreement pay grievance, cost many times that, primarily for outside legal counsel.

Employee Protections Prompt Agency Prudence

The simple possibility that an impartial third party can decide a POPA-filed grievance often motivates the USPTO to act more mindfully. Agency officials may be more likely to review, moderate or reverse the actions of their own managers because they realize that their personnel actions may not stand up to labor law standards applied by independent arbitrators.

Employees not covered by union contracts—either employees designated as exempt by an agency or employees in agencies without union representation—have no opportunity for impartial review when charged with an infraction, as this GIPA employee's example illustrates.

When bad things happen to good employees, union protections help them receive fair consideration.

CORRECTION

The September 2008 *POPA News* article entitled, "New POPA Election Process for Changing Patents Workforce," should have stated correctly that teleworking employees living in other states more often travel to the headquarters office over the last weekend of a biweek (from Saturday to count Monday) to capture most efficiently the one-hour per week on-site work requirement.

POPA regrets any confusion.

POPA 2008 Election Nov. 20, 21 and 24

List of Candidates (in no particular order)

President
Robert D. Budens* 1600

Vice President
Howard J. Locker 1600

Secretary
Kathleen Duda 1700

Assistant Secretary
Pamela Schwartz* 1700

Treasurer
Randy Myers* 2600

Chemical Area Delegates (1600, 1700)
Gerald R. Ewoldt* 1600
Adrienne Johnstone* 1700
Jennifer Graser* 1600
Patricia Duffy* 1600
Kathleen Duda* 1700
Amy Lewis* 1600
Christine Saoud* 1600
Ileana Popa* 1600
Geraldina Vixconti* 1700

* Denotes an Incumbent

Electrical Area Delegates (2100, 2400, 2600, 2800)
Julie Anne Watko* 2600
Vincent Boccio* 2100
Dionne Harvey Pendleton* 2600
Jasmine Clark 2800
Jeff Swearingen* 2400
Albert Gagliardi* 3900
Scott J. Sugarman* 2800
Kim Lockett* 2800
Azizul Choudhury* 2400
Phylesha L. Dabney 2600
Howard Weiss* 2800
Adnan Mirza* 2400

Mechanical Area and Business Methods Delegates (3600, 3700)
Vinh T. Luong* 3600
David O. Reip* 3900
Ella Colbert* 3600
David Shay* 3700

Design & Other Areas Delegates
Melanie H. Tung* 2900
Debra Brittingham PCT
George Kirschbaum* 2900

POPA 2008 Election Guidelines

Election of Officers and Area Delegates will be from 9 a.m. to 4 p.m. on Nov. 20, 21 and 24, 2008, at the POPA Union Office, Randolph Building, Room 1D61 (to the right behind guard station).

1. Only members in good standing may vote. This means you must have paid your FY2008 dues or currently be on the payroll deduction program. (Non-dues-paid members see Note 3 below.)
2. Voting procedures will be as follows:
   a. Members are to proceed to the voting station.
   b. The voting station will be managed by contracted temporary workers and Election Committee members.
   c. Members should present I.D. card (building pass) and tell attendant their name and voting area.
   d. The attendant will then verify member's I.D. and voting area by comparing to a members listing by voting area, check off the name from the list and give the member a ballot. The attendant will also check the mailing address for accuracy, and make note of any corrections to be made.
   e. The ballot will then be marked at a voting table, folded, and placed in a ballot box. The ballot will not be signed or otherwise identified by the voting member.
   f. Ballots cannot be removed from the voting area (except by Election Committee members for the purpose of collecting and counting ballots).
   g. All dues-paid members may vote for Officers.
   h. Members may vote for Area Delegates only in their area of representation, e.g., Chemical members vote for Chemical Area Delegates, etc. Member may submit a blank ballot, vote for only one Area Delegate, or vote for as many Area Delegates as desired up to a maximum of 9 Chemical Area Delegates; 13 Electrical Area Delegates; 6 Mechanical & Business Area Delegates; 2 Designs & Other Areas.
   i. Write-in candidates are permitted; however, a write-in candidate for an Officer must receive at least 15 votes to be elected while a write-in for an Area Delegate must receive at least 5 votes to be elected.
   j. Ballots marked with more than the maximum number of votes permitted will not be counted.
   k. While candidates are permitted to have an observer present at the voting station during the election, no person including candidates will be permitted to interfere with the voting process at the voting station.
3. Persons who cannot produce their official I.D. card should check with the Election Chairperson. Persons who are not dues-paid POPA members may join, pay their dues, and vote in this election, provided they submit their dues deduction form personally to one of the above election officials.
4. Members are permitted to run both as an Area Delegate and as an Officer; however, they may be elected to only one position. If elected as an Officer, the member's name will automatically be removed from the list of Area Delegates.
5. In the event of a tie vote in any race, a run-off election will be held under the following guidelines:
   a. The membership list will be closed, i.e., no new members will be permitted to join and vote in the run-off.
   b. Ballots will be prepared and distributed to the affected area, the election will be held and the ballots counted.
   c. In the event of another tie vote, the candidates will be notified of same. Candidates will be asked if any wish to withdraw to resolve the contest. Failing this, the run-off will be decided by a coin flip.
6. The candidates for Officers and Area Delegates will appear on the ballots in the order listed on this page (asterisk denotes an incumbent).
7. No campaigning or campaign literature will be permitted within 50 feet of any polling room.
8. The Association shall only give out the name, address and area designation of members to candidates who have submitted valid nominating petitions.
9. No absentee ballots are permitted.

For more information, contact the 2008 Election Committee:
Don Walsh, Chairman, 703-229-5173
Nahid Amiri, KNX-2C21, 2-8113 Trang Tran, KNX-6B09, 2-7358
Emily Lloyd, RND-7A20, 2-2951 Michael Araj, RND-6D20, 2-5963
Ron Pompey, JEF-7D51, 2-1680 Kaveh Kianni, JEF-4C09, 2-2417
Mark Osele, REM-7D19, 2-1235 Celia Murphy, REM-5D31, 2-2654
David Fox, REM-2C09, 2-0795

Patent Office Professional Association

Letters from readers are welcome. Address to:
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Director of Adverse Action Challenges, (571) 272-0980

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Director of Unfair Labor Practices, (571) 272-1528

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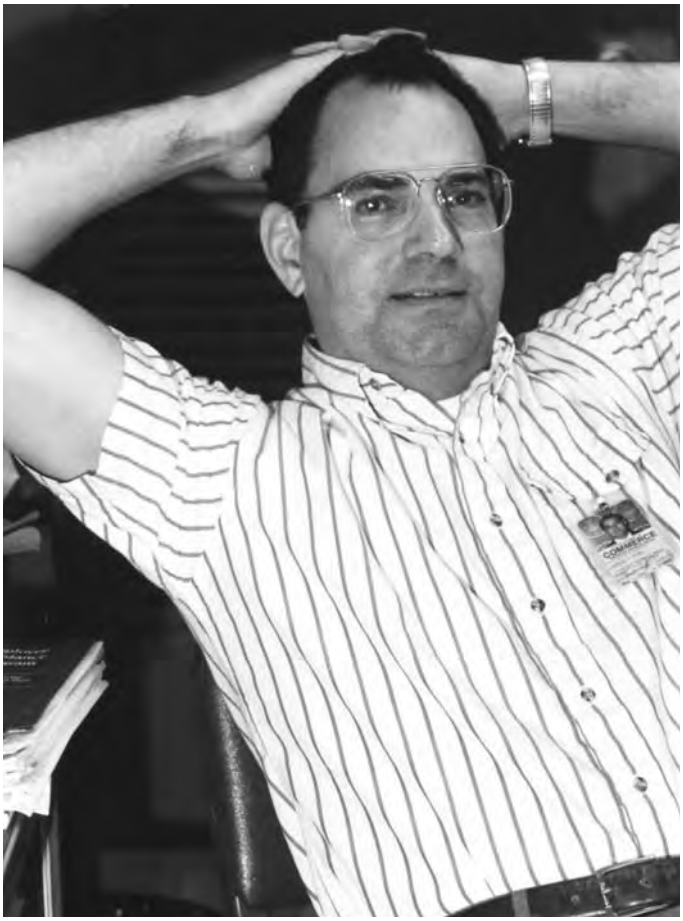
POPA NEWS EXTRA
Patent Office Professional Association
NOVEMBER 2008

Vice President Lawrence J. Oresky Retires

POPA Vice President and Director of Grievances Larry Oresky's Final Badge-Out

POPA Vice President Larry Oresky announced that he will retire at the end of December 2008. Larry's era at POPA saw gains in labor rights and employee benefits for our bargaining unit members not often equaled by large national federal labor unions. You can probably count on one hand the federal unions that have negotiated healthy monetary awards for their bargaining unit members over the years. Larry actively arbitrated to enforce the labor rights and benefits POPA has won.

Larry helped POPA negotiate and secure the Special Achievement Award and Gainsharing Award for patent professionals. More importantly Larry has steadfastly enforced the POPA gains in benefits and pay via arbitration under the negotiated grievance procedure he assisted in authoring in 1984.



Ready for Anything – POPA Vice President Lawrence J. Oresky, in earlier days.

Many commissioners and directors have come and gone but Larry remained a constant on the labor relations front. Schuyler, Gottschalk, Parker, Dann, Banner, Diamond, Mossinghoff, Quigg, Manbeck, Comer, Lehman, Dickinson, and Rogan have come and gone. Dudas will soon be leaving along with Larry. But through them all, Larry remained as the resolute "enforcer" to guarantee employee rights under the POPA contract and the many POPA agreements.

From Illinois to Washington, D.C.

Larry was born, raised and educated in Chicago, Ill. Higher education took him to the University of Illinois at Champagne/Urbana where he earned a BS and MS in Aeronautical Engineering. In June 1970, the need to support his wife, Marsha, and future family brought Larry to Washington, D.C., to work at the U.S. Patent Office ("Trademark" was not yet part of the agency's name).

From Waste Management to POPA Vice President

Larry reported to work as a junior examiner at the Patent Office headquarters in Crystal City, Va. The USPTO evaluated his educational background in aeronautical engineering and, in its infinite wisdom, assigned him to Group 310 to examine garbage truck applications. Even though garbage trucks weren't very aerodynamic, Larry learned much more than he ever dreamed about refuse moving and waste disposal apparatus.

Larry came from a family background of union affiliation, as Larry's father was a proud union member in Chicago. Larry almost immediately joined the Patent Office Professional Association and was elected to the POPA Executive Committee in 1971. One of his early assignments was to be editor of the POPA newsletter. Larry then worked his way up to secretary and joined forces with his friend, then POPA President Ron Stern, to run for vice president in 1983. As POPA vice president, Larry has served USPTO patent professionals faithfully and successfully for 25 years. He even stepped up and served as POPA president for two weeks in 2006 during the transition from retiring President Ron Stern to current President Robert Budens.

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As POPA director of grievances, Larry briefed POPA members on current arbitrations, as he did during the 2007 POPA Annual Meeting.

Handling Over 36 Years of USPTO Labor Relations

Not long after becoming vice president, Larry was also appointed as POPA director of grievances and will retire from the same position. Larry's specialty became taking grievances to arbitration.

While the rest of the large national federal unions have thousands and thousands of members and multimillion dollar litigation funds, Larry has prevailed in numerous arbitrations for individuals and the whole bargaining unit with far fewer resources. This includes a multimillion dollar settlement in back pay for employees who were not properly paid overtime by the agency.

Larry did this all and went toe to toe with management lawyers time after time without the benefit of a law degree. What Larry possessed instead was a highly motivating sense of fairness and justice for POPA bargaining unit members.

Litigator Extraordinaire – the Multimillion-Dollar Man

Larry quickly became known as the Perry Mason of the POPA organization. Larry may have been short of formal legal training but he prepared, prepared, prepared for litigation and came up with good evidence for his cases.

Larry has saved the careers of many bargaining unit members, including some who went on to become USPTO managers and who would have never made it that far but for Larry's dedicated and tenacious intervention. Along the way, Larry won substantial back pay for many, earning millions for bargaining unit members, individually and collectively.

A Hard-nosed Negotiator

During the POPA Collective Bargaining Agreement negotiations in the mid-1980s, the USPTO charged POPA representatives with examining time during impasse proceedings and arbitration. Larry was one of a handful of POPA representatives who carried on despite the time charges and he lost a within-grade increase as a result. Larry was willing to sacrifice salary and promotion so his fellow examiners could receive better workplace rights and benefits.

Several years later Larry won back the within-grade pay with interest in addition to pay, leave and time for his other union negotiators.

A Grievance Procedure and Arbitration Pit Bull

Larry has long been a proponent of taking the USPTO to arbitration when he saw agency injustice or discrimination. Larry became the advocate all bargaining unit members wanted in their corner when confronted, mistreated, or fired by management.

Training Union Reps and USPTO Managers

Larry is a firm believer in training, for patent professionals and for union representatives. Larry was an effective trainer for new and old POPA representatives alike. Larry provided internal training for POPA representatives, often tossing candy bar rewards across the room to people who gave correct answers to his questions. He also provided external training through affiliation with the Society of Federal Labor and Employee Relations Professionals and participation in their training seminars and through the Federal Labor Relations Authority training programs. Many POPA graduates of these programs have gone on to USPTO managerial positions, hopefully becoming better managers because of Larry's help.

Larry, Thanks for Everything You Have Done for Patent Professionals, POPA and the U.S. Patent System

Larry meets with Rep. Duncan Hunter (R-Calif.)

Good Luck and Good Health in Retirement

From Your Fellow POPA Officers and Representatives