POPA NEWS
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POPA Wins Millennium Agreement Backpay Case

Negotiations Start to Avoid Agency Court Appeal

The Federal Labor Relations Authority decided in favor of POPA's position that the agency-union negotiated Millennium Agreement required the agency to "provide substantially equivalent alternatives" when the USPTO failed to seek a special pay rate increase for POPA-represented employees in 2003. The Department of Justice has appealed the FLRA decision to the U.S. Court of Appeals for the D.C. Circuit.

However, in recent months the union and agency have been exploring possibilities for settling their differences out of court.

The FLRA on Nov. 30, 2010, ruled that a 2006 arbitrator's decision, which supported POPA's Millennium Agreement assertions, was valid. While the USPTO has expressed interest in settling the matter out of court, the Justice Department holds the authority to appeal on the government's behalf and filed a petition for review in the D.C. Circuit Court on Jan. 31, 2011. The agency's appeal brief is due in May.

History Explained

The Millennium Agreement, signed by POPA and the USPTO in 2001, specifically required the USPTO to request the Office of Personnel Management to increase the special pay rate each year to "maintain the 10 percent and 15 percent salary differentials relative to the updated GS rates" each year for the five years following implementation of the agreement (2002 to 2006). The agreement states that the USPTO must work with POPA to provide substantially equivalent alternative compensation if OPM denied the agency's request.

POPA filed a similar grievance for the 2002 special rate pay in a separate grievance but, after an initial victory before an arbitrator, POPA lost before the FLRA. POPA amended its arguments in the 2003 case and three similar grievances filed for 2004-2006. Those three grievances have been held in abeyance pending the outcome of the 2003 case; POPA will go forward with arbitration on those grievances if a settlement is not reached.

The agency and union both have incentives to settle their differences without further litigation. They can look to a similar, but larger, special rate backpay case litigated by the National Treasury Employees Union that, according to NTEU, took 22 years to resolve and cost the government more than $178 million. The USPTO presumably would like to avoid the expense and POPA would like the impacted employees to receive their backpay before they retire or die, as was the unfortunate instance too often with the NTEU case.

POPA will report on the results of any settlement negotiations and/or additional litigation as news becomes available.

USPTO and POPA Settle Dispute on Clarification of Unit

POPA succeeded in bringing approximately 130 additional employee positions into its bargaining unit through a negotiated agreement signed with the USPTO in early December.

The agreement settled a petition to the Federal Labor Relations Authority that the union filed in August 2010 seeking to extend POPA protections to about an additional 200 positions.

POPA chose to negotiate a settlement to avoid protracted litigation from a countersuit that the agency planned to file to remove other positions, not identified in POPA's petition, from the bargaining unit. Both sides decided negotiation was preferable to the cost—in time, money and disruption of employees' work lives—of continued litigation.

The agency and union agreed to include in the POPA bargaining unit:

- patent attorneys at the Board of Patent Appeals and Interferences;
- non-supervisory attorneys and congressional affairs specialists in the Office of External Affairs;
- petitions examiners in the Office of Petitions; and
- review quality assurance specialists (rQAS) in the Office of Patent Quality Assurance.

The negotiators settled to exclude from the POPA bargaining unit:

- attorneys in the Solicitor's Office;
- attorneys in the Office of General Law;
- attorneys in the Office of Enrollment and Discipline;
- attorneys performing supervisory functions in the Office of External Affairs; and

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USPTO, POPA Settle Dispute

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■ international technical projects specialists and patent classifiers on the International Liaison Staff.

The training quality assurance specialists (tQAS) were divided. The agency retained the ability to designate up to 24 training quality assurance specialists who work in employee relations as non-bargaining unit. The agency and union also agreed to exclude five specific, individual positions from the bargaining unit; all of those affected employees were notified.

The agreement became effective on Dec. 3, 2010, and all employees whose status changed should have been notified in writing. Each affected employee should receive a new Form SF-50, "Notification of Personnel Action," showing the employee's designation as a POPA bargaining unit member. POPA's bargaining unit code, "2325," should appear in Box 37 of the corrected Form SF-50. In addition, some employees have had their occupational series code changed from GS-1224 to GS-1220. This change became necessary to preserve employees' current pay grades. POPA is working with the agency to insure that this change in occupational series will not negatively impact affected employees.

POPA and the USPTO agreed to maintain the status quo regarding telework options and performance awards for the affected employees until POPA and the agency can complete negotiations on these issues. However, if the two parties have not yet finished negotiations and should the agency determine that budget issues would prevent payment of performance awards to managers, then affected bargaining unit employees would default to the current negotiated awards for employees without a production element in their performance appraisal plans. Criteria for the current non-production award programs can be found in Appendix A and Appendix C of POPA's Collective Bargaining Agreement. View a copy at *www.popa.org* under "Useful Info/Collective Bargaining."

If you have questions about your status, contact POPA officers Robert Budens, Kathleen Duda or Pamela Schwartz, whose contact information is listed on the back of this newsletter.

POPA Honors Employees for Service

POPA awarded its 2010 Distinguished Service Award to Dr. Gerald Ewoldt for his service in adverse actions and its Grievance Director's Award to Dionne Pendleton for her service in the grievance operations. Many thanks and congratulations to both POPA members.

Congress Chooses USPTO for Telework Pilot Program

A USPTO telework test recently legislated by Congress will use employees agency-wide as guinea pigs to show, hopefully, that allowing employees who telework from outside the 50-mile commuting limit to have home-based duty stations—without the requirement to travel to Alexandria every bi-week—can be a win-win situation for both employees and the agency. Employees would save money on travel costs by having to report back to the USPTO's Alexandria headquarters less frequently, while the agency improves employee retention and reduces overhead costs, such as real estate expenses.

The Telework Enhancement Act of 2010, enacted in January 2011, gave the USPTO specific authority to set up the telework pilot program—and a seven-year window within which to conduct the test. The test requires the formation of a Telework Oversight Committee comprised of an equal number of management and labor representatives from each agency collective bargaining unit, namely POPA and the two USPTO National Treasury Employee Union chapters.

Oversight Committee's Role

This committee will develop the pilot's operating procedures, including who may participate, costs to the employee and the agency, and other parameters, keeping in mind the legislation's goal of "minimizing agency travel expenses and employee travel requirements" and "to enhance cost savings or other efficiencies that accrue to the government." The test would permit the agency to change employees' duty stations to their approved alternate work sites within the U.S. provided the employees agreed to pay travel costs, e.g., airfare and accommodations, back to the agency for a limited number of trips per year. Under the legislation, the agency would still be required to compensate an employee for his/her travel time to and from the agency each time the agency requires the employee to return to the USPTO Alexandria headquarters.

The Telework Oversight Committee has been meeting regularly since early March to work out the details for the pilot program. with hope that final agreement will be reached very soon. Until the committee completes design of the program and announces its start date, employees who telework from beyond the 50-mile commuting area should continue reporting to the Alexandria office for two days per pay period as required by the current patents hoteling program.

The congressional outline for the program is in H.R. 1722 from the 111th Congress, Sect. 5711 (f)(2), available at the Library of Congress website, *http://thomas.loc.gov.*

Examiners Testing New Laptops Prior to Corps-wide Deployment

Selected patent examiners are test-driving new laptop computers as part of beta testing for the agency's coming move to universal laptops for all USPTO employees. Beta testing is being carried out in two examiner test groups, beta 2 and beta 3. Initial beta testing, beta 1, used non-examining personnel.

Selected examiners in Technology Center 2100 began beta testing the new laptops in February. In March, employees in art units 1624, 1654, 1722, 2911, 2886, 3657, and 3693 began the third and final beta test of the new equipment, along with about a dozen tech support personnel and several quality assurance specialists and group directors.

The universal laptops will serve as a single, primary desktop computer for all employees to use on and off campus. Deployment to the examining corps is slated to begin in May with Technology Center 2900 leading the way. The new laptop will replace the multiple computers assigned to employees in the office and at home, and will eliminate the need for the virtual ERA desktop for hotellers. Full deployment is expected to continue through the end of the calendar year and into early 2012.

Current teleworkers will lose the ability to leave their Patent Examiner Laptop Program computer at home. Instead they will have one business-class laptop that includes the latest processing tools: memory, display, the new Windows 7 operating system and Microsoft Office 2010 suite. Universal laptop users plug the laptops into desktop ports that connect to their additional office equipment, such as keyboard, printer and dual monitors. The laptops will serve as the central processing unit for employees wherever they may be, at home or agency office.

The agency expects the new laptops to provide: a stable 21st century platform for the most modern capabilities; desktop standardization, which will simplify future software updates and patches; improved remote access for teleworkers due to the elimination of the current remote desktop protocol; and recouped data center space, power and utilities provided by back-end improvements.

Testing and Deployment

The universal laptops' beta 2 testing is continuing, with art units 2183, 2184, and 2195 and associated tech support staff and supervisors using these new computers and operating systems. The participating examiners have reported only minor inconveniences with the new laptops so far. The Office of the Chief Information Officer and the universal laptop teams in the other business units expect to resolve any identified problems before issuing new equipment to all employees. Everyone who has tested the new laptop has noted the speed with which programs open and function in the office and home environments.

The USPTO plans to deploy the laptops during evening hours—to minimize down time and inconvenience—to about 50 employees each night, due to complexity of the launch. Examiners will leave for the evening and return the next day to their new laptop with all software and settings ready to go. Full art units will receive the new equipment at the same time to ensure communication and interoperability among co-workers. Deployment to all USPTO employees will take approximately a year.

Prior to the deployment, technicians will visit the employees to review their current computer (its programs, data storage, etc.) to ensure effective data migration to the new computer. Classroom and computer-based training will be offered on official time to all employees, along with training literature.

New Phone and Collaboration Tools

The agency is also replacing the phone system and collaboration tools and expects them to be a big improvement over the current ones—especially for the employees who work from home. Examiners participating in the beta 2 testing already have the new office phones. New home phones and collaboration tools will be provided to examiners in the beta 3 test as they become available.

The beta tests help improve the process and product for the examiner end-users. Thank you, beta test participants. Please continue to provide your valuable feedback.

See **POPA** on *Community Day*

Enjoy refreshments and fun freebies (while they last) when you visit the POPA table at USPTO Community Day May 12.

See you there!

The Agency is Watching Your Internet Use

The USPTO employs a commercial spyware program, Blue Coat, to monitor Internet use by all bargaining unit members, categorizing and recording every webpage viewed. If you open too many webpages that the agency has designated as inappropriate or you use too much bandwidth, you may be subject to an Employee Relations investigation.

The agency is targeting webpages in several Blue Coat categories, such as "Adult/Mature," "Gambling" and "Violence/Hate/Racism." The "Adult/Mature" category is not what you might think; it includes websites such as UrbanDictionary.com and others that Blue Coat describes as "very profane or vulgar content and sites that are not appropriate for children."

The agency also monitors the quantity of Internet use by recording both bandwidth usage and "page hits." Exceed the USPTO's limits and you may wind up the subject of an Employee Relations investigation for "excessive" Internet use.

While the limit for bandwidth usage is currently 5.0 GB per month, the agency won't tell employees the limit for "page hits." How can you know if you've exceeded the bandwidth limit? You can't. Additionally, the USPTO doesn't want you to know or be able to monitor/track how much Internet bandwidth you use each month because it believes that if you know how much you are using, you might push your usage to the limit.

How can you protect yourself? Simply apply a little knowledge and a lot of common sense. A few useful tips to remember:

- Video uses more bandwidth than streaming audio.
- Streaming audio uses more bandwidth than websites with changing or flashing images.
- Websites with changing images use more bandwidth than static websites.
- Always close websites you are viewing, do not minimize them.
- Close all websites when you lock your computer. Locking your computer alone does not shut open websites.

Recently the USPTO charged a bargaining unit member with excessive Internet usage for leaving a favorite blog open 24 hours a day, minimizing it when not in use. The blog refreshed its advertisers' websites every few minutes. Some websites, like this particular blog, use bandwidth to contact their advertisers for ad updates. This, along with the changing images, drove the employee's usage over the limit.

What should you do if you are charged with any sort of Internet abuse or called into a meeting with Employee Relations? Email and call Howard Locker and Gerald Ewoldt immediately. If you don't hear back from one of them directly, please inform one of the POPA officers or your local POPA representative. Contact information for all of these individuals is at *www.popa.org.*

Joint Labor-Management Committee Tackles Work Life Concerns

The POPA members on the Joint Labor-Management Committee serve as the bargaining unit's eyes and ears for workplace improvements. They offer an additional outlet for employees' concerns and suggestions.

The POPA-USPTO committee has been part of the agency landscape since its inclusion in the collective bargaining agreement signed in 1986. Though the committee would go on hiatus occasionally since that time, it has met quarterly since 2006.

The members of the committee strive to enhance the quality of USPTO work life and to improve agency effectiveness by discussing each other's concerns, openly exchanging information, and jointly solving issues and concerns that adversely impact the work environment.

The Joint Labor-Management Committee does not replace the collective bargaining process or the grievance procedure. It's prohibited from discussing grievances or other formal disputes or actions. It fosters cooperation to improve the workplace.

Committee Functions

The employees on the committee are first-line supervisors and examiners who are not POPA representatives. They meet in four discussion groups—Chemical, Electrical, Mechanical, and "Other," which covers all other agency areas in which bargaining unit members work.

When members raise issues in a particular area, an expert is often brought in for consultation. For example, to address a facilities issue the group may consult with a heating and ventilation expert. If an employee brings an issue to the Joint Labor-Management Committee that falls outside the committee's purview, the committee will direct the issue to the most appropriate forum. For example, an issue may be specific to one technology center, so the issue would be directed back to the technology center level for resolution. The committee members from that tech center then report back to the committee on how the problem was solved.

Issues Addressed

Some recent issues and concerns that the committee has dealt with include: recommending improvements and identifying problems with examiner automation tools such as OACS and eDAN; EAST/WEST error messages during searching; incorrect expectancy calculations in PALM; and facilities problems such as bathroom and pantry cleanliness and speeding in the parking garages.

If you have workplace or work life issues you would like the committee to address, share your concerns with one of the committee members listed on page 5.

POPA and USPTO Joint Labor-Management Committee

POPA Representatives		USPTO Representatives	
Robert Budens, Chair	TC 1600 x20897	Donald Hajec, Chair	TC 3700 x22975
Christine Saoud (POPA Coordinator)	TC 1600 x20891	Georgia Epps (USPTO Coordinator)	TC 2800 x22328

Electrical Discussion Group

Diane Mizrahi*	TC 2600 x24079	VACANT	
Luci Bautista	TC 2100 x24132	Christopher Kelley	TC 2400 x27331
Karen Tang	TC 2400 x23116	Brian Zimmerman	TC 2600 x23059
Samuel Gebremariam	TC 2800 x21653	Robert Kim	TC 2800 x22293

Chemical Discussion Group

Robert Kelly*	TC 1600 x20729	Anne Marie Grunberg*	TC1600 x20975
Mark Osele	TC 1700 x21235	Mike Wityshyn	TC1600 x20926
Phillip Gambel	TC 1600 x20844	Timothy Meeks	TC1700 x21423

Mechanical Discussion Group

Erica Cadugan*	TC 3700 x24474	Derris Banks*	TC 3700 x24419
Mary A. Davis	TC 3700 x29965	Monica Carter	TC 3700 x24475
Maurice Williams	TC 3600 x24263	Peter Cuomo	TC 3600 x26856

Other Discussion Group

Kery Fries*	P/OPLA x27757	Stella Reid*	TC 2900 x22656
Elaine Gin	E/PEA x29300	Steven Griffin	SIRA x21189
Deanna Fluegeman	TC 2900 x27649	Tim McMahon	SIRA x23381

Health and Safety Committee

Pamela Schwartz*	TC 1700 x21528	Karen Young*	TC 3700 x23750
Kathy Duda	TC 1700 x21383	John Hassett	C/OCS x26250
Howard Weiss	TC 2800 x21720	Joe Burns	Security x26247
VACANT		Timothy Thorpe	TC 3700 x24444

* Denotes USPTO and POPA co-chairs of each group.

POPA Negotiates First-Action Interview Process Expansion

Because the initial pilots of the First-Action Interview program resulted in practically double the usual allowance rate with positive reviews from patent examiners and applicants, the USPTO and POPA agreed to expand the pilot to all examiners and all patent applicants as of May 1.

Notable among the protections negotiated by POPA in the one-year pilot program is that examiners will not be charged under their performance appraisal plan for the first occurrences of errors related to the examination procedures changed by the initiative. Examiners will be informed of the clear error in the first-action interview process and may be held accountable for second and subsequent errors. This only applies to errors related to the new procedures—examiners can still be charged for the first clear errors on other quality issues such as identifying proper prior art and making appropriate rejections.

Applicants request the first-action interview process when filing their patent application. The agency then will email the examiner who receives the case that the interview process applies to the case. Examiners will get just-in-time training if/when needed and first-action interview specialists will be available to assist examiners in each technology center.

In the three years that the agency has been running limited first-action interview pilots, examiners lodged no noteworthy complaints with POPA about the program, providing much positive feedback to the association about the process.

POPA Financial Report 2010-2011

The following report includes 2010 Association income and expenditures through December 31, 2010, and the 2011 Association budget approved by the Executive Committee.

	2010 Actual	2011 Budget
INCOME		
Dues	$ 285,170.00	$ 299,000.00 (est.)
Interest	$ 682.07	$ 1,000.00 (est.)
Other	$ 852.42	
Total Income	$ 286,704.49	$ 300,000.00 (est.)
EXPENDITURES		
Litigation, Lobbying	$ 79,229.21	$ 160,000.00
Newsletter	$ 21,638.12	$ 33,000.00
National Activities	$ 1,190.00	$ 4,000.00
Training & Conferences	$ 6,045.00	$ 8,000.00
Legal Information Resources	$ 11,307.89	$ 12,000.00
Elections*	$ 0	$ 15,000.00*
Administrative	$ 14,527.34	$ 32,300.00
Membership Services	$ 2,144.53	$ 5,000.00
Membership Meetings	$ 2,501.81	$ 5,000.00
Capital Expenditures	$ 14,550.40	$ 15,000.00
TOTAL EXPENDITURES	**$ 153,134.30**	**$ 289,300.00**
Net to Reserve	**$ 133,570.19**	**$ 10,700.00**

* Effective November 2008, Election expenses are incurred every three years. Election – 2011

Notes

National Activities: Membership dues for national organizations such as the Society of Federal Employee and Labor Relations Professionals.

Administrative: Includes expenses for accounting, secretarial, postage, office supplies and equipment, insurance, miscellaneous and bank fees.

Membership Services: Membership incentives and participation in USPTO Community Day.

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