



July 7, 2006

**VIA FACSIMILE: (202) 690-6758 AND  
ELECTRONIC TRANSMISSION**

Peter Themelis  
Director, HHS Labor and Employee Relations Program  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Room 308E (HHH Bldg)  
Washington, D.C. 20201

RE: National Grievance over Unilateral Implementation of PMAP

Dear Mr. Themelis:

On or about June 21, 2006, the National Treasury Employees Union (NTEU) learned that several of the Operating Divisions ("OPDIVs") at the Department of Health and Human Services (DHHS) have begun full-scale implementation of the Performance Management Appraisal Program (PMAP) despite repeated assurances that implementation was limited to the specific terms of an agreement between DHHS and NTEU. The Office of the Secretary (OS) is one of those OPDIVs. Accordingly, pursuant to Article 31, § 7C of the OS-NTEU collective bargaining agreement, NTEU hereby files this national grievance on behalf of all OS employees represented by NTEU. Article 31, § 7C of the parties' collective bargaining agreement requires that NTEU file grievances with the "Labor Relations Officer." Since the creation of the Rockville Human Resources Center (RHRC), there is no longer a Labor Relations Officer specific to OS, so NTEU is filing this grievance with both you and a representative of the RHRC, Al Hilliard. If you believe service is improper, please notify me promptly of the individual with whom I should file this grievance.

By way of background, in March 2006, as part of an agreement to enter into a consolidated collective bargaining agreement for the agencies represented by NTEU, NTEU and DHHS entered into a Memorandum of Understanding (MOU) regarding partial implementation of the PMAP (PMAP MOU). As it was explained to NTEU at the time of bargaining that side MOU, DHHS needed to have three elements of its PMAP implemented to ensure "green light" status from the Office of Personnel Management. NTEU agreed to those specific and limited three elements in exchange for certain commitments in a separate MOU governing ground rules for the consolidated bargaining.

At issue in the present grievance is the wholesale implementation of the PMAP rather than the limited implementation as outlined in the PMAP MOU. According to the parties' PMAP MOU, "DHHS will implement a 4-tier structure as outlined in the January 2006 PMAP Policy document for all bargaining unit employees represented by NTEU effective upon signing this MOU, with the exception of FDA. For FDA, the new 4-tier structure will be implemented after the completion of bargaining the consolidated contract, but no later than November 1, 2006." (PMAP MOU, ¶ 2). The MOU further

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provides: "The remainder of the provisions and all attendant impact and implementation issues will be bargained in accordance with law, rule, and regulation." (PMAP MOU, ¶ 6). Despite this commitment to bargain all elements of the PMAP except for the three limited elements agreed to by the parties, OS is implementing the program as drafted in the January 2006 policy document, including those areas over which NTEU has a right to bargain and over which NTEU specifically reserved that right in the PMAP MOU.


NTEU hereby alleges violations of the following collective bargaining agreement provisions:

- The Employer's unilateral implementation of the PMAP — other than those three agreed upon provisions (i.e., four-tier structure, calendar system and 90-day minimum appraisal period) — violates Article 12, §§ 2 and 3;
- The Employer's unilateral implementation of the PMAP — other than those three agreed upon provisions (i.e., four-tier structure, calendar system and 90-day minimum appraisal period) — violates Article 49; and
- The Employer's unilateral implementation of the PMAP has resulted in: suspension of the Rewards and Recognition program and joint panels in violation of Article 50, §§ 1 and 2; violations of Article 50, § 3; violations of procedures outlined in Article 50, § 6; and violation of the reopening process outlined in Article 50, § 7.

OS's actions also represent a failure to bargain in good faith. Given that the parties are currently bargaining over the Performance Management article of the new consolidated agreement and over the Awards Article, which is inextricably linked with the performance article, OS's unilateral implementation in the middle of term contract bargaining and in spite of the proposals that NTEU has put forth in both the Performance and Awards articles, violates 5 U.S.C. §§ 7116(a)(1) and (5). Further, as a party to the PMAP MOU, OS's unilateral implementation of PMAP without bargaining in accordance with that agreement constitutes a patent breach of that MOU.

NTEU hereby requests that OS immediately cease and desist with implementation outside the scope of the PMAP MOU; bargain in accordance with contract, law, rule, and regulation; return to status quo ante until such bargaining is complete (including reinstatement of current Reward and Recognition panel and procedures); remove from employee files any evaluations conducted under the illegally implemented policy; attorney's fees; and any other appropriate remedies. I have appointed Barbara Sheehy to be my representative in this matter. She can be reached at 202.572.5500, ext. 7087.

Sincerely,



Colleen M. Kelley  
National President

cc: Alfonzo Hilliard (Alfonzo.Hilliard@hhs.gov)