

# **NTEU**

**The National Treasury Employees Union**

September 15, 2009

Mr. Alfonzo ("Al") Hilliard  
Director, Labor and Employee Relations  
HHS/RHRC  
5600 Fishers Lane  
Room 9-64  
Rockville, MD 20857

**Re: National Grievance Concerning Violations of the Two Memoranda of Understanding between FDA and NTEU Regarding the Foreign Inspections Program and Unilateral Change in Policy and Past Practice**

Dear Al:

Pursuant to Article 45, sections 8C and D of the FDA/NTEU Collective Bargaining Agreement (Agreement or CBA), the National Treasury Employees Union (NTEU) hereby files this grievance on behalf of all FDA employees represented by NTEU and on behalf of the NTEU's institutional rights. Sections C and D require that NTEU file national and institutional grievances with the "Division of Ethics and Labor-Management Relations." To my knowledge, that division no longer exists, and since the creation of the Rockville Human Resources Center, there is no longer a representative specific to FDA. It is my understanding that FDA grievances are to be filed with you. If you believe service is improper, please notify me promptly of the individual with whom NTEU should file this grievance.

NTEU has learned that FDA is violating two Memoranda of Understanding between FDA and NTEU concerning the foreign inspections program. On June 11, 2003 and October 16, 2003, HHS/FDA and NTEU entered into two Memoranda of Understanding (collectively referred to as MOUs) concerning the FDA's foreign inspection program agreeing to, among other things, a process for assigning foreign inspection work. Namely, the parties agreed that foreign inspections will be rotated fairly and equitably among similarly qualified employees and that FDA will encourage volunteers for foreign inspections by announcing semi-annually "a call for volunteers" to participate in foreign inspections and placing those employees answering the call on a national volunteer list, identifying each volunteer's area of expertise and country and time preferences for travel.

The parties further agreed that if FDA management does not select a volunteer for an inspection from the national list, inspection assignments will be issued on a regional basis and the region will work to identify a qualified volunteer by disclosing the assignment request to all qualified employees within the region. If no volunteers apply, or if no volunteers who apply are selected, then FDA will make every reasonable effort to assign inspections on the

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regional/district level by grade in the following order: 1) any qualified GS-13 employee; 2) any qualified GS-12 employee; and 3) any other qualified employee. The assignments will be made on the basis of regional inverse seniority based upon HHS entry on duty date. Once an employee is chosen and performs the inspection, the employee's name goes on the bottom of the inverse seniority list of his/her grade.

The parties also agreed that FDA will provide inspection teams cell phones that connect internationally. In the event a cell phone is unavailable, an international calling card will be provided to the team.

FDA is violating the parties' MOUs by not assigning inspections consistent with the MOU, including not encouraging volunteers, not utilizing the national volunteer list, and/or not following the procedure for involuntary assignments. The FDA is also violating the parties' MOUs by failing to provide cell phones/international cards to inspection teams.

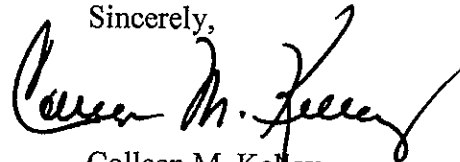
The agency is continuously and systematically breaching the parties' foreign inspections MOUs, resulting in a repudiation of their terms. These actions constitute an unfair labor practice in violation of 5 U.S.C. 7116(a)(1) and (5).

NTEU hereby requests that the FDA immediately cease and desist from violating the parties' foreign inspections MOUs and adhere to their terms, pay employees for any pay and/or benefit lost as a result of the violations plus interest, post a notice informing bargaining unit employees that the agency has violated the parties' MOUs and law, issue an all-hands bulletin to bargaining unit employees stating their commitment to abide by the terms of the parties' MOUs concerning foreign inspections, pay NTEU attorneys' fees and any other appropriate remedies.

NTEU reserves the right to supplement this grievance as additional facts and violations become known.

I have appointed Sharon Quinn Harris, Assistant Counsel for Negotiations, to be my representative in this matter. She may be reached at (202) 572-5500, extension 7029.

Sincerely,



Colleen M. Kelley  
National President

cc: Sharon Quinn Harris