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NTEU Arbitration Win at ATF Casts Serious Doubts on Pay-for-Performance

Washington, D.C.—The National Treasury Employees Union (NTEU) has won an important arbitration victory over the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) that not only will put money in the hands of agency employees, it exposes a serious flaw in proposals to install pay-for-performance plans throughout the government—namely, the effect on these plans of the lack of adequate funding.

An arbitrator ruled that ATF violated its agreement with NTEU by unilaterally splitting performance-based pay increases 50-50 between base pay and lump sum payments for employees under a pay demonstration project rather than providing the employees with the option of receiving their performance pay as a lump sum payment or as a base pay increase—a key part of the agency’s agreement with NTEU.

More than 100 employees will be affected by the decision, which restores to employees the right to make the choice. An increase in base pay generally has a more lasting impact.

NTEU President Colleen M. Kelley said “this is a perfect example of the kind of serious problems you get with pay-for-performance. Without adequate funding, such systems become pay-to-budget programs.”

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She has repeatedly issued that warning about pay-for-performance plans, as well as expressing her concern that they will fail unless employees see them as fair, credible and transparent.

The NTEU-ATF pay demonstration program was negotiated in the wake of a 1999 law authorizing pay demonstration projects designed to address Treasury Department concerns that it could not recruit and retain certain highly-qualified employee under the General Schedule pay scale. ATF, which is now part of the Justice Department, was the only Treasury agency to take part in such a program; the negotiated agreement covered specific scientific and technical positions, such as forensic auditors and chemists.

In its testimony before the arbitrator, ATF said it made that unilateral decision because of budget concerns, and cited a purported agreement with Treasury to place an arbitrary limit on funding for the program. However, the arbitrator found, no such limit was ever negotiated with NTEU, nor even communicated by the agency to the union.

The arbitrator underscored NTEU's position on the resource aspect of such programs. "ATF's invocation of budgetary concerns provides no basis to nullify the parties' agreement with respect to the form of payouts for performance-based pay increases," he wrote.

NTEU's grievance addressed the 2004 fiscal year performance appraisal period, after ATF decided to apportion performance-based pay increases between base pay and as a lump sum on a 50-50 basis.

The arbitrator—citing the NTEU-led federal court victory striking down Department of Homeland Security (DHS) personnel regulations—said the program is a negotiated collective bargaining agreement that is enforceable via the parties' grievance procedure and that cannot be changed, absent further negotiations with NTEU.

"ATF's interpretation," he said, "would essentially nullify the parties' agreement by subjecting all of its terms to management's unilaterally-exercised discretion"—a point that went to the heart of NTEU's victory in the DHS case.

NTEU is the largest independent federal union, representing some 150,000 federal workers in 30 agencies and departments.