

July 13, 2006

**MEMORANDUM**

TO: IRS Chapter Presidents

RE: Grievance on Behalf of Bilingual Employees

**SUMMARY: NTEU has filed a national grievance alleging that the IRS is discriminating against bilingual employees by not compensating them for their foreign language skills.**

We filed the attached national grievance against the IRS today that is potentially important to every one of our units. The IRS has hired about 800 employees not only for their technical tax skills, but also because they are bilingual. Most often they are placed in traditional IRS positions with a parenthetical reference to their bilingual skills after the job title, e.g., Customer Service Representative (Bilingual). Obviously, they are needed to help those taxpayers who cannot speak English, or cannot speak it well enough to comply with their complex tax obligations.

For some time now, NTEU has been arguing that when an employee not only has to perform all the technical, tax-related functions of a position, but also translate tax forms, rulings, decisions, and procedures into another language, he or she should be compensated properly for both the bilingual skills and the tax skills. The foreign language skills should not be dismissed because the employee was raised bilingually and did not learn the second language through formal education. While our IRS contract requires it to pay a \$350 annual bonus for the bilingual skills, NTEU has maintained that these employees are entitled to far more than that. (In a similar situation, NTEU lobbied for legislation that today requires Customs and Border Protection (CBP) to pay those in the NTEU bargaining unit up to a five percent salary differential for using bilingual skills. Neither of the other two unions in CBP achieved this benefit for their members.)

While I would have preferred to resolve this dispute in some cooperative manner with the IRS, management has shut the door on virtually any partnership efforts. Consequently, we have no choice but to rely on the more adversarial litigation options available to us. The grievance charges management with engaging in discrimination in violation of the Civil Rights Act and other legal authorities. Our research has shown that well over 90 percent of the employees in these bilingual positions are Hispanics.

Furthermore, if the IRS had hired these employees under different job titles where bilingual skills are properly valued, e.g., as Foreign Language Specialists, they would have been compensated at least one grade higher than they are today. (Ironically, employees in these higher-graded, “language-based” job titles need not possess any knowledge of tax issues.) At a minimum, management should have followed the government-wide rules for compensating employees in positions that require more than one major job skill (i.e., “mixed grade” jobs), resulting in a higher salary for these employees. As we see it, management has adversely treated and/or impacted employees by not acknowledging the value of their bilingual skills. NTEU is asking that management correct this error and retroactively compensate bilingual employees at the proper level.

It is clearly unfair not to compensate bilingual employees for the extra skills that they bring to their work. Nonetheless, this will not be an easy case to win because the case law regarding allegations of national origin discrimination in the context of the compensation of bilingual employees, while very sparse, is not favorable to us. Once again, NTEU will have to devote our considerable experience and expertise to an effort to break new ground for the bilingual employees, as we have for many other groups over the years. Employees in bilingual positions all over government could benefit from a victory in this grievance. Moreover, I believe that this case will also help even those employees who are not bilingual, as it will shine a bright light upon the compensation system under which everyone works. This is yet another example of something happening in one bargaining unit that has enormous importance to federal employees.

Colleen M. Kelley  
National President

Attachment



June 28, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Beverly Ortega Babers  
Chief Human Capital Officer  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Room 2413 IR  
Washington, DC 20224

RE: National Grievance (Bilingual Employees)

Dear Ms. Babers:

I am writing to file a national grievance on behalf of all employees occupying taxpayer service jobs designated as bilingual. This grievance alleges that by refusing to provide these employees with additional compensation in recognition of their bilingual skills, the IRS is discriminating against them--either intentionally or through an invalid, facially neutral policy--based on their race, ethnicity, and/or national origin. If true, the IRS would be in violation of various provisions of law and the contract, including Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.) and implementing regulations; 5 U.S.C. § 2303(b)(1), (10), and (12) and implementing regulations; and Article 4, Section 2.

The IRS has hired employees with bilingual skills in a number of public-contact positions, including but not limited to Taxpayer Service Representatives and Tax Advocates. The formal job titles of these employees typically include the annotation "(Bilingual)." The IRS has required employees with bilingual abilities hired into bilingual positions to use their language skills in carrying out their job duties. It has not, however, provided any compensation beyond what their nonbilingual colleagues earn. Workforce data provided to us by the IRS show that the individuals occupying the bilingual taxpayer service positions are overwhelmingly Hispanic.

The IRS, however, has provided additional compensation to other employees with foreign language skills, such as the GS-1040 foreign language specialists. The GS-1040 jobs have a higher career ladder, resulting in higher pay grades for employees in those positions, than the bilingual taxpayer service jobs. The decision to provide additional compensation to one or more sets of employees in recognition of their foreign language skills, but not to the overwhelmingly Hispanic bilingual taxpayer service employees, may constitute illegal discrimination in violation of the authorities cited above. Moreover, the failure to treat the bilingual taxpayer service positions as "mixed grade" positions under OPM classification rules (because the bilingual employees devote at least 25% of their time to translating) is also discriminatory.

As a remedy, we request retroactive compensation and benefits, interest, attorney fees, and all other appropriate remedies.

In connection with this grievance, we request that the IRS provide the following information pursuant to 5 U.S.C. § 7114(b)(4) for all jobs at the agency for which knowledge of a foreign language is required (including but not limited to all bilingual taxpayer service jobs and translator or foreign language specialist jobs):

1. The official job title;
2. The career ladder;
3. The position description;
4. The critical job elements;
5. Any classification analysis performed on the job; and
6. For each employee encumbering such a job, his or her name (or other unique identifier, if disclosure of the name is not legally permissible), post of duty, grade, race, national origin, and ethnicity.

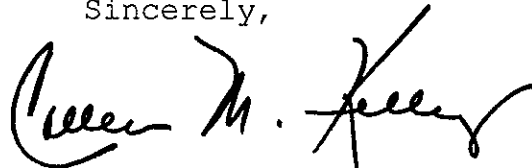
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In addition, please provide a copy of any regulations or other guidance or authorities the IRS has that address mixed series or mixed grade positions and the GS-series number and job title of all mixed grade or mixed series positions currently filled within the agency. We also request any regulation, guidance, or other authorities addressing the meaning of the term "translation" as it is used in the job classification process.

All of this information is necessary to our assessment of whether the IRS is treating similarly situated employees differently based on race, ethnicity, or national origin. It is essential to our prosecution of this national grievance. Please provide this information within 30 days.

Our representative in this matter is NTEU Assistant Counsel Robert H. Shriver, III. He can be reached at 202-572-5500, ext. 7049.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. Kelley". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Colleen M. Kelley  
National President