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## **NTEU Urges Federal Appeals Court to Uphold Essential Principles of Collective Bargaining**

**Washington, D.C.**—Bargaining under regulations issued by the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM) would not lead to contracts that are binding and enforceable against DHS. And that alone is enough to invalidate new DHS personnel rules, the National Treasury Employees Union (NTEU) said in a legal brief filed with a federal appeals court today.

NTEU, acting as lead counsel for the plaintiff unions in the case, is asking the court of appeals to uphold two lower court decisions blocking implementation of DHS regulations that would establish a new personnel system at DHS. The matter is now before the U.S. Court of Appeals for the District of Columbia Circuit following DHS's appeal. The regulations—enjoined by the lower court initially last August—would severely restrict employees' collective bargaining, due process and appeal rights.

“Even after NTEU's decisive legal victories, DHS continues its baseless efforts to strip away basic rights from the men and women who guard our ports and borders,” said NTEU President Colleen M. Kelley.

The regulations would authorize DHS managers and supervisors to nullify collective bargaining agreements on a whim; allow DHS unilaterally to take matters off the bargaining table by issuing rules and regulations declaring that such action “may be necessary” to accomplish the agency's mission; eliminate virtually all negotiations over daily working conditions, including impact and implementation bargaining; and give a management-controlled body the authority to resolve bargaining disputes without meaningful third-party review.

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## **NTEU Files Appellate Brief in DHS Rules Case—Add One**

President Kelley noted that the lower court issued a strong and well-reasoned opinion in striking down the regulations as failing to meet the dictates of the Homeland Security Act (HSA), in which Congress specifically requires that DHS “ensure” its employees have the right to bargain collectively.

The lower court, NTEU said in its comprehensive appeals court brief, ruled that the essence of “good-faith collective bargaining” is “an enforceable contract once the parties reach agreement.” The district court added that bargaining “is an illusion if any resulting agreement is unenforceable, which is the effect of allowing one party to ignore negotiated terms.” NTEU urged the appeals court to uphold that view as critical to meaningful employee workplace rights.

The union also asked the appeals court to sustain other key rulings of the district court. Specifically, NTEU asked the court to uphold the ruling that DHS could not assign functions to the Federal Labor Relations Authority (FLRA)—an independent body—that are fundamentally different from those Congress has previously assigned to it; and the ruling rejecting as unfair, and thus contrary to HSA, a new penalty-mitigation standard that DHS directed the Merit Systems Protection Board (MSPB) to apply to DHS employees under which even unreasonable penalties must be sustained, unless they are “wholly without justification.” The union also asked the appeals court to sustain the finding that the illegal regulations form an integral part of the proposed human resources program and cannot be severed from those the court found in conformance with HSA.

At the same time, NTEU asked the appeals court to overturn rulings of the lower court allowing DHS to limit the scope of bargaining; assign dispute resolution duties to an internal management board; amend the statute governing operation of the FLRA; and alter the jurisdiction and procedures of the MSPB.

President Kelley expressed outrage that DHS insists on pursuing its present course rather than sitting down with NTEU to work out regulations that would much better address any legitimate needs of the agency, while protecting the rights of its employees and better serving the nation.

“DHS leadership is intent on treating its employees as adversaries,” Kelley said. “These employees are trained, talented law enforcement professionals with the ability and a strong desire to protect this country. Give them the freedom to do their jobs.”

NTEU, as lead counsel, has written the briefs and presented argument on behalf of the plaintiff unions in this case.

NTEU is the largest independent federal union, representing 150,000 employees in 30 agencies and departments, including 14,000 in DHS’s Bureau of Customs and Border Protection (CBP).