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**Sent:** Tuesday, June 27, 2006 11:03 AM  
**To:** Chapter@mx-relay1.treas.gov; Presidents@mx-relay1.treas.gov  
**Subject:** NTEU Wins Far-Reaching Victory Against DHS Personnel Regs

This is a victory for ALL federal employees! It was NTEU who argued this case, and NTEU who won this decision. These regulations are aimed at DHS employees today, with the intent of implementing them on all federal employees in the future. Those plans have been stopped in their tracks with this decision. Please share this major breaking news with all NTEU members!

## ...Breaking News

From NTEU

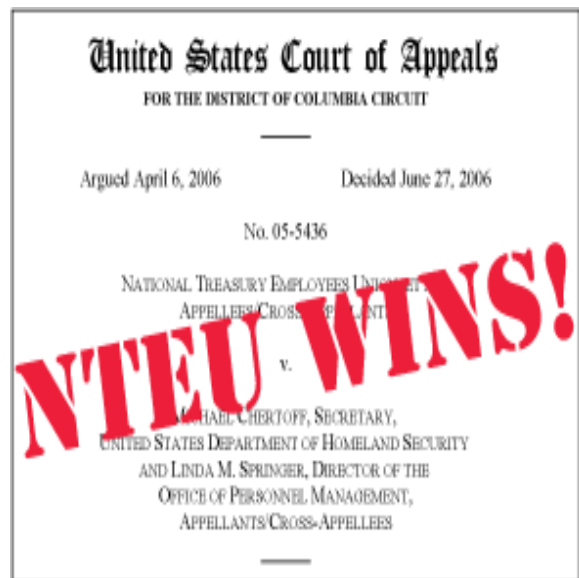
### Appeals Court Hands NTEU Far-Reaching Victory Against DHS Regs

Earlier today, NTEU won a major legal victory (<http://www.cadc.uscourts.gov/bin/opinions/allopinions.asp>) when a federal appeals court upheld a lower court's decision declaring that wide portions of a regressive personnel system proposed by the Department of Homeland Security (DHS) are illegal and may not be applied to employees.

The appeals court went even further than the district court, holding that DHS had improperly restricted the scope of bargaining to matters concerning employee-specific grievances only. This holding preserves a critical voice for the union on important workplace issues such as procedures for assigning overtime, among other matters.

NTEU's win imposes significant barriers to the administration's plan to extend governmentwide similar personnel rules that take away longstanding federal employee rights. NTEU continues to fiercely oppose the administration's so-called Working for America Act and any other personnel system that silences employee voices.

For more information on NTEU's fight against the DHS regulations, visit [www.CBPunion.org](http://www.CBPunion.org).



June 27, 2006

## **MEMORANDUM**

TO: Chapter Presidents

RE: Appeals Court Broadens NTEU Victory in DHS Personnel Regulations Case

**SUMMARY: NTEU obtained a landmark victory today when the court of appeals struck down the entire DHS labor relations scheme, preserving a critical voice for employees on important workplace issues.**

NTEU achieved an historic victory today on behalf of employees of the Department of Homeland Security (DHS). In a unanimous decision by a three-judge panel, the U.S. Court of Appeals for the D.C. Circuit, declaring that the DHS scheme “defies common sense” and is “bizarre,” upheld two earlier rulings by a federal district court that the regulations do not “ensure collective bargaining,” as required by the Homeland Security Act (HSA). The appeals court agreed with the district court that regulations allowing management to abrogate collective bargaining agreements were contrary to the HSA’s requirement that DHS “ensure employees’ right to bargain collectively.” In addition, the appeals court held that DHS had impermissibly restricted the scope of bargaining to only those matters concerning “employee-specific grievances.” This had the effect of “render[ing] collective bargaining meaningless.” The court’s decision preserves for employees a critical voice in important workplace matters, including, among other things, procedures for making work and overtime assignments.

The court of appeals also agreed with NTEU that the DHS regulations illegally attempt to control how an independent federal agency—the Federal Labor Relations Authority (FLRA)—conducts its business. Thus, it affirmed the district court’s decision striking down regulations imposing on the FLRA the responsibility of reviewing decisions of DHS’s new Homeland Security Labor Relations Board (HSLRB) under an extremely deferential standard of review. The court concluded that DHS had no authority to direct how the FLRA is to consider cases involving DHS employees.

The court declined to rule on other aspects of the case at this time, deferring judgment for a later date. Specifically, it held that, in light of its decision striking down the regulations assigning a new role to the FLRA, any challenge to the use of a management-controlled HSLRB would have to wait until after DHS rewrote the regulations. The court similarly deferred a ruling on the regulations’ penalty mitigation standard.

As a result of the court's decision, the entire labor relations scheme remains blocked. Further litigation is a possibility, as DHS may ask the entire court of appeals to consider the case and/or ask that the Supreme Court review it. The chances of either of those approaches being successful for DHS, however, are remote.

To avoid further defeats in the courts, DHS may now choose to revise its regulations to comport with the court's decision. In doing so, it must collaborate with NTEU, as is required under the HSA when any "adjustments" are made to the regulations. We intend to be active participants in that process and to work hard to get DHS to adjust even those parts of the regulations that the court did not strike down, because they are unnecessary and unwise.

I will be sending a letter to Secretary Chertoff urging him to abandon the defeated regulations and to sit down with me for meaningful discussions to devise a system that works for everyone. The Secretary knows by now that we will continue to fight unfair regulations in every forum available to us and that we will win those fights. He also knows that we are as committed to homeland security as anyone is and that we are willing to work with him, as we have been from the creation of this Department, to address any real problems with the current labor system.

There can be no doubt that this is a huge victory for NTEU and all DHS employees. Against all odds, we have brought the administration's anti-employee, anti-union civil service "reform" agenda to a halt and preserved a critical voice for federal employees on workplace issues. This decision not only blocks the DHS system, but it will also likely bring to a halt a similar system at the Department of Defense. In addition, it will stall the administration's efforts to extend these regressive schemes throughout the government.

Please get the word out about this victory to those you represent and make sure they know that NTEU is the union responsible for it. NTEU lawyers conceived of the lawsuit, wrote every word of every brief, and successfully argued the case three times in court.

Colleen M. Kelley  
National President