



## NATIONAL TREASURY EMPLOYEES UNION

### Representation of Employees of

### THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES AND THE OFFICE OF THE UNITED STATES ATTORNEY

1. On November 26, 2008 President George W. Bush signed an executive order exercising his statutory authority to exempt agencies or their subdivisions from coverage under the Federal Labor-Management Relations Statute. Most of the agencies and subdivisions exempted from coverage had previously been exempted and the executive order merely updated the references to reflect reorganizations. However, the executive order also exempts for the first time bargaining unit positions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) within the Justice Department, and positions within the Trade Analysis and Enforcement Division, Alcohol and Tobacco Tax and Trade Bureau (TTB), within the Department of Treasury.

NTEU had been the bargaining unit representative for 1687 professional and non-professional employees at ATF since its creation as a Department of Justice bureau. It also represented ATF's predecessor agency at the Treasury Department since its creation as a separate bureau from the IRS. TTB, which was once part of that predecessor agency, remained at the Department of Treasury after ATF became a DOJ Bureau. NTEU continued to represent 334 TTB employees until the November 26, 2008 Executive Order.

The statutory reference cited by the President as authority for this executive order, 5 U.S.C. 7103(b)(1) provides in subsection (A) that a subdivision may be excluded if it "has as a primary function intelligence, counterintelligence, investigative, or national security work, and (B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations."

ATF does not meet the first definition in subsection (A) above. Most ATF bargaining unit employees in the field, and a portion of those at headquarters, are Industry Operations Investigators (IOIs). DOJ's own description of the major duties of IOIs shows that their primary function is unrelated to the national security. It states that IOIs "conduct investigations and inspections designed to carry out the Federal government's regulatory responsibilities pertaining to the firearms and explosives industries." Their duties are to identify "evidence of falsification of records, inventories and document discrepancies through the analysis and examining of records, documents, and reports." Violations that they find are then referred to criminal investigators for "further action." They also "determine if persons desiring to enter business in the regulated industries meet established legal requirements for obtaining a federal permit or license."



Further, the provisions of the labor-management relations chapter of Title 5 can be applied to ATF in a manner consistent with national security requirements and considerations. In fact, it had been for approximately 30 years, including the last 7 years and 10 months of the Bush Administration.

The current ATF-Employee contract was implemented on April 7, 2008, having been negotiated and ratified by both parties. Neither before, during or after the most recent contract negotiations, did management raise any issue regarding a need to exclude employees from the bargaining unit. Nor did it identify any proposed provision of the contract that raised national security concerns. To the contrary, with the current contract, both management and NTEU agreed that employee involvement in the "formulation and implementation of personnel policies and practices affecting their conditions of their employment" benefits the "effective administration of government."

2. On January 7, 2002, President Bush issued Executive Order 13252, exempting U.S. Attorneys' Offices from coverage under the Federal Labor Management Relations Statute. The President issued his Order after NTEU had secured sufficient signatures to trigger an election at the Office of the United States Attorney in Miami, Florida. In fact, at the time the Order was issued, NTEU representatives were meeting with the Federal Labor Relations Authority in Miami to discuss the details of that election.

As was the case with ATF and TTB, the U.S. Attorneys' Offices do not meet the statutory criteria for exemption from the coverage of the Federal Labor-Management Relations Statute. Indeed, the President did not exempt the U.S. Attorneys' Offices from the Statute until some 24 years after it was enacted, and did so only in the wake of NTEU's successful organizing campaign in Miami.

For these reasons, NTEU requests that President Obama issue an executive order rescinding the exemption of all of these employees from coverage under the federal labor statute.