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Official Newsletter of NTEU 280

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Crystal City Consolidation Move - NTEU Proposals

On July 6, 2004, NTEU Chapter 280 provided to management proposals for bargaining regarding the Crystal City Consolidation Move. The next step is for management to respond to our proposals. The specific proposals are as follows:

Transition teams/committees: NTEU Chapter 280 representatives be part of the Agency move transition teams/committees.

Maintain Status Quo for Enclosed Staff Offices: The affected EPA offices presently provide enclosed office space for some of their staff. For example, the Federal Facilities Restoration and Reuse Office presently provides staff GS-15s and senior GS-14s with their own separate offices. On the other hand, some staff at OPPT share an enclosed office with another staffer, and others have their own separate offices. To place any of these office staff into cubicles is a change in working conditions. Accordingly, our proposal is that those staff in the affected EPA offices who presently work in enclosed offices (by themselves or shared with another) should also have an enclosed office at the new work location.

Women's shower/locker facilities these should NOT be co-located with the bike storage in the garage as currently proposed. This is a serious security concern for women. The women's showers/lockers should be in the main part of the building for safety reasons. They are currently located in the main part of Crystal Gateway (co-located with restrooms on the 11th floor). In the new building the women's showers/lockers could be co-located with the lactation room, with the Health facility, or with the women's restrooms in the main building.

Ample affordable parking: Need ample parking in the new building that is designated for EPA employees at rates comparable to the present workplaces of Crystal Gateway and Crystal Mall.

Health Facility: The health facility to be located in the new work location should be comparable to that of the Reagan facility

Cafeteria or food court: There should be a cafeteria or food court in the building. Otherwise, much employee productivity could very well be lost as employees are forced to walk to lunch elsewhere in Crystal City and use most of their 30 minute lunch breaks just walking back-and-forth in search of acceptable lunch food. Additionally, in Crystal Mall 2, there is a very large lounge with Microwaves next to fitness center for employees to have lunch together, talk with one another, this must be restored in new building too.

Shuttle Service: Maintain comparable bus shuttle between new location and the rest of EPA.

Notwithstanding the above proposals, NTEU Chapter 280 reserved the right to provide additional proposals and to modify and/or provide further details for the proposals listed above. The present proposals are based on information presently known to NTEU. In addition, should new or additional information become available to NTEU that may affect NTEU's proposals, NTEU reserves the right to modify and/or present additional proposals for bargaining.

Recent EEOC Decisions from DIGEST of Equal Employment Opportunity Law

The two referenced cases below can be found in the DIGEST of EEO Law, Volume XV, No. 2, Office of Federal Operations, Spring Quarter 2004.

Commission Awards \$90,000.00 in Nonpecuniary Damages

Complainant, who ultimately retired from the agency on disability, claimed that the agency failed to reasonably accommodate her medical conditions (chronic urticaria, dermatographism,

and formaldehyde allergy). Specifically, the agency did not allow her to telecommute, nor did it grant her request to assign her to a work area that met her physician's requirements. An AJ found that the agency discriminated against complainant on the basis of disability when it denied her reasonable accommodation. The AJ also found that the agency had failed to make a good faith effort to accommodate complainant, and as a result was liable for compensatory damages. In its examination of the appropriate amount of damages to award, the Commission noted that

complainant, her husband, and close friends testified that she experienced emotional distress; her relationship with her husband deteriorated; she became withdrawn and suffered lowered self-esteem. In addition, complainant's physician testified that her symptoms were mild prior to her arrival at the agency, and that she had never suffered a pattern of illness prior to her arrival at the agency. Her physician stated that he had been frustrated by the agency's failure to accommodate the complainant's condition, and that if it had complied with his recommendations to do so, complainant's symptoms would have improved. As to the duration of the harm, the physician noted that the symptoms were most severe for a 1-2 year period in 1997-98, but that they were ongoing, and continued into the year 2001. *Gamez v. Social Security Administration*, EEOC Appeal No. 07A20129 (October 27, 2003), request for reconsideration denied, EEOC

Request No. 05A40247 (January 5, 2004).

Hostile Work Environment Based on Gender - EEOC Orders Disciplinary Action

The Commission affirmed an AJ's finding that complainant was discriminated against based on sexual harassment and sex-based harassment. The AJ noted that the agency tolerated the use of sexist comments and jokes in the workplace that included a coworker's reference in writing to menstrual cycles; a written joke about PMS; and a photograph showing horses mating, which was put in complainant's mail slot. The AJ also considered a one-time comment made by a coworker who called complainant a "selfish b..ch." The AJ found that management was aware of the conduct and failed to promptly take remedial action to cure or correct the conduct. EEOC found

that these unwelcome incidents, taken as a whole, were sufficiently severe or pervasive to alter the conditions of complainant's employment and create an abusive working environment. The Commission ordered the agency to pay complainant attorney's fees and costs of over \$15,000.00; nearly \$12,000.00 in pecuniary damages for recorded medical expenses; and \$31,000.00 in nonpecuniary damages for stress resulting from the discrimination. EEOC also ordered the agency to consider disciplining complainant's supervisor, who had been identified as being responsible for the discriminatory acts. *Hiebert v. Department of Transportation*, EEOC Appeal No. 01A05253 (May 30, 2003). Cf. *Archie v. United States Postal Service*, EEOC Appeal No. 01A11588 (August 4, 2003) (agency not liable for sexual harassment by coworker (CW) where the agency conducted an immediate and thorough investigation; disciplined CW after determining that he had harassed complainant; permitted her to take leave; and assured complainant that CW would never work in the same facility as she).

Lawyering 101 - Verify Facts in Brief or Face the Consequences for Misrepresentations

As most attorneys should already know, attorneys can be held accountable for the misrepresentations they make in briefs and other documents that are used to justify or document agency actions. For example, in a recent Agency brief regarding an EEOC appeal, Agency counsel made the representation that: "The redelegation of authority in the instant case from Mr. Spears to Mr. Gibson was accomplished by a written memorandum signed by Mr. Spears." However, it turned out that, when pressed for a copy of that Ray Spears document, Agency counsel had to concede that she did not have a copy of that document, that she could not find an executed copy of that document, and that Mr. Spears did not have a dated and signed copy of his own redelegation document.

We understand that the staff attorney relied on representations of senior Agency officials regarding the Ray Spears redelegation document, but they never provided an executed copy to her. In the end, she had to file a supplemental letter with affidavit from Ray Spears attesting that he did sign the referenced missing document.

So what lessons can be learned from this real world example? Simple: If an Agency attorney is going to reference a document as part of the justification or support for an Agency action: (1) have a copy of that document in the attorney's possession before drafting the brief to verify that the document was signed and executed; and (2) verify that it says what the attorney represents it to say. The other lesson is that no matter how senior the Agency official, don't take their word that a document exists, get a signed and dated copy of the document before drafting the Agency brief or legal memorandum.

So who should be held accountable for the misrepresentation in the real world case, mentioned above? Well, obviously the attorney who signed the brief, but, the supervisory attorney is also accountable. In the cited case, we understand that the staff attorney relied on Steve Pressman's representations (her supervisor), regarding the Ray Spears document. Accordingly, we believe that management's performance review of Mr. Pressman should take that into account.

FROM THE PRESIDENT

by Dwight Welch

Management +/-

A slight change in format this month as I put "Management +/-" at the top of my monthly column. While some have claimed that the Union is engaged in vendettas, is targeting certain individuals, I have always maintained that we are issue-driven not person-driven. Or at least that is the ideal,

which I as President, try to pursue. Therefore, it is with great pride and satisfaction that I reveal this month's picks for Management Plus:

Managers Plus

Rafael DeLeon, Director OHR. It is with great pleasure that we pick as one of our Managers Plus Rafael DeLeon. Especially in view of past picks. Mr. DeLeon went the extra mile to investigate and clear up a dilemma which has left the Union and Management at impasse over Alternative Work Schedules. It is this extra effort along with creativity and interest based bargaining that often distinguish Managers Plus from others. Maybe it is because Rafael and I were getting sick of butting heads with each other, but I have always had confidence that somehow, we two strong-willed individuals could somehow forge a working relationship. I hope this is not premature, but I believe we may be well on our way. See "Will a 1945 Law Upset Your Life and Work Schedule?" below, to see how Mr. DeLeon has helped all EPA HQ employees get one step closer to Alternative Work Schedules.

Henry Longest, DAA, ORD. Henry is another manager to come a long way. As previously noted in *Inside the Fishbowl*, Mr. Longest nearly knocked me off my chair when he agreed with my e-mail that Human Resource Councils are illegal and need to be replaced with Partnership Councils. Mr. Longest has been good on his word when he established an ORD Human Resource and Partnership Council last April 7th. It was an oversight that the story has not gotten into the newsletter until now, so read all about this achievement in "ORD Finally Gets It...." below. You will see that Mr. Longest not only is talking the talk, he's walking the walk. Mr. Longest has also invited all of EPA's ORD Union Presidents nationwide to an upcoming "Managers' Leadership Summit." This is a unique first step, at least something I've not seen before. I hope to report on this summit in the next issue.

Mike Moore, ORD. Mike has long been a manager plus in my book, but his recent activities working on the NPC's Scientific Integrity Course and his hard work in getting going the ORD HRPC is worthy of mention. Mr. Longest has made the big decisions and Mr. Moore sees that they get implemented.

Quote of the Month

"Environmental protection is more than an agency; it is an ethic we must live every day,"... "EPA actively encourages employees to reduce energy consumption and pollution by participating in our transit subsidy program, car pooling and other environmentally friendly telework initiatives,"
-EPA Administrator Mike Leavitt.

Can Mr. Leavitt be talking about the same EPA we all work for? First off, since it was before his time, let me clarify some issues for our Administrator. The major reason EPA HQ enjoys transit subsidy, flexitime and flexiplace is because these are initiatives that the Union came up with, fought for and won. For instance it was Bill Hirzy that originally arranged the meeting between Metro and EPA to get employees transit subsidy, and VP Freshteh Toghrol who negotiated the agreement.

But while it is Agency policy to promote programs to reduce pollution, certain programs and program managers subvert this ideal. Below are two examples: denying telework, and trying to reverse flexible schedules.

Are You Being Denied Flexiplace?

Right now the only information the Union has is anecdotal. It is only when employees complain that they have been denied flexiplace that the Union has an inkling that anything might be wrong. Presently, Congress is pressing government agencies to maximize the use of telework as a pollution and traffic congestion reducing measure. To get a handle on how great or small the problem of denying flexiplace may be, I am going to suggest to the Executive Board the sending out of a short survey on flexiplace. My suspicion is that in some programs, at least, only the management favored employees get flexiplace. You know the same ones who get the awards, promotions, etc.

Will a 1945 Law Upset Your Life and Work Schedule?

Back in 1945 a law was passed, designed as a worker protection law, the Night Pay Differential provided agency workers get a 10% premium to their wages if an agency were to compel a worker to work before 6:00 AM or after 6:00 PM. Fast forwarding to the 21st century, many employees have voluntarily opted for alternatives to the usual 9 to 5, outside of the 6 to 6 variation band, in order to miss heavy traffic, to adjust personal to work life, and other reasons. Indeed, I have heard of people starting significantly earlier and significantly later than the 6 to 6 limitations. In response to supervisor inquiries, OHR issued a HR Advisory, Number 2004-1 dated June 1, 2004. In this advisory, supervisors are advised that employees cannot work beyond the 6 to 6 mandate of NPD, unless paid the additional 10% pay for those hours. Worker protection collided with worker flexibility yielding an unpleasant result for some. This has caused a number of supervisors to inform employees that work schedules outside of 6 to 6 may have to be changed. In one program, amazingly, employees are being required to apply to the disability coordinator if they wish to preserve their irregular schedule. (Huh?)

As a result of complaints from employees, I contacted Acting Assistant Administrator for OARM David O'Connor, and Office of Human Resources Director Rafael DeLeon. Mr. DeLeon arranged a meeting between himself, certain members of his staff, and the HQ Unions. In the briefing we learned that there were some five models for flexible work schedules. Management and the Union were on the same page in regard to common interests, that is, both sides wanted to be in compliance with the law and meet the needs of the organization, and both sides felt it important that people be allowed to maintain schedules outside of 6 to 6 to help minimize pollution and to accommodate employees' individual personal needs. At the union's invitation, OHR agreed to draft a discussion piece which could lead to an interim solution pending the results of formal negotiations. Management agreed to get the proposal to the Union by August 6, 2004.

Since this is part of an ongoing negotiation, it would be bad faith on my part to reveal the state of negotiations at this time. We will report any agreement, if one is reached, after the time it is signed off on by both sides.

Crystal City Outrage

Not only have I been bombarded with e-mails, but on occasion if I see a friend in Crystal City, I am treated to a long litany of gripes about the Crystal City Consolidation ranging from being placed in cubicles to wasting energy/creating more pollution to longer commutes. Many have threatened to quit or take retirement rather than to be banished to the southern wilderness of Crystal City. Now you can gripe to each other over the e-mail, and a few bold individuals have even sent their thoughts Office-wide, or you can support the Union's efforts to bargain over the change in working conditions.

The Unions were as surprised as everyone else including program management about this radical change in working conditions. In an ideal or even legal arrangement, management would have involved the Unions predecisionally. However, this thing started, no doubt, well beyond EPA. Next in line is the government's landlord, GSA. Finally, the assignment of a duty station is a management right under the law. Unions can only bargain on the impact of the implementation of a management decision. Thus we can try to keep those now in offices in offices in the new space, bargain over facilities such as a cafeteria, gym, etc. We can also try to push for more parking and shuttle service. (See our bargaining proposal under "Crystal City Consolidated Move - NTEU Proposals ") But Rich Lemley is playing it straight with employees when he talks about budget cuts and the possibility of no EPA shuttle. Putting the brakes on this move is well beyond Mr. Lemley's sphere of influence.

ORD Finally Gets It - Human Resource Council Abolished, Replaced by Partnership Council

Several months back I mentioned the proposed formation by ORD Deputy Assistant Administrator Henry Longest, of an ORD Partnership Council to replace the former ORD Human Resources Council. ORD has nearly 2,000 employees at thirteen locations across the nation, represented by 8 EPA union locals. But during the recent flurry of Partnership Council meetings (HQ, National and ORD), I neglected to report on the results of the April 29, 2004 meeting hosted by Mr. Longest. The meeting was in two parts. First the old HRC reported on their various activities and projects. In the second part, the transition took place to a Partnership Council.

The first part was informative, but in some ways a bit sad as conscientious members of the HRC felt sad to abandon their various projects. Both the Unions and managers indicated however, that these folks were still encouraged to participate, however, their participation must be through their lawful representatives, their bargaining unit unions. On the union side were the presidents of the 8 union locals which represent ORD employees. On the management side, the deputies of each organization would represent management interests. A telling change in direction was evidenced by attempted participation of non-principles from the Office of Civil Rights. My

objection to this participation, was reaffirmed by management. It is also interesting to note that those units without representation may be out in the cold. (Hint, hint.)

Most impressive about the meeting was Mr. Longest's commitment to achieving progress. He expressed his frustration with a lack of progress by the HRC as NOT being with from the staff council members, BUT on the management council members! Mr. Longest firmly indicated that in the future, it would be frowned upon if deputies sent underlings in their stead. Management has the power to make things change, and thus he is not going to permit a lack of commitment on the part of the management partners.

Certainly, ORD can be regarded as one of the most improved upon offices at EPA HQ. In the past, ORD was regarded by many as the "bad boys" of EPA HQ, but there is now a definite change in the winds as ORD heads in a more positive direction. In addition to Henry Longest's foresight, a large measure of credit also goes to Mike Moore who is active not only in the ORD Partnership and Humans Resources Council, but in the National Partnership Council as well. Credit also goes to NTEU 280 Vice President Al Galli who has contributed from our union's side.

We are scheduled to meet again at the end of August, so I will keep you informed of our progress.