

OUR UNION'S TWO STRONG ARMS: An Editorial by Bill Hirzy With the advent of four new members on the Executive Board, the Board has begun a discussion about the value of continuing our work with allies outside the headquarters professional bargaining unit on matters involving scientific integrity. This piece is my opinion on the subject. I'll give you the executive summary version first, then some deeper background and rationale.

Executive Summary

Our union has always had two strong arms working for EPA professionals and building our strength. One arm works on "traditional" labor relations matters like pursuing grievances, handling moves and reorganizations, negotiating benefits like flex-time, 5-4-9 and 4-10 work schedules, transit subsidy, indoor air quality, etc. The other arm works on job satisfaction, particularly in protecting employees from being suborned into complicity in violating the laws we administer by protecting our right to do our work ethically and with scientific integrity. In essence, this arm defends our right fully to live up to our Civil Service oath to support and defend the Constitution against all enemies, foreign and domestic. This arm was at work when we engaged EPA management - and those to whom it is subordinate - on disappearing asbestos ban/phase-down rules, on unlabeled flammable pesticide aerosol products, on failing to deal with toxic carpet-related air pollutants, on fraudulent fluoride drinking water standards, and now on short comings in dealing with organophosphate pesticides under the Food Quality Protection Act.

There is no competition between these two arms for union energy or resources. We have always been able to use both arms simultaneously, synergistically and effectively in representational and public service actions. The "traditional" arm focuses its work internally and is largely invisible to the outside world. The other, while having an effect internally, is highly visible to the outside world. Because of that, it has won us valuable allies who have come to our aid in ways that make the "traditional" arm stronger in defense of EPA workers.

I believe we will continue to build our strength as a representative labor organization and as public servants if we continue to vigorously exercise both our arms.

Background and Details Our website: www.nteu280.org has a History section that gives a detailed picture of much our work that has drawn outside attention.

I am one of eight charter members of the union. My father and both grandfathers were union men – longshoreman, iron molder and steamfitter. When I joined EPA as a chemist in 1981, the first thing I did was go to the AFGE 3331 office and sign up, even though that union could not represent me. I wanted to support organized labor right from the start, no matter how. Then I joined with other professionals like Adrian Gross, Bill Coniglio, Dave Anderson, Bill Marcus, Doreen Cantor and Bob Carton and worked on organizing a union to represent the professional bargaining unit. We had to collect over 400 signatures to have the Federal Labor Relations Authority run an election to determine whether professionals wanted to be represented by a union. All that work had to be done outside work hours and off EPA leased property.

We first petitioned FLRA to run the election on behalf of the National Treasury Employees Union as the professionals' representative. But after a lot of thought on what we really wanted our organization to be, and after considering how much more freedom we would have as a Local of the National Federation of Federal Employees to be a unique, activist professionals' union, we decided to affiliate with the latter instead of NTEU. This meant having to collect all those signatures again on a new petition.

Our main goal in organizing was to defend professionalism in the carrying out of environmental laws in the EPA workplace. It was the era of Anne Gorsuch, Rita LaVelle, James Watt, and Ronald Reagan with his "Killer Trees," of EPA featured for weeks on end in "Doonesbury" showing employees poised on the edge of the twelfth floor of the West Tower ready to jump. There was real fear in the air. A process for assigning office space was not the top item on everyone's mind - whether EPA would continue to exist as a functioning entity for protecting the environment and public health was number one on our list of worries.

We won the representational election as NFFE Local 2050 on June 11, 1984 by a 90 percent plurality: 210 to 19. (Interestingly and maddeningly, even in those terrible times and to this day, the

number of professionals who would actually pay dues to support the union has never much exceeded the number who voted to be represented by the union in 1984.)

Just a few months after the representational election, our first fight over professional job satisfaction began with the asbestos ban and phase-down rules issue. EPA, under secret pressure from OMB, withdrew the rules, citing TSCA section 9 as an excuse and referring the matter to OSHA and CPSC. OMB's involvement was widely suspected, and the Branch Chief, Richard Gross, who wrote the withdrawn rules approached me enraged and demanded to know what the union was going to do about it. The union organized a petition among Office of Toxic Substances employees, gathering over a hundred signatures on a letter to Administrator Lee Thomas. I also spoke with family friend, former Congressman Bob Eckhardt (D-Tx), father of TSCA and RCRA, who arranged with Rep. John Dingell (D-MI) to stop the referral to OSHA and CPSC and to hold hearings on the whole affair. OMB's secret involvement was revealed and an MOU was executed between EPA and OMB that prevents similar abuses today. This activity made the *New York Times* and drew the attention of people concerned with EPA's activities in setting drinking water standards for fluoride.

Simultaneously, Paul Price, an employee in the Office of Water came to Bob Carton complaining that EPA was about to propose standards for fluoride based on fraudulent science. We arranged for a seminar by Dr. John Yiamouyannis, who had published on the subject, and after hearing him, Bob and I tried to persuade EPA to have the contractors who had written the technical support document for the flawed regulations give a similar seminar. This failed, and after several months of futility in trying to settle the dispute in the family the union voted in 1986 to cooperate with the Natural Resources Defense Council, filing an *amicus curiae* brief in NRDC's lawsuit against EPA over the standards.

EPA challenged our right to file the brief, and in the D.C. Federal Circuit Court of Appeals Judge Ginsberg (now on the Supreme Court) voted to enter our brief. But Judges Buckley (brother of William Buckley) and Bork voted "nay," and our brief was not entered. But that was not the end of the matter. In 1990 the National Toxicology Program published the findings of its bioassay on sodium fluoride which were, "clear evidence of carcinogenicity in male rats." Promoters of water fluoridation realized that would be the end of their program, and they arranged to have a special review of the NTP's findings. That review changed the results to read, "equivocal evidence of carcinogenicity..." saving water fluoridation and angering Bill Marcus, Senior Toxicologist in the Office of Drinking Water and Treasurer of NFFE Local 2050. Bill went before the National Press Club to complain about the altered findings, for which EPA fired him.

While all this was going on and the court case on fluoride regulations was active, EPA decided to install new carpeting at Headquarters. Eventually 27,000 yds² of carpet was laid, and employees began to get sick, and I began my first term as union president. Union officers and I worked closely with the Committee of Poisoned Employees and others (including managers) trying to get EPA to remove the offending carpet and to provide alternative working arrangements for affected employees. We discovered information in the TSCA 8(e) files implicating a particular chemical in the problem, 4-phenylcyclohexene. The media picked up the story and people all across the country began contacting the union about similar problems. Union scientists put together a risk assessment and management plan to deal with our own problem and that of affected citizens. My Branch got the job of developing an EPA plan to deal with the problem. EPA decided to punt – to refer the issue to CPSC, which agency then allotted the grand total of \$5000 to handle it. I asked my Branch Chief why EPA was refusing to use the rich set of data it had collected in studying our in-house illnesses in the nation-wide investigation of carpet problems, and he said, "To avoid involvement in lawsuits." If private industry had such data showing an adverse health effect and didn't inform EPA, it would have been a violation of the TSCA, but EPA was content to sit on the information and do nothing to protect the public.

Faced with EPA's refusal to look at the data available and act on it under various sections of TSCA, the union voted to file a TSCA section 21 petition asking for section 4, 6, and 8 remedies that would address our own employees' and the general public's needs. EPA eventually denied the petition, saying privately that it would cost the carpet industry billions (in tort liability) if it were to grant the

petition. Instead, EPA set up a “Carpet Policy Dialogue,” allegedly to deal with and ameliorate the problem.

Just prior to the media picking up the carpet story in 1988, the union and management had reached a point in negotiating a code of professional ethics where we had exchanged Draft 13 of a code (much later, and in a watered down version, to be called the Principles of Scientific Integrity). When media attention turned to EPA’s carpet problem and how the Agency was ducking responsibility on the problem’s much wider scope, EPA broke off negotiations on the code of professional ethics.

While all this was going on, more employees were getting sick, and in addition to dealing with the needs of injured employees, the union was participating at EPA’s invitation in the Carpet Policy Dialogue, interacting with OSHA, helping to draft what became the 4-volume EPA Headquarters Workplace Health Survey and analyzing the results, handling hundreds of calls and letters from citizens and the media, and studying carpet manufacturing technology. We were also negotiating the first 5/4-9 work week agreements, AA-ship by AA-ship at headquarters at this same time as well as handling a number of routine grievance matters.

There were six people working full time in the union office dealing with this work load, the two strong union arms both working like mad. Management *said* it wanted to reach an agreement with us on how many FTEs would be devoted to “official time” for union work. What management was *really* after soon became apparent. Management did not like the fact that the union was drawing international attention to the carpet issue and putting pressure on the Carpet Policy Dialogue to produce meaningful results. Management threatened to prosecute me under 5 USC § 205 (for representing the union at the Dialogue). Dwight Welch, who had been pushing the Pesticide Office to label pesticide aerosols containing propane propellant as “flammable,” began his first term as president during this period, and EPA refused to allow him to work full time in the union office. His management tried to shoe-horn him into a chemist job for which he was not qualified as a means of shutting him up about flammable propane-containing aerosols and setting him up for an Unsatisfactory job rating.

In the official time negotiations they offered a total of 2000 hours per year for union work – less than one FTE. Clearly EPA was out to break the union.

At this juncture, with EPA out to cut off both our arms as well as our head, i.e. to fire its president (Dwight) as well as Bill Marcus, and to prosecute me, the value of our having invested work with people outside the headquarters professional bargaining unit became an asset of incalculable value upon which we could now draw. The arm that worked with citizens interested in workplace health and safety on asbestos, with others interested in fluoride, and others affected by toxic carpet in their homes, and still others who had been saved from imprisonment by Dwight’s testimony after their homes burned down after use of unlabeled flammable aerosol got them charged with arson, that arm beckoned all those citizens to our rescue. We organized a letter writing campaign, asking citizens with whom we had worked, who had received our help in understanding their carpet related illnesses and in fighting off forced fluoridation in their communities, etc. to write on our behalf. They wrote to their Congressional delegations telling of the union’s value to them, and asking their representatives to inquire of EPA management why they were trying to do these terrible things.

The campaign ran for about six months, after which the Assistant Administrator responsible for attacking us resigned. His replacement came to Dwight and asked what we wanted. Thus the union got four full time positions for the office and 2000 hours for use by stewards.

AFGE Local 3331 subsequently also got five full time positions for their larger bargaining unit, because of our fight for full time positions for the professional bargaining unit. Thus all of Headquarters organized labor benefited from our allies’ intervention on our behalf.

If we had not pursued our original union dream – of performing our work ethically and in the public interest – and pursued it vigorously - if we had not exercised that arm of the union visible

to citizens on the outside, we would not now have the trained, experienced staff in the office using the other arm – the one visible only to us on the inside, and neither would AFGE.

Based on twenty years of hard experience and tough battles, I am certain that continuing to exercise both our arms will continue to stand us in good stead, growing our strength synergistically inside the Agency and with our allies among the citizens whom we serve.