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Official Newsletter of NTEU 280

AUGUST 2002, VOL. 18, NO. 6

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Announcements

We Lose Mike Bristow To Pancreatic Cancer by Bill Hirzy

To those who were fortunate enough to know him, Mike Bristow was an esteemed colleague, scientist, friend and union man. I met Mike in my capacity as our union's representative to the National Partnership Council when Mike took on the same roll for his union (the National Association of Government Employees local in Las Vegas). I, like everyone, took an immediate liking to him, he was that kind of man, obviously competent, unassuming and open. He worked diligently and without complaint on many grueling tasks in his role as the NAGE representative on the NPC. He wore his altruism and integrity on his sleeve.

Mike was the Labor Co-chair of the NPC until he resigned about a month ago, giving no hint of his critical illness. So it came as a deeply saddening shock to learn last week of his death on August 16.

EPA workers everywhere are the beneficiaries of Mike's devotion to fair and equitable treatment of the working men and women of the Agency - his tireless efforts to promote an honest system for advancement of EPA research scientists and his staunch support for scientific integrity will be long remembered by his friends. We will miss him greatly.

The Civil Rights Tax Relief Act (H.R. 840 and S. 917) by Jacqueline Rose

The Civil Rights Tax Relief Act is a simple, straight forward bill to correct an injustice in the current tax code. As it stands now, a victim of discrimination who wins a back pay award in court, must pay taxes on that award in a single year, even if it is for ten or twenty years of back pay. This puts that person in a higher marginal tax bracket - sometimes even the highest tax bracket- than they would have paid taxes in had they been paid without discrimination originally. The result is that: first the person was discriminated against in the work place, and then, if they succeed in winning a back pay award in the courts, they are discriminated against a second time by the tax code. And this also costs American businesses more money in the long run to settle awards. The Civil Rights Tax Relief Act would correct this injustice by allowing for income averaging for back pay awards that represent multi-year awards.

This is a good and important bill that has the support of a broad range of organizations not typically found endorsing the same piece of legislation. In addition to the National Treasury Employees Union, the Civil Rights Tax Relief Act is endorsed by: the U.S. Chamber of Congress, the Chubb Corporation, the Small Business and Industry Association, the No Fear Coalition, many state Bar Associations, the National Employment Lawyers Association, the AARP, the American Civil Liberties Union, the Government Accountability Project, the Leadership Conference on Civil Rights, the National Women's Law Center,

Public Employees for Environmental Responsibility, the Seventh-day Adventist Church World Headquarters, and many other well known and respected organizations.

Eighty-eight members of the House (H.R. 840) and twenty-nine Senators (S. 917) from both parties, including the leadership, have endorsed the Civil Rights Tax Relief Act as of June 21, 2002.

Co-sponsors in the DC, Maryland, Virginia Area include:

In the House: Elijah Cummings, Maryland, 7th; Jo Ann S. Davis, Virginia 7th; Tom Davis, Virginia 11th; Robert L. Ehrlich, Jr., Maryland, 2nd; Steny H. Hoyer, Maryland, 5th; Jim Moran, Virginia, 8th; Constance Morella, Maryland, 8th; Frank Wolf, Virginia, 10th; and Albert Russell Wynn, Maryland, 4th. In the Senate: All of Maryland's and Virginia's Senators are co-sponsors: Barbara Mikulski and Paul Sarbanes, Maryland; George Allen and John Warner, Virginia.

Letter To The Editor

Male Discrimination at EPA

In your July issue, one of the quotes was from Whitman bragging about the small percentage of men on her staff and in AA positions and stating "but the majority are women, and that's no coincidence." By that quote, she is not only essentially admitting to violating anti-discrimination laws, but is blatantly bragging about it. Although the Union at least is bringing her quote up for attention, there is no indication that the Union is going to do anything else about it. Is the Union going to do anything else about it (e.g., call for IG, OPM, and EEO investigations; file unfair labor practices against her; bring her quote to the attention of Rep. Sensenbrenner and his committee, etc.)?

-Name Withheld

(We invite Administrator Whitman to respond to this allegation of anti-male, sexist discrimination, a common theme in verbal comments we received this month. - Ed)

From the Chapter President – Jim Murphy

1. "First, do no harm."
2. "For every action, there is an equal and opposite reaction."
3. "For any complex question, there is a simple answer – that's wrong."
4. "Love your enemies."

These are some of the thoughts that wandered through my head after listening to a recent address by prominent Republican Congressman Tom DeLay on the radio. He was explaining why war with Iraq was necessary and desirable, and how consensus with European nations was not necessary, and that the United States was now more than a superpower, but a "super-duper

power.” Interesting, well written speech. Maybe the Congress will want to assert its authority (formally, under the Constitution) to declare war.

Justifying a war is not easy, because it guarantees that harm will be done. To combatants, to noncombatants, to cities, to economies, to ecosystems. Questions need to be asked: “Is this war necessary? Against this particular enemy? This large a war? Is there another way?” We don’t want to repeat the mistake of the Forest Service and burn down a town and almost the whole forest by setting a small fire to contain a perceived threat. We don’t want the cure to be worse than the condition that we set out to cure.

It’s funny that people, individually and in groups, who can barely stand one another will band together against a common enemy. An outsider. A barbarian who doesn’t speak our language. A unified German nation resulted from war with the French over a hundred years ago. A newly unified German nation would be only too happy to pick up the pieces if we shatter our lance against Iraq (and the allies that may emerge to help Iraq in the war against the infidel). Newton’s law of opposite reaction has a parallel in the Central Intelligence Agency’s quaint expression: “blowback.” Ecology tells us that there is an interconnectedness among living things. Why should international affairs be any different?

H.L. Mencken, the newspaper curmudgeon from Baltimore, had a knack for mixing truth and acidity. He came up with the notion that there was a simple answer for any complex issue (and that that simple answer would be wrong). War may seem like a simple answer. At times it’s the right and necessary way, but often it’s wrong, and it’s never simple.

Loving your enemies is easier said than practiced, but it makes sense. Seek win-win solutions. If you win in a zero-sum game that has one winner and one loser, you can be pretty sure that the loser will be spending a lot of time thinking of ways to get even. A Pyrrhic victory isn’t worth the cost and effort. Two quotes appeared recently *via* wordsmith.org. One was attributed to Buddha: “Holding on to anger is like grasping a hot coal with the intent of throwing it at someone else; you are the one getting burned.” The positive side was from the Dalai Lama: “If you want others to be happy, practice compassion. If you want to be happy, practice compassion.”

OHROS Director Rafael DeLeon’s Reply To Dwight Welch’s July Open Memo

I’m taking the opportunity extended by the Environmental Protection Agency (EPA) National Treasury Employees Union, Chapter 280, to submit an article for publication in “Inside the Fishbowl. I also want to thank Dwight Welch and Seth Low for meeting with me last month.

Recently, I was appointed as the Director of the Office of Human Resources and Organizational Services (OHROS). Immediately prior to joining OHROS, I was the Associate General Counsel for Civil Rights in the Office of General Counsel (OGC). I have also served as the Agency’s National Hispanic Employment Program Manager and the Acting Director of the Office of Civil Rights (OCR).

At the outset I think it is important to state that I look forward to establishing and maintaining a cooperative, mutually beneficial partnership with our union partners. Over the years, I have established some very positive professional and personal relationships with many members of the respective unions. However, partnerships must be grounded on principles of trust, respect and cooperation, not innuendo, rumor and character assassination.

I respect the role of unions, and I am mindful of their many contributions to bettering the working lives of EPA employees (e.g., the protection of employee rights, compressed work schedules, and transit subsidy, to name but a few.) I am mindful that these and other negotiated benefits have given EPA a highly skilled and productive group of employees. A review of the existing collective bargaining agreements in the Agency clearly demonstrates the diverse subject matter they cover. It is self-evident from a review of the existing agreements that we, management and labor, both want the same thing—the best for EPA employees. That’s why I am committed to the collective bargaining and equal employment opportunity (EEO) processes both as an employee and as a manager.

Collective bargaining, labor relations and EEO involve processes where frictions can often arise between and among participants, negotiators or other parties. For my part, I pledge to work in a cooperative spirit with our union partners. However, that cooperative spirit must be reciprocal. Employees in various parts of OHROS, (e.g., the Labor and Employee Relations Staff), work very hard with EPA employees and managers on difficult and sensitive issues. Personal attacks on employees in OHROS, particularly those that call into question their integrity or assault their dignity, are harmful to establishing cooperative relationships and I will not tolerate them. If we don’t do good work, let me know. When we do good work, let me know that too. We can agree to disagree but retaining friction or grudges wed parties to the past and prevents us from effectively working together in future endeavors. Frankly, it gets in the way of attaining the best for EPA employees.

Despite all that EPA unions and management have achieved, we will continue to be faced with issues. Some of them have been raised in the invitation to me to provide this article. While I will not use this forum to address each individually, I believe my advocacy as an employee and my expectations as Director of OHROS cover the areas raised in NTEU’s invitation. On my first day as OHROS Director, I sent an e-mail to ALL OHROS employees in which I laid out my expectations in several areas including: customer service, quality, timeliness, and equal employment opportunity. I wrote: “I am a firm believer in shared leadership concepts and support the high performance organization approach that OHROS has been pursuing. I am also a firm believer and proponent of equal employment opportunity and diversity initiatives. I expect all OHROS managers to ensure a workplace free of discrimination where all employees can flourish and grow. As all of you do, I want OHROS to be known as a customer-friendly, customer-oriented organization where everyone takes pride in their work, and where employees produce quality and timely products. EPA’s mission is environmental protection and OHROS supports that mission by addressing the needs of the Agency’s most important asset – its people.”

My goals are to set the tone for working cooperatively with unions, to minimize and extinguish the frictions and grudges that the process may produce, and to keep management and unions focused on the same goal – the best for EPA employees. That’s my commitment to NTEU (and

other union partners). I trust union leadership commits to the same path. To this end, at Dwight's request, I have agreed to re-establish a series of regular meetings between my office and NTEU. I look forward to these meetings. Once again, I thank you for this opportunity to submit this article.

NTEU Requests IG Investigation of Office of Civil Rights Acting Director and Region 1 Regional Counsel for Alleged Agency

Civil Rights Authority Abuses

On August 29, 2002, NTEU 280 President James Murphy, requested that EPA 's Inspector General investigate Karen Higginbotham, Acting Director of EPA's Office of Civil Rights and Carl Dierker, Regional Counsel for EPA Region 1, regarding their involvement in purporting to exercise Delegation of Authority 1-83 to dismiss two administrative civil rights complaints. Dr. Murphy stated that he is very concerned regarding Mr. Dierkers' unauthorized exercise of that authority, since by the very terms of Delegation1-83, Ms. Higginbotham is not authorized to redelegate that authority to the Regional Counsel of Region 1.

He also stated that "I believe this incident shows a knowing and willful disregard for EPA's delegation and redelegation requirements. Those Agency delegation and redelegation requirements are designed to protect the civil rights complaints process at EPA from undue influence by Agency officials who have an interest adverse to the complainants'."

By separate correspondence to Administrator Christie Todd Whitman and Region 1 Regional Administrator Robert Varney, NTEU asked that they voice their support for the NTEU OIG investigation request, and that they notify the Inspector General of their support for such investigation.

Full text of NTEU OIG request letter is as follows:

National Treasury Employees Union

Chapter 280

August 29, 2002

VIA FAX

Nikki L. Tinsley,

Inspector General

Office of Inspector General

U.S. Environmental Protection Agency

1200 Pennsylvania, NW

Washington, DC 20460

Dear Ms. Tinsley:

As the President of Chapter 280 of the National Treasury Employees Union (NTEU), I request that your office investigate Karen Higginbotham, Acting Director of EPA's Office of Civil Rights and Carl Dierker, Regional Counsel for EPA Region 1, regarding their involvement in purporting to exercise Delegation of Authority 1-83 to dismiss two administrative civil rights complaints. I am very concerned regarding Mr. Dierker's unauthorized exercise of that authority, since by the very terms of Delegation 1-83, Ms. Higginbotham is not authorized to redelegate that authority to the Regional Counsel of Region 1.

I believe this incident shows a knowing and willful disregard for EPA's delegation and redelegation requirements. Those Agency delegation and redelegation requirements are designed to protect the civil rights complaints process at EPA from undue influence by Agency officials who have an interest adverse to the complainant's.

Because others in the Office of the Administrator may have been involved in this unauthorized redelegation decision, I ask that you do not refer this matter to the Administrator's Office, but, instead, have your office conduct the investigation. In addition, besides Ms. Higginbotham and Mr. Dierker, your investigation should also include Eileen McGinnis, Chief of Staff, Ray Spears, Deputy Chief of Staff, Rafael DeLeon, who is carbon copied on the April 5, 2002 memorandum, and Bridget Shea, who is at the Office of General Counsel and handles civil rights cases for the Agency and may have given advice to Ms. Higginbotham regarding redelegating 1-83 authority to Mr. Carl Dierker. Considering that Ms. Higginbotham is not an attorney, I believe she would have consulted with legal counsel before making her unauthorized redelegation decision. Moreover, since Eileen McGinnis and Ray Spears are in her direct supervisory chain, it is also likely that Ms. Higginbotham consulted with them before she issued the April 5, 2002 redelegation memorandum.

As I understand, the undisputed circumstances surrounding this incident are as follows:

On June 21, 2002, Mr. Dierker issued a decision, allegedly on behalf of EPA, dismissing two civil rights complaints that one of our members filed against the Agency (copy enclosed). Mr. Dierker represents, in footnote one, that the authority to make such decisions was delegated to him by memorandum dated April 5, 2002, from Karen Higginbotham, the Acting Director of Civil Rights. Unfortunately, a copy of that April 5, 2002 memorandum was not attached to his decision. Consequently, our NTEU member filed a FOIA request asking Ms. Higginbotham for a copy of that memorandum. Ms. Higginbotham responded with a copy of the April 5, 2002 memorandum (copy enclosed), which purports to redelegate to Mr. Dierker

authority under EPA Delegation of Authority 1-83. In her April 5, 2002 memorandum, Ms. Higginbotham states:

In the above-referenced complaints [EPA File Nos. 2001-0090-HQ, 2001-0098-HQ], the complainant has alleged that two senior officials in the Office of the Administrator, Eileen McGinnis, Chief of Staff, and Ray Spears, Deputy Chief of Staff, retaliated against him for pursuing his rights under EEOC regulations. The Office of Civil Rights is a staff office within the Office of the Administrator. Additionally, both Ms. McGinnis and Mr. Spears are in my direct supervisory chain. Therefore, in order to avoid any real or perceived conflict of interest issues, I am hereby re delegating to you [Mr. Carl Dierker, Regional Counsel, EPA New England] the above-referenced authority [Agency Delegation 1-83] to issue final decisions on the above-referenced complaints of discrimination.

Delegation of Authority 1-83 delegates final decision on formal complaints to the Director Office of Civil Rights, the Environmental Appeals Board, and the General Counsel (copy enclosed). **The re delegation clause in that delegation authorizes re delegations by the Director, Office of Civil Rights to the Deputy Director, Office of Civil Rights. Obviously, Carl Dierker is not the Deputy Director of the Office of Civil Rights.**

On August 19, 2002, our NTEU member e-mailed Karen Higginbotham to inform her that the June 21, 2002 decision by Mr. Carl Dierker is not authorized by delegation 1-83 as such authority may not be re delegated to him by Ms. Higginbotham (copy enclosed). In that e-mail, a copy of which was sent to Mr. Dierker, our NTEU member requested that Ms. Higginbotham immediately notify Mr. Dierker that he was not authorized to make his decision dismissing the two EEO complaints, direct him to rescind such decisions, and notify the EEOC of the rescission.

After receiving no response to his e-mail, on August 20, 2002, Dwight Welch, the Vice-President for Civil Rights of NTEU Chapter 280, sent an e-mail to Mr. Dierker requesting that he immediately rescind his unauthorized decision dismissing the two complaints and notify the EEOC of his rescission (copy enclosed). As of August 29, 2002, there has been no response to either e-mail.

I have assured the NTEU union member that the NTEU will not tolerate actions by management that are improper or violate agency directives, policies, guidances, or procedures, and will seek to expose such actions to the highest levels of government. Considering the recent Zero Tolerance Policy statement by the EPA Administrator that she will not tolerate civil rights discrimination, I am hopeful that my request would be supported by her and by the Regional Administrator of Region 1.

Please give me a call so that we can discuss this matter further. I can be reached at number is (202) 566-2786

Sincerely,

/s/

James J. Murphy, President

NTEU, Chapter 280

enclosures

cc: Christie Todd Whitman, Administrator EPA

Morris Winn, Assistant Administrator, OARM

Robert Varney, Regional Administrator, Region 1

Know Your Rights - Civil Rights Settlement Authority -

Delegation of Authority 1-39

Have you ever wondered if the Agency official claiming to have full settlement authority in a civil rights action, has, in fact, such authority? Obviously, unless you have filed a civil rights action against the Agency, you probably haven't given much thought to this question. But NTEU is quite concerned that Agency officials are making such representations, thereby violating Agency Delegation 1-39 and Administrative Judges' Orders, and are, in essence, negotiating in bad faith.

Civil Rights settlement authority is governed by Agency Delegation 1-39, which states that the Administrator has delegated such authority to the Director, Office of Civil Rights. The Director, is authorized to redelegate such authority to: "the Deputy Director, Office of Civil Rights; the Regional directors of civil rights; and, on a case by case basis, individual attorneys in the Office of General Counsel and the Offices of Regional Counsel."

As we understand the redelegation process from reading EPA's delegation manual and EPA's practice in, for example, enforcement cases, redelegations must be in writing. However, through FOIA requests for civil rights settlements and redelegation documents, NTEU found that some of the settlements, though heavily redacted so that the terms of the settlements remain confidential, were signed by Agency officials not listed in the redelegation clause cited above, and for others, OGC attorneys were signing without a written redelegation of settlement authority.

NTEU sent e-mails to those OGC attorneys asking them to state their authority to settle for the Agency when it appears that there was no written redelegation. Their boss, Bridget Shea responded by e-mail, dated August 22, 2002, and stated:

“Dwight--This is in response to the e-mail messages you sent to attorneys assigned to the Office of General Counsel’s Employment Law Practice Group (ELPG) regarding their authority to enter into settlement agreements on behalf of EPA. . . .”

“With regard to employee discrimination complaints filed before the EEOC, ELPG attorneys are authorized to represent the Agency and to enter into settlement agreements on behalf of EPA. Pursuant to Delegation 1-39, the authority to “issue adjustments and settlement agreements for discrimination complaints” has been redelegated by the Director, Office of Civil Rights (OCR), to “on a case by case basis, individual attorneys in the Office of General Counsel.” This redelegation is effected when the Director, OCR, or her designee, transfers an employee’s complaint to the EEOC to conduct a hearing, provides ELPG with a copy of the complaint file, and notifies the EEOC to contact ELPG regarding Agency representation during the hearing phase of the complaint. Once ELPG and the complainant receive an order from the EEOC acknowledging receipt of the request for a hearing and requesting the name of each party’s representative, an ELPG attorney is designated to act as EPA’s representative for that particular complaint. Should a settlement be reached in a complaint, an agreement is drafted in accordance with the provisions of 29 CFR Part 1614, and a copy is provided to OCR to ensure Agency compliance with the terms of the agreement. This process is followed in each case to which an ELPG attorney is assigned.”

However, the “redelegation process” described by Ms. Shea, does not appear to be an Agency authorized redelegation process. Consequently, NTEU responded to Ms. Shea, on August 23rd, asking her to provide the Agency document that authorizes such “redelegation process” and requesting a meeting “to further discuss these redelegation issues and that we bring our respective delegations experts to such meeting, including the OGC attorney charged with delegation and redelegation issues.”

So far, no date has been set for the meeting. However, in the meantime, we suggest NTEU members who find themselves in this situation in EEO settlement negotiations with Agency officials listed in the redelegation clause, demand to see the redelegation of settlement authority. Clearly, for Agency officials not listed in the redelegation clause, they are not authorized to settle for the Agency, even if the Director of EPA’s Office of Civil Rights, provided a document purporting to redelegate that authority to them. If you find yourself in this situation, please contact Dwight Welch at 202 566-2787.

X-BYTES

Dwight Welch

Compassionate Conservatism: Morris Winn Intervenes on Behalf of Cardiac Patient

In the Office of Science and Technology, Office of water, a program in which we seem to get a disproportionate amount of complaints by minorities, a minority employee was requesting, with medical certification, 16 weeks of medical flexiplace. While the employee had previously

performed highly successfully during an initial 16 weeks of medical flexiplace, management was unwilling to grant another 16 weeks. Next the employee applied for 16 weeks of sick leave. While he had the sick leave to cover it, he was told that he had to use annual leave or Leave Without Pay (LWOP) for his recuperation from a serious cardiac condition, and that he could only use his sick leave for actual doctor visits. This would have put the employee in a position of choosing between protecting his health or protecting his income.

An e-mail complaint from me to Morris Winn, complaining about this heartless, if not illegal, treatment, quickly turned this situation around in a dramatic fashion. The employee's program is now open to use of the Medical Flexiplace program or perhaps Alternative Work Space (Work at home.) Once again, while Mr. Winn is still the only political appointee with which the Union has a dialogue, it seems to be a productive dialogue.

Late Breaking Update: Program management is relentless. They are now saying that the employee can only have 32 hours per week. This will have an adverse impact on not only the employee's paycheck, but perhaps his retirement benefits as well. Mr. Winn has been apprised of latest tactic of program management heartlessness, but we will have to inform you next month of how it all turns out. Fighting with management over this has not only delayed recuperation of the employee but placed a great deal of stress on him; something a cardiac patient really doesn't need.

On Behalf Of Males

Now that I have everyone's attention, sparked by this month's letter to the editor, it's time to write the editorial no one else in EPA has the kahunahs to write. Being that I am the champion of controversial social causes both great and small, it is past time to write on the subject of the abuse of males in general and the abuse of white males in particular. This editorial will probably generate me more hate-male than I've ever received, due to misunderstandings of its message, but I'm not one to shy away from controversy.

I've been approached by many over the years to speak out on this issue. I've also participated in discussions with male employee leaders, brainstorming the idea of starting a special interest group, similar to groups such as BIG, HAC, GLOBE, WISE, etc.; this one being toward the interests of male, EPA employees. Even came up with the name for such a group: MAD - Males Against Discrimination. Unfortunately, all such discussions had no concrete outcomes: these employee leaders felt the objectives of such a group would be misunderstood. But there is a need for such a group and it could even stand the scrutiny of political correctness.

Let me start off by saying that the Feminist Movement was necessary and one of the greatest movements ever. But equality of the sexes is subject to interpretation. Equal pay for equal work is a no brainer. A blurring of the stereotypes, ending gender based prejudices is a laudable goal of the movement. However, implementation of such goals is subject to interpretation. In the opinion of this author, the evolution of the female chauvinist pig in order to better compete with the male chauvinist pigs is not the answer. Better to do away with chauvinist pigs altogether, no matter what the gender.

This month's letter to the editor complained of the Administrator not only breaking the law with regard to discrimination, but actually bragging about it. But this is hardly the first time, nor is it isolated, that EPA females in power have been guilty of gender bias. Back when I didn't have to work nearly so hard to earn a living, back in the Office of Pesticide Programs, way back when rotation of managers was once before an ongoing fad, I had the experience of having my uptight male branch chief rotated out for an uptight female branch chief. Shortly after the transition, came annual performance evaluations. According to many employees and the section heads, despite the fact that the new chief had little time to get to know all of us in the branch, much less gain a knowledge of our abilities and work ethics, all or most of the performance scores were altered by the new chief. All or most male scores were lowered, all or most female scores were raised. Gaining parity between the sexes does not involve a knee jerk reaction, but rather a thoughtful and unbiased evaluation of all employees regardless of gender, race, etc. Had such an action been committed, by say, a male manager against females, the branch would have been awash in EEO complaints, grievances, and class action suits. While a lot of below the surface grumbling occurred, officially not a peep. While many in my home program complained about the OPP matriarchy in which only females and their favored males advance, this grumbling is done only in fearful, guarded, private conversations.

Wake up people, not all males are chauvinists or even sports fans. We need to treat people like people and not like categories. Meanwhile, all you males out there, if others can express cultural pride, gay pride, race pride, female pride, there is no need for males to feel insecure about being male. So if you feel you have been the victim of reverse gender discrimination, speak up, for no one else can do it for you.

The Facts Behind Christie Whitman's Spin

Does anyone out there read Employee Matters? Edited by Daiva Balkus, written by managers, for managers, ostensibly about employees, were there truth in labeling, it should be more appropriately be called: Employees Don't Matter. While most I talk to immediately deposit the newsletter in the recycle bin, lamenting unnecessary deforestation, myself, being a big fan of the ex-governor, I had to read what Administrator Whitman had to say in the latest issue to hit the corridors. Unfortunately, I had just eaten lunch. Let's examine some facts behind the spin.

Ms. Whitman's lead article in the newsletter is not so much about EPA as it is about Ms. Whitman's political future. Ms. Whitman talks about a call to serve: "My decision to leave my position as governor of New Jersey a year early was only possible because I believed that the job the President had asked me to do provided an opportunity to make a positive difference for America's environment and the public health." But how about the facts behind the spin? In the 1993 New Jersey governor's race, Ms. Whitman handily defeated Governor Florio by a 50% to 48% margin (source Washington Post, NJ internet election records didn't go back that far.) Gov. Florio was talking about the necessity of raising taxes, while Ms. Whitman was preaching a Bush-style tax cut. Unfortunately, the Whitman tax cut had about the same effect on the New Jersey budget, as the Bush tax cut did on the federal budget—red ink. In 1997, Ms. Whitman barely squeaked by her opponent former state Senator James E. McGreevey by a 47% to 46% margin. (Whitman - 1,126,927 votes to McGreevey - 1,100,239 votes.) (Sources Washington Post, NJ election records) Neither candidate reaped a majority due to an unusually strong

showing by the Libertarian Party which picked up about 4.7% of the vote. Of course we can never know what would have happened in 2001, because Ms. Whitman didn't rerun for Governor, but Ms. Whitman's previous opponent Senator McGreevey handily defeated the GOP by a 1,256,853 to 928,174 margin. (Source NJ election records) We also know that Ms. Whitman declined to run for the Senate. Would Ms. Whitman, by virtue of her name and face recognition have pulled the election out for the GOP? We will never know, but considering the close margin in 1997, and considering the tiny showing by third parties '01, and considering the red ink, growing criticism over her environmental record by groups like Sierra Club, and Public Employees for Environmental Responsibility, not to mention racial profiling by the NJ State Police, and Ms. Whitman's now universally recognized internet picture of her frisking of an unfortunate black motorist, methinks not. While it is not as blatant as John Ashcroft's being appointed Attorney General after losing an election to a dead man, let's face it Ms. Whitman was going to be in need of a job.

In the article Ms. Whitman boasts of all her travel, "I've visited more than 25 states." Scarcely a week passes when we are not treated to an all employee voice mail or e-mail concerning a Whitman media appearance. Some might argue that these activities promote the mission of the Agency, while others might dispute that notion with the rebuttal that it's not about EPA, but about Ms. Whitman's future political aspirations. (Some rumors have it that Whitman will replace Cheney on the 2004 GOP ticket.) One thing is for sure, while Ms. Whitman seems to have plenty of time for the media, she seems to have little or no time for employee leaders. Rather than traveling around talking about EPA, most of us would rather she stay here and talk with EPA. And I'm not talking about the usual gang of suspects who seem to have Ms. Whitman totally bamboozled into thinking everything is cool; this group has mostly their own career advancement in mind. Rather, Ms. Whitman needs more interaction with those who do the work and those who represent those who do the work. The average EPA employee has nothing to gain, and everything to lose, via retaliation, by speaking frankly with Ms. Whitman. Such a pursuit, dialoging with people whose only motive is reform, is more objective than those who have everything to gain via the schmooze.

Similar to the arrival of Carol Browner, the arrival of Christine Todd Whitman inspired a lot of great hope for reform of this dysfunctional agency. Browner proved to be a great disappointment: her non-involvement with running the Agency left the day to day functions to the same dysfunctional set of mismanagers who have always run the place. Ms. Whitman followed suit. Ignoring employee input, those who created the "garbage can" continue to advance their careers, while the voices of the employees are ever more muted. In my 26 years here at EPA, since Anne Gorsuch, never have I see employee opinion about an Administrator drop so fast.

Dr. Sylvester Wins Grievance At Step 3 (Sort of)

On August 7, 2002, the three manager, step 3 panel of consisting of Marcia Mulkey, Vanessa Vu, and Ray Spears came up with what I believe they considered to be a balanced answer to Dr. Sylvester's grievance. During the course of the face to face hearing, the three managers seemed visibly impressed by Dr. Sylvester's professionalism and obvious, previous management experience. One down side of the face to face meeting was that when we moved to be able to

question Arthur Jean Williams and the two secretaries who shredded numerous documents, Matt Green of Labor Relations immediately objected and the managers sustained this objection. NTEU National informs me that we had no right to such depositions as this was not a trial. (Note: my motion included whistle-blower protection against retaliation against the secretaries if they testified.)

While the written grievance response does not grant Joe a GS-14 as requested in his relief, it did offer him a number of high profile opportunities to demonstrate his abilities so as to earn a GS-14, freedom from an adverse performance evaluations for 6 months, and a mechanism by which he and Artie Williams might work out future disagreements or misunderstandings.

One depressing part of the response is once again, we are left with no management accountability. While any disciplinary action should be based on investigation by upper management, none of our listing of the proposed violations of the EPA Conduct and Discipline Manual were looked into. Rather, the managers used the Christine Todd Whitman dodge of saying the claims need to be investigated by the Office of Inspector General, only slightly less than doing nothing at all. Indeed, a formal complaint on a related matter was filed with the OIG a day or two after step one was filed, with no report even by the late date of the Step 3 grievance. When an employee is accused of similar violations of the Conduct and Discipline Manual, no OIG investigation is called for then, no they simply take disciplinary action against you. Why a dual standard for managers and another for employees?

We hope Ms. Williams and Dr. Sylvester can work out their differences and aside from dodging the management accountability issue, we would like to thank the three manager panel for a fair decision and would like to thank them for their time and effort.

Anthrax Vaccine – To Be (or Not To Be) Vaccinated

The question of whether some or all of the population should be vaccinated is a question of balancing risks. Vaccines have been beneficial where no drugs were available to treat the disease that would ensue from exposure to a given pathogen (usually a virus). Edward Jenner noted over two hundred years ago that milkmaids who had contracted cowpox, a mild disease, were safe from getting the deadly disease smallpox, which we now know to be caused by a virus. Jenner scratched the skin on an 8-year-old volunteer's arm with a cowpox-contaminated needle (talk about informed consent!). The volunteer developed a mild case of cowpox, but never caught either cowpox or smallpox after that. A hundred years later, Louis Pasteur discovered how this protection works and named the practice "vaccination" after the Latin word "vaca" (cow). The widespread use of smallpox vaccine has eradicated smallpox around the world. Schoolchildren are no longer vaccinated against smallpox, because the risk of adverse effects from the vaccine outweighs the risk of getting smallpox.

Anthrax is in a different category. Anthrax is a bacterial disease, not viral. There are several effective antibacterial drugs that can be employed against the several forms of anthrax that attack the skin, digestive tract and respiratory system. Anthrax vaccines have been developed, but their use has not been required by the National Childhood Injury Act. As with any drug or vaccine, there are risks of adverse effects, and the degree of protection that some of the new anthrax

vaccines would provide is uncertain. In this context, and in view of the availability of effective antibacterial drugs, the balance seems to be against vaccination for anthrax at this time.

For more information see the following articles:

CDC safer, healthier people October 1 2001 Vaccination information statements-what you need to know Department of Health and Human Services Inhalational anthrax, influenza, or influenza-like illness? Consideration for distinguishing among these illnesses (2002?)

Friedlander AM 2001 Tackling anthrax Nature 418; 160-1.

Friedlander AM 1986 Macrophage are sensitive to anthrax lethal toxin through an acid-dependent process J Biol Chem 261(6), 7123-6.

Mock M, Fouet A 2001 Anthrax Ann Rev Microbiol 55;647-71.

Nature (25 July 2002) Brief Communications 418, 386 Pharmacology: screenings inhibitors of anthrax lethal factors.

Pannifer AD, Wong TY, Schwarzenbacher R, Renatus M, Petosa C, Bienkowska J, Lacy DB, Collier RJ, Park Sj, Leppla SH, Hanna P, Liddington RC 2001 Crystal structure of the anthrax lethal factor Nature 414; 229-33.

Schwarze SR, Hruska KA, Dowdy SF 2000 Protein transduction: unrestricted delivery into all cells Trends in Cell Biol 10, 290-5.

US Department of Health and Human Services, Center for Disease Control and Prevention, Atlanta, Georgia 30333, December 15, 2000 vol 49/No RR-15 Use of anthrax vaccine in the US Recommendations of the Advisory Committee on Immunization Practices (ACIP).

Vitlale G, Pellizzari R, Recchi C, Napolitani G, Mock M, Montecucco C 1998 Anthrax lethal factor cleaves the N- terminus of MAPKKs and induces tyrosine/threonine phosphorylation of MAPKs in cultured macrophage Biochem Biophys Res Comm 248(3); 706-11.

Vitale G, Bernadi L, Napolitani G, Mock M, Montecucco C 2000 Susceptibility of mitogen-activated protein kinase family members to proteolysis by anthrax lethal factor Biochem J 352; 739-45