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## **New Employees Orientation - Fact Sheet on Chapter 280, National Treasury Employees Union**

### **Who represents you?**

Two Unions represent EPA Headquarters employees. Local 3331 of the American Federation of Government Employees (AFGE 3331) represents persons in the 300-series positions, such as program analysts and clerical workers, plus the 028 environmental protection specialists. Chapter 280 of the National Treasury Employees Union (NTEU 280) represents the various "professional" job series, as defined by the Office of Personnel Management and the Civil Service Reform Act, such as attorneys, economists, engineers and scientists. The Unions negotiate contracts governing hours and conditions of work, and, at the national level, lobby the Congress for improved pay and benefits. The Unions are by law your exclusive representatives

Certain jobs are outside the AFGE and NTEU bargaining units, and are not represented by either Union. For example, supervisors, personnel officers, political appointees, Title VII workers, the uniformed services (Army, Navy, Marines, Air Force, Public Health Service, and NOAA), law enforcement, and much of the office of the Inspector General are by law not represented by any Union.

What are Unions good for?

Unions are those wonderful people who brought you the weekend and the paid vacation, which we now take for granted. Employers weren't so enlightened and generous as to make them available without the pressure of collective bargaining.

Federal workers are not permitted to strike, but their Unions can arbitrate, litigate, educate through informational picketing, and lobby the Congress for pay and benefits. As this is written in the summer of 2002, AFGE and NTEU national offices are urging parity with the military pay raise, which would increase next year's civilian pay raise from 2.6 percent to 4.1 percent. Unions have been instrumental in the rollback of a half-percent payroll tax, getting health insurance paid with pre-tax dollars (saving the average employee another several hundred dollars a year), and implementation of the transit subsidy to encourage the use of public transportation (worth up to \$100 a month).

Local contracts have saved employees time as well as money. The compressed work week and flexiplace (telecommuting) are in both Union contracts at Headquarters. Unions have also been interested in employees health, urging establishment of alternative work space for chemically

sensitive employees, lactation and quiet rooms, a health and exercise unit in Crystal City, and a graduated fee schedule for the health and exercise unit in the Reagan Building.

Welcome! Jim (JamesJ) Murphy (202) 566-2786, NTEU (3376 Connecting Wing)

## **FROM THE CHAPTER PRESIDENT**

Pay for performance. What a great idea! So exemplary of the great American work ethic! Accountability. So redolent of bedrock New England virtues! The only problem with these ideas is that they only apply to workers, not to top management. These ideas should apply to workers; it is they who create wealth through their efforts. (Wall Street doesn't create anything except confetti for the occasional ticker-tape parade in Manhattan.) The injustice, it seems to me, lies in the fact that business leaders are not held to the same standard. If mismanagement, greed or banditry cause a company to fail, the leaders get a golden parachute, while the workers get a golden shower.

American productivity has been rising for years. Salaries of American workers have been flat. Labor costs are said to adversely affect The Bottom Line. Keeping labor costs down is said to help The Bottom Line. Nobody seems to object to the wealth creation that the workers are responsible for, and nobody asks whether The Bottom Line might be improved by trimming the compensation packages of the company's executives. Maybe that's a consequence of making Chief Executive Officers out of accountants. At least, executives who came up through the operating divisions of the company knew something about what the company did and who did it and why, and they could see through and beyond a quarterly report. When manipulation of stock prices becomes more important than what the company produces, we're all in trouble.

When I was young and naive, I heard the story of the goose that laid golden eggs until its owner became greedy and impatient and killed the goose, so as not to have to wait for the goose to produce and lay the next golden egg. But alas, there were no more golden eggs when the goose died. Even though I was young and naive, I had an idea that this fable had to be a made-up story, because surely real people wouldn't be so stupid as to destroy the source of the golden eggs through greed and impatience, as the goose's owner had done. Even though I'm now old and cynical, I have to admit a painful astonishment to realize that the story of the man who killed the goose that laid the golden eggs was not a fable after all. It was prophecy.

The following article exemplifies the logical conclusion of a manager telling an employee that, "It is your job to support me, even if I say '2+2=7'," and it illustrates why this union has fought so hard for the Principles of Scientific Integrity - Editor

## **EPA WANTS SCIENTIST OUT FOR PUBLISHING PAPERS CRITICAL OF SLUDGE RULE** by Caroline Snyder.

(Caroline Snyder is Professor Emeritus at the Rochester Institute of Technology where she taught environmental studies for 20 years and chaired the Science, Technology, and Society Division before taking early retirement. She has studied the sludge spreading issue extensively. She served as co-chair of New Hampshire's Sludge Management Advisory Committee and is a

member of the Sierra Club Sludge Task Force. The Sierra Club opposes land application of sewage sludge because they believe that current rules are not protective of health or the environment.)

EPA did not take kindly to a two-page commentary by microbiologist David Lewis published by the British science journal Nature ("EPA Science: Casualty of Election Politics." Nature. 1996. 381:731-732). In it, Lewis talked about how poor science behind many of EPA's regulations stand to harm public health and the environment, rather than protect. Having worked at EPA's research laboratory in Athens, GA for over 30 years, Lewis has a wealth of first-hand knowledge on the subject.

In the early 1990's, Lewis led a team of researchers from Washington University Medical School and Loma Linda University's School of Dentistry, which discovered that the AIDS virus could survive disinfection in dental equipment. The findings, which Lewis published in Lancet and Nature Medicine, led to new heat-sterilization standards for dentistry worldwide.

When Nature published a second article by Lewis, which was critical of EPA's sludge rule (Lewis, DL, et al. 1999. "Influence of environmental changes on degradation of chiral pollutants in soils." Nature. 401:898-901), the agency removed his director, Dr. Rosemarie Russo, for approving the research publication.

Based on ethics rules requiring "reasonably prominent" disclaimers, Washington EPA officials retaliated by accusing Lewis of violating ethics rules. The print size Nature used for his disclaimer, saying he was not speaking for EPA policy, was smaller than that used in the body of the article. Lewis, of course, had no way of knowing what sizes of print the journal would use for different parts of his article. Department of Labor investigators found that EPA had applied its ethics rules in a discriminatory manner, and later determined that EPA also denied his promotion in a discriminatory manner.

Although the Labor Department ruled in his favor in these cases, EPA demanded that he resign by age 55 (May 28, 2003) for criticizing the Agency's policies. EPA's Office of General Counsel (OGC) and the National Exposure Research Laboratory (NERL) also took Lewis's supervision out of the hands of his local managers. Everything with his name associated with it had be approved by headquarters.

In a settlement agreement dated October 7, 1998, EPA offered Lewis an opportunity to conduct research at the University of Georgia for up to four years under an Intergovernmental Personnel Act (IPA) assignment if he would agree to resign after it was over. The purpose of the IPA, according to his IPA Assignment Agreements, was for him to apply his research on pathogens in dental or medical devices to EPA's mission.

EPA's offer posed no financial or career benefit to Lewis. The Agency paid him no money and refused to grant him the promotion he had been unfairly denied. They did pay \$25,000 in attorney fees; however, Lewis's attorney had taken the case on contingency. Lewis, therefore, did not personally owe attorney fees. Furthermore, Dr. Russo told Lewis that she would approve an

IPA assignment without a settlement agreement, as she had done for many others at the Athens laboratory.

Although Lewis had nothing to gain financially from EPA's offer, he had everything to lose in terms of why he went to work for EPA in the first place. His life's work has been protecting public health and the environment. He was the only scientist at EPA who would listen when several mothers and fathers argued that sewage sludge, which EPA approved as a cheap fertilizer, had taken the lives of their children. Hundreds more across the country were sick with the same illnesses that even appeared to affect farm animals and family pets.

To keep his job, Lewis would have had to turn his back on sick people and grief-stricken mothers and fathers who were being taxed to pay his government salary. For anyone with any heart or conscience, Lewis said, there was really no other honorable choice than to fold under EPA's pressure to resign. EPA had dead-ended his career and going to the University of Georgia was the only way he could continue his research on pathogens in sludge. He could have a government job, or do it, but not both.

**Broken agreement** What Lewis did not know was that EPA did not plan to let him continue his work on sludge at the University of Georgia. What he thought would be four years of unhampered research turned into an unending battle against the combined efforts of EPA, Synagro Technologies, Inc, and the Water Environment Federation (WEF) to stop his research on sludge. Synagro, based out of Houston, TX, is the leading sludge company and the WEF is a national trade association for the sludge industry.

Both Synagro and the WEF appealed directly to EPA Administrator Christie Todd Whitman and other top EPA officials to withdraw EPA's support for Lewis's research. EPA was all too happy to work with the sludge industry and go after Lewis. At least one EPA official in the Office of Water went so far as to publicly distribute Synagro materials attacking Lewis's credibility. On another occasion, he solicited help from Synagro in writing a negative internal EPA peer-review of Lewis's research on sludge.

**First documented cases** Overcoming strong opposition from EPA and the sludge industry, Lewis' research on sludge was recently published in a British medical journal ("Interactions of pathogens and irritant chemicals in land-applied sewage sludges (biosolids)" D. L. Lewis, et al BMC Public Health 2002, 2:11 (28 Jun 2002) <http://www.biomedcentral.com/1471-2458/2/11>). The Journal of Environmental Science & Technology also featured the research in a 7-page article in their July 1, 2002 issue. This is the first time illnesses and deaths among residents exposed to sewage sludge have been documented in the medical and scientific literature. Simultaneously, the National Academy of Sciences released a report on July 3 citing Lewis work and supporting the science issues he raised.

Altogether, Lewis's research on sludge prompted two hearings by the full Committee on Science in the U.S. House of Representatives, an EPA Office of Inspector General audit of the EPA's mishandling of science behind the 503 Sludge Rule, and an earlier-than-planned review of that science by the National Academy of Sciences.

Last May, the President of the United States signed the No Fear Act, which was intended to better protect federal employees from discrimination and retaliation. This legislation was drafted by the Science and Judiciary Committees partly as a result of the hearings into EPA's retaliations against Lewis and his director for his publications in Nature.

Responding to a request from Lewis's attorney that he be allowed to stay at EPA, the Agency's Office of General Counsel replied on June 11, 2002, stating "should Dr. Lewis refuse to resign or retire no later than May 28, 2003, the Agency will unilaterally effect his resignation on that date."

Two weeks after receiving this letter, Lewis was invited to brief China's Ministers of Public Health, the Environment, and Agriculture in mid-October on his sludge research. When forwarding the invitation to EPA managers, Lewis questioned how he should explain to Communist China's leaders that he is being terminated for criticizing government policies and cannot continue his EPA research.

## **SCIENTIFIC INTEGRITY by Bill Hirzy**

The Administrator's recent message to all employees endorsing the Agency's Principles of Scientific Integrity is a welcome development. It was something the union asked for as one element of relief in a grievance we filed in March with Deputy Administrator Linda Fisher. We filed the grievance after a supervisor told an employee that it was the employee's job to support the supervisor, even if he said  $2+2=7$ . The other element of relief requested is for EPA to convene a work group to develop a plan for enforcing the Principles and for resolving disputes, such as " $2+2=7$ " statements, that will inevitably arise pursuant to the Principles.

The grievance was answered by Assistant Administrator Morris Winn three weeks past the date when a response was due. No request for an extension of the time for responding was received by the union, so, assuming we were being stone-walled, we filed Step 2 of the grievance and we took the matter to the street.

Following our May Day demonstration, we heard that Congress and the public were making inquiries of EPA about its policy on scientific integrity. Management was not pleased with all these Congressional and public inquiries, some of which came from as far away as Australia, Japan and Ireland.(see June issue of Inside The Fishbowl)

In any event, Ms. Whitman issued her message on the Principles, and this is a good thing, even though it was not as strong as we had hoped. The union had drafted a more straight forward statement for the Administrator, one that warned managers explicitly against issuing orders that violate the Principles. Management declined to let the union review and comment on the statement before it was issued, even though we asked several times for that opportunity.

What next? Our friends sent us copies of their letters to EPA and to Congress and copies of the responses. EPA's replies to Congress and to citizens said, among other things, that the EPA Order on Conduct and Discipline already proscribes scientific misconduct and that "...the Principles do not establish any new requirements or administrative processes..." (emphasis

added). This lack of any applicable administrative process is where we must concentrate our attention. While the Order on Conduct and Discipline does proscribe "scientific misconduct," with specific definitions thereof, there is no agreed upon, easy to use and - most importantly - safe method for employees to raise objections to unethical professional behavior on the part of their boss.

In terms of an employee safely raising such a complaint against the boss, Conduct and Discipline also proscribes "Interference with an employee's exercise of, or reprisal against an employee for exercising, a right to grieve, appeal, or file a complaint through established procedures (emphasis added), "Reprisal against an employee for providing information to an Office of Inspector General (or equivalent) or the Office of special Counsel, or to an EEO investigator, or for testifying in an official proceeding (emphasis added)," and "Reprisal against an employee for exercising a right provided under 5 U.S.C. Chap 71 (governing Federal labor-management relations)" [emphasis added]. All of these proscriptions putatively aimed at protecting an employee's right to raise a complaint depend on there being an "established procedure," or "official proceeding," or process "provided under 5 USC Chapter 71" undertaken by the employee. Referring back to what EPA is telling Congress and the public, "the Principles do not establish any new ... administrative process." So if an employee complains to a second level supervisor about a violation of the Principles by his boss, in the absence of an agreed upon administrative process, the employee has no protection under Conduct and Discipline. This is where we need to make a change; we need a process.

When we raised the issue in a National Partnership Council Executive Board conference call in June, and again asked Mr. Winn to create a work group to deal with this matter, he refused. He is having his staff - without union participation, thank you very much - "benchmark" what other scientific agencies are doing in this regard. Rather than insure what comes out of such a "benchmarking" exercise will adequately deal with the problem from the unions' (our sister unions are solidly with us on this issue) and management's perspectives, Mr. Winn seems bent on "partnering" in a strange, anti-union style. The Principles were, after all, as Administrator Whitman states in her message, "...developed in 1999 by the management and union membership of the National Partnership Council..." (emphasis added).

Why this latter day turning away from partnership? What has Mr. Winn got to lose by including union members in this benchmarking work group and finishing the job on the Principles in the same way it was started?

## **SENATE HEARING ON EPA OMBUDSMAN BILL by Bill Hirzy**

The Senate's Environment and Public Works Committee held a hearing on June 25 on S. 606, the Ombudsman Re-authorization Act of 2002, a Bill designed, in the testimonial words of Senator Wayne Allard (R-CO), "to keep the Office of the EPA Ombudsman open for business and capable of conducting it," independently and without its investigative ability being restricted due to its being under the EPA Office of Inspector General. EPA Administrator Whitman finalized her "reorganization" of the Office of Ombudsman to bring it under the I.G.'s supervision April 12, 2002.

Three panels of witnesses testified. The first panel consisted of Sen. Allard and Rep. Jerrold Nadler (D-NY), who represents citizens of lower Manhattan, former location of the World Trade Center. Sen Allard lauded former Ombudsman Robert Martin for his work on the Shattuck Superfund site in Overland Park, outside Denver, and he called for passage of S. 606. Rep. Nadler took EPA to task for the way it attempted to impede Mr. Martin's investigation of EPA's actions following the September 11 attacks on the Trade Center. He also testified to the wide respect Mr. Martin enjoys among citizens and government officials in the Democratic and Republican parties, due to his work on Superfund sites around the U.S. Rep. Nadler attacked the re-assignment of the Ombudsman to the Inspector General's Office as designed to make the Ombudsman ineffective and subservient to the I.G. Questions posed by Chairman Jeffords and Sen Clinton (D-NY) showed both of those Senators to be sympathetic to Mr. Martin and to S.606.

Rep. Nadler included reference to a quote by Justice William O. Douglas, speaking about the problems that plague Federal agencies which make an ombudsman a necessary adjunct:

"The federal agencies of which I speak are not venal or corrupt But they are notoriously under the control of powerful interests who manipulate them through advisory committees, or friendly working relations, or who have that natural affinity with the agency which in time develops between the regulator and the regulated." (Sierra Club v. Morton, 92 U.S.1361, 1371 (1972))

Ring a bell, EPA staffers?????

The drumbeat of support for Mr. Martin and an independent EPA Ombudsman continued when Sen. Crapo (R-ID) took over the Committee Chair. Sen Crapo thanked Mr. Martin for his work on a Coeur D'Alene Superfund site and began questioning members of the second panel, consisting of Nikki Tinsley, EPA's Inspector General, and David Wood, Director for Natural Resources and Environment, U.S. General Accounting Office.

Mr. Wood's testimony included this statement: "If EPA intends to have an ombudsman function that is consistent with the way the position is typically defined in the ombudsman community, placing the national ombudsman within the OIG does not achieve that objective." He went on to give detailed reasons for that finding.

Ms. Tinsley's testimony in opposition to S.606 was to the effect that it creates another Inspector General's office within EPA and thus is an un-necessary duplication of functions. Sen. Crapo, along with Sen. Carper (D-DE) and Sen. Specter (R-PA) questioned her closely about the degree of independence the EPA Ombudsman would have under her direction. Ms. Tinsley said she is ultimately responsible for everything that goes on in her Office, but that she wouldn't change the conclusions of any Ombudsman investigation, "unless the evidence supported" such a change. Sen. Crapo asked her if she could veto an application from outside EPA for an investigation, and she said that she did have that authority.



Sen. Specter's background as a prosecutor was evident in his work this day. He managed to maneuver the panels so that both Ms. Tinsley and Mr. Martin (scheduled as a member of the third panel) were at the witness table together, setting up a fascinating dynamic.

In his testimony, Mr. Martin praised the work of his staff members, including Douglas Bell and Hugh Kaufman and the interns who worked with him, and reiterated the quote from William O. Douglas to give his overall view of how things are within EPA and why an independent Ombudsman is needed. Basically, he said, the Ombudsman works for the people, not the bureaucracy. Sen. Specter then went to work.

He asked Ms. Tinsley why Mr. Martin was put under her authority. She replied the intent was to make him more effective, to give him more resources to work with as "part of the IG team." Sen. Specter expressed surprise that Ms. Tinsley would expect anyone to believe that was the reason. He then castigated the Administrator for her seizing of Mr. Martin's files, and said Mr. Martin was removed as retribution for his recommendations and his effectiveness, which EPA didn't like.

Sen. Specter asked Ms. Tinsley what she was doing regarding the Marjol Battery case, a Pennsylvania case that Mr. Martin had been working on. She said that she had a person reviewing Mr. Martin's files, which would be done by the end of July, prompting an angry response from the Senator, "But when are you going to do something about it?" He was mad as hell. Ms. Tinsley replied that it was hard getting anything done on these cases without Mr. Martin's presence in the office, and that he had resigned after the reorganization was implemented in April.

The Senator asked Mr. Martin what he has done since his resignation. At this point, his attorney, Tom Devine, General Counsel of the Government Accountability Project, spoke. Mr. Devine said Mr. Martin was approached by the Office of Special Counsel about mediation of the dispute. Mr. Martin agreed to mediation and proposed that he be allowed to finish the cases then open - including the Marjol Battery case. Mr. Devine said that EPA has never even responded to the proposal. At this point, Sen. Crapo noted that the legislative branch doesn't normally get involved in this kind of situation, but, he noted, in this case there is a statutory process available to resolve a significant problem, and he encouraged the parties to use it.

Senator Specter asked Mr. Martin if he was still interested in going back to EPA, working under Ms. Tinsley, and finishing up the Marjol Battery case. Mr. Martin responded in the affirmative. (strikethrough: Prosecutor) Senator Specter then directed his gaze at Ms. Tinsley and said, "And Ms. Tinsley, would you be willing to have Mr. Martin come work for you and finish the Marjol Battery case?" Ms. Tinsley, visibly shaken, replied, "Well, I'm not part of that mediation or negotiation... I don't know if I have authority to accept him back.. I'll have to get back to you on that."

Sen. Specter sarcastically noted Ms. Tinsley's previous statement about how hard it was for her to do any effective work on Marjol just now without Mr. Martin's presence, Mr. Martin's

willingness to come work for her to finish the Marjol project and closed his (strickethrough: case for the prosecution) questioning.

S.606 is cosponsored by Senators Allard, Craig, Campbell, Grassley, Santorum and Specter. It has been read twice and referred to the Committee on Environment and Public Works. Details about the Bill can be obtained on the U.S. Senate website.

## **QUOTES OF THE MONTH**

Morris Winn on the subject of management accountability:

"It is just as repugnant to me for management to be found to do wrong as it is for employees to be found to do wrong."

Administrator Whitman at 06/13/2002 Women Executives in State Government Leadership Awards Gala:

"... if you were to come to one of my weekly senior staff meetings here in Washington, you'd notice more women around the table than men. My deputy administrator, my chief of staff, my deputy chief of staff, and many of my assistant administrators are women very talented women. There are a few men around the table too I do believe in equal opportunity but the majority are women, and that's not a coincidence." (Emphasis added)

Administrator Whitman on EPA OIG investigation of her conflict of interest allegations:

"I'm pleased that the inspector general conducted such a thorough investigation. As both governor and EPA administrator, upholding the highest ethical standard has always been of utmost importance to me. This report confirms that fact."

## **X-BYTES by Dwight Welch**

Bush Plans to Veto Homeland Security Bill Due to Union Rights - An Editorial Opinion - Start Implementing Management Accountability

Reported in the July 26, 2002 Washington Post is the story that President Bush Plans to Veto Congress' Homeland Security Bill, due in part, at least, to bill's guaranteeing Union and Civil Service Protections to employees in the proposed department. Part of the problem is that Administration officials would like to be able to fire people without a 30-day notice and take people out of bargaining units based on "national security concerns." The White House has offered a "compromise" that Unions be allowed in the new Agency for one year. Republican Senator and Bush supporter from Tennessee, Fred Thompson has indicated the White House might be better off without the new Department than with what Congress is proposing.

I'll second the first part of the Senator's statement. Hello! Hasn't the Conservative Agenda been, for decades, NOT to create new agencies and departments, but work with the existing laws and agencies? It is also highly offensive to suggest that the presence of Unions might somehow

compromise national security. Indeed, unions which serve as a watchdog on mismanagement would tend to improve the national security. The Homeland Security Department, proposed by Bush, represents the worst of both Liberal and Conservative agendas ? blindly throwing money at a problem while simultaneously eliminating protections which should be guaranteed all workers.

My alternative suggestion, undoubtedly will be disregarded, just as it has been here at EPA. Start holding management accountable. Were the managers who prevented FBI field reports on the potential for terrorist attacks by airliner disciplined? Heck no, they were promoted and rewarded. Can we expect improvement of this situation in a Homeland Security Department? Extremely unlikely, indeed, without Union-protected watchdogs the situation of compromised national security, due to mismanagement and management incompetence, will undoubtedly worsen.

With the financial frauds uncovered by big corporations, Congress is finally getting around to holding corporate management accountable. The same needs to be done for government. So take your reorganization plans and other bureaucratic nonsense and chuck it in the trash can. Start holding management accountable to the same rules bargaining unit employees are held accountable to and we might start seeing a government which costs less and is more responsive to the needs of the people.

EPA OIG Exoneration of Whitman - Fact or Whitewash?

As reported by the Associated Press, the EPA Office of Inspector General investigating financial conflict of interest charges in connection with the World Trade Center disaster clean-up, concludes, "the allegations were not substantiated, criminal prosecution was declined, and, thus, no further investigation is warranted in this matter." Some are arguing that the EPA OIG is an independent entity and thus was the appropriate place to reassign the OSWER Ombudsman, Robert Martin, and this investigation. The Ombudsman folks tell me critical evidence was destroyed by the OIG even prior to the case being turned over to them. Our experience is that, almost with out exception, management wrong-doing is white-washed by the OIG.

In the worst case to my knowledge, reported by this newsletter in the early 1990s, several young and ethical OIG investigators were sent by me into the files of the Office of Pesticide Programs, Registration Division. In order to trigger this investigation, I produced evidence to show that the Hartz Blockade pet kill of the late 1980's was due to improper scientific review (unqualified toxicologist) of this new and unique mixture. I also showed them that certain pesticide active ingredients, newly registered at the time, never had any long term testing. I also pointed out that due to the final printed labeling requirements of submission without review, approximately 90% pesticide labels were out of compliance with what was supposed to be registered. In this last part, some errors were minor, however, others had SIGNIFICANT potential of adverse health effects.

It was an exciting time as the young investigators found more and more incriminating evidence. Then suddenly, the investigators were removed and replaced by a new team. Upon inquiry, I was informed that then Assistant Administrator Linda Fisher had reassigned the initial

investigators to do lab audit work. Then surprise, surprise, the new team found nothing worth pursuing. How is the OIG independent if an AA can reassign investigators?

Another important case which comes to mind is EPA vs Dr. William Marcus. During the hearing, the fact that the EPA OIG had shredded important documents came out.

The fact that the EPA OIG has been very much the hand-maiden of various political appointees and the fact that all union initiated IG investigations in the past year or two have been white-washed (as recently reported), doesn't mean that Ms. Whitman is guilty of a conflict of interest due to her husband's business assets. However, if, as Whitman claims, she wishes to uphold the "highest ethical standard" then she should have formally recused herself, even if there was only an appearance of conflict. Further, an independent investigation, completely outside of the EPA OIG should have been done. Until these higher standards are met, there will always be doubt in the minds of many.

### Whitman Hangs Tough on Diesel Truck Rule

As reported in the Washington Post recently, Administrator Whitman did not grant an extension or exemption from the new Diesel pollution rules to the Caterpillar Tractor company. She gets a thumbs up from us on this one.

### Morris Winn Delivers

In the last issue we presented the readership with a couple of requests made of Assistant Administrator Morris Winn. We are happy to report that Mr. Winn delivered, at least in part. The first issue was the reissuance of the Principles of Scientific Integrity by the EPA Administrator. This was done and is reported by Bill Hirzy in another article in this issue.

What I am reporting on is the second issue of import, the Assistant Administrator's idea for a Labor Management Summit Conference between EPA's Headquarters Unions and the Labor Relations Office. The first meeting was initiated by Mr. Winn for the purpose of setting up such a meeting. It was an information filled meeting and I hope I can regurgitate it all.

But before I get to a description of the meeting, here's a little something our management readers may benefit from. Initially invited were the Presidents of both HQ Unions. Now if this had happened to a Division Director, the average DD would jump to attend. But President Jim Murphy sets the example that many should emulate. Rather than attend himself, he indicated that I was the lead on this issue and thus I should be the one attending for NTEU 280. Now how many directors do you know who would say, "Well my staffer, so and so, is really the expert on this so he/she will be attending instead."? Hmm?

So Eyvone Petty-Callier (AFGE 3331) and I attended the meeting with Mr. Winn to represent both Headquarters Unions, a partnership unknown just a couple years ago. During a pre-meeting of several union members, we decided that our first request would be a general meeting between both Unions' officers and Mr. Winn without Labor Relations. All the Union folks in the pre-meeting figured this would be a tough sell and devised various strategies to sell it to the AA.

Early in the meeting with Mr. Winn, we started presenting this idea, didn't get too far, before Mr. Winn interrupted with "Done."

Basically we came up with the following parameters for the Summit meeting. It will be attended by an outside facilitator, Mr. Winn, Daiva Balkus, Steve Sharfstein and another LR person, and two officers from each union. The meeting will be all day and some time in September or October. Morris asked us if we could condense our list of fifteen issues down to five. I responded that we could boil them down to two: Management Accountability, and Labor Relations Accountability. Eyvone added disparate treatment of minority employees. Stewart Speck on behalf of LR cited Labor Relations Accountability. OK, pretty boring so far, but things got interesting when we started into the rest of the agenda items Mr. Winn had set for this meeting.

Mr. Winn acted very upset and concerned about Inside The Fishbowl coverage of both the Administrator and himself. Morris joked that if he "...didn't know this guy Morris Winn, on the basis of the Inside The Fishbowl, he would want to take him out back and beat him up." He expressed his feeling that Ms. Whitman was also being treated unfairly. Eyvone and I both responded with the fact that much of this is probably due to the perception of them being filtered down from lower management such as Labor Relations and the Administrator's staff. I expressed my opinion from talking to lots of employees and managers, that "In my 26 years here at EPA, I have never seen, other than Anne Gorsuch, the popularity of an Administrator erode so much and so quickly." When asked why, I indicated that employee feeling was that Ms. Whitman was an aloof elitist who is perceived not to care much about the employees but rather is more concerned with her personal political future. Initially, hopes were high for Ms. Whitman to be a strong reformer. She talked the talk, but implementation has been somewhat lame. We followed with some examples. I pointed out the most recent example: the Hispanic Advisory Council (HAC). The Council had requested a meeting with Ms. Whitman, but received back a letter informing them that Ms. Whitman was too busy. It wasn't a date conflict, HAC hadn't even requested a date in their letter. Eyvone cited her year-long and unsuccessful attempts to get a meeting as having no success. Mr. Winn offered a meeting with Deputy Administrator Linda Fisher and/or Chief of Staff Eileen McGinnis. The AFGP President wasn't too thrilled with that proposal but kept her professional demeanor.

At this juncture of the meeting, I invited Mr. Winn to do a guest article for Inside the Fishbowl. Morris responded that he would do so. Later in the issue we make the same offer to the new OHROS Director Rafael DeLeon.

One issue discussed very thoroughly and introduced by Eyvone was the case of Dr. Marsha Coleman-Adebayo. It began with the AFGP 3331 President indicating that Dr. William Sanders was rewarded with a promotion for retaliating against Dr. Coleman-Adebayo. After winning her civil rights case involving the Office of International Activities, Marsha went on to work for Dr. William Sanders, program director in OPPTS.

In the way of background, in another case of retaliation, reported by our Chicago Regional Office, Dr. Sanders was alleged to have engaged in retaliation against a senior female African American employee. The plaintiff claimed she was subjected to a hostile work environment, this

elevated her blood pressure, she was denied leave, and then had several heart attacks. The employee won the federal maximum of \$300,000 and Dr. Sanders was transferred from Chicago to Headquarters.

Dr. Coleman-Adebayo's complaints and grievances against Dr. Sanders were two-fold. One was the fact that Marsha was taken off a project on which I personally witnessed his saying that she was doing a good job at less than two weeks earlier. She was then given an assignment which would have been good for a person with dual PhD in toxicology and epidemiology. She was to identify every pollutant that can be found in the human body in the United States and identify their toxicological effects. Unfortunately, Marsha is a social scientist. However, her immediate supervisor, Dr. Mary Ellen Weber, told her essentially that any college educated person can do any job here at EPA. OPM qualification standards suggest otherwise.

Dr. Coleman-Adebayo was forced to file her retaliation grievance without support from her union AFGE 3331, despite the fact that I put her into direct contact with then President Carolyn Lowe. (At that time, through a unilateral effort by Lowe, an e-mail to Elsie Wilson of Labor Relations, the only other active stewards, Eyvone Petty-Callier and Anita Nickens were removed from official time.) But it didn't end there.

Another complaint revolved around stress from her hostile work environment. Marsha's blood pressure was dangerously elevated, despite BP reducing drugs. According to her cardiologist, back up with blood pressure reading taken at the EPA Health Unit, and also according to our own M.D. Pathologist, Dr. Arthur Chiu, Marsha's blood pressure was high enough to precipitate stroke or heart attack. OPPTS (William Sanders and Stephen Johnson) was denying her work at home, despite the opinions of these medical doctors. The situation was resolved thanks to the efforts of Marsha's attorney, and the Congressional champion of EPA civil rights, Rep. F. James Sensenbrenner.

Another hot item in the meeting with Mr. Winn was the appointment of Rafael DeLeon as director of the Office of Human Resources and Organizational Services (Mr. DeLeon had served as the Acting Director of EPA's Office of Civil and was later made head of OGC's Civil Rights Law Office.) Prior to the meeting, I was informed by Mr. Winn's Special Assistant Renee Page, that there was only one EEO complaint against Rafael. But my sources, including eye-witness and former OCR employees, indicated that there were at least 6 cases against Mr. DeLeon from OCR itself and at least 11 or 12 in all. The others were settled, only one is ongoing, and yet another, filed by a member of our bargaining unit, has never even been acknowledged by OCR! Mr. Winn thought it incorrect to assume that, since EPA settled most of the cases, that there was any wrong-doing. "Maybe it was easier to settle than to fight the case." Right, EPA settles cases it knows it can win! And the moon is made out of cheese.

Mr. Winn urged me to listen to management's side before writing my articles. But indeed, I do, if they will talk to me. However, usually we get the silent treatment. Regarding the appointment of Mr. DeLeon to OHROS director, I received many unsolicited comments from both employees and managers. Their theme is a common one: "As bad as employee morale is now, it will go through the floor with Rafael DeLeon as OHROS director." Anyway, I've decided to take Mr.

Winn's advice and am thus writing an open memo to Rafael DeLeon urging him to work with us in partnership to correct problems with EPA Human Resources. (See next article)

We also discussed numerous other issues, such as Labor Relations putting out a continuously changing set of rules, their improper influence over internal and representational union business (offering favored treatment and bending rules to help Union officers/ex-officers they like, to the detriment of those they don't like--those who stand up to them).

Mr. Winn had a number of various replies and defenses. He felt LR gets the heat from both sides and is a difficult job. (Being a Union officer isn't?) He again defended EPA as being a better organization than other agencies, for instance Texas state personnel. (I replied, that is because we have some good unions at EPA keeping management more in check than it would otherwise be.)

Mr. Winn also had a really outstanding idea which I hope gets implemented. Although this Administration seems to be allergic to the word "ombudsman", Morris said he is in favor of starting up some sort of Labor-Management Ombudsman to try to informally resolve issues before they get to be a grievance or EEO complaint. This could work out fine, so long as it is someone capable of win-win negotiations, like Barbara Marx instead of the "heels dug-in" style of certain Labor Relations and Office of General Counsel personnel. I also informed the Assistant Administrator that such an idea was floated by Mr. Paul Newton in the previous Administration. Back when Jim Jackson was Labor Relations Director, Paul was his second in command. We had all hoped that Mr. Newton, who always applied the rules fairly and used interest based bargaining techniques, would fill Jackson's position. Instead they pushed Mr. Newton aside, and hired Mr. Sharfstein who does look good on paper. But Paul Newton remained a loyal employee, even after being edged out of Labor Relations. Mr. Newton submitted a suggestion of an L-R Ombudsman, but was ignored. Shortly after Paul retired in disgust.

I believe Mr. Winn is genuine in his desire to make EPA a better place. The difficulty will be to get him out of his state of denial. Indeed, he asked the same question of Eyvone that he asked of Rosezella and me, "Would you recommend EPA as a place to work to a young person searching for employment?" He got the same reply, a resounding "No." And he seemed equally as taken aback by the response. If Mr. Winn is to succeed at reforming EPA, he needs to realize he has been bamboozled by senior career management. In bamboozling Mr. Winn and Ms. Whitman, the two political appointees are taking at least some negative criticism that they shouldn't have to. Both W&W have only the vaguest notion of the anger down in the ranks, only the vaguest notion of the rampant injustice. It will be the Unions' great task to educate them in the coming months. And while, Ms. Whitman, her Chief of Staff and others totally ignore communications from the Unions, at least we seem to have some sort of dialogue with Mr. Winn. Talking about issues is better than not talking about issues; the icy silence may at last be melting.

An Open Memo to Rafael DeLeon

Dear Rafael,

I notice with great interest that you are being rotated to be the new director of OHROS. Assistant Administrator Morris Winn recently voiced his concern to me that in the past, Inside The Fishbowl has been a little too hard on you. He suggested to me that I make more of an effort to get management's side of the story. I whole-heartedly support this idea, indeed, we have invited, with little success, guest articles from management in the past. Therefore, I would like to take this opportunity to invite you to write a one or two page article for our publication.

As you may know OHROS still suffers from a great many problems. We would like to know, as the new head of EPA's personnel office, what reforms you intend to implement. Below are a number of subjects which you might like to address:

1. Many minority groups claim there is still a lot of discrimination going on at EPA. What would you do to not only deal with this problem in OHROS, but agency-wide?
2. An increasing and alarming number of older employees are coming to both Headquarters Unions claiming that they are being pressured into retirement and/or that management is attempting to fire them. Worse than that, many senior employees are opting out to retirement rather than endure another minute at EPA. What is your plan to try to retain this vast wealth of knowledge and experience?
3. Many employees complain of Prohibited Personnel Practices and other abuses including preselection, cronyism, nepotism, and retaliation. What do you intend to do to stem these practices?
4. Many employees complain of unfair desk audits. If a manager likes an individual, the individual gets an accretion promotion, if the program manager dislikes an employee, no promotion. This happens, the employees claim, regardless of duties, responsibilities and achievements of the employees. What do you intend to do to implement fair classification and desk audits?
5. Most, if not all, current officers in both Headquarters Unions complain that Labor Relations, led by Mr. Steve Sharfstein is conducting a vendetta against certain Union officers, while providing favored treatment to others. What do you plan to do to resolve this discriminatory treatment?
6. The rules concerning filing and processing grievances seem to be in a state of continual flux with no consistency. What do you plan to do to provide for a fixed set of rules by which everyone would adhere?

-Dwight Welch for the Executive Board

Will the former OCR Director respond? We will let you know in the next issue of Inside The Fishbowl.

Joe Sylvester Update



This is a progress report on the grievance of Dr. Joseph Sylvester reported on previously. Joe's grievance is at step 3 and is currently being considered by a three manager panel consisting of Pesticide Program Director Marcia Mulkey, and Ray Spears and Vanessa Vu from the Office of Administrator. They have requested an extension and the Union has granted one until August 2, 2002.

Meanwhile, Dr. Sylvester has gotten his mid-year review and it went well. Joe will even get to be acting Chief for a week of Arthur Jean Williams' 2 week vacation. The situation seems to be improving in that division.

## Health & Safety News

### Don't Chain Me In - EPA Employee Complaint Prompts OSHA Inspection by Dwight Welch

Every now and then something happens which gives me hope for the federal government. This story is one of them. This is a story about a federal employee doing his job and it makes me proud to be a federal employee.

On July 24, I got a call from Dennis Bushta, EPA's Health and Safety Director. An OSHA inspector, Joe Sancomb was here in response to an EPA employee complaint regarding blocked egress from ICC West. The employee remained anonymous but the complaint came from the 6300 corridor of ICC West. The OSHA inspector led a group consisting of Facilities Management, Security, and Health and Safety on the inspection. I represented labor. AFGE 3331 officials could not be located at the time.

No violations were found in the 6300's of ICC West and the Inspector remarked about the positive conditions of the floor. However, the first floor was another story. We found a number of violations including hazards at exits. In one a roll of carpeting was blocking the way and at another, a ramp to move furniture was cluttered with fibreboards which presented slip and trip hazards. EPA may be cited.

Some interesting highlights: The managers, obviously fans of Inside The Fishbowl, vouched that the two Headquarters Unions now had a partnership, thus it was OK if AFGE could not be reached for the walkthrough. Another interesting thing was that while the inspector interviewed employees, the managers were not allowed to be present but the Union was unless an employee objected. The Unions are also supposed to be present on any follow up. At the post inspection conference, the inspector indicated the possibility of a citation. He also informed the managers that retaliation against participating employees was not allowed to which management readily agreed. And my experience was that the group participating do not engage in retaliation. The EPA managers did present a mitigating circumstance, which was no idle whine, but one in which I concurred. A major problem with EPA buildings is GSA and their lack of cooperation. GSA is the bureaucracy of bureaucracies. For instance back during the gas line construction break, at the ensuing meeting, EPA H&S and Facilities Managers were all being reasonable. It was the GSA managers who were not only being unreasonable but were operating under incorrect technical

information. If EPA employees are to be protected something needs to be done about GSA. GSA officials could not be reached for the above described inspection.

One valuable lesson I did learn from this is that a signed and written complaint will always trigger an inspection whereas an anonymous complaint or phone call would not necessarily do so. However, I would recommend anyone contemplating a complaint to come to your Union first.