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Inside The Fishbowl

Official Newsletter of NTEU 280

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Office of the Administrator Quality-of-Work Life Survey #2 is About to be Launched

By Jack Kooyoomjian and Jacqueline Rose⁽¹⁾

The Office of the Administrator (AO) launched a Quality-of-Work Life (QWL) Survey in 2001, because there were a number of issues impacting employees that needed to be understood, recognized and dealt with in a positive manner to improve the Quality-of-Work Life of individual employees in AO.. The Office of the Administrator hired Dr. Herbert Wong of Herbert Z. Wong & Associates to conduct the survey and analyze the data. Dr. Wong conducted focus group sessions in addition to using the questionnaire as the principal survey instrument.

As a result of the survey responses from the AO employees, Work Groups were formed to address the major issues coming out of the first survey (Survey #1). These issues dealt with Awards and Recognition, Communication, Performance Evaluation and Feedback, and Training and Career Development. Two cross-cutting issues were also identified in the first survey that would be addressed by all the Work Groups, namely Senior Management (Survey #1 recognized a disconnect between senior managers and employees in the communications area) and Diversity. In later Workshops, two other Work Groups were created, namely Vision and Values, and the Up-Down Feedback Work Group (for assessing managers performance as a pilot program).

Significant effort and participation has occurred in the Office of the Administrator among a broad swath of employees. Collectively, over 140 employees have been actively engaged in the Work Group and Work Shop process as a long-term exercise over the past 3 years. Well, the time has finally come to re-survey the AO employees to see if all these activities have made a difference in the Quality-of-Work Life in the Office of the Administrator. Dr. Wong has again been employed by the Office of the Administrator to conduct the second survey (Survey #2) to see if changes have occurred in that Office and if the results of the collective efforts in developing products, hiring resource persons, and others changes have made a difference in the Quality-of-Work Life in the Office of the Administrator. Documents developed by this initiative can be found at <http://intranet.epa.gov/oespage2/quality.htm>

If there is one message that we wish to convey to our bargaining unit colleagues in the Office of the Administrator, that is *you should definitely avail yourself of this opportunity to respond to the survey and let your opinions be known*. We need to see if any of these activities that we have invested significant collective time and energy into on your behalf is making a difference in your Quality-of-Work Life. If things have improved or need to be improved, or new directions have been taken, or you think that no change has occurred, now is the time for you to make your voice heard. The survey is anonymous. Responses in each office are clustered using the "rule-of-ten" so no individual responses are identified.

If you would like to personally talk to Dr. Herbert Z. Wong or his associates , who are conducting the survey, you can call or e-mail him directly at Herbert Z. Wong & Associates in Cambridge, MA (Tel. 681-749-2997, or e-mail at herbwong@earthlink.net). Also, please feel free to contact Jack or Jacqueline if you have any issues you wish to bring to our attention.

LETTERS TO THE EDITOR

Dear Dwight:

Thank you so very much for bringing my plight and the plight of the disabled in the federal workforce to the attention of Sheila Jackson Lee. THANK YOU!!!

In a round about way using someone else's computer, I have a copy of the Fishbowl. My compliments!!

I found it timely - the response of NTEU Chapter 280 to the GOA Report about the Office of Civil Rights with the publication of Blind Injustice. Via a FOIA, I have a copy of the EPA's SOPs to Process Internal Complainants of Discrimination. The SOPs do not have a preliminary step to effectively accommodate disabled EEO complainants. This error coupled with EPA's violation of Executive Order 13164 July 26, 2000 Requiring Federal Agencies To Establish Procedures To Facilitate The Provision of Reasonable Accommodation creates willful and malicious discrimination against disabled EEO Complainants by OCR.

Under the Privacy Act of 1974 I have requested all data entered in the new EEO complaint tracking system(s). An evaluation of its accuracy for EPA File No.:2003-0016-R06 is in progress.

I also requested that the GAO finish its investigation of OCR by focusing on complainants filed by disabled EEO Complainants.

Talk to you soon, and thank you so

very much, Carin [Memmer]

Administrator Ignoring Hispanic Council Also

(The Following letter is reprinted with permission and request of the HAC)

Dear EPA Hispanic Colleague:

As you know, the EPA Hispanic Advisory Council (EPA-HAC) has worked hard for the last few years to encourage EPA management to be more responsive to the needs of Hispanics, the largest minority group in this country. As our population has grown so have our needs, especially in the area of employment and advancement. You know the employment statistics of Hispanics at the EPA, 4.7%, lower than their total in the Federal workforce, 6.7%, and the civilian labor force, 13%. At the Senior Executive Service (SES), it is only 2%, lower than their total in the Federal work force, 2.5%, also shamefully low.

It is because of this long term problem and other serious concerns of EPA Hispanic employees and the Community that we have asked to meet with the Administrators of EPA. Unfortunately, former Administrator Christine T. Whitman turned us down three times during her three year administration. She did, however, attend the LULAC Convention in Orlando, Florida, seven days before she departed EPA and told the LULAC audience that Hispanics were doing great at the EPA. We were encouraged when our new Administrator came aboard because it was said about Mr. Mike Leavitt that he possessed strong abilities as a collaborator and consensus builder and that his first priority at EPA would be to listen and learn from us. The "us" must not have included EPA-HAC since Administrator Leavitt has not responded to our two requests to meet with him. This is disappointing, especially since the Executive Networking Forum and others recommend that Agency leadership establish advisory councils and collaborate with them as one of the "best practices" for hiring and advancing Hispanics.

In previous correspondence, we suggested that from time to time we would be asking for your consultation and advice on certain issues important to EPA Hispanic employees. This is another one of these times. We are attaching the requests we made to Mr. Mike Leavitt on November 12, 2003, and January 23, 2004. We would appreciate if you would give us your advice as to how to address this silent treatment. In the past, your ideas, opinions, and recommendations have been beneficial as we continue the effort to make certain that Hispanics participate in EPA's programs and its workforce.

Thank you,

Lupe Saldaña

Chair, EPA-HAC

Ed. Note: In the last issue of *Inside the Fishbowl* and in our recent press release, we mentioned being ignored by EPA Administrators Whitman and Leavitt. If you represent an employee group at EPA that is also being ignored by Administrator Leavitt, send us a letter or article and we will probably publish it.

Dwight/Seth

Ok-- I can live with being accused of approving removal of the Holland and Knight Report. I did.

What I can't live with is your sloppy, misleading and inflammatory description of the report and my career. This is EXACTLY what I am talking about when I talk about Union Communications.

You mislead people to think the Holland and Knight report says what you appear to be quoting. That is not true and is a willful disregard for the truth. This is highly unfair, defamatory and libelous. You took a passage from the report, inserted my name where it fit your purposes and you published it as if the Report says that. It doesn't.

Furthermore, either being incredibly malicious or just taking rank liberty with the truth, you assert that I was promoted after my 1-year OCR Director stint to be Director of OHROS. For those who don't know, they will consider this to be true. The Fact is that this is factually incorrect and MISLEADING. I went to OGC, where I established the Civil Rights Law Office and practiced for approximately 5 years, before coming to OHROS. When you look at the law in this area, what you are doing looks a lot like what the threshold is for proving defamation of character and libel.

I strongly urge you to immediately correct what you have published and to refrain from publishing these misleading, defamatory attacks in the future.

Rafael DeLeon, Director

Office of Human Resources and Organizational Services

Ed. Note: In the quote from the Holland & Knight Report, we added two names in brackets and then stated that: we note that paragraph B 3 on page A-2 states that: "the [then] current OCR Director's predecessors [e.g., Rafael DeLeon] were not strong managers; therefore, the Director [Ann Goode] inherited a poorly- managed organization." We expected that our readers would know that, if there is a quote and within the quoted text there appears bracketed language, the bracketed text is not from the quoted text.

Office of Civil Rights Responds to NTEU That There are no Disciplinary Procedures in Place for Use Against Discriminating Managers

On February 24, 2004, NTEU, Chapter 280 wrote to Administrator Leavitt regarding a GAO report dated June 26, 2003, reporting on EPA's civil rights program and the need for improvement. Our letter stated, in part, that:

"GAO also reports that since 1995, EPA has not disciplined any manager or employee for discriminatory conduct. We note that EPA's No Fear Act Data Report, found on EPA's internet site at <http://epa.gov/civilrights/nofearact.htm>, reports that for FY03 there were two findings of discrimination. [Ed. note: there is also one for FY04 that was not included in the EPA report.] But our question to you is were these individuals held accountable for their discriminatory actions?"

We agree with GAO that a process that holds managers accountable for discriminatory conduct should enhance employee confidence in the EEO environment and demonstrate EPA's commitment to providing a fair and discrimination free environment. Accordingly, we urge that you direct that EPA fully implement GAO's recommendations. . . ."

On March 10, 2004, EPA's Office of Civil Rights hand carried the Agency's response to NTEU Chapter 280's "union hall" a/k/a 3376 EPA East. The letter, from Karen Higginbotham, but signed by Gordon Schisler, states that: "Procedures for a system of disciplinary actions to be taken, when cases are settled or managers/supervisors are found to be discriminating, are still being reviewed and have not been finalized." In other words, there have been no disciplinary actions taken against the three managers who were found to have discriminated.

We have asked to see a copy of the draft procedures and have urged the Administrator to direct that such procedures be put in place ASAP, and that, in the meantime, the Agency proceed against the three managers and hold them accountable for their discriminating actions.

Referred EEO Complaint to Administrator Leavitt for Decision is Decided by
Thomas J. Gibson, Chief of Staff

In the December edition of *Inside the Fishbowl*, we reported that on December 10, 2003,

Karen Higginbotham, Director of EPA's Office of Civil Rights, withdrew her Final Agency Decision, a decision which was on appeal to the EEOC, that dismissed an EEO complaint. That complaint alleged, in part, that Ray Spears, Deputy Chief of Staff, retaliated against an EPA employee for pursuing rights under EEOC regulations.

In Ms. Higginbotham's memo to Administrator Leavitt, she states:

"To avoid any real or perceived conflict of interest [because Ray Spears is her supervisor], I have withdrawn the Final Agency Decision that was issued on this complaint on August 25, 2003, and I am referring . . . [the] complaint to you for processing and final decision, pursuant to Delegation 1-83." [Delegation 1-83, the authority to accept or dismiss EEO complaints, provides that the Director of the Office of Civil Rights can refer any EEO complaint to the Administrator for final decision.]

So what will Administrator Leavitt do with that EEO complaint? Will he make the decision himself or will he delegate it to some other EPA official? Or, will he use this as an opportunity to demonstrate the ENLIBRA concept? In other words, have a meeting with the complainant and work out a resolution in a non-confrontational, common sense manner.

We now have the answer. On January 30, 2004, Administrator Leavitt's Chief of Staff, Thomas J. Gibson, issued the Final Agency Decision dismissing the complaint. An appeal was filed, on March 26, 2004, with the EEOC. What is troubling is that the decision does not reference under whose authority Mr. Gibson was acting. Also troubling is that it is not clear if Mr. Gibson was acting at the direction of the Administrator or Deputy Chief of Staff Ray Spears. This confusion is caused by the Agency failing to respond to a FOIA requesting a copy of the document from Administrator Leavitt authorizing Mr. Gibson to be the deciding official. Compounding the confusion is the existence of a July 2, 2003 memorandum from Acting Administrator Linda Fisher delegating such authority to Deputy Chief of Staff Ray Spears with the unbridled right to redelegate that authority to anyone he deems appropriate.

That memorandum states:

"By this memorandum, Ray Spears, in his capacity as Deputy Chief of Staff, is hereby delegated the authority to receive, evaluate and make the final Agency decision on such referrals [referrals by EPA's Director, Office of Civil Rights to the Administrator for final decision] and to redelegate this authority to whomever he deems appropriate."

So did Ray Spears redelegate his authority to Mr. Gibson? We don't know, but if he did would that comport with the Management Directive of the EEOC that, "Agencies *must avoid* conflicts of position *or conflicts of interest* as well as the appearance of such conflicts." EEO-MD-110, Ch. 1, Section III at 1-2. (Emphasis added)? What do you think?

Casting further doubt on the appropriateness of the selection of Thomas Gibson as the deciding official, is the past practice of Karen Higginbotham when a similar conflict of interest arose also involving Deputy Chief of Staff Ray Spears and then Chief of Staff Eileen McGinnis. In those past cases, which arose in Washington DC, the referral for Final Agency Decision, was to Carl

Dierker, the Regional Counsel of Region 1, located in Boston. In Mr. Dierker's decision is the statement that: "I have been delegated the authority to issue a final decision on your complaints of discrimination in order to avoid any real or perceived conflict of interest issues." The Agency's position in those cases was that, although Higginbotham did not first refer those complaints to the Administrator, as EPA Delegation 1-83 at 3.d provides, "Higginbotham did what the Administrator would have done anyway: she referred those complaints to an objective, impartial, senior EPA official for review."

Based on the Agency's statements noted above, how could the Agency now take the position that having the Final Agency Decision issued by Administrator Mike Leavitt's Chief of Staff, who works on a daily basis and in the same office with Deputy Chief of Staff Ray Spears, complies with the Commission's requirements to avoid conflicts of interest as well as the appearance of conflicts of interests?

Considering the close working relationship of Mr. Gibson with Mr. Spears, is it likely that Mr. Gibson could be "an objective, impartial, senior EPA official" regarding a complaint that names Mr. Spears as one of the alleged discriminating Agency officials? Stay tuned on this one.

Chief of Staff, Thomas Gibson, Refuses to Meet Over NTEU Allegations of Agency Corruption and Finds No Corruption

On January 7, 2004, NTEU Chapter 280 requested that Administrator Mike Leavitt, take action to investigate the alleged corruption of Agency officials claiming to have the Administrator's civil rights settlement authority in civil rights cases involving EPA, when, in fact, they do not, and are violating Agency Delegation 1-39 (settlement authority) and Administrative Judges' Orders, and are, in essence, negotiating in bad faith. The letter stated that such actions, no doubt, have had an adverse impact on the settlement terms that EPA employees were forced to accept, under the threat that, if not accepted, the alternative was to continue with expensive litigation that few EPA employees can afford. It is not uncommon for litigation costs to reach into the six figure range.

NTEU also requested an immediate investigation regarding the May 2, 2001 report of Ray Spears regarding redelegation of settlement authority to an Office of General Counsel attorney without a written redelegation. We stated our belief that Ray Spears and his ad hoc task force intentionally distorted the record to achieve their goal of finding that the Agency OGC attorney had full settlement authority.

As a further example of alleged corruption in the Administrator's Office, NTEU pointed to the actions of Ms. Karen Higginbotham, a member of Mr. Spears' ad hoc task force and now the Director of EPA's Office of Civil Rights. We noted that, contrary to the redelegation provision of Agency Delegation 1-39, Karen Higginbotham, has redelegated the Administrator's Delegation of Authority 1-39, the Administrator's EEO settlement authority, to Agency officials not authorized to receive such authority.

[Ed. Note: See the January edition of *Inside the Fishbowl* for a copy of NTEU's January 7th letter.]

On March 2, 2004, Chief of Staff Thomas Gibson responded for the Administrator and declined to take action. The basis is that:

"I [Thomas Gibson] have carefully reviewed the information included in your letter and find nothing to support your allegations that the Agency officials therein engaged in any corruption whatsoever. In addition, nothing included in your letter leads me to conclude that the actions of these officials in any way adversely affected the terms that EPA employee complainants accepted in settlement of their complaints. As such, I do not find a factual basis for your contention that Agency employees were "forced to accept" the terms of settlement agreements."

The allegations were against Deputy Chief of Staff Ray Spears; Karen Higginbotham, Director, EPA's Office of Civil Rights; Rafael DeLeon, Director, Office of Human Resources and Organizational Services; Bridget Shea, former manager of OGC's Employment Labor Practice Group, currently serves as Senior Policy Advisor to the Assistant Administrator for Administration and Resources Management; Jonathan Newton; as well as Office of General Counsel attorneys who represented that they had EPA civil rights settlement authority, when, in fact, there was no redelegation of settlement authority to them.

We had hoped that Administrator Leavitt would have conducted a full, fair, and independent investigation regarding our allegations of corruption by agency officials, including senior officials of his Office. The fact that Chief of Staff Thomas Gibson responded to our request speaks for itself regarding an investigation by an objective, impartial, senior EPA official. In any event, at least Administrator Leavitt is now on notice of our concerns and hopefully has directed his staff to stop such practices that allegedly corrupt EPA's civil rights process.

FROM THE PRESIDENT

by Dwight Welch

Quote of the Month

"The success of our leadership team at EPA is inextricably linked to the productivity and creativity of the Agency's staff. EPA has an exceptionally talented and diverse workforce. As the designee for Deputy Administrator, I believe I have a responsibility to invest in our people, promote professionalism and diversity, and prepare our workforce for the future."

-Statement of Stephen L. Johnson for Senate Confirmation Hearing

Reasonable Accommodation?

This article is mostly excerpted from actual documents in connection with the request for medical accommodation by Dr. Marsha Coleman-Adebayo including from a March 22, 2004

memo from the Office of Civil Rights signed by William R. Haig, EPA Reasonable Accommodation Coordinator and from Dr. Deborah Wilson, Director of Glaucoma, Asst. Professor of Clinical Ophthalmology.

First Mr. Haig:

"In describing the extent to which her major life activities are affected when her medical condition is uncontrolled, Dr. Kanovsky states, as it relates to breathing, "Dr. Coleman-Adebayo would experience severe shortness of breath when exerting herself. The exertion would not have to be high; the shortness of breath could come from walking across a room. As a result of the severe shortness of breath, she would have to gasp for air, which would make it impossible to do anything else at the time. The shortness of breath would also make her fearful that something worse, such as a stroke or heart attack, was occurring. She could not work under these circumstances."

"Regarding his explanation of limitations imposed as it relates to the major life activity of walking, Dr. Kanovsky states, "Her problems of dizziness and balance would occur frequently during the day. She would have the feeling of light-headedness and sometimes it would seem as if the room were turning. These conditions made it difficult for her to walk, sometimes she would have to support herself on a wall when walking down a hallway. She could not work under these circumstances"....

"Dr. Deborah Wilson indicates in her March 18, 2004 letter that Dr. Coleman-Adebayo has a medical condition that can limit her ability to see." (Glaucoma induced by high blood pressure.)...

Dr. Wilson writes in her letter of March 18th to Mr. Haig:

"However, if her glaucoma worsens, which in my opinion could happen if she is subjected to additional stress in the workplace, her ability to perform work and non-work activities will be harmed even further. As I stated, she could become blind. Her quality of life will depreciate. If this occurs, especially at her age, this will impact every aspect of her professional and personal life. Considering the impact of stress on glaucoma, hypertension, multiple sclerosis and optic neuritis, this is an unacceptable medical risk"....

" She has been working from her home office since 2001. During that time, by using medications and having frequent check-ups, I have been able to keep the progression of her disease at least from accelerating. In fact, the pressure in her eyes had improved within the last year, even though it is still not within normal range. Unfortunately, the last time I examined her, the pressure had increased again, which may be attributed to recent stress due to her work situation. I am very concerned that changing her environment by having her work in the far more stressful workplace would increase the likelihood that her glaucoma would become worse. As I stated above, once vision is affected by glaucoma, it cannot be recovered. (Bold added for emphasis).

Mr. Haig's accommodation:

"In regard to addressing medical concerns raised by Dr. Kanovsky as it relates to this employee's breathing and walking limitations, it might be appropriate for the agency to provide her with a motorized wheelchair or scooter when performing her job duties at the office. Regarding specific concerns raised by Dr. Wilson as it relates to this employee's possible seeing limitations, it would be appropriate for the agency to grant leave so that Dr. Coleman-Adebayo can attend frequent medical appointments and check-ups." ...

So what happens if Marsha has a stroke or heart attack on the job? What happens to her if she goes blind? Based upon Carin Memmer's experience written about last month ("Blind Injustice"), we can infer that when she asks for accommodation for her blindness she will be fired. The concept of "Human Capital" has reached a new low.

Should you find yourself in a similar situation, contact us ASAP so we can help you through this process to reach a reasonable accommodation.

Stonewalling and Alleged Retaliation by Senior EPA Officials May Precipitate House Committee Hearings

As reported in the Washington Post on March 11, 2004, in a press conference called by NO FEAR Act co-sponsor Rep. Sheila Jackson-Lee and attended by Reps. Albert Winn and Diane Watson, the legislators are calling for a hearing on federal agencies failing to adequately support what has been dubbed "The First Civil Rights Law of the 21st Century." The Press Conference was part of a "Federal Report Card" on 6 agencies, using data supplied by those agencies, as required by the NO FEAR Law. EPA gets an "F." One of the show and tells for the press conference was the chart appearing in last month's *Inside the Fishbowl* showing Mr. Leavitt having the worst EPA EEO backlog during the NO FEAR reporting period of 5 years.

Of course it may seem unfair to some to blame Mr. Leavitt for this backlog since he's only been with EPA a few months. I wrote to Ms. Karen Higginbotham concerning both the backlog and the Carin Memmer case. She refused to discuss either with me. At some point Mr. Leavitt needs to take senior career management to task. So while the backlog may not have been caused by Mr. Leavitt or his policies, its continued existence, the continued lack of management accountability, rests clearly on his shoulders.

Four/Ten Workweek? - No Time Soon

Many have inquired recently on the status of a 4/10 work week. NTEU Chapter 280 is currently in negotiations regarding Credit Hours and a 4/10 work week. But I wouldn't expect results anytime soon. It would be against the rules for me to describe current negotiations, so I just leave it at that.

Management +/-

Managers Plus

David O'Connor - OARM

This month's Manager Plus designation once again goes to David O'Connor, now acting AA for OARM and chair of the Headquarters Partnership Council.

NTEU Chapter 280 has been engaged in ongoing negotiations with OECA on a move agreement and backfill policy for that office. However, previously, the HQ PC agreed to reopen the Generic Move Agreement and add to it a backfill policy. So I wrote to David and asked wouldn't it be better to negotiate an HQ-wide policy than to waste time with individual offices. A reasonable question to a reasonable manager got a reasonable response: Mr. O'Connor agrees and will be putting it to a vote to the HQ-PC. I will report on the results of this next month.

Managers Minus

Karen Higginbotham - Director, Office of Civil Rights

Ms. Higginbotham gets a Manager Minus for her apparent cavalier attitude about the growing EEO backlog or at least her unwillingness to discuss these issues with the employees' representatives, the unions. See above article "Stonewalling and Alleged Retaliation by Senior EPA Officials May Precipitate House Committee Hearings." In addition, her failure to finalize procedures for disciplining discriminating managers is unacceptable. While Ms. Higginbotham apparently feels no obligation to discuss these issues with the Union, I'm certain she will have an excuse for the Administrator.

People Minus Protest

I recently received an e-mail boasting that the rate of compliance for People Minus was 42%. Hmm, that means 58% or a significant majority is not complying. Could this be a protest?

1. Dr. K. Jack Kooyoomjian is an Environmental Engineer in the EPA Science Advisory Board of the Office of the Administrator, and is the NTEU Chapter 280 Rep. on the AO QWL Planning Committee. He has also served on the Communication, Training & Career Development, Vision & Values and Up/Down Feedback (as alternate) Work Groups. Ms. Jacqueline Rose is a General Engineer in EPA's Office of Wastewater Management in the Office of Water. She serves on the Manager of the Year Awards Committee and on the Performance and Evaluation Committee. She has served on the Awards & Recognition, and Up/Down Feedback Work Groups and is a member of the Executive Board as Secretary of NTEU Chapter 280.