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Inside The Fishbowl
Official Newsletter of NTEU 280

June 2005 Volume 21 - Number 5

NTEU Chapter 280 Website: www.nteu280.org

NTEU National Website: www.nteu.org

Note: Articles indicating authorship reflect the views of the author and do not necessarily reflect the views of the Editor, Editorial Board, or NTEU Chapter 280.

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Letter to the Editor

I am very surprised that the Union printed this article by Carolyn Davis [Director of the Workplace Solutions Staff] regarding Alternative Dispute Resolution [See January-March 2005 *Inside the Fishbowl*.] I went thru the ADR Process. The process is a Hogwash. Does not work

because they can not get the Manager(s) involved to meet the employee face to face to resolve the issue. If that Manager(s) would have come to the negotiation table, I would not have registered my discrimination complaint with the Office of Civil Rights. [Name withheld upon request.]

Editor's Response:

In a number of cases where NTEU used ADR, we found that the process generally works when the appropriate managers attend the meeting. However, I have confirmed in discussions with Carolyn Davis, the Director of the Workplace Solutions Staff, that she does not have the authority to order specific managers to attend the ADR sessions. By placing the article in the *Fishbowl* we were hoping to generate some feedback from those who have actually used ADR so that we can better point out where the process needs to be improved.

One possible process improvement is based on the May 2, 2001 Ray Spears memo that discusses "fundamental fairness" and who should be required to be involved, in the civil rights context, in settlement decisions. The specific Ray Spears language that I am referring to can be found on page 5, paragraph 2 of that memo, and states, in part, as follows:

"The issue of fundamental fairness is implicated by the level of program office involvement in the settlement process. Clearly, the settlement process should involve program officials sufficiently removed from the alleged acts of discrimination so as to provide board objectivity on the issue of the value of settling the complaint."

To adapt Ray's concept to ADR, the above text could be changed as follows:

"The issue of fundamental fairness is implicated by the level of program office involvement in the Alternative Dispute Resolution (ADR) process. Clearly, the ADR process should involve program officials sufficiently removed from the alleged acts that gave rise to the issue to be addressed by the ADR process so as to provide board objectivity regarding the issue in dispute as well as potential options to bring the matter to a successful ADR conclusion."

I have raised this fundamental fairness process issue in discussions with various management officials and have used your letter to the editor as one of the examples to illustrate that the ADR process needs to be improved so that we are more likely to reach common sense solutions.

Know Your Rights

Weingarten Meetings

So what is a Weingarten meeting? It is an investigative meeting between a management representative and a bargaining unit employee in which the employee reasonable fears discipline.

So what does this mean? If during questioning, an employee reasonably fears discipline may result and requests a representative, the manager questioning the employee must **stop the meeting and allow a representative to attend**.

The bottom line is that should you find yourself in such a situation tell the manager that you want to see your union representative.

Testifying before Congress is a protected activity

In Reed v. Department of Transportation, EEOC Appeal No. 01A05085 (May 20, 2003), complainant asserted, among other things, that a manager threatened to file a civil action against him. **The Commission noted that complainant engaged in protected activity when he testified before Congress about allegations of sexual harassment and reprisal at his facility**. The manager, who had been named by complainant during his testimony, then threatened to file suit. The Commission found that the threat, made one week after complainant's testimony, was reasonably likely to deter complainant or others from engaging in protected activity. Specifically, the Commission stated that, if true, the acts would have placed an undue and potentially chilling burden on the exercise of complainant's EEO rights, that is, the need to weigh the risk of incurring the cost of defending against a slander action against the desirability of obtaining a remedy for discrimination. Finally, the Commission noted that it was unnecessary for complainant to demonstrate that he was actually deterred from filing a complaint.

Medical Confidentiality

Complainant claimed that he was subjected to disability discrimination when his former supervisor made unauthorized disclosures of confidential medical information to various agency facilities, which then denied him employment. In his evaluation of complainant, the supervisor wrote that he would not recommend complainant for rehire unless his medical condition was resolved. The Commission noted that complainant failed to establish that he was an individual with a disability, as there was no evidence that he had or was regarded as having, a condition that substantially limited a major life activity. **Nevertheless, the Commission found that the supervisor's statement disclosing the nature of complainant's impairment (plantar fascitis) violated the Rehabilitation Act, since documentation of an individual's diagnosis or symptoms is confidential medical information. The Commission ordered the agency to remove all documentation containing medical information from complainant's work folder, as well as provide training for the responsible management officials.** Gianikos v. United States Postal Service, EEOC Appeal No. 01A21992 (October 16, 2003), request for reconsideration denied, EEOC Request No. 05A40208 (January 22, 2004).

Bill Hirzy Testifies Before New Jersey Health Board

Statement of J. William Hirzy, Ph.D. to

the New Jersey Board of Health on Mandatory Fluoridation

June 6, 2005

My statement today is made on authorization of the Executive Board of Chapter 280 of the National Treasury Employees Union, which represents the professional employees at the headquarters of the U.S. Environmental Protection Agency in Washington, D.C. I am Vice-President of that union as well as a Senior Scientist in the Risk Assessment Division of the Office of Pollution Prevention and Toxics, U.S. EPA. The opinions I present are those of the union, and they do not necessarily reflect the views of the U.S. EPA on this subject.

First I want to call to your attention the materials already in your hands that I submitted in previous testimony that I gave on this subject last October. These materials include information on adverse effects *now occurring in the general population* as a result of already excessive exposure to fluoride, and my argument for a moratorium on current fluoridation programs in your state. These adverse effects include increases in lung and bladder cancer caused by the arsenic contamination in the fluoridating agent.

Today, I also address the cancer issue by reciting text from a study which ought to put an end to fluoridation everywhere. I submit a copy of this material for the record. I do so to put you, the New Jersey Dental Association, and the political leadership of New Jersey on notice that if you rush to mandate more fluoride exposure for your citizens you will be condemning some of your youngest sons to - at best amputation - and at worst death from osteosarcoma - bone caner. This is in addition to the increases in lung and bladder cancer cases mentioned above.

The recited text is excerpted from the Discussion section of Chapter Three of "Association Between Fluoride in Drinking Water During Growth and Development and the Incidence of Osteosarcoma for Children and Adolescents," a thesis presented by Elise Beth Bassin in partial; fulfillment of the requirements for the degree of Doctor of Medical Sciences, Harvard School of Dental Medicine, and dated April 2001. I submit a copy of Chapter Three today.

I think it is fair to say that junk science this is definitely not, and it is a piece of work that you absolutely must require be addressed by those appearing before you urging that you dose your whole population with cancer-causing fluoride.

The entire thesis has been requested by the National Research Council committee that is reviewing EPA's drinking water standards for fluoride. It is my understanding that the reason for the NRC's delayed report to EPA has to do with Dr. Bassin's thesis.

Fluoride and Bone Cancer Linked

EWG Cites Compelling Body of Science Linking Fluoride to Rare Bone Cancer in Boys

WASHINGTON June 6, 2005 -- Citing a strong body of peer-reviewed evidence, Environmental Working Group (EWG) today asked the National Toxicology Program (NTP) of the National Institutes of Health (NIH) to list fluoride in tap water in its authoritative Report on Carcinogens, based on its ability to cause a rare form of childhood bone cancer, osteosarcoma, in boys. The

Report on Carcinogens lists only substances that are known or reasonably anticipated to cause cancer in humans.

In recent years, concerns have grown about the safety of fluoride in tap water. In 2002, the Environmental Protection Agency (EPA) commissioned a study by the National Research Council (NRC) on the overall safety of fluoride in tap water. The final report is expected by February 2006. The NRC, however, does not have the expertise or the mandate to determine the carcinogenicity of fluoride.

EWG recognizes the value of fluoride to dentistry, yet a substantial and growing body of peer-reviewed science strongly suggests that adding fluoride to tap water is not the safest way to achieve the dental health benefits of fluoridation.

Nationwide about 170 million people live in communities with fluoridated water. Adding fluoride to tap water can be a contentious issue. There are ongoing fights over fluoridation in Colorado, New Jersey, Oregon, Vermont, Washington, California, Massachusetts and Nebraska. States with recent battles over fluoridation include New Hampshire, Virginia, Florida, Arkansas and Tennessee.

Research dating back decades, much of it government funded, has long suggested that fluoride added to drinking water presents a unique cancer risk to the growing bones of young boys. New epidemiology provides strong evidence of a link between exposure to fluoride in tap water during the mid-childhood growth spurt between ages 6 and 10, and bone cancer in adolescence. Additional science strongly suggests that fluoride can cause genetic mutations in bone cells directly related to childhood bone cancer.

"We recognize the potential benefits of fluoride to dental health, but there is very compelling evidence that fluoride in tap water can cause bone cancer in boys," said EWG Senior Vice President Richard Wiles. "The government needs to assess the overall strength of the evidence and make a determination of fluoride's cancer-causing potential," Wiles added.

EWG's letter to the NTP and related materials can be found at
http://www.ewg.org/issues/fluoride/20050606/petition.php

Environmental Working Group is a nonprofit research organization based in Washington, D.C., that uses the power of information to protect human health and the environment.

MORE FROM EWG: Harvard Fluoride Findings Misrepresented?

Environmental Working Group (EWG) has obtained documents suggesting that the Chairman of the Department of Oral Health Policy and Epidemiology at the Harvard School of Dental Medicine falsified reporting to the National Institutes of Health. Dr. Chester Douglass has received several years of large federal grants to study the possible relationship between bone cancer in boys and drinking fluoridated water. Reporting on the findings of this funding, he told federal officials unequivocally that there was no relationship, but the grant-funded publication he

cited found exactly the opposite. In fact, the research was done by a former doctoral student of Douglass's and was the *most rigorous* study of its kind to date.

Douglass has made the same assertion to the National Academy of Sciences panel now reviewing the safety of fluoridated drinking water. He is the publisher of a Colgate-funded fluoride journal.

EWG has filed an ethics complaint against Douglass with the National Institute of Environmental Health Sciences (NIEHS).

FROM THE PRESIDENT by Dwight Welch

NTEU 280 Not Attending Convention

This year's convention is a between election year convention, no national union officers will be elected. Rather, its purpose is solely constitutional/by-laws amendments and resolutions. The convention will be in San Diego, a costly trip. NTEU Chapter 280 intends to send its proxies with Cincinnati President Larry Penley.

Five Tier Performance Standards Coming July 1st

The current Pass/Fail performance system will be closed out June 30, 2005, and a new 5 tier system will be implemented on July 1st. What will it look like? We don't know. In theory, the Unions must be allowed to negotiate the impact of such decisions before implementation. As it looks now, NTEU was told by EPA Labor Relations that negotiations will not begin until July 11, 2005. (Did I hear someone say, "Unfair Labor Practice?") The date is not yet even known for AFGE bargaining.

Interestingly, the performance standards portion of the ongoing (years upon years) AFGE national contract has been signed off on, and it is pass/fail. Another twist is that we have been unable to arrive on ground rules for 4/10 negotiations because we insist the final agreement be signed off on, not section by section. It seems Labor Relations wants it one way, but when it suits them, the other way.

In management's defense, as previously reported, the Unions did engage with management, led by Rafael DeLeon, in some limited pre-decisional brain-storming on what the five tier system would look like. However, there was no definitive outcomes or products of this meeting. Also, in fairness, the Labor Relations office has been decimated by experienced people moving elsewhere. Labor Relations has been understaffed and thus this has contributed to their being unable to engage in timely negotiations.

So what's the big deal? We've had five tier before? While most EPA Union officials are either not opposed to 5 tier, or in favor of it, the fear is what lurks over the horizon. The fear is, rightfully so, that 5 tier will give way to pay-banding. Read on.

Is My Job Safe?

This is a variation of the question most asked me, last month due to the outsourcing (Newspeak - Competitive Sourcing) memo. People want to know if their job might be outsourced. Well there's good news and bad news. There is no good news.

The bad news is, as mentioned in the previous article, is what lies over the horizon. The Newspeak term is the proposed "2005 Civil Service Modernization Act." Given to plain English, I term it the "Civil Service Destruction Act." Civil Service may cease to exist as we know it by 2010 and instead be replaced by a modernized spoils system, more subject to political manipulation. The very evils in government (an Administration giving the government jobs to ones family, contributors, and friends) which the Civil Service Reform Act corrected. Each agency would have until 2008 to develop their own plan or have the OPM plan foisted upon them.

One of the most brutal effects of the new plan is pay banding. Under pay banding the 15 GS grades would be replaced by 4 broad pay bands. I am told by proponents of this assault on Civil Service that your pay cannot be reduced. Okay, I'm a believer, but there is still a problem. Right now you get semi-automatic career ladder promotions (thanks to our most recent Collective Bargaining Agreement) and automatic step increases. Under the new system, you can be kept (assuming the proponents are telling the truth), indefinitely from making more money than you make right now. As inflation creeps up, your standard of living spirals downward. Downward until you are forced to get another job, so now your former job can be given to a friend, campaign contributor, or family member, at of course a higher salary than you were getting.

Now those in the favored groups, those who get the quick promotions, who always get the award money, may say, "So what." But Administrations come and go, and even if the party doesn't change power, appointees do. While this Assistant Administrator may like you, the next one might see your job as being just perfect for her friend.

Now the senior among us, may be saying, "Hey, I'm retiring before 2010, I don't care." You should. Under at least some proposals I have seen, each agency would receive a pot of money with which to pay both currently working employees and their retirees. Giving cost of living increases to those no longer working...well you can see how it might not be a big priority.

Then there is the matter of employee representation. Unions will become obsolete and in the case of Department of Homeland Security, prohibited. By having an employee meeting, management may dispense with the need to have collective bargaining on changes in working conditions.

The worst effect of the proposed legislation will be felt by any worker who believes her rights have been violated by management actions and whistle-blowers. Most complaints will be limited to inside of the Agency review. Appeals to outside organizations such as the Federal Labor

Relations Authority, the Office of Special Council, and the Merit Systems Protection Board will be sharply curtailed or eliminated.

Taken together, the economic and collective bargaining deficits will take a toll on the objectivity of government. Science be damned, if a desired outcome is demanded, and the Agency does not want to lose budget, if individual employees want a raise next year, they had better come up with the political, not the objective or scientifically supported conclusion. While blowing the whistle on waste, fraud, abuse, and mismanagement is currently a heroic effort, in the future it may become mission impossible.

Most people, unfortunately, forget history and take for granted the current quality of life. But historically, such niceties as the 40 hour work week and child labor laws were won by unions. Within the EPA perspective, benefits such as flexi-time, compressed work week, flexi-place, metro transit subsidy, lactation rooms, and more were NOT GIVEN to us, they were fought for and won by the unions.

What can you do? While lobbyists outnumber U.S. Senators and Representatives by many-fold to one, the last time I checked, it was still legal to question your elected officials on how they will vote.

At the Nexus of a Corrupted Agency - OARM/Can the New Guy Make a Difference?

If you work in a dysfunctional organization, an organization where equal work is not afforded equal pay and treatment or discrimination or cronyism exists, or where whistle-blowers are routinely retaliated against-where unfairness and disparity exists, you probably, and rightfully so, blame program management. But corrupt management does not exist in a vacuum. Corrupt management cannot exist without sufficient enablement. And most roads pass through a single AA-ship, the Office of Administration and Resource Management. Whether you are being hired, fired, promoted, disciplined, awarded, reassigned, moved, etc., your paperwork and direct assistance towards any of these ends is enabled by OARM.

I got here in 1976. It was my dream job to be hired as an entomologist by the Environmental Protection Agency. When I got here, it was a bit of a disappointment, but after 29 years, I have seen the dream turn to nightmare. Here is how the system got corrupted.

In these conflicts of opinion, if not fact, whether it be a desk audit to see if you really are worthy of that GS-14, a grievance, or whether you even get the job to begin with, there exists a natural corruptor of OARM servicing employees. If the OARM employee finds on behalf of the employee, nothing much, nothing positive happens for the OARM employee. However, if the OARM employee finds on behalf of the manager, well then a letter is written to the supervisor of the OARM employee praising his or her work. Come promotion time, come award time, such recommendations help an OARM employee fair well. An OARM employee who makes a finding, a justified finding, on behalf of an employee, well, they may merit a letter of complaint. In my 29 years I have seen it happen again and again and again.

A desk audit reveals that an employee should or shouldn't get that GS-14, well, if that desk audit disagrees with the manager's preconceived notion, a call to the auditor's supervisor may just bring about the desired result. Most often, it is an employee feeling that the audit did not reveal his or her positive accomplishments. But years ago, the opposite happened to me. In order to retaliate against me, I was placed in a job I was untrained to perform. The auditor visited me and asked me questions about how I did my job. I declared that I had only the vaguest idea of what I was doing, and further, that due to my lack of training, the public was being placed at risk. (I was assigned to assess the toxicity of pesticides.) I further pointed out my lack of OPM required training. The assessment that came back was that I was qualified to do the job. This was a necessary step before rating me as unsuccessful in order to fire me.

Let's say we have a case of discrimination. Let's assume the complaint is valid. Labor Relations can play fair and by the rules, in which case the complaint can be validated and relief achieved. Or Labor Relations can play hardball, try to trip up the Union on a technicality, limit the audience of the hearing officer to the manager who is the problem to begin with, etc. and assure that the problem will not be dealt with. Playing by the rules is unlikely to merit a glowing report to the Labor Relations supervisor, but trying to trip up the union probably will.

Who gets hired, who gets the promotion? In these situations, rating the qualifications of the applicants falls on OARM. If a manager believes that their brother-in-law is the most qualified, who do you suppose makes the top 5 and gets picked?

With the reenforcement of 30 plus years of pro-management decisions being rewarded and pro-employee decisions being discouraged, you can see how, over time, the system is likely to drift in one direction.

So how can this be changed? What about the new guy, is he a reformer? Actually, he is the prime target of this article and I know he reads *Inside the Fishbowl*. Luis Luna, Assistant Administrator. And while on paper, the Administrator is the top dog, in the day to day activities of running this Agency, the AA for OARM is the alpha.

I've had the privilege, or shall I say opportunity, to meet quite a few Assistant Administrators for OARM. A relationship, good or bad, is a natural between the AA for OARM and Union Presidents. Some were good, some were not so good, some ineffective. Historically, my favorite was the stern but fair Christian Holmes, our Union's patron saint. Mr. Holmes was disliked in OARM, a good sign in my book. Mr. Holmes marked a new era. Under Mr. Holmes grievances were now to be at least addressed while formerly they were simply ignored. Unfortunately, his tenure was too short to make a significant impact. My greatest praise of Mr. Chris Holmes was that he played by the rules, he administered in an even handed manner.

The new AA for OARM is Luis Luna. He's such an unassuming guy, he may very well blush when he reads this. But in my 29 years, I see him as the best hope for reform of EPA. Why? Not that he is a reformer with an agenda, but simply, it seems, at least this is my initial analysis, that he plays by the rules. Big new concept here people-playing by the rules.

I've already talked to Luis about what I am writing here. Unfortunately, coming from the even more corrupted U.S. Department of Agriculture, he seemed a bit pessimistic, still I have confidence in him. Both he and Administrator Johnson have discussed: following the rules, "the science is what the science is," and further, have even invited, without penalty, the airing of minority or dissenting opinions. Thus I am uncharacteristically optimistic. After all who could ask for more than this? So while the outlook in government is bleak and morale at an all time low, EPA could very well be a bright spot in a dismal landscape.

The 2005 Annual National Partnership Meeting

The concept of Labor-Management partnership was launched under the Clinton Administration. Unfortunately, the Executive Order implementing partnership was not as enthusiastically implemented at EPA as it could have been. Ironically, although the Executive Order was rescinded under the current Administration, L-M partnership has advanced more than ever. The reason, the person making it happen, has been not a political appointee, but a career manager, the then ACTING AA Dave O'Connor.

The new AA for OARM, Luis Luna, hung around for what seemed like forever as Assistant Administrator Designate. While not formally participating in partnership meetings, etc., Luis seemed in tune with the idea of partnership and as indicated in previous issues of *Inside the Fishbowl* exhibited characteristics of good management in scarce supply around EPA. This was his first National Partnership Meeting, and rather than fall short, Luis moved things forward.

A far less glowing report is indicated for the role Labor Relations played in setting up the conference. The agenda went out late, reservations were made last minute, some management partners were informed so late they were unable to make the conference due to other commitments, and we are still waiting, nearly a month later for the minutes of the meeting.

Here are some of the items discussed:

ACMIS

A new computer system, similar to People Minus, and will be used for procurement. Fortunately, it is unlikely to have any impact on anyone in our bargaining unit.

The Budget

Bad news of course, with significant reductions from EPA requests, however, what was presented was the proposal by the White House and not necessarily what Congress will vote.

Comp Time for Travel

Final comments were solicited by the unions on this item. It was also agreed that people with claims could file now.

Competitive Sourcing and FAIR Act (Outsourcing)

Information on this topic is given in "Is Your Job Safe?" above. Additionally, representatives from each National Union (I will be representing NTEU) will meet with senior management on July 6, 2005 (tentative date) to discuss union input on outsourcing. Once again, Mr. Luna breaks the mold in requesting union participation at this meeting. There may be more to report in the next issue of *Inside the Fishbowl.*

History of the NO FEAR Act

This was a power point presentation by Dr. Marsha Coleman-Adebayo, giving a slide show presentation of the various steps from the formation of EPA Victims of Racial Discrimination, to the Freedom Ride with Al Sharpton, to the passage of the NO FEAR Act. The only presentation to receive applause from the participants.

Principles of Scientific Integrity

Bill Hirzy and Mike Moore gave an excellent presentation on the new proposed Principles of Scientific Integrity course. Once the course is implemented, you can take the course, highly suggested, from the EPA intranet website.

Official Notice

A good discussion of standardizing what should be official notice to the unions.

Pre-Decisional Involvement (PDI)

Mark Coryell indicated that the PDI course for the unions and management would eventually get back on schedule after the departure of co-trainer Bill Carson formerly of Labor Relations.

Comment Period

Again, pushing the envelope forward, Luis Luna announced at the end of the meeting, for ANY questions anyone would like to ask. (Normally, senior management tries to duck issues.) For my part I asked whether Luis intended on making any changes to reform OARM. He indicated that he would announce changes as they were implemented but not before.

At the end, Luis summed up what he had heard, what folks expected management to get back with them on. Again, his fresh approach sets a new and higher standard.