

12 NOW

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www.afge12.org

Did you know?... That AFGE 12 is launching its own Web site (www.afge12.org)?

House Passes Bill to Allow Federal Employees to Keep Frequent Flier Miles

By 12NOW Staff

On July 30 of this year, the House of Representatives passed legislation that would allow Federal employees to keep for their personal use frequent flier miles that they earn on official travel for their agencies. The bill, H.R. 2456, was introduced in the House in early July by Rep. Dan Burton (R-IN) and Rep. Connie Morella (R-MD).

At present, Federal employees generally are not allowed to keep for personal use any frequent flier miles that they accumulate during trips taken for official government business. Rather, they are required to turn the miles back to their agencies. But there seems to be sentiment for changing this. In May, for instance, the General Accounting Office came out in favor of changing the law, saying that enabling Federal employees to keep their miles would help agencies compete with the private sector for talent.

According to *GovExec.com*, "Under H.R. 2456, Federal workers could keep their miles as long as the frequent flier programs used were obtained under the same terms as provided to the general public and cost the government no extra money. Other frequent traveler benefit programs, such as hotel point programs and car rental point programs, would also be covered under the bill. The legislation would be retroactive, allowing Federal employees to keep and use miles earned prior to the bill's enactment."

Rep. Morella, representing many

Federal workers living in Montgomery County, Maryland, sees this legislation as one measure to deal with the "human capital crisis" facing the civil service. "Many of our best Federal employees are leaving for the private sector, with the better pay and better benefits that are available," Morella commented. "For many Federal employees, work travel can interfere with their personal lives. This new benefit will be a great way to thank them for their service. With this legislation, Congress will demonstrate to current



and prospective Federal employees that it values their service, and is willing to reward this service with appropriate benefits," Morella said.

Rep. Burton, who chairs the Government Reform Committee, had the following to say in support of the bill: "As it stands, frequent flier miles are going to waste at agencies across the government because the airlines won't set up separate business accounts and personal accounts. This [benefit] will cost the taxpayers nothing and it will help Federal agencies retain hard-to-keep employees."

After H.R. 2456 was passed by the House, it was sent to the Senate and referred to the Committee on Governmental Affairs. At press time, however, a companion Senate bill had not yet been introduced. The Bush Administration has endorsed this legislation.

12NOW

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In Memoriam

Huvester Berger (1943-2001)

Support Builds for 4.6% Pay Increase

By 12NOW Staff

Despite the opposition of the Bush Administration, both Houses of Congress are on track to grant civilian Federal employees a pay increase of 4.6% in 2002. At press time, the House of Representatives had approved H.R. 2299 (the Transportation and Related Agencies Appropriations bill for FY 2002), which includes the 4.6% pay increase. In the Senate, the Appropriations Committee had approved its version of the bill which also contained the 4.6% increase.

In his budget for FY 2002, President Bush proposed a pay increase for military personnel of 4.6% and a pay increase for civilian Federal employees of 3.6%. His Administration is still defending the lower increase for civilians. On June 25, the Office of Management and Budget

stated: "We do not believe that military pay and civilian pay raises should necessarily be automatically linked. We will continue to review Federal pay policy annually and evaluate military and civilian pay raise policies on the basis of the particular circumstances applicable to each (for example, recruiting and retention needs), consistent with prudent use of taxpayers' dollars."

In response to the House's passage of H.R. 2299, the White House stated: "We believe this [3.6 percent] proposal is both reasonable and responsible and urge the Congress to support the President's budget. While recruiting and retaining the skilled and dedicated Federal civilian work force necessary to provide high-quality services to the American public is very important, we believe that civilian employees are already

benefitting from several recent enhancements to their compensation package."

The American Federation of Government Employees (AFGE) has been working hard for parity between the military and civilian pay increases. AFGE National President Bobby L. Harnage responded to the White House remarks by stating: "President Bush needs to wise up. It doesn't take a rocket scientist to figure out why the government is experiencing severe recruitment and retention problems. With both salaries and health insurance benefits substantially below those provided by large private sector firms and state and local governments, it's no wonder the government has failed to recruit top college graduates in the past several years."

What a 4.6% Pay Increase Would Look Like

President Bush has proposed that civilian Federal employees receive a 3.6% pay increase in 2002. The American Federation of Government Employees is actively lobbying for a pay increase of at least 4.6%.

The chart below shows what Federal workers in the Washington, DC metropolitan area would receive with a 4.6% increase in 2002.

	1	2	3	4	5	6	7	8	9	10
GS-1	\$16,423	\$16,971	\$17,517	\$18,060	\$18,608	\$18,931	\$19,467	\$20,012	\$20,033	\$20,546
2	\$18,465	\$18,903	\$19,516	\$20,033	\$20,260	\$20,855	\$21,451	\$22,048	\$22,644	\$23,240
3	\$20,148	\$20,819	\$21,490	\$22,161	\$22,832	\$23,503	\$24,174	\$24,845	\$25,516	\$26,187
4	\$22,618	\$23,372	\$24,126	\$24,879	\$25,633	\$26,387	\$27,142	\$27,896	\$28,650	\$29,404
5	\$25,305	\$26,149	\$26,993	\$27,837	\$28,681	\$29,525	\$30,369	\$31,213	\$32,057	\$32,901
6	\$28,206	\$29,146	\$30,085	\$31,025	\$31,965	\$32,904	\$33,844	\$34,784	\$35,724	\$36,663
7	\$31,344	\$32,389	\$33,433	\$34,478	\$35,523	\$36,567	\$37,612	\$38,657	\$39,701	\$40,746
8	\$34,714	\$35,872	\$37,028	\$38,186	\$39,344	\$40,501	\$41,659	\$42,817	\$43,975	\$45,132
9	\$38,342	\$39,619	\$40,898	\$42,175	\$43,452	\$44,730	\$46,007	\$47,284	\$48,563	\$49,840
10	\$42,224	\$43,632	\$45,040	\$46,448	\$47,856	\$49,263	\$50,671	\$52,079	\$53,487	\$54,895
11	\$46,392	\$47,938	\$49,485	\$51,031	\$52,577	\$54,123	\$55,669	\$57,215	\$58,762	\$60,308
12	\$55,601	\$57,455	\$59,307	\$61,160	\$63,013	\$64,866	\$66,719	\$68,572	\$70,424	\$72,278
13	\$66,119	\$68,324	\$70,529	\$72,733	\$74,938	\$77,141	\$79,346	\$81,551	\$83,755	\$85,960
14	\$78,133	\$80,738	\$83,343	\$85,948	\$88,552	\$91,157	\$93,761	\$96,366	\$98,970	\$101,575
15	\$91,906	\$94,969	\$98,033	\$101,097	\$104,161	\$107,223	\$110,287	\$113,351	\$116,415	\$119,478

Department Rejects Union's Proposal for a Joint Cafeteria Committee

By 12NOW Staff

In a letter to the Union dated July 5, 2001, DOL's Director of Labor Relations, Jerry Lelchook, rejected the Union's proposal that a joint union-management cafeteria committee be established. This matter captures in microcosm a big part of the problem with labor relations in the U.S. Department of Labor, namely, the career managers in charge of labor relations would really rather not deal with the Union at all.

The issue of a cafeteria committee arose when management notified AFGE 12 of its plans to survey employees concerning the service offered by the cafeteria in the Frances Perkins Building (FPB). The Union put that item on the agenda for the May, 2001 mid-term bargaining session. In that session, the Union proposed that the parties agree to set up a joint cafeteria committee, with each side naming three members, and that the committee deal with the results of the survey. The Union made this constructive proposal with the goal of involving more people, as well as both institutions (management and union), in order to improve the cafeteria for the benefit of all.

In his response, Mr. Lelchook resorts to his typical bureaucratic brush-off that

management has no duty to bargain. "After reviewing this entire matter, we have concluded that management has no duty to bargain regarding either of the Union's proposals."

Obviously DOL management is concerned about the quality of the cafeteria in FPB. Why else would they send out a survey to get employee feedback on the issue? So why not work cooperatively with the organization that represents the majority of the Department's employees in the Washington, DC metropolitan area?

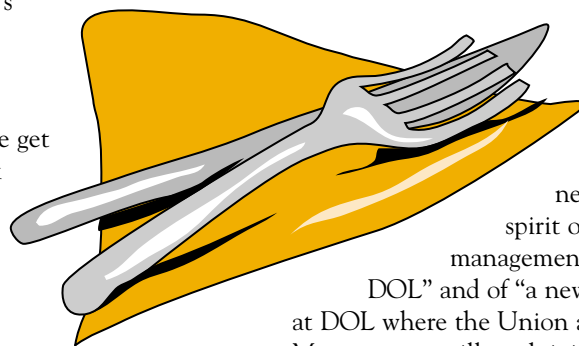
Instead, what we get from Mr. Lelchook is an arrogant and paternalistic response: "Be assured, however, that we do share a mutual interest in the services provided by the DOL cafeteria and we remain willing to designate a management liaison or point of contact through whom Local 12, on an on-going basis, may raise its concerns or suggestions regarding the cafeteria." How magnanimous! How far sighted! Management will deign to

designate someone with whom we can raise our concerns and suggestions. But a joint committee where we meet as equals? Forget about it! This, in the U.S. Department of Labor, the Agency responsible for enforcing the labor laws of the country and the Agency that should be setting the pace in terms of enlightened dealings with unions! What a sad commentary.

The preamble to the current contract between AFGE 12 and the Department, which Mr. Lelchook helped to negotiate, talks of "creating a new cooperative spirit of labor-management relations at DOL" and of "a new atmosphere

at DOL where the Union and Management will work jointly in meeting the mission of the Agency and where the parties will assist each other in creating a workplace to serve as a model for the United States." If Management refuses to cooperate with the Union about something as basic as improving the cafeteria, where do we really stand?

Secretary Elaine Chao accepted the Union's invitation and attended our monthly membership meeting in February. At that meeting, while recognizing that there would be differences between union and management, she pledged to seek common ground with AFGE 12 in order to make progress for the Department and its employees. We therefore ask: when Director of Labor Relations Jerry Lelchook rejects the Union's proposal for a joint cafeteria committee, is he speaking for the Secretary? Is it really the Department's position that it refuses to participate in a joint committee to improve the cafeteria, to improve the food that is served every day to the employees?



\$50

That's how much any new member will receive for joining AFGE 12. It's also how much any AFGE 12 member will receive for recruiting a new member to the Union.

So, if you are not yet a member of AFGE 12, come aboard today and get your \$50. If you are already a member, sign up your co-workers who aren't members and get \$50 for each one who joins. We're all winners when Union membership increases.

Traffic Crisis Underscores Need to Raise Transit Subsidy

By 12NOW Staff

The terrible traffic congestion so well known to residents of the Washington, DC area is not that unique in the United States. Rather, it is becoming increasingly common throughout the country in large metropolitan areas. That is one of the conclusions drawn in a recent cover story in *U.S. News and World Report (USNWR)*. The article, “American Gridlock” in the May 28, 2001 issue, makes it clear that unless something is done and done soon, the crisis will simply worsen.

The *USNWR* article paints a grim picture:

- “Traffic is making millions sick and tired. The bad news? It’s going to get worse unless things change in a real big way.”
- “It’s not just lost time—it’s real money. Congestion costs Americans \$78 billion a year in wasted fuel and lost time—up 39 percent since 1990.”
- “Truckers—and the businesses that depend on them—say clogged roads are choking off economic growth and reducing the nation’s competitiveness.”
- “According to the most recent federal data, the amount of time mothers spend behind the wheel increased by 11 percent just between 1990 and 1995, and there’s every indication that the trend is continuing. Moms spend more time driving than they spend dressing, bathing, and feeding a child.”
- “Stressed-out commuters with little time for loved ones also don’t have much time for community involvement, it turns out.”
- “Traffic is also taking a major toll on public health.”
- “Traffic influences not just where Americans live, but how they live. Studies repeatedly show that people making long commutes are at a higher risk for a host of maladies.

High blood pressure, sleep deprivation, and depression top the list.”

- “Washington, D.C., once dubbed the murder capital of America, turns out to be a far less dangerous place to live than several of its sprawling, distant suburbs. That’s because of the lower risk Washington residents have of being killed while driving.”

The picture is not completely bleak, however. The good news is that an increasing number of Americans realize that there is a crisis and that something needs to be done. For example, more and more people are using mass transit. According to *USNWR*, “Another indication of how congestion is influencing the patterns of American life is the largely unheralded boom in public transportation. Reversing a trend going back to the time of the tin lizzie, ridership on the nation’s public transportation systems has grown by 21 percent since 1995 (compared with an 11 percent increase in driving) and is now at the highest levels in more than 40 years...Survey data show more people are forsaking their cars for subway, train, and light-rail alternatives.”

In addition, people are getting organized to deal with the crisis. *USNWR* reports that “A decade ago, there were just 10 groups with paid staffs around the country committed to transportation reform; today there are at least 200.”

What is the relevance of all this to us at the Department of Labor, you may ask. The answer is: not only are we affected by this situation, but we are in a position to take positive steps to deal with it. Specifically, the transit subsidy

that is used by many DOL employees. The legal maximum at present is \$65 a month and currently in effect for the AFGE 12 bargaining unit. This coming January, the legal maximum will rise to \$100 a month.

Since its membership passed a resolution on March 23, 2000 mandating it to do so, AFGE 12 has been actively campaigning for the Department to sign an agreement with it that would set the transit subsidy at the maximum level allowed by law. The signing of such agreement would mean, for example, that in January DOL employees in the Washington, DC metropolitan area would be eligible for a \$100 transit subsidy.

“The Department of Labor needs to do its part to help solve this pressing problem,” declared Russ Binion, AFGE 12 President. “Raising the transit subsidy to the legal maximum is one important measure that can be taken, to encourage employees to use mass transit,” he continued. “We call on Secretary Elaine Chao to work with us to reach agreement on this important matter: we will be helping not only DOL employees, but society at large,” he emphasized.

“To achieve an agreement for the maximum transit subsidy, we need the support of all DOL employees,” Binion noted further. “We are particularly asking employees who are not yet members of the Union to come on board to help us win this increase,” he concluded.



**DON'T
WHINE,
ORGANIZE!**

Arbitration News

By Jan Blackburn

Three decisions clarify union rights and management obligations regarding space changes

Arbitration decisions issued in January and March 2001 have made significant contributions to the case law regarding application of the Article 29 bargaining provisions of the AFGE 12-DOL Collective Bargaining Agreement (CBA) to plans for space changes. Probably of greatest significance are the arbitrators' conclusions regarding the type of impact on bargaining unit employees that is adequate to trigger management's duty to bargain under Article 29, including negotiations regarding the possible use of space to correct existing space inequities pursuant to Section 3c. The provisions at issue in these cases reflect the changes and additions that were made to Article 29 in the negotiations leading to the current CBA, which went into effect on March 15, 1992. Contrary to management's interpretation, these decisions on current Article 29 language expands management's duty to bargain on space changes beyond that required by the Federal Service Labor-Management Relations Statute (the Act).

The first of these three decisions involved management's refusal to bargain regarding space changes in the Veterans' Employment and Training Service (VETS). In that case, management had proceeded to implement a space change in the absence of the consultation and negotiation process provided by Article 29. The Union took the matter before an arbitrator, arguing that management was obligated to bargain regarding both the reconfigured space to which VETS was moved and the space VETS was vacating. The Union argued that management's Article 29 obligation to bargain was triggered by a space change that had any impact on bargaining unit members, regardless of how minimal management might argue the change

was. Management contended that Article 29 as negotiated in 1992 was not intended to expand management's duty to bargain regarding space changes beyond that required by the Act. Under the Act, management's duty to bargain is triggered only by an impact on bargaining unit employees that is more than *de minimis*. The arbitrator agreed with the Union's interpretation.

In reaching this conclusion, the arbitrator determined that the language of Article 29, Section 3a was clear: management's obligation to bargain is invoked whenever space changes proposed by management have any impact on bargaining unit employees. Since the arbitrator found the CBA language to be clear and unambiguous, she did not have to rely on management's hearing testimony regarding the bargaining history of the CBA. On that basis the arbitrator discounted management's argument that would have, in essence, added language to Section 3a to restrict management's bargaining obligation to those situations in which a space change would have "more than a *de minimis* impact" on covered employees.

The arbitrator then considered whether the Union had demonstrated that VETS bargaining unit employees were impacted by the space changes planned by management. She concluded that they were, and cited various examples of space changes that impact employees. First, employees who are moved to a new workspace are impacted. Also, moving some employees from one cubicle to another, while other employees are moved to a private or shared office, has an impact on those employees. Finally, employees who work in a group of cubicles and are moved to separate workspaces are impacted.

With regard to the reduction of space, the arbitrator noted that Article 29, Section 2d specifically mandates that bargaining unit employees not bear a disproportionate burden of an agency-wide reduction in space. The arbitrator found that the VETS space plan reduced

the overall area occupied by the agency and that the reduction in space was taken from an area that had been occupied by bargaining unit employees. The arbitrator found that the question of whether those employees had borne a disproportionate reduction in space was a proper topic for consultation and negotiation between the Union and management pursuant to Sections 3 and 4 of Article 29.

In addition to ruling on the contractual duty to bargain under Article 29, the arbitrator examined the issue of whether management had committed an Unfair Labor Practice (ULP) by violating its duty to bargain under the Act. As already mentioned, management's statutory duty to bargain is triggered by space changes that have more than a *de minimis* impact on bargaining unit employees. The arbitrator found that the Union had not met this higher standard in this case. Consequently, the Union was not awarded the posting remedy that is appropriate when a ULP has been established. As remedy for the contractual violation, the arbitrator ordered management to engage in the consultation and negotiation process provided for by Article 29 regarding the VETS space plan.

The VETS decision provides useful guidance regarding the invocation of Article 29 protections by changes to workstation configurations and to overall agency space allotments. A second decision issued in January 2001 also applies the "any impact" interpretation of Section 3a. In that case, which arose in the Pension and Welfare Benefits Administration (PWBA), the arbitrator concluded that the space change, which involved space that was not occupied by bargaining unit employees, did not have an impact pursuant to Section 3a. A third decision, issued in March 2001, however, reached a conclusion that goes beyond the PWBA and VETS decisions to give the Union the full protection

see *Arbitration News*, page 15

District 25 Employees Prevail in Discrimination Case

By Eleanor Lauderdale

This was a discrimination grievance filed by 16 African-American Claims Examiners in the Employment Standards Administration's Office of Workers' Compensation Programs (OWCP), District 25. The most remarkable aspect of this case was the manner in which the employees exhibited true unionism. Despite encountering numerous adversities in pursuit of their grievance, they persevered to the end. Because of that, they were able to openly challenge management's failure to be inclusive of all members of the DOL family of workers in all aspects of employment.

In this case the African-American Claims Examiners asserted that management had carried out at least two overtime projects in a clandestine manner with the express intent of keeping African-American employees from participating in the projects. These employees argued that even when they became aware of the initial, secretive overtime project, and launched a protest, only those African-American workers who did not participate in the protest were asked to work on the second overtime project. This action, they asserted, constituted retaliation within the meaning of Title VII of the Civil Rights Act of 1964 and constituted an unfair labor practice as defined by the Federal Service Labor-Management Relations Statute. The African-American employees maintained that the reason for their exclusion from the overtime projects was that the projects were career building opportunities. The grievants presented proof that persons who had been permitted to work in the overtime project subsequently were placed in higher profile positions, at higher grade levels, in the Office of Appeals and Review, another subdivision of OWCP.

The fact that no African-American employee was asked to work on the initial overtime project in OWCP's Office of Hearings and Review was not

denied by management at the arbitration hearing. Despite the fact that approximately 80% of the claims examiners in District 25 are African-American, management claimed that it was merely happenstance that no African-American employee was

post-hearing briefs. Therefore, the arbitrator never had an opportunity to issue a decision in this case. Hopefully, the arbitrator would have found in favor of the grievants, given the overwhelming evidence of racial discrimination. Local 12 decided to agree to a settlement



Employees from District 25 of ESA's Office of Workers Compensation Programs are pictured here holding the checks that they received as part of the settlement of their group discrimination grievance. Eleanor Lauderdale, the Union's arbitration representative who handled their case, is seated second from the left.

solicited to work on the overtime project in which six white employees participated.

As a remedy for management's discrimination, the grievants requested back wages equivalent to the greatest amount earned by any employee who was permitted to work in either overtime project, plus interest computed from the time the work was performed. In addition, they sought a public posting stating that the management of OWCP, District 25, would not discriminate in work assignments of its employees on the basis of race.

After two days of hearing, with the sworn testimony of a dozen witnesses, and the submission of 15 documentary exhibits, management offered to settle the grievance shortly prior to the scheduled date for the submission of the

because it recognizes that, despite the fact of presenting favorable evidence, an arbitrator has wide latitude in issuing a decision and is not constrained by formal administrative procedures which might assure that the evidence of record is properly weighed.

As noted above, the full remedy sought by the grievants was back wages equivalent to the greatest amount earned by any employee who was permitted to work in either overtime project, plus interest computed from the time the work was performed. The evidence showed that the greatest amount of time worked during the overtime projects by any one employee was 18 hours. During settlement discussions management proposed that, as a compromise, the

see *Discrimination*, page 17

Your Job Could Be Contracted Out

By Dave Richardson

“President Bush has set a goal of making about 425,000 Federal employee jobs eligible for contracting out.” [*The Washington Post*, June 8, 2001] There are only 1.7 million civil service workers, so Bush is talking about a quarter of the Federal workforce. In Philadelphia on June 9, 2000, he said: “[W]e should no longer allow agencies to exempt themselves from competitive pressures. Today there are hundreds of thousands of full-time federal employees that are performing tasks that could be done by companies in the private sector. I will put as many of these tasks as possible up for competitive bidding.”

The FAIR (Federal Activities Inventory Reform) Act is the vehicle for doing this. It is anything but fair, making jobs considered “commercial” vulnerable to contracting out whether there are any cost savings or not. In the Department of Defense, there are 178,771 “commercial” jobs out listed of 452,807 or 39%. The Department of Labor (DOL) has been a bit less vulnerable, with “only” 2802 “commercial” jobs listed.

Since the June 8 *Post* story, it has gotten worse. According to Jason Peckenpaugh, July 23 at *GovExec.com*: “Staff attorneys at the Justice Department, food inspectors at the Agriculture Department and statistical analysts at the Labor Department are among the federal employees whose positions should be subject to competition from the private sector, Bush administration officials said in an internal document obtained by *GovExec.com*.”

Thus, thousands of positions would be added to the 2802 Labor Dept. jobs on what we call the unFAIR list.

The internal document referred to by *GovExec.com* is “OMB Competitive Sourcing Program: Analysis of Year 2000 Fair Act Submissions and Opportunities for Competition.” It was prepared for the July 11 meeting of the President’s Management Council. There is a revealing description of the program followed by comments on a number of agencies, including the Labor Dept.

The program description follows. It requires competition or direct conversion of 5% of the unFAIR list jobs in FY 2002 and 10% in FY 2003. Note that it is called “competition” but this use of the word is straight out of George Orwell’s 1984, where words mean something very different from what you think. Since competition takes two or three years, it would not be possible to actually conduct competitions and meet the program goals. Thus, what they say is competition but what they mean is direct conversion, RIF-ing Federal workers to make room for contractors. The more relevant passages have been *emphasized*.

The OMB Competitive Sourcing Program

The Federal Activities Inventory Reform (FAIR) Act of 1998 requires departments and agencies to prepare detailed inventories of all in-house commercial activities performed by Federal employees. The inventories allow each agency to determine which activities can be opened to a public-private competition.

These public-private competitions are governed by OMB Circular A-76. The Circular establishes Federal policy for the performance of recurring commercial activities. It provides guidance and procedures for determining whether these activities should be provided through contract with commercial sources, by in-house resources (using Government facilities and personnel) or through interservice support agreements with other Federal agencies.

Review of the 2000 FAIR Act inventories identified 850,000 civilian Full-Time Equivalents (FTE) performing commercial work. This figure represents 53% of the government’s civilian workforce. The President has committed to incrementally opening one-half of these 850,000 FTEs, or 425,000 of the FTE identified on the 2000 FAIR Act inventories, to public-private competition or direct conversion to private sector performance over time.

To implement the President’s

commitment, OMB established a “Competitive Sourcing Initiative.” On March 9, 2001, the Deputy Director of OMB issued *performance measures for FY 2002 which require agencies to complete public-private competitions or direct conversions* (as permitted under OMB Circular A-76) *on not less than 5% of the 850,000 FTE listed on the FAIR Act inventory as performing commercial work.* The 5% goal for FY 2002 will require public-private competitions or direct conversions of approximately 42,500 of the 850,000 FTE listed on the FAIR Act inventory. **For FY 2003**, agencies will be required to complete public-private competitions, direct conversions (as permitted under OMB Circular A-76), or privatization (which will be considered on a case-by-case basis) *on not less than 10% of the 850,000 FTE listed FAIR Act inventory as performing commercial work.* No goals have been established beyond FY 2003.

Attached is a brief analysis of the 2000 FAIR Act inventories. The attachment identifies: (a) the number of FTEs designated as commercial in the 2000 inventories; (b) activities where potential underutilized opportunities for public-private competition exist; and (c) the status of agency submissions of their 2001 FAIR Act inventory.

The section on DOL is as follows.

Labor

1. FTE Designated as Commercial on FAIR Act Inventory 2000 inventory: 2,802 of 15,921 total FTE (18%)

II. Activities with Potentially Underutilized Opportunities for Public-Private Competition

Data collection and analysis. Data collection is commercial. Also, the development, preparation and issuance of recurring statistical reports (not their approval or signature) is commercial.

Inspection. The development of recommendations and the calculation of deductions is commercial when reviewed by higher authority (see OFPP 92-1 regarding the “finality of

agency determinations”). It is, therefore, difficult to understand how the DOL’s compliance division could be entirely inherently governmental.

Statistical Analysis. DOL has argued its statistical analysis is an inherently governmental function. This activity currently comprises 6,700 FTE in the regulatory management (not inspection) area (including 1,131 wage and hour analysts, 613 EEO compliance analysts, 1,270 Mine Safety Analysts, 1,290 economists, 461

economics assistants, and 178 statisticians).

III. Status of 2001 FAIR Act Inventory Submission to OMB

Received

This recalls someone who had once been an Assistant Secretary of Energy and went on to run a labor hours contracting firm. In an earlier generation he might have served as a gatekeeper, requiring Energy job applicants to pay him say \$10,000 each for a job in the civil service. This is illegal. Instead he

connects, often through the Energy Department itself, with people that Energy wants to hire. He then hires them and contracts them back to Energy. This way he makes more than \$10,000 every year per worker, and it’s perfectly legal. Perhaps I am too cynical, but it seems to me that the point of contracting is to make people like this rich, and the rest of us if not poor, at least less well off than we would have been.

Harnage Named to Outsourcing Panel

By 12NOW Staff

AFGE National President Bobby L. Harnage has been chosen by the General Accounting Office (GAO) to serve on a newly created panel made up of 12 members that will study Federal outsourcing policy. This new panel—the Commercial Activities Panel—will study issues ranging from public-private competition to implementation of the 1998 Federal Activities Inventory Reform (FAIR) Act. A provision in the fiscal 2001 Defense Authorization Act directs GAO to convene the panel and provide recommendations to Congress by May 2002.

The Commercial Activities Panel, chaired by Comptroller General David Walker, includes representatives from labor groups, contractors, the Department of Defense and the Office of Management and Budget (OMB).

In addition to Harnage, labor’s interests are represented by panel members Colleen Kelley, President of the National Treasury Employees Union (NTEU); Robert Tobias, Professor, American University (and former NTEU President); and former Senator David Pryor, who conducted several investigations into the government’s use of contractors during the 1980s.

Two contractor representatives and four Bush Administration members of the panel are expected to push Bush’s agenda to increase the government’s use of outsourcing. In fact, OMB Deputy Director Sean O’Keefe, who has been named to the panel, recently directed agencies to put up for competition or

outsourcing at least five percent of positions classified as “commercial” on the FAIR Act by October 2002. O’Keefe also has ordered agencies to catalog lists of positions considered “inherently governmental” for the next round of FAIR Act submissions due to OMB June 30.

The presence of both contractors and administration officials on the board has Harnage questioning the panel’s balance. “At first I was very skeptical about whether this panel would accomplish anything other than trying to increase privatization,” Harnage stated. “But after meeting with Bill Woods [project director of the panel], I’m convinced he has the best interests of the taxpayers at heart. I’m going to go in with an open mind and be optimistic.”

In any case, AFGE believes that the Commercial Activities Panel is heavily weighted with contractor representatives and Bush Administration pro-contractor representatives whose agenda includes scrapping the A-76 process to avoid public-private competition completely or rewriting A-76 to stack the process in their favor in order to win more competitions.

First Meeting of the Panel

The Commercial Activities Panel held its first of several public hearings on June 11, 2001, in Washington, D.C. More than 40 people appeared as witnesses to share their thoughts on the principles and policies that should govern sourcing decisions. AFGE was instrumental in securing a number of witnesses who expressed grave concerns

about the impact of contracting out from a wide range of perspectives. AFL-CIO President John J. Sweeney discussed 10 principles that should guide the Federal government’s service contracting process, many of which are included in the Truthfulness, Responsibility and Accountability in Contracting (TRAC) Act (H.R. 721 and S. 1152) (see article on page 10).

Rep. Neil Abercrombie (D-HI), a member of the House Armed Services Committee, let the Panel know that he considered the government’s excessive service contracting to be bad public policy and a threat to national security. He accused contractors of lining their pockets with taxpayer dollars and praised Federal employees for their dedication, loyalty and professionalism.

Bush Ignores Panel

It appears the Bush Administration is ignoring the Commercial Activities Panel, deciding instead to convert or compete 425,000 Federal jobs over the next four years. Taking the first step toward meeting that goal, OMB has ordered agencies to directly outsource or perform public-private competitions on five percent of the jobs on their FAIR Act inventory lists no later than October 2002. In order to meet OMB’s overly restrictive deadline, however, many agencies will likely be forced to directly convert these jobs without allowing Federal employees to compete for their jobs.

see *Harnage*, page 19

Statement of AFL-CIO President John J. Sweeney Before the Commercial Activities Panel

June 11, 2001

Mr. Chairman and members of the panel: On behalf of the 13 million members of the AFL-CIO, I appreciate the opportunity to join you today to share our views and suggestions regarding the principles that should guide the federal government's service contracting process.

There are few challenges greater or more important than ensuring that the federal government has the resources and capacity it needs to keep the economy growing and the nation prospering. As we know from many successful public and private ventures, the key component for creating a vibrant, strong and effective organization is to recruit and retain an equally vibrant, strong and effective workforce, and to establish systems, such as labor-management partnerships, that tap the combined experience and expertise of all the partners in the enterprise. Making the investments up front in securing the best workers possible, and then continuing to invest in them throughout their careers, is the soundest and most cost-effective use of taxpayers' dollars. And it ensures the highest quality delivery of public services.

All too often today, however, rather than making the necessary commitment of resources and investments in devising a comprehensive, future-oriented work force development plan that includes building and strengthening the federal work force, the focus is on short-term savings by cutting the federal work force. The regrettable result is a real and growing human capital crisis, propelled in part by excessive downsizing and outsourcing in recent years.

This panel has the opportunity to help stem and reverse that crisis through the recommendations you will make for administration of the federal government's outsourcing processes and procedures. In the discussion that follows, we outline several principles that we believe should inform these agency procedures and practices.

1. The federal government should not engage in excessive downsizing and indiscriminate service contracting:

Many analysts have concluded that the federal government has engaged in excessive downsizing and indiscriminate service contracting over the last several years, resulting in a human capital crisis. In recent years, the federal work force has declined by almost 400,000 positions. Today, agency after agency suffers from shortages of federal employees in critical occupational categories. The aging of the federal workforce raises serious concerns that this crisis will intensify in coming years, with an expected large wave of baby boomer retirements.

America's working families depend on rank-and-file federal employees to nurse our veterans, patrol our borders, collect the government's revenues, dispense critical safety net benefits, conduct scientific and medical research, preserve our civil rights, defend our nation, safeguard our workplaces and environment, protect the rights of workers and consumers, and to provide myriad other important services. The interests of America's working families are best served by a strong and robust federal employee workforce.

Consequently, when the capacity of the federal work force is diminished, it is not just a crisis for federal employees, it is a matter of profound concern for all of us.

Our leaders should recognize the invaluable contributions federal employees make and provide them with the stable environment they need to do their important work. Bashing "bureaucrats" is a popular pastime for some, but arbitrary threats of downsizing and service contracting injure the interests of any organization, whether in the public or private sector. When the organization involved is the nation's largest and most important employer, the federal government, the dangers are even more pronounced.

2. The government should staff agencies adequately and pay federal employees competitively:

The federal

government must begin rebuilding its workforce to recover from the serious deficits created by downsizing and contracting. Agencies should no longer be subject to arbitrary in-house personnel ceilings, whether for managers or rank-and-file federal employees. In light of the central role the federal government plays in the lives of all Americans and the real and growing "human capital" crisis we face, it is in our national interest to emphasize the "right-sizing" of the federal workforce, instead of its continued "down-sizing." If it is to recruit and retain the best, the federal government must invest in its workforce by eliminating the documented pay gaps between federal employees and their counterparts in the private sector. Agencies must also stop looking at job-related training as a costly optional extra instead of the absolute necessity it is, if the government is to remain competitive with the private sector.

3. Government agencies should work collaboratively with employees:

The best way for agencies to achieve actual and lasting efficiencies is for managers to use the expertise and experience of rank-and-file federal employees and their union representatives in real labor-management partnerships. Nobody knows better how to get the job done right than the people who are actually doing the job.

We deeply regret that one of the first orders of business for the Administration was to repeal Executive Order 12871, which provided a strong foundation for labor-management partnerships in the federal sector. Indeed, even members of Congress from the President's party decried this move as a backward step that would hinder, rather than advance efforts to improve governmental performance and efficiency. Although some farsighted agencies are attempting to continue their cooperative

see *Sweeney Statement*, page 11

arrangements, the partnership initiative, which merely incorporates the emphasis on labor-management cooperation of some enlightened private sector firms, has suffered a significant setback. And that's a shame, because real labor-management partnerships are cost-efficient for managers, fair to employees, and beneficial for the public as a whole. We urge the panel to recommend resumption of these important labor-management partnerships.

4. The government should not use arbitrary competition/conversion quotas: We are extremely disappointed in and concerned about the Administration's apparent decision to place the jobs of at least 425,000 federal employees at risk over the next four years, either through direct conversions to contractor performance or public-private competitions. As discussed below, we believe that direct conversions are a disservice both to federal employees and taxpayers, and thus should never be used. Further, public-private competitions should be used as a last resort, only after other less disruptive mechanisms to achieve lasting efficiencies have proved ineffective.

Arbitrary quotas on federal employee positions, whether to meet goals for downsizing, in-house personnel ceilings, direct conversions to contractor performance, or public-private competitions are not sound public policy.

After abuses too infamous to ignore, the nation as a matter of law and policy rejected a "spoils system" allowing new presidents to replace their predecessors' workforces with cronies and political supporters. We adopted, instead, a civil service system to ensure that the American people would always be served by women and men who chose to devote their lives to the public good rather than private gain. Rank-and-file federal employees provide the continuity, attention to details, and institutional memory necessary to ensure that the American people continue to be the best governed in the world. Because they are not political appointees, these civil servants can do their job of serving the public without fear or favor. And because civil servants are part of the

enduring fabric of government, the American people can always count on them for service, regardless of a President's political affiliation or ideological bent.

The idea that as much as one-fourth of the federal government's executive branch workforce could be outsourced over the next four years raises grave concerns that, under the banner of "efficiency," the nation could well return to a latter day "spoils system." The real possibility exists that in the future, lucrative service contracts paid for by taxpayers will be doled out in ways the civil service system was created to prevent. While some would undoubtedly win under such a scheme, most of us would be losers.

5. The government should broadly define the concept of "inherently governmental" functions: We urge the panel to recommend against using narrow definitions of "inherently governmental" functions that fail to take into account the appropriateness of federal employee performance of most services. There are some who would argue adamantly that any service the private sector is interested in performing is inherently "commercial," and, therefore, need not be performed by federal employees. The panel should emphatically reject that contention. Not only should we err on the side of caution in determining that a particular service is not inherently governmental, we must also be careful about the extent to which even commercial services are outsourced.

We believe the Army has moved in the right direction by establishing a contractor inventory to develop a better understanding of the services it has outsourced. This inventory's purpose is to allow policymakers to "assess whether, and to what extent, contractors may be performing (inherently governmental) functions, or commercial functions, which, when contracted out beyond a certain level of reliance, increase operational risks to overall Army mission capabilities and readiness." We urge the panel to recommend that all agencies develop systems similar to the Army's contractor inventory, to provide for collecting reliable information about the

real costs and size of the contractor workforce.

6. The government should bar contracting out of federal employee jobs unless and until there is full and fair public-private competition: For reasons of efficiency and fairness, federal employees should always receive real and meaningful opportunities to compete for the opportunity to continue performing their jobs. Converting jobs to contractor performance without public-private competition is bad policy. Real savings from outsourcing come only from full and fair public-private competition. Savings that result from shortchanging workers on wages and benefits are often short-lived and illusory, costing all of us more in the long run.

Additionally, public-private competition should be just one tool for making service delivery more efficient. Given the cost of conducting competitions, the disruptions they cause, the longstanding difficulties in administering service contracts, and the persistent questions about whether they yield any long-term savings, federal agencies should exhaust all other options before pursuing outsourcing schemes. Whether called reinvention, reengineering, or reorganization, there is much federal managers can do on their own to generate efficiencies, and even more that agencies can accomplish if rank-and-file federal employees and their union representatives are involved in the process through strong labor-management partnerships. Selling off chunks of the government is the worst answer to efficiency concerns.

7. The government should ensure that federal employees have full and fair opportunities to compete for new work: Federal employees should have full and fair opportunities to compete for newly created work, as well as the work they are already doing. A contributing factor to the crisis the federal government is experiencing has been the almost systematic refusal to consider in-house performance of new work, regardless of how similar it might be to work already being ably performed by

American Federation of Government Employees (AFGE) Equal Opportunity and Diversity Policy

Editor's note: This policy was adopted by the National Executive Council of AFGE on June 29, 2001.

The American Federation of Government Employees (AFGE) strives to create and maintain a community in which people are treated fairly and equitably with dignity, decency and respect. AFGE's environment must be characterized by diversity, mutual trust, freedom of inquiry and expression appropriate for the workplace, and absent of intimidation, oppression, exploitation, harassment or retaliation. Members and employees of AFGE and local/council affiliates must be able to work together in a safe and discrimination free environment. The accomplishment of this goal is essential to the mission of AFGE. Therefore, the National Executive Council considers discrimination and/or harassment on the basis of race, creed, color, national origin, sex, age, political affiliation, handicapped condition, marital status, and sexual orientation, or retaliation for participation in the complaint process concerning such discrimination, a form of misconduct unbecoming a union member and misfeasance or malfeasance in office as an officer or representative of a local pursuant to Article XVIII, Section 2 (e) and (f) of the AFGE National Constitution.

Prohibited Conduct

1. **Discrimination:** It is a violation of this policy to discriminate in the policies or practices, employment opportunities and benefits, membership benefits or privileges, or to create a hostile environment based on unlawful discrimination, if the basis of that discriminatory treatment is, in whole or in part, the person's race, creed, color, national origin, sex, age, political affiliation, handicapping condition, marital status, and/or sexual orientation. Additionally, it is a violation of this policy to fail to make reasonable accommodations to the physical and/or mental limitations of members or qualified employees or applicants with disabilities. Officers, members and

employees of AFGE's National Office and local/council affiliates must comply with federal, state and local laws that prohibit discrimination. 2. **Sexual Harassment:** It is a violation of this policy for an employee or elected officer of AFGE and local/council affiliates or elected officers to make unwelcome sexual advances, request sexual favors, or other verbal or physical conduct of a sexual nature, when submission to, or rejection of, this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or elected duties, opportunities or advancement within AFGE, and/or creates an intimidating, hostile or offensive work environment. 3. **Retaliation:** It is a violation of this policy for an employee or elected official of AFGE and local/council affiliates to impose hardship, loss of benefit, and/or penalty on any member or employee as punishment for: i. Filing or responding to a bona fide complaint of discrimination or harassment; ii. Appearing as a witness in the investigation of a complaint; or iii. Serving as an investigator or as an adjudicator of a complaint.

Responsibilities 1. It is the responsibility of AFGE and all local/council affiliates to post this policy statement on all Union bulletin boards and to publish annually in their newsletter the procedures for filing a formal complaint. 2. All members and employees of AFGE and local/council affiliates must share the responsibility of understanding and preventing discrimination and harassment. Individuals who believe they have been discriminated against or are experiencing harassment, have the primary obligation of raising their concerns to the attention of the appropriate party or seeking the advice of the Women's/Fair Practices Departments. 3. All officers, members and employees of AFGE and local/council affiliates have the special responsibility to act promptly to eliminate any discrimination that exists

in their area of oversight. If there is knowledge of unlawful discrimination, harassment or retaliation occurring, you must take immediate action to address the concern. Such action may include, but is not limited to, seeking the advice of the Women's/Fair Practices Departments. 4. Members with disability, who are in need of reasonable accommodations in order to participate in union activities, have the responsibility of requesting such accommodations. Convention delegates with disability, who are in need of reasonable accommodations and/or convention materials in alternate formats, have the responsibility to make that request to the Women's/Fair Practices Departments, in a timely manner. 5. Employees with disability of AFGE and local/council affiliates, who are in need of reasonable accommodations, have the responsibility of requesting such accommodations.

Complaint Process 1. This policy supercedes the process for complaints and investigations under the Sexual Harassment policy. Charges of discrimination under this policy against national officers will be processed in accordance with the NEC's Policy, Standards, and Procedures for Processing Charges Against National Officers Pursuant to Article XIII, Section 7 of the AFGE National Constitution (as reissued by the NEC on December 2-4, 1981). Charges relating to conduct which occurred during an election shall only be made and remedied as election protests by complaint in writing in accordance with Appendix A, Part III (Election Protests and Appeals), Sec. 2. 2. Any officer or member who feels harassed, discriminated or retaliated against may file a formal complaint in accordance with Article XVIII of the AFGE National Constitution. 3. Any officer or member, who receives a complaint filed in accordance with Article XVIII of the AFGE National Constitution, may refer to the

see Policy, page 13

Senate Bill Would Make Child Care Subsidy Program Permanent

By 12NOW Staff

Legislation was introduced in the Senate on August 1 that would make permanent the child care subsidy program that has been piloted for the last two years. Entitled “The Child Care Affordability for Federal Employees Act,” the bill (S. 1286) is sponsored by Senator Jean Carnahan (D-MO) and co-sponsored by Senator Barbara Mikulski (D-MD). It is the companion bill to legislation introduced earlier in the House of Representatives by Rep. Connie Morella (R-MD).

Under this legislation, Federal “agencies could use a portion of their funds to provide child-care assistance for their lower-income employees. The agencies could choose to allow the assistance to apply toward the costs of on-site Federal day-care centers or a licensed day-care provider near an employee’s home.” (*The Washington Post*, p. B2, Aug. 13, 2001)

“Because the program was only temporary, some Federal agencies elected

not to participate,” Carnahan said when introducing her bill. “They were afraid to offer the benefit for a year and then have to take it away from their employees if it were not renewed...Passing this legislation and making the program permanent is essential to helping this initiative reach its full potential and benefit the maximum number of families.”

The American Federation of Government Employees (AFGE) has enthusiastically endorsed this legislation. AFGE National President Bobby L. Harnage had the following to say in support of the bill: “AFGE welcomes Senator Carnahan’s leadership of the effort to help financially hard-pressed Federal employees pay their ever-increasing child care expenses.

“Agencies have been allowed, under pilot projects during the last two years, to use existing appropriations to provide child care assistance to lower income Federal employees.

“AFGE has wholeheartedly taken up

the opportunity to turn the pilot programs into a real-life, earned benefit for Federal employees.

“As Senator Carnahan understands, her legislation isn’t just good for Federal employees—it’s good for the Federal government as well. Agencies can use the child care assistance to recruit and retain the best possible employees. Moreover, by giving Federal employees more certainty with respect to their child care arrangements, the program reduces absenteeism and increases productivity.

“Thanks to the last two years of pilot programs, the foundation for success has been put in place for all to see,” concluded Harnage. “It is now time to make the program permanent—and Senator Carnahan is leading the way. We also appreciate the leadership of Senator Barbara Mikulski (D-MD), a tireless champion of Federal employees, who is a proud original cosponsor of Senator Carnahan’s important legislation.”

AFGE Condemns Social Security Commission Report

Editor’s note: On July 24, 2001, AFGE National President Bobby L. Harnage issued the following statement in response to the interim report issued by President Bush’s so-called Commission to Strengthen Social Security.

“The Social Security Trustees, using very conservative estimates, have shown Social Security able to pay all promised benefits for the next 37 years without any changes to the system. And the shortfall over the next 75 years amounts to less than 0.75% of the Gross Domestic Product (GDP)—hardly a crisis. In 2001, the accumulated surplus in the Trust Fund will top \$3 trillion.

“Reckless politicians are the only real threat to Social Security’s long-term financial solvency.

“This privatization commission is

political payback to Wall Street and insurance companies, who cannot wait to get their hands on billions of dollars in commissions from administering the 150 million or so individual accounts envisioned by the privatizers. They don’t care that the retirement eligibility age would have to be raised to 70, and that guaranteed benefits would have to be cut by as much as 50 percent to pay for this scam.

Policy, continued from page 12

Committee of Investigation Guidelines and Procedure Manual and the Hearing Manual for Internal Disciplinary Trial, located at www.afge.org, for proper processing of the complaint. 4. Any employee of AFGE and local/council

“Social Security provides income support—vital economic security—to 45 million Americans. Social Security is all that keeps 50 percent of our nation’s elderly population above the poverty line.

“AFGE will not allow the Bush Administration to get away with dismantling and privatizing our nation’s most popular and successful government program.”

affiliates, who feels harassed, discriminated or retaliated against, may file a complaint in accordance with their state and local process for filing complaints and/or their collective bargaining agreements.

A Call to Action to Globalize Justice

— Sept. 26-Oct. 1, 2001 in Washington, D.C. —

By the AFL-CIO

This fall, America's unions will unite with a broad range of activists from around the world to insist on transforming the rules and institutions of the global economy to ensure that they work for working people.

The international union movement, student organizations, women's groups, human rights advocates, faith-based activists, solidarity groups, immigrants, environmentalists, unemployed people, small farmers and business people will come together in a week of action to reject the global economic system that values profits over people.

As the International Monetary Fund (IMF) and World Bank hold their annual joint meetings in Washington, D.C., during the week of Sept. 26-Oct. 2, 2001, we will come together for a massive march and rally and related events in the nation's capital. As we approach the November meeting of the World Trade Organization (WTO) in Qatar, we also will be joining together with unions from around the world in global solidarity actions being planned by the International Confederation of Free Trade Unions (ICFTU). And, also in Washington, D.C., from Sept. 24-25, the National Council of Women's Organizations will hold its Women's Equality Summit, Congressional Action Day with a focus on Social Security privatization—another item on the World Bank's agenda.

The fall meetings of the IMF and World Bank will be among the most significant gatherings of the proponents and decision makers of corporate-led globalization in 2001. We cannot stand by as these institutions continue to structure global economic rules for the benefit of corporations and the wealthy and deny basic justice to the majority of the world's people.

The IMF/World Bank are forcing national "structural adjustments" that include privatizing, downsizing and

slashing spending by governments; recklessly opening trade doors to exploitative foreign investment; and promotion of so-called "labor flexibility" moves, such as reducing the minimum wage and weakening workers' protections. Some countries are spending more each year trying to repay loan debts to these institutions than they are able to spend to meet the basic health, sanitation and education needs of their people. Both domestically and abroad, the World Bank continues to promote privatization of our public systems with dangerous consequences for the well-being of workers.

The struggle against the IMF and World Bank is about much more than trade. It is the struggle to address the inequalities of the global economy through the institutions that perpetuate them.

Global justice activists are making three demands:

1) Opposition to the granting by the U.S. Congress of "Fast Track" trade negotiating authority to President George W. Bush. Fast Track would bar Congress from more than a minimal review of trade agreements Bush negotiates, and would not require protections for workers' rights and the environment in the core provisions of the trade agreements—despite extensive protections for business interests.

2) Support for the call to unconditionally cancel the debts owed by the poorest countries to the IMF and the World Bank, using the institutions' own resources.

3) Opposition to the Free Trade Area of the Americas (FTAA) agreement aimed at extending the terms of the disastrous North American Free Trade Agreement (NAFTA) throughout the Western Hemisphere.

We call on people of conscience and good will to **Be There for a Global Justice Week of Action:**

- Women's Equality Summit, Congressional Action Day: Sept. 24-25
- March in defense of the rights of immigrants: Wednesday, Sept. 26
- Teach-in on the World Bank, IMF and the Global Economy: Thursday evening, Sept. 27 through Saturday, Sept. 29
- Forum on the impacts of international financial institution policies on women in the global economy
- "Behind the Label" retailer actions with UNITE, protesting sweatshop conditions: Friday, Sept. 28
- Interfaith Service for debt cancellation and global justice: Saturday, Sept. 29
- Massive rally and march Sunday, Sept. 30, demanding:
 - IMF/World Bank debt cancellation
 - A fair trade agenda and no Fast Track/FTAA
 - Priority treatment for combating HIV/AIDS
- Support for local labor struggles (including parking lot attendants' fight for the right to organize with Hotel Employees and Restaurant Employees Local 27)
- Preparation for the ICFTU's Global Unions' Day of Action by the Workplaces of the World to be held Nov. 9 around the meeting of the WTO in Qatar.



that it had sought under Section 3 of Article 29. In that case arising in the Office of the Assistant Secretary for Policy (ASP), the arbitrator ruled that changes to space that is not occupied by bargaining unit employees but is nonetheless used as a commons area by those employees will invoke the Article 29 duty to bargain.

The PWBA case involved a room that the Office of Regulations and Interpretations (ORI) had used for several years as workspace for two bargaining unit employees and for the storing of files. Some years before the space was reconfigured, one of the two employees was moved out of the workspace. Six months before the space reconfiguration, the other employee was moved out of the workspace and, like the other employee, into an existing workstation. The files were removed from the room and placed in archival storage or moved into the adjoining ORI office. The room was then reconfigured as workspace for contract employees. Management refused to consult or bargain regarding this space change and the Union invoked the matter to arbitration.

In concluding that the Union had failed to establish an impact on bargaining unit employees for purposes of Article 29, the arbitrator relied on various factors. First, she noted that the room that was reconfigured was not occupied by bargaining unit employees at that time and had not been for several months. Second, the arbitrator pointed out that there was no evidence that the file cabinets that had been removed from the reconfigured space were placed so as to impact on bargaining unit employees. To illustrate this point, the arbitrator contrasted this situation to one in which file cabinets are moved from reconfigured space into space occupied by bargaining unit employees. The arbitrator also noted that there was no evidence that the files that were moved to storage had an impact on covered employees.

On this basis, the arbitrator concluded that the Union had not established a refusal to bargain in

violation of the CBA. The arbitrator rejected the Union's additional argument that, pursuant to Article 29, it was entitled to receive floor plans prior to a space change, regardless of whether the space change impacted the bargaining unit. Although the arbitrator noted the broad range of issues that may be the subject of bargaining under Article 29 once that provision is invoked, the arbitrator determined that the "impact on bargaining unit employees" language of Section 3a clearly limits the circumstances in which space changes will trigger management's duty to bargain.

In the ASP case, however, the arbitrator concluded that an impact could be demonstrated under Section 3a of Article 29 by space changes that did not directly affect the work stations of bargaining unit employees. The case involved the remodeling and reduction of ASP space. The space that was to be yielded by ASP to another agency included conference and meeting rooms, which were used by bargaining unit employees.

After providing a draft floor plan to the Union, management proceeded with the remodeling of the space. The Union grieved the refusal to bargain or to provide a final floor plan and the case was subsequently invoked to arbitration. Management contended that there had been no impact on bargaining unit employees and therefore no obligation to bargain. The arbitrator found it unnecessary to apply the previous arbitrator's interpretation of Section 3a as requiring "any impact" to resolve the question of whether, like the Act, Article 29 required proof of something more than *de minimis* impact. Like the arbitrator in the VETS case, the arbitrator here construed Article 29 as providing protections beyond those provided by the Act.

The arbitrator in this case focused on a section of Article 29 that the arbitrator in the VETS case had not, however, Section 3c. The arbitrator read Section 3c, in conjunction with Sections 3a and 3b, as providing an opportunity for bargaining by the Union in cases where

a space change does not directly impact the work stations of bargaining unit employees. The arbitrator reasoned that Section 3c reflects "the Parties' recognition that space inequities within an Agency may have been left over from earlier negotiations about space, and their agreement that later changes in space may present an opportunity to address those inequities." The arbitrator then determined that the impact of the ASP space change—the elimination of commons areas used by bargaining unit employees for conference and meeting space on a regular, on-going basis—was more than *de minimis* and that Article 29 protections had been invoked.

Having concluded that management had violated its contractual duty to bargain under Article 29, the arbitrator outlined the process that should have been followed in this case. He explained that, once Article 29 was invoked by management's plans to change the ASP space, management was obligated to notify and consult with the Union regarding the impact on bargaining unit employees, pursuant to Sections 3a and 3b. In addition, management was required to discuss with the Union the possible use of the affected space to rectify existing space inequities, pursuant to Section 3c. Finally, management was required to provide the Union an opportunity to review the final space plan and to request bargaining.

Noting, among other factors, that the remodeling of the ASP space was almost two years old and that there was no evidence that management had acted in bad faith pursuant to Article 29, the arbitrator declined to order management to return to the position occupied before the space change was implemented. The arbitrator did, however, order management to provide the Union with a current floor plan or similar descriptive document concerning the space at issue. He also directed that the Union then be provided the opportunity to request negotiations concerning the impact of the space changes on bargaining unit work stations and affected commons areas, or concerning the possible rectification of space inequities within the ASP.

Local Launches Web Site

By 12NOW Staff

AFGE 12 is marking Labor Day, 2001 by launching its own Web site. Located at www.afge12.org, the AFGE 12 Web site will include the following features:

- a list of the AFGE 12 officers and stewards, along with their telephone numbers, room numbers, and photographs;
- the AFGE 12-DOL contract and bargaining history;
- current and past issues of **12NOW** and **12Alert**;
- the AFGE 12 Constitution and Bylaws;
- the AFGE 12 monthly calendar of events;

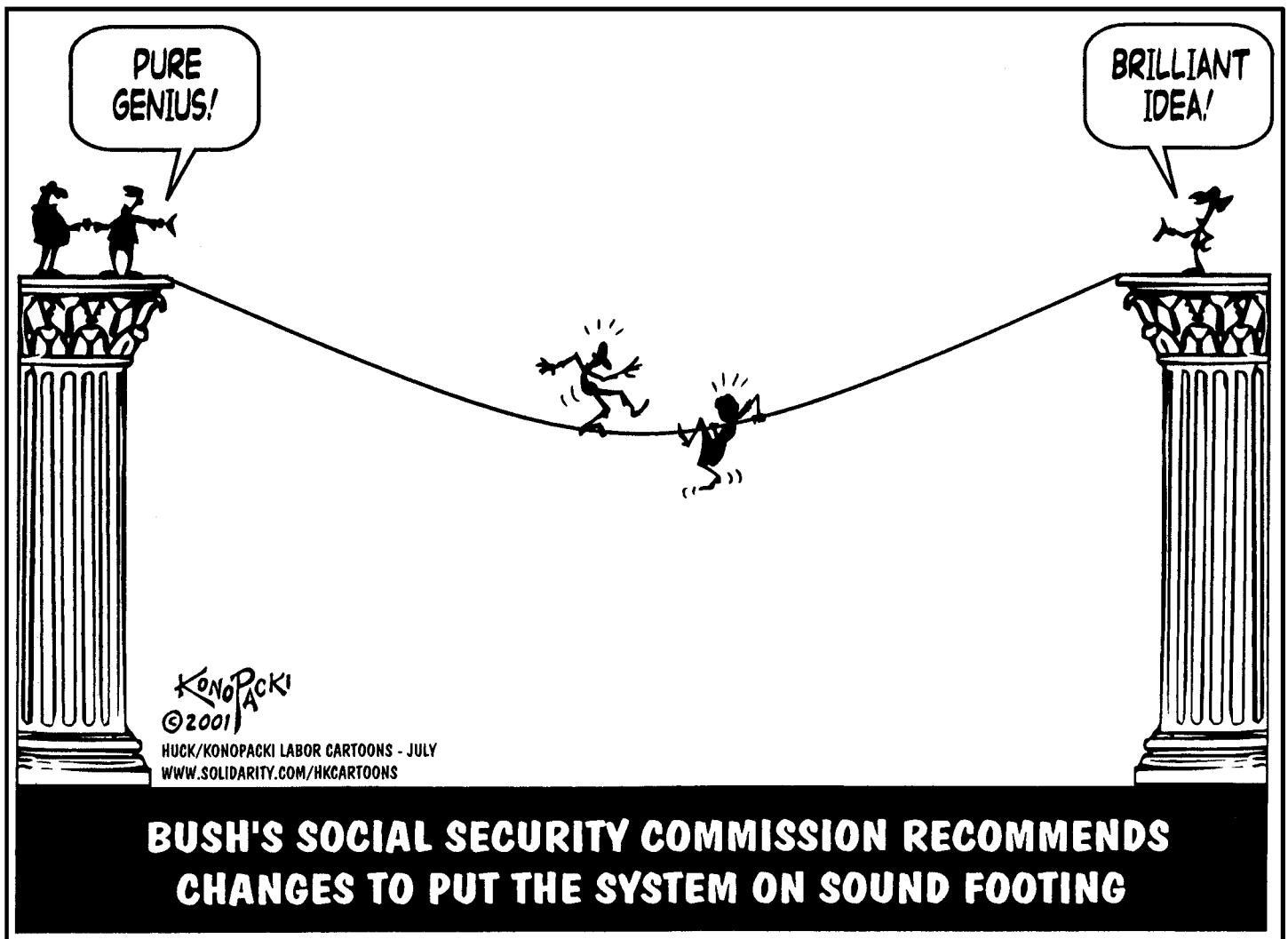
- membership meeting notices;
- a list of membership benefits;
- a membership application form (SF1187);
- links to other sites of interest, such as the AFGE National and the AFL-CIO, and
- the negotiated grievance form.

employees and union members everywhere to visit our site, to see the exciting things that our Local is doing.”

www.afge12.org

It is anticipated that over time other features will be added.

“The launching of our own Web site is a very fitting way for our Local to celebrate Labor Day at the beginning of the 21st century,” declared Russ Binion, President of AFGE 12. “We encourage all DOL employees as well as all Federal



The Essence of America's Unions: Standing Up for Justice

By Charlie Mercer, President

Union Label & Service Trades Department,
AFL-CIO

Standing up for the little guy is a treasured American tradition. The great legends of American history are filled with stories of heroes who stepped to the front when they saw injustice. And, what institution is more steeped in that philosophy than any other? The answer is the American labor movement. Our stories are celebrated in books, movies and song—Norma Rae in the textile mills in the South or the miners of Matewan, West Virginia. Our observance of Labor Day, and Union Label Week, September 3-8 this year, is a great opportunity to remind the community that the essence of America's unions is exactly that: working families sticking up for other working families.

When all the complications of collective bargaining, representation and political action are peeled back to the core, we see that the union label on any product or service means that we are striking a balance for working people—speaking up and speaking out for fair play, adequate wages and safe working conditions. That's exactly what the union label stands for.

Looking back into the 19th and 20th Centuries, we see one example after another of the otherwise ordinary men and women who had the extraordinary courage and vision to rise up against injustice and confront it. From Mother Jones who led miners to organize in the 19th Century to A. Philip Randolph who led African-American Pullman Porters to demand dignity, or Cesar Chavez on the dusty roads of California's vineyards in the middle of the 20th Century.

Our celebration of Union Label Week and Labor Day 2001 serves as a reminder that here in the early days of the 21st Century the heirs of the legacy of Mother Jones, A. Philip Randolph,

Cesar Chavez, and Norma Rae continue to walk among us. They may be the young men and women who are today talking union in the cubicles of the dot-com industry, or in the strawberry fields of the West Coast. They may be the leaders bringing janitors and parking lot attendants together in the nation's big cities, or they may be health care workers, teachers, performers, laborers, or skilled craft people, ship builders,

truck drivers, mechanics, flight attendants, factory workers or retirees.

Let's take the time this Labor Day and this Union Label Week to recall that the values that enrich our community and our nation are those which advance the dignity of our individual citizens. This is the time to thank the American Labor movement for the contributions it has made in that struggle.



Discrimination, continued from page 7

grievants would be assured the opportunity to work overtime at some future time. This proposal was rejected by the Union in view of the case law that holds that when an employee is discriminatorily denied the opportunity to work overtime, the appropriate remedy is not the promise of a future opportunity to work overtime, but rather that the employee is to be awarded the amount of overtime wages he/she would have received but for the discriminatory actions of management.

Thus, during settlement discussions between Local 12 and DOL management, the parties agreed that any settlement of the case would require the

payment of back wages for overtime. Finally, the Union and management agreed that each employee would receive 15 hours of overtime pay at that employee's pay grade at the time the overtime projects occurred. As required by law, the payment of back wages meant that the grievants would necessarily receive interest on the funds computed from the time that the grievants should have received the wages. The employees received checks ranging in amount from \$348 to \$711. In all, Local 12 obtained a total of almost \$10,000 in back wages for the 16 grievants.

D.C. Labor Filmfest 2001

By 12NOW Staff

“Great films are great stories, and some of the great stories of our time are the comedies and dramas of working life,” says American University Professor Pat Aufderheide. “These are stories, when they’re told right, that show us how central work is to our culture. Great films introduce us to people who we might otherwise look past, in our rush to catch the next train and make the next traffic light...people who we think we know, or who we think we don’t need to know, and who in fact have secrets and stories that make us sit down, watch and stretch our notions of what’s possible.”

Seven films that tell such stories are featured in the first-ever DC Labor FilmFest, scheduled for September 6-9, 2001. Co-sponsored by the Metropolitan Washington Council, AFL-CIO, the Debs-Jones-Douglass Institute, and the American Film Institute (AFI), the festival brings films, directors, workers and activists together in an exploration and celebration of the struggle for economic and social justice.

All films but one will be shown at the AFI’s Kennedy Center Theater. Individual tickets are \$7 (\$6 for AFI members). FilmFest attendees will receive a special DC Labor FilmFest Program Book, featuring an essay on “What is a Labor Film” by film critic Professor Aufderheide, as well as film bios and information about the local labor movement. For ticket availability, call the AFI box office (202-833-2348) or the Metro Washington Council (202-857-3410).

The one film to be shown in a site other than the Kennedy Center Theater will be **Human Resources**, to be shown at La Maison Francaise at the French Embassy (4101 Reservoir Road, NW, Washington, DC) on closing night. The schedule is as follows:

THURSDAY, SEPTEMBER 6 (AFI, Kennedy Center)

6:30 PM: Secrets of Silicon Valley (with filmmakers Deborah Kaufman and Alan Snitow). Chronicling a year in the

lives of a temp worker who assembles Hewlett-Packard printers and the director of a nonprofit computer training center, **Secrets of Silicon Valley** exposes the grimy underside of the Internet revolution and explores the downside of the “new economy.”

Directors: Deborah Kaufman and Alan Snitow. 60 minutes. 2001.

8:30 PM: Life and Debt.

Jamaica—land of sea, sand and sun. And a prime example of the complexities and dangers of economic globalization. This searing film dissects the “mechanism of debt” that is destroying local agriculture and industry in Third World countries while substituting sweatshops and cheap imports. **Life and Debt** is an unapologetic look at the “new world order” from the point of view of Jamaican workers, farmers and government officials who see the reality of globalization from the ground up.

Director: Stephanie Black. 86 minutes. 2001.

FRIDAY, SEPTEMBER 7 (AFI, Kennedy Center)

6:30 PM: La Ciudad (with producer Paul Mezey). Through the stories of four recent Latin American immigrants, **La Ciudad** (The City) highlights the alienation and confusion that often accompanies the immigrant experience—newcomers in an unfamiliar land of tall buildings and complex regulations.

Director: David Riker. 88 minutes. 1999.

8:00 PM: Bread and Roses. Set inside a fictional SEIU Justice for Janitors campaign in Los Angeles, **Bread and Roses** tells a moving story about Mexican immigrants seeking a better life in the United States who are exploited as cheap labor, “invisible” office cleaners.

Like other Ken Loach films, **Bread and Roses** is about and for people not usually shown in the movies.

Director: Ken Loach. 110 minutes. 2000.

SATURDAY, SEPTEMBER 8 (AFI, Kennedy Center)

6:30 PM: Live Nude Girls Unite! (with filmmaker Julia Query). While **Live Nude Girls Unite!** displays its

share of exposed flesh, at heart it’s a movie about work, part of the rich tradition of labor documentaries such as Barbara Kopple’s **Harlan County USA** and **American Dream**. The film makes the case that work—whatever you wear or don’t wear—is still work.

Directors: Julia Query and Vicky Funari. 70 minutes. 2000.

8:30 PM: At The River I Stand. **The River I Stand** tells the story of the striking sanitation workers of AFSCME Local 1733—the struggle that drew Martin Luther King, Jr. to Memphis where he delivered his famous “I have been to the mountaintop” speech on April 3, 1968—the day before he was assassinated.

Directors: David Appleby, Allison Graham, Steven Ross. 56 minutes. 1993.

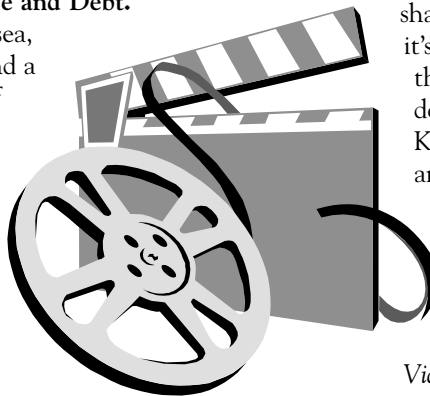
SUNDAY, SEPTEMBER 9 (French Embassy, La Maison Francaise)

6:00 PM: Human Resources. Franck, a Parisian business school student, takes an internship in the Human Resources department where his father has labored for past 30 years. Franck’s efforts to better the company lead to the firing of many workers, including his own father. It combines two eternal subjects—the father-son relationship and the conflict between labor and management.

Director: Laurent Cantet. 100 minutes. 1999. In French with English subtitles.

7:30 PM: “What is a Labor Film” Discussion

8:00 PM: Wine and Dessert Reception



federal employees at the agency in question or at another agency. Given agencies' continued difficulties in ensuring adequate competition between contractors for federal services, taxpayers would also benefit from public-private competition for new work.

8. The government should provide federal employees full and fair opportunities to compete for work that has previously been outsourced:

Agencies using public-private competition must use it fairly. If real and lasting savings can be achieved from competing the jobs of federal employees, then real and lasting savings can also be achieved by subjecting contractors to the same degree of public-private competition. To ensure that public-private competition is not merely a mechanism to replace federal employees by contractors, but rather a mechanism to make the federal government as a whole—both its contractor and federal workforces—more efficient, federal employees must also be allowed to compete for work that has already been outsourced.

9. The government should accord federal employees the same legal standing that contractors enjoy to challenge agencies' arbitrary service contracting decisions:

Contractors, but not federal employees and their union representatives, can take agencies to Federal Claims Court and the General Accounting Office to challenge service contracting decisions. Federal employees and their union representatives should

have the same rights and legal standing that contractors enjoy. Putting contractors and federal employees on the same legal footing is not just fair to federal employees; it also improves the integrity of the process by ensuring that agency managers are accountable to both federal employees and contractors.

10. The government should eliminate the human toll from service contracting:

Service contracting is undertaken in the private sector and elsewhere in the public sector as a strategy for reducing costs by undercutting workers' wages and benefits. Outsourcing leads to reductions in the numbers of public sector jobs that pay reasonably well, provide good benefits and offer job security. And all too often, the private sector jobs that are created through outsourcing pay considerably less and confer few or no benefits. A recent study by the Economic Policy Institute found that more than one-tenth of the contractor workforce earns poverty-level wages. In addition, these contract jobs are remarkably unstable, a situation greatly exacerbated by the President's repeal of a 1994 Executive Order that required federal service contractors to offer a right-of-first-refusal to their predecessors' employees, when contracts change hands. Taking away this protection has a disastrous effect on low wage service contract employees, many of whom are women.

At a time when the federal government enjoys and expects unprecedented surpluses, it is even more imperative that it act as a model employer, rather than contribute to a process that degrades jobs and drives down wages and benefits for workers performing public services.

Thus, while it is appropriate to compare staffing and processes in the context of public-private competitions, comparative wages and benefits of public employees and private contractor counterparts should be excluded from consideration. If there are lasting efficiencies to be achieved from service contracting, they should come from devising more ingenious ways of delivering services, not from replacing the working and middle class Americans in the federal workforce with what are in at least some instances poorly-paid, poorly benefitted workers with no job security.

Further, taxpayers want their tax dollars to be used to pave a high road of good jobs with good benefits, rather than to drive down working standards and living conditions. Accordingly, we urge the panel to ensure vigorous federal enforcement and contractors' full compliance with the Service Contract Act; and we recommend that Congress adopt legislation providing living wage and job retention safeguards that will help enable hardworking contractor employees to lift themselves and their families out of poverty.

Conclusion: The AFL-CIO appreciates the opportunity to share our views on these matters of great importance to the nation as a whole and to all working families. We all have a tremendous stake in insuring that the federal government does its job efficiently and capably. We believe that job is done best by a well-paid, well-trained, and well-respected federal workforce. To that end, we urge the panel to incorporate the principles outlined above in its final recommendations to Congress.

Harnage, continued from page 9

In his statement before the Panel at the June 11 public hearing, Paul Light of the Brookings Institute emphasized that the 1998 FAIR Act should be amended to discourage agencies from using it to set arbitrary targets for contracting out. He referenced OMB's order that agencies convert or compete five percent of the jobs on their FAIR Act inventories. "That's about the worst way to use the FAIR Act I can imagine," Light told the Panel. "I am so concerned about the use of head counts or arbitrary targets as a driver [for outsourcing]."

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