

Transfer of OHR back to FDA
Union Concerns about the Reorganization of DHHS/Office of Human Resources (OHR) Labor
and Employee Relations (LER).

Summary:

The reorganization of the DHHS/OHR will have a negative impact for all BUEs in the implementation of labor and employee relations policies that will result from this reorganization. NTEU's past experience with OHR being part of the FDA has shown abuses in HR practices on everything from how vacancy announcements are processed and selections made for them to the unfair and unequal management practices that were allowed and will likely return when OHR and LER return to FDA. Ethics law and regulations are clear that the DHHS and FDA should at all cost avoid conflicts of interest such as the one that will exist by this change. These standards were written to make sure that government employees conduct government business effectively, objectively and without improper influence. LER reporting directly to management with FDA will have a negative influence on the fair and equal application of employment law. NTEU has serious concerns that this action by FDA will cause more grievances and equal employment opportunity (EEO) cases to be filed due to the policies and management actions against employees that will increase as a result of this re-organization. NTEU Chapter 282 has contacted our national union office for guidance on this matter. To read the entire memo on this issue please see the attachment on website.

Article:

It has come to the attention of the National Treasury Employees Union (NTEU) Chapter 282 that the Department of Health and Human Services (DHHS) is currently re-organizing the DHHS/Office of Human Resources (OHR). Of particular concern to NTEU is the fact that the re-organization as currently planned would move all OHR functions that are currently being handled by DHHS for the Food and Drug Administration (FDA) into the FDA structure under the Office of the Commissioner or some other head office directly within the FDA. Specifically included in this re-organization would be the Labor and Employee Relations (LER) functions which would then fall under FDA as well. NTEU feels that moving the Labor and Employee Relations functions within FDA is bad for employees and the agency as a whole for a number of reasons all related to conflict of interest concerns that would be created by this change in policy.

In 2001, President George W. Bush issued a memorandum on standards of official conduct that reiterated the "Principles of Ethical Conduct for Government Officers and Employees." These principals and standards were originally issued under executive order 12674 which was issued in 1989. The standards were written to make sure that government employees conduct government business effectively, objectively and without improper influence. NTEU believes that a direct conflict of interest exists by moving the LER functions and duties from DHHS into the reporting structure of the FDA. This conflict of interest would be present under the new proposed structure because it would create for all LER personnel financial interests or other opportunities for tangible personal benefit that may exert, or appear to exert, undue or improper influence on the LER employee's professional judgment with regard to the LER employee's official duties which directly affect bargaining unit employees. By virtue of the PMAP process as well as other employment factors the LER specialist processing grievance actions as well as other agency actions would have a direct influence on the ultimate decision of a case they are working on and

would have both a financial and non-monetary stake in the outcome of the decision made on a case. Federal employees engaged in Labor and Employment related work have a duty and obligation to implement labor and employee relations policies, rules, regulations and law decisions based on sound legal principals in an objective manner. Moving the LER personnel within FDA will remove this level of objectivity because the LER specialist will then ultimately be held accountable for their decisions by someone within the very same reporting structure that will be determining the LER specialist performance evaluations, promotion actions, awards determinations and other employee personnel actions. (For example: The union files a grievance action on behalf of bargaining unit employees to an office or center director, it then moves through the grievance process to the commissioner's office, at some point during this process the LER representative assigned to review and respond to the grievance will have to do so at a level where someone within their direct supervisory chain will be involved with the very case the LER specialist is handling. These factors will have a direct influence on the decisions that the LER specialist makes since the decision they will be making on how a case should be handled and what actions to take with regard to it may directly involve the LER specialist supervisor or more likely the supervisors, supervisor.) This situation will add a layer of personal reflection and evaluation to the LER specialist processing of cases as the outcome could have consequences that directly affect the LER employee based on the management officials desired outcome and whether it was achieved or not by the LER employee processing the action. This type of personal reflection/evaluation is currently not a factor for LER representatives in their reporting structure within DHHS. The moving of LER functions within FDA would not only place into question how labor and employment law is being provided by LER specialist under an FDA structure but also brings up ethical concerns for LER representatives put in situations such as the one described above. In addition, DHHS has been down this road before. Prior to 2001 before Tommy Thompson who was appointed by President Bush became the 19th Secretary of Health and Human Services FDA did have LER as part of the FDA organization. Conflict of interest and centralization of LER functions were the primary reasons that Secretary Thompson determined that OHR and LER should be moved outside of the individual DHHS operating divisions (agencies). It was also determined that it is more efficient and cost effective to have OHR and LER centralized at the DHHS level as opposed to having multiple LER organization throughout DHHS each with their own interpretations of HR policy and LER matters.

Other unintended consequences of this reorganization placing LER within FDA are that it will negatively affect the working relationship between labor and management as the LER personnel will become not objective and viewed as outside of the internal politics of the FDA but beholden to do whatever FDA management request of them whether such actions are lawful labor and employment practices or not. NTEU can predict that the number of grievances and equal employment opportunity cases will increase exponentially due to overzealous management officials that LER will not want to restrain from taking unlawful actions because the LER representative will be part of the same reporting structure as the FDA managers that they will have to represent. The LER personnel will become part of the small FDA community environment where many individuals have interpersonal relationships with employees across the spectrum of the FDA headquarters. LER representatives will be concerned with the interpersonal relationships within FDA's chain of command structure potentially affecting their evaluation as LER specialist. This is a factor that will undoubtedly cloud the judgment of LER

representatives interacting with management officials and influence the decisions that they make based on what it is that the management official wants to happen in a given situation.

Something that creates the appearance or actuality of conflict of interest should be avoided at all times. At the FDA we have already seen the negative impact of management officials engaged in labor related work that report within the FDA supervisory chain of command. To the detriment of FDA employees the management and program analyst within the center offices of management at FDA have more often than not advised office managers that they are entitled to do things that are far beyond their authority. In some of these instances even the current LER representatives who are currently part of the DHHS not FDA management structure has told the FDA offices they have overreached. In other instances these FDA office of management personnel have not done what was in the best interest of the FDA and as a result unfair labor practice charges have been filed and FDA found to have violated the law. DHHS and FDA should take steps to avoid these types of problems from expanding as they will if LER is brought into the FDA under the proposed re-organization of DHHS/OHR. The LER specialist within FDA should be expected to do their job with integrity, ethics, and free from the influence of conflicts of interest. The Labor and Employee Relations functions should remain within the DHHS structure and not be transferred to the FDA. NTEU Chapter 282 has notified the NTEU national office of this situation and requested a briefing meeting from the Office of the Commissioner to ensure that all view points have been considered in this matter.