

**NATIONAL COUNCIL OF EEOC LOCALS No 216**  
**AFGE, AFL-CIO**  
**Office of the President**

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March 30, 2012

Chair Berrien  
Equal Employment Opportunity  
Commission  
131 M Street NE  
Washington, D.C. 20507

Re: Vote of No Confidence

Dear Chair Berrien:

I write to advise you that AFGE Council 216, which represents the bargaining unit employees of the EEOC, issued you a vote of no confidence on February 11, 2012. Since your arrival, the Union has asked you to address several specific issues, and you have failed to do so. Moreover, you failed to act on solutions to these problems the Union has presented to you. Your failure to take steps to address significant problems affecting EEOC employees and the public we serve has earned you this vote of no confidence.

The Union identified ten issues to you upon your arrival in 2010. Those issues are the following:

1. Failure to Reduce the backlog consistent with EEOC's Mission
2. Failure to Address Backlog/Staffing issues
3. Resolution of the Overtime Case
4. Failure to Demonstrate Model Employer
5. Failure to Overhaul Intake
6. Failure to Attract and Retain Talent
7. Failure to Make Training a Reality for All
8. Failure to Provide Administrative Judges the Necessary Tools
9. Failure to Reign in Micromanagement
10. Failure to Correct Reorganization Structures

The actions you have taken to address them are simply "window dressing," designed to create the appearance of addressing the problems without substantive change. Your failures in these areas are the basis for the 'NO CONFIDENCE' vote. I will address each of the Union's issues more specifically.

1. Reduce backlog consistent with the EEOC's mission

Upon your arrival, the Commission had a backlog of more than 85,000 cases. The Union urged you to address this problem so that aggrieved individuals do not

wait an unreasonable amount of time to have their charges resolved. Instead of creating a plan for reducing the backlog consistent with the EEOC's mission, the EEOC last year relied on modest hiring to address the backlog. However, no structured plan has been put into place, i.e., the Union's Full Service Cost Efficient Intake Plan, discussed infra. This is critical because staff is being reduced for attrition savings. If and when hiring occurs it will not be enough to create the net gains necessary to reduce/eliminate the backlog so that EEOC can operate in real time. Both the public we serve and EEOC employees are demoralized by this failure to act. Both deserve much better.

## 2. Assign sufficient staff and put quality over quantity

While the President and Congress have limited the EEOC's ability to hire new employees, the Commission has made completion of the work a near impossibility by failing to prioritize the hiring of adequate support staff and pursuing "systemic" cases we cannot support. This is demoralizing to employees. EEOC experienced many retirements by investigators who are fed up with pushing pencils while straining to do their substantive work. When any hiring is available, EEOC should backfill frontline positions and provide adequate support staff, rather than paying for Headquarters Managers to stay on as retired annuitants. In addition, a budget neutral solution to increase frontline staff is to finally implement the 2006 field restructuring promise to reduce supervisor to employee ratio to 1:10.

## 3. Pay employees for the overtime it required employees to work

On March 23, 2009, a federal arbitrator determined that the EEOC committed a willful violation of the Fair Labor Standards, when it permitted and expected its non-exempt employees to work numerous hours of overtime while not paying them for this work. Since that decision, the Commission has resisted giving these employees the compensation they deserve. EEOC immediately claimed no foul in its March 26, 2009 Press Release. EEOC acknowledged employees worked overtime, but hoped that failing to pay them as required by the law would be overlooked, because it also violated the law when some people were given some compensatory time.

The EEOC needs to pay its debt to the employees and focus on creating manageable and consistent priorities for its employees. It is certainly a matter of concern that there is no mention in the FY13 budget justification of available funds to pay claimants in the Overtime the claims process, due to conclude in FY13. EEOC needs to be as avid in protecting its employees against illegal practices as it is protecting the public.

## 4. Demonstrate its promise to be a "Model Employer"

The EEOC professes to be a "Model Employer" but falls woefully short of this promise.

### a. Dysfunctional Labor Management Forums

Management's relations with the Union have deteriorated. While management feigned interest in Labor Management Forums by signing a participation

agreement, the national forum exists in name only. Unless a report is due, or management wants to tackle a particular issue, there is no activity. Management stonewalls workgroups from performing any substantive work. Suggestions by the Union of topics to address are ignored. Employees have no confidence in the agency's commitment to these forums.

Adding insult to injury, employees who devote significant time to participating in District Labor-Management Councils, addressing issues like efficiency and cost savings, are not given credit for their work. Managers routinely refuse to include any of this work as part of the employees' performance evaluations. This occurs despite employees submitting performance input that includes these activities.

b. (UN) RESOLVE

Despite knowledge of the retaliatory practices that occur when employees use the agency's ADR program, RESOLVE, and despite being placed on notice that the program was designed with non-retaliation as a tenet, you failed to address this concern in a timely or effective manner. Your recent proclamation, issued months after the issue was raised, leaves much to be desired. Your failure to afford EEOC employees with the same protections that EEOC defends for the public we serve sent a strong message. While acknowledging the existence of your proclamation, the protections have not been formalized in the RESOLVE program handbook and so any intended protections lack teeth. Beyond the lack of teeth, the reference to an undefined process for investigations, the questions about how the process will work, and what will happen if a violation is found, continue to leave employees skeptical and continue to question – has anything changed? Not surprisingly, employees have no confidence in the RESOLVE program.

c. Requests for Reasonable Accommodations Not Welcome Here

Finally, and perhaps most appalling, is the EEOC management epidemic of failing to afford accommodations to employees with disabilities. If a reasonable accommodation is granted, it comes in drips and drabs following excessive delays of months, and even years.

The disability manager does not report directly to the Chair. This fractured process allows supervisors and managers to place disability requests under a shell. In response to accommodation requests, performance issues are paraded as the problem. Recommendations by doctors who have examined employees are routinely discarded. Managers also routinely proclaim that no accommodation is available. Proclaiming that there is a performance issue improperly trumps any need for an accommodation, even when the performance issue likely can be remedied with an accommodation. Most every employee to request or receive an accommodation is pushed out of the agency, subjected to very draconian work conditions or encouraged by management to take disability retirement. If EEOC fought as hard for its own employees as it fights for the public, and provided the needed accommodations timely, and retained and promoted disabled employees our record with disabled employees would be more than a numbers game. In any event, having only 2%, i.e., 68 employees nationwide, on our rolls seems hardly a number to brag about.

5. Overhaul the EEOC's intake process consistent with the agency's mission and staffing

As you are aware, the agency's ability to serve its mission depends upon modifying the current intake system to be consistent with its statutory obligations while taking into account the reality of its staffing and budget. In September of 2009, the agency was provided with the Union's proposed overhaul of the intake system. Upon your arrival in April of 2010 those plans were also shared with you. Despite the passage of time, you have failed to act on that proposal or moved to change the status quo. Not surprisingly, good investigators are retiring and morale continues to plummet.

Instead of using cost efficient personnel to perform the intake function, i.e., the Investigative Assistants in the position created to handle intake and provide trained staff when investigator openings occur, you authorized the continued segregation of the Intake Information Representatives (IIRs) to answer phones and funnel the intake duties to the highest graded employees. Meanwhile, the backlog mostly rises and processing times continue to grow. Your failure to provide any efficient and cost effective solution speaks volumes. Moreover, your belated effort to convince Congress the full service intake plan was ever given any serious consideration is simply not credible since there have been no ongoing discussions and there have been no changes to intake. Congress is aware that you made no mention of the full service intake plan in the Strategic Plan or any changes to intake itself.

6. Attract and retain talent to ensure the EEOC has on-going ability to serve its mission

The EEOC lacks an effective plan to attract and retain talent. Many investigators the agency hires leave within the first year instead of moving up the career ladder. Administrative Judges (AJs) leave for ALJ positions where they get the tools and support that they need to perform adjudicatory work. Attorneys and mediators also leave due to the lack of support and resources to do their jobs. Our mission requires that we retain our talent, not summarily dismiss employees as fungible objects.

7. Make training accessible to employees

Employees' requests for money to attend job-critical training are met with resistance and regularly denied without explanation. While employees are required to develop annual training plans, only a few employees are afforded this rare opportunity to receive training. Employees resent having to develop training plans, which largely remain ignored. The lack of training money undermines the strength of the workforce and employee morale.

The lack of training for managers further highlights the training problem. Most supervisors, who must approve employee requests, do not understand that training is a development tool. The result is that the limited training afforded provides few, if any, development opportunities for most employees.

8. Provide administrative judges the grade and tools necessary to do their job

Administrative Judges (AJs) at the EEOC continue to leave in droves for jobs that provide them the grade and tools necessary to adjudicate cases. The agency steadfastly refuses to provide basics, such as subpoena authority or support staff for this workgroup. Instead the agency requires that AJs manage their workload by issuing summary judgment decisions in a disproportionate amount of cases, which allows federal agencies to avoid the requirements of the EEO laws. Managers, including those in Washington conduct ex-parte conversations with attorneys in the cases, further undermining the AJs authority and limiting a claimant's ability to get a fair hearing with the necessary discovery. Heaping insult on injury, EEOC is resurrecting its fast track proposal which will further deny federal employees the right to discovery and a fair and impartial hearing.

9. Reign in micro-management and live up to EEOC's promise to reduce the supervisor to employee ratio

The supervisor to employee ratio at the EEOC remains too high, depriving the frontline of critical personnel. When resources are limited, allocation of staff to the front line is the only reasonable strategic plan. Instead, EEOC management added SES positions. And money is spent by Directors and Regional Attorneys collecting frequent flier miles. The EEOC's top-heavy management structure focuses resources with supervisors who micro-manage and second-guess seasoned employees rather than with employees who serve the public. Until resources are refocused on the front line, the public will continue to suffer and EEOC employee morale will remain low.

Keeping the failed call center model also reinforces the "widget" processing mode and is the biggest example of micro-management. The call center has high turnover, timed conversations and discipline for taking longer than six minutes to "read" to the public and make notes of the conversation. This is not in keeping with the agency's mission.

10. Restore the continuity of the agency by making states whole that were split during the poorly-designed "restructuring."

In 2006, EEOC was restructured in a manner that undermined its functioning. States like Ohio and New Mexico were split, creating a nightmare for enforcement and reporting purposes. The Union has consistently requested that this problem be rectified, but no action is taken.

In addition to these ten issues brought to your attention more than three years ago, the Union has asked you to stop the EEOC's unreasonable push for "systemic" litigation and five o'clock news headlines. The agency's systemic initiative is an unfunded mandate well outside the EEOC's capabilities. The agency employs a number of people who sustain their positions by identifying more cases as class/systemic than the agency has resources to investigate or litigate. The remaining overwhelmed investigators are pressed to do even more, without adequate support staff. The press and courts continue to ponder whether EEOC is using appropriate procedures. Until and unless the agency

obtains sufficient funding and staff to investigate and litigate these cases, the EEOC should cease demanding that its employees hyper focus on these cases. It is not in the interest of the victims of discrimination or the agency's employees to do otherwise.

Given the agency's important role in enforcing civil rights and in developing and supporting its dedicated workers, your refusal to correct these deficiencies caused the Union to issue you this vote of "NO CONFIDENCE." Despite having issued this vote, it remains imperative to meaningfully address the problems raised. Therefore, the Union remains available to fully participate as needed to expediently and effectively accomplish the needed results.

Respectfully submitted,

Gabrielle Martin

Gabrielle Martin, President

cc: Council Delegates