

**STATEMENT OF RACHEL SHONFIELD, LEGISLATIVE COORDINATOR,
NATIONAL COUNCIL OF EEOC LOCALS, NO. 216, AFGE/AFL-CIO
TO
THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON
COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES
ON
FY 2009 APPROPRIATION FOR EEOC,
INCLUDING INCREASING FUNDING AND REPLENISHING STAFFING
April 2, 2008**

Chairman Mollohan, Ranking Member Frelinghuysen, and members of the Subcommittee, my name is Rachel Shonfield and I am the Legislative Coordinator for the National Council of EEOC Locals, No. 216, AFGE/AFL-CIO. I am speaking in place of Council President Gabrielle Martin, who is out of the country. The Council is the exclusive representative of the bargaining unit employees at the Equal Employment Opportunity Commission (EEOC), including investigators, attorneys, administrative judges, mediators, paralegals, and support staff located in offices in 53 cities around the country. I am here to give you a view of the challenges, which EEOC is facing, from the perspective of EEOC's frontline-workers. I want to thank you for the opportunity to express our views to the Subcommittee on the proposed FY09 budget for the EEOC. The Council remains gravely concerned that civil rights enforcement in this country is being compromised due to five years of level budgets at EEOC, staggering case backlogs, and a failure by EEOC's administration to appropriately prioritize what funds are available for replenishing frontline staffing losses. To address these concerns, the Council urges the inclusion of bill and report language in the FY09 funding measure which: (1) increases funding to \$378,000,000, i.e., the FY08 funding level passed by the Senate last year; (2) directs the hiring of permanent frontline field staff to at least the requested staff ceiling of 2,556, in order to reduce the backlog; and (3) requires ongoing oversight of headquarters and field restructuring.

Introduction:

The EEOC was created by the Civil Rights Act of 1964. The EEOC's mission is to enforce this nation's laws, which protect against discrimination in employment based on race, color, religion, sex, national origin, age, and disability. As an EEOC Trial Attorney, I have tried cases, which are exemplary of the statutes we enforce. In one case a longtime female employee trained a male employee, who was then paid more than her to do the exact same job. In another case an employee was harassed because of her age. A different case concerned pregnant servers, who were not allowed to wait tables. A final case involved a landmark restaurant, which for years failed to hire any female servers. These injustices should not happen. Rather, employees should have an equal playing field to get a job, earn an income and support their families- without suffering discrimination, which prevents them from getting hired or results in harassment on the job or termination. To put it simply, EEOC's job is to ensure that the American dream is accessible to the nation's workers.

The Council Thanks This Subcommittee for the FY08 Report and Bill Language:

The Council first wishes to thank this Subcommittee for listening and responding to the concerns of our members last year. Most significantly, for FY08 this Subcommittee included report and bill language, which defunded the EEOC's disastrous contract call center. Also, the FY08 report

language called for the hiring of permanent frontline field staff to reduce the agency's swelling backlog. Additionally, the omnibus bill language retained oversight, which prevents EEOC from taking any action to restructure without first coming to the Subcommittee. Finally, the Council is very grateful that this Subcommittee recognized EEOC's critical situation and tried to increase funding, despite the agency unjustifiably standing by its request for a fifth year of level funding. Unfortunately, despite this Subcommittee's efforts, in the end the omnibus bill provided EEOC with only level funding.

EEOC's Primary Challenge: Not Enough Frontline EEOC Employees To Do The Work:

The incredibly important responsibility of ensuring the American dream to this nation's workers is put on the shoulders of a very small agency, which continues to get smaller. Specifically, since 2001, EEOC has lost over one quarter of its employees. This Subcommittee's report language last year noted that according to EEOC Chair Naomi Earp most of the staff losses were to the ranks of investigators, support staff, and attorneys. This means that EEOC's entire workforce nationwide is now so small that it hovers at just over 2,000 employees. And only a portion of the 2,000 are frontline employees, who directly serve the public by investigating, mediating, and litigating charges of discrimination, including resource intensive systemic cases.

This small group of dedicated workers is responsible for processing the over 82,000 charges of discrimination, in addition to 54,000 backlogged charges. So while in FY07 the EEOC received the greatest number of charges since 2002, EEOC has fewer employees than it has ever had since at least 1980. EEOC's investigators have seen their inventories of cases climb to as high as 250 cases. These unreasonably high caseloads do not allow investigators to do an effective job of interviewing witness, reviewing documents, attempting conciliation, etc.¹

The natural ramification of increasing work and decreasing staff is a skyrocketing backlog of charges of discrimination. EEOC's backlog has grown from 39,000 in FY06 to 54,000 in FY07. That is a 37% increase in one year. In its FY09 budget submission, the EEOC anticipates that at the end of FY08 the backlog will be 66,976. However, as of February 2008, the backlog is already 70,209, thus exceeding the full year projection. The forecast only gets worse. According to EEOC's FY09 budget, the backlog will continue to rise to 75,000 in 2009. For 2010, EEOC Chair Naomi Earp predicted in a PowerPoint slideshow presentation to stakeholders, that the backlog would grow to over 100,000 cases.

All of these backlog statistics represent American workers who are not receiving help. Employees who are suffering racial or sexual harassment or retaliation are still on the job waiting expectantly for action from the EEOC. However, the average amount of time it takes for EEOC to process a charge has risen from 171 days in FY05, to 193 days in FY06, and as of this February 2008 it is over 200 days. This wait of almost seven months could feel endless to a victim of discrimination, like someone with a disability who is hanging on to his job waiting for EEOC to assist him in getting an accommodation.

EEOC's Office of Inspector General (OIG) corroborates the Council's concerns about EEOC's shrinking workforce and growing backlog, stating:

¹ Additionally, on March 23, 2008, an arbitrator ruled against an EEOC attempt to change FLSA classifications, in order to avoid paying for the overtime that employees often work to keep up with their high caseloads.

The Agency is challenged in accomplishing its mission of promoting equality of opportunity in the workforce and enforcing Federal laws prohibiting employment discrimination due to a reduced workforce and an increasing backlog of pending cases. EEOC has experienced a significant loss of its workforce, mostly to attrition and buyouts that the agency offered to free up resources.

Further, the Agency is faced with an aging workforce that is increasingly retirement eligible. EEOC will have 42 percent of its employees eligible for retirement between fiscal years 2007 and 2012, which includes 46 percent of its investigators and 24 percent of its attorneys. Unfortunately, other than preparing annual succession plans, there is little evidence of succession planning implementation or recruiting and retention strategies.

In addition to staffing levels being at a record low, EEOC is also starved for basic office resources. Employees often have to scramble around to find office supplies. Even the number of copy and fax machines in field offices has been cut, with the remaining machines prone to paper jams. This problem of lack of support staff is compounded by having professional employees wasting their time wrestling with broken copiers.

Despite its Claims, EEOC Does Not Rely Upon New Efficiencies:

EEOC's Chair is fond of saying that the agency is making do with less by relying on new "efficiencies." However, there is no evidence of new efficiencies only new buzzwords. For instance, a claim that the agency is using a "national model" is a euphemism for using one field office's hard-pressed resources when the staffing in another office is too low to get the work done. This is done when federal sector hearings cases and private sector charge are transferred around the country, to offices with no geographic connection. The transferred cases are then quickly closed without effective investigation by the overwhelmed office which receives them. Transferring cases does not improve efficiency to the public, who needs substantive help. EEOC also does not consistently train its employees, either to improve skills or to take advantage of current technology, much less carry out new mission initiatives or efficiencies.

EEOC Should – But Does Not - Prioritize Replenishing Frontline Staff and Resources:

EEOC should prioritize replenishing lost staff and maintaining existing employees, in order to reduce the backlog. Instead, EEOC intentionally keeps staffing levels as low as possible, and then locks in those staffing losses. First, EEOC has perpetuated a multi-year hiring freeze. When EEOC does hire, it rarely results in a net gain of employees. Second, EEOC actually offered early-outs and buy-outs in 2006 to encourage retirement even of frontline investigators, in order to further shrink the workforce. Third, EEOC locks in these staffing losses by moving offices to smaller space or reducing existing space.

Finally, the EEOC refuses to fill over 200 budgeted slots, which are desperately needed. For FY07, EEOC received more funding than it requested.² However, even though EEOC's FY07 budget request had called for 2,381 full time equivalents (FTE), EEOC ended the year with 2,137 FTE's. The EEOC has provided no explanation for refusing to fill these two hundred slots.

² In a bizarre move, EEOC had actually asked that its FY07 budget be cut by almost \$5 million. However, Congress kept EEOC at slightly more than level funding, thus avoiding the budget cut.

For FY08, EEOC requested 2,381 FTE's, the same as the FY07 request. Congress funded EEOC at the requested level, so EEOC should maintain staffing at the requested level. At the Senate CJS Subcommittee Hearing on May 3, 2007, EEOC Chair Naomi Earp was asked by Ranking Member Shelby "whether the 2,381 full-time equivalents in the fiscal 2008 budget request is EEOC's current staffing or a ceiling on commission employees. Earp replied that 'we plan on hiring to our ceiling.'" *Daily Labor Report, May 4, 2007*. The Council urges this subcommittee to ensure that EEOC does in fact hire to its staff ceiling of 2,381 for FY08.

For FY09, the Subcommittee should increase EEOC's FTE ceiling by at least the 175 FTE's EEOC is requesting. To ensure hiring keeps up with attrition, the Council would suggest including report language requiring a net increase of at least 175 FTE's and a total of no less than the requested 2,556 FTE's. It should also be specified that these slots are intended to be used for permanent frontline field positions, similar to this Subcommittee's FY08 report language.

EEOC Requires An Adequate Budget Increase To Repair The Damage:

Five years of flat funding and questionable management decisions have left EEOC a shell of the agency it was a few years ago. Staffing is down. A controversial field restructuring downsized offices. Backlogs and months long case processing times threaten EEOC's ability to help victims of discrimination. Three years of a disastrous experiment to outsource customer service to a contract call center sucked up millions of dollars that were critically needed in-house.

Last year the Council sent out an SOS message for a budget increase and this Subcommittee responded. However, EEOC resisted. Finally, with another year of poor customer service statistics, even the EEOC admits a budget increase is necessary. So now all parties agree that an increase is in order. Unfortunately, the \$12 million increase EEOC is requesting amounts to only a 4% raise after five years of stagnant budgets. Due to the staffing and backlog crisis, the Council respectfully requests that this Subcommittee adopt the increase called for by the Senate's FY08 appropriations, i.e., a \$50 million increase resulting in a budget of \$378 million. The increase should be used to replenish staffing and resources, in order to reduce the agency's backlog. Last year, this Subcommittee saw that it was in the best interest of the public to provide a greater increase than what EEOC was requesting. The Council believes that the Subcommittee should do so again this year.

Subcommittee Should Retain Bill Language Regarding Oversight of EEOC Restructuring:

On January 1, 2006, as part of a nationwide field restructuring, EEOC downsized a dozen offices. The restructuring added bureaucratic layers, but no frontline staff. EEOC also failed to follow through on its commitment to improve to one to ten, its ratio of supervisors to staff. This would have moved redundant layers of management to frontline positions.

The final phase of EEOC's repositioning is the delayed restructuring of headquarters, which has been promised for two years. The intent of the headquarters restructuring should be to reduce redundancies and layers of management. These resources should be utilized to aid the frontline work in the field offices. The Council urges the Subcommittee to retain bill language regarding oversight of this restructuring. Additionally, Congress should assure a transparent process for public and internal stakeholders to have an opportunity to provide feedback of a draft plan.

Oversight Is Needed for EEOC’s In-House Call Center to Provide Quality Service:

After this Subcommittee issued its FY08 report language defunding the poor performing outsourced call center, EEOC’s Commissioners voted in July 2007 to terminate the contract. The agency then dragged its feet, during which time temp workers answered the phones, with scant training and little ability to provide substantive help to the public. Six months later, EEOC finally hired low-graded employees and gave them just two weeks of training, which only allows them to read from scripts, take messages, and send out questionnaires, much like the former contract operators. Since EEOC appears to be merely cloning the contract call center, it is also likely doomed for failure. In July 2007, the Council issued a more effective transition plan, available on www.council216.org, which recommends hiring Investigator Support Assistants (ISA’s) (GS-5/6/7). An ISA is a paraprofessional bridge position to investigator. With appropriate training, ISA’s would not need scripts and would also be able to provide substantive assistance, including drafting charges. In addition, these ISA’s would create a qualified pool to become investigators, as desperately needed vacancies are hopefully filled. Ongoing oversight by this Subcommittee is necessary to ensure the implementation of these and other reasonable recommendations that will lead to the success of EEOC’s In-House Call Center.

EEOC Must Comply With the Regulatory Process On Federal Sector Reform:

Finally, I would like to bring to your attention that EEOC is preparing a proposal, which makes changes to the Federal Sector process. Indications are that the changes would be controversial, because they would affect the rights to discovery and a hearing for Federal employees claiming discrimination in certain employment actions. The Council asks that this Subcommittee ensure that EEOC comply with the regulatory process, including posting a notice in the Federal Register, before proceeding with any changes to Federal Sector enforcement.

Conclusion:

In closing, I want to again thank the Chairman, Ranking Member and the Subcommittee for inviting me to testify. I hope my statement will give you insight into the difficult challenges facing EEOC. I urge the Subcommittee to include bill language in the FY09 funding measure which: (1) increases funding to \$378,000,000, i.e., the FY08 funding level passed by the Senate last year; (2) directs the hiring of permanent frontline field staff to at least the requested staff ceiling of 2,556; and (3) requires ongoing oversight of headquarters and field restructuring.

CHART: EEOC’S TROUBLING CUSTOMER SERVICE TRENDS³

| | | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY2007 |
|---|------------------------|---------|---------|---------|---------|---------|---------|--------|
| 1 | Full Time Employees | 2,924 | 2,787 | 2,617 | 2,462 | 2,349 | 2,250 | 2,137 |
| 2 | Backlog | 32,481 | 29,041 | 29,368 | 29,966 | 33,562 | 39,946 | 54,970 |
| 3 | Charge Receipts Filed | 80,840 | 84,442 | 81,293 | 79,432 | 75,428 | 75,768 | 82,792 |
| 4 | Resolutions | 90,106 | 95,222 | 87,755 | 85,259 | 77,352 | 74,308 | 72,442 |
| 5 | Avg. Charge Processing | 182 | 171 | 160 | 165 | 171 | 193 | 199 |

³ National Academy of Public Administration report, 2/2/03; EEOC Budget Requests; www.eeoc.gov.