

July 2003

# Alert!



**NTEU**

**Chapter  
25**

## **NTEU SUES OMB, CLAIMING CHANGES TO A-76 RULES ARE ILLEGAL**

*Fedmanager June 24, 2003*

The National Treasury Employees Union (NTEU) filed a lawsuit against the Office of Management and Budget (OMB) in federal district court last week, claiming that some of the changes OMB made to the rules governing federal contracting are illegal. Under the FAIR Act, agencies must compile annual inventories of work being performed that is not “inherently governmental.” The work that is not inherently governmental can be performed by private sector sources; work that is inherently governmental can only be performed by federal employees.

In its complaint, NTEU claims that the revised rules are illegal because they require federal agencies to apply “a substantially narrower definition” of inherently governmental functions than is now contained in federal law. For instance, under the FAIR Act, the lawsuit says, a function is considered inherently governmental if it requires the exercise of “discretion.” But under the revised OMB rules, functions that do not require the exercise of “substantial” discretion are no longer considered inherently governmental.

In addition, functions involving the collection, control or disbursement of federal funds, which have routinely been deemed inherently governmental under the FAIR Act, are considered inherently governmental under the revised rules only if they include the authority “to establish policies and procedures.” This, NTEU President Colleen Kelley said, would have a substantial adverse impact on large numbers of federal employees, including thousands of NTEU-represented employees at the Internal Revenue Service who are engaged in the collection, control or disbursement of appropriated or other federal funds, even though they may not be responsible for “establishing policies or procedures.”

Finally, NTEU claims that OMB’s revised rules have restricted the union’s ability to challenge improper agency designations of functions as “commercial.”

“Ensuring that inherently governmental functions are performed by federal employees only,” Kelley said, “is firmly rooted in sound government policies, such as ensuring that confidential taxpayer information is safeguarded and that the government

maintains needed expertise at all times.” The suit seeks OMB’s withdrawal of the revised rules, a court declaration that any executive branch reliance on it is improper and illegal, and an order that the earlier rules remain in effect.

## **OMB Responds to Union A-76 lawsuits**

*By Michael Hardy, Federal Computer Week, July 7, 2003*

Federal employee unions are trying to unfairly block federal jobs from competition by filing lawsuits intended to stop new competitive sourcing rules, according to an Office of Management and Budget spokesman.

The National Treasury Employees Union and the American Federation of Government Employees have filed similar federal lawsuits trying to halt implementation of OMB's Circular A-76. The circular, revised in May, guides agencies as they try to determine which of their jobs are commercial and thus could potentially be opened to competition from the private sector.

OMB spokesman Trent Duffy issued the agency's official response to the AFGFE suit late on July 3: "While it would be inappropriate to comment on the lawsuit, it is disappointing and unfair that unions are trying to shield hundreds of thousands of jobs from true competition," he wrote in the statement. "The job market in America today is the most competitive it has been in recent memory, and no sector deserves special treatment by being insulated from the competition."

Neither businesses nor government employees should be denied the right to compete for commercial jobs, Duffy wrote. The lawsuits allege that A-76 imposes more exacting standards to define a job as "inherently governmental" than does the Federal Activities Inventory Reform Act. The unions argue that executive branch policy should not supersede the statute.

## **Agencies March Ahead with New A-76**

*By Michael Hardy, Federal Computer Week, July 7, 2003*

Agencies are beginning to incorporate new competitive sourcing rules into how they do business by evaluating whether jobs their employees do could be taken over by the private sector and opening some to public/private competitions.

Late last month, a group of 36 Social Security Administration employees won SSA's first competition under the Office of Management and Budget's Circular A-76. They were competing to keep their jobs validating testing software. Other agencies are conducting studies and holding competitions, trying to impress on their employees the importance of competing, said Dennis O'Brien, director of competitive sourcing at the Energy Department.

"This is a competition," he said, speaking last week at an Excellence in Government conference in Washington, D.C. "I tell federal employees [that] there are people out there trying to take your jobs. You have to compete."

SSA held its competition under the old A-76 rules. In late May OMB published a new set of rules intended to expedite and simplify the process.

The revised A-76 has met some resistance. Earlier this month, the National Treasury Employees Union (NTEU) filed a federal lawsuit seeking to block its implementation. Some lawmakers have introduced measures seeking to exclude specific departments and agencies, such as the Forest Service, from the rules.

None of those efforts has borne fruit yet, however, and OMB is moving ahead at full speed with the rules. Officials will meet with many agencies during the next few months to discuss the challenges agencies face, said Angela Styles, administrator of OMB's Office of Federal Procurement Policy. "A-76 is inherently asymmetrical," said Michael de la Maza, an operations research analyst at the Air Force Space Command in Colorado Springs, Colo. "A contractor can compete against a civilian [agency employee] and take the civilian's job, but a civilian can't compete against the contractor and take the contractor's job."

Previous studies under the Federal Activities Inventory Reform (FAIR) Act suggest that about 850,000 federal jobs are commercial in nature, though some are exempt from competition. As agencies conduct new FAIR Act inventories using the new A-76, union members fear that number will rise.

"It would not surprise me to see the new figure go over 1 million," said Randy Erwin, assistant to the president at the National Federation of Federal Employees. "We are certain maximum privatization is the [Bush] administration's only concern, which means the only way to stop it is in Congress." NTEU's suit alleges that OMB "has illegally trumped Congress" in determining whether a federal job should be subject to such competition.

Under the FAIR Act, a job is considered inherently governmental if the employee exercises discretion in applying governmental authority, said NTEU President Colleen Kelley. A-76 requires the employee to exercise "substantial discretion." The distinction may seem subtle, but she said it could lead to the reclassification of many jobs.

Stan Soloway, president of the Professional Services Council, said that the private sector is likely the salvation of a government facing an aging workforce. "The fact is the government is not an employer of choice today. It's struggling to attract and retain the people with the skills to do the jobs they need to do," he said.

Like other A-76 proponents, Styles emphasized that the purpose of competitive sourcing is to find the best value for the government, not necessarily to outsource work. She said she does not think the new rules will change the number of jobs up for competition.

"We have a lot of jobs out there to compete," she said. "It's not about pushing them to one side of the ledger or the other."

Other A-76 advocates said the opposition was coming from expected sources.

Opponents of A-76 "are basically just trying to stop competition, period. They don't want to have to compete," said Cathy Garman, vice president of the Contract Services Association of America.

### Agency A-76 requirements

Agencies must prepare annual inventories that categorize their activities as "commercial" or "inherently governmental." They must justify in writing activities they deem inherently governmental and not open to private-sector competition.

Inherently governmental functions exist when employees exercise "substantial discretion" in making decisions that commit the government to a course of action; "significantly affect" the life, liberty or property of persons; exert ultimate control over acquisition, use or disposition of U.S. property; or determine and advance economic, political, territorial, property or the government's interests.

## **REVISION OF "DEADLY SINS" ADVANCES**

*FedWeek June 25, 2003*

The House has approved legislation (HR-1528) containing language to soften the so-called "ten deadly sins" policy in effect at the IRS--a listing of infractions for which firing is mandatory even though the agency might otherwise choose a less stringent penalty. The provision, part of the 1998 IRS reform law, mandates firing employees for offenses including willful understatement of tax liability, willful failure to file returns on time, making false statements under oath, falsifying or destroying documents in order to conceal mistakes and using tax laws to harass or retaliate against taxpayers or for personal reasons. The measure would allow the agency to "take a personnel action other than a disciplinary action" for violations of the rules. It also would make it no longer a "deadly sin" to fail to file a tax return for which a refund is due. The Bush administration supports changing the "deadly sins" provisions, saying in its budget proposal earlier this year that it favors allowing a broader range of potential penalties, thus "reducing employee anxiety resulting from unduly harsh discipline or unfounded allegations." The deadly sins provision has been an ongoing concern of the National Treasury Employees Union, which says the provisions are too broad and vague, that they create fear and confusion in the workplace and leave employees' careers vulnerable to frivolous allegations. When it was created, the deadly sins listing was seen as a potential precedent for similar mandatory disciplinary rules in other agencies, but the concept has not caught on outside the IRS, in part because of the concern about potential for abuse. The House-passed measure now moves to the Senate.



## THE FUNDS – Rates of Return



Rates of Return were updated on **July 2, 2003**.

	<b>G Fund</b>	<b>F Fund</b>	<b>C Fund</b>	<b>S Fund</b>	<b>I Fund</b>
June 2003	0.20%	(0.30%)	1.20%	2.20%	2.30%
<u>Last 12 Months*</u> (7/1/2002 - 6/30/2003)	4.19%	10.31%	0.25%	4.31%	(6.62%)

\* The G, F, C, S, and I Fund returns for the last 12 months assume unchanging balances (time-weighting) from month to month, and assume that earnings are compounded on a monthly basis.

## LAUNCH OF NEW TSP RECORD-KEEPING SYSTEM OFF TO A ROCKY START

*Fedmanager June 24, 2003*

The new Thrift Savings Plan (TSP) computer system launched last week, but it was off to a rocky start. While the system had been tested to ensure that it could handle thousands of users accessing it simultaneously, a glitch prevented a tremendous number of users from being able to access their retirement accounts. According to TSP officials, the problem was not with the record-keeping system, but with the website. Computer technicians working on the system said that the glitch occurred when participants logged onto the site and began using the system, causing the system to “loop.” The loops slowed the system down significantly, and meant that many of those trying to access the system were unable to do so. TSP computer technicians began closing the loops manually last week, so that those trying to access their TSP retirement accounts should have a much easier time doing so now.

## SPECIAL CONSIDERATIONS FOR "CATCH-UP" INVESTORS

*FedWeek June 25, 2003*

Individuals eligible to make "catch-up" contributions under a new TSP feature beginning next month for those age 50 and older this year must already be investing at either the maximum TSP contribution percentage or an amount which will result in his or her reaching the dollar limit by the end of the year. Thus, those persons have only until the end of the open season to adjust their regular contributions to the maximum, if they aren't already investing the maximum. Also, some highly paid FERS investors have been investing at a dollar amount that would bring them up to the dollar cap before the end of the calendar year, on the mistaken belief that they could continue investing beyond that and designate the money as catch-up contributing (catch-up contributions can be made only by filing a separate form, the [TSP-1-C](#), and results in a separate deduction from salary). Those investors will want to make sure they adjust their contributions so that they don't hit the dollar limit until the end of the calendar year. Otherwise, their contributions will shut off once they hit the cap and so will the matching government contributions. Use above link to locate the form, or go to the TSP web site, Forms (civilian), locate the form from the drop down box.

## **TSP BOARD, AMS SETTLE \$350 MILLION LAWSUIT**

*By FedManager July 1, 2003*

The Federal Retirement Thrift Investment Board, which oversees the Thrift Savings Plan (TSP), has settled a \$350 million lawsuit against contractor American Management Systems, Inc. The Board sued AMS in July of 2001, claiming that the contractor had defrauded the Board and breached its contract to deliver an automated TSP record-keeping system. In October 2001, AMS counter sued the Board, alleging that the Board's termination of the contract was improper. The Board's suit was dismissed on November 30, 2001 on jurisdictional grounds, and an appeal to the U.S. Court of Appeals for the D.C. Circuit was pending at the time the settlement was reached. After firing AMS, the Board quickly hired contractor Materials, Communications & Computers, Inc. to do the work. The new automated record-keeping system was launched two weeks ago.

Under the settlement agreement, AMS will pay \$15 million to the TSP, and the Board will pay AMS \$10 million. The Justice Department says the settlement represents a "global resolution" of both of the lawsuits, which will be dismissed.

The Board's Executive Director, Gary Amelio, said, "Given the additional time, cost, and potential liability that lay ahead, I am very pleased that a settlement on terms favorable to Plan participants and beneficiaries has been achieved." He added that the Board continues to maintain its view that it has the authority – independent of the Justice Department – to litigate claims on behalf of TSP participants, and that it may seek legislation that explicitly provides it with such authority.

## **Around the Office**

### **The Nuts & Bolts of Chapter 52**

*By Mick Eskew, Alert! Editor*

Generally we get praise for our services around here and that includes the Alert! news letter, but once in awhile we get someone who is willing to speak up and give us a different opinion. We also get comments in the elevator, hallways and in the parking lot. We appreciate all the comments as it provides us with a your perspective. This article is not to justify our position but to give you an insight to our perspective. I hope none of you feel we are soft on management, because we are not. We are not in bed with management or any other over used, erroneous saying regarding an unkind relationship with management. It is just that the wheels of justice turn slowly and by the nature of it we are reactionary. Believe me, it frustrates us all.

Let me give you a few facts and statistics regarding Chapter 52. The stewards of this Chapter have filed 163 grievances since October 1, 2002. We have members in Austin (3 PODs), Bryan, Corpus Christi, El Paso, Harlingen, Laredo, McAllen, Victoria, Waco and San Antonio, an area larger than many East Coast states. There are approximately 650 bargaining unit employees, of which 406 are union members. Chapter 52 operates with a limited capacity of personnel since the National Agreement only allows us 24 stewards. If management had its way we wouldn't have that many, if

any. This number does not include the full time chapter president and a part time chief steward, who also carries an exam inventory. The Chief Steward Bill Grace is in the Austin Union office on Wednesdays and Thursdays. I am part time, Monday and Tuesday in the San Antonio Union office but included in the 24, I also carry an inventory, as do the remaining stewards. We have a monthly newsletter and an inter-net web page to keep the members informed. The chapter president sends emails out in an attempt to keep everyone informed on time sensitive issues. In the past we have heard criticisms that the members never knew what was going on and now it seems like they say it is too much information. It is hard to find a happy medium.

The philosophy of this editor is as it states each month at the end of the newsletter, *Chapter 52 Alert!*, all the news that is fit to be copied! I do not try to rewrite the news each month, I don't have the time or the talent. The chapter does subscribe to a couple federal news services, I read memos and news articles that affect the government employees. Many of the stories come from the professionals who write for these news services, they have the research, the time and expertise. Others come from our National Union Office with information about their fight for your rights.

Why do I mainly choose stories about money, benefits and job security? Those are the things that affect us all and our families. Other stories are chosen which may have an impact on our members and are factual, regardless if it is written for management (i.e. FedManager). No one can be wrong all the time. It is very difficult to write about current grievances and issues due to privacy concerns but I will try to include some general information in the *Around the Office* as issues permit. In reviewing newsletters from other chapters, California to New York, we are right in line with keeping to the general issues. If you wish to review any of these others newsletters, you may access them through the National Union's web site [www.nteu.org](http://www.nteu.org), then select Hotlinks. There you may select chapters from all over the nation.

If you have an issue you wish to discuss with the Union, please contact your steward, call or come forward and we will listen. We do not solicit grievances and some employees do not come forward because they may have a higher tolerance of abuse than others. You should know you have a contractual and statutory right to come to the Union, and to file a grievance, all without fear of intimidation or retaliation. We can only help those who are willing to help themselves. We will not stand behind you, but we will stand with you, to fight for your rights if you have been harmed but don't expect immediate results all the time.

So, thanks for your comments. Keep the communications open and keep asking questions. Call, come by and chat if you have a concern or a problem.

## **Sound Advice: How to Avoid Stolen Identity**

*Provided by Dawn L. Goldberg & Lucila G. Davis*

A corporate attorney sent the following out to the employees in his company:  
Unfortunately, I, an attorney, have firsthand knowledge because my wallet was stolen last month. Within a week, the thief(s) ordered an expensive monthly cell phone package, applied for a VISA credit card, had a credit line approved to buy a Gateway computer, received a PIN number from DMV to change my driving record information online, and more.

1-The next time you order checks have only your initials (instead of first name) and last name put on

them. If someone takes your checkbook they will not know if you sign your checks with just your initials or your first name; but your bank will know how you sign your checks.

2-When you are writing checks to pay on your credit card accounts, DO NOT put the complete account number on the "For" line. Instead, just put the last four numbers. The credit card company knows the rest of the number and anyone who might be handling your check as it passes through all the check processing channels won't have access to it.

3-Put your work phone number on your checks instead of your home phone number. If you have a PO Box use that instead of your home address. If you do not have a PO Box use your work address.

4-Never have your SSN printed on your checks (DUH!) -- you can add it if it is necessary. But if you have it printed, anyone can get it.

5-Place the contents of your wallet on a photocopy machine, copy both sides of each license, credit card, etc. You will know what you had in your wallet, and all of the account numbers and phone numbers to call and cancel. Keep the photocopy in a safe place.

6-I also carry a photocopy of my passport when I travel either here or abroad. We've all heard horror stories about fraud that's committed on us in stealing a name, address, Social Security number, credit cards, etc.

7-But here's some critical information to limit the damage in case this happens to you or someone you know: We have been told we should cancel our credit cards immediately. But the key is having the toll free numbers and your card numbers handy so you know whom to call. Keep those where you can find them easily.

8-File a police report immediately in the jurisdiction where it was stolen, this proves to credit providers you were diligent, and is a first step toward an investigation (if there ever is one).

9-But here's what is perhaps most important: (I never even thought to do this). Call the three national credit-reporting organizations immediately to place a fraud alert on your name and Social Security number. I had never heard of doing that until advised by a bank that called to tell me an application for credit was made over the Internet in my name. The alert means any company that checks your credit know your information was stolen and they have to contact you by phone to authorize new credit. By the time I was advised to do this, almost two weeks after the theft, all the damage had been done. There are records of all the credit checks initiated by the thieves' purchases, none of which I knew about before placing the alert. Since then, no additional damage has been done, and the thieves threw my wallet away this weekend (someone turned it in). It seems to have stopped them in their tracks.

10-The numbers are:

Equifax: 1-800-525-6285

Experian (formerly TRW): 1-888-397-3742

Trans Union: 1-800-680-7289

Social Security Administration (fraud line): 1-800-269-0271

## How Does Your Manager Stack Up?

*By Tom Jones, President Chapter 52*

The figures below are based solely on CJE average scores from appraisals given between October 1, 2002 and March 31, 2003. Here is how your manager compares to other SB/SE managers in the Austin Territories 1 & 2 and the San Antonio Territories 1 & 2. Scores are listed from the lowest average score to the highest average score. Scores for other divisions will follow in subsequent issues.

<b>Score</b>	<b>Territory</b>	<b>Group</b>	<b>Manager</b>	<b>POD</b>
3.50	Austin 1	Group 5	Ron Turner	AUNW
3.70	San Antonio 1	Group 6	Mary Flemons	SANW
3.78	San Antonio 2	Group 6	Andrea Frankland	SANW
3.84	Austin 2	Group 3	Mike Johnstone	AUNW
3.90	San Antonio 1	Group 4	Manny Zepeda	SANW
3.95	San Antonio 2	Group 5	Ann Ackroyd	SANW
4.00	Austin 1	Group 1	Carl Neira	CC
4.11	San Antonio 2	Group 1	Lorenzo Alvaro	ELP
4.11	Austin 1	Group 2	Ken Bennett	AUNW
4.13	San Antonio 1	Group 5	Vicki Allen	HAR
4.30	Austin 1	Group 4	Bob Layton	AUNW
4.30	San Antonio 2	Group 3	Robert Rohleder	ELP
4.32	Austin 2	Group 1	David Wells	FTW
4.33	Austin 1	Group 3	Stan Phillips	AUNW
4.33	San Antonio 1	Group 3	Arthur Dailey	HOU
4.35	San Antonio 2	Group 2	Gloria Hill	MCA
4.40	Austin 2	Group 4	Melinda Murphy	AUNW
4.43	San Antonio 2	Group 4	Felix Lerma	SANW
4.46	San Antonio 1	Group 2	Rick Schampers	AUNW
4.48	Austin 1	Group 6	Nancy Ross	CC
4.53	Austin 2	Group 5	Chuck Burns	HOU

4.66	Austin 2	Group 2	James Noack	DAL
4.67	San Antonio 1	Group 1	Gary Latham	FB
4.70	Austin 2	Group 7	Richard Lee	AUNW
4.73	Austin 2	Group 6	Warren Wallace	OKC
4.75	Austin 1	Group 7	A. Valdespino	AUNW

- In the past few weeks the chapter has assisted members in gaining increase in their appraisal scores. Don't forget there are new requirements for grieving an annual performance appraisal. See your steward if you have any questions.
- Tom was able to negotiate a suspension from five days, reduced to one, without loss of any pay for the member.
- Tom recently met with management in an attempt to keep another member from being fired, based on a faulty TIGTA investigation.
- Tom is meeting again soon with management regarding their attempt to dismiss another member based on faulty allegations brought by a bias manager, attempting to retaliate against the employee.
- The union attorneys have invoked arbitration on a couple cases.
- We have been helping some employees who have chosen to take their case through the EEO process.
- Still no additional word about the San Antonio POD moving to a new building. Looks like the SANW POD will be at the present location for at least another year.
- The Internal Revenue Service and the N.T.E.U. have no agreement regarding a dress code. In other words, there is no dress code. The only guidance on this matter is in the Code of Conduct which states, Section 215.5 Appearance: Employees are expected to groom themselves in a manner fitting to the surroundings onto which their work assignments take them. If your manager approaches you, discuss it with them in a calm manner; consult with your union steward. If directed to go home and change, you must do so or risk an insubordination charge. Be sure to get several photographs of your so-called inappropriate apparel before changing. Contact your union steward if you choose to file a grievance. Your time away from the office to travel to your home, change clothing and return to the office should be administrative time.
- If you have any news regarding your POD or an event, please fax your story to 210-706-5376 or mail to NTEU Chapter 52, Stop 1700SANW.

# TOM'S HUMOR PAGE



Looking for a Good Job in the U.S.A.

Joe Smith started the day early having set his alarm clock (MADE IN JAPAN) for 6 a.m. While his coffee pot (MADE IN CHINA) was perking, he shaved with his electric razor (MADE IN HONG KONG). He put on a dress shirt (MADE IN SRI LANKA), designer jeans (MADE IN SINGAPORE) and tennis shoes (MADE IN KOREA). After cooking his breakfast in his new electric skillet (MADE IN INDIA) he sat down with his calculator (MADE IN MEXICO) to see how much he could spend today. After setting his watch (MADE IN TAIWAN) to the radio (MADE IN INDIA) he got in his car (MADE IN GERMANY) and continued his search for a good paying AMERICAN JOB. At the end of yet another discouraging fruitless day, Joe decided to relax for a while. He put on his sandals (MADE IN BRAZIL) poured himself a glass of wine (MADE IN FRANCE) and turned on his TV (MADE IN INDONESIA), and then wondered why he can't find a good paying job in AMERICA.



Chapter 52 *Alert!*, all the news that is fit to be copied!

This **Chapter 52 Alert!** and all *Alerts!* since January 2001, can be found on our

Chapter Web Page at <http://www.nteu52.org/>

You can e-mail any Chapter officer, staff member or steward from the site.

*Chapter 52 Board:*

*President, Tom Jones*

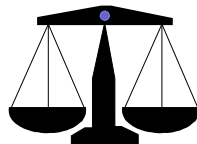
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*VP Area A & Chief Steward, Bill Grace*

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*VP of Finance & Recordation, Fran Dunagin*

*Send comments and/or articles to  
1700SANW or fax 210-706-5376,  
attention Alert! Mick Eskew*



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