

Society of Professionals, Scientists, and Engineers, Affiliated with University Professional & Technical Employees (UPTE), Communications Workers of America (CWA) Local 9119, AFL-CIO
Kurt Glaesemann, President ♦ Jayne Tonowski, President-elect

SENTINEL

News For LLNL
Professionals, Scientists, and Engineers

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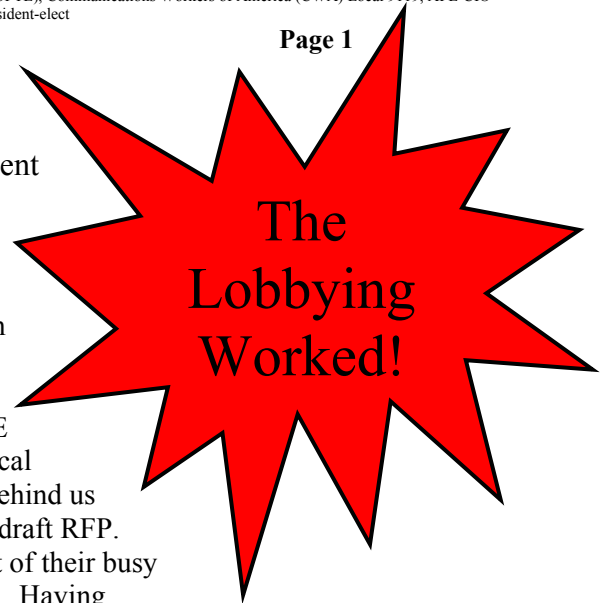
It Is RFP Time

By Kurt Glaesemann, SPSE President

After many months of anticipation, the final Request for Proposal (RFP) for the contract to run Los Alamos National Laboratory (LANL) has been released by the Department of Energy (DOE). I would like to take this time to thank all the members of SPSE and University Professional & Technical Employees (UPTE) who have stood behind us as we lobbied hard for changes to the draft RFP.

I would in particular like to thank those members who took time out of their busy schedules to go to Washington D.C. and talked directly to Congress. Having personally gone on one of these trips, I can attest to the hard work and determination of these individuals. More important than the hard work, is the outcome. I am personally proud of the effect our efforts had on the final RFP. It is time for SPSE and UPTE to stand tall and proud. Lawrence Livermore National Laboratory (LLNL) employees will certainly reap the same rewards when the LLNL RFP comes out.

<http://www.universityofcalifornia.edu/news/labcontract/doerfp.html> ■



Report on Meeting of the Council of Engineers and Scientists Organizations (CESO) in Washington, D.C., May 9-11, 2005

By Jeff Colvin

May 9-11 2005, I attended the semi-annual CESO meeting in Washington D.C. (<http://www.aspep.net/ceso.html>). The May meeting is for lobbying Congress. We were briefed on what is going on in Congress on the issues of concern to scientists and engineers, and to lobby key Senators and Representatives on our key issues.

We divided into several teams to lobby on Capitol Hill. We were lobbying on three specific CESO issues, for which we had Fact Sheets to hand out. For the team I was on, I added two other lab-specific issues: protection of employee rights and benefits in the bidding for the management contract for LANL, and support for the efforts of Representative Ed Markey (D-MA) to get legislation passed to stop DOE from reimbursing their contractors for legal appeals to whistleblower and wrongful termination lawsuits that they lose.

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Some highlights: Representative Owens (D-NY) was in a committee hearing at the Capitol when we showed up at his office, but, remarkably, he left the hearing just to come over and meet with us. He made the most thoughtful comment of the day, telling us that he thought that the complexity of society is evolving at a rate faster than average people can keep up with understanding it, so it puts a special obligation on educated, professional workers to organize into unions and help guide people through the changes.

Mike Telson, UC's Legislative Liaison, was very supportive of our lobbying efforts on the contract bidding. Over lunch, he asked that we get back in touch after the final RFP is issued.

One unplanned highlight was being caught up in the evacuation of the Capitol (caused by a small plane flying into the restricted airspace around DC). ■

The Other Side of the APA9 Story

The volume 3, May 2005 Sentinel published an article written by Kalina Wong on why the APA settlement offered in the lawsuit was considered detrimental by 5 members of the APA9 who filed the original lawsuit. One of our SPSE members who also was (and still is) one of the original APA9, asked if we would be willing to publish the other side of the story, prior to the May 31 deadline for opting out of the class. The following letter is written by Jody LeWitter, one of the attorneys involved with the settlement. SPSE agreed to present both sides of this landmark discrimination case to provide information for class members to make an informed decision.

Letter to the Editor Regarding APA Class Action Settlement

May 18, 2005

Dear Editor,

I write, as one of the lawyers for the class of 200 Series Asian Pacific Americans who have sued the Lawrence Livermore National Lab for discrimination based on national origin. I write to explain why we support the settlement of the case, and to set the record straight regarding certain issues set forth in the May 2005 issue of the *Sentinel*.

Although the settlement does not, by any mean, wipe out years of discrimination, it does bring some justice to class members by providing monetary and injunctive relief and forcing the Lab to acknowledge the contributions of its Asian Pacific American employees.

The exact monetary distribution to each class member will be determined pursuant to a formula that will primarily take into account the amount of money earned by the employee during the class period and the directorate of the employee. The monetary relief will be given to all Asian employees in the 200 Salary Series who worked for the Lab at any time between December 21, 1998 and March 22, 2005 and held Appointment Codes of IN, IP, FT or FX. The injunctive relief includes non-discrimination and non-retaliation policies, a three year monitoring protocol which will include annual workforce reviews including statistical studies involving pay, promotion and rank equity of the Asian American employees.

We support the settlement of this case because we believe it to be in the best interest of the class as a whole. The class will receive both monetary and injunctive relief. If we do not settle the case, the class members will face numerous risks in litigating the case, with the possibility that they will lose the case. The outcome of a case is never a sure thing. We analyzed the risks and believed a settlement was in the best interests of the class. We did have a lot of material at our finger tips in reaching this conclusion: we hired one of the best statisticians around to analyze the data and determine the statistics that we could present at trial; we reviewed the relevant records from the sex discrimination case, we reviewed tens of thousands of documents, had numerous meetings with the Lab and a professional mediator, and we did much work in this case. Four of the class representatives support this settlement.

I did also want to address certain issues set forth in Ms. Wong's article regarding the settlement:

1. There were nine individuals who originally sought to become class representatives, including Ms. Wong. There were differences of opinion between the representatives about whether to recommend the settlement. However, it is FALSE that we responded to these differences by removing the class representatives who didn't support the settlement. What happened is that those individuals found a new lawyer and the new lawyer ASKED for these five class members to be removed as potential class representatives. They made their OWN decision to be removed, and were NOT removed against their will.

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2. The agreement does NOT require that Asian Pacific Americans “..dismiss all discrimination charges by anyone and [to] forever give up their right to complain...” There are several safeguards here. First, any APA who is discriminated against from March 23, 2005 and into the future, CAN bring an action against the Lab. Second, any APA who has a separate case for discrimination, has the option of “opting out” and bringing his/her own suit. These individuals can make their own choice regarding their own situations by opting out, and still allow the other class members to benefit from the monetary aspects of the settlement. Even if they opt out, they will still benefit from the injunctive relief in the settlement. (Opting out will only, in our opinion, be a good idea in rare circumstances, where the class member has an individual claim of discrimination of significant monetary value and is able to hire his or her own lawyer. See 6 and 7 below).
3. There is a reason some employees will receive a greater share of the pie than others. In order to benefit from a class action, you need a “representative” from your class. Thus, the directorates that have class representatives will receive more money. This is only logical under the law.
4. We believe that women are treated the same as men in this case. When it comes to actually distributing money, each class member’s calculation will be the same. However, since some women already received recovery in the sex discrimination case for the same period of time, the amount already received [only to the extent the amount covers the same period of time in this case] will be subtracted from the award to the women class members. This is done to avoid a double recovery.
5. Objecting is NOT the best course of action for class members. If class members object to the settlement, and the judge therefore does not approve the settlement, class members will be back at square one. They will face all the risks of litigation, and all its inherent problems.
6. Opting out is NOT the best course of action for class members as it may overturn the settlement. If 10% of the class members opt out, the settlement will not go forward. This will leave class members back at square one facing all the inherent risks of litigation.
7. Opting out is NOT the best course of action for class members as, if the settlement is approved, and they have opted out, they have to – in order to receive any monetary relief – prosecute their own case. The members must either hire and pay their own lawyer, or bring and prosecute their claim by themselves. If all the member does is opt out, the member will recover nothing.

We have been in touch with class members regarding the settlement of this case. We had a meeting to which we invited all class members, and all class members should have received a notification from the court, as well as two letters about the settlement from us, in which we provided more detail and addressed issues we believed were of interest to the class members in particular. Any class members who have any questions are encouraged to contact me by email (jlewitter@sl-employmentlaw.com) or telephone (510-452-5000 x 307).

We believe that this lawsuit has been one small part of the struggle for justice at the Lab. We hope that all those at the Lab continue to struggle for equality and respect.

In Solidarity,

Jody LeWitter

That's Wrong and Why Won't They Fix It?

By Lee McVey

I thought about it for a long time. At the time, I felt embarrassed and culpable for having tolerated it for so long. Waste and conflict of interest were the primary issues. Why did I not say something early on? Part of the reason was that I did not have enough to go on. The pattern continued, and got worse. Much worse. More waste. More examples of conflict of interest. And, throw in unsafe consequences to boot.

So, why were they not noticed and fixed by the system?

I do not think it was conspiracy in the legal sense, although it might have been. It was most likely collective fear of embarrassment.

The last thing the University or DOE wanted was "bad press."

Yes, I was the victim of retaliation for having spoken outside of Lab circles. But, in the end it was worth it as approximately \$1 million more in DOE funds would have been wasted.

Exclusive, of course, of what UC must have

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spent on its outside legal team. And, most importantly, some things were not done that might have resulted in serious damage to facilities and possible injury to Lab employees.

So, the question: How do you live with yourself if your conscience tells you that it's worse than just wrong and you're afraid? Suppose it's something that is unsafe and could injure or kill someone if not fixed. Or, it is something clearly illegal. Could you live with yourself if, for example, someone were injured or worse because of your silence? Or, with the knowledge that you knew of illegal activities and sat back and did nothing to stop them because you thought they might retaliate against you?

Those are questions only you can answer. So, you decide you could not live with yourself if you did nothing. Your family would be ashamed of you if you did nothing. Your ethical sense of *right* says *stand up!* Now what?

To Be Continued ■

Lee McVey joined LLNL in 1990 after a 19-year career at Pacific Gas and Electric. He left PG&E to come to the Lab in response to the July 1988 site electrical outage and to help make needed changes in the electric utility system. He was the Electric Utility Systems Manager until 1998, when he was forced to leave his position and become a Maintenance Engineer. He filed lawsuits in both state and federal courts concerning fraudulent claims and wrongful retaliation. A settlement was negotiated by a US Magistrate Judge in 2001.

Lee was a member of the SPSE Board from 1998 until 2000, when he resigned from the University. He can be reached at W6EM@ARRL.net

This is the first of a several-part series on some of the options available to whistleblowers and will include some of the whistleblower protection statutes and why he chose to pursue his claims in both state and federal courts.

W **Have you wondered how employee friendly provisions ended up in the draft RFP for LANL? Are you concerned about having a pension when you want to retire? Do you want to remain a UC employee and continue your employment benefits?** SPSE recognized early on that what happens with the LANL contract bid process will set precedence for the LLNL contract bid process. To that end, SPSE has joined forces with University Professional & Technical Employees LANL, UPTe System wide, and our parent union Communications Workers of America (CWA) International and lobbied the DOE Source Evaluation Board (SEB), various members of Congress, and the UC for the inclusion of employee friendly provisions in the LANL RFP.

J **Are you concerned about the direction of LLNL management with respect to Employees Between Assignments (EBA's) and Flex Term hires? Are you concerned about the built in bias in the performance management process?** SPSE is the democratic voice for UC employees at LLNL. For over 30 years now SPSE has made LLNL a better place to work by advocating on behalf of employees and keeping management in check.

O **Have you wondered how it came to be that employees gained access to their own performance appraisals and ranking/salary data?** SPSE worked on behalf of its members and won access for all employees to that information.

S **If you have ever thought about joining SPSE now is the time to do it.** Sign up with SPSE and protect your working future at LLNL. Many benefits are awaiting you upon joining SPSE. Some near term benefits include grievance representation and adding your issues/concerns to the collective voice being heard by UC and LLNL management. A long term benefit of joining SPSE is securing a collective bargaining agreement with the UC and preserving your employment benefits for the future. Now is the time to join –come to an executive board meeting and meet the people who run your union. Ask questions of current SPSE members that work within your programs and divisions. Call Jayne Tonowski at ext. 4-4121 or the SPSE office at 925-449-4846 to arrange for a one on one get together – we would be happy to meet you and share the possibilities of what SPSE membership can do for you. Check out our web site at www.spse.org and find out about the many committees we have established to address the many issues of concern to our current members. While you are there, read the four fact sheets that we have prepared for our membership drive. Now is the right time to act – join SPSE! The future is in our hands. ■

UPCOMING SPSE BOARD MEETINGS

Thursday, June 2 Noon – 1:00 p.m. Building 123, Conference Room A
Thursday, June 16 Noon – 1:00 p.m. Building 125, Jade Room

Did You Know: Service Credit for Lab Employees that Have Been Deployed in the Military

A Lab employee was looking at the U.C. web site and noticed that the service credit shown did not match what he should have. He lost almost a year service time. The only period he was not at the Lab full time since being hired was during when he had been mobilized by the

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Navy. There was no question that a day spent in the military would count as a day of U.C. service time. He had been wrongfully docked almost 11 months of service credit. He contacted benefits and they said they would fix it. ■

JOIN SPSE

Membership is open to 100, 200, 300, 500 series employees:

To join SPSE, complete and return this form. The form below authorizes payment of \$25.00 per month dues to be paid by payroll deduction to SPSE. Be sure to sign on *6. If you do not wish to have automatic deduction do not fill out the * items and you will be billed quarterly.

Name (please print) _____ Employee Number _____

Job code _____ L-Code _____ Extension _____ E-mail _____

Home Address _____ Home Telephone _____

Signature _____ Date _____



**EMPLOYEE ORGANIZATION MEMBERSHIP
PAYROLL DEDUCTION AUTHORIZATION**
UPAY 669 (10/80)

**PLEASE
PRINT
OR
TYPE**

CAMPUS LLNL	LOC	EMPLOYEE I.D. *1 Must be entered	DATE *2
ACTION ON THIS FORM TO BECOME EFFECTIVE ON THE PAY PERIOD BEGINNING:			DATE ASAP
MONTHLY DEDUCTION			
LAST NAME, FIRST, MIDDLE INITIAL *3		ENROLL	AMOUNT
DEPARTMENT EMPLOYED AT U.C. *4	REGULAR DUES RATE: \$25.00		X
TITLE AT U.C. *5	MAXIMUM DUES: \$25.00 per month		
ORGANIZATION NAME (INCLUDING LOCAL NAME AND NUMBER) Society of Professionals, Scientists, and Engineers			
TOTAL			

I authorize The Regents of the University of California to withhold monthly or cease withholding from my earnings as an employee, membership dues, initiation fees and general assessments as indicated above.

I understand and agree to the arrangement whereby one total monthly deduction will be made by the University based upon the current rate of dues, initiation fees, and general assessments. I ALSO UNDERSTAND THAT CHANGES IN THE RATE OF DUES, INITIATION FEES AND GENERAL ASSESSMENTS MAY BE MADE AFTER NOTICE TO THAT EFFECT IS GIVEN TO THE UNIVERSITY BY THE ORGANIZATION TO WHICH SUCH AUTHORIZED DEDUCTIONS ARE ASSIGNED AND I HEREBY EXPRESSLY AGREE THAT PURSUANT TO SUCH NOTICE THE UNIVERSITY MAY WITHHOLD FROM MY EARNINGS AMOUNTS EITHER GREATER THAN OR LESS THAN THOSE SHOWN ABOVE WITHOUT OBLIGATION TO INFORM ME BEFORE DOING SO OR TO SEEK ADDITIONAL AUTHORIZATION FROM ME FOR SUCH WITHHOLDINGS.

The University will remit the amount deducted to the official designated by the organization.

This authorization shall remain in effect until revoked by me - allowing up to 30 days time to change the payroll records in order to make effective this assignment or revocation thereof - or until another employee organization becomes my exclusive representative.

It is understood that this authorization shall become void in the event the employee organization's eligibility for payroll deduction terminates for any reason. Upon termination of my employment with the University, this authorization will no longer be in effect.

This authorization does not include dues, initiation fees and general assessments to cover any time prior to the payroll period in which the initial deduction is made.

Payroll deductions, including those legally required and those authorized by an employee are assigned priorities. In the event there are insufficient earnings to cover all required and authorized deductions it is understood that deductions will be taken in the order assigned by the University and no adjustment will be made in a subsequent pay period for membership dues, initiation fees and general assessments.

EMPLOYEE SIGNATURE *6	DATE
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FOR UNIVERSITY USE ONLY

TRAN CODE	EMPLOYEE ID NO.	DATE	ELEMENT NO.	BAL CD	AMOUNT
1 2	4	13 18	19 22	23	24 3
X1		MO DY YR	6	G
X1			6	G
X1			6	G

RETENTION: 1 YEAR AFTER INACTIVE - ACCOUNTING OFFICE