

CHAPTER 293 WORKS

Volume III, Issue 2

January, 2009

MARY SCHAPIRO NOMINATED TO SERVE AS NEXT CHAIRMAN OF THE SEC

This month, President-Elect Barack Obama nominated Mary Schapiro to serve as the next Chairman of the SEC. Schapiro currently serves as the CEO of the Financial Industry Regulatory Authority (FINRA). She has previously served as Chairman and CEO of the NASD, Chairman of the Commodity Futures Trading Commission (CFTC) and as an SEC Commissioner.

Schapiro faces the tough challenge of leading a demoralized agency that recently has been beset by criticism in the wake of the current financial crisis. She is widely viewed as a veteran Wall Street regulator who will provide strong leadership and restore the SEC's luster. Her experience with key players, and in shepherding the process of consolidating the NASD with the regulation/

enforcement functions of the NYSE, and her knowledge of the law will be important assets as Congress and the new administration take on the task of restructuring the financial regulatory regime.

NTEU is ready to work with her. "Ms. Schapiro and I have already been in contact, and we intend to meet shortly after she joins us at the SEC,"

Chapter 293 President Greg Gilman recently remarked. "We will be discussing a number of issues that currently face SEC employees, and I am committed to working towards a constructive relationship with her."



Mary Schapiro

IN THIS ISSUE:

Mary Schapiro Nominated to Serve as SEC Chairman, p. 1
Increasing Calls for Changes to SEC, p. 2
Kelley Applauds Support of SEC Employees, p. 3
FLSA Arbitration Update, p. 4

Merit Pay Settlement Update, p. 5
Meet a Member: BRO's Greg Gilman, p. 6
Pay Parity – Who Really Made it Happen?, p. 7
President's Perspective, String of Successes in 2008, p. 8

NTEU CHAPTER 293

Working Hard to Improve Your Work Life

President - Greg Gilman
Treasurer - Dean Suehiro

Vice President - Veronica Lewis
Secretary - April Keys

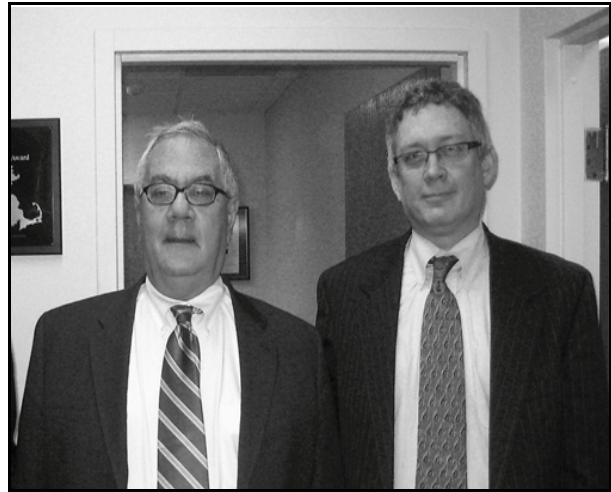
NTEU CONTINUES TO RESPOND TO INCREASING CALLS FOR CHANGES TO FINANCIAL REGULATORY SCHEME, SEC

The current economic crisis has led to increasing calls for fundamental changes to the financial regulatory structure of our nation. Such changes could have a profound impact upon the Securities and Exchange Commission and how it operates. NTEU leadership is currently working to ensure that SEC employee rights and benefits will be protected as these plans unfold in Washington. Union leaders have reached out to incoming SEC Chairman Mary Schapiro, House Financial Services Chairman Barney Frank (D-Mass.), Senate Banking Committee Chairman Chris Dodd, and members of the Obama transition team to discuss SEC issues.

President-Elect Obama recently stated during an interview on CNBC that he plans “a substantial overhaul” of financial regulation, including “better enforcement, better oversight, better disclosure, increased transparency.” He went on to say that, “We’re going to have to look at this alphabet soup of agencies and figure out how do we get them to work together more effectively. We’ve got to stop splintering functions in such a way that capital in one form is treated one way and capital in another form is treated another way, because these days in global financial markets, they’re all fungible.”

One proposal that has been gathering momentum is the possible merger of the Commodity Futures Trading Commission (CFTC), which regulates the commodity futures and options markets, into the SEC. Many securities fall under the jurisdiction of both agencies, leading to overlapping regulation, and a merger has been discussed in Washington for many years. New SEC Chairman Mary Schapiro previously served as the Chairman of CFTC, and she also presided over the merger of NASD and the New York Stock Exchange. Her nomination could signal a possible merger of the two agencies.

House Financial Services Committee Chairman Frank will have a key leadership role in crafting any



Chapter 293 President Greg Gilman (right), meeting earlier this month with House Financial Services Committee Chairman Barney Frank

new regulatory scheme and shepherding it through Congress. Chapter 293 enjoys a good working relationship with the Chairman. During a recent meeting with Chapter 293 President Greg Gilman earlier this month, Chairman Frank stated that he favors an approach that would separate the functions of investor protection from protection against systemic risk. Under such a model, an enhanced SEC, perhaps combined with the CFTC, could continue to serve in its role as the watchdog for investor protection, with improved regulatory authority and beefed up resources and personnel. Chairman Frank visited the SEC at the union’s invitation a year ago to speak to frontline employees, and we hope that he will be returning soon.

Chapter 293 will continue to keep you apprised of developments regarding the SEC’s future. Thank you to all of the SEC employees who have joined the union, without whom agency employees would not have a voice in Washington.

KELLEY APPLAUDS KEY LAWMAKERS’ SUPPORT OF FRONTLINE SEC EMPLOYEES

Early this month, NTEU National President Colleen Kelley welcomed recognition by key House members that structural issues involving both the SEC and more broadly the nation’s financial regulatory system played a major role in the proliferation of a long-running financial scheme.

President Kelley pointed in particular to the view expressed by Rep. Barney Frank (D-Mass.), Chairman of the House Financial Services Committee, who, in speaking about SEC employees, said in the face of structural problems at the agency, that “no one should infer from this terrible situation that the working personnel of the SEC were at fault. There is no suggestion that any of them were less than diligent.”

“Any investigation into the Madoff situation needs to be done impartially,” President Kelley said, “and not have a pre-determined conclusion about where to lay blame.”

Under current leadership, Kelley noted, SEC staff has been cut, resources have been limited, employees have faced serious workplace issues and deregulation of the financial industry has been pursued. In fact, said Kelley, the frontline employees at the SEC have been outgunned, underfunded and have suffered from inadequate leadership.

Rep. Frank’s comments were delivered at a committee hearing on the growing scandal involving the financial activities of Madoff, who is alleged to have conducted a Ponzi scheme running over many years, causing financial harm both to individuals and organizations.

The hearing was called by Rep. Paul Kanjorski (D-Pa.), chairman of the Capital Markets, Insurance and Government-Sponsored Enterprises Subcommittee, who noted a sharp decline in enforcement personnel



NTEU National President Colleen Kelley

assigned to review the operations of investment advisors, such as that run by Madoff.

Separately, former SEC Chairman Arthur Levitt wrote in an op-ed piece published recently in the Wall Street Journal that while the number of investment advisors has grown by some 50 percent since 2002, the agency’s enforcement resources have been flat or reduced, noting that Enforcement Division personnel were cut – by 146 to 1,192 from 1,338 – from 2005 to 2007.

In mid-December, President Kelley rejected statements by SEC Chairman Christopher Cox which sought to lay the blame for the Madoff scandal on agency frontline employees. Kelley noted the importance of ensuring that financial regulatory agencies, such as the SEC, have sufficient resources and personnel to perform their congressionally-mandated missions. “That clearly has not been the case in recent years,” President Kelley said.

FLSA ARBITRATION UPDATE - SEC WILL NOT APPEAL

In NTEU's latest national victory for SEC employees, in December a federal Arbitrator ruled that all Securities Compliance Examiners in grades 11, 12 and 13 are now eligible to receive higher pay rates for their overtime work. Under the Arbitrator's decision, these employees are also eligible for back pay and damages. The SEC has elected not to appeal this decision to the Federal Labor Relations Authority. The agency has commenced the process of reclassifying affected employees to FLSA non-exempt status, but is not yet certain when this process will be completed.

This case began on November 5, 2002, when NTEU filed a grievance with the SEC alleging that the agency had improperly exempted a number of positions, including Securities Compliance Examiners, from coverage under the Fair Labor Standards Act ("FLSA"). The SEC's classification of the positions as "FLSA-exempt" caused employees working in these positions to receive compensatory time or overtime pay at a "capped" rate. The SEC's classification decision may also have caused these employees to receive no compensation at all for time that may have been compensable under the FLSA.

On September 27-29, 2006, NTEU presented its case regarding the Securities Compliance Examiners in Grades 11-13 to Arbitrator Joseph M. Sharnoff. The SEC had previously agreed to reclassify Securities Compliance Examiners in grades 7 and 9 to FLSA coverage, effective in April 2006. In a well-reasoned decision received by NTEU in December 2008, Arbitrator Sharnoff agreed with the Union that the SEC had improperly exempted these employees under the FLSA. To review the decision, please visit the Chapter's website.

Because the SEC has decided not to appeal the Arbitrator's decision, the change to FLSA coverage will mean that, going forward, the overtime provisions of the FLSA will apply to these Securities Compliance Examiners in Grades 11-13. They will be entitled to choose between receiving time-and-a-half their regular rate of pay or one hour of compensatory time off for each overtime hour

worked. The SEC will no longer be permitted to require them to take compensatory time. In addition, under a previous agreement between NTEU and the SEC, these employees are entitled to back pay and additional damages. These calculations will likely take several months. Chapter 293 will keep you posted regarding these payments. The Union urges all Securities Compliance Examiners in Grades 11-13 to maintain accurate records of all overtime that they are required to work.

The SEC is also considering whether to reclassify employees in four other positions at the agency: Internet Surveillance Specialist (Grade 12); ARP Specialist (Grades 12, 13, 14); Investor Assistance Specialist (Grades 12,13); and Market Surveillance Specialist (Grades 12, 13, 14). No final decision has been made on these positions.

In March 2008, NTEU and the SEC were able to reach a settlement under which the agency agreed to reclassify a number of other positions under the FLSA and pay those employees back pay and damages. DOI will be making the payments of back pay and the SEC will be making the liquidated damages payments. The agency currently anticipates that these payments will be issued at the end of January to employees in the following affected positions: Administrative Program Specialist (Grade 9); ARP Specialist (Grades 9-11); Budget Analyst (Grade 9); Case Management Specialist (Grades 9-11); Contract Administrator (Grade 9); EDGAR Operations Assistant (Grade 9); General Supply Specialist (Grade 9); Internet Surveillance Specialist (Grade 9-11); Investor Assistance Specialist (Grades 9-11); Legal Instruments Examiner (Grades 8-9); Market Surveillance Specialist (Grades 7-11); Paralegal Specialist (Grades 7-13); Program Analyst (Grades 8-11); Program Information Specialist (Grades 9-11); Program Support Assistant/Specialist (Grade 9); Regulation Specialist (Grade 11); Research Assistant/ Specialist (Grades 7-9); Research Specialist (Grade 11); Securities Compliance Examiner (Grades 7-9); Securities Regulation Specialist (Grades 9-11); Space Management Specialist (Grades 9-11); and Telecommunications Specialist (Grade 9).

MERIT PAY SETTLEMENT UPDATE

The first round of settlement payments to SEC employees under the NTEU-negotiated merit pay settlement are scheduled to occur by February 18, 2009. African-American bargaining unit employees in grades 8 and above, and all bargaining unit employees aged 40 or older, who worked at the SEC during the period from 2003 to 2007, will receive these distributions under the settlement. To be eligible, an employee must have been a member of the bargaining unit in October of 2008, when the settlement agreement was signed. In a second round later this year, the same participating employees will also receive an additional salary increase.

As anyone who has sought redress for discrimination knows, discrimination cases are often tough to prove. Using statistical evidence, NTEU proved its sophistication in presenting such cases by persuading an arbitrator that two classes of SEC employees had been discriminated against. Even more important, the union demonstrated that it will not back down from protecting SEC employees from systematic discrimination in the face of substantial resistance from the agency.

“As a result of NTEU’s strong support of its members at the SEC, including in obtaining significant monetary relief, the agency has once again been reminded that it must comply with federal labor law and the Collective Bargaining Agreement, and must negotiate with NTEU regarding matters that involve bargaining unit member rights,” LARO Chapter 293 Executive Board member and Senior Trial Counsel Karen Matteson recently observed about the Merit Pay settlement.



The payments in February will be made from the \$2.7 million in damages provided for under the settlement agreement with NTEU. Eligible employees will receive points for each year in which they did not receive a 3-step increase from 2003 to 2007, based upon their grade. An employee must have been employed at the agency on January 1 to receive points for that year. An employee aged 40 or over must have reached the age of 40 by April 30 to receive points for that year. The total points assigned to all employees will be divided into the \$2.7 million to determine each employee’s share.

The subsequent salary adjustments will be made when Congress passes a Fiscal Year 2009 budget for the SEC. If such a budget is not passed, the salary adjustments will be made in September, at the end of Fiscal Year 2009. Salary adjustments will be determined based upon a similar formula as for the February distributions. If an employee has reached the maximum salary for his or her grade, the adjustment will be paid to the employee as a one-time lump sum payment.

“I’m pleased with the Merit Pay settlement,” noted Headquarters Chapter 293 Steward Pat Copeland. “The settlement isn’t just about the money, it’s about the future treatment of employees at the SEC, especially the treatment of minorities and older employees. I have worked at the SEC for about 26 years. In the past, our own EEO office did not step up and fight for diversity and equal treatment. Thanks to NTEU, this is the first time that someone fought on behalf of minorities and older employees.”

MEET A MEMBER: CHAPTER 293 PRESIDENT GREG GILMAN BY JOHN BRITT

Chapter 293 President Greg Gilman, who lives in Exeter, New Hampshire, is the quintessential New Englander: his family has held season tickets for the New England Patriots since 1962 (“through the lean years,” as Greg points out); one of his ancestors was actually convicted of witchcraft lo’ so many years ago in Andover, Massachusetts; and he is the only person I’ve ever known who actually uses the adjective “wicked” in a positive way (as in “the Pats are a wicked good football team!”). He recently finished writing a book, *GilmAncestry*, about the Gilman family (they originally settled in Exeter in the 1600s), which will be published this winter.

After working at a large Boston law firm and for the Massachusetts Office of the Attorney General, Greg now serves as a Senior Enforcement Counsel in the Boston Regional Office. He joined the union early on, and served as a BRO steward, as the BRO representative on the Chapter’s Executive Board, and on the negotiating team for the Collective Bargaining Agreement before being elected Chapter President in 2006.

As President, Greg has immersed himself in all aspects of chapter negotiations, national and local grievances, meetings with Congress and SEC management, and chapter communications. In

addition, he has found time to travel to all but one of the Commission’s regional offices (Denver, your turn is coming very soon), while continuing to commute regularly and often between Boston and Washington—gets me tired just writing about it!

“I firmly believe in the vitally important role that the union serves at the SEC,” Greg said during a recent interview. “I am extremely proud of the fact that Chapter 293 is directly responsible for greatly improving the lives of all of the employees at the agency. I see the union as making it possible for all of us to enjoy more flexible schedules and spend more time with our families, while receiving the competitive pay and benefits that NTEU has been able to negotiate.” He went on to add, “I hope that more and more employees will see the wisdom of strengthening the union’s ability to get things done for them by joining – we have grown tremendously over the past couple of years, and I would like to see that trend continue.”

Greg, his wife Julie, his twin daughters Meredith and Guinevere, and their three cats live in Exeter, where Greg serves as a Steward of the Congregational Church and as the Chairman of the Exeter Historical Society. Thank goodness he also has the time and energy to serve as our Chapter President.

NTEU CHAPTER 293

STATION PLACE CHAPTER OFFICE, ROOM 2541

MAIL STOP 1590

100 F STREET, NE

WASHINGTON, D.C. 20549-1590

202-551-2204 (VOICE)

202-772-9313 (FAX) / 202-772-9312 (TTY)

WWW.SECUNION.ORG

Working Hard to Improve Your Work Life

PAY PARITY — WHO REALLY MADE IT HAPPEN?

Over the past seven years, some SEC managers and employees have suffered from a fundamental misconception regarding how it was that Congress passed Pay Parity, leading to substantially higher compensation levels for SEC employees. According to their version of events, although NTEU provided some small assistance in the process, the “heavy lifting” was done by SEC management. This is revisionist history. It is important to understand what really happened so that you will appreciate the union’s vital role at the SEC.

Beginning in the late 1980s, SEC management tried, unsuccessfully, to get Congress to pass some sort of legislation that would afford the Commission the ability to raise our pay to something approaching that of the other financial regulators, such as the FDIC. Veteran employees can remember SEC managers appearing before congressional committees and testifying that the SEC budget should be increased.

Here is an excerpt from a national newspaper article published in 1988:

“S.E.C. Seeks Budget Shift

Citing a mounting budgetary crisis at the Securities and Exchange Commission, the commission's chairman today suggested that the agency be removed from the Federal budget. The chairman, David S. Ruder, suggested that Congress grant the S.E.C. authority to set up a trust fund for its budget. The trust would be financed by the fees that are generated by Federal securities laws.

The S.E.C. received \$249 million in fees in the 1988 fiscal year, far more than the \$135 million budget that the Federal agency received from Congress. These fees are now turned over to the Treasury Department.

Mr. Ruder made the remarks before a sympathetic House Energy and Commerce investigations subcommittee headed by Representative John D. Dingell, the Michigan Democrat who is chairman of the full Committee. Mr. Dingell noted that the S.E.C. budget for 1988 was less than the appropriated budget for the musical bands of the military

service.”

Since the Commission is prohibited by law from lobbying Senators and Congressmen, this sort of testimony was one of the few routes available to Commission management to bring about needed change. Nevertheless, Congress took little note of SEC testimony, and did nothing for another 13 years — while SEC management continued its fruitless quest for significantly greater funding.

A confluence of events led to Pay Parity becoming a reality in 2001. First, there was the Enron scandal. In a post-Enron world, a number of members Congress wanted to demonstrate their support for the federal regulator of the securities markets — the SEC. Second, there was the unionization of the SEC. In mid-2000, the bargaining unit employees at the SEC voted overwhelmingly to bring in the National Treasury Employees Union.

NTEU wholeheartedly endorsed Pay Parity, and acted quickly and aggressively to make it happen. NTEU has a significant lobbying presence on the Hill, unlike SEC management, and it convinced the senators and congressmen who were union-friendly to support the Pay Parity bill. Senators and Congressmen who were not union-friendly were induced to vote for the Pay Parity bill because it included a fee-reduction component for the registration of securities. Ultimately, NTEU persuaded both sides that one part of the bill wouldn’t be passed without the other. As a result, the Pay Parity bill became law. Without NTEU pushing for Pay Parity, we still would not have it. This is a lesson that we would do well to remember.

To read more in depth about the struggle to achieve pay parity, go to www.secunion.org.

“This afternoon the President signed pay parity legislation into law. This represents a significant milestone in our efforts to obtain pay parity for the hardworking employees of the Commission and is a cause for celebration. It is also a cause for recognizing the wonderful efforts of Commissioner Unger, the NTEU, and so many others who made this a reality.”

– SEC Chairman Harvey Pitt, January 16, 2002

President's Perspective

Greg Gilman



STRING OF SUCCESSES IN 2008

In 2008, Chapter 293 enjoyed a string of successes in its continuing efforts to represent your interests. As we embark upon a new year and a new administration, I thought that it would be appropriate to review a few of the union's important accomplishments last year:

- The union won an unprecedented settlement of its five national Merit Pay arbitrations with the agency, securing \$2.7 million in damage payments and salary increases for affected employees, as well as important agreements on diversity initiatives at the agency.
- The union caused the SEC to suspend its illegal and discriminatory Merit Pay system and to fully commit to negotiating with the union over a new, more fair and transparent pay for performance system.
- The union won a favorable decision from the Federal Labor Relations Authority affirming its arbitration victory in the 2002 within grade increase case, which, when the SEC's final appeal to the Federal Circuit is resolved later this year, will likely lead to the payment of millions of dollars in back pay and interest to hundreds of affected employees.
- The union settled a national grievance regarding the Student Loan Repayment Program, ensuring that (i) employees who leave the agency early need only pay back three years of distributions, (ii) employees are not required to make monthly payments to participate, and (iii) employees may participate even if they owe less than \$10,000.
- A new union-negotiated child care center opened at Headquarters.
- The union won a settlement of a national grievance under the Fair Labor Standards Act, ensuring that hundreds of employees will now be able to earn overtime and receive back pay and damages. Later in the year, the union also won an arbitration victory securing overtime compensation for Securities Compliance Examiners in Grades 11-13 as well.
- A new union-negotiated 4-10 work schedule went into effect, allowing employees to work four ten hour days each week.
- A new union-negotiated Expanded Telework Program went into effect, under which employees are working from home three, four and, in some cases, five days per week.
- A new union-negotiated Leave Bank Program went into effect, providing an additional source of emergency leave to employees who donate a small amount of leave to the bank each year.
- The union secured a 3.9% federal pay raise for 2009, a full percentage point higher than the raise recommended by the administration.
- The union attained majority membership in the SEC's regional offices for the first time.

As we face new challenges in 2009, I would like to thank you for your continued support of NTEU. Our important work is not possible without dues paying members like you.