

Testimony
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Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce and the
District of Columbia
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Labor-Management Forums in the Federal Government

**FMA AND ITS INVOLVEMENT WITH
THE NATIONAL COUNCIL ON FEDERAL
LABOR-MANAGEMENT RELATIONS**

**Testimony of
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Chairman Akaka, Ranking Member Johnson and Members of the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia:

My name is Patricia Niehaus and I am here today representing the over 200,000 managers, supervisors and executives in the federal government on behalf of the Federal Managers Association (FMA). Please allow me to take a moment and thank you for the opportunity to present our views before the Subcommittee. As federal managers, we are committed to carrying out the mission of our agencies in the most efficient and cost effective manner while providing necessary services to millions of Americans.

In March of 2010, I was elected to serve as the National President of the Federal Managers Association. During my career with FMA, I have held several positions, including Chapter Trustee, Chapter Vice President, Chapter President, and Zone Vice President. In my professional life, I am the Labor Relations Officer for the Travis Air Force Base (AFB) in California. I have completed 28 years of federal service in the Department of the Air Force, the last 25 of which were in the human resources field. I began my tenure as a GS-04 Secretary and worked my way up to my present position as the Labor Relations Officer in the Civilian Personnel Office. During my career, I have spent time in the General Schedule (GS) and the National Security Personnel System (NSPS), and have worked with managers under four separate pay systems – the Federal Wage Grade (FWS), the General Schedule, the now-defunct General Manager (GM) system, and the National Security Personnel System (NSPS) – to provide advice and guidance on personnel management issues. Over the last year, I have been actively involved in the New Beginnings process at the Department of Defense (DOD), working to formulate a new performance management system for the department. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of DOD.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the federal government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense and has since branched out to include nearly forty different federal departments and agencies. We are a nonprofit, professional, membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective federal government.

Since my inauguration, I have been serving as FMA's representative on the National Council on Federal Labor-Management Relations (LMR Council). Thank you for the opportunity to present our views on the Council and labor-management relations across the government.

THE CLINTON PARTNERSHIP COUNCIL

In order to fully appreciate where we are today, it is imperative we provide some background on how we arrived here.

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the

nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

Those were the words of former President Bill Clinton when he signed Executive Order 12871 on October 1, 1993, establishing the National Partnership Council (NPC). The Council was formed to advise the President on matters involving labor-management relations in the Executive Branch. It was the opinion of the Administration, based on the results of the National Performance Review, that to transform government, we must transform the adversarial relationship between the federal unions and agency management.

The Executive Order required agencies to establish individual partnership councils and increase union involvement in agency decision-making. At the time of its founding, the Council consisted of: the Office of Personnel Management (OPM) Director; the Deputy Secretary of Labor; the Deputy Director for Management at the Office of Management and Budget (OMB); the Chair of the Federal Labor Relations Authority; the Federal Mediation and Conciliation Service Director; the President of the American Federation of Government Employees; the President of the National Federation of Federal Employees; the President of the National Treasury Employees Union; the Secretary-Treasurer of the Public Employees Department; and, a deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies not otherwise represented on the Council.

As you can see, FMA and the Senior Executives Association (SEA) were not included on the original Partnership Council. For over two years, FMA and SEA fought for a seat on the Partnership Council, extolling the virtues of placing front-line managers and career executives on the Council, as they are the ones who carry out the decisions of the Council at the ground level. It was also the opinion of our respective organizations that excluding two large management contingents, representing upwards of 200,000 employees, goes against the intent of the Order to bring management and unions together to improve services delivered to the American people.

Per Executive Order 12983, signed by President Clinton on December 21, 1995, FMA and SEA were granted one seat each on the Council. Union members and management associations alike praised the decision of the President, calling it a stronger adherence to the spirit of partnership. FMA was humbled by union support for our participation, and attribute this decision on the part of the Administration in large part to their support. In fact, FMA was proud to host several NPC meetings during its annual National Convention.

Through FMA's new recognition on the National Partnership Council, our members were able to participate on local councils, such as the Federal Aviation Administration (FAA) and Naval Air Systems Command (NAVAIR) partnerships, in their FMA capacity. Several agencies retained their partnership councils even after President George W. Bush rescinded the Executive Order, and FMA has retained its role on these councils since that time.

While I was not in FMA leadership at the time of the NPC, I participated in our local effort at Travis Air Force Base. Travis' partnership council (PC) worked on a few issues, mostly pertaining to working conditions, such as the speed limit entering and exiting the installation. The PC was co-chaired by the two Wing Commanders and the union's Local President. The issues were very limited and the council only met a handful of times. The labor-management relationship at the installation at that time was adversarial and did not lend itself much to cooperation. Much like many of our chapters are currently experiencing, FMA did not have a seat on the council and was not recognized as a party to the process. As the Labor Relations Officer, I served as the Executive Director for the PC at Travis AFB. We began the partnership with joint training by a DOD Labor Relations Specialist and a Union Labor Relations Specialist. During this process, we drafted and executed a partnership charter and formed a working group that was eventually responsible for addressing the working conditions issues. The PC charter addressed the mechanics of the agreement, including frequency of meetings, decision-making processes, conflict resolution and provisions for joint press releases. One of the PC activities was the development of a voluntary Alternative Dispute Resolution process which consisted of a panel of the aggrieved employee's peers and impartial agency officials who acted as de-facto arbitrators in a dispute resolution. The recommendations of the "Peer Review Panel" were non-binding but there was some success with reaching settlements of some workplace issues.

The inhibiting factor in the PC relationship was trust, or, more accurately, the lack thereof. Due to our adversarial relationship going into the process, it took a lot of time to begin forming that trust. Unfortunately, in a military environment, the regular replacement of military commanders meant the individuals filling key roles on the PC were constantly changing. Overall, I would report that the partnership council at Travis was minimally successful.

However, it appears the NPC was successful in some areas in obtaining its goals. In 1998, then-FMA National President Michael Styles commented, "As those who have experienced partnership know, it works. FMA, federal managers and their staffs and their most important customer base, the American public, will continue to benefit from effective federal labor-management partnerships."

An Office of Personnel Management report¹ from December 2000 takes a careful look at the outcomes of the NPC. Results were mixed. Agencies reported the most progress in creating agency-level partnership councils, and saw the least success in bargaining over permissive, or (b)(1), subjects. We will take a closer look at the results of the Clinton Partnership as we examine the current Executive Order.

Shortly after taking office, President George W. Bush revoked the Executive Order and dissolved the Council. At the time of disablement, reaction to the decision was mixed, much like the views of the NPC itself.

¹ United States Office of Personnel Management, *LABOR-MANAGEMENT PARTNERSHIP: A REPORT TO THE PRESIDENT*, December 2000.

THE NATIONAL COUNCIL ON FEDERAL LABOR-MANAGEMENT RELATIONS

In December 2009, President Obama signed Executive Order 13522 creating the National Council on Federal Labor-Management Relations (LMR Council). FMA was honored to have a seat on this Council from its onset, and viewed our involvement as a testament to the important role first- and second-line supervisors play in carrying out agency initiatives and fostering better employee/management relations.

In addition to FMA, SEA was also awarded a seat on the Council along with: the Director of OPM; the Deputy Director for Management at OMB; Chair of the Federal Labor Relations Authority; a Deputy Secretary or other officer with department- or agency-wide authority from the Departments of Defense, Veterans Affairs, Homeland Security, Labor, and Treasury; and, representatives from seven federal unions including the American Federation of Government Employees, the National Federation of Federal Employees, the National Treasury Employees Union, the International Federation of Professional and Technical Engineers, the International Brotherhood of Teamsters, the National Association of Government Employees, and the Federal Education Association.

Much like the NPC of the 1990s, the purpose of the Order was to improve the delivery of services to the American people. According to the President, “A nonadversarial forum for managers, employees, and employees’ union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.” To accomplish this goal, the Executive Order laid out the following initiatives for the Council:

1. Support the creation of department- or agency-level labor-management forums and promote partnership efforts between labor and management in the Executive Branch.
2. Develop suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies.
3. Collect and disseminate information about, and provide guidance on, labor-management relations improvement efforts in the Executive Branch, including results achieved.
4. Utilize the expertise of individuals both within and outside the federal government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations.
5. Develop recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests.
6. Serve as a venue for addressing systemic failures of department- or agency-level forums.
7. Provide recommendations to the President for the implementation of several pilot programs within the Executive Branch for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

Under the Order, agencies must carry out the following initiatives:

1. Establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management to help identify problems and propose solutions to better serve the public and agency missions.
2. Allow employees and their union representatives to have predecisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1).
3. Evaluate and document, in consultation with union representatives any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

Within ninety days of the Order being issued (March 9, 2010), agencies were supposed to report to the Council a written implementation plan including:

1. How the agency will conduct a baseline assessment of the current state of labor relations within the agency.
2. The extent to which the department or agency has established labor-management forums or may participate in the pilot projects described in this order.
3. How the agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants.

The Council was tasked with evaluating each agency's plan within thirty days of receipt and created a working group to accomplish this substantial task. At the April 2010 Council meeting, it was reported that 24 agencies had submitted plans that met the requirements of the Executive Order. By the May 2010 meeting, 23 more agencies had approved plans in place. To date, 51 agencies have submitted agency implementation plans to the Council, with 46 agencies having submitted metrics reports. The remaining five agencies are working with their unions to complete this requirement.

The final piece of the Executive Order, bargaining over permissive subjects, will be covered by FMA later in our testimony.

FMA'S INVOLVEMENT ON THE COUNCIL

In order to achieve the goals set out in the Executive Order and ensure the National Council tackled all the issues, even the tough ones, Council members broke into several working groups over the last year and a half. The subjects tackled by these working groups include issues specific to the Executive Order – metrics, implementation of forums and bargaining – but also issues that go beyond the Order, such as performance management. In working on issues beyond the scope of the Council's

initial charter, stakeholders were able to collaborate with decision-makers to make a stronger product and ultimately a stronger government. At the national level, FMA has been involved in several of the initiatives undertaken by the Council. However, on a local level, FMA has not been allowed to participate, which we will discuss further in our testimony. Below is information on the two working groups in which FMA participated.

Telework Working Group

At the September 2010 Council meeting, I was asked by Director Berry to lead a working group of Council members to find ways for federal employees to be more mobile within their workplace. It was the original intent of the working group to complete a model for a “mobile working day,” which would allow federal employees to telework in the event they could not get to their office, such as during a snowstorm or terrorist attack. In the weeks that passed, we compiled a widespread group of individuals from the Council and their staff.

What started as a straightforward mission turned into a larger discussion on how agencies can implement effective telework programs in the wake of the passage of the Telework Enhancement Act (P.L. 111-292). It also became clear during our initial meetings that it would be difficult to recommend the parameters involved with a mobile work day without tackling the broader challenges surrounding telework. As such, the group began by collecting and reviewing agency policies and collective bargaining agreements as they relate to telework. We also reviewed OPM’s *Checklist and Criteria* used to assess federal agency telework policies, and updated the document where we felt necessary.

Next, the group reviewed OPM’s *Guide to Telework in the Federal Government*. Given the new requirements on federal agencies under the Telework Enhancement Act, the document was out of date and needed updating in order for agencies to meet the conditions of the legislation. Over the course of several weeks, stakeholders vested in the proper implementation of this legislation were allowed an opportunity to weigh in on *Guide*, ultimately providing both mechanical and substantive information that may have otherwise not been included. This document is readily available on the government’s www.telework.gov website. As the deadline neared for agencies to implement the new law and create telework programs, the work of our group naturally ended.

Employee Performance Management Working Group

At the March 2011 Council meeting, Director Berry discussed an effort by the Chief Human Capital Officers (CHCO) Council to examine and strengthen performance management in the federal government and better formulate mission-aligned performance objectives. It was suggested by Director Berry that the LMR Council form a similar group working in tandem with the CHCO Council on this issue. Several Council members representing labor organizations objected to the CHCO Council working without the input of labor and suggested that the two groups work together, not separately.

A new working group was subsequently formed consisting of Council members, CHCOs and staff from the two organizations, including FMA. At the first meeting of the working group, it was decided that our efforts would be focused on strengthening the General Schedule, not creating an entirely

new system. After initial meetings, it was clear that in order to carry out our mission, we would have to break into groups. We ultimately divided into three subgroups – Leadership and Culture, Employee/Supervisor Engagement, and Training. An FMA representative served on the Engagement and Training subgroups.

After meeting weekly (and sometimes more frequently) throughout the summer, the three groups came back together in late August to share their work and compile the final product – *The Employee Performance Management Accountability Framework*. The Leadership and Culture group is to be commended for their work in combining the three documents and releasing a draft at the September 2011 Council meeting. The final document will be available at the October Council meeting, after Council members have had an opportunity to review and comment on the *Framework*.

The group started from the belief that failed attempts to implement performance management in the past have been due to a lack of attention placed on the “human” side of the equation and too much attention on the system itself. In the thirty-page document, the working group compiled a list of five recommendations to improve performance management, as well as foreseeable challenges and solutions to each of the recommendations. To create high-performing organizations that are aligned, accountable, and focused on results, the working group recommended agencies:

1. Articulate a High-Performance Culture – Require all agencies to identify and articulate their desired agency culture, and focus on employee engagement, development, performance, accountability, and how that culture fits in with government-wide performance improvement.
2. Align Employee Performance Management with Organizational Performance Management.
3. Implement Accountability at All Levels.
4. Create a Culture of Engagement – Improve employee and supervisor engagement through two-way communication as an integral part of performance management and foster and require a culture of ongoing feedback.
5. Improve the Assessment, Selection, Development and Training of Supervisors.

The work of the group was focused on the premise that any successful system must have leadership buy-in and a culture that promotes accountability as it relates to agency mission, and we at FMA could not agree more. After having been a part of the failed National Security Personnel System, I can attest firsthand to the need for strong agency and facility leadership to hold all employees accountable in order for a strong performance management system to work.

However, we also have some concerns with the document, which we have expressed to the Council. Throughout the document, references are made to engaging agency labor-management forums to carry out the initiatives recommended. As management associations have not been given a seat on the forums in nearly every instance, we are effectively being left out of the conversation yet again. Given our belief that including all stakeholders leads to a stronger end product, we have suggested language be included which recommends the inclusion of management associations before the document becomes final.

Overall, while we at FMA would have preferred the group tackle the issue of whether or not the General Schedule speaks to today's workers and job seekers, we believe the document is a good first step in ensuring agency leaders take performance management seriously and begin to consider strong performance management as business as usual. Implementing an agency culture based on strong performance management must come from the top down and hold all managers and supervisors accountable for performance.

One distinct issue all parties in the room agreed on was the need to develop and train supervisors on how to be good managers, have difficult conversations with their employees, and motivate employees to perform better. The need for training came up in all three subgroups in nearly every meeting. There was consensus that few agencies give their supervisors time to manage, focusing on tangible job-related goals and ignoring the "people" aspect of management. There was also agreement that in order to become better managers, agencies must hold them accountable for carrying out their management duties. We would be remiss if we did not take this opportunity to stress the importance of managerial training to Congress.

In 2004, the President signed into law the Federal Workforce Flexibility Act (P.L. 108-411), which added §4121 of Title 5 U.S.C. requiring agencies to create basic training programs for federal managers and supervisors. Hailed at the time by many in the federal community as a major step forward in ensuring agencies afford their managers the training necessary to effectively supervise their employees, the law, however, failed to establish funding mechanisms and accountability measures to ensure training takes place. The law also failed to provide specific guidance on the type of training managers and supervisors should undertake, while omitting when and how often this training should take place. The result is that current regulations give agencies the latitude to cut training from their budgets when funding is tight, and as you are aware, funding is always tight.

In order to provide federal managers and supervisors with training on the full array of subjects necessary to effectively monitor and manage their employees, we at FMA urge Members of Congress to support the Federal Supervisor Training Act (S. 790/H.R. 1492), introduced by Senator Akaka (D-Haw.) and Congressman Jim Moran (D-Va.). This legislation, which FMA helped craft as part of the Government Managers Coalition (GMC), requires agencies to provide managers and supervisors with training within one year of promotion to a supervisory position. Training would cover three primary management topics: basic supervisory training; mentorship training; and, training focused on prohibited personnel practices including collective bargaining and anti-discrimination rights. After receiving initial managerial training, supervisors would engage in training updates once every three years.

The FY10 National Defense Authorization Act (P.L. 111-84) included training language pulled directly from S. 790, applying the provisions to DOD managers and supervisors. As Acting Deputy Under Secretary of Defense Marilee Fitzgerald discussed in her testimony before this Subcommittee in April 2010, the Department of Defense conducted an analysis of current and future workforce requirements and identified a critical need for enhanced supervisory training to develop "diverse civilian leaders who effectively manage people in a joint environment, ensure continuity of leadership, and

sustain a learning environment that drive continuous improvement across the enterprise.”² Fitzgerald detailed DOD’s belief that managers and supervisors on the front lines “can have a stronger impact on employee performance and productivity than anyone else in the management chain.” We thank Congress for extending these crucial regulations to DOD managers and supervisors and we encourage you to capitalize on this momentum and approve the Federal Supervisor Training Act to codify regulations currently in place to provide supervisors across the federal government with managerial training covering the full gamut of supervisory responsibilities.

According to the OPM report examining the success of the NPC, “an investment in training is the best strategy to help labor and management learn the skills they need to develop effective partnerships.” You will be hard pressed to find anyone who would disagree that the benefits of training far outweigh the costs involved in providing employees and managers with training. It is time Congress provided agencies with the resources they need to carry out effective training programs for employees at all levels.

AGENCY-LEVEL LABOR-MANAGEMENT FORUMS

Per the Executive Order, the head of each executive department or agency shall “establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions.”

A November 2010 survey was distributed to agencies to determine how many forums had been established at departments and agencies. The survey showed that 619 forums had been established and 612 more were being established. According to OPM, 769 forums are now up and running, covering 770,000 bargaining unit employees, and 306 forums are in the process of coming together. My installation, Travis Air Force Base, has not organized a local forum. As you can see, substantial progress was made in this area, but more needs to be done.

It is the primary concern of the Federal Managers Association that management associations have been left out and in some cases actively excluded from participating in the forums at the agency and local levels. Under Title 5 C.F.R. 251, agencies are to provide a framework for consulting and communicating with non-labor organizations representing federal employees and with other organizations on matters related to agency operations and personnel management. Several federal management associations, including FMA, have these consultation rights with various federal agencies. These rights were afforded with the belief that management associations and the employees they represent have a unique perspective that is not necessarily represented by agency leadership. Members of management associations work closely with employees and agency leadership and are directly affected by the issues addressed in labor-management forums, and our exclusion means agencies are missing out on the experience of a crucial stakeholder when making decisions in these forums.

² Written Testimony of Marilee Fitzgerald, Acting Deputy Under Secretary of Defense, Department of Defense, “Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government,” April 29, 2010.

In a letter to the Council co-chairs, the membership organizations of the Government Managers Coalition wrote the following:

The Senior Executives Association and Federal Managers Association raised the issue of management association participation in forums at the May 2010 Council meeting. Many members of the Council expressed support for management association participation, which can be found in the minutes of that meeting. Following the meeting, FMA, the Professional Managers Association (PMA), the National Council of Social Security Management Associations (NCSSMA), and the FAA Managers Association (FAAMA) each worked individually with their respective agencies to join the newly formed labor-management forums. However, not a single association has been allowed to participate in the forums, and in some cases, our associations have been actively excluded. More troubling, the associations are not part of the dialogue about issues and decisions discussed in pre-decisional involvement or the forums, despite the fact our members are directly responsible for carrying out the decisions of the forums.

I would like to take this opportunity to share with you the experience of FMA and other management associations in regard to being excluded from participating in the agency labor-management forums.

Despite numerous requests over the last several years, the FAA Managers Association has not been included on the Federal Aviation Administration's forum. FAAMA's requests for inclusion have been largely ignored, and it is our understanding that FAA's position is that FAA management speaks for management and a separate and distinct management position expressed by an independent association is redundant and potentially divisive. It is our opinion that this is naive and lacks consideration of the career FAA managers, many who have been serving the agency for decades and can offer firsthand knowledge of policies and processes. If there is one positive we can report, FAA and FAAMA are very close to signing a new consultative relationship document, but unfortunately the agreement does not address inclusion on the labor-management forum.

The situation at the Social Security Administration (SSA) paints a graver picture of the lengths groups have gone to to exclude management associations from the forums. At the onset of developing SSA's agency forum, the agency originally intended to include the National Council of Social Security Management Associations and FMA on the labor-management forum, both of which have consultation rights with the agency and have a model relationship with agency leadership. The associations were included in the initial meeting in January 2010 and subsequent conference calls involving SSA unions and leadership. However, the process of developing a forum at SSA has been very contentious and involved issues beyond management associations' inclusions. Despite support from SSA leadership, the national union at SSA was successful in its quest to exclude FMA, NCSSMA and other unions from participating on the national forum. In fact, in a meeting with SSA leadership to discuss this issue, I was told our participation was a deal breaker and a non-starter for the union, a far cry from the agreement on the national level that management associations should be active participants in the forums.

While the SSA example is extreme, the sentiment is common throughout the government. In several local agencies across the country, and places where FMA has a strong membership base, our

association is being excluded from the forums. At several DOD installations, FMA has been allowed observer status, but not a seat at the table. As first- and second-line managers bring a unique perspective to the conversation, and are often the ones who carry out the decisions of the forums, our exclusion from these conversations hurts our ability to complete those directives.

All is not lost, however. At the Internal Revenue Service (IRS), both FMA and the Professional Managers Association enjoy and actively participate in a consultative relationship with IRS leadership. While this arrangement has proved beneficial for the associations and the agency, we were not allowed to participate on the agency's forum.

The Naval Air Systems Command, a component of the Department of the Navy, provides a model example of how an agency labor-management relationship should organize. Despite the revocation of the Clinton Executive Order, NAVAIR retained its partnership council, the Labor Management Partnership Team (LMPT), which has been in place since 1995. FMA was allowed a seat on the team shortly after it came together. The following is a firsthand account of the LMPT from FMA's representative currently on the team.

The NAVAIR National LMPT has built an atmosphere of trust, integrity, and honesty within its membership. Labor and management can express concerns of a local nature and feel comfortable that their concerns will be kept in confidence. As new members join, they often feel the need to put a shield up because they have an adversarial environment at their local sites. NAVAIR's National LMPT has nurtured a trusting environment and fostered a predecisional environment since I have been on the team. As with every team, trust is never a given, it is earned and re-earned. Teams like these foster the types of relationships that should be desired across all of the federal government. The NAVAIR National LMPT is currently working on metrics for local LMPT's to report on, and this effort should help open the lines of communication and help the local sites work similar to the National LMPT.

The National LMPT has been working to foster these same traits at the local components or sites. Some of the local sites have LMPTs, but it is taking longer to build a trusting relationship and have all parties represented at the table. Some LMPTs only allow the labor representatives to be full members while employee associations can only be sideline ex-officio members or are offered no membership at all. Having different perspectives is always valuable on any team. The Council needs to push harder to get the components to recognize the importance of partnerships to foster an atmosphere that will help with the agency's mission and save the taxpayer valuable dollars.

In response to the GMC letter referenced above, Director Berry sent a letter to agency and department heads reminding them of their obligations under 5 C.F.R. 251. In the letter, the Director states, "These regulations apply to all Federal Executive branch departments and agencies and their officers and employees at all levels. Please take appropriate steps to ensure that your agency is complying with your consultation obligations." The letter can be accessed on the CHCO Council's website.³

³ <http://chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4109>

As predecisional involvement, (b)(1) bargaining pilot programs, and labor-management forums grow in importance, allowing management associations to participate can be useful to agencies and union members in ensuring communication at all levels. Additionally, having the managers' viewpoints and buy-in expressed early in the decision making process allows managers to be better equipped when they carry out and relay these new procedures to their employees. While we appreciate the action of the Director and are optimistic agencies will utilize the opinions of front-line managers within the scope of the regulations, we further encourage the Council to use its influence to ensure managers are afforded a seat on the forums where FMA or other management associations have a large presence.

METRICS

As stated in the Executive Order, by March 31, 2011, agencies were to have reported to the Council on what metrics their forums chose as a baseline; 31 agencies met this deadline. On September 30, 2011, forums were to have submitted a six-month report on their performance against their identified metrics. Finally, on December 31, 2011, agencies will report to the Council on their forums' performance against their identified metrics using the September forum reports and available updates.

FMA did not participate on the metrics working group, which took on the arduous task of evaluating agency metrics. From what has been reported to the Council, information is slowly trickling in. At the May 2011 Council meeting, the metrics working group reported several criteria for what constitutes strong metrics, and the agencies that implemented these measurements. To date, 46 of the 51 agency forums have submitted metrics.

Based on our experiences in the 1990s, we believe for a forum to be successful, it must have at least some quantifiable metrics, such as a reduction in the number of grievances filed, an increase in employee satisfaction based on the Employee Viewpoint Survey results, or a clearly-defined cost savings component. For example, during the partnerships of the 90s, one agency reported that no grievances or unfair labor practice charges were filed in a two year period. However, only ten agencies reported that labor-management partnership had directly and significantly improved customer service throughout most of the agency in the Clinton era of partnerships. Implementation of and adherence to metrics in the NPC were mediocre at best and we should learn from where we failed in the past by holding agencies and forums accountable for developing metrics and sticking to them.

PREDECISIONAL INVOLVEMENT

Per the Executive Order, the head of each executive department or agency shall, "allow employees and their union representatives to have predecisional involvement in all workplace matters to the fullest extent practicable." Predecisional involvement (PDI) has always been a contentious issue for both management and labor, but can be a benefit to both groups when discussed appropriately.

As we have stated throughout this testimony, we at FMA believe inclusion of all stakeholders in the forums provides for a more meaningful labor-management relationship. When it comes to PDI, FMA encourages agencies to allow participation by management associations when the unions are invited to participate. As those directly impacted by the decisions made at the PDI level, our members have the

unique perspective of how the decisions impact operations at the ground level and are responsible for insuring the intent of the directives are adhered to. Our association should be an active player in all forums, and if not, at the very least, we ask that decisions made at the PDI level be shared with managers and supervisors quickly in order to ensure success in implementing the directives

Based on the OPM report evaluating partnerships in the 1990s, less than half of the agencies surveyed reported substantial levels of predecisional involvement. FMA members' viewpoints and experiences with PDI also vary across agencies, with some reporting it enhanced labor-management relations, while others reported it delayed decisions and slowed progress over minor issues. To date, the Council has had little to report on this area of the Executive Order.

In terms of my personal experience, I am continuing to serve on one of the largest examples of PDI to date, the DOD New Beginnings Conference. For nearly the last year, DOD, OPM, FMA and the unions have been working together to enhance performance management at the department. I can attest that PDI works well when several factors are met, most importantly being the potential for trust among the all the parties. A clear mission and set of goals from the onset is also an important factor in successfully accomplishing the objectives of predecisional involvement.

PERMISSIVE OR (b)(1) BARGAINING

The Executive Order requires the establishment of pilot projects to evaluate the impact of bargaining over permissive subjects under 5 U.S.C. 7106(b)(1). Permissive bargaining subjects, as defined by the law, include: the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or the technology, methods, and means of performing work.

It is the opinion of the Federal Managers Association and the experience of our members that (b)(1) bargaining can lead to gridlock and hamstringing of federal agency operations. In this time of budget challenges and increased attention on agency operations, we should be working together to ensure agencies are agile and able to adapt at a moment's notice, not wasting valuable time co-managing with the unions. All stakeholders bring unique and respected viewpoints to the table and we at FMA would never advocate the exclusion of anyone or group in the labor-management relations framework. However, negotiating over numbers or types of employees needed to complete a job represents an encroachment of agency leaders' ability to make decisions and be held accountable for them in a timely manner.

Permissive bargaining would give the unions the power to hold work hostage while they engage in endless negotiations. This would effectively gut the statutory prohibition at 5 U.S.C. 7311 against striking by federal employees. Additionally, agency decisions to contract out work or downsize would have to be bargained with the union because agencies would be forced to negotiate over the number of employees assigned to particular work projects. Requiring agencies to negotiate with their unions over the grades of employees is the same as bargaining over pay. The FAA provides a cautionary tale as to the slippery slope negotiations over permissive subjects can take. In 1998, the agency bargained over pay

with its union and ultimately, many managers lost their jobs to pay for the stark increase in salaries for air traffic controllers.

Under the Clinton Executive Order, agencies were mandated to bargain over permissive subjects. What was supposed to enhance the relationship between managers and unions ultimately drove a wedge between the two groups. Only nine agencies reported agreements to negotiate over permissive subjects and only six applied this to the entire agency. Even more disconcerting, only three agencies which worked on (b)(1) issues were categorized by OPM as being substantial. Overall, “the controversy surrounding (b)(1) bargaining remains a significant barrier to partnership in many places.”

Currently, twelve agencies have agreed to implement (b)(1) bargaining pilots. The Council’s website provides information on the agencies and the permissive subjects they chose to bargain over. On September 30, 2011, pilots had a six-month report due to the Council on their performance against their identified metrics and on March 31, 2012, a full-year report is due to the Council on their forums’ report against their identified metrics. Given this short time frame, it is unlikely the Council will be able to judge the full effectiveness of the pilot projects.

Of the 12 pilots, only two are bargaining over all the permissive subjects. It is the opinion of FMA that cherry picking the issues over which to bargain will lead to inflated results. The Office of Personnel Management should be commended for leading by example and bargaining over the full range of permissive subjects, and we encourage other agencies to follow its lead. More pilots should be added to provide the Council with a wide range of perspectives and outcomes on the controversial issue of permissive bargaining.

CONCLUSION

As we saw in the 1990s and over the last year and a half, many factors must be met to create cooperative relationships between management and labor. This is no easy feat, but the dedication of the Council members to improve relations through this avenue has proven successful thus far.

Application of the Executive Order has been inconsistent across agencies, both at the agency level and the facility level, especially as it relates to the implementation of local forums. FMA remains discouraged that our participation is viewed as valuable on a national level but not at the agency or local level. We intend to continue to pursue this issue with the national Council.

The Executive Order is set to terminate in December, and we at FMA encourage the Administration to renew our charter. We have made excellent progress and will continue to do so if allowed to continue our work.

Thank you again for the opportunity to express our views here today and I am happy to answer any questions you may have.