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before the

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Committee on Homeland Security and Governmental Affairs

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Hearing: " *Labor-Management Forums in the Federal Government*"

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Good afternoon Chairman Akaka and Senator Johnson. Thank you for inviting me to testify on Labor-Management Forums in the Federal Government, a matter I consider both important and very timely.

The Forums were established pursuant to Executive Order 13522 (E.O.) issued on December 9, 2009. The E.O. opened government decision-making to non-government entities in an unprecedented fashion. Although the labor management councils created under the E.O. are reminiscent of the partnership councils during the Clinton Administration, they are Clinton partnerships on steroids. One has to wonder what management crisis called for such a radical escalation of the role of federal unions. Of particular concern are the pursuit of "pre-decisional involvement" that expands union activity into previously non-bargainable areas such as budget preparation and the allocation of resources that this entails. It is the ultimate planning activity for policy implementation. At a time of perhaps the most severe peacetime budgetary constraints we have ever experienced, when federal programs face cuts and employee pay has been frozen, it would not seem to be an opportune moment to launch a radical initiative that is certain to drive up the cost of governing. We should be streamlining government management for greater efficiency and lower cost rather than overlaying additional burdensome procedures.

Labor-Management Forums and Pre-Decisional Involvement

Pre-decisional involvement (PDI), as promoted under labor management forums weakens the chain of accountability by which agency management is held responsible for the stewardship of government. The President and his appointees set priorities for the allocation of resources based on his publicly stated agenda and Congressional intent. Allowing non-government entities to participate in agency decisions affecting all "workplace matters" is unprecedented. The scope of issues falling within the rubric of "workplace matters" is undefined and is therefore open to the broadest interpretation.

This is a dangerous precedent to establish, especially in the realm of labor relations where rolling back existing practices and concessions are extremely difficult and very rare. In the realm of government policy we go to great lengths to avoid conflicts of interest or even the appearance of conflicts of interest. The Office of Government Ethics promulgates voluminous rules to prevent federal employees, career and political, from engaging in activities and contacts that create conflicts of interest. This is important in order for the public to retain confidence in their government, confidence that rules are applied fairly and equally to everyone and that decisions are not skewed for the benefit of special interests.

Unions are a special interest. They exist to maximize the extraction of benefits from employers on behalf of their members. Federal unions were not created for the purpose of maximizing the efficiency of governance. To place them in a position where they can influence public policy for their own benefit is a clear conflict of interest and should not be tolerated. I cannot imagine the oil and gas industry sitting down with the Department of Interior at budget time to work on the Department's enforcement budget. Nor would we tolerate Wall Street bankers and brokers participating in the allocation of resources at the SEC, or the AFL-CIO sitting down with the Department of Labor to map out next year's apportionment of funds for that agencies oversight and enforcement programs. And yet we have already pierced that wall, as the American Federation of Government Employees (AFGE) is a member of AFL-CIO and will participate in the Labor-Management Forum at the Department of Labor. These conflicts will ultimately undermine the credibility of unions and it makes no sense to conflict them in this manner no matter how well intended the purpose.

The problems with PDI reach beyond conflicts in regulatory environments and extend into administrative matters. It is during the process of preparing a budget that decisions on procurements and workforce allocations are made. Decisions to automate agency processes, modernize equipment, contract out services, increase or decrease staff size are all integral to the budget process. Such matters are left to agency discretion and they often strike at the core of union members' particular interests. These resource decisions are inexorably driven by the availability of funding. How are narrow union interests in this realm to be reconciled with government responsibility to taxpayers for the rational allocation of tax revenues?

Finally, the labor-management forums, beyond the PDI initiative, have a stifling effect on open communications between career executives and managers and their political hierarchy. Policy development and implementation depends upon open channels of communication between the political and career sectors in government. It cannot be properly exercised without mutual trust between the parties. The evaluation of the performance of each side requires a stipulation of goals and objectives. When a third party is injected in this relationship the balance is lost, especially when the third party is responsible to no one and its role is to maximize the third party's special interest. That is the effect of inserting the unions between the political and career sectors in government management. Career executives are not free to propose a full range of policy options to their political bosses. They feel obligated to limit their recommendations to choices they know the unions will not object to in order not to appear out of touch to the people who evaluate their performance and make pay and bonus recommendations.

The management scenario envisioned in the labor-management forums may appeal to an administration in tune with union ideology. But we live in a democracy in which our government changes in line with our election cycles. What is a succeeding administration to do when saddled with a "labor-management" structure adamantly opposed to its agenda? The labor-management forums are not "good government" but rather pandering to special interests.

Cost of the Federal Labor-Management Experience

The new labor regime envisioned in the forum concept can only drive up costs. According to OPM reports annual labor relation expenses overwhelmingly go to general labor management issues, more so than contract negotiations or filing grievances. The forums when implemented at the agency level will only add more issues to meet over and discuss. That will take away more labor hours from performing taxpayer directed services into activities intended, by definition, to address union interests. And what of the cost resulting from lost or delayed opportunities resulting from union opposition to cost saving measures. Management of the federal sector is replete with examples of money saving initiatives delayed for months or years by the need to negotiate workplace impact with multitudinous bargaining units (1500 at the Department of Defense.)

Unions are already heavily subsidized by the taxpayers for the use of official time (performing union business on payroll time) and in dedicated office facilities, equipment and supplies provided at no cost to the unions. Most recent OPM reports indicate that official time costs the taxpayers well over two million man-hours per year at a cost of at least $130 million (probably well over $200 million per year.) The burden of paying for office space, equipment and supplies adds an additional $250 million per year.

Since its inception last year, the National Council overseeing the labor-management forums has already spent over $1 million in holding monthly meetings. As the National Council's directives are implemented in every participating agency the annual cost of administration will multiply 20, 30 or 50 fold. Add to that cost the many "training" programs already being proffered or contemplated and you are soon looking at real money – money not going into employee salaries or bonuses because they are frozen as a cost saving measure.

These are the direct costs of implementing this new labor-management initiative. And they are to be added to the existing heavy burden of subsidized federal labor-management relations. And to what end? The most compelling argument OPM has advanced was the need to "reset" labor relations after the "bad feelings" created by the previous administration. Surely there were other, cheaper ways for the administration to reach out to its labor constituency. In fact several government agencies are now run by appointees selected directly from federal unions – the Merit Systems Protection Board and the Federal Labor Relations Authority, for example – and a host of senior officials at these and many other agencies were recruited from the ranks of federal unions. That is how the appointment authority of the President is meant to be exercised. It is certainly less expensive than grafting unions wholesale into the government's policy making process.

What Next

The "reset" of labor-management relations under the forums unfortunately results in further politicization of the civil service. Unions in general are very political and highly partisan entities. This is their choice. It is also their right to be so. Federal unions are no exception. That has also been their choice and their right. Federal unions have increased their activism since they successfully overturned Hatch Act restrictions on political activities of federal employees. The changes to the Hatch Act have enabled them to organize their members to contribute money and to work in political campaigns. The Hatch Act remains in force and continues to limit other more overt leadership activity in political campaigns. However, we cannot be deaf and blind to the consequences of federal union political activism when a significant part of their funding comes from direct taxpayer subsidies. Elevating these non-governmental entities to partnership status with career managers in government undermines the perception of political neutrality that the career civil service has nurtured since its inception over a century ago. And how is the next administration to deal with the "fox in the chicken coop" that the unions have come to represent? For the sake of maintaining the neutrality of federal civil service, I would recommend that Congress defund the Labor-Management Forums.

Secondly, I would reinforce the provisions in Chapter 71 of 5 USC that stipulate non-negotiable agency rights in order to place these agency rights beyond reach of temporal political pressures. One must be mindful that in labor relations once a concession has been made it is very difficult, if not impossible, to roll it back. Based on recent experience a firewall around management rights may now be necessary. It is worth noting that it is Congress that appropriates funding for government operations and delegates spending authority to the President and then holds him and the Executive Branch accountable for those expenditures. To re-delegate this authority by way of binding labor agreements to non-governmental entities, which have no accountability to Congress, does not seem appropriate.

Finally, defund the subsidies that distort the true worth of unions in the federal sector. It is time to establish a market test of the viability and need for employee representation in the federal sector. Unions collect dues from their members and these should be used to pay their own way. Self-sufficiency will give unions the incentive to focus on member services and issues that are relevant and important to their members. Electing specific individuals may or may not fall into union rank and file priorities but that is what political action committees (PACs) are meant to reflect. Money is fungible and as long as taxpayers fund the operating expenses of unions, dues collections are freed up for political activity. Such political activity should not be performed at taxpayer expense.

Conclusion

Let me conclude by underscoring the deep flaws embodied in the administration's reset of labor relations. The pre-decisional involvement advanced by the National Council for Labor-Management Forums is rife with inherent conflicts of interest for the member unions. It also has a stifling effect on the participation of career executives in policy development. Furthermore, the already burdensome costs of federal labor-management relations will be expanded with additional millions of dollars to implement and sustain the Forums as new management structures. Finally, it is perhaps time to rethink some of the precepts of federal labor relations. The management rights provisions of Chapter 71 5 USC need to be reinforced and the significant operating subsidies afforded to the unions need to be reconsidered and curtailed. The subsidies distort the true market value of unions in the federal sector.