



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
THE HONORABLE JOHN BERRY
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U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

October 11, 2011

Chairman Akaka, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today as co-chair of the National Council on Federal Labor-Management Relations (National Council) to report on implementation of Executive Order 13522, entitled "Creating Labor-Management Forums to Improve Delivery of Government Services."

President Obama's Executive Order creates a new era of collaboration and partnership between the Federal Government and unions representing Federal employees. The Administration believes that a strong partnership between the Federal Government and labor organizations in the civil service is in the public interest and promotes efficiency. The National Council shares President Obama's belief that Federal employees are the Federal Government's greatest asset and resource for ideas that will ensure the delivery of high quality and cost effective service to the American people. We are committed to the President's mission of establishing cooperative and productive labor-management relations throughout the Federal Government.

The Executive Order sets forth certain responsibilities of the National Council that include supporting the creation of agency-level labor-management forums, developing suggested measurements and metrics for the evaluation and effectiveness of agency-level labor-management forums, and fostering successful labor-management relations across the Federal Government. In keeping with the President's commitment to ensure top leadership involvement and participation, the National Council membership includes senior leaders of executive departments and national labor unions, the Chairman of the Federal Labor Relations Authority, and the presidents of the Senior Executives Association and Federal Managers Association.

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Since its inaugural meeting on February 26, 2010, the National Council has made significant progress in implementing the President's Executive Order. In 2010, the National Council focused on establishing a strong foundation for collaborative labor-management relationships at all levels of the Federal Government. The focus was on setting up and instituting processes to establish, advance, and measure the impact of labor-management forums. This year, having established the framework for labor-management forums, the National Council has shifted its focus to mission driven outcomes, such as improving employee performance management in the Federal Government.

Improving Employee Performance Management in the Federal Government

The National Council formed a new workgroup consisting of representatives of the Chief Human Capital Officers (CHCO) Council working jointly with representatives of the National Council on exploring solutions to improve employee performance accountability to the American people. The new workgroup considered how the Federal Government can better formulate mission-aligned employee performance objectives and reward good performance. This is a great example of pre-decisional involvement where both labor and management are collaborating on solutions to improve employee performance management in the Federal Government.

The group addressed three areas critical to successful performance management accountability:

- (1) Leadership and Culture;
- (2) Employee and Supervisor Engagement; and
- (3) Training and Development Needs of Employees and Supervisors.

At the September 21st meeting of the National Council, the workgroup presented recommendations that are intended to improve the way employees and supervisors engage with each other and their work in order to foster a high-performance culture. The recommendations emphasized the importance of employee performance management all the way up to the highest levels of our agencies by promoting accountability through open government and driving agencies' top priorities. The National Council enthusiastically endorsed the workgroup recommendations and now we are taking the appropriate steps to implement the recommendations across the Government. Ultimately, our goal is for employee performance management systems to become more transparent and directly focused on the mission and goals of the agency. By working with labor representatives who represent front-line employees, we believe that we will be successful in improving mission delivery in this effort.

I would also like to highlight some of the other work the National Council has done thus far.

Supporting the Creation of Agency Level Labor-Management Forums

The National Council developed guiding principles for agencies to use in establishing and operating labor-management forums at all appropriate levels with relevant agency decision-makers as participants. Consistent with the tenets and requirements of the Executive Order, the

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guiding principles recommended that forums contribute positively to the performance of the agency; promote economic and workplace interests of employees and managers; and allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining. I am pleased to report that the implementation plans for all 51 participating agencies have been certified and approved by the Council. To date, at least 769 forums have been established, covering approximately 770,000 (approximately 65 percent) of the bargaining unit employees employed by the 51 agencies.

From our surveys of agency forums, agencies have reported the following early successes during implementation:

- Development of joint baseline assessments of labor-management relations and metrics;
- Improved labor-management communication;
- Reduction in the number of formal negotiations;
- Reduction in the time to bargain a collective bargaining agreement; and
- Progress toward or resolution of issues related to matters such as –
 - Agency performance management systems;
 - Work space issues, Reorganizations, Telework; and
 - Work-life programs.

Developing Measurements and Metrics for Evaluating Labor-Management Forums

The Executive Order tasked the National Council with developing suggested measurements and metrics for evaluation of the effectiveness of the National Council and department or agency labor-management forums. Metrics are a critical step in demonstrating how labor and management collaborating together on workplace matters contributes to a more productive and efficient Federal Government.

The National Council has identified three main objectives to be used in measuring the progress made on forums' issues, and ultimately, the effectiveness of forums. Those objectives are:

- (1) improve the agency's ability to accomplish its mission and deliver high quality products, services, and protection to the public;
- (2) improve the quality of employee worklife; and
- (3) improve the labor-management relations climate.

Labor-management forums continue to determine the most effective way to capture the work and their outcomes with emphasis on identifying and measuring mission focused metrics. To date, the Council has received substantive metrics reports from 46 of the 51 agencies which have established labor management forums, covering the vast majority of bargaining unit employees across the Federal government.

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Training Agency Officials, Labor Representatives, and Employees

To assist the National Council in fostering successful agency labor-management relations, the Federal Labor Relations Authority (FLRA) and the Federal Mediation and Conciliation Service (FMCS) have taken the lead in providing training to agencies on implementing the executive order. The FLRA and FMCS are partners with OPM and OMB in providing Government-wide leadership on Federal sector labor-management relations at a time when our Government is facing significant and unprecedented challenges. FLRA and FMCS have partnered to develop and deliver training to labor and management representatives throughout the Government on implementing the executive order. Their training efforts have been instrumental in helping agencies and labor to begin working together to meet the President's goal of promoting satisfactory labor relations and improving the productivity and effectiveness of the Federal Government. To date, the joint FLRA/FMCS training has been presented in at least 161 classroom sessions and reached approximately 6,000 management and union representatives. FMCS also offers additional training to further assist forums and has presented in at least 192 classroom sessions and reached approximately 3,900 management and union representatives.

FLRA has also partnered with the Department of Veterans Affairs (VA) to provide web-based interactive training for Federal employees as well as the public through the CHCO Council website. The training covers the purpose and requirements of E.O. 13522 as well as certain legal concepts and principles of management rights in bargaining.

I would like to give special thanks to the leadership of Carol Waller Pope, Chairman of the FLRA and a member of the National Council; Julia Akins Clark, General Counsel of the FLRA; and George Cohen, Director of the FMCS. They have been key to the success of Executive Order 13522 training efforts.

Even with this progress, we still have a great deal of work ahead of us. All members of the National Council are anxious to realize the vision of the President's Executive Order. In some organizations, the pace of change has been slow, and we recognize that there may be some frustration at the pace of change. Early efforts of the National Council focused on establishing a strong foundation for collaborative labor-management relationships at all levels of the Federal Government, and laid the groundwork to achieve success in the following efforts.

Ensuring That Employees and Labor Representatives Are Afforded "Pre-decisional Involvement" in All Workplace Matters

The National Council has supported agencies and unions in working jointly to solve workplace issues by encouraging pre-decisional involvement. The National Council issued a guidance memorandum to agencies and labor-management forums emphasizing the importance of pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining.

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The memorandum counseled management to immediately engage unions on an ongoing basis consistent with the spirit and intent of the executive order. It reiterated the executive order's direction that management discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions and then engage in bargaining over the impact and implementation of the solutions. The ultimate goal of the process is to engage employees, through their labor representatives, in an ongoing, meaningful dialogue resulting in better quality decision-making, more support for decisions, timelier implementation, and better results for the American people.

Establishing Pilot Projects to Allow for Bargaining Over "Permissive Subjects"

The National Council has made strong progress in assisting agencies and unions in establishing pilot projects allowing for bargaining over permissive subjects. The National Council developed guidance and recommendations for establishing and evaluating pilot projects in which agencies agree to waive their statutory rights to make unilateral decisions over certain issues, such as staffing and technology, and instead negotiate with labor unions over such matters.¹

To date, twelve pilot projects have been established and are operational in nine different agencies covering approximately 13,724 employees.

Our Work Continues

Given what we have accomplished thus far, the National Council is on the right path toward achieving the President's goal to improve the productivity and effectiveness of the Federal Government, and delivering the highest quality service to the American people. We will continue to be vigilant in our efforts to expand not only the creation of labor-management forums across the Federal Government but also to work with labor in a collaborative manner on all workplace matters.

Thank you for the opportunity to testify here today, and I am happy to answer any questions you may have.

¹ 5 U.S.C. 7106(b)(1)