Pre-hearing Questionnaire for
Carol Waller Pope to be a Member
Of the Federal Labor Relations Authority

1. How do you view the role of a Member of the Federal Labor Relations Authority? What would you highlight from your experience that will enhance your effectiveness in this role?

Answer:

The role of a Member, consistent with §7105 of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. 7101, *et seq.,* is to serve as a part of a quasi-judicial body known as the Authority to adjudicate disputes arising under the Statute. [(1)]A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.

My effectiveness in the role of Member will be enhanced by my experience as a career FLRA employee. My work for twenty years as an employee of the Office of the General Counsel in the Boston Regional Office and in the National Office has provided me with the experience of working directly with labor and management representatives who must interpret and pragmatically apply Authority case decisions to their disputes. I have worked to assist the parties in the joint resolution of disputes and, when necessary, to litigate novel and complex legal issues that have contributed to the FLRA's development of the law. My experience, which provides knowledge of the law, an understanding of the importance of the Authority's mission, and a valuable perspective of the parties' application of the law, will further enhance the Authority's adjudication of disputes.

Additionally, in the performance of my duties as Assistant General Counsel for Appeals in the Office of the General Counsel's National Office, I have gained experience in caseload management; policy development; regulatory review and revision; and strategic planning implementation and evaluation at both the component and agency-wide level. This experience has enabled me to develop skills in team-building and consensus decision-making that will enhance my effectiveness as a Member.

In sum, my knowledge of the law and first hand experience in working with labor and management representatives, coupled with my policy-making experience, will enable me to contribute to the effective operation of the FLRA.

- **What would be your priorities as a Member of the FLRA?**

Answer:

My highest priority would be to issue timely and well reasoned legal decisions which effectuate the purposes of the Statute and give clear understanding to the law. This priority is consistent with the FLRA's strategic goal of timely dispute resolution as well as the results of the FLRA's 1998 Customer Survey wherein respondents indicated a need for more timely decisions.

If confirmed, I would work with the other Members toward the objective of defining appropriate timeliness standards for the disposition of the pending caseload. In so doing, it is my belief that the Authority will focus on both the reduction of its inventory of older cases and pro-actively manage its incoming caseload so that current cases do not turn into "older" cases. In addition to prioritizing the timely issuance of case decisions, I would seek to consistently maintain a high level of quality of the decisions to ensure that FLRA customers understand the legal doctrines and their application.

An additional priority, if confirmed, would be to work with FLRA Presidential appointees, career managers and employee leadership to develop additional initiatives in furtherance of the strategic goal "to develop the FLRA's human resources to ensure a continually improving, highly effective and efficient organization." Training of newly hired professional staff of the Authority in the principles of legal reasoning and writing, coupled with exposure to working directly with FLRA customers in one of the other FLRA components, will provide an opportunity to develop a greater understanding of customers' needs. Training initiatives have already begun to develop FLRA senior staff for increased leadership roles and future

management opportunities. New training and development initiatives should also include enhancement of the skills of support staff in areas which provide for career development and contribute to accomplishment of the FLRA mission. Key to fulfilling the mission of the FLRA is not only knowledge of the law, but an understanding of how and why labor-management disputes arise; how the parties can succeed in joint problem-solving; and how the parties can effectively use third party adversarial processes, such as adjudication before the FLRA.

- **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of conflict of interest?**

Answer:

The appeals cases which I currently review in my role as Assistant General Counsel for Appeals are appeals of decisions of Regional Directors of the Office of the General Counsel not to issue complaints in unfair labor practice charges. In accordance with section 2423.11(g) of the FLRA's Rules and Regulations, the decision of the General Counsel to dismiss the charge is final and thus not appealable to the Authority. Less than 5% of the approximately 500 appeals cases that I review annually are remanded to the Regional Directors for further action. Of that 5%, there is the possibility that a very small number of these cases may ultimately come before the Authority for decision during my tenure as a Member, if confirmed. I would recuse myself from all such cases.

If confirmed as a Member, in the event any potential conflict of interest arises, I will apply the standards of recusal as applied by the Federal Courts and consult with the FLRA Designated Agency Ethics Officer to ensure compliance with all applicable rules, regulations and guidance from the Office of Government Ethics.

- **In your view, what are the major challenges facing the FLRA? What do you plan to do, specifically, to address these challenges?**

Answer:

The major challenges facing the FLRA are:

- Improving the timeliness and enhancing the quality of Authority decisions to ensure stability in Federal sector labor relations.

- Meeting the demand of FLRA customers for education, training, facilitation and intervention services to foster successful labor-management relationships and joint problem-solving; and,

- Providing clear and understandable decisions to address ongoing Federal Government reorganizations and realignments, particularly in the Department of Defense, which present complex representation issues for resolution and can have a destabilizing effect on labor-management relationships.

I would address these challenges by working with the other Members to continually balance the need for sound and timely legal decisions, with the need to commit resources to fostering collaborative approaches to resolve disputes.

For example, beginning in 1995, the FLRA has trained its employees in interest-based problem-solving, mediation, alternative dispute resolution, conflict resolution, facilitation techniques and effective communication. The FLRA has also developed and delivered internal training programs on substantive case law, litigation skills, and investigatory and case processing techniques to develop new employees and enhance the skills of senior employees. Training has also been conducted for FLRA employees and FLRA customers on the revised negotiability, unfair labor practice and representation regulations to provide a greater understanding of case processing procedures and the use of alternative dispute resolution opportunities set forth in the regulations.

If confirmed, I will continue the outreach and training initiatives of the current FLRA Presidentially-appointed leadership. Enhancing the skills employees need to perform their jobs effectively will improve

the timeliness and quality of Authority decisions. These challenges can also be addressed by enhancing the skills and statutory knowledge of FLRA customers.

- What is your assessment of the current state of Federal labor-management relations?

Answer:

Federal labor-management relations is in a state of continual change. Change, to the extent that it represents the ongoing evolution of the Authority's decisional body of law to elucidate and clarify the Statute, is appropriate. However, change in legal doctrines and their application to workplace disputes is often discomforting to FLRA customers who want to continue to live by the old legal rules and tests that are most familiar.

Change is also evident within those agencies and unions that are embracing collaborative relationships. Some have experienced mixed results. Unclear expectations as to the outcomes of a collaborative labor-management relationship; confusion about roles in a collaborative environment; and confusion regarding how collaborative relationships co-exist with traditional rights-based relationships typify the current state of Federal sector labor-management relations in many organizations.

As documented by the work of the National Partnership Council, some collaborative labor- management relationships have succeeded in reducing the cost of adversarial labor-management relations. However, for some, the changes have been too slow and uneven, and for others, the pace of change in their relationship has been too fast.

The FLRA has recognized and addressed these changes. Beginning in 1995, the FLRA has systematically revised its regulations to redefine how cases are processed, incorporate alternative dispute resolution processes (ADR), create more user friendly processes, ease the procedural burdens on the parties to reduce the costs of litigation and expedite resolution of claims, and most importantly, to narrow and sharpen the legal and factual issues in dispute.

I believe that the FLRA should continue to work with both labor and management to reduce the costs of adversarial labor-management relations and to ensure an effective and efficient Government consistent with Congressional intent as expressed in the Statute.

- FLRA's strategic plan lists four goals for the agency:

To consistently provide high quality services that timely resolve disputes in the Federal labor-management relations community;

To effectively use and promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict in the Federal labor-management relations community;

To maintain FLRA's internal systems and processes to support a continually improving, highly effective and efficient organization with the flexibility to meet program needs; and

To develop FLRA's human resources to ensure a continually improving, highly effective and efficient organization with the flexibility to meet program needs.

What is your assessment of how well FLRA is meeting each of these goals? Assuming that more progress is appropriate for the goals, what more do you believe FLRA should do in relation to each goal? What role do you see for yourself in helping FLRA achieve these goals?

Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

Answer:

The FLRA's Annual Performance Goals Report indicates that there has been considerable progress over the last three years in meeting the goals set forth in the strategic plan. All FLRA components established

case processing time targets and/or productivity goals in support of the quality and timeliness objectives of Goal #1. Over the last three years, each component has reduced its backlog of pending cases and/or reduced the median age of cases processed.

The Authority's Annual Performance Goals address "timeliness" in the issuance of decisions by targeting the older cases in its inventory. For FY 1999, the Authority set a Performance Goal of reducing by 20% the number of cases pending decision over one year. In FY 1997, when this goal was set, the Authority had a pending backlog of 60 cases pending decision over 365 days old. In FY 1998 the backlog was reduced to 48 cases and at the end of FY 1999, the Authority had reduced the backlog of cases pending decision over 365 days to 15 cases, which met its goal. Notwithstanding the progress in achieving the goal, if confirmed, I will continue to work toward elimination of the inventory of older case to ensure the timeliness of Authority decisions.

The Authority's FY 2000 and FY 2001 Annual Performance Goals provide for continued reduction of the older cases in its inventory. The FY 2000 performance goal seeks to "ensure that no more than 10% of cases pending are over 270 days old." Beginning in FY 1999, the target age of an "older" case incrementally decreases from one year to nine months to six months in FY 2001. These goals, coupled with the additional FY 2000 goal of issuing at least 216 merit decisions, provide a mechanism to reduce the backlog of older cases, and ensure that all other pending cases are addressed in a timely manner.

In furtherance of the objectives of Goal #2, the FLRA has provided extensive training, facilitation and intervention services to customers to promote alternative methods of dispute resolution and avoidance. In FY 1999, 269 outreach services were provided to over 14,000 participants and 1,387 case related intervention sessions were conducted. Also, the FLRA's systematic revision of the unfair labor practice case, representation and negotiability case processing regulations to incorporate alternative dispute resolution processes support this goal and provide a mechanism for the parties to seek FLRA training and facilitation services in order to resolve disputes before formal charges are filed. I believe that the FLRA has made a great deal of progress toward meeting this goal and if confirmed, I would continue to emphasize the use of innovative dispute resolution techniques to promote more efficient Government operations.

Goal #3's objective to maintain the FLRA's internal systems and processes has resulted in the development and implementation of case tracking systems to meet data collection needs and life cycle plans to maintain, service and upgrade the electronic infrastructure. Since implementation of the strategic plan, the FLRA has timely and successfully replaced desktop and laptop computers, Regional Office servers, word processing software and communication software. Most importantly, electronic research capabilities have been improved to enable FLRA employees full access to electronic legal research tools needed to achieve a high level of quality in Authority decisions. Additionally, the FLRA's Internet web site now provides customers access to FLRA decisions, policy guidance, case handling manuals and case filing checklists to enhance their knowledge of the law and FLRA processes. If confirmed, I will seek to provide FLRA customers with improved electronic access to FLRA decisions, policy guidance and case processing manuals.

Goal #4 achievements include training of FLRA employees in interest-based problem-solving, alternative dispute resolution design, litigation skills and unfair labor practice investigatory and case processing practices. In addition, performance management initiatives include the integration of the FLRA's organizational goals in individual performance plans. Individual development plans and leadership development training programs have been developed and implemented. If confirmed, I will continue the FLRA's initiative to enhance the skills of its employees in order to better assist labor and management representatives in the resolution of their disputes in an non-adversarial manner.

In order to appropriately determine what if any additional actions and initiatives should be developed to continue achievement of the strategic plan goals, a strategic plan review and assessment must be conducted. An agency-wide strategic plan review is being scheduled for FY 2000. At that time, if confirmed, I would play an active role in critically assessing the FLRA's progress and determining what additional initiatives and resources are needed to continue progress towards achievement of the goals. Of particular interest will be the question of what additional initiatives will reduce the older inventory of cases and further improve the timeliness of Authority decisions. As set forth above in response to Question #2,

additional progress in reducing the age of the Authority's inventory of cases and issuing more timely decisions is a priority.

I do not have any recommendations for additional goals at this time. I anticipate that the FY 2000 strategic plan review will include an assessment of whether the stated goals are in need of revision to guide the FLRA in effective administration of the Statute. Also, the strategic plan review will provide an opportunity to determine whether sufficient mechanisms are in place to provide for ongoing evaluation and assessment of the effectiveness of the strategic plan.

7. The FLRA recently reported that the Authority had reduced its inventory of cases awaiting merits decisions for more than one year by more than half during fiscal year (FY) 1999. Do you believe the FLRA caseload has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to address the backlog issue?

Answer:

The Authority's progress towards reducing its inventory of cases pending decision over one year old has been significant. As noted above, in FY 1997, when this goal was set, the Authority had a pending backlog of 60 cases pending decision over 365 days old. In FY 1998 the backlog was reduced to 48 cases and, at the end of FY 1999, the Authority had reduced the backlog of cases pending decision over 365 days to 15 cases. To the extent that the caseload inventory continues to include such cases that are over one year old, I would work toward eliminating them from the Authority's case inventory, if confirmed.

The Authority has already taken actions to address the backlog. As stated above in response to Question # 6, the Authority's FY 2000 Annual Performance Goal appropriately prioritizes continued reduction of cases over 270 days old pending decision to no more than 10% of inventory. If confirmed, I would continue the actions the current Members have taken to reassess internal work processes in order to identify ways to expedite decision-making and ensure accomplishment of this Performance Goal. In addition, I would continue and, where appropriate, increase the Authority's use of expedited arbitration decisions in those cases where the exceptions filed to an arbitration decision do not present arguments based on established grounds for review.

8. The FLRA also reported that it had reduced its case processing time during FY 1999. Do you believe the case processing time has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to address the issue?

Answer:

As stated above in response to Question #2 and Question #7, if confirmed, I will prioritize the goal of reducing case processing times to further reduce the inventory of older cases. Initially, I would work with the other Members and management staff to assess the current internal case processing mechanisms to determine their effectiveness in ensuring timely issuance of decisions. If confirmed, I would explore the possibility of increased screening of cases at the time they are received to determine which cases present legal issues that should be prioritized and, which of any cases can be expedited because they are procedurally defective. Additionally, I would continue the use of expedited determinations in arbitration cases that do not meet the established grounds for review. I would also review the data related to the outcomes of the FLRA's ADR efforts in the processing of negotiability cases to determine if the new regulations have been implemented in a manner that facilitates more timely disposition of these cases.

9. The FLRA addresses a variety of cases, such as unfair labor practice complaints, negotiability issues and representation cases. Do you believe there should be different case processing timeliness goals for different types of cases? If so, what do you believe those goals should be, or do you believe FLRA should undertake a systematic effort to set case processing timeliness goals for various types of cases?

Answer:

If confirmed, I would seek to review historical data for each type of case to determine case processing times. After review, I would consider the appropriateness of setting case processing time targets for different types of cases. However, in my experience, each case, regardless of type of case, is different. Some cases present complicated factual records and some do not. Some cases present complex and novel legal issues, whereas other cases present legal issues that are well settled by Authority case law. Thus, rather than setting different case processing times based on whether the case is an unfair labor practice, negotiability or representation case, I would seek to work with the other Members to establish a screening process as stated above in response to Question #8, to identify the issues presented in each case and determine the level of review that is required to reach disposition. Resources can then be directed in a manner that meets the needs of each case.

By reviewing cases in this manner, as is currently done in the review of arbitration awards, all cases could be processed in a more timely manner.

10. What is your view of Alternative Dispute Resolution? Is ADR a useful tool? Is there a danger that ADR could lead to undue pressure to reach settlements and that, as a consequence, some settlements would favor one party more than the other? If so, what steps are appropriate to guard against such an outcome while preserving the value of this technique for resolving workplace disputes?

Answer:

ADR is a useful tool. If used effectively, ADR resolves the parties' underlying dispute and also fosters improved labor-management relationships. For example, the FLRA introduced a voluntary ADR mechanism known as the settlement judge program to facilitate the resolution of cases pending before the Office of Administrative Law Judges for hearing and decision. Prior to the settlement judge program, 21% of unfair labor practice complaints were settled prior to decision at the eleventh hour at the "courthouse steps." In FY 1999, the percentage of such last-minute "courthouse steps" settlements had declined sharply to less than 2% of cases settled. Through the settlement judge program, cases are settling earlier in the process. As a result, the FLRA and affected agencies and unions are saving the costs of protracted litigation and minimizing the negative impact adversarial litigation has on the labor-management relationship. The integration of ADR processes in the revised unfair labor practice, negotiability and representation case regulations will further enhance the usefulness of this tool.

Participation in all of the FLRA's ADR processes is completely voluntary. There should be no undue pressure applied to the parties to resolve their disputes. A party may have a perception of undue external pressure in those instances where they are not certain that the terms of the settlement agreement resolves the parties' real dispute; or a party's decision to settle a case is based on a lack of confidence in the validity of its case; or the representative is unprepared to proceed to litigation in a timely manner. FLRA employees who assist the parties in resolving their disputes advise parties that they should not agree to a settlement if it does not satisfy their interests. Additional steps that can be employed to guard against undue pressure include: the use of surveys of participants in the ADR process, a review and assessment of settlement rates achieved through ADR processes, and increased education of the parties.

The use of an ADR process to reach resolution of a dispute increases the likelihood that the settlement resolves the parties' underlying dispute and lessens the likelihood that the settlement agreement unduly favors one party. Settlements reached through an ADR process generally resolve the parties' underlying dispute. In my experience, it is more likely that settlements reached through the traditional means of power based positional bargaining may favor one party more than the other, because the interests of both parties are often not fully identified and met in the settlement process.

The success of ADR processes is dependent upon the parties' skills in joint problem-solving techniques. Training and education in the skills needed to effectively practice ADR, such as interest-based problem-solving, are the best tools to guard against dissatisfaction with the outcomes. To ensure continued success of ADR, labor and management also have to commit resources to training and education to achieve a greater understanding of statutory rights and obligations to avoid disputes. As stated above in response to Question #6, the FLRA has committed resources to training its employees in the skills needed to assist the parties in the facilitation and resolution of disputes.

Additionally, as the parties gain experience in the use of ADR, they can increase the likelihood of a successful outcome by understanding which disputes can and should be resolved through an ADR or joint problem-solving approach, and which disputes are best resolved through a traditional third party appeal process. In this way, ADR will be used not just an alternative to resolving disputes through traditional arbitration or litigation, but rather as a method of dispute resolution best suited to achieving constructive labor-management relations.

11. The number of cases before the FLRA has steadily declined since fiscal year 1991. To what do you attribute this decline?

Answer:

There does not appear to be a single reason for the decline in the number of cases filed before the FLRA. Anecdotally, some agencies have reported that their partnership activities pursuant to Executive Order 12871, and increased facilitation and training services provided by the FLRA, have lessened the adversarial nature of their labor-management relationships. As a result, the parties are using joint problem-solving techniques and pre-decisional involvement to resolve some of the issues that previously would have resulted in the filing of grievances and unfair labor practice charges. Comparatively, as case filings have decreased, ADR service delivery by the FLRA has increased. Fewer filings of unfair labor practice charges at the Regional Office level have resulted in fewer unfair labor practice complaints before the Authority.

Also, in the last few years significant decisions issued by the Authority on such issues as the statutory right to information and the duty to bargain regarding matters that are covered by a collective bargaining agreement, have resulted in the filing of fewer cases.

12. . In October 1999, the President issued a memorandum reaffirming his Executive Order 12871 on labor-management partnerships. That memorandum addresses, in part, the Administration's concerns that federal managers are not following the order's directive to bargain over permissive issues set forth in 5 U.S.C. 7106(b)(1). This provision of the law allows, but does not require, negotiating the numbers, types, and grades of employees or positions assigned to an organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work. How has FLRA responded to this order? How does the order impact on matters coming before the Authority, particularly those matters involving the negotiability of (b)(1) issues?

Answer:

The FLRA has responded to Executive Order 12871 in the following ways:

The Chair of the FLRA serves on the National Partnership Council, which is charged with advising the President; supporting the creation of labor-management partnerships; and collecting and disseminating information to provide guidance on partnership efforts.

The FLRA has provided facilitation, intervention, training and education services to labor and management representatives in order to assist them in the development, maintenance and evaluation of collaborative labor-management relationships. As noted above, in FY 1999, the FLRA provided 269 training, facilitation and relationship building sessions and conducted 1,387 case related intervention services in an effort to promote alternative dispute resolution and foster improved labor-management relationships. The FLRA's outreach activities, at both the national and regional levels, include: 1) statutory training; 2) principles of pre-decisional involvement; 3) interest-based problem-solving skills training; and, 4) facilitation and intervention services. These activities are not only in support of Executive Order 12871, but are consistent with the FLRA's strategic goal to promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict as discussed above in response to Question #6, and the Congress' expressed intent that the provisions of the Statute should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Executive Order 12871 has not changed the FLRA's mission to enforce the Statute, which includes §7106, commonly referred to as the "management rights" clause. In that regard, since enactment of the

Statute in 1978, the negotiability of §7106 (b)(1) subjects has been, and will continue to be, a subject of litigation. Authority doctrinal analysis will continue to be developed through the case law to further define the standards that should be used in determining what matters are permissive subjects of bargaining at the election of the agency under §7106(b)(1); and, whether proposals are negotiable procedures under §7106(b)(2) or appropriate arrangements under §7106(b)(3) of the Statute. The Executive Order and President Clinton's Reaffirmation Memorandum did not in any way expand the Authority's responsibilities for administration and enforcement of the Statute.

Since issuance of Executive Order 12871, unfair labor practice charges seeking to enforce Executive Order bargaining over §7106(b)(1) subjects have been presented to the Authority for decision. In a series of cases including, U.S. Department of Commerce, Patent and Trademark Office, 54 FLRA 360 (1998), *aff'd*, 179 F.3d 946 (D.C. Cir.1999), the Authority determined that Section 2(d) of Executive Order 12871 does not constitute an election under the Statute to bargain over section 7106(b)(1) subjects.

13. Describe your vision of what the relationship should be between the FLRA and the Office of Personnel Management, the Merit Systems Protection Board, and the Office of Special Counsel. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

Answer:

Congress has established each of these agencies with a distinct statutory mission in the area of Federal sector employee and labor relations. I do not know of any statutorily mandated relationship between the FLRA, the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB) or the Office of Special Counsel (OSC), except that the Authority, pursuant to §7105(i) of the Statute, may request from the Director of Office of Personnel Management an advisory opinion concerning the interpretation of OPM regulations OPM regulations. Also, pursuant to Executive Order 12871, the Chair of the FLRA and the Director of OPM serve as members of the National Partnership Council. However, it is my belief that the FLRA in its administration of the Statute must operate independently of both the OPM and the MSPB . Employees of both OPM and MSPB are subject to the Statute that is administered by the FLRA. Accordingly, OPM and MSPB could become parties to cases adjudicated by the Authority.

On occasion, the OSC and the FLRA may have dealings with the same parties over similar issues. For example, the OSC, which has responsibility for investigating and prosecuting prohibited personnel practices before the MSPB, may review a case involving allegations that the prohibited personnel practice is based on union activity protected by the Statute. It is my understanding that the OSC has a policy of deferring to the FLRA for a determination on those issues within the jurisdiction of the FLRA. Thereafter, the OSC will make an independent determination on the prohibited personnel practice allegations.

I would endorse any communications between the OSC and the FLRA regarding statutorily permitted information sharing to ensure effective and efficient accomplishment of the respective missions. In my current role as an employee of the Office of the General Counsel, I am aware that the OSC and the Office of the General Counsel have participated in joint Town Hall meetings and statutory training initiatives to educate labor and management representatives about the law and mission of the respective agencies.

14. In January 1999, the FLRA General Counsel issued a memorandum providing guidance on how to apply the requirements of the federal service labor management relations statute to equal employment opportunity (EEO) complaints and to bargaining over EEO matters. This was a first-time articulation of how the federal service labor management relations statute could apply to the management of agencies' EEO complaint programs, and the Equal Employment Opportunity Commission (EEOC). EEOC, which this past July issued revised federal sector complaint processing regulations, has taken exception to some of this policy. What are your views of the applicability of the federal service labor management relations statute vis-à-vis EEOC's governance of federal sector EEO complaint processing? What are your views on how the policy disagreements between FLRA and EEOC could be resolved?

Answer:

On January 26, 1999, General Counsel Joe Swerdzewski of the FLRA issued a Memorandum to Regional Directors of the Office of the General Counsel entitled, "Guidance on Applying the Requirements of the Federal Service Labor-Management Relations Statute to Processing Equal Employment Opportunity (EEO) Complaints and Bargaining over Equal Employment Opportunity Matters." As stated in the Guidance, the Guidance reflects the views of the General Counsel of the FLRA and does not constitute an interpretation by the three-member Authority.

The issuance of the Guidance does not interfere with the EEOC's governance of Federal sector EEO complaint processing. In the discharge of the FLRA's statutory mission, EEO regulatory matters may be subject to interpretation and application in a case before the FLRA, in the same manner as the regulations of OPM, General Services Administration or any other Federal agency, as discussed above in response to Question #13.

The Guidance is largely a recitation of the past twenty years of case law issued by the Authority. The Guidance discusses legal principles regarding the rights and obligations of management, unions and employees under the Statute as applied to the processing of EEO matters. In that regard, the Guidance discusses the legal issues regarding union representation during meetings between employees and management officials in the processing of EEO complaints; the statutory duty of an agency to provide a union with EEO related information; official time for processing EEO complaints; the duty and scope of bargaining over conditions of employment matters related to EEO; a union's duty of fair representation when representing an employee in an EEO claim; and, current Authority case law addressing these statutory rights.

If confirmed as a Member of the Authority, I will adjudicate cases on these statutory issues with the recognition that the mission of the EEOC and the mission of the FLRA are extremely important. I will act, along with the other Members, to decide these issues as they are presented in future cases consistent with the policies and principles of the Statute.

I have no knowledge of any policy differences between EEOC and the FLRA. Therefore, I am unable to respond to how any such differences may be resolved. However, if the EEOC or any other Federal agency has a differing legal theory regarding the application of the Statute in a negotiability, representation or unfair labor practice case before the Authority; the Authority will resolve the dispute through the issuance of a case decision and order. Any person aggrieved by a final order of the Authority may request judicial review in the United States Court of Appeals.

15. What improvements, if any, do you believe should be made to the Federal labor relations statutes?

Answer:

I do not have any recommendations for improvements to the Statute at this time. If I am confirmed as a Member, I would recommend that the Authority continue to fulfill its statutory mission to establish policies and guidance relating to matters under the Statute by taking actions to identify opportunities for regulatory reform and/or rulemaking that will operate to effectuate the purposes and policies of the Statute.

1. In my responses I have used the term "Authority" to refer to the component of the FLRA that consists of the three Members, who perform an adjudicatory and policy guidance role. I have used the term FLRA to refer to the entire agency, which is composed of the Authority, the Office of the General Counsel and the Federal Service Impasses Panel.