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The Federal Labor-Management Relations Program

Statement of
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THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

SUMMARY OF STATEMENT BY
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How well is the federal labor-management relations program working? Are changes needed for the future? Has the program fostered a cooperative spirit between management and labor so as to help agencies' quality improvement initiatives succeed?

This statement summarizes the results of GAO's inquiry into these questions. GAO interviewed three categories of experts in federal labor-management relations. They included: (1) officials with labor relations responsibilities in federal agencies and the Office of Personnel Management (OPM); (2) presidents of the largest federal employee unions; and (3) neutrals, including current and former top officials at the Federal Labor Relations Authority (FLRA) and other third-party dispute resolution agencies involved in the program, arbitrators, and academics. GAO also administered a nationwide questionnaire to agency and union representatives who are involved in day-to-day program operations in 13 departments and agencies. The survey covered 80 percent of the federal workforce represented by unions.

The large majority of all experts said the program is not accomplishing its objectives. They said the program is characterized by excessive litigation, adversarial relationships between agency management and unions, and too much focus on minor matters rather than the issues that are of greater importance to employees. The respondents to GAO's questionnaire tended to agree with the experts' assessments of the program.

Based on these findings, GAO believes the program needs substantial reform. Rather than a piecemeal approach of technical changes, GAO recommends a special panel of nationally recognized experts in labor-management relations matters and participants in the federal program be created to develop a plan for comprehensive program reform.

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear here today to discuss our report on the federal labor-management relations program as it operates under Title VII of the Civil Service Reform Act of 1978.[1]

Based on our findings, we are convinced the program needs comprehensive reform. Our study clearly showed that federal labor-management relations experts and day-to-day participants believe the program is not meeting the statute's objectives. In their view, the program is characterized by excessive litigation, adversarial relationships between agency management and unions, and too much focus on minor matters rather than the issues that are of greater importance to employees.

These conditions must be corrected if the program is to operate effectively. In turn, an effective labor-management relations program should greatly enhance the chances for success of agency quality improvement initiatives that require employee involvement and teambuilding.

REVIEW APPROACH

When Congress enacted the statute, several important objectives were enunciated--increasing governmental efficiency and effectiveness, resolving disputes amicably, and giving employees a voice in workplace matters.

To find out whether these goals have been accomplished, we obtained the views of persons who should know. First, we interviewed 30 experts in federal labor-management relations. They included:

-- officials with labor relations responsibilities in federal agencies and the Office of Personnel Management (OPM);

-- presidents of the largest federal employee unions; and

-- neutrals, including current and former top officials at the Federal Labor Relations Authority (FLRA) and other third party dispute resolution agencies involved in the program, arbitrators, and academics.

Then, to get a broader perspective on the state of the program, we surveyed a nationwide random sample of agency and union representatives who are involved in day-to-day program operations in 13 departments and agencies. These departments and agencies

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[1]FEDERAL LABOR RELATIONS: A Program in Need of Reform (GAO/GGD-91-101, July 30, 1991)

employed approximately 80 percent of all employees represented by unions under the program.

We heard many complaints--some major, some minor. Although their reasons varied, neither agency management, union leaders, or neutral officials were satisfied with the program as it now exists. With few exceptions, agency and union field representatives who responded to our questionnaire tended to agree with their respective headquarters' assessments.

The report portrays in detail what each of these groups had to say. The remainder of my statement summarizes their views.

HOW DO THE EXPERTS PERCEIVE THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM?

The experts had four basic complaints: (1) the program is too adversarial and often plagued by litigation over procedural matters and minutiae; (2) some dispute resolution processes are too lengthy, slow, and complex; (3) FLRA management has generally been ineffective--particularly in the early years; and (4) an "agency shop" or "fair share" representation fee is needed if unions are to have adequate resources to properly carry out their statutory responsibilities.

The majority of union officials, as well as third-party and other neutral officials, also saw the limited bargaining rights in the federal program as a critical problem. The majority of agency officials disagreed and opposed any change in the existing scope of bargaining.

Excessive Litigation and Adversarial Relationships

According to almost all the experts we talked to, the collective bargaining processes are far too legalistic and adversarial and often dominated by relatively minor issues. The tendency of the parties to resort to litigation rather than settling their differences at the bargaining table was the principal criticism.

Our report contains a number of rather graphic quotes of statements made to us by experts in each category in describing their perceptions of the state of the bargaining processes, including terms such as "litigious", "advocating and posturing", "equivalent of the Edsel", "frustrating", "not a pretty picture", "petty", "downhill slide", etc. Two examples they cited illustrate the causes of their concern.

One involved the American Federation of Government Employees (AFGE) and the Air Force Logistics Command (AFLC) which began negotiating over day care facilities at five air logistic centers

in 1978. It took 10 years before day care became available to AFLC employees because of complex and extensive litigation that included a hearing before an arbitrator, a hearing and two appeals before FLRA, two court proceedings, a petition to the Supreme Court, a Court of Claims proceeding over the agency's responsibility for paying its share of the arbitrator's fee, and finally a decision by the Comptroller General regarding the use of appropriated funds for day care facilities.

The other case began in 1981, when the International Association of Machinists filed an unfair labor practice charge against the Department of the Army, Aberdeen Proving Ground, Maryland. The charge concerned the agency's refusal to negotiate its decision to close the facility over a holiday weekend and require employees to use one day of annual leave. This case took 8 years, wending its way through a hearing and an appeal before the FLRA, the U.S. Circuit Court of Appeals, and finally the Supreme Court, which ruled in 1988 that the union should have filed a negotiability appeal instead of an unfair labor practice charge. As one newspaper account of the case noted: "It is as if the machinery of the United Nations were invoked to resolve a fender bender."

It should be noted that most of the litigation in both of these examples did not arise over whether the union proposals had merit or were desirable, but rather from a continuing conflict over whether the proposals were appropriate subjects for substantive bargaining in the first place. In fact, a third of FLRA's case load is on negotiability appeals over what issues can be bargained. More than half of all unfair labor practice charges are filed over the agencies' alleged failure to bargain with unions on changes in working conditions. And, these charges are increasing. In fiscal year 1990, 7,097 unfair fair labor practice charges were filed which represented an increase of 10 percent over fiscal year 1989 and 36 percent over fiscal year 1986.

Slow, Lengthy, and Complex Dispute Resolution Processes

Three-fourths of the experts said some of the processes used to resolve disputes between management and employees were too slow, lengthy and complex, and susceptible to delaying and stalling tactics. Here, the main targets of criticism were procedures for handling negotiability appeals and unfair labor practice charges, particularly the way these procedures were administered by FLRA.

More than two-thirds of the experts thought the negotiability appeal process was a major obstacle to effective bargaining in the government. They said the 15 day statutory time limit for filing appeals compels unions to formalize negotiability disputes before the bargaining process has run its course. Thus, they

said the appeals process generates litigation over proposals which might be worked out through bargaining, mediation, or impasse procedures. They also said allegations of non-negotiability are easily made and FLRA has often taken years to render decisions.

Of the 30 experts we interviewed, 28 said they found it difficult to understand what was negotiable and not negotiable even though FLRA has issued hundreds of negotiability appeals decisions. For example, a union official said a data search identified at least 69 cases on the issue of "seniority" where FLRA had sometimes determined seniority questions to be negotiable and sometimes determined they were not.

We attempted, in drafting our report, to prepare a chart showing specific subject matter that is and is not negotiable under the program. We learned there were so many exceptions in each area that we abandoned the attempt as an impossible task.

Almost all the experts agreed that too many unfair labor practice charges are filed, but they differed widely on how the number could be reduced. Three-fourths of agency officials and almost two-thirds of third-party and other neutral officials said the unions file too many charges over minor issues or issues that are more appropriately resolved through negotiated grievance procedures. As examples, they cited charges filed about agencies altering partitions in work areas and moving a coffee pot from one area of an office to another.

All union officials said agency management too often ignores its responsibilities under the statute. In their opinion, this occurs because FLRA has not strongly enforced the statute. As examples, they said FLRA does not order effective remedies, such as status quo ante or "make whole" remedies when agencies violate the statute, and FLRA's General Counsel does not seek injunctive relief in court to delay management action until bargaining obligations have been met.

The majority of third-party and other neutral officials we interviewed agreed that unions file too many charges over minor issues. However, they also said management often ignores its statutory obligations and the parties do not try hard enough to settle the underlying problems.

Past Ineffective FLRA Management

According to the majority of the experts, FLRA's past management of the program was generally ineffective. It was contended that FLRA took too long to make decisions, and when it did rule, its decisions were often inconsistent and unclear. In general, they believed FLRA had not provided the leadership necessary to make the program work well. Two of the neutrals even went so far as

to suggest that FLRA be eliminated and its responsibilities assumed by the National Labor Relations Board.

Let me acknowledge that we held our interviews last year and at that time FLRA had gone for 14 months with only one member and the two new members had just been confirmed by the Senate. Therefore, it was too early for the interviewees to judge the current FLRA. However, some of those we talked to said FLRA's past history of mismanagement, internal fighting, and unclear decisions would be difficult to overcome. In discussing this situation with the current FLRA members, they acknowledged the past difficulties and said they were endeavoring to make their decisions clearer and more timely. They also said they were undertaking programs to promote more cooperation between agencies and unions. We were told by agency and union representatives alike in subsequent discussions that the current FLRA has, indeed, made improvements in its management of the program.

Prohibition Against Agency Shop

Federal employees are entitled to form bargaining units and to select unions to represent them. A union must represent all employees in the bargaining unit, but an "agency shop" (requiring employees to join the union or pay dues to support it) is not allowed by the statute. Fewer than one-third of all federal employees who are represented by unions are also dues paying union members. However, the statute allows agency employees to use on-the-clock time, known as "official time," to carry out union activities.

According to the majority of the experts, the agency shop prohibition has created problems. They had varying reasons for this opinion. The union officials pointed out they have a broad obligation under the statute to represent all employees in bargaining units fairly and equitably, without regard to their membership or non-membership in the union. However, they felt this responsibility provided little incentive for employees to join and pay dues to the union. Some agency officials felt granting official time to union officials for representation purposes was costly to the government and contributed to many of the disputes between agencies and unions. Because of low union membership rates, some of them said unions don't speak for all employees and thus tend to concentrate on the grievances raised by malcontents. The agency officials also said an agency shop approach would enable unions to be self sufficient and able to afford more full time union-paid representatives. Neutral officials in support of agency shop said effective and representative unions are important to a successful labor-management relations program and agency shop arrangements would make unions self sufficient and more accountable to employees.

Limited Scope of Bargaining

The greatest difference in viewpoint among the experts was over the scope of bargaining--the extent to which working conditions should be negotiated by unions and agency management.

Bargaining under the program is restricted to personnel policies and practices that affect working conditions. It may not include issues which are controlled by federal statutes, for example, pay and benefits. Likewise, it may not deal with matters covered by regulations which have government-wide application. For example, many work rules governing the hiring, firing, promotion, and retention of employees are established by regulations issued by the Office of Personnel Management (OPM). Also excluded from bargaining are certain "management rights" as agency mission, budget, organization, work assignments, and almost all significant employment decisions.

Therefore, much of the negotiation centers on the impact of various management actions, such as agency reorganizations, reductions-in-force, etc., or on procedures to implement the actions.

All union officials, almost all third-party and other neutral officials, and one-third of the agency officials supported a broader scope of bargaining to include more matters of concern to employees. They differed, however, as to how broad that scope should be. Union officials and one-third of the neutral officials, including a former chairman of the FLRA, favored full collective bargaining on all matters, including pay and benefits. Others supported one or more ways to broaden bargaining with the addition of some economic issues, modification or elimination of the management rights clause, and less regulation by the agencies and OPM. However, most agency officials opposed changing the existing scope of bargaining.

Priority of Labor Relations in Federal Agencies

Over three-fourths of union officials and third-party and other neutral officials believed labor relations was a low priority for federal agencies and was not well integrated into agency operations. The majority of agency officials disagreed, asserting that the impact of operational decisions on labor relations was almost always taken into account.

PERCEPTIONS OF THE PROGRAM BY UNION AND AGENCY REPRESENTATIVES AT FEDERAL FACILITIES

Agency and union field representatives who responded to our nationwide questionnaire tended to agree with their respective headquarters' assessments of the program. For example,

-- 70 percent of the agency and union respondents said it takes too long to resolve disputes. About half said contract negotiations take too long;

-- Both agency and union respondents said the procedures for resolving unfair labor practice charges were not working well. The union respondents also believed the negotiability appeal process needed improvement, but this view was not shared by the agency respondents;

-- Union and agency respondents' ratings of FLRA's "efficiency", described on the questionnaire as timeliness in processing cases and issuing decisions, were much lower than their ratings of other third party agencies' efficiency; and

-- 96 percent of union respondents supported broadening the scope of bargaining; only 21 percent of agency respondents agreed.

The one major exception where field representatives disagreed with their headquarters counterparts was that the majority of agency field representatives did not support an agency shop.

There was a wide difference of opinion between agency and union respondents as to how well the program was working at the local level. For example,

-- 72 percent of agency respondents thought disputes too often led to litigation, contrasted to 41 percent of union respondents who held this view;

-- 73 percent of agency respondents said their installations took labor relations concerns into consideration most of the time when making operations decisions; 56 percent of union respondents said these concerns were seldom or never considered; and

-- 74 percent of agency respondents characterized their relationships with the unions as cooperative with 64 percent reporting that disputes were usually settled informally . Only 47 percent of the union respondents said a cooperative relationship existed, and 58 percent said they either had to resort to formal dispute resolution processes or leave their differences unresolved.

Our questionnaire listed 17 employment issues and asked the respondents to indicate how much concern they believed employees at their locations had about each issue. Those cited by the majority of respondents to be of great or very great concern were pay, career advancement, retirement benefits, job security, performance evaluation, health insurance, and budget and staffing levels. Because of the restrictions imposed by the statute, bargaining is virtually non-existent or extremely limited on all these issues.

HAS THE PROGRAM FOSTERED LABOR-MANAGEMENT COOPERATION?

The experts frequently cited two federal labor-management cooperative efforts they regarded as successful joint partnerships. One was the Joint Quality Improvement Process between the Internal Revenue Service and the National Treasury Employees Union--an agency-wide program involving the union in improving organizational effectiveness at all levels. The other was the PACER SHARE productivity enhancement program between the Sacramento Air Logistics Center and the American Federation of Government Employees--a 5-year "gainsharing" demonstration project in which the agency and employees share cost savings generated by productivity improvements. Both of these cooperative efforts were based on the Total Quality Management (TQM) concept and have won Quality Improvement Prototype Awards because of cost savings and enhanced productivity. In both instances, the amount of litigation between the parties was greatly reduced.

However, we were told that, with few exceptions, most federal labor-management cooperative efforts have been at the local level with a minimum of headquarters involvement. These local efforts consisted primarily of joint labor-management committees and "quality circle" programs. The experts were generally not familiar with the details of the local initiatives, but believed most were limited in scope, some short lived and only marginally successful.

The agency and union respondents to our questionnaire had greatly contrasting views about the success of their cooperative efforts. Over 65 percent of all respondents said they had been involved in at least one type of labor-management cooperation program. Most agency respondents thought the results were positive. However, the majority of union respondents said the results were negative or neither positive nor negative. Nevertheless, almost all union respondents and the majority of agency respondents expressed interest in participating in future labor-management cooperative efforts.

Union respondents from the Internal Revenue Service, with its agency-wide joint labor-management cooperative effort, perceived the same shortcomings about the federal labor relations program

as did other union respondents. However, they were much more positive about their dealings with management than were other union respondents in general. Similarly, many more of these union respondents viewed their cooperative efforts as positive compared to other union respondents.

WHAT CHANGES ARE NEEDED?

Our work strongly suggests that the federal labor-management relations program is in need of comprehensive reform. The numerous concerns raised by the experts we interviewed and union and agency questionnaire respondents throughout the country have pinpointed many deficiencies and shortcomings. Accordingly, we believe the policies and processes governing federal labor-management relations need a major overhaul to provide a new framework that:

-- motivates labor and management to form productive relationships to improve the public service;

-- makes collective bargaining meaningful;

-- improves the dispute resolution processes; and

-- is compatible with innovative human resource management practices which emphasize employee involvement, teambuilding, and labor-management cooperation.

In our opinion, an effective labor-management relations program would enhance the chances for success of the quality improvement initiatives being sought by federal agencies. It makes little sense to try and implement a new employee involvement program in which cooperation between agency management and unions is essential to accomplishing quality objectives when the current labor-management relations program suffers from excessive litigation and adversarial proceedings.

Because the perceived problems are systemic and widespread, we believe a piecemeal approach of technical revisions to the statute would not be the best means to bring about the necessary changes. Rather, a system is needed which all participants can buy into and support. We have concluded that a viable approach would be to create a special panel of nationally recognized experts in labor-management relations matters and participants in the federal program to develop a plan for comprehensive program reform.

Participants in the group could include representatives of executive branch agencies, including OPM and the Department of Labor; officials of federal employee unions; representatives of the third party agencies that administer the statute; and experts in labor relations and public administration in general.

We are encouraged by the numerous expressions of willingness by agency and union representatives to work together to solve the problems. Because of this, we believe the time is ripe to build a strong and solid consensus for a new, revitalized program that will serve the nation well.

That completes my prepared statement. We would be pleased to try and answer any questions the Committee may have.

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