



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



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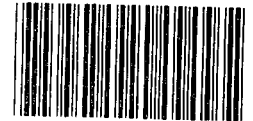
JUNE 11, 1979

B-115398

The Honorable Abraham Ribicoff,
Chairman, Committee on Governmental Affairs
United States Senate

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Dear Mr. Chairman:

During testimony before your Committee on May 8, 1979, dealing with the adequacy of staff and resources of the Merit Systems Protection Board (MSPB) and Office of Special Counsel, you asked whether GAO was finding similar problems at the newly established Federal Labor Relations Authority (FLRA). Our work at the FLRA is revealing similar problems in terms of inadequate staff, space and resources. Some of these problems appear even more serious than those we identified to you at the MSPB.

In our opinion, with their present staffing, space and funding, the FLRA, and especially its General Counsel and regional operations, do not have adequate resources to establish full operation and effectively carry out the duties and responsibilities assigned under the Civil Service Reform Act (CSRA). As a result, the intent of the legislation may not be achieved. Currently, the FLRA's fiscal year 1979 supplemental and fiscal year 1980 budget requests are before the Congress. We believe that the FLRA should receive immediate attention and action on its budget requests. Furthermore, our review of the number of cases filed with the FLRA during its first four months of operations, projected on an annual basis, substantially exceeds the case-load upon which the FLRA based its initial fiscal year 1980 budget request. We believe this raises concern as to the adequacy of the resources requested in the fiscal year 1979 supplemental and the fiscal year 1980 budget to handle the workload.] -> The delays.

Although the newly appointed FLRA members have made some progress in organizing their newly established agency, delay in appointing a General Counsel, the lack of adequate resources, and space problems have seriously impeded their efforts. Following is a brief discussion of our concerns on the problems the FLRA is encountering. A more detailed discussion of these areas is included in the enclosure to this letter.

Letter Report

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Office of General Counsel
and Regional Operations

To date, the absence of a General Counsel has prevented the FLRA from issuing its regulations. Moreover, in the absence of a General Counsel, unfair labor practice charges filed since January 11, 1979, when the CSRA took effect, are being investigated at the regional level but no complaints can be issued and no dispositive action can be taken. This has resulted in a backlog of more than 1,000 cases.

The FLRA has established nine regional offices across the country. The lack of sufficient and skilled staff for these regional offices is a major problem. The FLRA has had to use many of the vacant slots transferred to it to fill field management positions. As a result, few vacant positions remain to staff its investigatory and prosecutorial functions. Prosecuting unfair labor practice complaints is new to the Federal sector. Existing staff can not automatically assume these new duties. Performing the job effectively will require the hiring and training of new staff with specialized legal and prosecution expertise. Currently, the FLRA lacks the slots to hire this needed staff.

Another area of concern is the General Counsel's ability to effectively monitor and track cases being processed at the regional level. The FLRA currently lacks the resources to establish such a system.

One of the major criticisms of the third-party procedures of the Executive Order program was the lengthy time required to process cases. We believe that without additional staff and resources the General Counsel cannot adequately and in a timely manner investigate and prosecute unfair labor practice cases.

FLRA Headquarters

The headquarters operations, like the Office of General Counsel, does not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities.

An estimated 20-25 percent of the unfair labor practice charges filed at the regional level will require a hearing before an administrative law judge and many will subsequently be appealed to the FLRA. The increase in cases filed at the regional level will also require FLRA action at the headquarters level. Also the number of other types of cases,

such as negotiability appeals, filed directly with FLRA headquarters, have also markedly increased since the Act's enactment. We believe that the current FLRA's headquarters staff is inadequate to handle this increased caseload.

Title VII of the CSRA also gives the FLRA new responsibilities in the areas of judicial review and enforcement. These responsibilities will require new staff with the requisite expertise. The FLRA currently lacks this staff.

Another problem in setting up its headquarters operations is that many of the positions transferred to the FLRA must be used to fill administrative and support functions. While some of these administrative functions have been staffed, additional new positions are required. Continued reliance on the Office of Personnel Management (OPM) and the Department of Labor (DOL) for services and space may create the appearance of a potential conflict of interest since these two agencies are among the FLRA's clientele and will be parties to cases adjudicated by the FLRA.

Space Problems

Currently, the FLRA has a serious space problem. After devoting considerable time and effort in negotiating with the General Services Administration (GSA), the FLRA has made some progress, but many difficulties persist. At present, headquarters personnel are, for the most part, still temporarily located at the OPM and DOL buildings. Regional personnel are still operating out of DOL's field offices.

The lack of adequate space and resultant dispersal of staff is having a serious impact on the FLRA's effectiveness, efficiency and public image. This has resulted in

- staff spending considerable time commuting between various office locations;
- the inability to provide desks for all professional staff in some offices and the inability to fill certain vacant personnel slots because there's no place to put additional staff;
- the appearance of a potential conflict of interest;
- delays in purchasing necessary new equipment because there's no place to put it.

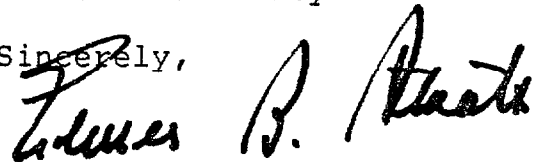
The GSA has offered space to the FLRA at 1726 M St., N.W. in Washington, D.C. The space will not be available, however, until at least November. Securing new space for the regional offices is even less optimistic.

Conclusions

We believe that in order to achieve the goals of the Civil Service Reform Act, the FLRA must have the resources to expeditiously and judiciously decide complaints and issues affecting all parties to the Federal Government's collective bargaining process. It is essential that early on, the FLRA demonstrate credibility as the independent and effective body that Congress intended to establish. The FLRA's inability to accomplish the responsibilities assigned to it in a timely and effective manner will not only take its toll on protecting the rights of employees and their chosen representatives, but also on the effective and efficient operation of the government. We are concerned that [the delays in processing cases resulting from insufficient resources or inexperienced personnel will increase the time and energy required of Federal managers to resolve problems arising in the workplace and strain and disrupt the working relationship between supervisors and their employees. The consequences may be costly in terms of declining morale and productivity.]

We have previously called your attention to the problems of the MSPB and the Special Counsel. We also believe that the current funding and space problems at the FLRA are serious and need prompt action. We have discussed the contents of this letter with officials of the FLRA and they concur with our assessment of their current funding, resources and space problems. Your attention to this matter will be helpful. As arranged with your office, we are also sending copies of this letter to the House and Senate Appropriations Committees and to Senator Percy.

Sincerely,



Comptroller General
of the United States

Enclosure

Response to questions submitted by Senator Abraham Ribicoff on the Federal Labor Relations Authority

Question 1: The April 20 letter from Mr. Staats concerns only the MSPB and the Special Counsel. Does the GAO have similar concerns about the ability of the Federal Labor Relations Authority to perform its mission with the resources assigned to it? Please provide, for the record, an assessment of the performance and difficulties which the FLRA is currently encountering.

Answer: As we noted in our April 20, 1979, letter to your Committee (in response to your earlier request for our assistance in providing oversight of the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM) and the Federal Labor Relations Authority (FLRA)), we now have a staff at each of these agencies to monitor their activities and implementation of the Civil Service Reform Act (CSRA). In that letter and in our subsequent statement before your Committee on May 8, 1979, we highlighted the staffing and funding problems of the MSPB and the Special Counsel.

As part of our monitoring activities we have also reviewed the budget, current staffing and operations of the FLRA. This includes the FLRA's Office of General Counsel and regional operations as well as the FLRA's headquarters office. In our opinion, with their present staffing and funding, the FLRA, particularly the General Counsel and regional operations, do not have adequate resources to establish full operations and effectively carry out the duties and responsibilities assigned under Title VII of the CSRA. The FLRA had an initial staff allocation of 265 positions for fiscal year 1979. Of this total, 64 positions were transferred from the Federal Labor Relations Council, 198 from the Labor Management Services Administration and 3 from the Civil Service Commission. The FLRA's budget request for fiscal year 1980 and a supplemental appropriation request for fiscal year 1979 of \$1,789,000 (which includes a request for an additional 23 full-time permanent positions) are currently before the Congress. We believe that the FLRA should receive immediate attention and action on its budget requests. Furthermore, our review of the number of cases filed with the FLRA during its first four months of operations,

projected on an annual basis, substantially exceeds the caseload upon which the FLRA based its initial fiscal year 1980 budget request. We believe this raises concern as to the adequacy of the resources requested in the fiscal year 1979 supplemental and the fiscal year 1980 budgets to carry out their workload. The FLRA is aware of the problems we have raised and has done some initial work in preparing an amended fiscal year 1980 budget for the Office of Management and Budget.

To achieve the goals of the Civil Service Reform Act, we believe the FLRA must have the resources to expeditiously and judiciously decide complaints and issues affecting all parties to the Federal Government's collective bargaining process. It is essential that early on, the FLRA demonstrate credibility as the independent and effective body that Congress intended to establish. The FLRA's inability to accomplish the responsibilities assigned to it in a timely and effective manner will not only take its toll on protecting the rights of employees and their representatives, but also on the effective and efficient operation of the government. We are concerned that the lengthy case processing time resulting from insufficient resources, or the staffing of functions with inexperienced personnel, will increase the time and energy required of Federal managers to resolve problems arising in the workplace and strain and disrupt the working relationship between supervisors and their employees. The consequences may be costly in terms of declining morale and productivity.

Although the newly appointed FLRA members have devoted their efforts and made progress in organizing their newly established agency, delay in appointing the new General Counsel, space problems, and lack of adequate resources have seriously impeded their efforts. Following is a more detailed discussion of our concerns on the problems encountered to date.

Office of General Counsel
and Regional Operations

Delay in appointing the General Counsel, who will be in charge of most field activities, has seriously impeded the progress made in establishing this aspect of the FLRA's operations. The General Counsel's major responsibilities under the CSRA are (1) investigating and prosecuting unfair labor

practice cases which are filed at the regional offices and comprise the major portion of the FLRA's caseload and (2) directing the field operations. To date, the absence of a General Counsel has prevented the FLRA from issuing regulations. It is therefore still operating under transition regulations which basically continue the Executive Order program. Unfair labor practice cases filed at the regional level since January 11, 1979 are being investigated, but in the absence of a General Counsel no complaints can be issued and no dispositive action taken. This has resulted in a backlog of more than 1,000 cases. Potentially, many of these cases will require unfair labor practice trials before an administrative law judge.

The FLRA has established nine regional offices across the country whose locations are based primarily on prior case activity under the Executive Order 11491 program while also taking into account where the majority of employees who previously administered the Executive Order program were located. The Assistant Secretary's employees had, under the Executive Order program, been located in the Department of Labor's 30 field offices. A number of problems have been encountered in relocating field office staffs, including the lack of space in many of the designated regional offices to accommodate any additional personnel. (See discussion in question 2.)

Another major problem is the lack of sufficient and skilled staff in the regions. One of the significant responsibilities assigned under Title VII is the prosecutorial function of the General Counsel's regional personnel. The FLRA has had to use many of the vacant slots transferred to it to fill field management positions, i.e. a regional director and supervisory trial attorney for each of the nine regions and their support staff. The Department of Labor had previously provided field management. The FLRA, as a result, has few vacant positions remaining to staff its investigatory and prosecutorial functions. Prosecuting unfair labor practice complaints, a function also performed by the National Labor Relations Board (NLRB) in the private sector, is new to the Federal sector. Staff transferred from the Assistant Secretary of Labor's Executive Order operations can not therefore automatically assume these new duties. The

hiring and training of new staff, with specialized legal and prosecution expertise will be required to perform the job effectively. Currently the FLRA lacks the personnel slots to hire this needed staff.

Another area of concern is the General Counsel's ability to effectively monitor and track cases being processed at the regional level. Your Committee has previously commended the NLRB for its procedures in tracking and expediting cases. If the FLRA is to emulate the efficiency of the NLRB, at the minimum, the resources requested in the fiscal year 1980 budget and the supplemental request will be needed.

In its first four months of operations, 927 cases, 714 of which are unfair labor practice charges, have been filed by agencies, labor organizations and employees at the FLRA's regional offices. The FLRA's request for fiscal year 1980 is for 178 full-time permanent positions to staff its field operations. Staffing requirements were based on initial projections that 1,798 representation and unfair labor practice cases would be filed at the regional level. Therefore, if the present level of filings continue, actual cases filed will exceed, by more than 50 percent, the FLRA's initial estimates upon which it based its fiscal year 1980 budget request.

Without additional staff and resources, the General Counsel cannot adequately and in a timely manner perform the functions assigned under Title VII. One of the major criticisms of the third-party procedures of the Executive Order program was the lengthy processing of cases. We believe that without adequate resources the current and future effectiveness of the General Counsel and the FLRA's field operations are likely to be seriously impaired.

FLRA Headquarters

The headquarters operation, like its Office of General Counsel, does not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities.

An estimated 20-25 percent of the unfair labor practice charges filed at the regional level will require a hearing before an administrative law

judge and many will be subsequently appealed to the FLRA. Therefore, the increase in cases filed at the regional level, which we discussed earlier, will also require action at the headquarters level.

Secondly, Title VII of the CSRA gives the FLRA new responsibilities in the area of judicial review and enforcement. These responsibilities will require new staff with the requisite expertise. The FLRA currently lacks this staff.

Thirdly, while many of the FLRA's functions are similar to those of the NLRB in the private sector, Title VII vests the FLRA with certain additional responsibilities unique to the Federal sector program. These include reviewing exceptions to arbitration awards and deciding negotiability appeals. These cases are filed directly with the headquarters office. Based on the number of cases filed in the FLRA's first four months of operations, it appears that the number of these cases, particularly negotiability appeals, will be significantly larger than similar types of cases filed with the Federal Labor Relations Council (FLRC) under the Executive Order program. The total number of negotiability appeals filed since January 11, 1979, already exceeds the total number filed in all of 1978.

Finally, another problem encountered in setting up the new agency is that many of the slots transferred to it must be used to fill administrative and support functions for which the FLRC and the Assistant Secretary of Labor, merged to form the FLRA, had previously relied on the Civil Service Commission 1/ and the Department of Labor (DOL), respectively. While some of these administrative functions have been staffed by the FLRA, additional new positions are required. Continued reliance on the OPM and the DOL for services and space may create the appearance of a potential conflict of interest since these two agencies are among the FLRA's clientele and will be parties to cases adjudicated by the FLRA.

1/Now performed by the Office of Personnel Management (OPM).

In conclusion, we feel that the FLRA, and particularly its Office of General Counsel and field operations are experiencing difficulties similar to those of the Merit Systems Protection Board and the Special Counsel. While the FLRA's case backlog is not as high as the MSPB's, more than 1,000 cases are currently pending. While we are confident that once the General Counsel is appointed this backlog will decrease, we are concerned that the FLRA's current level of staff and funding is inadequate to carry out the responsibilities assigned to it under the CSRA.

Question 2: While it is apparent that the Special Counsel and the MSPB have encountered problems in receiving adequate office space and services, could you tell us, for the record, what similar problems the FLRA had encountered?

Answer: Title VII merged the functions previously performed by the Federal Labor Relations Council (FLRC) and the Assistant Secretary of Labor (ASLMR). Also, additional new responsibilities requiring additional resources were assigned to the FLRA under the Act.

Previously, the FLRC personnel were located in the Office of Personnel Management's building in Washington, D.C. and the ASLMR staff was located in the Department of Labor's (DOL) main building. ASLMR regional personnel were located in 30 DOL field offices across the country. Those FLRC and ASLMR personnel transferred to the FLRA have been assigned to either its headquarters location or one of its regional offices which have been established.

Currently, the FLRA has a serious space problem. After devoting considerable time and effort in negotiating with the General Services Administration (GSA), there has been some progress, but many difficulties persist. At present, the FLRA's headquarters personnel are, for the most part, still temporarily located at the OPM and DOL buildings. Regional personnel are still operating out of DOL's field offices.

The lack of adequate space and the resultant dispersal of staff, is having a serious impact on the FLRA's effectiveness, efficiency, and public image. Headquarters staff spend considerable time commuting between the various office locations. Supervisors, particularly in the field, are separated from their employees. Also, in the Washington Regional Office, for example, where the FLRA's clientele often come in person to file complaints or deal with staff, there is not even enough space to provide desks for all of the professional staff. Moreover, we feel that continued housing of the

FLRA in agencies (OPM and DOL) which are themselves the FLRA's clientele creates the appearances of a potential conflict of interest.

Even if the FLRA's resources were adequate to hire those people they needed, some of the vacant slots in the regional offices could not be filled because there is no place to put additional staff. The FLRA is, in many cases, only able to begin personnel actions in those regional offices where space has been assigned by GSA and accepted by the FLRA.

The regional office staffs also need equipment, such as xerox machines to perform their duties. The equipment cannot be ordered yet because there is no space for it.

The GSA has offered space to the FLRA's headquarters at 1726 M St., N.W. The space will not be available, however, according to GSA, until at least November. Beginning in November, blocks of space in the M St. building will become available on a phased basis and it is therefore estimated that it will take until at least next spring before the FLRA's total Washington staff can relocate there.

Securing new space for the regional offices is even less optimistic. It will be a minimum of 5 to 6 months before the following regional offices are relocated in permanent space - Boston, New York, Atlanta, Chicago, Washington 1/, Dallas and San Francisco. The other regional offices and their proposed office occupancy dates are - Kansas City 7/79; Denver 5/79; and Los Angeles 8/79.

In summary, we believe FLRA has a serious space problem which needs prompt attention and action.

1/Plans now are to house the Washington Regional Office with the FLRA's headquarters office on M Street.