Engaging Federal Employees Through Their Union Representatives To Improve Agency Performance

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EXECUTIVE SUMMARY

With 60 percent of its workforce unionized, the federal service offers fertile ground to engage employees through their union representatives to improve agency performance. Engagement offers an opportunity to promote collaborative workplaces that give both employees and management a greater voice in improving operations and working conditions. This objective is stated in President Obama's recent executive order on "Creating Labor-Management Forums to Improve Delivery of Government Services," which mandates the creation of labor-management forums on a government-wide basis.

We prepared this white paper to facilitate the effective implementation of this presidential order. We conducted a review of the academic literature on the operations and effects of labor-management "partnerships" in the private and public sectors; reviewed the evidence available on the effects of such partnerships during the administration of President Clinton, who mandated partnership as part of his administration's effort to reinvent government; and convened a conference of 35 representatives from various unions representing federal employees on September 10, 2009 at the National Labor College in Silver Spring, Maryland, to discuss their experiences with partnership under the Clinton program. After reviewing the ebb and flow of federal policy regarding labor-management relations in the federal service, we report our various findings from these data sources. We rely on the information collected to make a set of recommendations on how to improve labor-management engagement in the federal service, so as to avoid problems that occurred under the Clinton program and to improve agency performance. We provide a template of steps to help agencies in this process.

We find that labor-management engagement can significantly improve the labor-management relations climate and improve agency performance. The impact of engagement, however, is contingent on several factors. These factors include the commitment of top management and union leaders to the process; the extent to which partnerships or forums receive the proper amount of training in interest-based problem solving; the pursuit of cooperative labor-management relations in the collective bargaining process while pursuing engagement; the recognition of the legitimacy of both parties' goals; and a measurable focus on solving real problems in a pre-decisional fashion.

Introduction

In a report titled *Roadmap to Reform: A Management Framework for the Next Administration,* the Partnership for Public Service (2008) stated that "Effective government requires effective management." Such management, in turn, requires the meaningful engagement of government employees. In unionized workplaces, such involvement occurs most efficiently and properly through the union representatives of employees. With 60 percent of its workforce represented by unions, the federal service offers fertile ground to engage employees through their unions with management in nontraditional collaborative decision-making venues. The absence of such venues deprives management and the public of the full knowledge, skill, and commitment that unions and employees can bring to ensure that government functions in a cost-effective manner.

Recognizing that the engagement of employees through their union representatives is essential to the organizational health upon which effective performance is predicated, we enlisted several major unions representing nearly one million federal employees to draw a "best practices" roadmap to link labor-management relations directly to organizational performance. We convened these representatives as part of a "design team" to plan a forum with their colleagues to provide insight on best practices. An all-day conference took place on September 10, 2009 at the National Labor College (NLC) in Silver Spring, Maryland, where 35 union participants with substantial experience in labor-management partnerships during the administration of President Clinton offered their perspectives. We asked them to address questions about the proper role of the unions in "collaborative" arrangements, the impacts of federal partnership in the 1990s, and the factors associated with partnership "success" as well as

the “barriers” to success. [We use the term “engagement” rather than “partnership,” except where referring to the designation of past activities or initiatives ongoing in other contexts.]

In preparing this white paper, we relied not only on the findings of the conference but also available evidence on the impacts of partnerships from studies that were conducted on the Clinton program. We also reviewed the academic literature on the effects of labor-management “partnerships” in both the private and public sectors, including several studies on the program at Kaiser Permanente, which covers approximately 90,000 union employees (for reviews of the relevant literature, see Gill 2009; Kochan, Adler, McKersie, Eaton, Segal, and Gerhart 2008; Masters, Albright, and Eplion 2006; Brock and Lipsky 2003; and Weeden and Jones 2007). Furthermore, we invited Peter Nixon, the Director of Metrics and Analytics of the Office of Labor Management Partnership at Kaiser, to address the conference about his organization’s program, which is the largest ongoing one (in terms of employees covered) in the U.S. today. We wove the evidence from these various sources through the fabric of our own experience with partnership to develop a “model” to guide future efforts at labor-management engagement in the federal service.

We offer this paper to the Obama administration in part to guide the effective implementation of its newly announced executive order on “Creating Labor-Management Forums to Improve Delivery of Government Services.” Several key principles and infrastructure requirements will increase the chances that these forums will achieve greater and more measurable success than what occurred under the Clinton mandate. A lot can be learned from prior federal service experience and what has transpired in the private sector. We bring these ideas to light.

Our paper consists of several parts. First, we trace the ebb and flow of federal policy toward labor-management relations since the early 1960s to put the need for a new program into historical perspective. Second, we examine the question of "why engage," providing a rationale for instituting labor-management engagement in unionized settings, particularly the federal sector. Third, we report on the published evidence available on the effects of the partnerships in the nineties. Fourth, we summarize the findings of our conference at the NLC. Finally, we make recommendations on how labor-management engagement can be structured to maximize its potential, identifying key principles and infrastructure requirements.

We believe that focusing engagement on agency performance is the key to achieving maximum results and legitimizing the effort, the former of which is essential to the latter. Performance is the glue that binds the parties together in a common mission to serve the public. Such a focus does not make it easy, but averts the tendency to squabble pointlessly over how engagement should be conducted relative to more traditional means of labor-management decision-making. It allows for meaningful rather than trivial participation.

Ebb and Flow of Policy on Union Representation in the Federal Service

Since the early 1960s, federal policy, either by presidential order or statute, has granted most federal employees the right to be represented by unions. Presidential administrations, however, have varied significantly in their commitment to achieving positive labor-relations, reflecting different philosophies toward public management and the legitimacy of union involvement. The labor-management relations pendulum has swung widely in the past 16 years between the administrations of Presidents Clinton, Bush, and Obama. These policy gyrations have no doubt left some in both labor and management suspicious and skeptical, and fearful that

an attempt at collaboration under the Obama administration will only last as long as this president.

Labor activism and organization among federal employees began in the first half of the 19th century (see Nesbitt 1976 and Spero 1948). Unions pursued organizing these workers for more than a century without legal protection. By the end of World War II, however, political and workplace pressures grew to establish a government-wide policy to grant basic labor rights. In 1960, unions had organized one-third of the postal and non-postal federal service, or over 760,000 employees in numerous agencies and departments. Without general policy guidance, agencies adopted their own labor-management programs, or chose not to do so. A crazy-quilt set of policies on employee-employer relations emerged.

In June 1961, President Kennedy formed a task force, chaired by then-Secretary of Labor Goldberg, to study labor-management relations in the federal service and make appropriate policy recommendations. He set the tone for the task force in an accompanying memorandum which stated in relevant part: "The right of all employees of the federal government to join and participate in the activities of employee organizations and to seek to improve working conditions and the resolution of grievances should be recognized by management officials at all levels in all departments and agencies. The participation of federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business. I believe this participation should include consultation by responsible officials with representatives of employees and federal employee organizations."

The task force released *A Policy for Employee-Management Cooperation in the Federal Service* on November 30, 1961. It recommended that the president establish a government-wide policy to grant federal employees the right to join unions and bargain collectively. On January

17, 1962, President Kennedy issued E.O. 10988, which established a program granting federal employees this basic labor right. The order's telling title, "Employee-Management Cooperation in the Federal Service," signaled that its purpose was to promote collaboration not confrontation, albeit through the avenue of collective bargaining. While landmark in its core purpose, E. O. 10988 narrowly defined the scope of bargaining (cf. the National Labor Relations Act) and prohibited the right to strike, the latter provision having been federal policy since the Taft-Hartley Act of 1947. Matters involving pay and benefits, which were set by statute, fell outside the orbit of negotiability, and a strongly worded "management rights" clause was embedded in the presidential decree.

Union representation grew rapidly under this order. Toward the end of the 1960s, over half of the postal and non-postal federal service belonged to union-represented bargaining units; nearly half of the non-postal service itself did so. The order's administrative shortcomings, however, became apparent as the decade closed. President Nixon issued E. O. 11491 in October 1969 to streamline the union-recognition process and establish a much-needed administrative structure. Otherwise, the basic elements of the labor policy remained intact.

Union representation continued to grow, though at a slower pace, reaching 60 percent of the non-postal workforce by 1978. [In 1970, Congress created the U.S. Postal Service with a new labor-management program, which granted a much broader scope of bargaining but still banned strikes.] By then, nearly 80 percent of the eligible non-postal employees had chosen union representation. However, the unions representing them understood the fragility of their legal standing, depending solely on the discretion of the president. What can be granted by the stroke of a pen can similarly be stricken. Therefore, they sought a statutory basis for labor rights. In the process they lobbied for a wider scope of bargaining and other favorable changes. In 1978, the

unions got part of what they asked for, with the enactment of the Civil Service Reform Act, Title VII (the Federal Service Labor-Management Relations Statute, FSLMRS). The FSLMRS essentially codified the existing executive-order policy, thereby enacting a highly circumscribed scope of bargaining reinforced by a powerful set of management rights.

Over time, the federal labor-management relations steadily deteriorated. The program allowed for only minimal employee engagement through union representation. Moreover, neither agencies nor their managers faced adverse consequences if they adopted a confrontational stance toward the unions. Managers had little if any incentive to engage union representatives substantively. Furthermore, presidents, agency executives, and legislators often displayed ambivalence or indifference to federal labor-management relations. Employee morale and government performance suffered, at the public's expense. The ill-fated strike by the air-traffic controllers in 1981 epitomized the deep-rooted decay in the federal labor-management relations program.

In 1991, the General Accounting Office (GAO) released a report on *Federal Labor Relations: A Program in Need of Reform.* It found that "The large majority of all experts GAO interviewed said the federal labor-management relations program is not working well. In general, they said (1) the program is too adversarial and often bogged down by litigation over procedural matters and minutiae; (2) some dispute resolution mechanisms are too lengthy, slow, and complex; and (3) ineffective FLRA [Federal Labor Relations Authority] management has weakened the program" (GAO 1991:2). The GAO (1991:5) added that "the problems in the federal labor-management relations program appear to be so widespread and systematic that piecemeal technical revisions would not be a workable solution….GAO recommends that the appropriate committees of Congress hold hearings on the state of the program with a view

toward establishing a panel of nationally recognized experts in labor-management relations and participants in the federal program to develop a proposal for comprehensive reform." Rather than offering a meaningful framework through which to engage employees through their union representatives, the FSLMRS provided a largely empty vessel that became smothered in adversarial relations.

When inaugurated in January 1993, President Clinton faced three intertwined deficits: budget, performance, and public confidence. He recognized the need to reform government. In the 1992 campaign, he and then-vice presidential candidate Al Gore (Clinton and Gore 1992) wrote that "We can no longer afford to pay more for –and get less from –our government. The answer for every problem cannot always be another program or more money. It is time to radically change the way government operates---to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up. We must reward the people and ideas that work and get rid of those that don't." The Clinton-Gore administration borrowed liberally from growing sentiment to "reinvent" government, popularized by Osborne and Gaebler's (1993) bestseller, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector.* Reinvention manifested a New Public Management (cf. bureaucracy) philosophy that infused government with proven best practices in the private sector. Greater employee participation emerged as a central tenet of reinvention, replacing the rigid top-down bureaucratic model of management with a participatory framework. Osborne and Gaebler (1993: 253) made the case succinctly: "When managers entrust employees with important decisions, they signal their respect for those employees. This is particularly important in organizations of knowledge workers." They specifically recognized labor-management cooperation as a legitimate form of participation, whose potential benefits are

unfortunately not realized, due to "the quality [or lack thereof] of management" (Osborne and Gaebler 1993: 263).

President Clinton acted promptly after taking office to begin reinventing the federal government. On March 3, 1993, he charged Vice President Gore to conduct a National Performance Review (NPR) "to make the entire federal government both less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement toward initiative and empowerment. We intend to redesign, to renovate, to reinvigorate the entire national government." The national review took place over the next several months during which federal-employee unions vigorously argued for major reforms in the dysfunctional federal labor-management relations program. The three largest union representatives of non-postal federal employees (the American Federation of Government Employees, AFGE, National Treasury Employees Union, NTEU, and National Federation of Federal Employees, NFFE) issued a joint report in 1993 on *Total Quality Partnership-A Vision for the Future.* The unions recommended that "The President should issue an executive order establishing labor-management partnership as a goal of the executive branch." The NPR endorsed this proposal in its September 1993 report to the president on *From Red Tape to Results: Creating a Government That Works Better and Costs Less.*

The NPR advocated a comprehensive new approach to public management that focused on "how" government does its work. It rested its case on four core principles: (1) cutting red tape; (2) putting customers first; (3) empowering employees to get results; and (4) cutting back to basics, i.e. producing better government for less. To empower employees, the NPR provided a compelling rationale: "Effective entrepreneurial governments transform their cultures by decentralizing authority. They empower those who work on the front lines to make more of their

own decisions and solve more of their own problems. They embrace labor-management cooperation…" Recognizing that "no move to reorganize government for quality can succeed without the full and equal participation of workers and their unions," the NPR recommended that President Clinton establish a government-wide labor-management partnership program with a National Partnership Council at the apex. E. O. 12871, issued on October 1, 1993, resulted.

The "Labor-Management Partnerships" decree summarized pungently the case for employee involvement through union representatives: "The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government." The order directed heads of government agencies to create labor-management partnerships at appropriate levels within their agencies "to help reform Government" and "involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission." E. O. 12871 also instructed agency heads to negotiate over so-called "permissive" items (which, by definition, management may elect to negotiate but remain non-negotiable if it decides not to so elect) under the FSLMRS [5 U. S. C. 7106 (b)(1)]. The order thus mandated that management negotiate on such matters as "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work."

As an integral part of reinventing government, E. O. 12871 focused on labor-management partnerships as instruments of change to produce bottom-line results. This is

engagement writ large, with a purpose beyond transforming labor-management relations from confrontational to collaborative. An expanded scope of bargaining served to reinforce this philosophy of full engagement. Agencies and their union representatives' responded promptly, instituting partnership councils across various organizational levels and sites. By 1998, councils covered 67 percent, or 810,260, of the represented employees in the federal service.

Later on, we will address what we know about how well partnerships performed. Unsurprisingly, imposing a vastly different program of labor-management relations on a statutorily restrictive and operationally adversarial system produced considerable tension and uncertainty. President Clinton eventually felt compelled to issue a memorandum to reaffirm E. O. 12871 on October 28, 1999, stating that "I believe the time has come to redouble the Administration's efforts to create genuine labor-management partnerships." He directed agencies to report to the Office of Management and Budget (OMB) by April 14, 2000 on the progress being made toward promoting partnership and achieving "improvements in customer service, quality, productivity, efficiency, and quality of work life…"

Shortly after taking office, President George W. Bush terminated the partnership program. On February 17, 2001, he issued E.O. 13203, revoking the partnership decree and dissolving the National Partnership Council. The Bush order did not require individual agencies or departments to disband their own partnerships, but no obligation existed to continue them. The message became unmistakably clear in short order: partnership with employees through their union representatives had no place under the Bush administration's approach to management.

A report issued by the Heritage Foundation on January 10, 2001, informed the administration's managerial program. In *Taking Charge of Federal Personnel*, the Foundation's report (Moffitt, Nesterczuk, and Devine 2001) condemned the partnership program and

recommended to the incoming president that "In the area of management of government… the new President's first act should be to revoke Executive Order 12871." Moffitt et al. argued that "Placing decision-making in the hands of self-interested 'partners' [i.e. unions] puts the interests of the permanent government first. Democratic government is supposed to put the interests of the people first…It is, after all, the president who will be held accountable for the actions or inaction of his Administration-- not the unions."

This blatantly politicized approach to public management received explicit presidential blessing when the administration (OMB 2001) released *The President's Management Agenda* in August 2001, one month before the tragic events of September 11, 2001, which would elevate labor-management relations to a whole new plane of policy-making significance. Like Clinton's reinvention program, Bush's management agenda focused on "improving government performance." Unlike the Clinton approach, however, top-down management prevailed. Rather than partner to transform, Bush advocated "freedom to manage." He (OMB 2001:5) declared that "Federal managers are greatly limited in how they can use available financial and human resources to manage problems; they lack much of the discretion given to their private sector counterparts to do what it takes to get the job done. Red tape still hinders the efficient operation of government organizations…" "Freedom to Manage" provided the palliative. The management agenda's stone-cold silence on the role of unions proved deafening.

9/11 exposed the government's incapacity to protect the homeland. It demanded an organizational as well as military response. Federalizing the airport security function emerged as the obvious first objective. In November 2001 Congress passed the Aviation and Transportation Security Act (ATSA), which federalized most passenger and baggage screeners by making them employees of the newly created Transportation Security Administration (TSA), which was

originally housed in the Department of Transportation before being transferred to the Department of Homeland Security (DHS). During the legislative debates on ATSA, a policy question arose about what type of human resource management (HRM) system should govern this new agency and its employees. At the president's insistence, Congress granted the head of the TSA the authority to draft a new HRM system, including a new labor-management program. On January 8, 2003, the head of the TSA, Admiral Loy, issued a memorandum that showed just how far the administration was willing to pursue this new-found managerial authority to negate labor-management relations. Invoking statutory authority provided under the ATSA, Loy stated that "I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United State Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization." The memorandum did not forbid screeners from joining unions, but unequivocally denied them the inherent rationale for unionization in the first place, i.e. collective bargaining to negotiate agreements to establish rights and protections in the workplace beyond those written into statute.

Our purpose here is not to review the litany of litigation that resulted from this interpretation. We observe the die was cast: a frontal assault was being launched on the role of unions as representatives. This confrontation occurred most dramatically in legislation enacted (1) creating the Department of Homeland Security (DHS) in November 2002 and (2) authorizing the National Security Personnel System (NSPS) as part of the Department of Defense (DoD) in November 2003. Both enactments authorized the heads of their departments to establish new HRM systems, including new labor-management relations programs. DHS issued such

regulations in early 2005, and DoD followed suit in November 2005. While the statutes authorizing the creation of these new systems required, to varying degrees, that the right of employees to collective bargaining be ensured, they otherwise granted the agencies considerable latitude to draft new programmatic regulations.

The results predictably proved antithetical to union representation, inviting a wave of legal challenges. In a nutshell, the proposed DHS and DoD labor-management programs significantly expanded management rights (vis-à-vis those accorded under the FSLMRS); narrowed even further an already restrictive scope of bargaining; granted agency heads greater authority to void negotiated agreements; and created "independent" boards in each department to replace substantially the role of the FLRA. The essential argument behind these changes was that unions unduly restricted the managerial discretion so essential to protecting the nation's security. The unions' coordinated legal challenges produced mixed judicial results. In 2006, a U. S. Court of Appeals [National Treasury Employees Union et al. v. Michael Chertoff U.S. Court of Appeals, NO. 05-5436, June 27, 2006] held that the DHS's labor-management program was substantially invalid; the department chose not to appeal to the Supreme Court. In 2007, a U.S. Court of Appeals [American Federation of Government Employees et al. v. Robert M. Gates, U.S. Court of Appeals, NO. 06-5113, May 18, 2007] upheld the DoD's labor-management program, though the department had delayed implementing this part of the NSPS, preferring instead to concentrate on a gradual roll-out of its highly controversial pay-for-performance program. [Congress has since legislated the termination of both DHS's and DoD's HRM programs.]

During its eight years, the Bush administration's assault on unions spread beyond agencies and departments with explicit national security responsibilities. Labor-management

relations deteriorated at the FAA, where bargaining impasses existed in 12 units, including the one represented by the National Air Traffic Controllers Association (NATCA). Through both removals and refusals to make appointments, the administration rendered the FLRA and its administrative complements substantially inoperative. Furthermore, in a little-noticed policy initiative, the administration's proposed "Working for America Act" would have extended managerial flexibilities on a government-wide basis in the areas of pay, performance management, and labor-management relations. Testifying before Congress on behalf of GAO, the former Comptroller General of the U.S. David Walker (2005:11) stated that "Under the draft proposal, agencies are obligated to bargain with employees only if the effect of the change in policy on the bargaining unit (or the affected part of the unit) is 'foreseeable, substantial, and significant in terms of impact and duration.'" If adopted, this proposal would have drastically shrunk the scope of bargaining, perhaps rendering it null.

The Bush administration's final act to expand managerial flexibility at the expense of union representation occurred on November 26, 2008. In E.O. 13480, the president removed the 1,500 bargaining-unit employees of the Bureau of Alcohol, Tobacco, Firearms, and Explosives from the protective shield of the FSLMRS, negating their right to representation.

By the time President Obama took office in January 2009, the federal labor-management relations program had been turned on its head. Partnership fell off the proverbial cliff and the very legitimacy of union representation came into question. We cannot say precisely what the effects of this policy and programmatic upheaval were on agency performance. We can, however, observe that performance problems surfaced on large and small scales. The abysmal performance of the Federal Emergency Management Agency (FEMA) during Hurricane Katrina in 2005, an agency that had arguably undergone significant positive transformation in the 1990s,

revealed a much wider and deeper malady, namely, " the eroding organizational health of our federal government" (Partnership for Public Service 2008:1).

President Obama's new executive order has created an opportunity to re-institutionalize labor-management engagement. Specifically, he has ordered the establishment of a "cooperative and productive form of labor-management relations throughout the executive branch" in order "to deliver the highest quality services to the American people." President Obama has created a 17-person National Council on Federal Labor-Management Relations to oversee the program to establish labor-management "forums" throughout the pantheon of federal departments and agencies. Agencies and departments are required to submit, for review and approval by the Council, plans on implementing these forums within 90 days of the order's issuance (i.e. before mid-March 2010). They are required to "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…" Further, agencies and departments are instructed to make a "good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1)" [the permissive items]. The order also stated that these permissive items will be elected negotiable in "several pilot projects."

Why Engage in Labor-Management Partnership in the Federal Service?

Labor-management relations exist in a variety of forms and occur through different processes. In the U.S. "industrial relations" system, collective bargaining and its ancillaries, such as contract administration, dominate. Through these processes, the parties negotiate agreements which delineate their rights and responsibilities and establish procedures to adjudicate differences over interpretation and application. In addition, the parties may form workplace-level

committees to grapple with a host of specific issues, extending from health and safety to education or recreation. They may also establish joint working groups to address problems and explore solutions to guide collective bargaining.

We put these labor-management processes on both decision-making and collaborative continua to distinguish the potential variation in union involvement. On one end of the decision-making continuum lies collective bargaining while full engagement [commonly called partnership] rests at the other end. Collective bargaining, which is typically restricted to those issues that fall within the legal definition of bargaining, generally deals with a narrower range of issues. Full engagement, on the other hand, extends much beyond the confines of negotiability, involving unions in matters of strategy formation and implementation.

While collective bargaining and engagement represent different forums for dealing with issues, they both may vary in the degree of collaboration and genuine involvement exhibited by the parties. We often view collective bargaining as more or less adversarial, though it can be cooperative or integrative in nature. Conversely, we perceive engagement as collaborative, though it may be more superficial than real. The parties determine the character of the process.

Past experience with partnerships in the private and public sectors reveals that they work best if the parties synchronize their approach to engagement with how they conduct collective bargaining. It is extremely difficult for either labor or management to engage in a genuine sense if they are adversarial in collective bargaining. In the federal sector, for example, strict adherence to a narrow scope of bargaining, which could be manifested by a blanket refusal by management to negotiate over so-called “permissive” items, only raises doubt and suspicion about the sincerity of management’s commitment to real engagement.

We emphasize that labor-management relations, regardless of decision-making process, exist on a continuum to underscore the point that the parties have options with consequences resulting from the choices they make. Engagement, which is heavily contingent on having and promoting a positive approach to collective bargaining and contract administration, is deemed preferable because it can substantially reduce the transaction costs of labor relations. Such costs include complaints, grievances, arbitrations, unfair labor practice charges, impasses, and an ambient reluctance to "go along" with needed change.

Faced with an adversarial management counterpart, unions will respond similarly and use various tools they have at their disposal to influence outcomes. In addition to filing grievances and litigating, unions may lobby Congress or attempt to sway public opinion, to the ultimate embarrassment and entrapment of management. Engagement, however, entails a fundamentally different approach if the parties are sincere and genuine. Kochan, Adler, McKersie, Eaton, Segal, and Gerhart (2008: 36) offer an operationally useful definition of the concept in the context of partnership: "A form of labor management relationship that affords workers and unions strong participation in a broad range of decisions from the top to the bottom of the organization." Metaphorically, it involves unions in everything from the takeoff to the landing. It includes involvement in decisions at levels from the work site to the headquarters, where strategy is set and capital budgeting occurs, both of which may have significant labor-management and personnel implications. Labor becomes a decision-making "partner," with an equal seat at the table with those seeking to influence the ultimate decision. Genuine engagement is arguably one of the most extensive forms of employee participation conceivable, short of co-determination. It involves managers and professionals in operational and staff functions who might not otherwise be involved. We cannot stress enough that there are two parties in engagement—labor and

management. Ideally, both sides benefit from what they have to offer, with each reaching deep into its own well of talent to maximize potential.

Why would management seek full engagement with unions? Gill (2009) provides a persuasive set of reasons based upon what we know about the effects of unions on high performance work organizations. First, unions provide a collective and independent voice that enables many employees to participate who might not otherwise have the chance. This voice is an alternative to "exit," which may occur in the form of unwanted turnover and the resulting loss of knowledge or the withdrawal of commitment and effort on behalf of the organization's mission. In this vein, unions offer an "independent" voice and serve as an important check on misguided policies and practices. Without the protection of union representation, employees may fear that exercising such a voice would jeopardize their employment security.

Second, unions provide a longer-term and broader perspective. They can afford to take the long-term view because they operate independently from the political appointees, who may change every four years. In addition, they can better see how management decisions will be received by the employees who are on the front lines and who will ultimately implement policy and change. Management may not see this viewpoint as clearly and mistakenly underestimate the difficulties and costs of implementing decisions. Third, unions offer management an important network of communications that is deeper and wider than the hierarchical channel.

Fourth, unions can promote workforce stability by reducing turnover. This allows an organization to accumulate institutional and relational capital so necessary to effective performance. Fifth, unions can promote trust and commitment. Engagement cannot occur without both of these ingredients. Open communication is unrealistic between parties who distrust each other, and, without commitment, no one will make an effort to become engaged.

The case for engagement with unions is by no means universally accepted. Some question whether it requires that unions be co-opted at the expense of their members' interests. Others argue that it needlessly hamstrings management, adding another burdensome layer of decision-making at a time when speed and flexibility are needed. Both of these viewpoints inherently underestimate the capacity of union representatives and managers. The purpose of engagement is not to delay, postpone, or obstruct. It need not invite paralyzing analysis. Rather, it is to inform and improve the quality and implementation of decisions. It is to engage in the decision so execution becomes both more understandable and acceptable.

No doubt, however, engagement does require a maturity and sophistication that neither blind confrontation nor accommodation do. Indeed, the acceptability and legitimacy of engagement to both parties depend on whether it drives concrete results. If engagement produces such results for both sides, it gains mutual acceptability and support. Geary (2008: 561) notes, in his study on whether unions benefit from partnerships: "for partnership to be effective and for unions to prosper under partnership arrangements, requires strong and effective union representation."

How does engagement, practically speaking, contribute to better results? First, it opens lines of communication [on both the management and labor sides] previously closed to those with the most knowledge about both operational and personnel matters vital to performance, such as the introduction of new technologies and the provision of needed training. Second, through broadened lines of communication, the parties have a greater chance of preventing conflicts and grievances, thereby avoiding and reducing costs and delays. Third, the parties can build confidence and trust which reinforces their commitment to accomplish the mission and solve ever greater problems. Fourth, it involves a much broader array of participants on both

sides, permitting more informed decisions and higher levels of buy-in when it comes to the tricky tasks of implementation. Finally, it encourages a set of attitudes and behaviors that benefit organizations in dealing with outside parties: customers, suppliers, or organizational partners-even Congress.

What Did Partnerships Do Under E. O, 12871?

Several reports exist on the effects of the labor-management partnerships of the 1990s on a variety of performance indicators: (1) the OPM (2000) analysis of agency submissions made in compliance with the president's memorandum reaffirming labor-management partnership issued in October 1999; (2) a report by the Defense Partnership Council (1999) on partnership in DoD; (3) a study commissioned by the National Partnership Council (Masters 2001); and (4) a report issued by Booz-Allen Hamilton (1998) on partnership in the U.S. Customs Service. These studies vary in methodology and scope, with OPM's being the broadest in terms of agency coverage. We review their key findings and compare them to the research conducted on the Kaiser Permanente partnership, which emerged in the mid-1990s and covered 90,000 union employees in 2007. Kaiser Permanente is a large not-for-profit health maintenance organization whose employees are represented by numerous unions, including the Service Employees International Union, Office and Professional Employees International Union, United Nurses Association, United Food and Commercial Workers, and the International Federation of Professional and Technical Engineers.

OPM (2000). OPM received reports from 38 agencies on the effects of their partnerships. It organized the results across agency submissions into several areas: customer service; quality; productivity and efficiency; cost savings and cost avoidance; quality of worklife; and labor-management relations. OPM categorized agencies in terms of substantial, moderate, or minimal

fulfillment of the goals of partnership, namely, to improve agency performance on such dimensions. In many instances, agencies did not provide information on partnership effects across performance areas.

OPM found the following number of agencies in "substantial" compliance: customer service (10); quality (9); productivity and efficiency (16); cost savings and avoidance (21); quality of worklife (16); and labor-management relations (16). The number in "moderate" compliance were: customer service (9); quality (11); productivity and efficiency (8); cost saving and avoidance (6); quality of worklife (10); and labor-management relations (14). In "minimal" compliance: customer service (4); quality of worklife (5); and labor-management relations (7). Not reporting: customer service (15); quality (18); productivity and efficiency (14); cost and savings and avoidance (11); quality of worklife (8); and labor-management relations (1). Within each of these areas, OPM identified several examples of positive effects. For example, the Social Security Administration had achieved a high overall customer satisfaction rating at least partly because its partnership with the American Federation of Government Employees had reengineered it toll free 800 number. A Veterans' Hospital in Tampa, Florida had substantially reduced the time for delivery of medication as a result of this partnership. The U.S. Customs Service had reported a 48 percent increase in the seizure of illegal narcotics through joint labor-management action plans. Overall, however, the weight of the evidence, or lack thereof, led OPM to observe the following (OPM 2000): "Most agency reports contained little quantitative data to support the conclusions about partnership and its impact. In the areas of customer service, quality, and productivity, a substantial number of reports contained no information at all about improvements resulting from partnership. We believe many agencies are finding it

extraordinarily difficult to quantify changes in labor-management relations and to measure the impact of these changes on the performance of large, complex organizations."

Unsurprisingly, OPM found the evidence of impact most compelling in the domain of labor-management relations. Across many agencies, such relations had improved and in numerous cases resulted in cost savings and avoidance. For example, the Social Security Administration reported annual savings of $7-8 million from reduced unfair labor practice claims. While these improvements did not reach the level of agency impact desired, they nonetheless represented an important first step toward more significant results. In many agencies, the parties started from a baseline of deep conflict and distrust. Before they could move forward to tackle difficult issues affecting agency mission, the parties had to jump this hurdle of adversarial relations. In fact, as previously suggested, research has shown that the potential effectiveness of partnership is contingent on developing a more cooperative relationship in the first place.

NPC (2001). The National Partnership Council commissioned a study that was conducted on 61 partnerships across eight federal agencies (Masters 2001). The research included the collection of archival data on partnership impacts and a survey of attitudes of members of labor-management partnership councils in these agencies. For the most part, hard measures of partnership impacts, including those pertaining to grievance rates and other labor-management conflicts, were unavailable. However, the survey data did shed some light. A majority of council participants agreed that their partnerships had a positive effect on internal customer satisfaction and labor-management relations. Over 40 percent agreed that they had positive effects on cost savings and employee morale. A third found positive effects on productivity and external customer satisfaction. Interviews with council participants at many sites revealed a broadly

shared perception that labor-management disputes had declined appreciably as a result of partnership, but, again, hard data were not available.

DOD (1999). The department-wide Defense Partnership Council conducted a survey of 20 percent of its bargaining units to assess partnership impacts in several areas. From its survey, it gathered 44 matched samples (i.e. union and management respondents from the same units with partnerships). These data revealed that a sizable majority of both union and management respondents agreed that partnership had positive effects on agency operations, working conditions, customer service, and employee morale or job satisfaction. Less than half of the respondents (27 percent management and 38 percent union) agreed that partnership increased productivity. The report also noted that the number of unfair labor practice claims in the DoD had fallen from 3,691 in fiscal year 1993 (pre-partnership) to an average of 2,092 in fiscal years 1997 and 1998. It attributed part of this drop to partnership, but employment in DoD bargaining units had also fallen by 40 percent from fiscal year 1992 to 1997.

Booz-Allen Hamilton (1998). The U.S. Customs Service retained Booz-Allen Hamilton (BAH) to conduct a cost-benefit analysis of the labor-management partnership between the agency and the National Treasury Employees Union. The study covered the time period between fiscal years 1993 and 1998. BAH performed the only true cost-benefit analysis of partnership with which we are familiar, i.e. it covered both the cost and the benefit sides of the equation, attempting to estimate a return on investment (ROI). It found that partnership had produced $3 million in net benefits over the time span. For every one dollar spent on partnership, the agency benefited by $1.25, for a 25 percent ROI.

We draw three principal conclusions from this evidence. First, the most clear-cut impacts occurred in the areas of improved labor-management relations. More cooperative attitudes

replaced the dominant confrontational predisposition, resulting in cost savings and avoidance through reduced disputes. Second, numerous examples of partnership effects on performance (e.g. increased productivity and improved customer satisfaction) can be found among those partnerships that [a] focused on such matters and [b] made an effort to measure partnership effects. Third, most agencies did not attempt to capture, one way or another, these effects, and many struggled to orient their partnerships to matters relating directly to agency performance.

Kaiser Permanente Partnership. In the mid-1990s, Kaiser Permanente faced a financial problem of crisis proportions, and its labor-management relations had deteriorated considerably. To deal with this difficult situation, Kaiser joined with a coalition of 10 national and 30 local unions to form an organization-wide labor-management partnership in 1997. This partnership has grown with Kaiser Permanente in size to cover 90,000 union employees, making it the largest example in the private sector and one of the longest in terms of sheer duration. The parties have also approached this partnership in perhaps the most systematic and sophisticated way ever on record to focus on mutual goals and the measurement of accomplishments.

Kochan, Eaton, McKersie, and Adler (2009) have chronicled and analyzed the Kaiser partnership in a recent book, *Healing Together: The Labor-Management Partnership at Kaiser Permanente.* Their research has revealed several conclusions, which remarkably parallel those found on the federal-sector experience under E.O. 12871. First, significant reductions in grievances occurred on an organization-wide basis. Second, the partnerships diffused throughout the geographically dispersed Kaiser organization, which operates in 18 states and the District of Columbia. Third partnership survived numerous challenges on both the labor and management sides, including leadership turnover and inter-union tensions. Fourth, numerous examples of partnership effects on clinical outcomes in health care can be found, depending on whether the

partnerships addressed the matters and sought appropriate documentation. Finally, the partnership struggled continuously with the issue of measuring impacts, and performance success proved difficult in certain areas, including safety, attendance of employees, and market growth. On balance, however, the evidence enabled these researchers to conclude that "we judge the first decade of the Kaiser Permanente labor-management partnership's existence a success--but still a work in progress. It turned around dangerously deteriorating labor-management relations; deepened the organizational capacity of Kaiser to meet challenges and crises as they arose; demonstrated that workers, unions, managers, and physicians could work together in delivering high-quality health care: and yielded significant benefits for managers, employees, and unions."

NLC Conference

Approximately 35 union leaders attended the conference on "Engaging Federal Employees Through Their Union Representative to Improve Agency Performance," which was held at the National Labor College on September 10, 2009. They represented several unions, including AFGE, NFFE, NTEU, the International Brotherhood of Teamsters, and the International Federation of Professional and Technical Engineers. We divided these participants into four groups and asked each group to address several questions about their experiences with partnerships under E.O, 12871:

(1) What impact did their partnerships have on agency performance?

(2) What factors contributed to partnership success and what were the barriers to success?

(3) What were the principal lessons learned?

These insights, combined with the other evidence on partnership operations and impacts, enable us to understand how to construct an engagement program to avoid the barriers and pitfalls encountered during the nineties. We can, in other words, learn from experience.

Partnership Impacts. The participants identified numerous effects of partnership, which reflected in part the breadth of their agencies and their work experiences. However, several threads ran through their examples. First, partnership in numerous cases improved the labor-management relations climate, as reflected in reduced grievances and other disputes. Partnership in some instances also expedited the collective bargaining process. As a result, significant cost savings and avoidance occurred (though largely undocumented). Second, several partnerships positively affected agency performance in terms of improved productivity, customer satisfaction, scheduling, and delivery. A frequently mentioned effect involved the improved capacity of agencies to handle non-routine events, such as restructuring or an emergency, more effectively. Third, agencies and partnerships generally did not attempt to document or measure their successes or impacts. Thus, the simple absence of data collection and measurement leads to limited knowledge about partnership impacts.

Success Factors and Barriers. The participants identified several common factors that contributed directly to the ability of partnerships to succeed. The following emerged as particularly salient: mutual trust, commitment of top management, pre-decisional involvement on significant issues, training in interest-based problem solving, and a focus on agency mission. Having a formal partnership agreement that articulated the purpose, jurisdiction, and authority of the partnership also contributed to success.

Participants identified numerous barriers to success, which, to some extent, represented the flip side of the coin. Distrust, lack of accountability, an “us” versus “them” mentality,

turnover on the management and union sides, and a lack of commitment to partnership emerged as relevant barriers. Another commonly mentioned barrier concerned the role of the labor-management relations specialists. Concerns were expressed that some specialists tried to create a barrier between top and line management and their agency's partnerships.

These findings map closely to the variables identified by OPM, which covered 38 agencies, including DoD. OPM identified these success factors: partnership principles worked their way into day-to-day operations; there was widespread commitment to partnership on both sides and at the highest levels; the partnerships were willing to take on tough issues; and partnerships had invested time and money to train managers, employees, and council participants on the key skills needed to promote labor-management cooperation, such as problem solving and interest-based bargaining.

In terms of barriers, OPM listed the lack of a common understanding of what partnership means, lack of mutual trust and respect, turnover among management and union leaders, and an inconsistent commitment to partnership. The Defense Partnership Council identified mutual distrust and respect, adversarial relationships, disagreement about labor law, problems with pre-decisional involvement, lack of knowledge about labor-management relations and partnership, insufficient training, leadership turnover, and miscommunication as common barriers.

Lessons Learned. The participants cited the lack of measurement of partnership impacts as one of the most important lessons learned. Agencies and partnerships lacked metrics and data, which, to some extent, reflected the absence of clear goals and objectives. Both labor and management needed to be involved in the process of setting goals and measuring accomplishments. In addition, partnerships needed to be more aggressive in communicating to employees generally about their activities. Partnerships should focus on specific, significant

goals, identify relevant metrics, collect performance data, and communicate information about their activities and achievements. Proper roles needed to be found for middle managers and local union officials so that partnerships could be more inclusive.

A relatively clear picture emerges from the conference about what needs to be done to improve the effects of labor-management engagement. First, top union and management need to be publicly and unequivocally committed to engagement. Second, unions need an equal seat at the table, which means pre-decisional involvement in significant matters that affect not only labor and personnel issues but all matters that go to the crux of agency performance. Third, the parties must invest in training on how to make engagement work. Fourth, engagement should focus on agency mission and performance and measure the impact of efforts to achieve agency goals and objectives. Fifth, the parties have to build trust and communicate their commitment to engagement widely and clearly. Sixth, they must be clear about their respective roles and responsibilities, recognizing that there will be differences and that cooperative but vigorous bargaining can occur parallel to comprehensive engagement. Engagement does not absolve managers of the duty to manage, nor does it mean the end to union representation per se, through either collective bargaining or contract administration. Unions must remain advocates of employee rights and interests. Managers should execute their responsibilities to ensure that service and product are delivered properly. Wherever possible, particularly with regard to getting the work done efficiently, the parties should work together collaboratively, engaged with each other to ensure high-quality performance. An adult-level psychology must prevail, in which the parties are mature enough not to let legitimate differences in perspectives and interests countermand the importance of working together meaningfully to serve the public.

Recommendations for a "Model" of Labor-Management Engagement

To succeed, engagement must possess two sets of core ingredients: principles and infrastructure. These elements do not guarantee success, but they are essential contributing factors. Obviously, engagement cannot work if either party pays only lip service to the process. No one can force engagement down someone's throat, but the "right" kind of environment can be created.

Guiding Principles. We recommend these guiding principles:

- Engagement should contribute positively to the performance of the agency;
- Engagement should promote the economic and workplace interests of employees and managers;
- Engagement should operate with a clear charter that grants the parties broad authority to address issues that fall outside the scope of bargaining;
- Engagement should address issues in a pre-decisional manner wherever possible;
- Engagement teams should receive training in interest-based problem-solving and conflict resolution;
- Engagement teams should use skilled facilitators at appropriate times;
- Engagement teams should set goals, measure performance, and communicate results;
- Managers and union representatives at all levels, especially high-ranking, should be committed to making engagement work, which means being personally engaged;

- A cooperative approach to collective bargaining should be taken wherever possible so that adversarial relations at the negotiating table do not jeopardize the larger engagement process;
- Engagement teams should include middle managers and labor relations specialists with the understanding that the role of the latter is not to obstruct but rather to contribute to the cooperative conduct of all forums of labor-management interaction.

To assist parties further in implementing labor-management forums, we include a set of guidelines in the Appendix at the very end of this paper. We stress that these are guidelines and encourage the parties to solicit the advice and expertise of those who can provide objective suggestions on how to operationalize the forums.

Infrastructure. Effective engagement in large and complex organizations does not come cheap. Kaiser Permanente spends $16 million annually to fund its Office of Labor-Management Partnership. This captures only a fraction of the overall cost. Simply put, it makes no sense to establish an engagement program if no provision is made for the necessary training and facilitation. It makes no sense if managers and employees lack the administrative wherewithal to manage the logistics of engagement, which include such mundane functions as setting up meetings, collecting performance data, and communicating results. It makes no sense if the participants on engagement teams are not given sufficient time to make the process work. A shoe-string operation will produce shoe-string results.

The savings to fund these investments may come directly from reduced grievances, unfair labor practice claims, arbitrations, and bargaining impasses, and indirectly through reduction of the "distraction effect" of such conflicts. The benefits will come in the form of improved

productivity, reduced waste, and increased revenue. The potential for gain is real, if the parties are willing to make the commitment.

REFERENCES

American Federation of Government Employees, National Federation of Federal Employees, and National Treasury Employees Union. 1993. *Total Quality Partnership: A Vision for the Future.*

Booz-Allen Hamilton. 1998. *U.S. Customs Service: Cost Benefit Analysis of the Labor-Management Partnership*, October 28.

Brock, Jonathan and David B. Lipsky. 2003. *Going Public: The Role of Labor-Management Relations in Delivering Quality Public Services.* Champaign, IL: Industrial Relations Research Association.

Defense Partnership Council. 1999. *Report on the Examination of Partnership and Labor Relations in the Department of Defense,* December.

Gill, Carol. 2009. "Union Impact on the Effective Adoption of High Performance Work Practices," Human Resource Management Review 19: 29-50.

Goldberg, Arthur J. 1961. A Policy for Employee-Management Cooperation in the Federal Service.

Greary, John. 2008. "Do Unions Benefit from Working in Partnership with Employers? Evidence from Ireland," *Industrial Relations* 47, 4(October): 530-68

Kettl, Donald F. 2009. *The Next Government of the United States: Why Our Institutions Fail Us and How to Fix Them.* New York: W. W. Norton & Company.

Kochan, Thomas A. 2008. "Editor's Introduction: Introduction to a Symposium on the Kaiser Permanente Labor Management Partnership," *Industrial Relations* 47, 1 (January): 1-9.

Kochan, Thomas A., Paul S. Adler, Robert B. McKersie, Adrienne E. Eaton, Phyllis Segal, and Paul Gerhart. 2008. "The Potential and Precariousness of Partnership: The Case of the Kaiser Permanente Labor Management Partnership," *Industrial Relations* 47, 1 (January): 36-65.

Kochan, Thomas A., Adrienne E. Eaton, Robert B. McKersie, and Paul S. Adler. 2009. *Healing Together: The Labor-Management Partnership at Kaiser Permanente.* Ithaca: Cornell University Press.

Masters, Marick F. 2001. *A Final Report to the National Partnership Council on Evaluating Progress and Improvements in Agencies' Organizational Performance Resulting From Labor-Management Partnerships,* February 15.

Masters, Marick F., Robert R. Albright, and David Epilon. 2006. "What Did Partnerships Do? Evidence from the Federal Sector," *Industrial and Labor Relations Review* 59, 3 (April): 367-85.

Moffit, Robert E., George Nesterczuk, and Donald J. Devine. 2001. *Taking Charge of Federal Personnel.* Heritage Foundation Backgrounder #1404, January 10.

National Performance Review.1993. From Red Tape to Results: Creating a Government that Works Better and Costs Less.

Nesbitt, Murray B. 1976. *Labor Relations in the Federal Government Service*. Washington, DC: The Bureau of National Affairs.

Osborne, David and Ted Gaebler. 1993. Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector, New York: Penguin Books.

Partnership for Public Service. 2008. *Roadmap for Reform: A Management Framework for the Next Administration*, October 1.

Spero, Sterling D. 1948. *Government as Employer*. Carbondale, IL: Southern Illinois University Press.

U.S., General Accounting Office. 1991. Federal Labor Relations: A Program in Need of Reform, July.

U.S. Office of Management and Budget. 2001. *The President's Management Agenda.*

U.S. Office of Personnel Management. 2000. *Labor-Management Partnership: A Report to the President,* December.

Walker, David. 2005. "Preliminary Observations on the Administration's Draft Proposed 'Working for America Act.' GAO: Washington, DC: October 5.

Weeden, Marija and Rich Jones. 2007. *Labor Management Partnership: Research from the Public and Private Sectors.* Denver: The Bell Policy Center.

APPENDIX

GUIDELINES TO IMPLEMENT LABOR-MANAGEMENT ENGAGEMENT PROCESSES IN THE FEDERAL SERVICE

Step 1: Select labor and management participants for the engagement forums; choose from different ranks and functions; include top leadership on both sides;

Step 2: Draft charters which define the pre-decisional scope of involvement, establish practices and protocols for the engagement forums, and enumerate core principles that serve the interests of both sides while focusing on improving agency performance;

Step 3: Ensure that participants on forums receive the appropriate training and that they are provided the resources (e. g. time, administrative and clerical support, travel expenses) to conduct their business effectively and engage the workforce;

Step 4: Establish a communications plan to communicate on the activities and accomplishments of the forum to employees and managers on a continual basis;

Step 5: Focus the forums on taking the appropriate steps to improve the labor-management and organizational climate so as to facilitate the improvement of agency performance;

Step 6: Focus the forums on achieving measurable results that align with the agency's mission and strategic goals [integrate this process into the budgetary, performance management, and personnel management activities that are central to compliance with the Government Performance and Results Act];

Step 7: Continually measure and assess outcomes and adjust accordingly;

Step 8: Adopt attitudes that anticipate problems and hurdles, realizing that they are inevitable in the process of change and performance improvement;

Step 9: Set as a goal the institutionalization of collaborative means of solving problems on an organization-wide basis so that issues are solved as efficiently and effectively as possible.