

**National Council on Federal Labor-Management Relations
Tenth Public Meeting, 03/16/2011**

On March 16, 2011, the National Council on Federal Labor-Management Relations (NCFLMR) held its tenth meeting at the American Institute of Architects building at 1725 New York Avenue, NW., in Washington, D.C. Mr. John Berry (Director, Office of Personnel Management (OPM)) and Mr. Jeffrey Zients (Deputy Director for Management and Chief Performance Officer, Office of Management and Budget (OMB)) co-chaired the meeting.

The following Council members also attended:

Member Name	Member Title
Ms. Carol Bonosaro	President, Senior Executives Association
Mr. William Dougan	President, National Federation of Federal Employees
Mr. John Gage	National President, American Federation of Government Employees
Mr. W. Scott Gould	Deputy Secretary, Department of Veterans Affairs
Mr. David Holway	National President, National Association of Government Employees
Mr. Gregory Junemann	President, International Federation of Professional and Technical Engineers
Ms. Colleen M. Kelley	National President, National Treasury Employees Union
Mr. H.T. Nguyen	Executive Director, Federal Education Association
Ms. Patricia Niehaus	National President, Federal Managers Association
Ms. Carol Waller Pope	Chair, Federal Labor Relations Authority

Mr. Rafael Borrás, Under Secretary for Management, Department of Homeland Security (DHS), sat in for Ms. Jane Holl Lute, Deputy Secretary, DHS.

Mr. T. Michael Kerr, Assistant Secretary for Administration and Management, Department of Labor (DOL), sat in for Mr. Seth David Harris, Deputy Secretary of Labor.

Ms. Lynn Simpson, Performing the Duties of the Principal Deputy Under Secretary of Defense for Personnel and Readiness, sat in for Mr. William J. Lynn, Deputy Secretary of Defense.

Mr. Dan Tangherlini, Assistant Secretary for Management and Chief Financial Officer, sat in for Mr. Neal Wolin, Deputy Secretary, Department of the Treasury.

About 67 members of the public also attended the meeting, including 4 representatives from the media.

Agenda Item I: Welcome and Approval of Minutes from January 19 Meeting

At 10:07 a.m., Mr. Berry thanked everyone for coming to the meeting. He welcomed Mr. George Cohen, Director of the Federal Mediation and Conciliation Service, and mentioned Mr. Cohen's recent involvement in difficult National Football League negotiations. He said the Council was now getting down to some very good, important issues. He said that while in its

first year the Council was busy setting up processes to advance and measure partnership, now the Council would focus on improving results for the taxpayer. He said most of today's agenda would focus on how to get results and measure them. He then asked whether Mr. Zients cared to comment. Mr. Zients said he agreed and was ready to get started.

The Council unanimously approved the minutes from its previous meeting on January 19, 2011 (Council Document 11-02-01), and then Mr. Berry turned to the next agenda item.

Agenda Item II: Initial Results of 2nd Implementation Plan Survey of Agency Efforts

Mr. Tim Curry, OPM Deputy Associate Director for Partnership and Labor Relations, reported to the Council the results of a February 2011 OPM survey of 51 agencies. In making his presentation he used slides with a cover page reading "Survey of Agency Forum Status: Initial Results of February 2011 Survey." (Council Document 11-02-02). He explained that the survey was a follow-up to the November 2010 OPM survey he summarized in the previous Council meeting.¹

Mr. Curry reminded the Council that the purpose of the November 2010 survey was to determine how many forums had been established at departments and agencies, and that the survey showed that 619 forums had been established and 612 more were being established. He explained that the main purpose of the follow-up February 2011 survey was to go back to the departments and agencies and find out how many of the Government's bargaining units are represented on forums, a question the Council asked in the previous Council meeting during discussions of the November 2010 survey results.

Mr. Curry said that though his office was still collecting data for the follow-up survey, the 31 largest agencies had provided full or partial responses, which was enough to represent close to 95 percent of the total number of forums reported for the November 2010 survey. He said that the total number of forums in place is now 696, and that there are 1,137,216 bargaining unit employees in the Federal Government, and that 765,757 of them, or 67.34 percent, covered by a forum.

Mr. Curry said the February 2011 survey also asked whether the forums were established at, above, or below the level of recognition and how often the forums meet. He said the survey showed that the overwhelming majority of forums were established at, rather than above or below, the level of recognition.

Mr. Curry said the purpose in asking how often forums meet was to get an idea of how engaged the forums are. He said that while the data showed a great deal of variance, the vast majority of forums have a regular meeting schedule and typically meet monthly.

Mr. Berry provided the Council an opportunity to ask questions on Mr. Curry's presentation. The Council had no questions, so Mr. Berry moved to the next agenda item.

¹ See minutes from previous meeting and Council Document 11-01-03, slides entitled "Survey of Agency Forum Status: Results of a November 2010 Survey of 51 Agencies Status: Results of a November 2010 Survey of 51 Agencies."

Agenda Item III: Results of Survey of Pilot Projects

Mr. Curry reported to the Council the results of a February 2011 OPM survey of (b)(1) bargaining pilot projects. In making his presentation he referred to a handout with the title "5 USC 7106 (b)(1) Pilot Projects – Agreed to by Management and Unions" (Council Document 11-02-03), and he used slides with a cover page reading "Survey of (b)(1) Pilot Projects Status: Results of February 2011 Survey" (Council Document 11-02-04).

Mr. Curry said that as of March 2011, there are a total of 12 (b)(1) bargaining pilot projects, which are located in 9 different agencies and cover approximately 13,274 employees. He said that OPM had received survey responses for all 12 pilots. He said the survey had six questions, and for convenience the survey results for each question are shown below.

Question 1: Is the pilot operational?

Mr. Curry said all 12 pilot projects listed on the handout were reported as *operational*, and that this meant a bargaining team consisting of management and labor had been identified. He said that every team except one is already engaged in efforts to advance the work of the pilot, and that for the one exception the team is scheduled to begin work this month.

Question 2: Has the pilot project been documented in writing?

Mr. Curry said that 7 of the 12 pilot projects were formally documented in either a charter, memorandum of understanding (MOU), letter to employees, or other format. He said that documentation for the remaining five pilots is being drafted.

Question 3: Has work on baseline issues, goals and metrics progressed?

Mr. Curry said 8 of the 12 pilot projects reported significant progress in reporting baseline issues, goals, and metrics.

Question 4: Has any bargaining involving a (b)(1) topic taken place?

Mr. Curry said that 5 of the 12 pilot projects reported that bargaining had taken place. He added that these projects had at least started and were even complete in some cases. He said that in one additional case while no actual bargaining has taken place, "the spirit and intent of what the pilot is about" is still being met because discussions of (b)(1) issues has led to consensus on the way forward.

Question 5: If so, what was the outcome of such bargaining?

Mr. Curry said that of the five pilot projects where bargaining has taken place, four reported reaching formal agreement and one reported that the parties are drafting an MOU based on bargaining. He said that one organization reported that the cultural change to accept predecisional involvement (PDI) had been a challenge, but he added that this is to be expected in any culture where PDI is new.

Question 6: Have staff received training on (b)(1)?

Mr. Curry said that only 3 of the 12 projects have not yet received (b)(1) training, and that one of those 3 projects had already scheduled training. He said that the other nine projects have received training, and that for all projects where (b)(1) bargaining has yet to take place training is either done or already scheduled.

When Mr. Curry finished covering the slides, Mr. Berry provided an opportunity for Council members to comment or ask questions.

Ms. Pope said that the Federal Labor Relations Authority (FLRA) provided training for 4 of the 12 (b)(1) pilot projects. She said the (b)(1) training ranges from 3 hours to a full day and is tailored to the parties of interest. Mr. Curry said he would let the three (b)(1) projects that still need training know that the (b)(1) training is available.

Ms. Pope said FLRA had been working with the Veterans Administration (VA) on a project to provide Web-based training, and she said there will be a (b)(1) module.²

Mr. Dougan asked Mr. Gould whether the 546 employees listed for the VA (b)(1) pilot project are all at a single location. Mr. Gould said he would get back to Mr. Dougan on specifics. He added that the pilot had been “a challenging issue and one that management and labor wanted to dig into together.”

Since there was no further discussion, Mr. Berry moved to the next agenda item.

Agenda Item IV: Success Stories

As Mr. Berry requested in the previous Council meeting, the Metrics Working Group provided a presentation of success stories resulting from early efforts of labor-management forums.

Ms. Bonosaro began the presentation, which was accompanied by slides entitled “Success Stories” (Council Document 11-02-05). The presentation told success stories from DHS, the Department of Agriculture, and OPM.

Ms. Bonosaro said the working group’s earlier presentations on metrics were complex and “maybe even boring,” but that the Council was working towards seeing whether its efforts are worthwhile. She said that now the Council wanted to leave numbers aside and tell some stories, so the working group asked forums to identify success stories in order to show what is possible and to encourage others. She said the idea was to “put some faces on partnership.”

Ms. Bonosaro asked Mr. Borrás and Ms. Karen Hilliard, Senior Advisor, Labor and Employee Relations, to tell the DHS success stories.

DHS Success Stories

Mr. Borrás said his success story was the creation of a model for DHS component-level forums. He said the DHS top-level forum works to create the proper environment for component-level

² The Council discussed Web-based training further, and provided a preview of it, in covering Agenda Item V.

forums to operate effectively. He said the top-level forum meets quarterly and is co-chaired by Mr. Gage, Ms. Kelley, and Ms. Lute, where they model the behavior expected at component-level forums. He said that so far working groups established by the co-chairs have produced—

- A charter, which sets forth the membership, goals, frequency of meetings, and procedures;
- A Web site;
- A baseline assessment of labor-management relations, including DHS and component reports for use in action planning;
- Information for components to use when identifying joint labor relations training; and
- Metrics for the coming year.

Ms. Hilliard said she had attended previous Council meetings and heard about difficulties encountered on the way to partnership, so she wanted to share a DHS success story from Immigration and Customs Enforcement (ICE). She said that ICE management had reached agreement with a nationwide American Federation of Government Employees (AFGE) unit of attorneys to install hard-wired internet access ports in the Executive Office of Immigration Review Court in Oakdale, LA. She said this information technology upgrade enables attorneys to conduct research during legal proceedings instead of using less reliable air cards or having to travel back to their offices to conduct research. She said ICE expects a significant gain in efficiency, and that a survey was scheduled to be conducted 90 days after the system is implemented in order to see whether expansion to other courtrooms is warranted.

USDA Success Story

The next speaker was Mr. Ralph Linden, USDA Associate General Counsel, who said his story was one of “success and abject failure that USDA is trying to use (b)(1) to solve.” He said that the USDA Office of General Counsel (OGC) began a major effort in 2007 to establish an OGC-wide case tracking system and electronic tracking database. He said his office had a contractor working on the conversion in 2008 and 2009. The project stalled, and so now USDA has made it a (b)(1) pilot.

Mr. Linden said the project has been very challenging. He said his office is still paper-based and functions like a 1950s style law office. He said the goal is to be able to find all existing documents electronically, and that getting there is a huge task. One question is who does it, since USDA OGC employs only 291 people nationwide, 220 of whom are covered by the collective bargaining agreement with AFGE. He said a major obstacle initially seemed to be getting working software to accomplish the project, and that it seemed at first that negotiations regarding the conversion could not even get started without new software. He said, however, that OGC found out when it began involving staff in solving the problem that new software was not really needed, and that standard programs OGC staff already had were sufficient. He explained that senior leadership were often not as technologically oriented as younger staff, and

that once less senior staff were involved the project seemed to be moving forward again. He said his hope is that in the end USDA OGC will be able to say it used (b)(1) to solve a major problem.

Mr. Gage asked whether Mr. Linden's office had been hinging telework on new software. Mr. Linden responded that a telework policy has been in place for some time, but that the attorneys need ready access to all legal briefs, opinions, and other research materials. He said that it is typical now for a teleworking attorney to have to say, "I'm working at home today; I'll get back to you tomorrow." He added that this is unacceptable.

Mr. Gage asked Mr. Linden if in the office the attorneys have full access to all the legal briefs, opinions, and other research materials they need, and Mr. Linden said they do. Mr. Gage then asked if the office telework policy allows for episodic telework. Mr. Linden said there is a need for face-to-face meetings at times and that currently the attorneys can work 2 days a week on a set schedule. He said he wanted attorneys to be able to telework 4-5 days a week.

OPM Success Stories

OPM Success Story #1, IdeaFactory at OPM

Mr. Justin Johnson, OPM Deputy Chief of Staff, presented IdeaFactory as a success story. Mr. Johnson said that, since there are only two locals at OPM (AFGE locals 32 and 2450), it is relatively easy to get everyone together, so meetings of the OPM Labor-Management Transformation Forum (LMTF) have been held twice a month. He said the meetings are top-level and include all Associate Directors, so with decision-makers present the group is very much a decision-making body. He said a discussion in LMTF about the need to obtain and implement ideas to increase performance had led to implementation of IdeaFactory at OPM. He said—

- That the LMTF serves as the Idea Council, which decides whether IdeaFactory ideas elevated to the LMTF (i.e. Big Ideas) will be implemented;
- That the Idea Council is establishing a threshold for whether ideas become Big Ideas and are elevated to the Idea Council;
- That each week three "hot ideas" will be featured at Mr. Berry's 10:00 a.m. senior staff meeting; and
- That as of today's meeting IdeaFactory has produced—
 - 143 ideas, 3968 ratings, and 243 comments,
 - 5 implemented ideas,
 - 6 ideas that are being implemented, and

- 7 ideas that are being reviewed for possible implementation.

Mr. Johnson added that a success story for the Transportation Security Administration (TSA) is its ability to share the IdeaFactory software with other agencies, and that OPM worked with Mr. Terrence Hill of DHS to implement IdeaFactory at OPM.

OPM Success Story #2, LMTF Structure and Successes

Ms. Michelle Tolson, President of AFGE local 32, said that the OPM LMTF had been up and running since NCFLMR got up and running. She said the LMTF was getting a whole lot better. She said the OPM LMTF has a three-tier structure—

- Tier 1, LMTF at OPM Director level,
- Tier 2, a labor-management committee for doing mid-term bargaining for local 32 and, as needed, teams for doing mid-term bargaining for local 2450, and
- Tier 3, a group for handling day-to-day issues and ensuring regular joint training for labor and management.

Ms. Tolson said that Tier 2 also had two local forums, one for OPM Retirement Services and one for OPM Healthcare and Insurance. She said Tier 2 deals with issues such as reorganization and realignment and had negotiated the reorganization for OPM Retirement Services and for OPM Healthcare and Insurance. She said that Tier 3 dealt with day-to-day operations, and she mentioned that Tier 3 had recently addressed an issue with use of official time.

Ms. Tolson said that it was good to see management learning it can benefit significantly from working with labor. She suggested that the NCFLMR Council consider holding a summit where those just getting started in implementing partnership could hear from those who have had positive experiences.

Ms. Bonosaro asked Mr. Johnson what was meant by “ratings” in IdeaFactory. Mr. Johnson briefly explained the categorical rating scale in IdeaFactory. He said the Idea Council had found that while users can rate ideas and also comment on them, and such comments might provide some insight into the impact of ideas on OPM program offices, there have not been nearly as many comments as ratings. He said one recommendation the Idea Council was considering is to convene a panel to consider the impact of ideas on OPM program offices.

After the presentations of success stories, Ms. Bonosaro reminded the Council of the following deadlines for forums and (b)(1) projects:

Deadlines for Forums

- December 31, 2010: All forums will have identified issues, goals, and metrics for reporting on a baseline.

- March 31, 2011: Agencies will report to the Council on what their forums have chosen to measure as a baseline.
- September 30, 2011: Forums have 6-month report due to agencies on their performance against their identified metrics.
- December 31, 2011: Agencies will report to the Council on their forums' performance against their identified metrics using the September forum reports and available updates.

Deadlines for Section 7106(b)(1) Pilot Projects

- December 31, 2010: All pilots will have identified issues, goals, and metrics for reporting on a baseline.
- March 31, 2011: Pilots will report to the Council on what their forums have chosen to measure as a baseline.
- September 30, 2011: Pilots have 6-month report due to the Council on their performance against their identified metrics.
- March 31, 2012: Pilots have a full-year report due to the Council on their forums' report against their identified metrics.

Ms. Bonosaro said that, with a focus on performance and infrastructure built over the last year, the Council is on the right path to meet the President's direction. She said there is still a great deal of work ahead, and that the due date for the Metrics Report (March 31, 2011) is fast approaching. She said the Metrics Working Group will continue to identify early successes, where labor-management forums are working, and the type of issues forums focus on in their work.

Ms. Bonosaro proposed that the Council skip its April meeting and meet next in May. She said this might be a good idea so the Council could have additional time to digest the agency reports that are due by March 31 and to determine next steps. Mr. Berry agreed this would be a good idea, for the reason Ms. Bonosaro gave and also 1) because counting for the TSA union election would be going on around the scheduled April meeting and 2) because he and Mr. Zients want some time to meet one-on-one with each Council member about Council priorities in the coming year. The Council agreed to skip the April meeting.

Ms. Pope suggested the Council consider ways to get the word out about success stories. She said that trainees had expressed interest in hearing success stories. Mr. Berry said he thought that was a good idea, and that both sides of the coin could be beneficial, i.e. also sharing knowledge gained where problems have arisen. Mr. Berry then turned to the next item on the agenda.

Agenda Item V: FLRA Training Preview

Ms. Julia Clark, FLRA General Counsel, said she had come to the meeting to present a preview of an unreleased Web-based version of training on Executive Order 13522 (the EO). She said that FLRA and the Federal Mediation and Conciliation Service had presented the training throughout the country many times to many union and agency officials, but that training so far was really a drop in the bucket. She said the Web-based version was a refined and concise version of the live training and would help make the training available to the many who still need it. She said an accountability function would be built in to track whether individuals have completed the training. She said the online training was the brainchild of Mr. Gould, who presented the idea one day at lunch to her and Ms. Pope.

Mr. Gould said training is at the heart of what the Council is trying to achieve. He said his idea had been how to use the Web to advance the training, but that the expert content comes from FLRA. Ms. Clark said Mr. Gould wanted the training to be available to everyone. She said Web hosting was a “Field of Dreams” approach, and that FLRA had worked on the preview the Council was about to see up until 3:45 p.m. the day before the Council meeting. She said that the training would be hosted on the HR University Web site (<http://hru.gov/index.aspx>).

Ms. Clark said the training was designed to give Federal employees a common, core understanding and is intended to convey a message of leading by example. She said the training stresses PDI, which she said is the heart and soul of the EO. She showed the preview, which included introductory coverage of the EO, PDI, labor-management forums, and the National Council. The preview also included a metrics section for the training, which covered EO reporting requirements, construction of metrics, and included hyperlinks to the Council materials on metrics.

Ms. Clark said the training was self-paced and typically would be about 90 minutes or so in duration, but that a user might choose to take it in multiple segments and take a little more time with it.

Mr. Berry thanked Ms. Clark for the presentation, and he thanked Mr. Gould for the idea of Web-based training. Ms. Bonosaro asked when the training would be live on the Web, and Ms. Clark said probably in the next couple of weeks. Mr. Berry added that as soon as the Web development work can be completed, the training will be deployed.

Ms. Pope added that the preview was for just one module of five or six, and that FLRA is currently working on a module for (b)(1) training (as she mentioned earlier in the meeting during coverage of Agenda Item III).

Mr. Junemann said he wanted to acknowledge the value of the training and the progress in getting it out to more people. He said that while his union represents thousands of people to whom the EO does not apply, the training is still a very good idea. He said the training gives management and labor a path forward. He added, “It shows them how to do it.”

Mr. Berry said he liked the preview and joked about getting his picture changed. He said an email would be sent out to Council members as soon as the training goes live. He then turned to the next item on the agenda.

Agenda Item VI: Telework Working Group Report

Ms. Niehaus presented a report of the Telework Working Group. She said that the working group received a new charter from the Council in the previous Council meeting. She said that the group's new focus is on providing assistance to agencies and their labor-management forums to ensure that the Telework Enhancement Act is implemented as intended.

Ms. Niehaus said that so far in 2011 the group has held telephone conference calls on January 24, February 7; and March 8. She said the group reviewed the OPM telework guidance which existed prior to the passage of the Telework Enhancement Act and provided OPM some feedback on recommended changes to the guidance. She said that in light of the feedback, OPM made significant revisions to the OPM telework guidance and provided a draft to the group for further review. She said that overall, the group was pleased with the revisions made to the telework guidance but provided OPM additional recommendations on revisions to further enhance the guidance. She said the suggested revisions were not only substantive revisions but also included suggested revisions on how to present the information for clarity and to make the telework guidance more user-friendly.

Referring to a portion of the Telework Enhancement Act dealing with continuity of operations (COOP), Mr. Gage said, "Most telework things are codified." He said, "What does it mean when you say you can supersede?" He questioned how this impacts telework policies which have been subject to collective bargaining. He said he believed this may need revision or clarification.

Mr. Berry said, "We'll make sure we get back to all parties on this." He said that emergency drives COOP, and he added that COOP situations are clearly the exception and not the rule. Mr. Gage said that there were a lot of good things in the draft telework guidance, but that all things are subject to collective bargaining agreements. Mr. Berry said that the Council would get attorneys working on the issue.

Ms. Kelley recalled that in the New York City area around 9-11 the number of teleworking employees greatly expanded and the number of options for teleworking increased. She said the ability to telework was extremely important under those tragic circumstances.

Agenda Item VII: New Business

Mr. Berry said that the Chief Human Capital Officers (CHCO) Council had agreed to form a working group on performance management, to consider how the Government can better formulate mission-aligned performance objectives and reward good performance. He raised as new business the question of whether the NCFLMR Council should get involved as the CHCO working group gets formed and underway. He said the business of the CHCO working group would not be about new pay-for-performance systems, but that the group would consider

what can be done "within existing law to improve performance accountability to the taxpayer." He asked whether a NCFLMR working group should take up the same issues and coordinate with the CHCO working group so that labor and management can move forward together in the spirit of partnership.

Ms. Kelley asked whether members of the NCFLMR Council would serve as members of the working group the CHCO Council planned to form. Mr. Berry said he thought it would be cleaner to have two separate working groups coordinate. Ms. Kelley said her concern in that event would be that the CHCO working group would be a management working group with no one there representing labor. Mr. Berry said the CHCO working group had not really gotten airborne. He said, "I bring it up here because it needs the involvement of labor. Let's open an email discussion about it." He added that the CHCO Council clearly felt optimizing performance is an urgent topic.

Mr. Berry said that the decision to form the CHCO working group had been made just a week earlier, and that CHCOs Michael Kane of the Department of Energy and Janie Payne of the Department of Housing and Urban Development would chair the CHCO working group. Mr. Berry said he thought today's meeting would be a good time to begin thinking of how the Council might take advantage of an opportunity for input just as the CHCO working group was getting started.

Ms. Kelley said she could imagine a separate CHCO working group going off in a different direction than might be taken with labor involvement. Mr. Berry acknowledged that Ms. Kelley's point was worth considering.

Mr. Dougan said this would be a good time for the Council to model PDI. He said that the problem with two separate working groups is that one could get ahead of the other and find itself too far down the road in the wrong direction.

Mr. Gage said that he and Mr. Berry had talked a lot about what could be done with performance systems to save a ton of money. Mr. Gage said he did not like the idea of the CHCO Council going off in its own direction without the benefit of input from labor. He added that he had 35 years of experience that could benefit efforts to improve performance. He said, "Who is the CHCO group coming back to? I need more information." He asked why it would be a good idea to start from square one rather than include as much expertise and experience as possible. Referring to Mr. Berry's comment that the CHCO Council felt a sense of urgency on the issue of Government performance, Mr. Gage said he did not understand what urgency would necessitate the CHCO working group going off on its own, and he said he had little confidence that labor's viewpoints would be well represented in a separate CHCO working group.

Mr. Junemann agreed that a single working group with labor members included would be best. He proposed that since not much had been done yet and things were still embryonic, rather than two separate groups working on performance why not form one group in the spirit of PDI? Ms. Niehaus said that regardless of whether groups are merged, the NCFLMR Council should assign a working group to work on performance.

Mr. Berry said, "Let's keep the discussion going in email." Ms. Kelley asked whether the CHCO working group would be held up until the issue of membership is settled. Mr. Berry said that it would. He added that a joint approach is essential.

Addressing Mr. Gage's question about the urgency to work on performance, Mr. Berry said he did not mean "urgent like the building is on fire." He clarified that he meant it is imperative to figure out what can be done under current law to optimize the Government's performance and deliver the best possible services to taxpayers.

Mr. Dougan said this portion of the meeting might be a good time to bring up another matter. He said that now that the Government is under a series of continuing resolutions, the possibility of furloughs is an important concern. He said his union has had difficulty getting agencies to provide information required under OMB Circular A-11, including which employees would be considered essential personnel. He said that this sort of information is very important for a number of reasons. He said, "We need to know who works and who doesn't." He said there are collective bargaining implications, and the information his union has been seeking is clearly important, yet it has been stonewalled at every attempt to get the information.

Mr. Zients said that the hope is that the Government averts a shutdown and there are no furloughs. He said that at the same time, the Government must be prepared for a shutdown. He said that OPM General Counsel Ms. Elaine Kaplan had taken the lead on legal issues in the event of a Government shutdown. He said that if the Government actually does need to implement agency plans for a shutdown, then there will be union involvement.

Ms. Kaplan said that under the provisions of the Anti-Deficiency Act, agencies can continue to employ some people during a Government shutdown.

Mr. Dougan said that in this instance he was not looking for PDI and that he was just trying to find out who is essential and who is not. He said he found it incredible that the Government is in its third continuing resolution and so has faced three potential decision points but cannot say who is essential. He said he had to wonder just when the agency plans for a shutdown would be approved if not sometime *before* the shutdown.

Mr. Gage asked Ms. Kaplan whether there is a guarantee that employees who turn out to be essential will be paid for their work during a shutdown. Ms. Kaplan said this was a legal question the Government had not yet been forced to face. She said that in the shutdowns in the mid-1990s Congress had voted to repay all employees who had worked during the shutdowns.

Mr. Gage said he did not understand why the question of what happens during a shutdown is not answered right now. He asked, "Why doesn't Justice or OMB issue a statement?" Ms. Kaplan said that the Department of Justice, OPM legal Counsel, and OMB would need to consider the question before a definitive answer could be given.

Ms. Kelley said the word on the street has been that OMB is holding up approval of agency shutdown plans. Mr. Zients said that actually OMB is coordinating rather than approving agencies' plans for a shutdown. He said it is a very big process to ensure appropriate legal

review and statutory compliance. He said there is every reason to believe there will not be a shutdown, but that if one becomes imminent OMB will “crank it up.” He said OMB is very much in the final stages of coordinating the agency plans.

Ms. Kelley said that it has been known since March 2 that there would be a continuing resolution. She said that for Federal employees it is a churning question, and that well-intentioned Federal managers are trying to fill in the information void for employees. She said that Federal managers had asked her union if in the event of a shutdown their employees could come to work. She said that such managers are powerless to inform their employees, but that it is not the managers’ fault, since there is no information from above. She said that people are unable to plan, and if employees are furloughed and not paid some of them may need time to find a job to make ends meet. She said not informing employees is unfair, and she asked that someone advise agencies on what to tell their employees.

Mr. Zients said that OMB will clearly communicate the Government’s plan for a shutdown if one becomes imminent. He said that until then, “We’ll take it one day at a time.”

Mr. Holway asked whether there is any prohibition against agencies discussing their plans for a shutdown now. Mr. Zients replied that it would be best for OMB to complete its coordination and ensure that everything is up to date.

Mr. Berry said, “Right now, David, it’s in agencies’ general counsel’s hands. We need the legal information in front of us.” Mr. Holway replied, “But this is the third time through; surely someone has asked who is and who is not essential.”

Mr. Junemann said he was glad Mr. Dougan had raised this issue. He said that when he goes back to his local leaders and talks about partnership and forums, they tell him to get real, that they have a sword of Damocles over their heads and need answers. He said his union represents all sorts of employees now that it did not represent in the mid-1990s. He said, “Respectfully, just because you’re in an elected leadership doesn’t mean you can’t get outvoted.” He said he was very leery about what Congress might do, since people will do crazy things to get their names in the paper.

Ms. Kelley said she believed that someone at OPM or OMB should issue some statement saying, “A shutdown is not expected, but this is what we know now.” She said the situation now is that nobody is answering anything. She added that someone should tell agencies they can share what information they have, since agencies seemed to think they are not allowed to provide any information at all.

Mr. Gage said it would be helpful to know as soon as possible who gets paid during a shutdown. He said he recalled from the shutdowns of the mid-1990s that there were lists of essential personnel.

Mr. Berry and Mr. Zients both said the Council members’ comments about a possible Government shutdown were “good input,” and then Mr. Berry asked if there were other topics to discuss.

Mr. Gage said he did have another topic. He said, “This Social Security thing is not moving at all.” He said he had brought in Mr. Witold Skwierczynski, president of AFGE's National Council of Social Security Administration (SSA) Field Operations, to talk about difficulties with the stalled SSA implementation plan. He said that he and Mr. Skwierczynski first worked together on a contract in 1980, and that Mr. Skwierczynski could provide a brief synopsis of the situation at SSA.

Mr. Berry said he would like to save Mr. Skwierczynski’s synopsis for the public comment period. Mr. Gage asked whether he would still be able to make a motion under new business. Mr. Berry said that Mr. Gage could do that, and then he turned to the next agenda item.

Agenda Item VIII: Acknowledgment/Receipt of Public Submissions

Mr. Berry turned the floor over to Mr. Skwierczynski, who said he was the main AFGE spokesperson in AFGE’s attempts to establish a forum at SSA. He said he was wearing red today in protest of the budget Congress provided for SSA, which was not adequate for the services SSA needs to deliver to the public. He added that he was “wearing a Wisconsin shirt to fight the union busting going on there.”

Mr. Skwierczynski said that SSA was the last agency to submit an implementation plan and that the plan has still not been approved. He said there were 3 meetings to try and work out remaining issues on the plan, including a 2-day meeting in December, a 1-day meeting in January, and another 1-day meeting in February. He said the main problem is that the agency believes the only place where PDI is required is on National decisions made at the Commissioner level. He said the agency does not want to “do PDI” on decisions made by Deputies or Regional Commissioners. He said that SSA also has 1,500 facility managers and believes PDI is not applicable at their level.

Mr. Skwierczynski said SSA tells AFGE that approval of the SSA plan only calls for a forum at the bargaining unit level, and that “they believe they are only obligated to do PDI through a forum at the Commissioner level.” He said that AFGE proposes a forum at the Deputy and Regional Commissioner levels and that PDI apply at the facility level. He said he would like the Council to examine the issue, and he added that he believed other agencies were having similar problems. He said the word “practicable” might be part of the problem.³

Mr. Berry said that he and Mr. Zients could examine the SSA situation, but that they would need to get the story from both sides of the table. Mr. Gage said he would “go with that,” but that he wanted the issue to be an agenda item for the May Council meeting, and then he could make it an action item. He said that Mr. Cohen could step in if necessary.

Mr. Cohen said it seems the parties involved are asking for a legal opinion, and that the question appeared to be a fundamental threshold question involving interpretation of the law. He said that the question was really outside of a mediator’s purview.

³ The EO provides that covered employees and their union representatives will have PDI in all workplace matters “to the fullest extent practicable.”

Mr. Berry agreed that the SSA situation seemed to require a legal interpretation, and he said that he would get some attorneys working on it and would see if it can be put on the agenda for the May meeting.

Mr. Holway commented that it would be best to have the decision on the SSA question sooner rather than later, especially since it might benefit other agencies as well as SSA. Mr. Berry said the Council always has the ability to convene by telephone. Mr. Holway said that someone needed to make a legal determination, and Mr. Berry assured him the Co-Chairs would look into it. He said the plan would be to get it on the agenda for the May meeting and make some progress before then if possible.

Mr. Junemann said his union's relationship with SSA had been as fruitless as AFGE's. He said he would have an administrative law judge participate.

Mr. Dougan asked for clarification of the issue: Is the question whether PDI applies only in labor-management forums or also in other labor management relationships? Mr. Berry said he thought the issue is broader than that. He said he wanted to work with the SSA Commissioner and others to clarify all the issues.

Agenda Item IX: Adjournment

Since there was no further public comment, Mr. Berry adjourned the meeting at 11:55 a.m.

CERTIFIED

John Berry
Co-Chair

Jeffrey Zients
Co-Chair