

National Council on Federal Labor-Management Relations
Third Public Meeting, 05/05/2010

On May 5, 2010, the National Council on Federal Labor-Management Relations held its third meeting at the Office of Personnel Management (OPM). Mr. John Berry (Director, OPM) and Mr. Jeffrey Zients (Deputy Director for Management and Chief Performance Officer, Office of Management and Budget (OMB)) co-chaired the meeting.

In addition to the Co-Chairs, the following Council members attended:

| Member Name | Member Title |
|-----------------------|---|
| Mr. William Dougan | President, National Federation of Federal Employees |
| Mr. Michael Filler | Director of Public Services, International Brotherhood of Teamsters |
| Mr. John Gage | National President, American Federation of Government Employees |
| Mr. W. Scott Gould | Deputy Secretary, Department of Veterans Affairs |
| Mr. Seth David Harris | Deputy Secretary, Department of Labor |
| Mr. David Holway | National President, National Association of Government Employees |
| Mr. Gregory Junemann | President, International Federation of Professional and Technical Engineers |
| Ms. Colleen Kelley | National President, National Treasury Employees Union |
| Ms. Jane Holl Lute | Deputy Secretary, Department of Homeland Security |
| Mr. H.T. Nguyen | Executive Director, Federal Education Association |
| Mr. Darryl Perkinson | Federal Managers Association |
| Ms. Carol Waller Pope | Chair, Federal Labor Relations Authority |

Mr. William Bransford, General Counsel for the Senior Executives Association (SEA) sat in for Ms. Carol Bonosaro, President, SEA.

Dr. Clifford L. Stanley, Under Secretary of Defense for Personnel and Readiness, sat in for Mr. William J. Lynn, Deputy Secretary of Defense.

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

For a portion of the meeting Mr. Jeffrey Neal, Chief Human Capital Officer, Department of Homeland Security (DHS), sat in for Ms. Jane Holl Lute, Deputy Secretary, DHS.

More than 70 members of the public also attended the meeting, including four representatives from the media.

Agenda Item I: Welcome and Approval of Minutes from April 7 Meeting

At 10:00 a.m., Mr. Berry welcomed the Council members and audience. He said the Council would try to conclude its business a little early today. He explained that, as part of an event for

Public Service Recognition Week, a band would be performing just outside the meeting room during lunch time, which might make it difficult for people to hear the Council's discussions. He said everyone was welcome to stay and attend the event.

Mr. Berry said the Council had made progress since its last meeting, and in today's meeting would discuss how to move forward, e.g. with bargaining pilot projects. He asked whether Mr. Zients had any opening comments. Mr. Zients said he agreed with Mr. Berry's remarks and suggested the Council get started with today's business.

Mr. Berry asked whether anyone had any comments on the minutes for the Council's previous meeting. (Those minutes are Council document NCFLMR-10-03-01). Mr. Gould said he had noticed "a couple of typos" he would report later. The Council had no other comments on the minutes. Mr. Berry suggested the Council proceed based on the assumption the typographical errors Mr. Gould noticed would be corrected¹. The Council unanimously agreed.

The Council turned to the next item on the agenda, the report of the Level of Recognition Working Group. The Working Group was assembled in Council meeting number 10-02 and asked to address the issue of union recognition and representation in labor-management forums.

Agenda Item II: Level of Recognition – Working Group Report

Mr. Dougan said the Working Group consisted of—

- Mr. Dougan,
- Mr. Gage,
- Mr. Gould,
- Mr. Holway,
- Mr. Lynn/Dr. Stanley, and
- Mr. Wolin.

Mr. Dougan added that Mr. Berry and Mr. Zients were also involved in the Working Group's discussions.

Mr. Dougan presented Council Document 10-03-02, a slide presentation summarizing the findings of the Working Group.

Mr. Dougan said the Working Group saw the need for the Council to provide some guidance on union recognition and representation on labor-management forums. He said the Working Group also agreed that guidance should not lead to a "cookie cutter" or "one size fits all" approach. He said the Council should also be careful not to be so prescriptive that it stifles creativity or impedes progress.

Mr. Dougan said the Working Group found it helpful to consider the problem of recognition and representation in the contexts of the Department of Defense and the Social Security Administration, and that this had encouraged good discussion.

¹ OPM staff followed up with Mr. Gould's staff and made the revisions on May 11, 2010.

Mr. Dougan said that the two models below emerged from the Working Group's discussions and analysis:

MODEL 1

1. A single forum may be created at the Department level with those unions having consultation rights at that level with the agreement that details will be worked out in their Forum Charter.
2. In addition, forums may be created at the Service/Component level with each union having at least National Consultation Rights status at that level, and so on down to the lowest level of the organization.
3. There will be a forum at the levels of recognition within the organization.
4. Agenda based meetings may be held with participating union(s), as appropriate, to address specific topics.

MODEL 2

1. Where no unions with Department level recognition exist, and only one union has National Consultation Rights, a multi-union forum may not be needed.
2. There will be forums at the levels of recognition within the organization.
3. Forums may be created at the Bureau/Agency/Component level with unions having at least NCR status at that level.
4. Ad Hoc working groups may be established to address Department-wide issues. Such working groups may be made up of participants from the Bureau/Agency/Component level forums.

Mr. Dougan said the Working Group considered it important to provide for establishing a single forum at the Department level, but that it also wanted to ensure that members of forums below the Department level could have a voice in efforts to address Department-wide issues, which he said was the intent behind number four of Model 2. He expressed that the general goal of the recommendations is to ensure labor-management partnership throughout the agencies at all levels, with complete representation.

After Mr. Dougan presented the slides, Mr. Berry suggested the members of the Working Group have an opportunity to add anything further to the foregoing discussion, then the floor could be turned over to the rest of the Council for any additional discussion.

Mr. Gould said he believed the overall approach suggested by the two models is very reasonable.

Mr. Berry asked if there were other comments.

Mr. Gage said he approved of the basic approach but thought some of the language could be more precise in order to achieve all the goals Mr. Dougan described.

Mr. Holway said the spirit of Executive Order 13522 is to “get everyone together,” and that the Council’s efforts should be to that end.

Mr. Berry said he thinks there is “broad agreement in the Administration that we want good labor-management relations.”

Mr. Gage said there are agencies where “delegation is too far down,” and that “maybe language should be more specific about decision makers.” He said three or four agencies had figured out they could delegate and were “trying to game that.” He said maybe the language should be revised to ensure the appropriate decision makers are engaged.

Mr. Berry said that at the first meeting the Council had discussed who the principals would be and had established in its guiding principles that all levels should be engaged. He said, “Let’s take an open approach,” and suggested that Mr. Gage let him and Mr. Zients know which agencies had the representation problems Mr. Gage described, then the Co-Chairs could work with the agencies to resolve their issues. Mr. Berry said he believed “a working group approach” would be consistent with the principles the Council had established so far.

Mr. Bransford asked whether management associations would be included on the forums.

Mr. Gage said that one approach would be as the Department of Defense (DOD) had done, i.e. leave the decision of whether to include management associations in forums up to those forums.

Mr. Perkinson said he had a concern about the Working Group’s language. He said he agreed that forums need the level of empowerment provided when real decision-makers are engaged.

Mr. Bransford said he was concerned that participation by management associations would be precluded, and that this would be a loss. He said he knew of agencies where management associations had fostered very good relationships.

Mr. Berry asked the Council whether it could agree that management associations could be part of the forums.

Mr. Dougan said including management associations might be problematic in some contexts at lower-level meetings but might work at upper-level meetings.

Mr. Berry said that maybe the Council should takes steps to encourage participation of management associations where practicable.

Mr. Bransford clarified his earlier statements by saying he wasn’t suggesting a requirement that management associations be in all forums, only that such participation not be precluded.

Ms. Lute asked Mr. Bransford for clarification: What role would the management associations have? Would the representatives speak as managers? Mr. Bransford responded that the associations could bring the perspective of second-level managers to the forums.

Ms. Lute said that management represents management.

Mr. Berry said he believed the management associations could bring a useful perspective to the forums.

Mr. Bransford said that when he looks at the goals of bringing labor and management together and engaging all levels, he believes both first and second-level supervisors have something to offer.

Ms. Lute repeated that management is management and added that “there can’t be two managers at the table.” She said she would be okay with management associations representing employees in the forums, but that there’s probably no more important factor to employee satisfaction than front-line supervisors and she doesn’t want any confusion about management voice.

Mr. Holway said he believed that in forums everyone affected should be at the table, but that it should be clear what hats participants are wearing.

Mr. Zients asked Ms. Lute to clarify how she would square the principle that all levels should be engaged with her concern about the management associations. Ms. Lute said that if the associations were engaged as part of the workforce, their involvement might be appropriate but that if it leads to multiple management voices in a forum that might be problematic.

Mr. Berry said he was comfortable with leaving whether management associations should be involved in the forums up to the individual forums.

Mr. Zients said that with clarification on roles and management voice, the management associations participating should not be a problem.

Mr. Berry said that Ms. Lute’s point was well taken, that there can only be a single management voice, but he also saw the need to have all levels at the table. He reminded the Council, “This is a work in progress,” and said for now the Council should try encouraging forums to engage management associations and leaving the actual decision regarding their participation in forums up to the forums.

Mr. Gage expressed some concerns: What does “encouragement” mean? Does it mean encouragement of participation of the management associations on all levels? He suggested their participation at the lower levels may complicate things.

Mr. Berry asked Mr. Bransford if he meant that management associations should be represented at the lower levels. Mr. Bransford responded that he was “thinking overarching higher levels.”

Mr. Berry asked whether there were further comments on the Working Group recommendations. Since no one spoke up at this point, he asked Mr. Dougan if the Working Group recommended the recommendations in its report as presented to the Council be adopted as guidance.

Mr. Dougan said the first question to settle was whether the Council agrees with the Working Group’s recommendations, then how the Council should disseminate the guidance.

Ms. Kelley expressed concern about the language in the recommended guidance, and said that “words become important” should the Council choose to adopt the Working Group recommendations. She pointed out the phrase in the models “may be created” and said

alternative language might be better. She suggested the language in the models might benefit from use of a phrase such as “this Council endorses and encourages.”

Mr. Gould suggested the Working Group work as a team on revising the language in the guidance on levels of recognition and then resubmit it to the full Council. Mr. Berry agreed with that suggestion and said the suggested revisions could be considered/approved by email. Ms. Kelley suggested that people other than those on the Working Group could have input, and Mr. Gould agreed that was a good idea. So did Mr. Berry, who said to the amusement of the Council that this would be great because it would provide yet another chance for Council members to volunteer for a task.

Mr. Berry said he believed the Council’s work on guidance for levels of recognition had progressed well, and he thanked all involved for their efforts. He then turned to the next item on the agenda, the Working Group Report on Implementation Plans.

Agenda Item III: Implementation Plans – Working Group Report

Mr. Gould presented Council Document 10-03-03, the Implementation Plans Working Group report. He acknowledged the “wonderful staff” listed on page 2 of the document and thanked them for their contributions.

Mr. Gould summarized the Working Group’s activities. He reminded the Council that in the previous meeting the Working Group had recommended certifying implementation plans for 24 agencies (which the Council voted to approve). He said the Working Group had —

- Provided feedback and guidance to 21 agencies whose plans were determined by the Council to need additional work;
- Reviewed supplemental information provided by the above 21 agencies;
- Conducted initial review of 5 agency plans not reviewed by the full Council at the April 7 meeting; and
- Determined whether resulting 26 agency implementation plans meet the Executive Order 13522 requirements.

Of the 26 additional agencies the Working Group reviewed since the previous Council meeting, Mr. Gould said there were now three agencies not yet satisfying the requirements of Executive Order 13522 for implementation plans. These agencies are identified in Council Document 10-03-03 and are —

- The Armed Forces Retirement Home (AFRH),
- The Federal Communications Commission (FCC), and
- The Social Security Administration (SSA).

Mr. Holway said there were three other agencies for which the Working Group agreed mediators should be brought in to help management and labor resolve likely difficulties in implementation. These three agencies are—

- The Agency for International Development (AID),
- The Broadcasting Board of Governors (BBG), and
- The Department of Energy (DOE).

Mr. Gage said the Council would need to address the question of whether lower-level forums are subject to the provisions of the Federal Advisory Committee Act (FACA), and he said this issue had arisen with DOD and the Department of Commerce. He said he personally believed that “lower level meetings shouldn’t be FACA,” but added that he thought the Council should issue guidance on the applicability of FACA to the forums.

Mr. Berry agreed with Mr. Gage that “FACA has come up,” and said that just the day before the meeting the issue had arisen in the Department of Commerce. Mr. Berry said the Council had learned that FACA is “a pretty complicated area.” He said that OPM and the General Services Administration were meeting to discuss this issue. He suggested as a possibility that some of the unions’ general counsels could help with this issue, and said the Council may want to assemble a working group to consider the FACA question further. He said that while he didn’t have an answer on the FACA issue yet, maybe by next meeting a legal analysis can be prepared from which the Council can determine what guidance to issue.

Mr. Dougan said that FACA had become an impediment. He said that in the agencies “pushing for FACA” there was a wide gap “between what labor and management think of this.” He added, “The research we have done leads us to very different conclusions than management.” He said the FACA question warranted a working group, and said he thought if one weren’t assigned to address the FACA issue the Council would use a lot of time dealing with the issue agency by agency and level by level.

Mr. Berry asked whether any unions would volunteer to provide attorneys to work on the FACA issue. Mr. Gage and Ms. Kelley volunteered.

Mr. Gage said he was not in favor of the idea of having each agency decide whether its meetings are subject to FACA requirements. He asked, “Can’t you guys make a call?”

Mr. Berry said he wasn’t prepared to take a position on the FACA issue yet, and thought it best to wait for the benefit of legal advice, then the Council could have a better informed discussion on the issue. He suggested the Council move on for now and return to discussing other aspects of the Working Group report.

Mr. Filler asked, regarding the three agencies for which the Working Group recommended mediation, if the Working Group was just recommending mediation or predicating approval of the plans on mediation. Mr. Berry directed the question to the Working Group.

Mr. Harris asked whether agencies would be consulted with before the Council imposed such a contingency. He said that making the approval of the plans contingent on mediation might put the Council into a “complicated relationship” with the agencies. Mr. Holway responded that the alternative, which he said was not approving the implementation plans, was also not desirable.

Mr. Gould said he was unaware of any contingency and that his impression was the implementation plans would be approved and the agencies would be advised they should get a mediator.

Mr. Gage said he didn't think the three plans would be approved at this point, and that his understanding was that mediation would help "remove the logjam" blocking the way to approval.

Mr. Gould said, "Up until now, the idea was it was binary." He said there were three agencies whose plans met the criteria for implementation plans, and that while those agencies have mediation issues they also have implementation plans that meet the Council's criteria and should therefore be approved.

Mr. Gage asked why the Council would not also recommend mediation for the three agencies² whose plans the Working Group had not recommended for approval.

Mr. Berry said that for agencies whose plans had deficiencies clearly precluding approval, he didn't want to cloud the message. He said that not approving an agency's plan would send a "loud and clear signal."

Mr. Zients asked what the next step would be for "the three not approved." Mr. Gould said the Working Group recommended that the Co-Chairs return the implementation plans to the three agencies with guidance for improvement and resubmission within 30 days. Mr. Berry said the three agencies would get additional attention and guidance as needed from the Co-Chairs.

Mr. Gage asked whether the full Council could see the guidance before it goes to the agencies. Mr. Dougan said he believed that would be a good idea, and suggested the Council could even send the agencies guidance marked "DRAFT" to get them started.

Mr. Holway suggested that, since many unions are not represented on the Council, the Council check for public comment on the implementation plans. Mr. Berry responded that he was concerned about setting a precedent that the Council needs the consensus of unions not seated on the Council. Mr. Holway said his concern was that the Council might miss something important. Mr. Zients said he was not comfortable with changing meeting procedures already established. Mr. Gould moved that the Council adopt all but three of the implementation plans (ARFH, FCC, SSA) and follow up with the three remaining agencies with guidance subsequently approved by the Council. The motion was seconded and carried.

Ms. Kelley asked for clarification: Of the 24 agencies with approved plans, which were the three for which mediation was recommended? Mr. Berry said these three agencies were —

- The Agency for International Development (AID),
- The Broadcasting Board of Governors (BBG), and
- The Department of Energy (DOE).

Agenda Item IV: (b)(1) Bargaining Pilots

Mr. Berry said that he and Mr. Zients had many productive discussions about bargaining pilots. He said that the Council was to report to the President on the bargaining pilots by May 8, 2010,

² There was some potential confusion over reference in these discussions to the "three agencies," since there were a) three agencies whose implementation the Working Group had clearly stated were not in compliance with Executive Order 13522 (AFRH, FCC, and SSA) and b) another three agencies the Working Group agreed would benefit from mediation (AID, BBG, and DOE).

but was not yet ready to do so. He proposed seeking a 30 day delay and establishing a Working Group to move forward on bargaining pilots. Noting progress he had already made in assembling a Bargaining Pilots Working Group (i.e. four of the five largest agencies had already committed to participating), Mr. Berry sought additional volunteers. The Council agreed that agency representation on the Council would consist of--

- Mr. Gould (Veterans Affairs),
- Mr. Harris (Department of Labor),
- Ms. Lute (Department of Homeland Security),
- Mr. Lynn/Dr. Stanley (Department of Defense), and
- Mr. Wolin (Department of Treasury).

Mr. Berry then asked for union volunteers, and the Council members below volunteered:

- Mr. Junemann (International Federation of Professional and Technical Engineers),
- Ms. Kelley (National Treasury Employees Union), and
- Mr. Nguyen (Federal Education Association),

Two additional Council members volunteered to serve on the Working Group:

- Mr. Bransford, who said that, while not a union, the SEA was happy to participate since it had an interest in meaningful bargaining pilot projects being created; and
- Ms. Pope, who offered the services of the Federal Labor Relations Authority to help the Working Group in its efforts.

Mr. Dougan asked if it's been worked out what the Working Group will deliver to the full Council. Mr. Berry said that question could be left to the Working Group.

Mr. Dougan pointed out that not all agencies are represented on the Council and asked what was being done to involve the other agencies. Mr. Berry said that 80 percent of the Government is represented already. He said the Working Group may decide it's important to have bargaining pilots tried in other agencies, but for now at least the Council has shown a good faith effort to get bargaining pilots underway and to represent the majority of the Government.

Mr. Gage asked whether it might be helpful for the Council to encourage agencies or unions to get involved and contribute ideas for bargaining pilots. Mr. Berry responded that the Council had extended an open invitation and had been soliciting ideas from agencies and unions since day one. Ms. Kelley said there are many ideas, and made a distinction between ideas from either labor or management and ideas to which both sides agree.

Mr. Berry said that assembling the Working Group was a good step forward and that the efforts were moving in the right direction. He said that he and Mr. Zients would work on extending the May 8, 2010, deadline, and that meanwhile the Working Group could continue its thinking on how best to proceed with bargaining pilots. Mr. Berry then turned to the next item on the agenda, the continuing discussion of metrics for measuring the labor-management relations climate.

Agenda Item V: Metrics – Continued Discussion

Ms. Lisa McGlasson, an OPM Labor Relations Specialist, gave a presentation on strategies for metrics from the 24 implementation plans approved in the previous Council meeting. She presented Council Document 10-03-04, which takes metrics statements from the 24 implementation plans and shows by agency plan how metrics will be developed/used, what measurement tools will be used, and what will be measured.

Ms. McGlasson also presented Council Document 10-03-05, which summarized the data from Council Document 10-03-04, showing frequencies from the 24 plans for how metrics will be developed/used, what measurement tools will be used, and what will be measured, as shown below.

Metrics development

Forum or working group (24)

Use national Council Metrics (3)

Use survey or outside facilitator (4)

Co-Chairs will develop (1)

Measurement tools

-EAS (13)

-Forums will develop new measurement tools (8)

-Alternate survey already in use (3)

-Traditional LMR (3)

-Need guidance (1)

-Focus groups (1)

What will be measured

- Exactly what EO 13522 said (12)
- Mission linkage (9)
- Satisfaction (6)
- Will be developed by Forum (3)
- Traditional LMR (2)

Mr. Berry said the data on metrics showed the Council has a great deal of work left to do in refining metrics. He said the Council would need to maintain “a laser focus on mission linkage” and must ultimately show that the main goal of the Council’s efforts is to serve the American people better.

Mr. Zients said the Council had made some progress on metrics. But he added, “This is a start but is not where we need to be.” He said that while he was comfortable with the idea that the bulk of work on metrics could happen at the forum level, “too much punting” is probably a bad idea. He said that metrics is an important enough concern that it probably warrants “best practices” guidance and a “professional working group” to develop it. He said there were people at the Office of Management and Budget (OMB) who were “good at measurement” and could help.

Mr. Berry agreed with Mr. Zients and said it was very important to make use of good technical expertise. He added that the Council really needs to “get on this.”

Mr. Zients said that the work he had suggested may be a “few months project.”

Mr. Filler emphasized the urgency of the Council developing guidance on metrics and said, “We can’t get started quickly enough.”

Mr. Dougan also emphasized the urgency of the Council developing guidance on metrics and said, “This is something that will eat our lunch if we don’t get on it.” He said that good measurement was a deficiency under the Clinton Administration’s Partnership Council, and he warned against this Council not adequately addressing metrics. He said the Council should look in and out of Government for models, and mentioned that Kaiser Permanente had some expertise the Council might find helpful. He agreed with Mr. Berry’s earlier comment that mission and service to the American people are paramount. He said he believed the Council needs to develop at least some common metrics to ensure the Government has some way of measuring the labor-management relations climate.

Mr. Gage said the current state of affairs with respect to metrics was disappointing. He said some people err by thinking measurement should go straight to grievances and filings of unfair labor practices, things he doesn’t care about in the context of metrics. He said there were better things to measure, such as career opportunities and quality of training.

Ms. Kelley said she agreed metrics are very important but believed they need to be a work in progress. She said the Council needs to breathe life into the forums first, and once the forums get up and running natural things the Council can measure will emerge. She said until the forums come to life, developing good guidelines for metrics will be difficult.

Mr. Neal emphasized the importance of working relationships. Mr. Nguyen agreed working relationships are important. He said complying with Executive Order 13522 in two ways will help: 1) management and labor sharing information and 2) agencies ensure predecisional involvement of unions.

Mr. Berry said that the Council didn't need to do the work of the Working group in today's meeting. He encouraged volunteering now or by email over the next week.

Mr. Junemann volunteered to serve on the Working Group. He said he was bothered he didn't see much in the plans for metrics about customer satisfaction. He said the Council should keep in mind the difference between the hurdle and the finish line, and that the finish line is that the taxpayer is satisfied.

Mr. Zients said the idea is that the Working Group is going to provide guidance on metrics letting agencies know what's important, not try to produce a completely finished, mandatory system of measurement. He said that what's important at this point is to get started now on developing general guidance.

Mr. Gould volunteered to serve on the Working Group. He expressed optimism with regard to metrics, reminding the Council that the data pool in Ms. McGlasson's presentations came from "the original 24," i.e. the 24 implementation plans approved in the previous Council meeting. He said he was encouraged that agencies are starting to implement Executive Order 13522.

Mr. Filler volunteered to serve on the Working Group.

When the Council reached the end of its discussion on metrics, the Working Group so far consisted of Mr. Zients, Mr. Gould, Mr. Filler, and Mr. Junemann. Mr. Berry once again encouraged the Council members to participate and that anyone interested should let Mr. Zients know by email.

Change to Council Meeting Schedule

Mr. Berry said the Council needed to move the next scheduled meeting from Wednesday, June 2, 2010, to Monday, June 7, 2010, as long as that date would work for the Council members. All Council members agreed.

Mr. Berry then opened the floor for public comment.

Agenda Item VI: Acknowledgement of Public Submissions

Ms. Paula Lucak, United States Department of Agriculture (USDA), Acting Branch Chief, Labor/Employee Relations and Litigation Branch, brought up two items:

1) She asked whether the National Council would be providing formal guidance regarding *pre-decisional involvement*, laying out what the Council understands that term to mean.

Mr. Berry said the Council will not be producing such guidance, but that they planned to post helpful information on the website.

2) Ms. Lucak said that in light of the Bargaining Pilot Working Group having been established at today's meeting, she wanted to advise the Council that USDA is working towards two (b)(1) pilot projects. She plans to follow up with OPM labor relations staff on this matter.

Agenda Item VII: Adjournment

After confirming there were no additional comments, Mr. Berry adjourned the meeting at 11:27 a.m.

CERTIFIED

John Berry
Co-Chair

Jeffrey Zients
Co-Chair