

**National Council on Federal Labor-Management Relations  
20th Public Meeting  
April 18, 2012**

The National Council on Federal Labor-Management Relations held its 20th meeting on April 18, 2012, at the Office of Personnel Management (OPM). Ms. Elaine Kaplan, OPM General Counsel, and Mr. Daniel Werfel (Controller, Office of Management and Budget) co-chaired the meeting. The following Council members also attended:

Name	Title
Ms. Carol Bonosaro	President, Senior Executives Association
Mr. William Dougan	President, National Federation of Federal 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. Kathleen Merrigan	Deputy Secretary, U.S. Department of Agriculture
Mr. H.T. Nguyen	Executive Director, Federal Education Association
Ms. Patricia Niehaus	National President, Federal Managers Association

Ms. Julia Clark, Federal Labor Relations Authority (FLRA) General Counsel, sat in for Ms. Carol Waller Pope, Chair, FLRA.

Mr. Brian DeWyngaert, Chief of Staff, American Federation of Government Employees (AFGE) sat in for Mr. John Gage, AFGE National President.

Ms. Catherine Emerson, Department of Homeland Security (DHS) Chief Human Capital Officer, sat in for Ms. Jane Holl Lute, Deputy Secretary, DHS.

Mr. Steve Keller, Senior Counsel, National Treasury Employees Union (NTEU), sat in for Ms. Colleen M. Kelley, National President, NTEU.

Ms. Sydney Rose, Deputy Chief Human Capital Officer, Department of Labor, sat in for Mr. Seth David Harris, Deputy Secretary of Labor.

Ms. Donna Seymour, Executive Director, Enterprise Automation, Office of the Under Secretary of Defense for Personnel and Readiness, sat in for Mr. Ashton B. Carter, Deputy Secretary of Defense.

About 37 members of the public also attended, including 2 representatives from the media.

**Agenda Item I: Welcome**

Mr. Werfel began the meeting at 10:04 a.m. He said Ms. Kaplan would serve as Co-Chair today, since OPM Director John Berry was unable to attend the meeting.

Mr. Werfel announced that, as required under the Federal Advisory Committee Act, later in the meeting the Council would invite comments from the public. He asked that members of the public wait until then to address the Council.

Before proceeding with the agenda, Mr. Werfel said the draft minutes of the previous meeting included all the Council's edits so far, and asked if there were any more changes. The Council unanimously approved the minutes with no further revisions.

## **Agenda Item II: Report to President on (b)(1) Pilots – Draft**

Mr. Werfel reminded everyone of the report on (b)(1) bargaining pilots due to the President on May 1, 2012, and said the (b)(1) Pilots Working Group had held regular meetings since December 2011 to ensure the deadline would be met. He said that last week the working group submitted a draft report to the full Council, and then based on Council members' feedback made revisions resulting in the current draft. He said the Council would decide today whether to approve the draft report, and that if remaining issues precluded approval today the Council could set a goal of approving the report in the next Council meeting. (In which case, he explained, the Council would ask the President for additional time to address its concerns and submit the report.) He then turned the floor over to Mr. Dougan, who began a presentation using slides labeled "Report to the President – (b)(1) Collective Bargaining Pilots".

### *Working Group Presentation*

Mr. Dougan reviewed the portions of Executive Order 13522 relevant to the (b)(1) pilot projects and the report to the President. He said the report to the President would be based on 12 pilot projects that cover more than 14,000 employees in 9 agencies. He added that the Council had solicited (b)(1) pilot projects from all agencies.

Mr. Dougan displayed a list of working group members (page 3 of slides). He pointed out that 3 of the 21 working group members were Council members and that several agencies and unions were represented. He gave special thanks to OPM staff for their support: "I want to mention the excellent support from Tim Curry, Tom Wachter, Amanda Jones, and Temple Wilson. There were lots of administrative matters to handle and notetaking required, and they did a great job. We couldn't have done it without them."

Mr. Dougan summarized the working group's activities since December 7, 2011. He said the working group met regularly (usually weekly for about 3 hours), and he briefly described the working group activities that culminated in the draft report. He said the work included reviewing reports from the pilots, interviewing pilot representatives and analyzing data from the interviews, drafting the report outline, producing the initial draft report, and modifying the initial draft based on Council feedback. He briefly commented on some aspects of this work, e.g. that interviews of pilot representatives were of both labor and management officials and were intended to elicit the extent to which the pilots contributed to the key areas for metrics (improve mission accomplishment and service/product quality; improve employee worklife; and improve labor management relations.)

To summarize the structure and content of the draft report, Mr. Dougan displayed the outline for the draft report:

*Outline for Draft Report*

- I. Transmittal Letter
- II. Executive Summary
- III. Definition and Background of (b)(1) bargaining
- IV. Pilot Projects Undertaken
- V. Assessment of Pilot Projects
- VI. Analysis of Pilots
- VII. Findings and Recommendations
- VIII. Appendices

Mr. Dougan elaborated on some portions of the outline. He said the Transmittal Letter provides a brief overview of the report, is signed by the Co-Chairs, and lists all Council members; that the Executive Summary is short but substantive and includes basic findings and recommendations; that the analysis of pilots is a discussion/enumeration of percentages of pilots falling into certain categories and tells “what was done and what wasn’t;” and that the appendices include definitions of acronyms, all pertinent Executive orders, and final reports from each of the 12 pilots.

Mr. Dougan provided highlights of the report findings and recommendations as summarized below.

*Findings*

- 12 pilots are at various stages in implementation of their plans:
  - Some have completed bargaining, while others have not;
  - Some pilots have no measurable outcomes at this time; and
  - Those with reported outcomes, little data collected or reported concerning the impact on or the benefit to the government.
- Many pilots did not bargain over matters that had a significant & immediate impact on an agency’s mission.
- Many reported metrics were largely anecdotal, with little objective statistical data – may reflect level of experience in measuring outcome of collective bargaining experiences.

- More robust feedback and assistance from the Council to the pilots on their original plans may have helped pilots better focus their efforts and develop stronger metrics.
- General lack of prior experience and knowledge on the legal principles and standards applicable to the topics covered by 5 U.S.C. 7106(b)(1) presented some challenges.
- Success in working collaboratively on all workplace matters, not just (b)(1) matters – pre-decisional involvement was common.
- No bad or negative outcomes reported by any pilot – communication increased and labor-management relations improved.
- Pilots generally had a prior history of good labor-management relations which developed and strengthened due to pilot.
- Pilots often chose less complex workplace issues to address in initial bargaining – likely contributed to success.
- *General Finding: Lack of complete data from all the pilots makes it difficult to fully assess and evaluate pilot results at this time*

### *Recommendations*

- Extend the duration and scope of the pilot projects to provide further evaluation of the effectiveness of negotiating over permissive subjects of bargaining
  - Invite current twelve projects to continue for two additional years, and identify additional pilot projects
  - Solicit new pilots from additional agencies/departments
  - Endeavor to ensure sufficient representation of pilots bargaining full scope of (b)(1) subjects
  - Take steps to ensure ALL pilots are trained
  - Encourage pilots to select issues based on strategic/operational plans
  - Provide sufficient support and oversight to pilots
  - Collect data and evaluate outcomes over entire period
- Urge all agencies to have pre-decisional discussions of (b)(1) subjects with their unions in accordance with E.O. 13522

Mr. Dougan said that, with regard to next steps for the report, the working group recommended approving the report for submission to the President, after discussing it in the meeting today and making any necessary changes.

### *Council Discussion*

When Mr. Dougan concluded the working group's presentation, Mr. Werfel thanked him, and said, "Obviously, this information is encouraging, though there's clearly a need to make sure we have the appropriate amount of reliable data." He then opened up the floor for Council discussion.

Ms. Bonosaro thanked Mr. Dougan for his leadership. She added, "It was an enormous amount of work, and everyone worked hard to go through the issues and make what we thought were well-founded conclusions. I think it's a good report."

Mr. Holway commented, "I agree with Carol it's a good report." He stressed the importance of meeting the deadline for submitting the report to the President: "I understand there may still be some concerns, but we should work them out and meet the deadline. I'm ready to go forward right now."

Ms. Bonosaro moved that the Council adopt the report now and then work out any changes still needed. She said, "Parliamentarily speaking, it's a way to go forward with a discussion."

Mr. Gould said he had a couple of questions/concerns; first, the need to allocate resources in furtherance of partnership. He said that agencies allocating time and resources for training is a good example, and that making sure labor and management have adequate training is very important. He asked whether the working group had specific recommendations regarding agencies' allocation of resources.

Mr. Dougan responded, "I think there was some analysis in terms of the support pilots had as far as leadership from the agencies and unions, and that there was some correlation between strong labor and management support and the success of pilots." He agreed that sufficient allocation of resources is critical, but that the working group had not developed specific recommendations to address that issue. He suggested that, if the decision is made to expand the pilot programs, any accompanying guidance should address the issue of resources (e.g., what resources the Council provides and what resources labor and management in agencies should provide).

Mr. Gould said another issue that came to mind was alignment with strategic and operational plans. He asked, "Is there an opportunity to make sure we establish better performance measures to render the kind of data we need in coming years?"

Responding to Mr. Gould, Mr. Dougan said, "I think so. Metrics are a new idea for a lot of people. We need to highlight and recommend certain metrics so we have objective measures. Cost data, for example. Cost data are especially important in these times. I'd propose that training packages on metrics be put together, and that we partner with each pilot to work maybe

one on one in order to identify metrics that make sense for their project. That's probably the only way to ensure we get the quantity and quality of data that we need."

Ms. Bonosaro offered an explanation for the data from the pilots not being more robust: "It's not so much a failure of the metrics themselves, but rather, as Bill said, that people were new to metrics, and limited in their ability to follow through."

Mr. Gould commented, "I'd recommend we take the opportunity to call for PDI." He stressed the importance of agencies establishing and fully engaging forums, and of forums being fully committed to (b)(1) projects."

Mr. Dougan said, "I agree a hundred percent that forums provide a vehicle to build a relationship and establish good communication." He said labor and management accomplishing anything worthwhile requires establishing good communication and learning to work together.

Mr. DeWynngaert commented, first conveying Mr. Gage's apologies for not attending today's meeting due to unforeseen events. He said the working group did a good job, that he agreed meeting the deadline for the report was important, and that AFGE was ready to vote today.

Mr. DeWynngaert added that AFGE was disappointed that the number of pilots was so small: "When we started, a number of Council members requested more involvement on the part of agencies, but that was met with a fair amount of resistance. That made the number of pilots small. It's now a little unnerving that we don't have enough pilots. We didn't put enough on the table, even though both labor and management asked for more. The report makes sense given where we are, but this is not a happy place since we thought there would be more pilots. We even suggested at the time that, rather than just (b)(1) topics, all health and safety matters be considered."

Mr. DeWynngaert asked Mr. Dougan how long the working group expected an extension of the (b)(1) pilots would need to be. Mr. Dougan said the working group recommended the pilots be extended for 2 years. He added, "Part of the problem was some pilots were based on things that were expected to happen but which were delayed or never materialized." As an example, he cited a hiring freeze as a factor delaying results from the Camp Pendleton effort.

Mr. DeWynngaert asked Mr. Dougan to confirm his understanding that the working group found no negative outcomes from the (b)(1) bargaining experiment. Mr. Dougan said he was pleased to report there were no negative outcomes or bargaining impasses, and that the working group's surveys showed the pilots generally improved relationships, and added, "Even those with a rocky history reported being on the road to improving their relationship. When labor and management sit down together and there's PDI, we can expect positive outcomes."

Mr. DeWynngaert said he thought it was significant that no negative outcomes were reported. He added, "For years there was resistance to (b)(1), and people acted as if Government would fall apart if we tried it. The reluctance on (b)(1) for decades came from fear that agencies would lose control, that things would go down the tubes, but these findings show the opposite. Regarding the suggestion to take on strategic and operational objectives, I think that people would then be

even more engaged.” He said he believed the working group’s analysis indicates that (b)(1) bargaining ought to be expanded. He added that bargaining beyond just (b)(1) topics would be beneficial to the Government.

Mr. Keller commented, “We’re also disappointed we couldn’t make a stronger recommendation, but it is what it is. There was limited participation in (b)(1) pilots, so it’s not surprising we have limited data. But we’re hoping the success, albeit limited, will encourage others to participate. We hope the gain of experience from this will, through labor-management forums, result in some inclination to expand. It’s a crucial time: an opportunity to take this to another level.”

Mr. Nguyen commented, “I join Carol and others in recognizing Bill’s leadership. To Brian’s point that it’s disappointing there are few pilots, I agree we are where we are, but I recognize the need for more pilots. It is encouraging that no negative effects were reported. My recommendation is to adopt the report and working group recommendations in totality.” He added that he hopes that if there are more pilots, 2 more years to look at data, more training and generally greater commitment of resources to (b)(1) bargaining, in 2 years the Council will have a great deal more to report.

Mr. Gould said VA could already see great improvement in relationships. “We already see that things that used to take several months to negotiate now take 3 days. We just need more time to demonstrate the value of engaging in these type of negotiations.”

#### *Approval of Draft Report*

Mr. Werfel reminded everyone of the pending motion by Ms. Bonosaro to approve the draft report. Mr. Gould asked if the report could be approved with the understanding that a few more minor edits could be made in the next few days. A discussion involving several Council members ensued, and the Council finally agreed to approve the report in general now with the understanding that—

- Minor edits can be made, but must be suggested within 48 hours;
- Any such edits must be suggested to the full Council; and
- If any Council member objects to suggested edits, the full Council will work to resolve the issues.

Mr. Werfel thanked the Council for its work on the report, said that more work lies ahead for the Council, and then proceeded with the agenda.

#### **Agenda Item III: New Business**

Mr. Werfel said he had no new business to raise, but wanted to remind everyone of the next Council meeting, to be held on May 16, 2012. He then opened up the floor for others to raise new business.

Ms. Clark took the opportunity to alert Council members to a document in their meeting materials, a copy of an FLRA news release announcing that FLRA will hold its first virtual town hall meeting at OPM's Washington, D.C. facility. She enthusiastically encouraged Council members to spread the word and encourage as many participants as possible. Mr. Junemann commented that IFPTE received information on the event and looks forward to participating.

**Agenda Item IV: Acknowledgment/Receipt of Public Submissions**

As he promised earlier in the meeting, Mr. Werfel provided an opportunity for public comment. There was one commenter, Mr. George Cohen, Director of the Federal Mediation and Conciliation Service (FMCS).

Mr. Cohen said that, given the disappointment expressed during the meeting about the small number of (b)(1) pilots, he thought it would be worthwhile to point out that pilots need not bargain over the full range of (b)(1) subjects, and that one (b)(1) topic would suffice. He said he thought amplification of that point might help the Council get more pilots.

**Agenda Item V: Adjournment**

Mr. Werfel adjourned the meeting at 11:00 a.m.

**CERTIFIED**

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Elaine Kaplan  
Acting Co-Chair

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Daniel Werfel  
Acting Co-Chair