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LABOR–MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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LABOR–MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

TUESDAY, OCTOBER 11, 2011

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:34 p.m., in Room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Johnson.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order. Aloha and good afternoon, everyone. I would like to thank you all for joining us today for this hearing examining labor-management partnerships in the Federal Government.

In December 2009, President Obama signed an Executive Order (EO) to improve government services by creating Federal labor-management forums. The Executive Order, which was similar to my 2007 bill on labor-management partnerships and a previous Executive Order during the Clinton Administration, established the National Council on Federal Labor-Management Relations Association. It also required Federal agency heads to establish labor-management forums of employee representatives and agency officials.

President Obama's Executive Order emphasizes a critical point about government performance: That a non-adversarial forum for employees, managers, and agency officials to discuss government operations will improve the services our government provides. Employees are in the best position to inform executives about the details of operational problems or inefficiencies. In addition, labor-management partnerships improve employee morale, which also helps drive better performance.

Data has shown that, once established, effective labor-management partnerships will reduce costs. In 1998, the U.S. Customs Service obtained an independent cost/benefit analysis of its labor-management partnership with the National Treasury Employees Union (NTEU). This analysis showed that the partnership produced $3 million in net savings between 1993 and 1998. For every dollar the Customs Service invested in its labor-management partnership, it received a 25 percent return on its investment.

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More recently, we have seen examples of cost savings and increased government efficiency as a result of labor-management partnerships at the Pearl Harbor Naval Shipyard—in my home State of Hawaii—and at the United States Forest Service. I look forward to hearing about these recent success stories today. As labor-management partnerships are re-established throughout the Federal Government, I expect that we will learn of many more partnerships creating short-and long-term cost savings.

I have long understood that its employees are the Federal Government's greatest asset. A fair, efficient, and effective government requires that Federal employees have a voice in their workplace.

I am looking forward to hearing from Director Berry about the recent work of the National Council on Federal Labor-Management Relations. I know that he has worked hard in his role as co-chair of that body, and I commend him for his dedication to this issue.

I am also excited to learn more about the current efforts at the Department of Defense (DOD) where labor and management are working together to establish a new performance management system and hiring process. As our Nation's largest agency—performing critical functions—I believe that DOD can serve as an example to the rest of the Federal Government on how employees and management can work together to achieve positive results.

With that, I ask my friend and colleague, Senator Johnson, for any opening remarks he may have. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Well, thank you and aloha, Mr. Chairman.

Senator AKAKA. Aloha.

Senator JOHNSON. Just quickly, my own background is in manufacturing and accounting, so I am definitely going to be keying in on numbers and looking for metrics. So I appreciate that part of your testimony.

I just want to open up, first of all, by saying that I think it is pretty obvious that a good relationship between labor and management is a key to good operational efficiency. There is absolutely no doubt about it that the workers on the front line probably have the best ideas in terms of how to efficiently and effectively operate and either produce products or provide the service that they are required to do. So I think that is pretty well understood now in the private sector. I think most successful managers understand that and are working hard toward having those good, cooperative relationships with employees.

I would also say that private unions have played a key role in making sure that the balance of power between management and employees became a little bit more in balance certainly than what it was in the early 20th century.

But there is a big difference between private sector unions and public sector unions. In the private sector you actually have a market discipline. If unions go too far, if they bargain for too high wages, too high benefits, they put their business at risk. And if the business goes out of business, they lose their jobs. So you have that market discipline.

That same discipline does not operate within public sector unions, which is why people like Franklin Delano Roosevelt (FDR),

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certainly a friend of the labor movement, had the following quote. He said, "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has distinct and insurmountable limitations when applied to public personnel management. The very nature and purpose of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations."

Even the AFL–CIO's George Meany in 1955 said, "It is impossible to bargain collectively with the government." Let us face it. Public sector employees are a reality, and I think we need to figure out how we can deal with them effectively so that they actually work cooperatively and help our Federal Government become more fiscally responsible.

I would like to just quote a few financial facts here. I do not want to turn this into a budget meeting, but I think this really does drive our discussion here.

Ten years ago, under Bill Clinton, his final budget, the Federal Government in total spent $1.8 trillion. Ten years later, this last year, we doubled that amount. We spent $3.6 trillion. In President Obama's 2012 budget, he projected out 10 years, and according to his budget, we will be spending $5.7 trillion in another 10 years. So, again, we are not cutting government. We are just trying to limit the growth of government.

Our Nation's debt right now stands at $14.7 trillion, and that would not be a problem if our economy was $100 trillion large. But it is about $14.5 trillion large. And just like a family that is in too much debt and is having a hard time growing its own personal economy because they are just spending all their money servicing the debt, they cannot increase consumption, the same exact fiscal reality faces our Nation because we have too much in debt.

So we are faced with financial realities here that are pretty ugly, and, again, that is why it is very important that we work cooperatively with the Federal workforce to make sure that we have an efficient government sector.

I think with that I will stop. I will probably have some other comments a little bit later on, but, again, I have a very open mind coming in here. Again, I think it is exactly important to have a good, cooperative relationship with the Federal workforce. And I am going to be looking forward to the testimony to see what some of those examples are.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Johnson.

On our first panel, it is my pleasure to welcome the Honorable John Berry, the Director of the Office of Personnel Management (OPM); the Honorable Scott Gould, the Deputy Secretary at the Department of Veterans Affairs (VA); and Pat Tamburrino, Jr., the Deputy Assistant Secretary for Civilian Personnel Policy at the Department of Defense.

It is the custom of the Subcommittee to swear in the witnesses, and I ask you to stand and raise your right hands. Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

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Mr. BERRY. I do.

Mr. GOULD. I do.

Mr. TAMBURRINO. I do.

Senator AKAKA. Thank you. Let the record show that the witnesses answered in the affirmative.

I want you to know that although your remarks are limited to 5 minutes, your full statements will be included in the record.

Director Berry, will you please proceed with your statement?

TESTIMONY OF HON. JOHN BERRY,[1] DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Mr. BERRY. Mr. Chairman, thank you for the opportunity to be here with you and the Ranking Member today. It is an honor to be here with you, and it is also an honor to be here with Deputy Secretary Gould and Pat, who have been great partners in this effort, along with many other efforts to make our government better and more efficient.

As the President stated when he signed this Executive Order, Federal employees and their union representatives are an essential source, as Senator Johnson said, of front-line ideas. The Administration believes that a strong partnership between the Federal Government and our employee unions is critical to delivering better results for the American people.

Our labor partners are an essential source of ideas and information. They provide valuable insight to improve working conditions for all employees, and they provide innovative ideas for delivering services to the American taxpayer in a more efficient and cost-effective way.

The National Council on Federal Labor-Management Relations includes representatives of our major large departments throughout the agency from the management side, usually the Deputy Secretary level, like Secretary Gould. It also includes representatives from our management associations, senior executives associations, front-line supervisors, and all of our national labor unions.

In the first year, we focused on getting the process of labor-management discussions set up. To date, thanks to the Federal Labor Relations Authority and the Federal Mediation and Conciliation Service (FMCS), more than 350 training sessions have been held, reaching over 10,000 managers and union representatives. Labor-management forums are now up and running; 769 have been established, covering approximately 770,000 bargaining unit employees.

At OPM, for instance, our partnership with our unions is strengthened by an open table where we allow any issue to come for pre-decisional discussions before we have to reach the mandatory bargaining table, and that collaboration has allowed us to improve speed and efficiency of our mission. It allowed us to reorganize ourselves so that we could streamline, and control costs, while still providing better services. It also allowed us to increase our training for our employees, and working with our employees, we developed some very innovative training and mentorship programs that have been of great assistance to us.

[1] The prepared statement of Mr. Berry appears in the appendix on page 37.

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Another thing is we survey each year throughout the Federal Government our employees. When I got here, the Office of Personnel Management was not in the top 10. In the 2011 Employee Viewpoint Survey, amongst all the agencies OPM is now ranked in the top 10 in all of the category areas: Ninth in leadership and knowledge management, seventh in results-oriented performance culture, tenth in talent management, and fifth in job satisfaction.

Let me point out again, the year before we were not in the top 10 in any of those areas. I would credit our strong partnership with our unions for the dramatic improvements that we have been able to achieve in a very fast period of time together.

Improving performance management is something I think both parties and all parties can come to agree on, and that is, making sure that we are getting the most out of our employees.

Over the last decade, we have spent millions of dollars implementing different performance personnel systems, and most of them have largely failed because they did not have the buy-in of the employee groups that were working—they were developed without their effective partnership. The No. 1 lesson of those experiences is that employee engagement for performance management reforms is essential for their success.

To that end, the National Council took on a work group with our Chief Human Capital Officers (CHCO) Council, Mr. Chairman, that you and Senator Voinovich formed to improve Federal employee performance accountability, and just at our last meeting we received the work product from that group. And I have to tell you, it is very impressive.

The Council is now looking to roll this out in pilot form. The Department of Defense is using it to inform their efforts on performance management review. And I believe it is going to achieve greater accountability for our employees and the American public.

By working with our labor unions who represent our front-line employees, we believe that we can be successful in improving delivery of those results to the American people.

Even with the progress that has been made, there is still much to do. Again, I thank you for the opportunity to testify and will be ready to answer and discuss any questions that you might have.

Senator AKAKA. Thank you very much, Director Berry.

Secretary Gould, please proceed with your statement.

TESTIMONY OF HON. W. SCOTT GOULD,[1] DEPUTY SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. GOULD. Chairman Akaka, Ranking Member Johnson, thank you for the opportunity to appear here today alongside my good friend and colleague John Berry and Pat Tamburrino to discuss implementation of Executive Order 13522. It is a privilege for me to be here today to represent Secretary Eric Shinseki and the hard-working VA workforce, over 300,000 good people who each and every day provide veterans and their families with care and benefits.

Our mission at VA is to provide the best possible health care and services to veterans wherever they reside. To accomplish that com-

[1] The prepared statement of Mr. Gould appears in the appendix on page 42.

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mon mission, both labor and management must work together as collaborative members of the same team.

VA has a long history of working jointly with its labor partners. For the past 15 years, we have maintained a successful VA Partnership Council, which has been key to our progress in implementing the Executive Order. To date, we have successfully stood up over 150 of the 200 labor-management forums we expect to have at the local and network levels within the next couple of years.

We are doing what leading private sector firms in America are doing today to improve performance and achieve positive results for their shareholders. And we are recognizing what good leaders and managers have always known: That employees have more to contribute to the mission when they are asked for their ideas. The result is greater pride, positive morale, and better quality.

Our greatest challenge in getting started at VA was making sure that everyone shared the same understanding of the Executive Order. To address concerns of both labor and management, we developed mandatory Web-based training for managers and supervisors, 25,000 of whom have completed this requirement. We have also had over 820 labor and management employees attend joint training outside of VA, which has helped build trust between them.

In consultation with our labor partners, VA has also developed metrics to track changes in customer, employee, and manager satisfaction, as well as organizational outcomes that can be linked back to the work of our labor-management forums. Our metrics have been approved by the National Council on Federal Labor-Management Relations and will be included in our progress report to the Council in December.

Our bottom line is whether improved labor-management relationships have a positive, measurable impact on the delivery of government services—in this case, our Nation's veterans.

The logic is inescapable. Good two-way communication with front-line employees helps managers make better decisions, and the early engagement boosts employee buy-in, which eases implementation of VA transformation initiatives and avoids unnecessary litigation.

In sum, Executive Order 13522 has already contributed directly to stronger labor-management relations at VA. There is still work to be done, but working with our labor partners will improve mission outcomes for our veterans by creating a more efficient and effective environment for all employees.

Finally, we expect the overall improvement in the labor-management climate to lead to less conflict, fewer grievances, and smoother, speedier negotiations of needed changes in the Department.

Mr. Chairman, Members of the Subcommittee, this concludes my remarks. Thank you again for the opportunity to testify. I will be happy to answer questions at a later point in time.

Senator AKAKA. Thank you very much, Secretary Gould, for your statement.

And now please proceed, Mr. Tamburrino.

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TESTIMONY OF PASQUALE (PAT) M. TAMBURRINO, JR.,[1] DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. TAMBURRINO. Chairman Akaka, Ranking Member Johnson, thank you for inviting the Department of Defense to appear at this hearing today to discuss our efforts to implement Executive Order 13522. We have involved our labor partners in the development of recommendations for the design of a new performance management system and discussion of methods to improve the Federal hiring process called "New Beginnings." I am pleased to share with you DOD's progress, the challenges and rewards of pre-decisional involvement (PDI), and our way ahead.

The Department of Defense embraces the provisions of the Executive Order as a means of facilitating the success of our labor-management objectives. We have established over 450 labor-management forums and are engaging in pre-decisional involvement at all levels of the Department. DOD has approximately 450,000 bargaining unit employees in 1,500 bargaining units.

As I am sure you can appreciate, implementing any program, especially in an organization as complex as DOD, is a daunting task. Nonetheless, as DOD follows the Executive Order's mandate to establish labor-management forums, we are experiencing measurable success. The 450 forums established in the Department of Defense represent approximately 60 percent of all the forums established in the Federal Government.

DOD has been engaged with the unions that represent DOD bargaining unit employees over the past 18 months in the New Beginnings process. At the outset, the Department recognized that it needed to rebuild relations with the unions following the dissolution of the National Security Personnel System (NSPS). DOD leadership engaged with the unions who enjoy national consultation rights to repair relationships before embarking on creating alternative solutions.

Working with the unions, DOD hosted its first New Beginnings conference in September 2010, bringing together a broad representation of diverse stakeholder groups. The conference was a free-flow of ideas, with participants generating over 800 recommendations with respect to performance management and over 600 suggestions for the hiring process.

DOD hosted a second New Beginnings conference in February 2011 to launch the design team effort. Following the conference, three teams—Performance Management, Hiring Flexibilities, and the Civilian Work Incentive Fund—began their work in earnest. Each team had approximately 25 members, all DOD employees, equally represented by labor and management. Labor and DOD leadership designated their team members, with a view toward ensuring a diverse group, reflective of all skill levels and seniorities.

In September of this year, the teams completed their final recommendations for delivery to DOD leadership. We expect to deliver a comprehensive report by year's end. While the pre-decisional process used with our design team has worked well, I think it is fair to say that the process is challenging for both management and

[1] The prepared statement of Mr. Tamburrino appears in the appendix on page 46.

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labor. We need to do more to identify topics that are worthy of discussion at all levels so that trends and common best practices can be identified and shared.

Training is also critical to the success of forum implementation. We have taken advantage of the Federal Mediation and Conciliation Service Executive Order Train-the-Trainer program. In fiscal year (FY) 2012, we will continue to leverage training opportunities, particularly those delivered by the Federal Labor Relations Authority.

We should be supportive of the time required to allow for meaningful pre-decisional involvement. This includes time for both training as well as the actual time to conduct pre-decisional involvement discussions. However, my experience is effective engagement between labor and management significantly contributes to the successful execution of DOD's mission.

The time in pre-decisional discussion may reduce the time required for formal negotiations. Traditionally, collective bargaining has involved significant amounts of time required by labor officials to obtain information relative to the issues at hand. Involving labor in the development of the solutions from the onset reduces the time on information gathering, typically found at the back end of the traditional bargaining model.

As the Department moves forward, we plan to continue our collaborative effort. The Executive Order requires each agency to conduct a baseline assessment of the state of labor relations. The preliminary results of our assessment indicates that when joint labor-management forums exist and meet regularly, all parties see the relationship as more positive and results-oriented.

Thank you again for your interest in this critical area and for the opportunity to speak with you today. I am pleased to take your questions.

Senator AKAKA. Thank you very much, Mr. Tamburrino.

Director Berry, as I mentioned in my opening statement, I would like to commend you on all of your hard work on this issue. I know that you believe in effective partnerships between employees and management in the Federal workforce. Now that the National Council has been meeting for well over a year, what do you believe is its most important accomplishment to date as well as its greatest challenge moving forward?

Mr. BERRY. Mr. Chairman, you will remember at my confirmation hearing we discussed two things that had stymied human resources for the past 50 years. The first was a hiring system that was as broken as broke could be. And second was we did not have strong performance accountability in the Federal Government. I promised you I would work hard on both of those issues.

The first one we are moving in the right direction on every front. Time to hire is down and all of those issues. But I think the best hope—and it is one that we have just started, but the one that I believe is going to have the farthest reach and the greatest impact is the joint effort that we have taken at the national partnership table between our unions and our managers on performance management and accountability in that it will create a new framework for doing this from top to bottom, from our senior executives to our front-line workers where we will have accountability, mission align-

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ment, and strong communication on a regular basis. It sounds so simple but some of the great reforms are those that are such strong common sense that you wonder why they have not been done before.

But the essence of this program being developed from the bottom up gives it its greatest chance of success, and so I think, Mr. Chairman, the greatest hope I have is it will allow us to make solid progress toward an issue that has stymied—and as we all know, NSPS, Pat could tell you the amount of money that was spent standing it up and then taking it down.

Homeland Security did the exact same thing. They put in place a performance management system. They stood it up, and they had to take it down. A lot of money was wasted.

By doing this and focusing on the performance system in the right way and building it from the bottom up, we are saving those millions of dollars, and I believe are going to be doing it right. And so that is going to be the longest-run investment.

The second I would say, Mr. Chairman, is innovation, and it goes, Senator Johnson, to your point. We had a hearing. Pat and Scott will remember this. We had a gentleman from Pearl Harbor, from the shipyard in Pearl Harbor, and he said that the people came to him and said, "How do we save money?" to his workers. He said, "Well, fire my supervisor." They said, "How do I save time?" He says, "Then my union members will give you a hundred different ways to do it faster and better."

Well, of course, time is money, and no one had spent the time to ask them, "Do you have a way to do this faster?" And when we did at that table, it is amazing what they have done. Pat can go into more examples of this, but they shaved the time of which you could turn around a submarine, and every day in dry dock that you can save translates into millions of dollars saved for the taxpayer.

By going to the front line, we have been able to do that, and I think that opening that spirit of innovation, Mr. Chairman, is going to produce great fruit for the taxpayers for years to come.

Senator AKAKA. Thank you very much, Director Berry.

Pat Tamburrino, I would like to thank you for your nearly already 30 years of military and civilian Federal service. Thank you.

Mr. TAMBURRINO. Thank you.

Senator AKAKA. I believe that the National Security Personnel System ultimately failed because it was imposed on employees who had very little input into the system that it designed. I appreciate the attention DOD is paying to rebuilding strong labor-management relationships.

Do you believe costs could have been saved had DOD engaged employees in the design of NSPS from the outset?

Mr. TAMBURRINO. Thank you, Mr. Chairman. In hindsight, absolutely. When I reflect on the past 18 months of New Beginnings, where we have had at points in time more than 70 labor and management people working in those three design teams together, they have come to a common understanding of what that performance management system should look like and the principles that it should embrace. And you will find that detailed in our report.

If we had done that in NSPS to begin with, in hindsight, we would have had the buy-in of both sides of the table, and we would

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not have had to spend those resources to go into the system, train people, only to bring the same 226,000-plus people back out of the system.

So I find that people as a result of this New Beginnings process on both sides understand what performance management is about better. They understand the concerns of both labor and management. And I can tell you the recommendations we will bring forward to the Congress are truly joint recommendations of both parties. And I think based on that alone, we will be very successful.

Senator AKAKA. Thank you.

Secretary Gould, first, I want to thank you. Through my service on the Senate Veterans' Affairs Committee, I know how hard you work to improve the lives of our Nation's veterans. One of the most important roles of the National Council is to ensure that forums develop metrics to evaluate their effectiveness and report on progress.

Please discuss the concept of metrics, their value, and what recommendations you have for any agency that is struggling with how to evaluate the effectiveness of their forums.

Mr. GOULD. Mr. Chairman, thank you. As a prior businessman, well, a former executive at the International Business Machines (IBM), I really appreciate the value of getting your metrics right and deciding what it is you are going to measure your success against.

One of the strongest aspects of the Executive Order is its focus on metrics, and there is a hierarchy of metrics that is laid out for us. The most important is mission accomplishment. Are we making a difference for the taxpayers that we serve? And those things at my own agency include the care and well-being of the veterans that we serve, and the quality of the benefits that we deliver.

Next most important is the well being of all employees that are involved in public service. Better morale and better employee satisfaction, I think generally translate into an organization with stronger esprit de corps, morale, and pride.

And, last, the third measure that we are focused on is the quality of the labor-management relations itself. We have all seen where union-management relationships do not work effectively, and I personally believe that a lot of time and effort can be attenuated in a confrontational process. Our goal is to move that to more of a collaborative and cooperative effort.

So our performance measures are focused on the mission, on achieving results for taxpayers, and then the people who make the organizations go, and, last, the labor-management relations itself.

Senator AKAKA. Thank you very much.

We will have a second round, but at this time we will hear from Senator Johnson with his questions.

Senator JOHNSON. Thank you, Mr. Chairman, and I would like to thank all of you for your service.

As I was reading through the written testimony, there were a couple of questions that popped into my brain. First of all, it sounds great. As I said in my opening statement it is just true that working with the people who work with you is going to improve your effectiveness and efficiency. But the question I kept coming back to is where can it go wrong.

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There was something similar instituted under Bill Clinton, and President Bush rescinded that Executive Order. Now President Obama has reissued an even more wide sweeping order. Why is that? Can you just kind of address the shift? What was the thinking?

Mr. BERRY. Mr. Johnson, I think I will take a crack at that. I think the President took the approach—it was building on—not creating something new but building on what was actually in existence in the law. And bargaining in the Federal Government is established under the law, and it is very different from the private sector in that Federal employees cannot bargain over pay and benefits like they can in the private sector. They do not have the right strike as they do in the private sector. So it is a very different labor statute that governs Federal standards.

But what the President said is, what will make our bargaining table more productive is the notion of talking beforehand. And it is certainly something I have found works well at OPM, that predecisional engagement where you can talk about ideas before you have fleshed them out, before you have gotten into it, and it gets to just what Pat was saying. You can identify where the weak spots are, and you can work together on them rather than sort of crafting it all in management's mind and then unfurling it and saying this is the road.

And so the gist of the Executive Order is to drive that predecisional discussion and to create forums where that kind of conversation could happen. So it builds on the law. It does not change the bargaining table. It does not change any of the legal standard. It just says before you get to the bargaining table, have an open conversation. And that was the spirit that drove the Executive Order.

Senator JOHNSON. As I was reading through the materials here, that seems to be the crux of one of the concerns, the pre-decision involvement. You said that Federal employees cannot strike, but they could certainly in that process do something that is almost similar to a strike and just simply not allow good ideas to move forward if they have an objection to them.

Mr. BERRY. But, again, Senator, that I think is exactly why we might actually get somewhere with this new performance management system, is because they were brought in on the shaping of it and the understanding of it and helped to design the structure on which it will be built.

Senator JOHNSON. They will now be involved in decisions that are basically outside their bargaining rights, correct? They are going to be brought in pre-decision in terms of budget preparation, in terms of potentially taking a look at what the size of the workforce might be. Isn't that a potential inherent conflict of interest? And I think that was one of the concerns of the people as I was reading through the testimony.

Mr. BERRY. Well, the law is pretty clear in that they cannot bargain over pay and benefits. What you are talking about is bargaining over the technology that might affect numbers and how that might be implemented.

For example, at OPM we installed a new phone system. We had a phone system when I got there, they told me the day I arrived

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on the job, "Your phone system could fail at any minute." Well, we, management, could have just gone out and picked one, but we went and instead met with our employees at the table about this. And we looked at it as an opportunity to expand telework, and it could use technology more effectively so that people could work and have distant conferences and we would save money on travel so that people would not necessarily have to fly to an area. They could use the technology.

In fact, that has happened, and we have saved about $1.5 million a year by putting in this new phone system. The union would have had the right to slow that down if we had not talked to them. They could have taken the approach you said of filing suits and other things that could have slowed things down. But because we worked it out at the table with them, they instead were supportive of it. We got the thing installed on time, under budget, and it is saving us money each year for the taxpayers.

So I think it is a great example of the other thing we have done which is we have controlled the cost on this. We have been very mindful that people were going to be looking at how much money we are spending on this. We are spending—the National Partnership Council (NPC) costs have been almost half of what they were during the Clinton years. And so we have been very careful on conserving these resources, spending them wisely, and using them effectively.

Senator JOHNSON. We will come back to costs.

Mr. Tamburrino, one of the things, I think, in your testimony you talked about is Project Moonshine or Moonshine Initiative. That was prior to these labor-management forums, correct?

Mr. TAMBURRINO. The first instance we cite, yes, sir, it was, approximately 5 years ago. But that project continues today.

Senator JOHNSON. OK. Again, so I guess my question is: Why did we need a sweeping Executive Order to encourage a best practice where it was already occurring? And why wouldn't other people in the Federal Government take a look at that example and say, "That makes sense. Let us start implementing it the way we would like to do it in our agency"?

Mr. TAMBURRINO. I think you are right Senator. What we face in the Department of Defense is we have to come up with efficiencies. We are under as much budget pressure as any other Executive Agency, and we find things like the "Moonshine Project", which has had multiple ideas, are a great way for us to attack those efficiencies.

If only management thinks of the efficiencies, then labor may or may not be inclined to adopt them. But if I get some of the ideas from the shop floor or the depot floor, I am much better off, because the amount of efficiencies we have to come up with are enormous.

So things like the "Moonshine Project" just institutionalize this partnership, and I think the pre-decisional involvement allows a lot earlier identification of the challenges that both labor and management face. I think it helps us provide a structure to attack the problem.

Senator JOHNSON. I think that in your written testimony you talked about one of the concerns was cost.

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Mr. TAMBURRINO. Correct, sir.

Senator JOHNSON. But you said it was outweighed by the benefits. But what concerns you about the cost? Do we actually know the cost of this within the Department of Defense?

Mr. TAMBURRINO. We are not collecting those metrics right now, but your questions cause me to pause: Do I need to do that?

But what we find and what has been relayed to me by my labor partners is if we wait to talk about the problems that face us both in the execution of the DOD mission, labor spends a lot of time trying to find out the facts. And in the pre-decisional involvement, we expose them to all the facts we understand a lot earlier, so we get to the substance of how do we solve this problem as opposed to let us spend hours in fact finding where guarding the information too closely is not in anyone's best interest.

But I think to your concern at the end of the day, I think everybody appreciates, at least in the Department of Defense, the commander, the commanding officer, the responsibility at the end of the day rests with that individual. And this pre-decisional involvement does not change that. It helps inform that. I think it may help us make better decisions at the end of the day.

Senator JOHNSON. OK. Thank you.

Senator AKAKA. Thank you, Senator Johnson.

Director Berry, telework and work-life programs have been priorities for the labor-management forums as well as for OPM more broadly. Would you please discuss how improving labor-management cooperation is helping to advance OPM's telework and work-life initiatives?

Mr. BERRY. Mr. Chairman, thank you. I would say that the partnership table has allowed us to move much faster and more effectively in implementing the law that you all passed, the Telework Enhancement Act. And I believe that as we implement that and get that stood up and get the technologies in place and have the employees designated, that is another place where we are just going to save money and be smarter. People, rather than having to spend 2 hours each way commuting, can now spend that time with their families and still deliver 8 hours to the taxpayer and do it effectively, securely, at their home location.

So it is a great law that you all put in place, and the Partnership Council has allowed us to stand it up more quickly, and I think that had we not had the Partnership Council, it certainly would have been one you would have had to almost informally create something like it to allow us to get the standards in place and to put in place what the law required us to do.

Senator AKAKA. Thank you.

Secretary Gould, I am a long-time supporter of investing in workforce training and, in particular, the training of supervisors. As a result of joint efforts between the FLRA and the FMCS and the Department of Veterans Affairs, thousands of labor-management officials have been trained on the Executive Order. They are not represented here today, but for the record, I want to commend FLRA for its extensive work on training with very limited resources.

I would like to hear more about these training efforts and your agency's role in providing such training.

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Mr. GOULD. Mr. Chairman, thank you. I share your view that the two most important things that a leader can do in an agency is develop and train the next generation of leaders behind them. And the reason why that training is important is directly related to business value: a more efficient, more effective organization, and the elimination of waste. It comes from people who really know their jobs and have gone that extra mile to learn in the community and draw lessons from the private sector and other agencies that are doing it well. And that happens on the job, it happens in a classroom, but it has to happen.

It is also true that in the environments that we're working in today, complexity is increasing, and taxpayer demand to deliver new results is not shrinking. So we have to train our people to do that.

So it was very natural for us together in the Labor-Management Council to go figure out a way where we could leverage training assets across the government, and the first place that we went to find the richest content, the deepest expertise, was at FLRA and FMCS. There is no question that these are the folks that have a lot of the insight, the professionalism, and the knowledge to make that happen. And we at VA volunteered to leverage our ability to create Web-based training using their expertise together. And what we have done is to create a number of Web-based training courses that really are an effort for us to work as colleagues in a community and to support the provision of those training assets that all 51 agencies can now draw upon, and they are posted on the Web and available for everyone to use.

Senator AKAKA. Thank you. Director Berry.

Mr. BERRY. Mr. Chairman, if I could just also shout out a thanks not only to those two great organizations but also to Scott and Secretary Shinseki. This is being done within budget, this entire operation. There are no separate appropriations for any of this that is provided. And without the assistance of the VA to stand up and help us to put these training programs on the Web, we would not have had the resources to do that.

It was a great partnership in terms of using both the capacity and the resources to get the job done so we could reach it out, and then Scott has made that available to all the agencies of the Federal Government. So rather than having to have Pat pay twice or someone else to have to pay for the same thing, we have shared it. And so I think we have been very careful, and I just want to express my deep thanks to Scott for his leadership on this important issue, sir.

Senator AKAKA. Thank you.

Mr. Tamburrino, I would like to hear from you on this as well. I believe that educating and training the DOD workforce, particularly its supervisors, will be critical to the success of a new performance management system.

What steps are being taken by agency officials and employee representatives to ensure that a strong training program is in place when the time comes to implement DOD's new performance management system?

Mr. TAMBURRINO. Mr. Chairman, thank you for that question. Currently, DOD has new supervisory training courses for anybody

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who becomes a supervisor for their very first time. So we offer that across the components.

In the report that we will give you, we emphasize the fact that one of the keys to successes for our new performance management system is that supervisors have objectives which rate them on their ability to supervise; that when we pick new supervisors, we do that with some conscious activity that the person that we are about to pick has some aptitude to do it; and we equip that person with the knowledge, skills, and abilities to become a supervisor through some formal training.

So I think you will see in our final recommendations we have current training, but we will bring it to a higher level; and we will emphasize that part of the supervisory responsibility is to conduct good dialog with your employees every day, make sure they understand what their responsibilities are, and, more importantly, what their contribution to the mission is, and enable them to make the most effective contribution possible.

The design teams will write, I believe, at great length on that particular item in their report because they found that to be a critical ingredient going forward.

Senator AKAKA. Thank you. Senator Johnson, do you have any questions?

Senator JOHNSON. Thank you, Mr. Chairman.

Mr. Berry, why in the top three goals of this effort don't we list cost savings? I understand more effective mission, but with the fact that we are bankrupting this Nation, why isn't that an incredibly high-level goal?

Mr. BERRY. It is, and, in fact, it is married, Senator, exactly with the first one. The first metric that we are looking at is both mission and service delivery, and service delivery being expressed specifically in metrics of costs, cycle time, error rate cost savings, return on investment, so that the breakdown when you get into that, the standards of the metrics are under one are very strongly focused on time and dollar savings. It is too early—in other words, I do not have enough of the reports back in. Those reports are not even due until the end of this calendar year, so I will not be able to give you a full analysis of this until later. But, the early stuff we are seeing, it is definitely showing up on the cost meter.

Senator JOHNSON. OK. Again, I realize this is early in the process and we do not have a whole lot of examples to be talking about. But, again, I think that the concern is in bringing basically union negotiators in some respect early into the decisionmaking process, there is an inherent conflict of interest there, where, appropriately so, people representing the union really are there to get larger benefits, higher wages, higher benefits. How do you guard against that conflict of interest?

Mr. BERRY. Well, two important things, Senator.

First, in the Federal place, in terms of at our bargaining table, wages and benefits are not negotiable, so that traditional thing that is in the private sector is not at play for us.

Senator JOHNSON. But in the pre-decision involvement, they are being brought in on the budgetary preparation, correct? As a matter of fact, isn't it also true that those discussions are not even

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open and available under Freedom of Information Act (FOIA) requests?

Mr. BERRY. Well, sir, the pre-decisional discussions are still governed by the law, and the law requires no pay and benefits, no right to strike and no mandatory union dues. So it is very different from the private sector negotiations, and management under pre-decisional waives none of its rights. And so I think it is very important to remember that at that pre-decisional tables, managers still reserve all of their rights, which are very strong under Federal law.

Senator JOHNSON. Why are those discussions confidential and not available under Freedom of Information Act requests?

Mr. BERRY. Senator, I will have to get back to you, if I can, for the record on that. As many discussions happen in the Executive Branch that are not subject to Freedom of Information Act, not everything in a discussional sense is.

Senator JOHNSON. That would help allay my fears if those were available.

Mr. BERRY. Yes, sir.

INFORMATION FOR THE RECORD

In a January 19, 2011 memorandum, the Co-Chairs of the National Council on Federal Labor Management Relations reminded heads of departments and agencies that Executive Order 13522 requires agencies to allow pre-decisional involvement with unions in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects to bargaining under 5 U.S.C. 7106. The memorandum noted that one example of an opportunity for pre-decisional involvement is during the budget development phase. If management chooses to solicit input from employee representatives at this stage, the memorandum stresses that such input should be limited to high-level discussions of goals and strategies. Additionally, employee representatives may provide input on implementation of proposals in the President's budget and on use of budgetary resources to carry out agency missions; however, pre-decisional input does not obligate agency management to make specific decisions or take specific actions.

Release of information during the budget development period is governed by the Freedom of Information Act, including FOIA exemptions; the memorandum issued by the President on January 21, 2009 concerning compliance with FOIA[1]; Justice guidance interpreting the President's memorandum; and section 22 of the Office of Management and Budget (OMB) Circular A–11, "Communications with Congress and the Public and Clearance Requirements," which sets out longstanding OMB policies on preserving the confidentiality of pre-decisional budget deliberations. Agency budget documents may be exempt from FOIA depending on the nature of the record requested. In particular, the deliberative process privilege incorporated within Exemption 5 of the FOIA may protect agency records which are pre-decisional and deliberative in nature from public release, in order to preserve the quality of agency decisionmaking. If the request falls within one of the categories that OMB has directed agencies not to produce, the OMB guidance will control.

Senator JOHNSON. That would help allay my fears if those were available.

Mr. BERRY. Yes, sir.

Senator JOHNSON. One thing that surprised me, again, preparing for this, is I did not realize the extent that the Federal Government and really the taxpayers subsidize union activity. Our figures, showing how difficult to get this information is, are between 5,000 and 10,000 offices are provided to public sector unions at a cost of about $250 million. I also did not realize that union representatives basically can work and do their union job on Federal pay, and that also could be $130 to $25 million worth.

[1] http://www.whitehouse.gov/the—press—office/Freedom—of—Information—Act/

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So I want to throw it open to Mr. Gould here. One of the figures I got was that there are 600 full-time union representatives working at the VA for 150 hospitals. That is about four per hospital. Why do we need four union representatives basically being paid by the taxpayer? Can you explain that to me?

Mr. GOULD. Senator, obviously, cost is an important part of the mission-oriented metrics that we established as the most important set of metrics that we are focused on. I think Mr. Berry gave a good summary of the operational, financial performance, customer satisfaction, and people-related measures that constitute a balanced scorecard, and you are focused in on cost.

What I believe we need to look at is cost and benefit together, so when we look at our official time, the time that union managers work under government pay, it is a tiny fraction of the total amount of labor that is available to our agency. And what we get in return for that is better-quality decisions and more streamlined implementation. And if you had a moment, I could give you two or three examples of where that work, I believe, has created greater value for the taxpayer.

The first is faster review of appeals claims. Our veterans are able to appeal claims that they disagree with back to the government, and 2 years ago we were stuck. It was taking us too long to process those appeals. We sat down in pre-decisional involvement with our unions. We came up with a process that doubled the productivity of the teams on the ground, No. 1.

No. 2, we are working together now to create a new certification process to ensure the quality of our vocational rehab counselors. These are individuals who sit down one-on-one with a veteran and you want to know that they are trained, certified, and ready to deliver high-quality service.

We needed to develop a new training program and certification program to do that. We are sitting down with pre-decisional involvement with our unions, and we are quickly moving through that.

The last example I would give—you may be aware that Secretary Shinseki has 16 major initiatives to help transform the VA. All 16 have engaged pre-decisional involvement. I am just going to pick one, and it has to do with the implementation of the new GI bill, which I am sure affects people in your own home State. That new GI bill says that a youngster who has gone down range and served 3 or more years in the military can come back and go to any public or private institution in America, full tuition, with an additional stipend for room and board. That system to deliver those benefits was just an idea 2 years ago. Today there are over 600,000 people who received checks under the new GI bill since it began and $14 billion worth of tuition has been paid.

We sat down with our union colleagues. We worked through that using pre-decisional involvement, and the result was no attenuation, no limitation on our speed to be able to deliver that new capability.

So those three examples are just ways of my communicating that it is the benefit net of cost that really is important here, and unbelievable value is being created by this initiative.

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Senator JOHNSON. OK. Thank you. I do need to give a shout out to the Milwaukee VA hospital I visited a couple of times, really highly qualified individuals really working hard to deliver services to our veterans. So that is appreciated.

Mr. GOULD. Thank you, Senator. That means a lot.

Senator JOHNSON. If I could just beg your indulgence, one more question for Mr. Berry. In Ms. Niehaus' testimony, the representative for the Federal Managers Association (FMA), she was concerned about the fact that the Federal Managers Association is not present in some of these labor-management forums on the agency level. Can you explain why that would be the case? There seems to be some real conflict on that?

Mr. BERRY. Yes, sir. Essentially, on both sides of the table—we have to leave that up to each of the units to decide, because under the law it allows clearly for managers and labor to be at the table. Associations are not clearly defined in the law, and in some places managers are not comfortable having another group representing, if you will, management at the table.

Now, management associations do have the right for consultation with management, and so separate from the bargaining process, they do have the ability for consultative and pre-decisional engagement and involvement. We leave that sort of to the discretion of each agency to follow to their best—as long as they are following the law within their units. But at this point in time, the law does not mandate for the management associations to be present at the table in such a way.

And so, we do not have the ability, if you will, at the Partnership Council to go beyond what the law provides.

Senator JOHNSON. Thank you.

Senator AKAKA. Thank you very much, Senator Johnson.

I would like to thank our first panel for their testimony and responses.

I would now like to call up the second panel of witnesses. On our second panel this afternoon, we welcome Mr. Greg Junemann, President of the International Federation of Professional and Technical Engineers (IFPTE); Mr. William Dougan, President of the National Federation of Federal Employees (NFFE); Ms. Patricia Niehaus, President of the Federal Managers Association; and Mr. George Nesterczuk with Nesterczuk and Associates. Mr. Nesterczuk also held positions in the Office of Personnel Management during the Reagan and George W. Bush Administrations.

It is the custom of the Subcommittee to swear in the witnesses, so I will ask you to please stand and raise your right hand. Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DOUGAN. I do.

Mr. JUNEMANN. I do.

Ms. NIEHAUS. I do.

Mr. NESTERCZUK. I do.

Senator AKAKA. Thank you. Let the record show the witnesses answered in the affirmative.

I want you all to know that although your remarks are limited to 5 minutes, your full statements will be included in the record.

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Mr. Junemann, please proceed with your statement.

TETIMONY OF GREGORY J. JUNEMANN,[1] PRESIDENT, INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, AFL–CIO

Mr. JUNEMANN. Thank you, Mr. Chairman. Good afternoon. I am Gregory Junemann. I am the President of the International Federation of Professional and Technical Engineers. I would like to thank the Chairman and Ranking Member Johnson for allowing me the invitation to testify today.

Before going further, I would also like to extend my personal appreciation on behalf of my union to Chairman Akaka. At the conclusion of this Congress, Senator Akaka will cap off a distinguished career serving the citizens of Hawaii and this Nation, which includes, of course, my local. On behalf of IFPTE Local 121's Local President Jamie Kobayakawa, and IFPTE Executive Vice President Ben Toyama, again, I would extend my formal appreciation to you for your service to this Nation.

Of course, the issue before us today deals with labor and management forums in the Federal Government through partnership and how effective they have been for taxpayers, workers, and managers alike. IFPTE applauded the President's Executive Order 13522 when it was initially announced in December 2009, and we continue to stand by our initial support, and we remain firmly committed to Federal Government partnerships.

At the same time, I would like to say we are not blindly led cheerleaders for the Executive Order and its programs; rather, we like to see ourselves as critiquingly optimistic as we participate in moving the programs forward.

With the Executive Order, of course, also came the creation of the National Council on Partnership for Labor and Management Relations. The Council is compromised of both labor and management officials, and as President of IFPTE, I am quite proud to serve on this distinguished panel.

IFPTE represents thousands of scientists, engineers, technicians, and other highly educated professional employees, and these are the people who essentially run my union. These people basically get paid for thinking very deeply. That is what they do. My members are problem solvers, and it is because of that we are so strongly committed to partnership within the Federal Government.

My written testimony shows concrete examples of where partnership has and continues to produce significant benefits for taxpayers and Federal workers alike, and my testimony also points to areas that remain essentially behind the times.

Of course, we all know that the U.S. Government is operating under a tremendous financial deficit, and in response to our Nation's looming financial woes, we believe it is incumbent upon every person within the Federal Government, all employees and all managers, union representatives alike, to do everything they can to streamline the efficient operations and, to quote from Executive Order 13522, "make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment."

[1] The prepared statement of Mr. Junemann appears in the appendix on page 66.

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We reject the heavy-handed, top-down, old-school autocratic style of management that only pretended to work when it seemed as though money was no object. Instead, we embrace the notion that a working partnership will much better serve the American people.

IFPTE remains fully supportive of the Executive Order and the Obama Administration's commitment to making the Executive Order work because we believe that there exists concrete evidence of benefits to taxpayers. This is particularly true, as has been mentioned, at the Pearl Harbor Naval Shipyard, in the Chairman's State of Hawaii, where, again, as has been discussed, the implementation of Moonshine Program has saved tens of millions of dollars for the American taxpayers. The Moonshine Program, which was presented to the National Council by IFPTE Executive Vice President Ben Toyama, has, again, saved the taxpayers millions of dollars and countless man-hours. And this is only one example of how well partnership works within the Federal Government.

Along with this partnership at Pearl Harbor, IFPTE is also proud of the newly established partnership within NASA. I have a joint letter that is signed by Deputy Director Lori Garver of NASA and IFPTE National Council President Lee Stone,[1] and I would ask to submit that joint letter for the record. It was only signed on Friday. They were, of course, being scientists, working out the language of the letter. But it basically endorses in full their complete support for partnership within NASA.

Again, it is just starting. That program is just underway, and cost savings we work will just pile upon themselves as this goes forward.

Mr. JUNEMANN. It would be nearly impossible for me, again, as has been discussed, to talk about the benefits of labor-management partnership without discussing the issue of training. And, again, we do acknowledge the very, very important role that was made by the Federal Labor Relations Authority and the Federal Mediation Conciliation Service, FLRA and FMCS, in doing joint training for labor and management at—I do not know how many facilities, but it seems like it is something like 6,000 labor and management employees have been trained. This training goes basically two ways. It is done on a person-by-person basis onsite, and also the training is offered online. It is a 90-minute training that is available to all Federal employees. We not only encourage our members, we have actually put the link of the IFPTE Web site to make sure that our members have access to it. And, again, I should acknowledge that this was apparently partially paid for by the Veterans Administration since FMCS and FLRA and OPM did not have the money to put this all together.

I am getting ahead of myself a little bit here.

Again, in conclusion, we are strongly grateful to the President for his continuation of the Executive Order under partnership. We saw how it worked, when it worked under President Clinton. We continued to operate—since President Bush did not exactly prohibit partnership, we continued to operate some levels of partnership within some agencies, and then when President Obama reissued the Executive Order, we stood strongly behind it, and we still do today.

[1] The joint letter appears in the appendix on page 115.

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That concludes my remarks, and I would be more than happy to answer any questions that the Subcommittee has. Thank you.

Senator AKAKA. Thank you very much, Mr. Junemann.

Mr. Dougan, will you please proceed with your statement?

TESTIMONY OF WILLIAM R. DOUGAN,[1] PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. DOUGAN. Thank you, Chairman Akaka and Ranking Member Johnson, for inviting me to testify today. I am here on behalf of the National Federation of Federal Employees and the 110,000 Federal workers we represent at 40 different agencies throughout the government.

In these lean budget times, downsizing in many agencies is a fact of life. Belt tightening has become unavoidable, and accordingly, lawmakers have the critical task of scrubbing the budget looking for ways to cut costs without adversely impacting critical agency missions.

But let me make one point absolutely clear. If you are serious about trimming budgets and finding ways to make government run more efficiently, you should make certain that agencies are working with employees to find solutions. It is employees that do the work every day, and they know better than anyone how to get the work done better, faster, and more economically.

In order for the know-how of Federal workers to be leveraged into government efficiency, they need a legitimate voice in the process. It is through labor-management forums and extension of the collective bargaining relationship that Federal workers are provided that essential voice.

I am pleased to say that the Obama Administration has made great strides in establishing labor-management forums. His Executive Order led to a change in policy that is transforming the labor-management culture throughout the government for the better.

The re-establishment of labor-management forums has been a breath of fresh air in a majority of agencies where forums are established. In these agencies forums are being used to facilitate smarter, leaner, and more efficient government by including some of the most important stakeholders of all—the employees who actually carry out the missions of the agencies.

I can say from my 30-year career as a Federal employee that labor-management forums do improve agency performance. Regardless of what an agency's objective is, be it cost savings, faster processing, better workplace safety, et cetera, employees are often the best source of information for how to make the agency work better. Through forums, employees have a real voice in offering alternatives and ideas on how to better accomplish the work.

There is no more fertile ground for improved agency performance than listening to the ideas and concerns of workers. This is particularly true when unions are engaged early in the decisionmaking process through pre-decisional involvement, a key tool that leads to better decisionmaking by agency leaders.

I can also say from my experience that labor-management forums save agencies money. By discussing problems early and al-

[1] The prepared statement of Mr. Dougan appears in the appendix on page 76.

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lowing the union to share workers' concerns and possible solutions, it allows management to make better decisions, thereby saving time and effort involved in implementation.

A major component of that increased efficiency is improved buy-in from workers. The use of forums can also result in less need to bargain once an agency decision is made, resulting in significant potential cost savings. Communication through forums allows the parties to reach an understanding about why agencies are taking certain actions and what it means for employees.

Forums also allow for plans to be modified to mitigate some adverse impacts on employees when the alternative—failing to hear workers' concerns—could lead to far greater problems associated with a workforce that is uninvolved in agency decisions.

You have heard the saying, "An ounce of prevention is worth a pound of cure." The same concept applies to labor-management relations. Labor-management forums are very effective at preventing far greater costs that agencies might incur by not involving employees.

I would like to talk about one specific example of how the Forest Service labor-management forum improved agency performance and saved millions of dollars per year. In partnership, the Forest Service and NFFE collaborated on a firefighting workforce succession planning process. As a result of a decision to reclassify many firefighter jobs into a different job series, the current firefighting workforce faced the need to be retrained in subjects completely unrelated to their firefighting duties in order to qualify for their jobs they had been performing for years.

The union identified that the agency faced spending $15 million per year for the sole purpose of retraining the workforce to address the unintended technical glitch. This became a key item for partnership meetings between the NFFE, Forest Service Council, and the agency. In the end, the agency realized the tremendous negative impact this was going to have and wisely committed to changing course. Union and agency leadership collaborated on an alternative plan that avoids these negative effects and reduces costs and are working now to implement it.

Without partnership and the meaningful and detailed technical collaboration that allowed it to happen, the agency faced losing a sizable portion of current fire leadership as well as the pipeline for our leaders of tomorrow. The agency would also have continued to incur $15 million per year in meaningless expenses.

This is just one example of the kind of good decisionmaking and savings that can be achieved through effective labor-management forums.

I appreciate the Subcommittee's decision to hold a hearing on this matter, and I thank you for the opportunity to provide testimony.

Senator AKAKA. Thank you very much for your statement, Mr. Dougan.

Ms. Niehaus, will you please proceed with your statement?

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TESTIMONY OF PATRICIA NIEHAUS,[1] PRESIDENT, FEDERAL MANAGERS ASSOCIATION

Ms. NIEHAUS. Chairman Akaka and Ranking Member Johnson, since being elected FMA president in March 2010, I have been serving as FMA's representative on the National Council on Federal Labor-Management Relations. I would like to thank you for the opportunity to present our views on the Council and labor-management relations across the government.

FMA was honored to have a seat on the Council from its onset and viewed our involvement as a testament to the important role of first-and second-line supervisors in carrying out agency initiatives and fostering better employee-management relations. We believe that when you bring all the stakeholders together, each of whom bring unique and respective viewpoints to the table, you ultimately end up with a more meaningful, successful labor-management relationship.

In order to achieve the goals set out in the Executive Order and ensure the Council tackled all the issues, even the tough ones, Council members divided into several working groups over the last year and a half. The subjects examined by these groups include issues specific to the Executive Order but also go beyond the order, and working on issues beyond the scope of the Council's initial charter, stakeholders were able to collaborate with decisionmakers to make a stronger product and ultimately a stronger government.

At the national level, FMA has been involved in several of the initiatives undertaken by the Council, including the Performance Management Working Group, which is on track to release its final report at the next Council meeting. Overall, while we at FMA would have preferred the group tackle the issue of whether or not the General Schedule speaks to today's workers and job seekers, we believe the document is a good first step in ensuring agency leaders take performance management seriously and ensuring agency leaders consider strong performance management business as usual. Implementing an agency culture based on strong performance management must come from the top down and hold all managers and supervisors accountable for performance.

In my written testimony, I provide background information on the partnerships of the 1990s and offer suggestions on how this Council could improve upon what we learned then. I also detailed FMA's position on the various subjects the Council is tackling: permissive bargaining, metrics, and pre-decisional involvement. In many cases, I am pleased with the progress the Council has made, and in others, I believe more can be done. One such issue is the involvement of managers and supervisors on the labor-management forums. I would like to take this opportunity to share with you the challenges FMA is experiencing at the agency level.

To date, over 750 labor-management forums have formed at the agency or facility level. It is the primary concern of FMA that management associations have been left out and in some cases actively excluded from participating in the forums. Under Title V, agencies are to provide a framework for consulting and communicating with non-labor organizations representing Federal employees on matters

[1] The prepared statement of Ms. Niehaus appears in the appendix on page 89.

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related to agency operations and Federal personnel management. Federal management associations, including FMA, have these consultation rights which were afforded with the belief that management associations and the employees they represent have a unique perspective that is not necessarily represented by agency leadership. Members of management associations work closely with employees and agency leadership and are directly affected by the issues addressed in labor-management forums, and our exclusion means agencies are missing out on the experience of a crucial stakeholder when making decisions in these forums.

At the May 2010 Council meeting, SEA and FMA raised the issue of management association participation in forums, and many members of the Council expressed support for our participation. Since that time, FMA and other management groups have been working with the agencies where we have a strong membership base to join the newly-formed forums. Unfortunately, with the exception of one forum where FMA has had a seat on the local council since 1995, not a single association has been allowed to participate in the forums, and in some cases our associations have been actively excluded. More troubling, the associations are not notified of the forums' decisions in a timely manner, despite the fact that our members are directly responsible for carrying out the decisions of the forums.

As pre-decisional involvement, (b)(1) bargaining pilot programs, and labor-management forums grow in importance, allowing management associations to participate can be useful to agencies and union members in ensuring communication at all levels. Additionally, having the managers' viewpoints and buy-in expressed early in the decisionmaking process allows managers to be better equipped when they carry out and relay these new procedures to their employees.

In conclusion, as we saw in the 1990s and over the last year and a half, many factors must be met to create cooperative relationships between management and labor. This is no easy feat, but the dedication of the Council members to improve relations through this avenue has proven successful thus far. However, FMA remains discouraged that our participation is viewed as valuable on a national level but not at the agency or local level.

Thank you again for the opportunity to express our views here today, and I am happy to answer any questions you may have.

Senator AKAKA. Thank you very much, Ms. Niehaus.

Mr. Nesterczuk, please proceed with your statement.

TESTIMONY OF GEORGE NESTERCZUK,[1] PRESIDENT, NESTERCZUK AND ASSOCIATES

Mr. NESTERCZUK. Thank you, Senator. Good afternoon, Chairman Akaka and Ranking Member Johnson. Thanks for inviting me to testify on labor-management forums in the Federal Government, a subject that I consider both important and timely.

Permit me to sound perhaps a discordant note this afternoon on this subject. Executive Order 13522, issued on December 9, 2009, opened government decisionmaking to non-governmental entities in

[1] The prepared statement of Mr. Nesterczuk appears in the appendix on page 103.

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an unprecedented fashion. Although the labor management councils created under the Executive Order are reminiscent of the partnership councils during the Clinton Administration, they are Clinton partnerships on steroids. One has to wonder what management crisis called for such a radical escalation of the role of Federal unions. Of particular concern are the pursuit of pre-decisional involvement that expands union activity into previously non-bargainable areas such as budget preparation and the allocation of resources that this entails. At a time of perhaps the most severe peacetime budgetary constraints we have ever experienced, when Federal programs face cuts and employee pay has been frozen, it is not an ideal time to launch a radical initiative that is certain to drive up the cost of governing. We should be streamlining government management for greater efficiency and lower cost rather than overlaying additional burdensome procedures.

Now, of particular concern, pre-decisional involvement, as promoted under labor-management forums, weakens the chain of accountability by which agency management is held responsible for the stewardship of government. The President and his appointees set priorities for the allocation of resources based on his publicly stated agenda and congressional intent. Allowing non-government entities to participate in agency decisions affecting all "workplace matters" is unprecedented, especially since the scope of issues falling within the rubric of "workplace matters" is undefined and, therefore, open to the broadest interpretation.

The Office of Government Ethics promulgates extensive rules to prevent Federal officials from engaging in activities and contacts that create conflicts of interest or even have the appearance of conflicts of interest. This is important in order for the public to retain confidence in their government, confidence that rules are applied fairly and equally to everyone, and that decisions are not skewed for the benefit of special interests.

Unions are a special interest. They exist to maximize the extraction of benefits from employers on behalf of their members, and Federal unions were not created for the purpose of maximizing the efficiency of governance. To place them in a position where they can influence public policy for their own benefit is a clear conflict of interest and should not be tolerated.

And what is a succeeding Administration to do when saddled with a labor-management arrangement adamantly opposed to its agenda? The labor-management forums are not good government; rather, they represent a pandering to special interests.

As far as costs, the new labor regime envisioned in the forum concept can only drive up costs of government. According to OPM reports, annual use of official time overwhelmingly—that is, about 75 percent—goes to general labor-management issues, not to dispute resolution or bargaining. And the forums, when fully implemented, will only add more issues to meet over and discuss.

Since its inception last year, the National Council overseeing the labor-management forums has already spent over $1 million in monthly meetings, and this will multiply 20-or 30-fold as individual agencies become more involved.

Unions are already heavily subsidized by the taxpayers for the use of official time, which, according to recent OPM reports, com-

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promise about 2 million man-hours per year at a cost of at least $130 million. The burden of paying for office space, equipment, and supplies adds an additional $250 million a year.

The most compelling argument OPM has advanced for this new labor initiative was the need to "reset: labor relations after the "bad feelings: created by the previous Administration. Surely there were other, cheaper ways for the Administration to reach out to this constituency.

What should we do about this? The reset under the forums unfortunately results in further politicization of the civil service. Unions in general are very political and highly partisan. That is their choice. It is also their right to be so. However, elevating these non-government entities to partnership status with career managers in government undermines the perception of political neutrality that the career civil service has nurtured since its inception over a century ago. And how is the next administration to deal with the "fox in the chicken coop" that the unions have come to represent? For the sake of maintaining the neutrality of Federal civil service, I would recommend that Congress consider defunding the labor-management forums.

Second, Congress should consider reinforcing the provisions of Chapter 71 of 5 USC that stipulate non-negotiable agency rights in order to place these agency rights beyond reach of temporal political pressures in the agencies.

Finally, Congress should undertake defunding the subsidies that distort the true worth of unions in the Federal sector. Federal unions should be subjected to a market test of their viability and value to Federal employees. Unions collect dues from their members, and these should be used by unions to pay their own way. Self-sufficiency will give unions the incentive to better focus on member services and issues that are relevant and important to their members, not necessarily the next election.

I will conclude with that, and I will be happy to answer any questions that you might have. Thank you.

Senator AKAKA. Thank you very much, Mr. Nesterczuk.

Senator Johnson, will you please proceed with your questions?

Senator JOHNSON. Thank you, Mr. Chairman.

Ms. Niehaus, you said that you have been excluded, FMA has been excluded from these forums, but you have not answered the question why. Can you just tell me why is that happening? I would imagine there are probably various reasons at different agencies.

Ms. NIEHAUS. We have heard overwhelmingly, not citing either of my colleagues at the table, that the unions object to a management association being involved, and that in some agencies the unions have indicated it would be a deal-breaker and they would not participate if FMA was allowed to participate.

Senator JOHNSON. Can you speculate as to why they would be objecting to that?

Ms. NIEHAUS. The only reason I can think of is they would see it as a second management seat at the table or an additional management seat at the table; whereas, we would not be representing the agency, we would be representing the management personnel who are our members.

Senator JOHNSON. So it would be a matter of being outnumbered.

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Ms. NIEHAUS. Yes.

Senator JOHNSON. Mr. Dougan or Mr. Junemann, would you have a comment on that as to why?

Mr. DOUGAN. Yes, I think the basic issue is labor-management forums are essentially an extension of the collective bargaining agreement between labor and management. It is a vehicle that we can use to enhance our collective bargaining relationship, and it allows us the ability to talk as equals at the table in a pre-decisional mode, to discuss issues which management then is going to exercise their management right to make that decision. So I want to make that point clear. There has been, I believe, some misclarification of exactly what pre-decisional involvement is.

Pre-decisional involvement is not co-management; it is not the case that labor is making decisions with management in a labor-management forum in a pre-decisional involvement setting. Pre-decisional involvement is nothing more than communication and sharing information, sharing concerns, sharing alternatives, sharing options between labor and management to hopefully better allow management to make a more informed and better decision. It is management's decision to make. It is not labor's decision to make.

Senator JOHNSON. Well, let me interrupt you here. So, again, the purpose for these things, as is being laid out here, is just it is kind of warm and fuzzy, we get everybody at the table that can really help improve effectiveness and efficiency. But we have really the first-line supervisors that unions are basically excluding from that process. Does that not run counter to the stated purpose of the forums?

Mr. DOUGAN. As I stated before, by law there is a different relationship that exists between labor and management as opposed to between management and other employee groups, which Ms. Niehaus' group is one of many. There are many employee groups within any Federal agency that represent various groups of employees. They are not sanctioned and do not exist by law. They exist through agency policy and through the agency's willingness or unwillingness to recognize them as a group to communicate with and to seek input. But the problem with labor-management forums at a local level, that is where the rubber meets the road. That is where the decisions get made that ultimately are going to impact on the need to either collectively bargain—to bargain further on those decisions or not bargain further on those decisions. And I believe it puts labor in a difficult place when there are parties other than labor and agency management sitting at the table discussing——

Senator JOHNSON. Well, you seem to be confirming my worst fears that this really is a quasi-negotiating session as opposed to something else.

Mr. Nesterczuk, you made the statement that these forums will certainly drive up costs. Can you explain why you feel that way? Why are these forums absolutely certain to drive up costs?

Mr. NESTERCZUK. The more issues that you put before the unions, the more official time will be used to deal with those issues, the more opportunities they get to become involved with policy matters, policy decisions in the agency, the more staff will be as-

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signed to those matters, all on official time. These are not things that happen for free. There may not be additional budget allocations for that purpose, but those are funds that are taken away from other activities, activities that are supposed to be directed at delivering services to the taxpayer.

Senator JOHNSON. So you are saying that these forums basically open up a can of worms where they will basically metastasize in terms of maybe four or five issues become 20 become 100?

Mr. NESTERCZUK. Absolutely.

Senator JOHNSON. That is your primary concern?

Mr. NESTERCZUK. Yes.

Senator JOHNSON. Mr. Junemann, you look like you are anxious to hop in here.

Mr. JUNEMANN. I have that look on my face, and it has nothing to do with——

Senator JOHNSON. The Brewers. [Laughter.]

Mr. JUNEMANN. First of all, on the question with the management associations, our union does not really have a stand on that. In fact, I heard about that issue the first time this morning, that this was an issue. Obviously, they have a responsibility to advocate for management, for front-line supervisors. We have a different one. Ours is, I think more governed by laws than theirs. But they have a responsibility to theirs, and we have not taken a stand like I have heard this morning.

On this thing about that these forums will lead to more—sort of like marijuana leading to stronger stuff or something, right? That these forums will lead——

Senator JOHNSON. I did not say that.

Mr. JUNEMANN [continuing]. To more problems. [Laughter.]

I know. I kind of did. No, I did. I have that way of talking. But I really see just the opposite. As a matter of fact, in talking to our folks at NASA—I just met with our NASA Council people last week. They had issues—for instance, there was—and I would like to tell you exactly. I could get it for you, the issues behind it. There was a grievance at Goddard Space Flight Center, Goddard Research Center, that has been going on since the mid–1990s. And it is a grievance and it is a charge and it is a suit, and it goes on and on and on. And they brought it up at a labor-management forum, and it is done, it is resolved, and it will never be brought up again.

Senator JOHNSON. OK.

Mr. JUNEMANN. This is supposed to be solving problems, and that is what it is for.

Senator JOHNSON. OK. Because my time is running short in a number of ways, let me just quickly go to a broader question directed to the union representatives here, because it does strike at the heart of my concern in terms of the politicization of management and really how effective are these going to be at trimming costs, where we ran a $1.3 trillion deficit last year, we are borrowing $3.5 to $4 billion a day. But the fact of the matter is that the taxpayer really through payment to Federal workers and those wages are turned to a certain extent into dues and those dues are funneled back into political contributions. In the last 20 years, labor unions have contributed $384 million into Federal campaigns

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in terms of Federal public employee unions—$45 million from the American Federation of State, County and Municipal Employees (AFSCME), $31 million from the National Education Association (NEA), $29 million from the Service Employees International Union (SEIU). Ninety-five percent of those contributions go to one party, the Democratic Party. So you can maybe understand how there may be just a little concern about the conflict of interest of unions being at the table when certainly one party is trying to instill some fiscal discipline in this country. So I guess I will just open that up.

Mr. DOUGAN. First I would like to address the issue of union dues going to political candidates. That is absolutely not correct. There is not one dime of union dues that is spent in political contributions to any candidate from any party. Those dues cannot be spent by law——

Senator JOHNSON. Where is that $384 million going in terms of Federal campaigns then?

Mr. DOUGAN. Our individual members, should they decide to make political contributions, are certainly free, just like any other citizens of the country, to make contributions either individually or through a PAC fund that many unions have, just like other corporations, to help support the candidates. But it is not from dues money. It is from their own contributions should they so choose to do that. There is no decision on the part of union leadership as to how much money will be contributed. It is up to each individual member whether they want to contribute something or nothing.

Senator JOHNSON. OK. Thank you.

Mr. Chairman, thanks for indulging me so I could leave early. Thank you.

Senator AKAKA. I have a question for both Mr. Junemann and Mr. Dougan. As we have discussed today, DOD has worked closely with employees throughout the process of designing a new performance management system, a critical difference from NSPS. Do you believe the process for designing the new system will improve its implementation? Mr. Junemann.

Mr. JUNEMANN. Yes, Senator. Absolutely I do believe that it will be improved simply because when the employees are involved at the inception point of the performance management system, when they are designed and putting it together, they will be invested into it because of the resources, simply because of the time and energy that they have put into the program, it will be more successful simply because they will be participating in it.

To Senator Johnson's question—and I am sorry he had to leave—my union is very concerned, as am I, on cutting costs at every level of the Federal Government. We think that is one of the primary reasons to have an Executive Order on partnership, because I think it is up to the President, it is up to the Congress to go the Federal employees and say, "It is your duty as workers and as patriotic citizens to cut costs wherever we can." We are very, very concerned with shipyards potentially being closed, with bases potentially being closed. So each one of these people, each one of these leaders wants to make sure that they have wrung out every nickel out of their operation, and partnership is the best way to do that.

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But on your question of the workplace performance initiatives, certainly if the unions are involved—and, again, my union does not bring in professional negotiators into these talks. They bring in just everyday workers who get elected to a responsible position, and they go into these talks, and based on their members' input, that is where these initiatives and programs get designed. And once they get designed with these people's input, then they are invested and they are going to make them successful.

Senator AKAKA. Mr. Dougan.

Mr. DOUGAN. Thank you, Senator. Before I answer your question, I would like to be granted just a moment to speak to a quote that Senator Johnson gave in his opening remarks. He quoted a letter from FDR where he said,". . . the process of collective bargaining, as usually understood, cannot be transplanted into the public service." I know this letter well because the letter hangs outside my office, the original letter. This letter was addressed by FDR to Luther Steward, the president of NFFE, my union, in 1937. And Senator Johnson accurately quoted FDR, but he did not present the quote in its proper context.

When FDR said "collective bargaining, as usually understood," he was talking about the right to strike. There was no collective bargaining at that time that did not include the right to strike, and the portion of the letter that he did not quote talks about "as usually understood," meaning that public workers would not be allowed to strike. That is what FDR was talking about and that is what he meant by collective bargaining, as usually understood, not translating to the public sector, and nothing else. And I just want to set the record straight on that.

But to address your question, I think, what we saw with NSPS, the National Security Personnel System, and what we have seen with the New Beginnings effort in DOD is night and day. And just to set the record straight, Mr. Nesterczuk wrote a report in 2001 called "*Taking Charge of Federal Personnel*," and this report served essentially as the template, as the guiding document for the Department of Defense to inflict the National Security Personnel System upon the DOD workforce and the rest of the Federal Government.

This report recommended bypassing workers and their union in order to give Federal executives full authority to move those who remained into a highly subject merit-based pay system. Those recommendations in that report were followed almost verbatim in the creation of NSPS. As a result, NSPS ultimately failed, was seen as an abject failure, was seen as essentially the largest failed personnel system effort. It has proved to be the biggest waste of taxpayers' money in personnel reform history. And there are really two reasons for that:

One was because the employees and their elected representatives were completely cut out of the process. The process and the system lacked transparency. Nobody could figure out how it worked. Therefore, there was no buy-in and people were suspect and people just did not know how this thing worked. And so it is hard to have credibility when you do not understand the system. And ultimately it was determined that the system was discriminatory. It discriminated against varying classes of employees.

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These are fundamental problems that ultimately made NSPS unsalvageable, and I would note that the Chairman of this Subcommittee at the time, Senator Collins, was a key supporter in calling for the full repeal of NSPS. So this is not a partisan issue. This is not a Democrat-versus-Republican issue. This is doing what is right, as opposed to what we did in New Beginnings, a completely transparent process. Labor was brought in early, fully engaged, was given an equal seat at the table. We were able to put—much like Mr. Junemann, all of labor offered folks from the field that actually know the work, that live under these rules and these systems, and offered them as the team members of these work groups. And because of that, we have a product that can stand the test of whether it is transparent or not. We have a product that can be supported by labor as well as management and hopefully can be supported by Congress when they get the results in the next few months.

Mr. NESTERCZUK. Senator, surely I could be given an opportunity to respond? May I comment on your question?

Senator AKAKA. Yes, please comment.

Mr. NESTERCZUK. Mr. Dougan's points sort of bring to kind the maxim that in this town the difference between truth and a lie is that you have to tell the lie more often before people accept it.

As far as the status of NSPS, it was not a failed system. It was a system that was meant to serve the Department of Defense, at its own choosing, based on 25 years' prior experience with demonstration projects. They knew fully well what they were doing. Employees were beginning to learn it. We knew from experience it takes 3 to 5 years for the workforce to accept such a significant change in a personnel system, and that was based on the experience in the various demonstration projects, 3 to 5 years.

So the unions were very anxious to kill that thing before it ever reached the 5-year maturation point where employees were buying in, and the degree of buying was increasing exponentially at the time that the plug was pulled on NSPS.

The notion that only a system that is blessed by the unions can flourish in the Federal Government is what has kept us working with a Model T compensation system—and that is the General Schedule—at a time when we have hybrid engines available to power our workforce. The initiative today on the part of the Councils to build a new personnel management system, a performance management system built on that rickety structure of the General Schedule is doomed to fail.

Yes, I wish them well in their efforts. They will spend gross amounts of money in the process. They will foist this on a workforce that will have to accept it. No question of that. But it will not have the beneficial results that NSPS was beginning to provide the Department of Defense.

If the Administration had been really honest and sincere in their desire to explore performance management, they would have done their best to keep NSPS going to learn from it. If there were faults and flaws in it, there was a wonderful opportunity to learn from it in a system that was unique at the time—over 200,000 employees covered across various kinds of DOD activities from coast to coast. We could have learned a lot, and instead you killed it. And

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now you have to start from scratch, again falling back to ancient technology. I wish you a lot of luck with that. Thank you.

Senator AKAKA. Thank you.

Ms. Niehaus, thank you for your comments about the importance of training to effective implementation of labor-management partnerships and of supervisor training more broadly. As you know, improving training is a priority for me.

Ms. NIEHAUS. Yes, sir.

Senator AKAKA. I would like to hear your thoughts on the training that is being provided on implementation of the Executive Order. What have your members told you about training they have received on this issue?

Ms. NIEHAUS. In that particular respect, I can also speak from personal experience. My day job is as the Labor Relations Officer at Travis Air Force Base; I am not expressing DOD or Air Force opinions but strictly my own. I attended the FLRA training with our local union president from the installation, and I was very impressed with the training provided by the FLRA regional director and his staff for the implementation of the Executive Order. It was very thorough and included exercises that were very helpful to understanding the various aspects of this.

Senator AKAKA. Thank you.

Mr. Junemann, I am proud of the Moonshine Program to improve collaboration and innovation at the Pearl Harbor Naval Shipyard and the positive results it is achieving for our military and taxpayers.

What lessons does the Moonshine Program hold that could be replicated in other locations where partnerships may not be as advanced?

Mr. JUNEMANN. Well, I think the lesson is—I will quote Scott Gould, what he said at one of our National Partnership Council meetings, a very short statement. He said, "This stuff works."

I think the lesson that can be learned is they have very, very short meetings, unlike what has been stated by some of the detractors of partnership and its progresses. They have very short meetings. They have 1-hour meetings on Monday, Wednesday, and Friday morning, and those are only to talk about efficiency, productivity, and safety. That is it. And then they go forward, and they get it done.

As Director Berry said in his testimony—and you know Ben Toyama. It was Ben Toyama who made that statement, and what he said was, "If you ask one of my members how can I save some money, they will say, 'Get rid of my boss,'" because they do not really know. That is not their job. But if you say how can I save some time, they have a hundred ideas.

So the lesson that can be learned and the lesson that can be replicated is—and this is the thing that I really think that the Subcommittee should look at, is exactly what you are saying, Senator Akaka. We should take the benefits that have happened under Moonshine at Pearl and say, "Why isn't it being done at Philly? Why isn't it being done at Norfolk and at Portsmouth?" And call in the decisionmakers and say this is makes a whole lot of sense, that the workers, the stewards, the supervisors, the managers get together for one hour, one short hour, and say let us get this done

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better than we have ever done it before. And you have seen the statistics, sir. The benefits, the efficiency, the man-hours that have been saved, the millions of dollars are incredible. And when we are facing the sort of deficits that this Nation is facing, those things should be capitalized upon.

And, Senator, I agree with you, they should be replicated, and where they are not, really the question should go out to the players involved and say, "Why aren't you doing this?" Because that is actually what Ben Toyama from Pearl Harbor Naval Shipyard is asking others: Why isn't this being done elsewhere? So, Senator, I really believe it should.

If I could just make a statement about FMA, it seems to me that the reason that they have a separate agency for managers is because, I guess according to law, you cannot belong to unions. Even that needs to be changed. [Laughter.]

Senator AKAKA. Mr. Dougan, your written testimony discusses an Inspector General report which found that a firefighting workforce succession planning process developed through partnership between your union and the U.S. Forest Service saves $15 million per year. Will you please describe this planning process and how it saves taxpayers' money?

Mr. DOUGAN. Sure. As I stated in my oral testimony, what happened in the Forest Service was there was an attempt to "professionalize" the wildland firefighting workforce in that agency. And as a result of that decision, there was a determination made that many of the fire leadership positions within the agency needed to be in a professional occupation series. Much of the current firefighting workforce is in a technical series.

Professional occupations require positive education requirements, and in the case of the series that they were looking at for these firefighters, it required everyone that was in one of those positions to have a bachelor degree or higher with a minimum of 24 hours in very specific types of college course work. Much of the firefighting workforce comes up through the ranks, and basically their university is out on the fire lines. Many of these people do not have college educations. Many of them have taken some college classes but do not hold degrees. But yet they have been doing the work and leading the firefighting efforts in the Federal Government for a number of years.

As a result of that reclassification, there was a determination made that these people had to be sent back to school to get that training in order to qualify for those jobs, and that is where the $15-million-a-year figure comes from. It is the cost of sending these folks back to school either through distance learning or actually physically having to go enroll in colleges and take classes in order to qualify for the very jobs that they have been doing for, in many cases, the last 30 or 40 years of their careers.

So the union had a concern over that because, obviously, we represented many of these people, and it is very difficult for people, unless you are very early in your career and you are not married and you do not have kids, to just pick up all your belongings and go back to school. So we had concerns about how we were going to make this happen, and when we got to looking into the facts, there were other opportunities, it appeared to us, other types of job series

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that they could be placed into that would meet the agency's requirements of a more professional workforce, but yet the training that they would receive would be more fully directed at the work that they are actually doing in firefighting. And so we proposed that change to agency management and worked with OPM and working with many Members of Congress, many congressional committees, to drum up support, and we are finally able to get the support in Congress and through OPM that we needed to change the job series from a professional series to an administrative series, which eliminated the positive education requirement, the degree, and yet protected ensuring that these folks still maintained the knowledge, skills, and abilities that they needed to do their jobs. It was an effort that took several years. It was carried on through the Forest Service Partnership Council and through various work groups that were spun off of this Council.

It is one of many examples, I think, across government where there are positive results being seen from the labor-management forums. In many cases I think labor-management are sometimes our own worst enemies because we do not do a good job of championing these victories when we have them and telling these stories. And it should not take a hearing like this for this kind of word to get out there to folks about some of the benefits of labor and management collaboration.

Senator AKAKA. Well, thank you very much. I want to thank the witnesses for attending this hearing. As we have heard today, the Federal Government can increase productivity and reduce costs through the establishment of effective labor-management partnership. I am also pleased that DOD is engaging with the employees and their representatives in a genuine collaboration to design a new performance management and hiring system. Employee buy-in will reduce costs and make the new system more effective.

I look forward to working with all of the witnesses in the coming months on the important issues we discussed today. Again, thank you for being here.

The hearing record will be open for one week for additional statements or questions other Members may have pertaining to the hearing.

This hearing is adjourned.

[Whereupon, at 4:29 p.m., the Subcommittee was adjourned.]

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APPENDIX

STATEMENT OF CHAIRMAN DANIEL K. AKAKA

Labor-Management Forums in the Federal Government

Hearing
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia,
Senate Committee on Homeland Security and Governmental Affairs

Aloha and good afternoon. I would like to thank all of our witnesses for joining us today to examine labor-management partnerships in the federal government.

In December 2009, President Obama signed an Executive Order to improve government services by creating federal labor-management forums. The Executive Order is similar to my 2007 bill, the Federal Labor-Management Partnership Act, and a previous Executive Order during the Clinton Administration. The Executive Order established the National Council on Federal Labor-Management Relations and required Federal agency heads to establish labor-management forums of employee representatives and agency officials.

President Obama's Executive Order emphasizes a critical point about government performance – that a non-adversarial forum for employees, managers, and agency officials to discuss government operations will improve the services our government provides. Employees are in the best position to inform executives about the details of operational problems or inefficiencies. In addition, labor-management partnerships improve employee morale, which also helps drive better performance.

Data has shown that once established, effective labor-management partnerships will reduce costs. In 1998, the U.S. Customs Service obtained an independent cost-benefit analysis of its labor-management partnership with the National Treasury Employees Union. This analysis showed that the partnership produced $3 million in net savings between 1993 and 1998. For every dollar the Customs Service invested in its labor-management partnership, it received a 25 percent return on its investment.

More recently, we have seen examples of cost savings and increased government efficiency as a result of labor-management partnerships at the Pearl Harbor Naval Shipyard – in my home state of Hawai'i – and at the United States Forest Service. I look forward to hearing about these recent success stories today. As labor-management partnerships are re-established throughout the Federal government, I expect that we will learn of many more partnerships creating short- and long-term cost-savings.

I have long understood that its employees are the Federal government's greatest asset. A fair, efficient, and effective government requires that Federal employees have a voice in their workplace.

(OVER)

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I am looking forward to hearing from Director Berry about the recent work of the National Council on Federal Labor-Management Relations. I know that he has worked hard in his role as co-chair of that body, and I commend him for his dedication to this issue.

I am also excited to learn more about the current efforts at the Department of Defense (DoD), where labor and management are working together to establish a new performance management system and hiring process. As our nation's largest agency –performing critical functions – I believe that DoD can serve as an example to the rest of the federal government on how employees and management can work together to achieve positive results.

-END-

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
THE HONORABLE JOHN BERRY
DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

October 11, 2011

Chairman Akaka, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today as co-chair of the National Council on Federal Labor-Management Relations (National Council) to report on implementation of Executive Order 13522, entitled "Creating Labor-Management Forums to Improve Delivery of Government Services."

President Obama's Executive Order creates a new era of collaboration and partnership between the Federal Government and unions representing Federal employees. The Administration believes that a strong partnership between the Federal Government and labor organizations in the civil service is in the public interest and promotes efficiency. The National Council shares President Obama's belief that Federal employees are the Federal Government's greatest asset and resource for ideas that will ensure the delivery of high quality and cost effective service to the American people. We are committed to the President's mission of establishing cooperative and productive labor-management relations throughout the Federal Government.

The Executive Order sets forth certain responsibilities of the National Council that include supporting the creation of agency-level labor-management forums, developing suggested measurements and metrics for the evaluation and effectiveness of agency-level labor-management forums, and fostering successful labor-management relations across the Federal Government. In keeping with the President's commitment to ensure top leadership involvement and participation, the National Council membership includes senior leaders of executive departments and national labor unions, the Chairman of the Federal Labor Relations Authority, and the presidents of the Senior Executives Association and Federal Managers Association.

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Statement of the Honorable John Berry
Director
U.S. Office of Personnel Management

October 11, 2011

Since its inaugural meeting on February 26, 2010, the National Council has made significant progress in implementing the President's Executive Order. In 2010, the National Council focused on establishing a strong foundation for collaborative labor-management relationships at all levels of the Federal Government. The focus was on setting up and instituting processes to establish, advance, and measure the impact of labor-management forums. This year, having established the framework for labor-management forums, the National Council has shifted its focus to mission driven outcomes, such as improving employee performance management in the Federal Government.

Improving Employee Performance Management in the Federal Government

The National Council formed a new workgroup consisting of representatives of the Chief Human Capital Officers (CHCO) Council working jointly with representatives of the National Council on exploring solutions to improve employee performance accountability to the American people. The new workgroup considered how the Federal Government can better formulate mission-aligned employee performance objectives and reward good performance. This is a great example of pre-decisional involvement where both labor and management are collaborating on solutions to improve employee performance management in the Federal Government.

The group addressed three areas critical to successful performance management accountability:

(1) Leadership and Culture;
(2) Employee and Supervisor Engagement; and
(3) Training and Development Needs of Employees and Supervisors.

At the September 21st meeting of the National Council, the workgroup presented recommendations that are intended to improve the way employees and supervisors engage with each other and their work in order to foster a high-performance culture. The recommendations emphasized the importance of employee performance management all the way up to the highest levels of our agencies by promoting accountability through open government and driving agencies' top priorities. The National Council enthusiastically endorsed the workgroup recommendations and now we are taking the appropriate steps to implement the recommendations across the Government. Ultimately, our goal is for employee performance management systems to become more transparent and directly focused on the mission and goals of the agency. By working with labor representatives who represent front-line employees, we believe that we will be successful in improving mission delivery in this effort.

I would also like to highlight some of the other work the National Council has done thus far.

Supporting the Creation of Agency Level Labor-Management Forums

The National Council developed guiding principles for agencies to use in establishing and operating labor-management forums at all appropriate levels with relevant agency decision-makers as participants. Consistent with the tenets and requirements of the Executive Order, the

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Statement of the Honorable John Berry
Director
U.S. Office of Personnel Management

October 11, 2011
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guiding principles recommended that forums contribute positively to the performance of the agency; promote economic and workplace interests of employees and managers; and 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. I am pleased to report that the implementation plans for all 51 participating agencies have been certified and approved by the Council. To date, at least 769 forums have been established, covering approximately 770,000 (approximately 65 percent) of the bargaining unit employees employed by the 51 agencies.

From our surveys of agency forums, agencies have reported the following early successes during implementation:

- Development of joint baseline assessments of labor-management relations and metrics;
- Improved labor-management communication;
- Reduction in the number of formal negotiations;
- Reduction in the time to bargain a collective bargaining agreement; and
- Progress toward or resolution of issues related to matters such as –
    - Agency performance management systems;
    - Work space issues, Reorganizations, Telework; and
    - Work-life programs.

Developing Measurements and Metrics for Evaluating Labor-Management Forums

The Executive Order tasked the National Council with developing suggested measurements and metrics for evaluation of the effectiveness of the National Council and department or agency labor-management forums. Metrics are a critical step in demonstrating how labor and management collaborating together on workplace matters contributes to a more productive and efficient Federal Government.

The National Council has identified three main objectives to be used in measuring the progress made on forums' issues, and ultimately, the effectiveness of forums. Those objectives are:

(1) improve the agency's ability to accomplish its mission and deliver high quality products, services, and protection to the public;
(2) improve the quality of employee worklife; and
(3) improve the labor-management relations climate.

Labor-management forums continue to determine the most effective way to capture the work and their outcomes with emphasis on identifying and measuring mission focused metrics. To date, the Council has received substantive metrics reports from 46 of the 51 agencies which have established labor management forums, covering the vast majority of bargaining unit employees across the Federal government.

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Statement of the Honorable John Berry
Director
U.S. Office of Personnel Management

October 11, 2011

Training Agency Officials, Labor Representatives, and Employees

To assist the National Council in fostering successful agency labor-management relations, the Federal Labor Relations Authority (FLRA) and the Federal Mediation and Conciliation Service (FMCS) have taken the lead in providing training to agencies on implementing the executive order. The FLRA and FMCS are partners with OPM and OMB in providing Government-wide leadership on Federal sector labor-management relations at a time when our Government is facing significant and unprecedented challenges. FLRA and FMCS have partnered to develop and deliver training to labor and management representatives throughout the Government on implementing the executive order. Their training efforts have been instrumental in helping agencies and labor to begin working together to meet the President's goal of promoting satisfactory labor relations and improving the productivity and effectiveness of the Federal Government. To date, the joint FLRA/FMCS training has been presented in at least 161 classroom sessions and reached approximately 6,000 management and union representatives. FMCS also offers additional training to further assist forums and has presented in at least 192 classroom sessions and reached approximately 3,900 management and union representatives.

FLRA has also partnered with the Department of Veterans Affairs (VA) to provide web-based interactive training for Federal employees as well as the public through the CHCO Council website. The training covers the purpose and requirements of E.O. 13522 as well as certain legal concepts and principles of management rights in bargaining.

I would like to give special thanks to the leadership of Carol Waller Pope, Chairman of the FLRA and a member of the National Council; Julia Akins Clark, General Counsel of the FLRA; and George Cohen, Director of the FMCS. They have been key to the success of Executive Order 13522 training efforts.

Even with this progress, we still have a great deal of work ahead of us. All members of the National Council are anxious to realize the vision of the President's Executive Order. In some organizations, the pace of change has been slow, and we recognize that there may be some frustration at the pace of change. Early efforts of the National Council focused on establishing a strong foundation for collaborative labor-management relationships at all levels of the Federal Government, and laid the groundwork to achieve success in the following efforts.

Ensuring That Employees and Labor Representatives Are Afforded "Pre-decisional Involvement" in All Workplace Matters

The National Council has supported agencies and unions in working jointly to solve workplace issues by encouraging pre-decisional involvement. The National Council issued a guidance memorandum to agencies and labor-management forums emphasizing the importance of pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining.

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Statement of the Honorable John Berry
Director
U.S. Office of Personnel Management

October 11, 2011

The memorandum counseled management to immediately engage unions on an ongoing basis consistent with the spirit and intent of the executive order. It reiterated the executive order's direction that management discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions and then engage in bargaining over the impact and implementation of the solutions. The ultimate goal of the process is to engage employees, through their labor representatives, in an ongoing, meaningful dialogue resulting in better quality decision-making, more support for decisions, timelier implementation, and better results for the American people.

Establishing Pilot Projects to Allow for Bargaining Over "Permissive Subjects"

The National Council has made strong progress in assisting agencies and unions in establishing pilot projects allowing for bargaining over permissive subjects. The National Council developed guidance and recommendations for establishing and evaluating pilot projects in which agencies agree to waive their statutory rights to make unilateral decisions over certain issues, such as staffing and technology, and instead negotiate with labor unions over such matters.[1]

To date, twelve pilot projects have been established and are operational in nine different agencies covering approximately 13,724 employees.

Our Work Continues

Given what we have accomplished thus far, the National Council is on the right path toward achieving the President's goal to improve the productivity and effectiveness of the Federal Government, and delivering the highest quality service to the American people. We will continue to be vigilant in our efforts to expand not only the creation of labor-management forums across the Federal Government but also to work with labor in a collaborative manner on all workplace matters.

Thank you for the opportunity to testify here today, and I am happy to answer any questions you may have.

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[1] 5 U.S.C. 7106(b)(1)

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STATEMENT OF
W. SCOTT GOULD
DEPUTY SECRETARY
U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
Senate Committee on Homeland Security and Governmental Affairs
Subcommittee for Oversight of Government Management, the Federal Workforce, and DC
UNITED STATES SENATE

October 11, 2011

Good Afternoon, Mr. Chairman, Ranking Member Johnson, members of the Subcommittee. Thank you for inviting me to discuss the implementation of Executive Order 13522, *Creating Labor-Management Forums to Improve Delivery of Government Services,* at the Department of Veterans Affairs (VA).

Since the signing of the Executive Order on December 9, 2009, VA has worked to put in place the right people, policies, and resources for successful implementation. Over the last two years, we have built the foundation on which to establish productive, collaborative relationships with our labor partners, and achieve positive mission outcomes for our Veterans. The leadership of our Secretary, Eric K. Shinseki; Assistant Secretary for Human Resources and Administration, John U. Sepúlveda; and, our Deputy Assistant Secretary for Labor-Management Relations, Leslie B. Wiggins have been key factors in the implementation of the Executive Order.

In VA we realized early that there are some significant differences between Executive Order 13522 and prior Executive Orders. This Executive Order places more emphasis on the involvement of our labor partners pre-decisionally. It specifically calls for the Department to "allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable..." It also mandates the establishment of forums in which management and labor create metrics to measure outcomes and impact. Furthermore, it establishes the National Council on Federal Labor-Management Relations (Council). As you know, the Council is chaired by Mr. John Berry, Director of OPM and Mr. Jeffrey Zients, Deputy Director of OMB, and I am proud to represent VA on the Council.

The Council agreed to measure the effect of agency efforts across government by using metrics in three primary categories: mission outcomes, employee satisfaction and labor management relations. VA was able to leverage the Department's existing Performance Management System (PMS), Strategic Plan and Performance Accountability Report to identify relevant metrics to begin measuring the impact these relationships will have on mission outcomes. We have had some early successes. For example, in our Veterans Benefits Administration (VBA) at the Washington, DC Appeals Management Center, the collaborative relationship between labor and management resulted in an increase in completed appeals cases. The parties avoided the protracted

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negotiation process by collaborating and getting the unions involved pre-decisionally, developing the process together and measuring outcomes together. Another example is in our Veterans Health Administration (VHA). In Veterans Integrated Service Network (VISN) 4, which is one of our 21 VISNs that provide integrated VA healthcare across the United States, the Labor Management forum agreed to implement a smoking cessation program. The effort led to a 25% increase in participation and a 40% smoking cessation rate for Veterans and employees. At the same time, VISN 4's employee satisfaction rate increased, especially in the areas of job satisfaction and work family balance. These successes provide clear evidence that pre-decisional involvement (PDI), in a healthy labor-management forum have a positive impact and are part of an effective performance management system. Our experience and observations tell us that employee engagement is a key success factor for performance management reform.

By far the greatest challenge in getting started was making sure that everyone, both management and labor, had the requisite knowledge and mutual understanding of the Executive Order. The majority of our resources during these foundational years have been dedicated to the training and education of both management and labor members of our workforce.

The VA has a long and significant history of working jointly with its labor partners. We have maintained a successful National Partnership Council (NPC) for the past fifteen years spanning three Administrations. The NPC has representatives from all five of our national unions and twelve of our Senior Executives representing all three Administrations, the Office of General Counsel, the Office of Labor Management Relations, and the Office of Information and Technology. The NPC is our national forum which serves as an advisory body to the Secretary and is currently overseeing the implementation of the Executive Order. Having the NPC already in place has been key to the Department's progress to date.

The Executive Order directs us to work with our labor partners collaboratively and look for opportunities to work with them pre-decisionally. At VA, the NPC developed the Department's implementation and execution plan for leadership approval. Our plan requires three levels of forums: a national level forum which is our NPC; intermediate level forums, associated with our VISNs; and, local forums at our medical facilities, regional offices, and cemeteries. This level of inclusion of our labor partners early in the process led to buy-in by all five of our national unions and provided a model for the other approximately 200 forums we expect to see throughout the Department within the next couple of years.

This collaborative approach continues and it was important to the early approval of the Department's plan by the Council. The council used common criteria to evaluate and approve plans from every agency in government.

Our early challenges included overcoming assumptions and fears by both management and labor. Many on the management side thought they would have

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limited control over the process; our labor partners feared that this Executive Order did not go far enough in compelling leaders to work collaboratively and that their rights could be compromised. It is important for all parties to understand that the Executive Order does not undermine management's responsibility or authority to manage the workplace, nor does it replace labor's rights to bargain. The Executive Order does require new skills and attitudes as labor and management move toward a more collaborative and productive relationship.

We found that training early and thoroughly was the best approach to mitigate these fears. We developed mandatory web based training for managers and supervisors. The training provided an overview of the Executive Order along with practical information on how to get started. To date over 25,000 managers and supervisors have completed this training. In addition, over 820 labor and management employees have attended joint Executive Order training provided by the Federal Labor Relations Authority (FLRA) and the Federal Mediation and Conciliation Services (FMCS). Labor leaders and managers are required to attend training together. It has proven to be a great motivator for labor/management pairs to return to their institutions and begin taking the steps to build forums consistent with the Executive Order. The Department also provided leadership direction and the resources necessary to act.

VA has also partnered with the FLRA in the development of web based training now available Government-wide to assist Agencies in meeting the requirements of the Executive Order. Through this partnership, VA and the FLRA have been able to make Executive Order training on bargaining over 5 U.S.C. § 7106(b)(1) matters available to all Federal employees, management, and union representatives right at their desks.

With the help of training and our continued emphasis on the importance of the Executive Order, we have successfully stood up over 150 of approximately 200 forums in VA, to date. As the forums mature they are able to begin measuring and documenting specific areas they impact in accordance with Section 3(a)(iii) of the Executive Order, which states the that Department must "evaluate and document, in consultation with union representatives and consistent with the purposes of this order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums."

In consultation with our labor partners, VA developed metrics to track changes in customer satisfaction, employee satisfaction, manager satisfaction, as well as organizational performance and outcomes that can be linked back to actions of the forums. These metrics are "SMART", in other words they are Specific, Measurable, Actionable, Relevant and Timely. Our metrics and implementation plan were approved by the Council. As required by the Executive Order, we will be submitting our progress report to the Council in December of this year.

The Executive Order anticipated the need to measure the benefit-net-of-cost of our efforts. Our bottom line is whether improved labor management relationships will

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have a positive impact on the delivery of government services – in this case to our customers, the Nation's Veterans. Preliminary indicators are positive. We recognize there has been and will be costs related to education and training. There is a compelling logic that good communication with front line employees can inform the management decision-making process and that early buy-in will speed implementation of modernization efforts in government. Improved labor-management relationship and employee engagement, will ultimately help us avoid future costs of unnecessary litigation.

Now more than ever we need to be working together to improve our services to Veterans. The Executive Order has directly contributed to stronger labor management relations at VA. After seven years of negotiation, we concluded a new master labor contract with the American Federation of Government Employees (AFGE). We are working with two of our National unions, AFGE and the National Federation of Federal Employees (NFFE) on a (b)(1) pilot to standardize skill levels of all VA Vocational Rehabilitation Counselors. By having an agency-wide certification skill level for our Vocational Rehab Counselors, we will increase accuracy and quality of services provided to Veterans. Furthermore, the VA has invited all of our national unions to participate in PDI to improve working conditions for thousands of employees involved with our 16 major transformation initiatives.

Conclusion

Mr. Chairman, in conclusion, VA has made significant progress, but there is still work to be done. We believe ultimately that working with our labor partners will improve mission outcomes for our Veterans. It makes sense to listen to the front line as we work to a common goal. At VA, we have given our organization the direction, training and tools they need to successfully in implementing this Executive Order.

Most importantly, it is our belief that these collaborative relationships will lead to improved services to our nations Veterans. They will create a more efficient and effective environment for all employees. And finally, we expect to see an overall improvement in the labor management climate leading to decreased conflict, grievances and the time it takes to negotiate needed changes in the Department.

This concludes my prepared statement. Thank you for the opportunity to testify. I am prepared to answer your questions at this time.

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WRITTEN STATEMENT OF MR. PASQUALE (PAT) M. TAMBURRINO, JR.

DEPUTY ASSISTANT SECRETARY OF DEFENSE
(CIVILIAN PERSONNEL POLICY)
DEPARTMENT OF DEFENSE

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

on

LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

October 11, 2011

Chairman Akaka, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for inviting the Department of Defense (DoD) to appear at this hearing today to discuss the Department's efforts to implement Executive Order 13522 as a means of facilitating our labor partners' participation in the design of a new performance management system, and development of suggestions to improve the Federal hiring process, as provided by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010. I believe this partnership is the largest practical example of pre-decisional involvement across the Executive Agencies since the Executive Order was signed. I am

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pleased to share with you DoD's progress, the challenges and rewards, and the way ahead toward full implementation of the Executive Order.

LABOR-MANAGEMENT FORUMS IN DOD

Executive Order 13522 states, and DoD firmly embraces, that Federal employees and their union representatives are an essential source of ideas and information that are valuable inputs to the management process. In April 2010, Deputy Secretary of Defense Lynn emphasized in a memorandum to DoD's leaders the Department's commitment to cultivating and promoting cooperative and productive labor-management relations. He outlined three guiding principles to guide labor management actions:

1. DoD's civilian employees provide critical support to the ongoing war effort and the larger mission of the Department;
2. Collective bargaining rights are important to ensuring a healthy and engaged civilian workforce;
3. Working with labor representatives in a collaborative manner is key to improving the operations of the Department of Defense.

In May 2010, the Under Secretary of Defense for Personnel and Readiness, Dr. Clifford Stanley, further endorsed support for the Executive Order, directing activities in the Military Departments and Defense Agencies to immediately move forward with the establishment of labor-management forums, particularly at the level of exclusive recognition, such as the forums at the Defense Logistics Agency with the American

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Federation of Government Employees (AFGE) and the South Dakota National Guard with the Laborers' International Union of North America (LIUNA).

The Department has embraced the guidance and is making significant progress that is benefitting all parties. DoD has approximately 450,000 bargaining unit employees and 1,500 bargaining units. As I am sure you can appreciate, implementing any program, especially in an organization as complex as DoD, where the goal is agreement of the parties on all of the procedural aspects of the program, is a daunting task. As DoD follows the Executive Order's mandate to establish labor-management forums, councils, and committees at various organizational levels, we are experiencing measurable success. We have labor-management groups that meet on a regular basis at the DoD level, the Component level, and most notably, at the local installation level, where the impact of these types of discussions is greatest. To date, over 450 forums have been established in DoD. This number represents about 60 percent of all forums established in the Federal government.

With the continued growth in the number of forums, we hope to replicate some of the mission-related improvements we have already seen as a result of successful labor-management engagements, to include the "Moonshine Project" at the Pearl Harbor Naval Shipyard. The "Moonshine Project" is a Production Efficiency Program that generates innovative and inexpensive ideas from workers, who meet with production managers to evaluate ideas for immediate process improvement. For example, one idea from this

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process resulted in a $600,000 savings, eliminating a requirement to dry dock a submarine. The project was an example of a labor-management success story presented by Mr. Ben Toyama of the Metal Trades Council, at the National Council on Federal Labor-Management Relations meeting chaired by Office of Personnel Management (OPM) Director John Berry, and Office of Management and Budget (OMB) Deputy Director Jeffrey Zients.

NEW BEGINNINGS

Next, I would like to discuss "New Beginnings," which is the way we refer to DoD's efforts to involve labor representatives in the design of a new performance management system and hiring process provided for in the NDAA for FY 2010. New Beginnings has been an evolving process and included labor and management planning sessions, conferences, and design team working meetings that culminated in recommendations developed by labor and management employees for DoD leadership consideration. I am particularly delighted with the progress made here by labor and management employees alike, and that this unique example of pre-decisional involvement has worked well.

NDAA for FY 2010 and Executive Order Requirements

The NDAA for FY 2010 repealed the statutory authority for the National Security Personnel System (NSPS) and provided DoD the authority, in coordination with OPM, to develop a new DoD performance management system, redesign procedures used within

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DoD to make appointments to positions in the competitive service, and establish a DoD Civilian Workforce Incentive Fund. The NDAA further provided that the implementing regulations were to be agency regulations subject to National Consultation and collective bargaining under chapter 71 of title 5, United States Code.

Development of the NDAA personnel authorities is different from management-driven projects. Congress required DoD to ensure a means for employee involvement (for bargaining unit employees, through their exclusive representatives) in the design and implementation of the authorities. DoD has been consistently and intensively engaged with the unions that represent DoD bargaining unit employees over the past 18 months, consistent with Executive Order 13522 and Congressional requirements, to develop the process to design the new authorities. We have established a clear track record of working, on a nearly daily basis, with labor and management representatives in implementing the requirements of the NDAA.

Pre-Design Conference Planning

The Deputy Secretary of Defense established the DoD NSPS Transition Office (NSPSTO) and appointed its Director in January 2010, under the auspices of the Under Secretary of Defense for Personnel and Readiness. The Director's responsibility was to provide overall management and direction to (1) the transition of some 226,000 employees from NSPS to the appropriate successor pay and personnel system by not later

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than the statutory deadline of January 1, 2012[1]; and (2) the design and development of the personnel authorities for performance management, workforce incentives, and hiring flexibilities identified in section 1113(d) of the NDAA for FY 2010.

In March 2010, the NSPSTO Director proposed a conference to be held in April 2010 to bring together a diverse group, including employees, managers, supervisors, labor representatives, OPM, and other key stakeholders, to participate in the design and development of the new DoD personnel authorities. The unions expressed their desire to be included in the planning for a conference of this nature. In the interest of building an effective relationship between management and labor, the conference planning timeline was adjusted to accommodate discussions between labor and management with respect to a pre-design conference to help identify broad concepts for the NDAA personnel authorities. As a result, representatives from the NSPSTO, DoD Components[2], unions, OPM, and Federal Managers' Association (FMA) worked together closely to plan a pre-design conference. The result of months of extensive conference planning and design was "New Beginnings: Exploring Ideas, Information, and Insights in Partnership for a Working Defense." The New Beginnings pre-design conference was scheduled for September 2010.

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[1] DoD has established November 20, 2011, as the last date for transitions from NSPS to occur in order to resolve any remaining transition-related issues before the statutory deadline.

[2] DoD Components are the Military Departments, Combatant Commands, and DoD Fourth Estate Entities. The DoD Fourth Estate consists of the Office of the Secretary of Defense, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in DoD that are not in the Military Departments or the Combatant Commands.

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Pre-Design Conference: New Beginnings I

DoD hosted the first New Beginnings conference from September 20-23, 2010, in Los Angeles, California. The conference brought together 185 individuals representing diverse stakeholder groups (e.g., representatives of 11 unions that represent DoD employees, managers, FMA, OPM, and the U.S. Merit Systems Protection Board (MSPB)) to explore information, insights, and ideas on, among other things, civilian performance management and recognition; experiences in hiring and applying for positions in DoD; and incentives for attracting, retaining, and rewarding employees. Ground rules established for the session included that DoD was not looking for consensus, but for the free flow of ideas; and everyone had a voice in the conversation.

The main topics of discussion at the conference were performance management and hiring and job application experiences within DoD. The topics were introduced jointly by a DoD management representative and a union representative. These presentations set the stage for a free flow of ideas and discussions among all participants. Because there are many different performance management systems in DoD, participants were given the opportunity to learn from each other about some of the different approaches to performance management that have been used in the Department. Participants were asked to be curious about the differences and note the similarities in approach. The goal of this exercise was to gain perspectives and generate ideas that could later (after the conference) be considered for the design of the new system.

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The New Beginnings conference generated over 800 recommendations in the area of performance management and over 600 insights into the hiring and application process in DoD. The NSPSTO compiled a comprehensive report on the conference and sent it to all participants in October 2010. The report includes the conference agenda, materials, and all recommendations received from participants during the conference; and was posted to the New Beginnings website home page for public viewing. Discussions continued during the fall and winter of 2010 between DoD management and labor on the way forward for the design of the new authorities.

Planning Off-Site: Next Steps

Building upon the success of the September 2010 New Beginnings conference, a joint labor-management working group met to plan the next steps. At a two-day off-site in December 2010, the working group agreed to three design teams of 20-24 employees equally represented by labor and management, and that the identification of team participants would begin in January 2011, with start-up of the design teams projected for late February 2011. In mid-February, the working group completed planning for the design effort and continued their involvement as the Design Steering Group (DSG) to provide support to the design teams. The United Defense Workers' Coalition (UDWC)[3] selected the labor representatives, and DoD officials selected the management participants on the DSG. Management participants consisted of NSPSTO personnel, a

[3] In 2005, 36 of the national unions that represent DoD employees formed the UDWC. Mr. Byron Charlton, AFL-CIO, Director of Government Relations, chairs the UDWC and is our contact point for working with and coordinating our design efforts for the new authorities.

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participant identified by FMA, a participant identified by OPM, and the transition program manager from each DoD Component.

The three design teams – Performance Management, Hiring Flexibilities, and Civilian Workforce Incentive Fund – would be comprised of union and non-union employees from across DoD. Representatives were chosen from a broad array of occupational series, grade levels, and geographic locations spanning DoD. OPM was included on the teams as advisors and consultants.

Design Teams: New Beginnings II

The New Beginnings II conference was held on February 23-25, 2011, in Arlington, Virginia, to launch the design team effort. The NSPSTO Director and UDWC Chairman welcomed conference participants.

The conference was a continuation of the work achieved during the New Beginnings I conference held in Los Angeles the previous September. Approximately 100 individuals equally represented by labor and management attended New Beginnings II, which was designed around four key objectives: (1) demonstrate leadership's commitment and support of this important initiative; (2) build a common database regarding timelines, requirements, and expectations during the conference; (3) equip team participants with tools and skills to effectively participate; and (4) foster support for the collaborative relationship and process that are critical to the success of the effort. The

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conference featured a variety of learning activities, workshops, and speakers. Within the teams, everyone had an equal voice and was encouraged to actively participate. The conference set the stage for the important work to follow and equipped design team participants with tools and skills for interacting effectively.

New Beginnings Design Team Efforts

Following adjournment of the New Beginnings II conference, the participants reconvened, as the three design teams, after a weekend break, in Arlington, Virginia. The three teams started their work in earnest, with each team establishing ground rules and developing an individual plan of action and milestones (POA&M) to help guide their work. The teams met in Arlington about three weeks out of every four from the end of February through September 2011 to deliberate on the issues.

Due to the varied backgrounds, experience, and degrees of knowledge of the design team members, it was necessary for the teams to spend several months doing extensive research into the authorities, policies, and processes that currently exist. This effort was to help establish a common knowledge base among participants as they moved forward toward starting to explore design possibilities. The teams also heard from guest speakers from across DoD, OPM, and MSPB, who met with them to share research, trends, and practices to help inform the teams' understanding and knowledge of their respective areas. They engaged in much discussion within their own team and across the

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teams. In July 2011, they began developing their recommendations for the design of the new authorities.

In early August 2011, the teams briefed the first draft of their recommendations to the DSG as well as to DoD and OPM senior executives. They answered questions and received written feedback from individuals on the DSG and from the DoD Components and OPM in mid-August. The teams used the results of these meetings and this feedback to inform them on their continuing work and to update their recommendations when they re-convened in late August.

Updated recommendations and topical papers were briefed to the DSG and to DoD and OPM executives in early September 2011, with feedback provided by the individuals on the DSG and from the DoD components to the teams in mid-September. In late September, the labor and management co-leads briefed the Service Assistant Secretaries for Manpower and Reserve Affairs and the Office of the Secretary of Defense Director of Administration and Management on their updated recommendations. The teams concluded their deliberations and completed their final recommendations for delivery to the Under Secretary of Defense for Personnel and Readiness. They identified statutory, legislative, or internal DoD barriers to their design recommendations and wrote a comprehensive report on their work. The teams' final recommendations will inform the Department's senior leadership on its decisions for a new DoD performance management

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system, redesigned appointment procedures, and whether to establish a Civilian Workforce Incentive Fund.

New Beginnings Challenges and Rewards

New Beginnings has been both challenging and rewarding. We have found that relationship building is key. A good relationship, based on mutual trust, respect, and honesty must be in place for an effective relationship to occur. When we began this effort, the state of the union/management relationship – primarily as a result of NSPS – was severely strained, with significant discord and mistrust on both sides. While the passage of the NDAA for FY 2010 and the President's Executive Order calling for pre-decisional involvement paved the way for a more inclusive process, we first had to strengthen the relationship.

The first meeting between the NSPSTO and labor at the end of March 2010, confirmed the nature of the relationship. The DoD leadership took away from that meeting three clear messages from labor. First, there was a lack of trust on their part. Second, from their perspective, the Department had no genuine interest in listening to and giving consideration to labor's issues, positions, and input. Third, that our actions on the NDAA authorities at that time (planning for the April 2010 conference) did not reflect significant progress in resolving the issue of trust.

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From that first meeting, DoD leaders determined that restoring and rebuilding the relationship was the top priority. DoD clearly understood the pre-decisional involvement process is dependent on the relationship that exists between the involved parties. Based on that and the clear messages we received from labor, we were determined to restore and rebuild the relationship on three basic tenets: (1) earn trust, (2) show respect, and (3) maintain basic honesty. All of our actions and engagement with labor have been and continue to be guided and measured by those tenets.

Another challenge was that the approximately 75 members of the three design teams faced a steep learning curve. Extensive time and attention were given to ensuring design team members were provided thorough background briefs on the law's requirements and to provide time for thorough research and analysis activities. The schedule also took into consideration the need for team members to periodically return to their home bases, not only to check in with their families and co-workers, but also to keep their leadership updated on design team activities and obtain additional feedback and information regarding design options.

The AFGE withdrawal from participation in March and their eventual re-entry in July was also challenging. In crafting recommendations for the design of the new authorities, our goal has always been to ensure broad-based participation; and their departure left a significant void. When AFGE made the decision to return to the design teams, the teams adjusted their schedules to give AFGE returning members an

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opportunity to catch up and reintegrate with their teams. AFGE's return and participation on the design teams ensured their perspective was fully considered. We welcomed their return and their input.

Even with its challenges, the New Beginnings process has been worthwhile. The NDAA and the President's Executive Order paved the way for a more inclusive approach to developing a new performance management system and redesigned appointment procedures. The process itself creates an environment for the free flow of ideas and ensures a diversity of perspectives is considered. Working together in resolving the Department's human capital issues promotes shared interest, investment, and ownership, all so critical to a successful outcome. The trust and respect gained from this endeavor will have a positive carryover effect as we go forward.

FULLY IMPLEMENTING EXECUTIVE ORDER 13522 IN DOD

Prior to the Executive Order, the Department engaged with our 10 unions with national consultation rights with DoD to reestablish relationships. Under Dr. Stanley's guidance, we started very informal meetings with union representatives to discuss how to change the tenor of the relationship. The initial meetings focused primarily on relationship-building. As the relationship matured, the group began to focus on human resources issues and programs, with pre-decisional discussions on issues such as the Department's Training Instruction, suicide prevention training for supervisors, and expanded implementation of the electronic leave and earnings statement. These meetings

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also set the stage for the establishment of Component-level labor-management meetings with the national unions and pre-decisional discussions.

As the Department-level group evolved into what we now call the "DoD Roundtable," it provided us the vehicle for discussions regarding the Department's Executive Order Implementation Plan and union pre-decisional involvement in the NDAA design effort. Because of the conflict surrounding the processes used in the past, we found that it was in our mutual best interest to collaborate on how we would engage in the pre-decisional process.

In addition to our work establishing forums and pre-decisional involvement efforts, the Department volunteered to be part of the Executive Order's permissive bargaining pilot initiative. Initially the Department submitted two permissive bargaining pilot sites: (1) Marine Corps Maintenance Center, Albany, Georgia covering, 1,200 AFGE bargaining unit employees; and (2) Camp Pendleton, California, with over 900 National Federation of Federal Employee (NFFE) bargaining unit employees. Within the last few months, the Marine Corps reached agreement with AFGE to expand the pilot project to include an additional 1,200 AFGE bargaining unit employees at the Marine Corps Logistics Command in Barstow, California. The Department's permissive bargaining pilots cover 3,300 employees.

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We are already starting to see results from the pilots. Earlier this year, agreement was reached on a reorganization effort that consolidated two Logistics Command Maintenance Centers into a single Maintenance Command. While the reorganization is in its infancy, the consolidation is expected to create cost efficiencies and enhance organizational effectiveness. This effort was completed through pre-decisional discussions with the unions, without the need for the time and resource intensive formal collective bargaining process. As new collective bargaining relationships mature, we hope to see more mission-focused results that we can share with the rest of the Federal government.

There is ample evidence that the quality and value of the dialog between the Department and our labor unions have improved markedly. The evolution of these relationships, however, is ongoing and will be for some time. As I stated earlier, the unique quality of the relationship between management and labor at the level of exclusive recognition puts ownership of success of forums and pre-decisional involvement in the hands of those who do the hard work at the installation level. DoD is committed to putting the necessary resources and tools in the hands of our leaders, our employees, and their exclusive representatives to achieve the goals and objectives of the Executive Order.

Experience and practice show that where forums exist, employees feel engaged and provide meaningful input affecting the delivery of products and services. The enduring legacy of those labor-management relationships at the installation level serves

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as the true foundation for success under the Executive Order. While our baseline assessment revealed that much hard work on the relationship dimension remains in front of us, that assessment also confirms that where employees are engaged in those decisions that affect them, the support of those decisions is greater when compared to those relationships where engagement does not occur.

POSSIBLE AREAS FOR IMPROVEMENT

While the Department has embraced the Executive Order and made strides in its implementation, we note areas for improvement needed to meet our commitment, including: (1) establishing more forums; (2) documenting improvements in productivity and effectiveness (metrics); and (3) managing pre-decisional involvement costs.

Forum Establishment

As I mentioned previously, the Department has over 450 forums established. While significant, we need to do more to maximize the mission-related benefits that are inherent with productive, collaborative labor-management forums. We need to work with our national unions to educate our respective representatives on why it is in their best interest to establish cooperative labor-management forums and provide the tools and information they need for success.

The Office of General Counsel of the Federal Labor Relations Authority (FLRA), together with the Federal Mediation and Conciliation Service (FMCS), provide training

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to labor and management on the critical aspects of the Federal Sector Labor-Management Relations Statute, as well as training on implementing and sustaining labor-management forums under the Executive Order. Likewise, human resources organizations throughout DoD provide training on core labor-management topics, including the Executive Order, as part of our overall managerial and supervisory training initiative. Training is critical to the success of forum implementation and puts the right tools in the hands of forum participants.

Documentation of Productivity and Effectiveness Improvements (Metrics)

As we move forward under the Executive Order, one of our chief challenges will be to further develop the concept of a shared mission throughout the Department and firmly establish the attitudinal and behavioral models that serve as a foundation for success. I believe there is experience in the Department that may provide positive models that can be replicated and provide for dynamic improvements in both productivity and effectiveness that are necessary for the forum experience to yield the type of results envisioned by the Executive Order. Results-oriented forums, focused on a shared vision by labor and management, will improve our productivity and effectiveness.

We will know if our efforts are successful by measuring the movement towards achieving the Department's objectives. To this end, the National Council on Federal Labor-Management Relations developed three broad metrics that include: (1) mission and service delivery; (2) employee satisfaction and engagement; and (3) labor-

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management relationship. Utilizing these three overarching metrics, each installation-level forum will select measurable criteria that best fit their respective slice of products and services. As the forums reach agreement on their metrics, conflicting priorities will be reduced, allowing the forums to align their resources and efforts in a meaningful and measurable way. For example, in the metric concerning mission and service delivery, depots and refit facility forums may select a criterion that focuses on the processes that lead to a reduction in the cycle time to refit or refurbish weapon systems, or return airframes to airworthiness standards and return these systems to the field. By avoiding a one-size-fits-all approach, those at the installation level can shape what they need to measure and report those successes. Where it makes sense, others may replicate those successful models and achieve even higher levels of productivity and effectiveness. This approach creates a dynamic process within the Department where we measure the performance of the enterprise, replicate success where we find it, and implement where it makes sense. Based on this strategic approach, the Department is in a better position to invest its time, resources, intelligence, energy, and opportunities affecting attainment of its goals and objectives.

Managing Pre-Decisional Involvement Costs

There are resource implications for engaging in this collaborative behavior in terms of required investments in training, sustaining the skill sets of those participating in the process, and the investment needed to fully explore the recommendations of employees and labor organizations. It also requires that the right people are in the right

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place at the right time to move forward on meaningful discussions. While some costs are predictable, leaders must manage these costs efficiently and effectively with no degradation of mission capability or capacity. However, my view is, in relative terms, the cost concerns pale in comparison to the potential benefits of effective engagement between labor and management.

THE WAY AHEAD

As the Department moves forward, we plan to continue our collaborative efforts. The Executive Order requires each agency to conduct a baseline assessment of the state of labor relations. The preliminary results of the assessment we developed with our unions indicate that when joint labor-management forums or committees exist and meet regularly, union representatives and supervisors rate almost all aspects of the relationship as significantly more positive and report a more results-oriented labor relations climate.

In early September 2011, "DoD Roundtable" representatives met and agreed to take more of a leadership role in forum establishment throughout the Department by becoming the first group to take advantage of the FMCS Executive Order Train-the-Trainer Program. In FY 2012, we will be embarking on a training program for labor and management employees delivered by labor and management employees. As we train, we will continue to build knowledge and trust, thus adding value to DoD's decision-making process.

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Testimony of Gregory J. Junemann, President
International Federation of Professional and Technical Engineers, AFL-CIO & CLC

Good afternoon. I am Gregory Junemann, President of the International Federation of Professional and Technical Engineers (IFPTE). I would like to thank Chairman Akaka and the members of the Subcommittee for the invitation to testify today.

I would like to also extend a personal note of appreciation to Chairman Akaka and his Subcommittee staff. At the conclusion of this Congress Senator Akaka will cap off a distinguished career serving the citizens of Hawaii and our nation. As a union representing tens of thousands of federal workers, including federal workers represented by IFPTE Local 121 at the Pearl Harbor Naval Shipyard, IFPTE commends the Chairman for his long standing support for the members of IFPTE Local 121, and for federal workers overall. On behalf of Local 121's President, Jamie Kobayakawa, Local 121 member, Don Bongo, IFPTE Executive Vice President, Ben Toyama, and the entire IFPTE family, we thank you for your service to our nation. We will not soon forget your leadership and strong voice for working Americans.

Background and IFPTE's Views on Federal Government Partnerships

The issue being looked at today deals with 'labor management forums in the federal government', and how effective they have been for taxpayers, workers and managers alike. After an eight year hiatus from formal partnerships in the federal government, President Obama issued Executive Order 13522 (EO 13522) on December 9, 2009, directing federal government managers to work collaboratively with their unionized workers. At the time IFPTE hailed the EO, saying that it "will create an environment in which meaningful and positive change can occur to the benefit of not only the American taxpayer, but also to the benefit of dedicated federal workers." IFPTE continues to stand by that statement and remains in firm support of federal government partnerships. This testimony will show concrete examples of where partnership has, and continues, to produce significant benefits for taxpayers and federal workers.

With EO 13522 also came the creation of the National Council on Federal Labor-Management Relations, co-chaired by Office of Personnel Management (OPM) Director John Berry, and Office of Management and Budget (OMB) Deputy Director for Management Jeffrey Zients. This council is comprised of both labor and management officials, with the IFPTE president holding one of the seven labor seats. The group is tasked with oversight of the implementation of EO 13522, and our mission is to serve in an advisory capacity.

Of course we all know that the United States government is operating at a deficit, and regardless of how that came to happen, President Obama is tasked with wiping out the red ink. He has put forward various proposals, including a budget, a jobs package, and recommendations to the Joint Select Committee on Deficit Reduction, that purport to cut trillions of dollars from the nation's deficit, while at the same time, maintaining a reasonable degree of government service and job creation.

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IFPTE is not oblivious to the clear reality that lawmakers will address federal spending in ways that will require agencies to make changes to how they do business, and potentially eliminate programs and reorganize operations. While it is difficult to predict now what programs and operational changes will be initiated as a result of FY12 appropriations decisions and recommendations made by the Joint Select Committee on Deficit Reduction, it is likely that these changes will be significant, wide spread and will greatly impact the federal workforce. IFPTE believes that partnership is even more important, not only for the workforce, but for the services taxpayers depend on during such uncertain times.

Implementing Executive Order 13522 – What it Means for Past, Current, and Future Partnerships

EO 13522—Creating Labor-Management Forums to Improve Delivery of Government Services—requires all federal agencies to "**make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment ... through discussions in its labor-management forums**." In his memorandum to heads of departments and agencies on January 29, 2010, Director Berry noted that Labor-Management Forums (LMFs) "can improve the working relationship between employees and the employer and support changes needed to enable agencies to deliver the highest quality services and products to the public." While there have been great successes and continued challenges, IFPTE applauds Director Berry for his leadership in attempting to ensure that the President's vision on partnership is ultimately achieved.

IFPTE remains fully supportive of EO 13522 and the Obama Administration's commitment to making it work. In fact, even before taking office, and after winning the Presidency in November 2008, IFPTE actively encouraged the President's transition team to re-establish formal partnerships in the federal government. Contrarily, one of the first orders of business when President Bush assumed office in 2001 was to overturn the Clinton era partnership EO. President Bush did not forbid management from engaging in partnership, but his actions did encourage most partnerships to end. Nonetheless, and much to their credit, some federal government entities voluntarily continued with partnership. Two of the successful partnership arrangements enjoyed by IFPTE members that continued during the Bush Administration were at the Bremerton Naval Shipyard in Washington State, where IFPTE Local 12 is located, and at the Pearl Harbor Naval Shipyard, where IFPTE Local 121 is located. This is important to mention because in places where partnership has been well established there exists concrete evidence of benefits to the taxpayer. This is particularly true at the Pearl Harbor Naval Shipyard, in Chairman Akaka's home state of Hawaii, where partnership has led to the creation of the "Moonshine Program", a collaborative project between the Hawaii Federal Employees Metal Trades Council (HFEMTC) and management to better streamline projects in the shipyard. Moonshine, which was presented to the National Council this past May by IFPTE Executive Vice President and HFEMTC officer, Ben Toyama, has saved taxpayers tens of millions of dollars. The moonshine project is a shining example of how a well-established partnership continues to deliver top quality services to the taxpayers.

Along with the partnership at Pearl Harbor, IFPTE is also proud of the newly established partnership at NASA. As NASA's largest civil servant union, we point to the NASA

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partnership, or agency-wide Labor Management Forum, created as a result of President Obama's EO as one of its early, but great, successes. The NASA partnership, like most other partnerships established under President Obama's EO, is still in its infancy but will reap huge benefits to the taxpayers as it continues to evolve.

The NASA partnership is a great example of where the full intent of the President's EO is being implemented. For example, NASA's partnership is a decision making body that is co-chaired by NASA Deputy Administrator, Lori Garver, and the President of the NASA Council of IFPTE Locals (NCIL), Lee Stone. Along with the five IFPTE seats on the national NASA partnership are two seats allotted for the American Federation of Government Employees (AFGE). IFPTE is proud of the productive working relationship established at NASA with our AFGE and NASA management partners. This testimony will expand later on both the NASA and Pearl Harbor success stories.

With successes however also come challenges, and some IFPTE Locals are facing some pretty large hurdles. Simply stated, the President's EO requires a culture change and in many federal government locations, including at Department of Defense (DoD) installations, there are problems. Of course this is not unique to IFPTE. Most unions representing federal workers are having similar problems establishing partnerships that meet the true intention of President Obama's EO. With respect to IFPTE, we can point directly to two examples—one at the Social Security Administration (SSA) and the other at the Naval Surface Warfare Center (NSWC) in Philadelphia. There are more locations, including the Defense Logistics Agency (DLA) in Columbus, Ohio, where IFPTE Local 7 is located, and NAVAIR in Jacksonville, Florida, where IFPTE Local 22 is located. These Locals, along with several other IFPTE Federal Locals, continue to experience an inflexible management culture where the effort is not geared toward establishing a successful partnership. Rather, it is focused on frustrating any legitimate effort to implement the President's directive. Along those lines, IFPTE has compiled a summary of responses received from IFPTE Federal Locals throughout the nation as to the status of their efforts to fulfill President Obama's EO. That survey, with the verbatim responses from IFPTE federal Locals, is attached to the end of this testimony.

For the purposes of this testimony, IFPTE will focus on SSA and NSWC Philadelphia as two of the primary examples of where partnership is not currently working. Whether it be management's misguided perception of a loss of some power by sitting across the table from labor, anti-union animus that remains in place at SSA from the last administration, or the malicious non-compliance with a Presidential directive by reinterpreting the EO to fit their purposes, management in some locations has looked for every avenue to avoid meaningful partnership. While we can only speculate as to the reasons, we are quite certain that at both SSA and NSWC Philadelphia, management is simply 'running out the clock' to see if they can stall partnership until the end of the President's first term. In other words, they are waiting to see if the President will win a second term before deciding whether or not to take partnership seriously. This is an unfortunate, but accurate reality. Even without the EO, both Management and Labor are federal employees and should therefore be working together for the good of their agencies and their country.

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Before turning to concrete examples of where partnership is working and where it is not, I want to first talk about training.

Training is Essential to Partnership Success

It will be nearly impossible to realize successful implementation of EO 13522 without proper training for both labor and management. In that regard, the Federal Labor Relations Authority's (FLRA) Office of General Counsel (OGC), the Federal Mediation and Conciliation Service (FMCS), and the Department of Veterans Affairs (VA) have stepped up to the plate in providing the necessary training.

There are two aspects to the training that I'd like to highlight:

1. Live session training being conducted jointly by the FLRA OGC and the FMCS. This training provides workers and managers with an overview of the EO, how to establish a forum, and ongoing support of LM forums. So far this training has reached over 6,000 federal workers.
2. Online self-paced tutorial created by the FLRA OGC and VA that is readily available to every federal worker, union representative and manager. It is a 90 minute training that is flexible enough to be completed in segments. This training tool has the potential to give every federal supervisor and union steward a working knowledge of EO 13522, including the proper way to deal with pre-decisional information (PDI).

With respect to the online training, IFPTE recommends to our union partners and management, an aggressive outreach campaign to all rank and file federal workers and managers encouraging them to complete the online training. It can accommodate hundreds of thousands of individuals simultaneously. Like many other unions, IFPTE has posted this online training on our webpage for easy access by IFPTE members.

It is worth noting that this training has received rave reviews by those who actually receive the training. While the FLRA, FMCS and VA budgets continue to be stretched, like most agencies, they have nonetheless found a way to provide top quality training at very little cost. That said, it is also worth mentioning IFPTE's ongoing disappointment with House and Senate appropriators in providing the FLRA with a shoe-string budget for FY12. Granted, these are tough fiscal times. However, this EO, and the FLRA and the training it is providing is critical to the success of this EO. Providing the FLRA with a minimal investment in the form of a $30 million FY12 budget will reap huge benefits for federal government efficiency, particularly in such uncertain times.

IFPTE Experiences with Partnership – Huge Efficiencies Achieved in Some Places, Ongoing Hurdles in Others

So, which agencies represented by IFPTE are truly engaging in partnership and which agencies are not? The next section of the testimony has been broken into three pieces to answer this question. (1) Where partnership is working – more detailed descriptions of the NASA

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partnership and the Pearl Harbor Moonshine program; (2) Where the President's EO is being disobeyed - pointing to SSA and NSWC Philadelphia of examples of where partnership remains stalled, and; (3) New Beginnings at the DoD – While the overall DoD national partnership is simply a 'meet and confer' process, there does remain a unique, but very worthwhile partnership that was created as a result of the Fiscal Year 2010 (FY10) National Defense Authorization Act (NDAA) that mandated a labor-management collaborative effort to create a DoD-wide performance management system.

Let's start with the positive:

Where partnership is working for IFPTE:

I. NASA:

There is no better way to reflect on the promise of the new NASA partnership than by reading the October 7th letter, jointly signed by the NASA partnership Co-Chairs—NASA Deputy Administrator Lori Garver and Labor Caucus Chairman and NASA Council of IFPTE Locals President Lee Stone—that we ask be submitted for the record. Both Management and Labor are celebrating the improved decision making and process streamlining at NASA, fostered by a new culture of mutual respect and cooperation. Both sides are embracing a new approach of working jointly towards the betterment of the Agency they love, rather than engaging in wasteful bickering over procedural minutia or posturing over legal authorities. Although NASA is just beginning to reap the rewards of partnership, Labor-Management cooperation is already yielding tangible results with Management as it shapes its new labor policy decisions with input from Labor, which includes reforms that will increase productivity and reduce administrative costs. Once the legalistic pretense is peeled away, it is remarkable how often consensus can be reached, as the only discussion issue becomes how NASA can best deliver top notch services more efficiently and effectively for the American taxpayer. Furthermore, in the contagious spirit of cooperation, Labor has begun to waive its statutory procedural rights, thereby accelerating implementation timelines and thus decreasing both legal and administrative costs. Concrete cost and time saving numbers will be available by the end of FY12. IFPTE looks forward to sharing those numbers with this Subcommittee.

II. Pearl Harbor Naval Shipyard Moonshine Program and Partnership:

As previously explained, IFPTE Executive Vice President Ben Toyama presented earlier this year to the National Council the Pearl Harbor Moonshine Program, and gave concrete examples of where the program has resulted in great efficiencies.[1] In 2005, the HFEMTC at Pearl Harbor Naval Shipyard, including IFPTE, began to form a Union program of process improvement. With a proactive partnership with management, Labor created the "Moonshine" process improvement. **The "Moonshine" program has saved the Navy millions of dollars in cost and schedule.**

[1] Hawaii Metal Trades Council Moonshine Presentation to National Labor-Management Council, May 18, 2011, http://www.lmrcouncil.gov/meetings/handouts/Final%20Overall%20Moonshine%20Presentation%20May%202011%5B1%5D.pdf

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One of the most successful Moonshine projects at Pearl Harbor is the Virginia Class Submarine Battery change team. In February 2011, the Moonshine Battery Team accomplished the battery change out on the USS Texas in record-time by completing a 30 day schedule in 15 days. They repeated their performance in July 2011 on the USS Hawaii. The savings the Navy realized was $435,000 per vessel for a total of $870,000. When it comes to the ultimate metric to measure success of a Labor-Management partnership, the Moonshine metric of monetary savings for the taxpayer is the most appreciated measure. Indeed, the Moonshine process improvement work teams at the Pearl Harbor Naval shipyard prove that proactive partnership between Labor and Management can and will work.

Here is a sampling of some, but not nearly all, of the other realized efficiencies achieved through the Pearl Harbor Moonshine program:

- Increased safety and a reduction by half the man hours required to paint tanks by using a personal cooling hose to be worn by painters entering a tank;
- Increased productivity by 33% and savings of 210 fiscal year man hours by installing cabinets with a new brand of installation jig;
- Reducing from 15 shifts to 3 shifts for fluid changing times by using a more efficient pump to change hydraulic fluid, and;
- Saving over 75 man hours per fiscal year by implementing a new draining method for chill water systems.

How does it work? Pearl Harbor Moonshine teams, made up of both management and labor, meet for one hour on Mondays, Wednesdays, and Fridays, to discuss ideas brought to the Moonshine Teams from the rank and file. The teams determine if better safety and efficiency can be achieved and move accordingly to implement good ideas into actual practice. As you can see, the results have been extraordinary.

And, this is not just IFPTE blowing our own horn. The Pearl Harbor Moonshine program has been recognized well beyond Pearl itself. In December 2009, Pearl Harbor was awarded the Robert T. Mason Award for Excellence, an annual award presented to one outstanding program at a major DoD-level maintenance facility. The award recognizes exceptional quality of maintenance support, outstanding mission accomplishment, effective support of warfighters, and logistics process innovation. It is given to the program that best exemplifies responsive, transformed, organic depot-level maintenance support to DOD operating units. Pearl Harbor Naval Shipyard became the first Navy activity to win the Mason Award and this accomplishment is due in no small part to the Moonshine partnership.

Concurrent with the Moonshine partnership and in compliance with EO 13522, on April 20, 2011, the first official command-level Labor Management Workshop was conducted for Pearl Harbor Naval Shipyard. Twenty-one managers and twenty-four labor representatives were in attendance. Agreements, actions, as well as the framework for union representative involvement in pre-decisional meetings were established. Navy Region Hawaii Human Resources Office gave training on the Executive Order 13522. The purpose, intent, rights of employees, union and management and pre-decisional involvement were all discussed.

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FMCS of Honolulu facilitated the follow up discussion. Ultimately it was decided that the goal is to establish collaborative Department and Production Shop level forums throughout the Shipyard. Code 132 and Code 950 became the pilot projects for developing structured collaborative labor-management forums.

On September 23, 2011, the second command-level Labor Management Workshop was held. In this forum the results of the pilot projects were discussed. The parties agreed to continue to establish more pilot projects to build "partnerships" at the production shop levels.

Where partnership is not working for IFPTE:

I. Naval Surface Warfare Center (NSWC), Philadelphia:

IFPTE Local 3 has conducted numerous meetings with the management of Naval Surface Warfare Center, Carderock Division (NSWCCD), in Philadelphia to generate a charter for the Labor Management Forum (LMF). This process, which continues to stall, was initiated in March 2011 and continued with monthly meetings until July 2011. It should also be noted that IFPTE Local 3 does not have any alternate forum or partnership with NSWCCD.

The interpretation of EO 13522 by IFPTE, including IFPTE Local 3, is that the purpose of the LMF is for management to discuss workplace challenges and problems with labor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions. In effect, this would increase government efficiency through streamlining what otherwise may be addressed through a collective bargaining process. To that end, IFPTE Local 3 desires that the LMF be a decision making rather than a recommending body.

Conversely, it is the desire of NSWCCD management to create a recommending body where the proceedings are to remain confidential. As part of negotiations over the charter, which did have a Federal Mediation and Conciliation Service (FMCS) representative present at each meeting, it was agreed that executive summaries could be made public, but that minutes were to remain confidential after the LMF charter has been signed.

When pressed for a reason why the LMF was to be a recommending and not a decision making body, the reply from the NSWCCD co-chair of the LMF was that none of the management representatives at the table had decision making capabilities. To IFPTE Local 3, this appeared to be in contravention of a May 18, 2010 memorandum titled "Establishment of Labor-Management Forums in the Department of Defense" from the Under Secretary of Defense for Personnel and Readiness, Dr. Clifford Stanley (see attached document), which recommends that "labor-management forums should be led by relevant decision makers and supported by appropriate staff." When pressed further on this issue, the reply from NSWCCD management was that the memorandum from the Under Secretary of Defense contained recommendations, not directions, and that the recommendations were considered and rejected.

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Subsequently, the Commanding Officer created a leadership meeting to facilitate development of the LMF charter outside of the LMF environment. At this September 20, 2011 meeting, division heads were present. The issue of recommending versus decisional was discussed, and management related that decision making authority was vested in the Commanding Officer and the issue of recommending versus decisional was strictly one of semantics. Nevertheless, the creation of a decision making body remains at a standstill.

After the leadership meeting, the request by IFPTE Local 3 to have the Local 3 President and one representative attend the National Labor Management Council Meeting of September 21, 2011 was conducted by OPM, and was denied by NSWCCD (see attached memo from NSWCCD Commanding Officer).

To date NSWCCD, Philadelphia is failing to live up to the true intention of EO 13522.

II. The Social Security Administration:

IFPTE is proud to represent Administrative Law Judges (ALJs) at SSA. Unfortunately, the Association of Administrative Law Judges, IFPTE Judicial Council 1 (AALJ/IFPTE JC1) has not yet experienced any benefit from the President's EO. The impaired vision of SSA management has been to delay implementation of the Executive Order and thus avoid having to meet with its Forum counterparts. Only within the last few months has the Agency agreed to an organizational charter to govern the operation of the Forums. The first substantive AALJ/IFPTE Forum meeting will take place during the week of October 17.

This delay approach by SSA has precluded the AALJ from participating in discussions with agency executives over significant issues involving the disability adjudicatory system. The AALJ strongly believes that problems flowing from the backlog of disability cases could have been minimized had the Agency not delayed its compliance with the President's Executive Order. While the AALJ is cautiously optimistic over the future success of Labor Management Forums at SSA, it remains concerned that the prevalent anti-union attitude of the last several years will limit its ability to address important issues as contemplated by the President's Executive Order.

If it were not for the stalled process at SSA, this is one of the forum's that could have quickly resulted in huge benefits to taxpayers. As scored out by Senator Coburn in his "Back to Black" deficit reduction proposal, major taxpayer savings could be achieved through streamlining and revamping the Social Security disability process. Coincidently, Senator Coburn and the AALJ/IFPTE views on the Social Security disability process are similar, and it is the AALJ/IFPTE's view that the savings outlined in his report could be achieved if there were a real and meaningful labor-management forum as SSA.

New Beginnings at the DoD – An Unanticipated, but Effective Partnership

As this Subcommittee knows well, the FY10 National Defense Authorization Act (NDAA) repealed the so-called National Security Personnel System (NSPS). This bipartisan supported repeal came about for various reasons and was fully supported by IFPTE.

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With the repeal of NSPS also came authorities to allow the DoD certain flexibilities for moving forward with a performance management system. Section 1113 of the FY10 NDAA gave the DoD the authority to work on personnel and hiring reforms of their own, separate and apart from what OPM and OMB may do with other Executive Branch agencies. Granted, this authority requires the DoD to work with OPM and labor, but it also allows the DoD to move forward separate from whatever OPM may do. Included in these flexibilities were certain requirements and expectations of management. Among them was the requirement that the DoD work hand in hand with not only OPM, but also with labor. In other words, Senate Armed Services Committee Chairman Levin, Armed Services Committee Member, Senator Collins, and then House Armed Services Committee Chairman Skelton wanted to ensure that if DoD decided to move forward, they needed to do so with labor as an equal partner. There was also an expectation that any new performance management system make full use of the flexibilities already inherent within the GS system. This last point is directly aligned with IFPTE's position on any performance management system.

In IFPTE's view, what has resulted is one of, if not the most successful labor-management collaboritive efforts the federal government has seen in some time. While this may not be a 'formal' partnership arrangement, it certainly can serve as a blueprint of how to implement one.

What has now become known as "The New Beginnings" process, and is close to wrapping up its work, is a collaborative effort made up of both DoD workers and DoD managers working together to create a DoD-wide performance management system that remains within the scope of the current GS and Wage-Grade pay systems. The original lead from the management side was John James, who testified before this Subcommittee back on June 9, 2010 about this, and the NSPS transition. Mr. James has since been promoted and the task has now been handed over to Deputy Under Secretary of Defense for Civilian Personnel Policy, Pat Tamburrino, who is testifying here today. Without going into too much detail about the work of the New Beginnings team, as Mr. Tamburrino will do, I will just provide the Subcommittee with the following views from IFPTE's perspective.

First, I want to point out that a final product on performance management has yet to reveal itself. The New Beginnings labor-management team is in the final stages of completing its work, with a final product due to be released later next month. IFPTE is optimistic that the final product will be one that can be endorsed by both labor and management, and could possibly even be a blueprint for a performance management system to be emulated elsewhere in the federal government.

IFPTE applauds this process. While there have been some bumps along the way, which is fully expected in a process of this magnitude, New Beginnings has included all of the elements that any effective partnerhip requires, including the flow of pre-decisional information and a good-faith partnership between labor and management. And, as with any effective partnership, neither labor nor management got everything they wanted. This has been a partnership ripe with compromise, productive debate, and meaningful give and take. To the credit of Mr.

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Tamburrino, Mr. James before him, and labor, this process has worked and we hope to reap huge rewards for taxpayers, employees and management alike.

Conclusion

The President's efforts with respect to producing real savings for the taxpayer through this EO does not lie within his political will or his ability to rein in Congress. Instead, President Obama's success in creating a more efficient federal government depends upon his ability to engage his own workforce, while demonstrating the need to connect the dots between budget discipline and labor-management partnership. IFPTE believes that he is headed in that direction with the creation and continued implementation of EO 13522.

This concludes my testimony. Thank you again for the opportunity to speak to you today.

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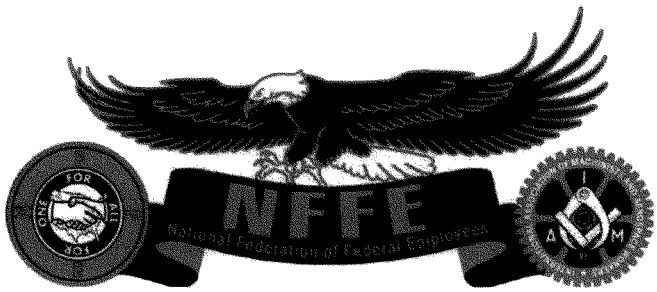

STATEMENT OF

WILLIAM R. DOUGAN

NATIONAL PRESIDENT
OF
THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

REGARDING

LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT

OCTOBER 11, 2011

Introduction

On behalf of the National Federation of Federal Employees (NFFE) and the 110,000 federal employees we represent throughout the United States and abroad, at 40 different federal agencies and departments throughout the federal government; I thank you for the opportunity to provide testimony today regarding labor-management partnerships in the federal government.

Summary

On December 14, 2009 President Obama signed Executive Order (EO) 13522 which reinstituted labor-management partnerships, or "forums," in the federal government. Labor-management partnerships were in place during the Clinton Administration, but President George W. Bush eliminated most federal agency partnerships during his tenure. The reestablishment of labor-management partnerships under President Obama has been a breath of fresh air in a majority of federal agencies where labor-management forums are established and underway.

Currently there are at least 769 individual labor-management forums that have been established in federal agencies and department, covering approximately 770,000 bargaining unit employees. In these agencies, partnerships are being used to find innovative solutions to agency problems, to identify ways to trim budgets without undermining the core missions of agencies, to build buy-in from employees for various initiatives that impact the workers and local communities, and to avoid unnecessary costs that federal agencies frequently incur – like costs associated with litigation and grievances – that are easily avoided by communicating with employees through pre-

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decisional involvement. In short, labor-management partnerships are being used to facilitate smarter, leaner, and more efficient government by including some of the most important stakeholders of all – the employees who actually carry out the missions of the agencies.

How Labor-Management Forums Improve Agency Performance

I can say from my 30-year career as federal employee that labor-management forums most certainly do improve agency performance. Regardless of what an agency's objective might be – i.e. cost savings, increased production capacity, faster processing, fewer errors, better workplace safety, etc. – it is often the employees who are the best source of information for how to improve processes to make the agency work better, and thereby improve performance. After all, employees are the ones who do the work every day.

Through labor-management forums, employees who actually perform the work have a real voice in offering options, alternatives, and ideas on how to better accomplish the work through changing processes and procedures. There is no more fertile ground for improved agency performance than listening to the ideas and concerns of workers. This is particularly true when employees, through their designated union representatives, are engaged early in the decision-making process. In my view, the inclusion of pre-decisional involvement in President Obama's EO was a key provision that leads to better decision making by agency leaders and better performance of federal agencies.

The pre-decisional involvement provision has substantially opened up the lines of communication between management and employees, and has done much to garner trust

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and buy-in from workers. By listening to labor's ideas and concerns early in the process before all decisions are made, it helps management make better decisions about workplace changes which are better supported by the workforce. The support from employees in turn makes implementation of the management decision easier. This leads to less concern and distraction among employees and greater focus on the agency mission to be accomplished.

How Labor-Management Forums Save Money

I can also say from my three decades working in the U.S. Forest Service that labor-management forums save agencies money. By discussing problems early on, and allowing the union to share workers' concerns and possible solutions to problems, it allows management to make better decisions, thereby saving money in terms of time and effort involved in implementing decisions. Again, a major component of that increased efficiency is improved buy-from workers, which results in quicker, smoother implementation.

Agency decisions resulting from or influenced by discussions held in labor-management forums can result in less need to bargain once a decision is made, resulting in significant potential cost savings. It is in the interest of both labor and management to avoid lengthy and costly grievances or litigation. Communication through labor-management forums allows the parties to reach an understanding about why agencies are taking certain actions and what it means for the employees. Communication through forums also allows for plans to be modified to mitigate some of the adverse impact on employees, when the alternative, failing to hear workers' concerns, could lead to far

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greater problems associated with a workforce that is uninformed or unsupportive of agency decisions.

One major reason that labor-management forums save agencies money is because partnership tends to involve fewer people for shorter lengths of time than collective bargaining. Partnerships forums tend to have a smaller number of union and management representatives as participants. In addition, meetings are conducted less frequently and at relatively low cost to agencies. On the other hand, collective bargaining negotiations can go on for extended periods of time and often involve large negotiating teams which cost agencies more. You've heard the saying, "An ounce of prevention is worth a pound of cure." The same concept applies to labor-management relations. Communication through labor-management forums is very effective at preventing costly, time-consuming labor-management deliberations. Labor-management forums are an efficient way to hear and address workers' concerns. For this reason, federal agencies should utilize them to the fullest.

Labor-management forums can achieve significant savings for federal agencies by fostering innovative thinking about solutions to problems, which can result in significant savings by streamlining work processes, designing new procedures for accomplishing work, and the like. Here is an example of an initiative that was the product of the labor-management forum at the U.S. Forest Service that saves the agency over $15 million annually. In partnership, the U.S. Forest Service and NFFE collaborated on a firefighting workforce succession planning process. According to an audit conducted by the U.S. Department of Agriculture (USDA) Office of the Inspector General, the product of this labor-management collaboration will save the agency over $15 million annually in

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unnecessary training. This savings far exceeds (many times over) the amount the U.S. Forest Service spends annually on labor-management partnership forums. This is just one example of the kind of savings agencies can achieve through partnership with labor.

Importance of Pre-decisional Involvement

Pre-decisional involvement as defined in EO 13522 allows for discussion on *all* workplace matters (to the extent practicable) to be discussed by labor and management, regardless of whether a particular issue is negotiable under Title 5. This provides an opportunity for employees to have input on workplace issues which the union, as their exclusive representative, cannot bargain.

Pre-decisional involvement requires early communication and engagement of labor by management when changes to working conditions are being contemplated. By engaging early in the process, it provides real opportunity for workers to have their issues, concerns, and alternatives given fair consideration by management prior to making a decision.

Without pre-decisional involvement, labor is often engaged by management too late in the decision-making process. By the time draft proposals are developed and written by management and shared with the Union, there can be enough investment of resources (time, money, emotion, ownership, etc.) that input by labor becomes essentially meaningless with regard to substantive changes. That approach leads to lots of unnecessary tension with employees.

Pre-decisional involvement helps to build a relationship of trust between labor and management. If employees genuinely feel that they have been afforded an early

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opportunity to present their views and concerns over workplace issues before management makes a decision, it is much more likely they will support, and help to implement, that decision. When implementation of management decisions becomes easy, it saves agencies, and taxpayers, money.

Communication problems (i.e. lack of communication, miscommunication, or poor timing of communication) are a primary cause of complaints and grievances against management. Pre-decisional involvement seeks to ensure that problems related to communication are minimized, thereby potentially reducing the number of grievances and other third party interventions and appeals.

Pre-decisional involvement tends to result in cost savings if concerns, issues, and alternatives raised by labor are considered and addressed as part of the decision-making process by management. In many instances, there is less need for negotiations on implementing management's decision, and when negotiations *are* needed, they are usually expedited, resulting in cost savings.

Labor-management Forums at NFFE Locals

NFFE is very supportive of the Administration's effort to promote labor-management forums in federal agencies; however, we have experienced somewhat mixed results in establishing forums at the various levels of recognition. While management and labor have successfully implemented forums across nearly all of the executive agencies and departments where our union represent federal employees, in many cases the pace of implementation has lagged. I believe some of the lag in the EO implementation can be attributed to a lack of clear direction coming down from agency

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leadership to the local managers, resulting in some managers being uncomfortable in moving forward until they received sufficient direction from above. In a small number of cases, resistance from local managers to implement the EO has led to a protracted effort on the part of NFFE to establish labor-management forums. Agency heads should take a more active role in holding local managers accountable for implementation of the EO.

Several agencies and departments made decisions to continue with partnership councils or other similar forums which resulted from an EO signed by President Clinton (EO 12871), despite the Clinton EO being rescinded by President Bush. In these cases, the agency and the union saw value in being able to work together collaboratively to address issues and resolve problems, and thus made a conscious decision to continue their collaboration when not required to do so under Bush. These more mature and ongoing partnership councils tend to produce the most dramatic results with respect to cost savings and improved agency performance. In particular, partnership councils at the Department of Veterans Affairs (VA) and U.S. Forest Service have been very effective and have produced demonstrated cost savings and positive outcomes as a result of their work over the past several years.

Pre-decisional involvement of the union continues to be a change in philosophy we would like to see embraced more fully in many agencies. I believe there are two main reasons pre-decisional involvement has been inconsistent across federal agencies: First, there is a lack of understanding and agreement by labor and management on what pre-decisional involvement is and what it isn't, setting up differing expectations from the parties. Second, in some cases there is not a willingness on the part of management to engage the union early enough in the decision-making process.

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In order to fully implement President Obama's EO, and for agencies to reap the full benefit of working in partnership with labor, pre-decisional involvement needs to be better embraced and carried out more consistently throughout federal agencies. Both labor and management need to get beyond the old way of thinking that a complete written draft proposal from management to the union is where communication about an agency decision begins. This old approach to pre-decisional involvement is wasteful and should be considered unacceptable. Pre-decisional involvement needs to be more about early engagement and communication, and less about waiting to engage and communicate until written proposals are written.

Bargaining on Permissive Subjects

While EO 13522 did not call for mandatory bargaining on all permissive subjects, the EO did call for pilot projects where agencies would elect to bargain over permissive, often referred to as "(b)(1)" issues. There is one (b)(1) pilot project being conducted where NFFE represents employees, and that (b)(1) pilot project is underway. This pilot is with the Department of Defense, at the U.S. Marine Corps Base Camp Pendleton where NFFE represent employees. The pilot covers approximately 920 bargaining unit employees represented by NFFE Local 919. The subject of the pilot is numbers and types of employees or positions assigned to any organizational subdivision, work project, or tour of duty. Grades of positions are excluded from bargaining under this pilot.

The pilot at Camp Pendleton will provide for bargaining on current and future reorganization projects. The pilot became operational in 2010, when a bargaining team of agency management and union representatives were identified. A charter for the pilot

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has been written, metrics have been identified, and these have been submitted to the National Council on Federal Labor-Management Relations. The bargaining team and staff have received training on (b)(1) bargaining.

Bargaining permissive subjects is not entirely new to NFFE. Our union has a history of (b)(1) bargaining in USDA during major reorganizations which resulted in significant cost savings and more effective and high-performing organizations following bargaining.

New Beginnings at Department of Defense

The establishment of labor-management forums in the federal government has been instrumental in bringing about a cooperative approach to addressing agency objectives. I can think of no better example of how that new-found cooperation has played out more successfully than at the Department of Defense (DoD), in the New Beginnings effort.

The National Defense Authorization Act of 2010 tasked DoD with engaging Defense employees through their unions and working with them to develop a new performance management system, hiring system, and system for administering workforce incentives at the Department. I am proud to say that DoD answered the call in spades with the New Beginnings effort.

The Department reached out to the employees through their unions and put together a genuine plan for labor and management at DoD to work together to develop the three critical new systems for the Department. By engaging labor organizations at the beginning of the process, labor became a full partner and took shared responsibility with

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management in designing these systems. The result has been an historic labor-management collaboration where dozens of DoD employees, representing both labor and management, have put their lives and careers on hold to answer the call and participate on design teams tasked with taking a deep dive into each of the three subject areas.

Design team members committed to an extremely difficult schedule of two weeks at a time in Arlington working on the design teams, followed by one week at home, for approximately six months. It was a huge sacrifice for each and every one of the participants, but it was essential to getting all the perspectives necessary to get the final work product done right.

They adopted such a rigorous schedule so that DoD could be expeditious in developing the new systems. The design team process has now been completed, and, at the time this written testimony was finalized, recommendations from the design teams are being vetted by DoD leadership. We are also on schedule to meet the timelines Congress has asked for in developing these systems. Meeting that timeline is no small feat, but all parties are committed to it, and we continue to move through the process on schedule.

While the recommendations from the design teams are not yet final, I believe there will be broad support of labor for the recommendations coming out of all of the workgroups. Labor and management have had ongoing communications and briefings on the workings and status of the workgroups, and have been afforded numerous opportunities to provide feedback. Labor and DoD management have been afforded the same opportunity to provide feedback throughout the process. Most importantly, that feedback has been given the genuine consideration from the various design teams.

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When this process is complete, I believe that labor will be able to support the systems that are developed. While we may not be able to agree with every individual decision, because the process was inclusive and fair, the outcomes will likely be supported. I am confident that new systems put in place as a result of this process will lay the foundation for decades of success at DoD. The employees had a real voice in the process, and as a result, DoD will have more buy-in from the workforce than ever could have imagined. DoD took the right approach, and the Department will now reap the benefits of that.

Without question, one of the biggest keys to the success of the New Beginnings effort was the trust that was built between labor and management in the process. This trust was spurred by an early commitment from DoD to genuinely engage employee representatives, and to depart from the approach employed for years under the National Security Personnel System (NSPS) to marginalize employees and their unions. That trust continued to build as the Department followed through on promises of transparency and inclusiveness. Today, that trust is strong, and DoD has a real partner in labor to address issues within the Department going forward. I hope other federal agencies will learn from this experience that collaborating with labor can help bring about positive change in federal agencies. If a Department as big and diverse as DoD can do it, so can any federal agency.

Training on Implementing

The Federal Labor Relations Authority (FLRA) and Federal Mediation and Conciliation Service (FMCS) have partnered to produce and put on several face-to-face

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training sessions across the country for management and labor representatives. The focus of initial training sessions has been on implementing the EO and establishing labor-management forums. This training has been highly effective in ensuring that labor and management have the basic knowledge and the tools necessary to get labor-management forums up and running at all appropriate levels of recognition.

NFFE union officials have participated in many of these training sessions and have been enthusiastic in their support of the training. Feedback has been very positive, and our members are hungry for additional training to help them maintain effective forums and ensure that the forums are resulting in a more productive workplace.

FLRA training for agency and labor representatives engaged in (b)(1) bargaining pilots has also taken place. This training has been highly effective in getting the parties to understand what (b)(1) is and isn't, and has provided essential tools for successful bargaining.

FLRA has partnered with the VA to produce web-based training on the EO and labor-management forum implementation. They have just released web-based interactive training on (b)(1) bargaining.

FLRA needs to be acknowledged for their proactive approach to training labor and management on implementing and maintaining effective forums. The combination of face-to-face and web-based training has increased the audience who can take advantage of the training which will lead to more effective and productive labor-management forums throughout government.

Closing

I thank the Subcommittee for holding this hearing and for allowing me to provide testimony today.

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Chairman Akaka, Ranking Member Johnson and Members of the Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia:

My name is Patricia Niehaus and I am here today representing the over 200,000 managers, supervisors and executives in the federal government on behalf of the Federal Managers Association (FMA). Please allow me to take a moment and thank you for the opportunity to present our views before the Subcommittee. As federal managers, we are committed to carrying out the mission of our agencies in the most efficient and cost effective manner while providing necessary services to millions of Americans.

In March of 2010, I was elected to serve as the National President of the Federal Managers Association. During my career with FMA, I have held several positions, including Chapter Trustee, Chapter Vice President, Chapter President, and Zone Vice President. In my professional life, I am the Labor Relations Officer for the Travis Air Force Base (AFB) in California. I have completed 28 years of federal service in the Department of the Air Force, the last 25 of which were in the human resources field. I began my tenure as a GS-04 Secretary and worked my way up to my present position as the Labor Relations Officer in the Civilian Personnel Office. During my career, I have spent time in the General Schedule (GS) and the National Security Personnel System (NSPS), and have worked with managers under four separate pay systems – the Federal Wage Grade (FWS), the General Schedule, the now-defunct General Manager (GM) system, and the National Security Personnel System (NSPS) – to provide advice and guidance on personnel management issues. Over the last year, I have been actively involved in the New Beginnings process at the Department of Defense (DOD), working to formulate a new performance management system for the department. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of DOD.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the federal government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense and has since branched out to include nearly forty different federal departments and agencies. We are a nonprofit, professional, membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective federal government.

Since my inauguration, I have been serving as FMA's representative on the National Council on Federal Labor-Management Relations (LMR Council). Thank you for the opportunity to present our views on the Council and labor-management relations across the government.

THE CLINTON PARTNERSHIP COUNCIL

In order to fully appreciate where we are today, it is imperative we provide some background on how we arrived here.

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

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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. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

Those were the words of former President Bill Clinton when he signed Executive Order 12871 on October 1, 1993, establishing the National Partnership Council (NPC). The Council was formed to advise the President on matters involving labor-management relations in the Executive Branch. It was the opinion of the Administration, based on the results of the National Performance Review, that to transform government, we must transform the adversarial relationship between the federal unions and agency management.

The Executive Order required agencies to establish individual partnership councils and increase union involvement in agency decision-making. At the time of its founding, the Council consisted of: the Office of Personnel Management (OPM) Director; the Deputy Secretary of Labor; the Deputy Director for Management at the Office of Management and Budget (OMB); the Chair of the Federal Labor Relations Authority; the Federal Mediation and Conciliation Service Director; the President of the American Federation of Government Employees; the President of the National Federation of Federal Employees; the President of the National Treasury Employees Union; the Secretary-Treasurer of the Public Employees Department; and, a deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies not otherwise represented on the Council.

As you can see, FMA and the Senior Executives Association (SEA) were not included on the original Partnership Council. For over two years, FMA and SEA fought for a seat on the Partnership Council, extolling the virtues of placing front-line managers and career executives on the Council, as they are the ones who carry out the decisions of the Council at the ground level. It was also the opinion of our respective organizations that excluding two large management contingents, representing upwards of 200,000 employees, goes against the intent of the Order to bring management and unions together to improve services delivered to the American people.

Per Executive Order 12983, signed by President Clinton on December 21, 1995, FMA and SEA were granted one seat each on the Council. Union members and management associations alike praised the decision of the President, calling it a stronger adherence to the spirit of partnership. FMA was humbled by union support for our participation, and attribute this decision on the part of the Administration in large part to their support. In fact, FMA was proud to host several NPC meetings during its annual National Convention.

Through FMA's new recognition on the National Partnership Council, our members were able to participate on local councils, such as the Federal Aviation Administration (FAA) and Naval Air Systems Command (NAVAIR) partnerships, in their FMA capacity. Several agencies retained their partnership councils even after President George W. Bush rescinded the Executive Order, and FMA has retained its role on these councils since that time.

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While I was not in FMA leadership at the time of the NPC, I participated in our local effort at Travis Air Force Base. Travis' partnership council (PC) worked on a few issues, mostly pertaining to working conditions, such as the speed limit entering and exiting the installation. The PC was co-chaired by the two Wing Commanders and the union's Local President. The issues were very limited and the council only met a handful of times. The labor-management relationship at the installation at that time was adversarial and did not lend itself much to cooperation. Much like many of our chapters are currently experiencing, FMA did not have a seat on the council and was not recognized as a party to the process. As the Labor Relations Officer, I served as the Executive Director for the PC at Travis AFB. We began the partnership with joint training by a DOD Labor Relations Specialist and a Union Labor Relations Specialist. During this process, we drafted and executed a partnership charter and formed a working group that was eventually responsible for addressing the working conditions issues. The PC charter addressed the mechanics of the agreement, including frequency of meetings, decision-making processes, conflict resolution and provisions for joint press releases. One of the PC activities was the development of a voluntary Alternative Dispute Resolution process which consisted of a panel of the aggrieved employee's peers and impartial agency officials who acted as de-facto arbitrators in a dispute resolution. The recommendations of the "Peer Review Panel" were non-binding but there was some success with reaching settlements of some workplace issues.

The inhibiting factor in the PC relationship was trust, or, more accurately, the lack thereof. Due to our adversarial relationship going into the process, it took a lot of time to begin forming that trust. Unfortunately, in a military environment, the regular replacement of military commanders meant the individuals filling key roles on the PC were constantly changing. Overall, I would report that the partnership council at Travis was minimally successful.

However, it appears the NPC was successful in some areas in obtaining its goals. In 1998, then-FMA National President Michael Styles commented, "As those who have experienced partnership know, it works. FMA, federal managers and their staffs and their most important customer base, the American public, will continue to benefit from effective federal labor-management partnerships."

An Office of Personnel Management report[1] from December 2000 takes a careful look at the outcomes of the NPC. Results were mixed. Agencies reported the most progress in creating agency-level partnership councils, and saw the least success in bargaining over permissive, or (b)(1), subjects. We will take a closer look at the results of the Clinton Partnership as we examine the current Executive Order.

Shortly after taking office, President George W. Bush revoked the Executive Order and dissolved the Council. At the time of disablement, reaction to the decision was mixed, much like the views of the NPC itself.

[1] United States Office of Personnel Management, *LABOR-MANAGEMENT PARTNERSHIP: A REPORT TO THE PRESIDENT*, December 2000.

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THE NATIONAL COUNCIL ON FEDERAL LABOR-MANAGEMENT RELATIONS

In December 2009, President Obama signed Executive Order 13522 creating the National Council on Federal Labor-Management Relations (LMR Council). FMA was honored to have a seat on this Council from its onset, and viewed our involvement as a testament to the important role first- and second-line supervisors play in carrying out agency initiatives and fostering better employee/management relations.

In addition to FMA, SEA was also awarded a seat on the Council along with: the Director of OPM; the Deputy Director for Management at OMB; Chair of the Federal Labor Relations Authority; a Deputy Secretary or other officer with department- or agency-wide authority from the Departments of Defense, Veterans Affairs, Homeland Security, Labor, and Treasury; and, representatives from seven federal unions including the American Federation of Government Employees, the National Federation of Federal Employees, the National Treasury Employees Union, the International Federation of Professional and Technical Engineers, the International Brotherhood of Teamsters, the National Association of Government Employees, and the Federal Education Association.

Much like the NPC of the 1990s, the purpose of the Order was to improve the delivery of services to the American people. According to the President, "A nonadversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government." To accomplish this goal, the Executive Order laid out the following initiatives for the Council:

1. Support the creation of department- or agency-level labor-management forums and promote partnership efforts between labor and management in the Executive Branch.
2. Develop suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies.
3. Collect and disseminate information about, and provide guidance on, labor-management relations improvement efforts in the Executive Branch, including results achieved.
4. Utilize the expertise of individuals both within and outside the federal government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations.
5. Develop recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests.
6. Serve as a venue for addressing systemic failures of department- or agency-level forums.
7. Provide recommendations to the President for the implementation of several pilot programs within the Executive Branch for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

Under the Order, agencies must carry out the following initiatives:

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1. Establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management to help identify problems and propose solutions to better serve the public and agency missions.
2. Allow employees and their union representatives to have predecisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and 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).
3. Evaluate and document, in consultation with union representatives any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

Within ninety days of the Order being issued (March 9, 2010), agencies were supposed to report to the Council a written implementation plan including:

1. How the agency will conduct a baseline assessment of the current state of labor relations within the agency.
2. The extent to which the department or agency has established labor-management forums or may participate in the pilot projects described in this order.
3. How the agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants.

The Council was tasked with evaluating each agency's plan within thirty days of receipt and created a working group to accomplish this substantial task. At the April 2010 Council meeting, it was reported that 24 agencies had submitted plans that met the requirements of the Executive Order. By the May 2010 meeting, 23 more agencies had approved plans in place. To date, 51 agencies have submitted agency implementation plans to the Council, with 46 agencies having submitted metrics reports. The remaining five agencies are working with their unions to complete this requirement.

The final piece of the Executive Order, bargaining over permissive subjects, will be covered by FMA later in our testimony.

FMA'S INVOLVEMENT ON THE COUNCIL

In order to achieve the goals set out in the Executive Order and ensure the National Council tackled all the issues, even the tough ones, Council members broke into several working groups over the last year and a half. The subjects tackled by these working groups include issues specific to the Executive Order – metrics, implementation of forums and bargaining – but also issues that go beyond the Order, such as performance management. In working on issues beyond the scope of the Council's

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initial charter, stakeholders were able to collaborate with decision-makers to make a stronger product and ultimately a stronger government. At the national level, FMA has been involved in several of the initiatives undertaken by the Council. However, on a local level, FMA has not been allowed to participate, which we will discuss further in our testimony. Below is information on the two working groups in which FMA participated.

Telework Working Group

At the September 2010 Council meeting, I was asked by Director Berry to lead a working group of Council members to find ways for federal employees to be more mobile within their workplace. It was the original intent of the working group to complete a model for a "mobile working day," which would allow federal employees to telework in the event they could not get to their office, such as during a snowstorm or terrorist attack. In the weeks that passed, we compiled a widespread group of individuals from the Council and their staff.

What started as a straightforward mission turned into a larger discussion on how agencies can implement effective telework programs in the wake of the passage of the Telework Enhancement Act (P.L. 111-292). It also became clear during our initial meetings that it would be difficult to recommend the parameters involved with a mobile work day without tackling the broader challenges surrounding telework. As such, the group began by collecting and reviewing agency policies and collective bargaining agreements as they relate to telework. We also reviewed OPM's *Checklist and Criteria* used to assess federal agency telework policies, and updated the document where we felt necessary.

Next, the group reviewed OPM's *Guide to Telework in the Federal Government*. Given the new requirements on federal agencies under the Telework Enhancement Act, the document was out of date and needed updating in order for agencies to meet the conditions of the legislation. Over the course of several weeks, stakeholders vested in the proper implementation of this legislation were allowed an opportunity to weigh in on *Guide*, ultimately providing both mechanical and substantive information that may have otherwise not been included. This document is readily available on the government's www.telework.gov website. As the deadline neared for agencies to implement the new law and create telework programs, the work of our group naturally ended.

Employee Performance Management Working Group

At the March 2011 Council meeting, Director Berry discussed an effort by the Chief Human Capital Officers (CHCO) Council to examine and strengthen performance management in the federal government and better formulate mission-aligned performance objectives. It was suggested by Director Berry that the LMR Council form a similar group working in tandem with the CHCO Council on this issue. Several Council members representing labor organizations objected to the CHCO Council working without the input of labor and suggested that the two groups work together, not separately.

A new working group was subsequently formed consisting of Council members, CHCOs and staff from the two organizations, including FMA. At the first meeting of the working group, it was decided that our efforts would be focused on strengthening the General Schedule, not creating an entirely

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new system. After initial meetings, it was clear that in order to carry out our mission, we would have to break into groups. We ultimately divided into three subgroups – Leadership and Culture, Employee/Supervisor Engagement, and Training. An FMA representative served on the Engagement and Training subgroups.

After meeting weekly (and sometimes more frequently) throughout the summer, the three groups came back together in late August to share their work and compile the final product – *The Employee Performance Management Accountability Framework*. The Leadership and Culture group is to be commended for their work in combining the three documents and releasing a draft at the September 2011 Council meeting. The final document will be available at the October Council meeting, after Council members have had an opportunity to review and comment on the *Framework*.

The group started from the belief that failed attempts to implement performance management in the past have been due to a lack of attention placed on the "human" side of the equation and too much attention on the system itself. In the thirty-page document, the working group compiled a list of five recommendations to improve performance management, as well as foreseeable challenges and solutions to each of the recommendations. To create high-performing organizations that are aligned, accountable, and focused on results, the working group recommended agencies:

1. Articulate a High-Performance Culture – Require all agencies to identify and articulate their desired agency culture, and focus on employee engagement, development, performance, accountability, and how that culture fits in with government-wide performance improvement.
2. Align Employee Performance Management with Organizational Performance Management.
3. Implement Accountability at All Levels.
4. Create a Culture of Engagement – Improve employee and supervisor engagement through two-way communication as an integral part of performance management and foster and require a culture of ongoing feedback.
5. Improve the Assessment, Selection, Development and Training of Supervisors.

The work of the group was focused on the premise that any successful system must have leadership buy-in and a culture that promotes accountability as it relates to agency mission, and we at FMA could not agree more. After having been a part of the failed National Security Personnel System, I can attest firsthand to the need for strong agency and facility leadership to hold all employees accountable in order for a strong performance management system to work.

However, we also have some concerns with the document, which we have expressed to the Council. Throughout the document, references are made to engaging agency labor-management forums to carry out the initiatives recommended. As management associations have not been given a seat on the forums in nearly every instance, we are effectively being left out of the conversation yet again. Given our belief that including all stakeholders leads to a stronger end product, we have suggested language be included which recommends the inclusion of management associations before the document becomes final.

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Overall, while we at FMA would have preferred the group tackle the issue of whether or not the General Schedule speaks to today's workers and job seekers, we believe the document is a good first step in ensuring agency leaders take performance management seriously and begin to consider strong performance management as business as usual. Implementing an agency culture based on strong performance management must come from the top down and hold all managers and supervisors accountable for performance.

One distinct issue all parties in the room agreed on was the need to develop and train supervisors on how to be good managers, have difficult conversations with their employees, and motivate employees to perform better. The need for training came up in all three subgroups in nearly every meeting. There was consensus that few agencies give their supervisors time to manage, focusing on tangible job-related goals and ignoring the "people" aspect of management. There was also agreement that in order to become better managers, agencies must hold them accountable for carrying out their management duties. We would be remiss if we did not take this opportunity to stress the importance of managerial training to Congress.

In 2004, the President signed into law the Federal Workforce Flexibility Act (P.L. 108-411), which added §4121 of Title 5 U.S.C. requiring agencies to create basic training programs for federal managers and supervisors. Hailed at the time by many in the federal community as a major step forward in ensuring agencies afford their managers the training necessary to effectively supervise their employees, the law, however, failed to establish funding mechanisms and accountability measures to ensure training takes place. The law also failed to provide specific guidance on the type of training managers and supervisors should undertake, while omitting when and how often this training should take place. The result is that current regulations give agencies the latitude to cut training from their budgets when funding is tight, and as you are aware, funding is always tight.

In order to provide federal managers and supervisors with training on the full array of subjects necessary to effectively monitor and manage their employees, we at FMA urge Members of Congress to support the Federal Supervisor Training Act (S. 790/H.R. 1492), introduced by Senator Akaka (D-Haw.) and Congressman Jim Moran (D-Va.). This legislation, which FMA helped craft as part of the Government Managers Coalition (GMC), requires agencies to provide managers and supervisors with training within one year of promotion to a supervisory position. Training would cover three primary management topics: basic supervisory training; mentorship training; and, training focused on prohibited personnel practices including collective bargaining and anti-discrimination rights. After receiving initial managerial training, supervisors would engage in training updates once every three years.

The FY10 National Defense Authorization Act (P.L. 111-84) included training language pulled directly from S. 790, applying the provisions to DOD managers and supervisors. As Acting Deputy Under Secretary of Defense Marilee Fitzgerald discussed in her testimony before this Subcommittee in April 2010, the Department of Defense conducted an analysis of current and future workforce requirements and identified a critical need for enhanced supervisory training to develop "diverse civilian leaders who effectively manage people in a joint environment, ensure continuity of leadership, and

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sustain a learning environment that drive continuous improvement across the enterprise."[2] Fitzgerald detailed DOD's belief that managers and supervisors on the front lines "can have a stronger impact on employee performance and productivity than anyone else in the management chain." We thank Congress for extending these crucial regulations to DOD managers and supervisors and we encourage you to capitalize on this momentum and approve the Federal Supervisor Training Act to codify regulations currently in place to provide supervisors across the federal government with managerial training covering the full gamut of supervisory responsibilities.

According to the OPM report examining the success of the NPC, "an investment in training is the best strategy to help labor and management learn the skills they need to develop effective partnerships." You will be hard pressed to find anyone who would disagree that the benefits of training far outweigh the costs involved in providing employees and managers with training. It is time Congress provided agencies with the resources they need to carry out effective training programs for employees at all levels.

AGENCY-LEVEL LABOR-MANAGEMENT FORUMS

Per the Executive Order, the head of each executive department or agency shall "establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions."

A November 2010 survey was distributed to agencies to determine how many forums had been established at departments and agencies. The survey showed that 619 forums had been established and 612 more were being established. According to OPM, 769 forums are now up and running, covering 770,000 bargaining unit employees, and 306 forums are in the process of coming together. My installation, Travis Air Force Base, has not organized a local forum. As you can see, substantial progress was made in this area, but more needs to be done.

It is the primary concern of the Federal Managers Association that management associations have been left out and in some cases actively excluded from participating in the forums at the agency and local levels. Under Title 5 C.F.R. 251, agencies are to provide a framework for consulting and communicating with non-labor organizations representing federal employees and with other organizations on matters related to agency operations and personnel management. Several federal management associations, including FMA, have these consultation rights with various federal agencies. These rights were afforded with the belief that management associations and the employees they represent have a unique perspective that is not necessarily represented by agency leadership. Members of management associations work closely with employees and agency leadership and are directly affected by the issues addressed in labor-management forums, and our exclusion means agencies are missing out on the experience of a crucial stakeholder when making decisions in these forums.

[2] Written Testimony of Marilee Fitzgerald, Acting Deputy Under Secretary of Defense, Department of Defense, "Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government," April 29, 2010

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In a letter to the Council co-chairs, the membership organizations of the Government Managers Coalition wrote the following:

The Senior Executives Association and Federal Managers Association raised the issue of management association participation in forums at the May 2010 Council meeting. Many members of the Council expressed support for management association participation, which can be found in the minutes of that meeting. Following the meeting, FMA, the Professional Managers Association (PMA), the National Council of Social Security Management Associations (NCSSMA), and the FAA Managers Association (FAAMA) each worked individually with their respective agencies to join the newly formed labor-management forums. However, not a single association has been allowed to participate in the forums, and in some cases, our associations have been actively excluded. More troubling, the associations are not part of the dialogue about issues and decisions discussed in pre-decisional involvement or the forums, despite the fact our members are directly responsible for carrying out the decisions of the forums.

I would like to take this opportunity to share with you the experience of FMA and other management associations in regard to being excluded from participating in the agency labor-management forums.

Despite numerous requests over the last several years, the FAA Managers Association has not been included on the Federal Aviation Administration's forum. FAAMA's requests for inclusion have been largely ignored, and it is our understanding that FAA's position is that FAA management speaks for management and a separate and distinct management position expressed by an independent association is redundant and potentially divisive. It is our opinion that this is naive and lacks consideration of the career FAA managers, many who have been serving the agency for decades and can offer firsthand knowledge of policies and processes. If there is one positive we can report, FAA and FAAMA are very close to signing a new consultative relationship document, but unfortunately the agreement does not address inclusion on the labor-management forum.

The situation at the Social Security Administration (SSA) paints a graver picture of the lengths groups have gone to to exclude management associations from the forums. At the onset of developing SSA's agency forum, the agency originally intended to include the National Council of Social Security Management Associations and FMA on the labor-management forum, both of which have consultation rights with the agency and have a model relationship with agency leadership. The associations were included in the initial meeting in January 2010 and subsequent conference calls involving SSA unions and leadership. However, the process of developing a forum at SSA has been very contentious and involved issues beyond management associations' inclusions. Despite support from SSA leadership, the national union at SSA was successful in its quest to exclude FMA, NCSSMA and other unions from participating on the national forum. In fact, in a meeting with SSA leadership to discuss this issue, I was told our participation was a deal breaker and a non-starter for the union, a far cry from the agreement on the national level that management associations should be active participants in the forums.

While the SSA example is extreme, the sentiment is common throughout the government. In several local agencies across the country, and places where FMA has a strong membership base, our

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association is being excluded from the forums. At several DOD installations, FMA has been allowed observer status, but not a seat at the table. As first- and second-line managers bring a unique perspective to the conversation, and are often the ones who carry out the decisions of the forums, our exclusion from these conversations hurts our ability to complete those directives.

All is not lost, however. At the Internal Revenue Service (IRS), both FMA and the Professional Managers Association enjoy and actively participate in a consultative relationship with IRS leadership. While this arrangement has proved beneficial for the associations and the agency, we were not allowed to participate on the agency's forum.

The Naval Air Systems Command, a component of the Department of the Navy, provides a model example of how an agency labor-management relationship should organize. Despite the revocation of the Clinton Executive Order, NAVAIR retained its partnership council, the Labor Management Partnership Team (LMPT), which has been in place since 1995. FMA was allowed a seat on the team shortly after it came together. The following is a firsthand account of the LMPT from FMA's representative currently on the team.

The NAVAIR National LMPT has built an atmosphere of trust, integrity, and honesty within its membership. Labor and management can express concerns of a local nature and feel comfortable that their concerns will be kept in confidence. As new members join, they often feel the need to put a shield up because they have an adversarial environment at their local sites. NAVAIR's National LMPT has nurtured a trusting environment and fostered a predecisional environment since I have been on the team. As with every team, trust is never a given, it is earned and re-earned. Teams like these foster the types of relationships that should be desired across all of the federal government. The NAVAIR National LMPT is currently working on metrics for local LMPT's to report on, and this effort should help open the lines of communication and help the local sites work similar to the National LMPT.

The National LMPT has been working to foster these same traits at the local components or sites. Some of the local sites have LMPTs, but it is taking longer to build a trusting relationship and have all parties represented at the table. Some LMPTs only allow the labor representatives to be full members while employee associations can only be sideline ex-officio members or are offered no membership at all. Having different perspectives is always valuable on any team. The Council needs to push harder to get the components to recognize the importance of partnerships to foster an atmosphere that will help with the agency's mission and save the taxpayer valuable dollars.

In response to the GMC letter referenced above, Director Berry sent a letter to agency and department heads reminding them of their obligations under 5 C.F.R. 251. In the letter, the Director states, "These regulations apply to all Federal Executive branch departments and agencies and their officers and employees at all levels. Please take appropriate steps to ensure that your agency is complying with your consultation obligations." The letter can be accessed on the CHCO Council's website.[3]

[3] http://chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4109

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As predecisional involvement, (b)(1) bargaining pilot programs, and labor-management forums grow in importance, allowing management associations to participate can be useful to agencies and union members in ensuring communication at all levels. Additionally, having the managers' viewpoints and buy-in expressed early in the decision making process allows managers to be better equipped when they carry out and relay these new procedures to their employees. While we appreciate the action of the Director and are optimistic agencies will utilize the opinions of front-line managers within the scope of the regulations, we further encourage the Council to use its influence to ensure managers are afforded a seat on the forums where FMA or other management associations have a large presence.

METRICS

As stated in the Executive Order, by March 31, 2011, agencies were to have reported to the Council on what metrics their forums chose as a baseline; 31 agencies met this deadline. On September 30, 2011, forums were to have submitted a six-month report on their performance against their identified metrics. Finally, on 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.

FMA did not participate on the metrics working group, which took on the arduous task of evaluating agency metrics. From what has been reported to the Council, information is slowly trickling in. At the May 2011 Council meeting, the metrics working group reported several criteria for what constitutes strong metrics, and the agencies that implemented these measurements. To date, 46 of the 51 agency forums have submitted metrics.

Based on our experiences in the 1990s, we believe for a forum to be successful, it must have at least some quantifiable metrics, such as a reduction in the number of grievances filed, an increase in employee satisfaction based on the Employee Viewpoint Survey results, or a clearly-defined cost savings component. For example, during the partnerships of the 90s, one agency reported that no grievances or unfair labor practice charges were filed in a two year period. However, only ten agencies reported that labor-management partnership had directly and significantly improved customer service throughout most of the agency in the Clinton era of partnerships. Implementation of and adherence to metrics in the NPC were medicore at best and we should learn from where we failed in the past by holding agencies and forums accountable for developing metrics and sticking to them.

PREDECISIONAL INVOLVEMENT

Per the Executive Order, the head of each executive department or agency shall, "allow employees and their union representatives to have predecisional involvement in all workplace matters to the fullest extent practicable." Predecisional involvement (PDI) has always been a contentious issue for both management and labor, but can be a benefit to both groups when discussed appropriately.

As we have stated throughout this testimony, we at FMA believe inclusion of all stakeholders in the forums provides for a more meaningful labor-management relationship. When it comes to PDI, FMA encourages agencies to allow participation by management associations when the unions are invited to participate. As those directly impacted by the decisions made at the PDI level, our members have the

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unique perspective of how the decisions impact operations at the ground level and are responsible for insuring the intent of the directives are adhered to. Our association should be an active player in all forums, and if not, at the very least, we ask that decisions made at the PDI level be shared with managers and supervisors quickly in order to ensure success in implementing the directives

Based on the OPM report evaluating partnerships in the 1990s, less than half of the agencies surveyed reported substantial levels of predecisional involvement. FMA members' viewpoints and experiences with PDI also vary across agencies, with some reporting it enhanced labor-management relations, while others reported it delayed decisions and slowed progress over minor issues. To date, the Council has had little to report on this area of the Executive Order.

In terms of my personal experience, I am continuing to serve on one of the largest examples of PDI to date, the DOD New Beginnings Conference. For nearly the last year, DOD, OPM, FMA and the unions have been working together to enhance performance management at the department. I can attest that PDI works well when several factors are met, most importantly being the potential for trust among the all the parties. A clear mission and set of goals from the onset is also an important factor in successfully accomplishing the objectives of predecisional involvement.

PERMISSIVE OR (b)(1) BARGAINING

The Executive Order requires the establishment of pilot projects to evaluate the impact of bargaining over permissive subjects under 5 U.S.C. 7106(b)(1). Permissive bargaining subjects, as defined by the law, include: the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or the technology, methods, and means of performing work.

It is the opinion of the Federal Managers Association and the experience of our members that (b)(1) bargaining can lead to gridlock and hamstringing of federal agency operations. In this time of budget challenges and increased attention on agency operations, we should be working together to ensure agencies are agile and able to adapt at a moment's notice, not wasting valuable time co-managing with the unions. All stakeholders bring unique and respected viewpoints to the table and we at FMA would never advocate the exclusion of anyone or group in the labor-management relations framework. However, negotiating over numbers or types of employees needed to complete a job represents an encroachment of agency leaders' ability to make decisions and be held accountable for them in a timely manner.

Permissive bargaining would give the unions the power to hold work hostage while they engage in endless negotiations. This would effectively gut the statutory prohibition at 5 U.S.C. 7311 against striking by federal employees. Additionally, agency decisions to contract out work or downsize would have to be bargained with the union because agencies would be forced to negotiate over the number of employees assigned to particular work projects. Requiring agencies to negotiate with their unions over the grades of employees is the same as bargaining over pay. The FAA provides a cautionary tale as to the slippery slope negotiations over permissive subjects can take. In 1998, the agency bargained over pay

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with its union and ultimately, many managers lost their jobs to pay for the stark increase in salaries for air traffic controllers.

Under the Clinton Executive Order, agencies were mandated to bargain over permissive subjects. What was supposed to enhance the relationship between managers and unions ultimately drove a wedge between the two groups. Only nine agencies reported agreements to negotiate over permissive subjects and only six applied this to the entire agency. Even more disconcerting, only three agencies which worked on (b)(1) issues were categorized by OPM as being substantial. Overall, "the controversy surrounding (b)(1) bargaining remains a significant barrier to partnership in many places."

Currently, twelve agencies have agreed to implement (b)(1) bargaining pilots. The Council's website provides information on the agencies and the permissive subjects they chose to bargain over. On September 30, 2011, pilots had a six-month report due to the Council on their performance against their identified metrics and on March 31, 2012, a full-year report is due to the Council on their forums' report against their identified metrics. Given this short time frame, it is unlikely the Council will be able to judge the full effectiveness of the pilot projects.

Of the 12 pilots, only two are bargaining over all the permissive subjects. It is the opinion of FMA that cherry picking the issues over which to bargain will lead to inflated results. The Office of Personnel Management should be commended for leading by example and bargaining over the full range of permissive subjects, and we encourage other agencies to follow its lead. More pilots should be added to provide the Council with a wide range of perspectives and outcomes on the controversial issue of permissive bargaining.

CONCLUSION

As we saw in the 1990s and over the last year and a half, many factors must be met to create cooperative relationships between management and labor. This is no easy feat, but the dedication of the Council members to improve relations through this avenue has proven successful thus far.

Application of the Executive Order has been inconsistent across agencies, both at the agency level and the facility level, especially as it relates to the implementation of local forums. FMA remains discouraged that our participation is viewed as valuable on a national level but not at the agency or local level. We intend to continue to pursue this issue with the national Council.

The Executive Order is set to terminate in December, and we at FMA encourage the Administration to renew our charter. We have made excellent progress and will continue to do so if allowed to continue our work.

Thank you again for the opportunity to express our views here today and I am happy to answer any questions you may have.

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Testimony of George Nesterczuk
President, Nesterczuk and Associates

before the

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Committee on Homeland Security and Governmental Affairs

United States Senate

Hearing: " *Labor-Management Forums in the Federal Government*"

October 11, 2011

Good afternoon Chairman Akaka and Senator Johnson. Thank you for inviting me to testify on Labor-Management Forums in the Federal Government, a matter I consider both important and very timely.

The Forums were established pursuant to Executive Order 13522 (E.O.) issued on December 9, 2009. The E.O. opened government decision-making to non-government entities in an unprecedented fashion. Although the labor management councils created under the E.O. are reminiscent of the partnership councils during the Clinton Administration, they are Clinton partnerships on steroids. One has to wonder what management crisis called for such a radical escalation of the role of federal unions. Of particular concern are the pursuit of "pre-decisional involvement" that expands union activity into previously non-bargainable areas such as budget preparation and the allocation of resources that this entails. It is the ultimate planning activity for policy implementation. At a time of perhaps the most severe peacetime budgetary constraints we have ever experienced, when federal programs face cuts and employee pay has been frozen, it would not seem to be an opportune moment to launch a radical initiative that is certain to drive up the cost of governing. We should be streamlining government management for greater efficiency and lower cost rather than overlaying additional burdensome procedures.

Labor-Management Forums and Pre-Decisional Involvement

Pre-decisional involvement (PDI), as promoted under labor management forums weakens the chain of accountability by which agency management is held responsible for the stewardship of government. The President and his appointees set priorities for the allocation of resources based on his publicly stated agenda and Congressional intent. Allowing non-government entities to participate in agency decisions affecting all "workplace matters" is unprecedented. The scope of issues falling within the rubric of "workplace matters" is undefined and is therefore open to the broadest interpretation.

This is a dangerous precedent to establish, especially in the realm of labor relations where rolling back existing practices and concessions are extremely difficult and very rare. In the realm of government policy we go to great lengths to avoid conflicts of interest or even the appearance of conflicts of interest. The Office of Government Ethics promulgates voluminous rules to prevent federal employees, career and political, from engaging in activities and contacts that create conflicts of interest. This is important in order for the public to retain confidence in their government, confidence that rules are applied fairly and equally to everyone and that decisions are not skewed for the benefit of special interests.

Unions are a special interest. They exist to maximize the extraction of benefits from employers on behalf of their members. Federal unions were not created for the purpose of maximizing the efficiency of governance. To place them in a position where they can influence public policy for their own benefit is a clear conflict of interest and should not be tolerated. I cannot imagine the oil and gas industry sitting down with the Department of Interior at budget time to work on the Department's enforcement budget. Nor would we tolerate Wall Street bankers and brokers participating in the allocation of resources at the SEC, or the AFL-CIO sitting down with the Department of Labor to map out next year's apportionment of funds for that agencies oversight and enforcement programs. And yet we have already pierced that wall, as the American Federation of Government Employees (AFGE) is a member of AFL-CIO and will participate in the Labor-Management Forum at the Department of Labor. These conflicts will ultimately undermine the credibility of unions and it makes no sense to conflict them in this manner no matter how well intended the purpose.

The problems with PDI reach beyond conflicts in regulatory environments and extend into administrative matters. It is during the process of preparing a budget that decisions on procurements and workforce allocations are made. Decisions to automate agency processes, modernize equipment, contract out services, increase or decrease staff size are all integral to the budget process. Such matters are left to agency discretion and they often strike at the core of union members' particular interests. These resource decisions are inexorably driven by the availability of funding. How are narrow union interests in this realm to be reconciled with government responsibility to taxpayers for the rational allocation of tax revenues?

Finally, the labor-management forums, beyond the PDI initiative, have a stifling effect on open communications between career executives and managers and their political hierarchy. Policy development and implementation depends upon open channels of communication between the political and career sectors in government. It cannot be properly exercised without mutual trust between the parties. The evaluation of the performance of each side requires a stipulation of goals and objectives. When a third party is injected in this relationship the balance is lost, especially when the third party is responsible to no one and its role is to maximize the third party's special interest. That is the effect of inserting the unions between the political and career sectors in government management. Career executives are not free to propose a full range of policy options to their political bosses. They feel obligated to limit their recommendations to choices they

know the unions will not object to in order not to appear out of touch to the people who evaluate their performance and make pay and bonus recommendations.

The management scenario envisioned in the labor-management forums may appeal to an administration in tune with union ideology. But we live in a democracy in which our government changes in line with our election cycles. What is a succeeding administration to do when saddled with a "labor-management" structure adamantly opposed to its agenda? The labor-management forums are not "good government" but rather pandering to special interests.

Cost of the Federal Labor-Management Experience

The new labor regime envisioned in the forum concept can only drive up costs. According to OPM reports annual labor relation expenses overwhelmingly go to general labor management issues, more so than contract negotiations or filing grievances. The forums when implemented at the agency level will only add more issues to meet over and discuss. That will take away more labor hours from performing taxpayer directed services into activities intended, by definition, to address union interests. And what of the cost resulting from lost or delayed opportunities resulting from union opposition to cost saving measures. Management of the federal sector is replete with examples of money saving initiatives delayed for months or years by the need to negotiate workplace impact with multitudinous bargaining units (1500 at the Department of Defense.)

Unions are already heavily subsidized by the taxpayers for the use of official time (performing union business on payroll time) and in dedicated office facilities, equipment and supplies provided at no cost to the unions. Most recent OPM reports indicate that official time costs the taxpayers well over two million man-hours per year at a cost of at least $130 million (probably well over $200 million per year.) The burden of paying for office space, equipment and supplies adds an additional $250 million per year.

Since its inception last year, the National Council overseeing the labor-management forums has already spent over $1 million in holding monthly meetings. As the National Council's directives are implemented in every participating agency the annual cost of administration will multiply 20, 30 or 50 fold. Add to that cost the many "training" programs already being proffered or contemplated and you are soon looking at real money – money not going into employee salaries or bonuses because they are frozen as a cost saving measure.

These are the direct costs of implementing this new labor-management initiative. And they are to be added to the existing heavy burden of subsidized federal labor-management relations. And to what end? The most compelling argument OPM has advanced was the need to "reset" labor relations after the "bad feelings" created by the previous administration. Surely there were other, cheaper ways for the administration to reach out to its labor constituency. In fact several government agencies are now run by appointees selected directly from federal unions – the Merit Systems Protection Board and the Federal Labor Relations Authority, for example – and a host of senior officials at these

and many other agencies were recruited from the ranks of federal unions. That is how the appointment authority of the President is meant to be exercised. It is certainly less expensive than grafting unions wholesale into the government's policy making process.

What Next

The "reset" of labor-management relations under the forums unfortunately results in further politicization of the civil service. Unions in general are very political and highly partisan entities. This is their choice. It is also their right to be so. Federal unions are no exception. That has also been their choice and their right. Federal unions have increased their activism since they successfully overturned Hatch Act restrictions on political activities of federal employees. The changes to the Hatch Act have enabled them to organize their members to contribute money and to work in political campaigns. The Hatch Act remains in force and continues to limit other more overt leadership activity in political campaigns. However, we cannot be deaf and blind to the consequences of federal union political activism when a significant part of their funding comes from direct taxpayer subsidies. Elevating these non-governmental entities to partnership status with career managers in government undermines the perception of political neutrality that the career civil service has nurtured since its inception over a century ago. And how is the next administration to deal with the "fox in the chicken coop" that the unions have come to represent? For the sake of maintaining the neutrality of federal civil service, I would recommend that Congress defund the Labor-Management Forums.

Secondly, I would reinforce the provisions in Chapter 71 of 5 USC that stipulate non-negotiable agency rights in order to place these agency rights beyond reach of temporal political pressures. One must be mindful that in labor relations once a concession has been made it is very difficult, if not impossible, to roll it back. Based on recent experience a firewall around management rights may now be necessary. It is worth noting that it is Congress that appropriates funding for government operations and delegates spending authority to the President and then holds him and the Executive Branch accountable for those expenditures. To re-delegate this authority by way of binding labor agreements to non-governmental entities, which have no accountability to Congress, does not seem appropriate.

Finally, defund the subsidies that distort the true worth of unions in the federal sector. It is time to establish a market test of the viability and need for employee representation in the federal sector. Unions collect dues from their members and these should be used to pay their own way. Self-sufficiency will give unions the incentive to focus on member services and issues that are relevant and important to their members. Electing specific individuals may or may not fall into union rank and file priorities but that is what political action committees (PACs) are meant to reflect. Money is fungible and as long as taxpayers fund the operating expenses of unions, dues collections are freed up for political activity. Such political activity should not be performed at taxpayer expense.

Conclusion

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Let me conclude by underscoring the deep flaws embodied in the administration's reset of labor relations. The pre-decisional involvement advanced by the National Council for Labor-Management Forums is rife with inherent conflicts of interest for the member unions. It also has a stifling effect on the participation of career executives in policy development. Furthermore, the already burdensome costs of federal labor-management relations will be expanded with additional millions of dollars to implement and sustain the Forums as new management structures. Finally, it is perhaps time to rethink some of the precepts of federal labor relations. The management rights provisions of Chapter 71 5 USC need to be reinforced and the significant operating subsidies afforded to the unions need to be reconsidered and curtailed. The subsidies distort the true market value of unions in the federal sector.

BACKGROUND
LABOR-MANGEMENT FORUMS IN THE FEDERAL GOVRNMENT
OCTOBER 11, 2011

OVERVIEW OF LABOR-MANAGEMENT RELATIONS IN THE FEDERAL GOVERNMENT

In 1960, approximately one-third of Federal employees (including both postal and non-postal employees) were members of labor organizations, but had no legal collective bargaining rights.[1] In 1962, based on recommendations contained in a presidential task force report entitled *A Policy for Employee-Management Cooperation in the Federal Service*, President Kennedy issued Executive Order 10988, "Employee Management Cooperation in the Federal Service" (E.O. 10988).[2] E.O. 10988 protected most Federal employees' right to join a labor organization and allowed labor organizations to bargain with Federal agencies on behalf of their members. Bargaining over certain issues, including pay, were explicitly prohibited under the Executive Order, as were employee work stoppages. Additionally, E.O. 10988 included a "management rights" clause, which preserved Federal agencies' rights to direct the methods, means, and personnel by which agency operations are conducted and allowed them to take whatever actions they deemed necessary during emergencies.

In 1969, President Nixon issued Executive Order 11491, "Labor-Management Relations in the Federal Service" (E.O. 11491), which expanded E.O. 10988 by establishing an institutional framework to govern the labor-management relations process in the Federal Government.[3] E.O. 11491 established unfair labor practices, which labor organizations and management were prohibited from engaging in, and authorized the use of binding arbitration in certain workplace disputes in the Federal government.

In 1978, Congress enacted the Civil Service Reform Act.[4] Title VII of that law – known as the "Federal Service Labor Management Relations Statute" (FSLMRS) – codified the previously-recognized right (under Executive Order) to organize, bargain collectively, and participate in workforce matters.[5] The FSLMRS defines the rights of employees, labor organizations, and agencies in the workplace and provides that its provisions should be "interpreted in a manner consistent with the requirement of an effective and efficient Government."[6]

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[1] Masters, Matrick , Christina Sickles Merchant, and Robert Tobias, *Engaging Federal Employees Through their Union Representatives to Improve Agency Performance*, Feb. 2, 2010, p. 6 (hereinafter, "*Engaging Federal Employees*").
[2] *Id.* at 6-7; Exec. Order No. 10988 (Jan. 17, 1962), at: http://www.presidency.ucsb.edu/ws/index.php?pid=58926#axzz1Z55fAmhv.
[3] *Engaging Federal Employees*, p. 7; Exec. Order No. 11491 (Oct. 29, 1969), at: http://www.archives.gov/federal-register/codification/executive-order/11491.html
[4] Pub. L. No. 95-454, 92 Stat. 1111.
[5] 5 U.S.C. § 7101, *et seq.*
[6] 5 U.S.C. § 7101(b).

LABOR-MANAGEMENT PARTNERSHIPS IN THE FEDERAL GOVERNMENT AFTER THE ENACTMENT OF THE CIVIL SERVICE REFORM ACT OF 1978

In 1991, the General Accounting Office[7] (GAO) examined the state of labor-management relations in the Federal government, seeking to determine whether a "cooperative spirit exists between management and labor." In a report entitled *Federal Labor Relations: A Program in Need of Reform*, GAO found that the labor-management relations program was not working well.[8] Experts in Federal labor-management relations informed GAO that:

- The Federal labor-management relations program was too adversarial and often bogged down by litigation over procedural matters and minutiae;
- Some dispute resolution mechanisms were too lengthy, slow, and complex; and
- Ineffective Federal Labor Relations Authority management had weakened the program.[9]

A. CLINTON ADMINISTRATION EXECUTIVE ORDER ESTABLISHING LABOR-MANAGEMENT PARTNERSHIPS IN THE FEDERAL GOVERNMENT

In 1993, Vice President Al Gore conducted a National Performance Review (NPR) with the goal of "reinventing government." In a 1993 report entitled *From Red Tape to Results: Creating a Government That Works Better and Costs Less*, the NPR found 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 the President articulate a new vision of labor-management relations by issuing a directive to promote labor-management partnership in the executive branch and establish a National Partnership Council to help implement it.[10]

On October 1, 1993, President Clinton issued Executive Order 12871, "Labor Management Partnerships" (E.O. 12871).[11] In its introductory paragraph, E.O. 12871 stated that "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."

E.O. 12871 established a National Partnership Council, which was responsible for advising "the President on matters involving labor-management relations in the executive branch."[12] The Executive Order directed the National Partnership Council to:

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[7] On July 7, 2004, the "General Accounting Office" was renamed the "Government Accountability Office."

[8] U.S. General Accounting Office, *Federal Labor Relations. A Program in Need of Reform*, GAO-GGD-101-91 (July 1991), p. 2, at: http://archive.gao.gov/d19t9/144654.pdf

[9] *Id.*

[10] Vice President Albert Gore and the National Performance Review, *From Red Tape to Results: Creating a Government that Works Better and Costs Less* (1993), at p. 87-88.

[11] Exec. Order No. 12871 (Oct. 1, 1993), at: http://www.archives.gov/federal-register/executive-orders/pdf/12871.pdf

[12] Members of the National Partnership Council included the Director of the Office of Personnel Management, the Deputy Secretary of Labor, the Deputy Director for Management of the Office of Management and Budget, the Chairman of the Federal Labor Relations Authority, and others.

- Support the creation of labor-management partnerships throughout the executive branch (at the agency level);
- Collect and disseminate information about partnership efforts in the executive branch, including results achieved;
- Utilize the expertise of individuals both within and outside of the Federal government to foster partnership arrangements;
- Propose statutory changes necessary to achieve the objectives necessary to achieve the objectives of the Executive Order; and
- Work with the President's Management Council toward reform consistent with the NPR's recommendations throughout the executive branch.[13]

E.O. 12871 directed the 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."[14] Moreover, Federal agencies were directed to negotiate with labor organizations over "permissive" subjects of bargaining as set forth in 5 U.S.C. § 7106 (b)(1). Section 7106(b)(1) allows but does not require Federal agencies to negotiate on certain aspects of assignments and work performance.[15]

By 1998, 67 percent, or approximately 800,000 employees in the executive branch, were covered by labor-management partnerships.[16] On October 28, 1999, President Clinton issued a memorandum to the heads of Executive departments and agencies reaffirming E.O. 12871, stating that "the time has come to redouble the Administration's efforts to create genuine labor-management partnerships."[17] The memorandum directed agencies to work with unions to develop a plan to implement the memorandum and E.O. 12871, and to report to the Office of Management and Budget (OMB) on the progress achieved toward the goals in the memorandum and Executive Order. The Office of Personnel Management (OPM), in coordination with OMB, was directed to analyze these reports and advise the President on any further steps needed to ensure successful implementation of this memorandum and E.O. 12871.

B. Bush Administration Executive Order Revoking Executive Order 12871

On February 17, 2001, President Bush issued Executive Order 13203, "Revocation of Executive Order and Presidential Memorandum Concerning Labor Management Partnerships" (E.O. 13203), which revoked E.O. 12871 and President Clinton's 1999 memorandum, dissolved the National Partnership Council, and directed OPM to rescind any orders, rules, regulations,

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[13] Exec. Order No. 12871, § 1(b).

[14] *Id.* § 2(a)-(b).

[15] 5 U.S.C. § 7106(b)(1) states, "Nothing in this section shall preclude any agency and any labor organization from negotiating, at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organization subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work."

[16] *Engaging Federal Employees*, p. 9.

[17] *Memorandum for the Heads of Executive Departments and Agencies from President William Jefferson Clinton*, Oct. 28, 1999, at: http://www.opm.gov/pressrel/1999/pres_statement.htm

guidelines, or policies implementing E.O. 12871 or the 1999 memorandum.[18] As a result of E.O. 13203, Federal agencies had no obligation to continue existing labor-management partnerships.

C. Obama Administration Revival of Labor-Management Forums

In August 2009, reports surfaced that the Obama Administration planned to reestablish the National Partnership Council and reinstitute labor-management partnerships in the executive branch.[19] On December 9, 2009, President Obama signed Executive Order 13522, "Creating Labor-Management Forums to Improve Delivery of Government Services" (E.O. 13522). E.O. 13522 created the National Council on Federal Labor-Management Relations (National Council) – which was based on the Clinton-era National Partnership Council – and again required the establishment of labor-management forums in the executive branch.[20] Section 1 of the Executive Order provides in part:

> Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people. A nonadversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.[21]

Unlike E.O. 12871, E.O. 13522 does not require Federal agencies to bargain over permissive bargaining subjects. E.O. 13522 does, however, require the establishment of pilot projects to "evaluate the impact of bargaining over [section 7106 (b)(1)] permissive subjects."[22] E.O. 13522 also requires that employees and their union representatives have "pre-decisional involvement" in "all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106."[23]

1. The National Council on Federal Labor-Management Relations

OPM Director John Berry and OMB Deputy Director for Management Jeffrey Zients chaired the inaugural meeting of the National Council on February 26, 2010. The National Council is composed of seventeen members, including officials from Federal agencies, presidents of

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[18] Exec. Order No. 13203 (Feb. 17, 2001), at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr22fe01-113.pdf

[19] Joe Davidson, *Obama Follows Clinton's Lead on Creating Labor Council*, WASH. POST, Aug. 12, 2009, at http://www.washingtonpost.com/wp-dyn/content/article/2009/08/11/AR2009081103283.html; Alyssa Rosenberg, *Obama labor relations proposal draws praise*, GOV. EXEC., Aug. 14, 2009, at http://www.govexec.com/dailyfed/0809/081409ar1.htm

[20] Exec. Order. No. 13522 (Dec. 14, 2009), at: http://edocket.access.gpo.gov/2009/pdf/E9-29781.pdf

[21] *Id.* at § 1.

[22] *Id.* at § 4.

[23] *Id.* at § 3

national labor organizations, and representatives of managerial and supervisory employees in the Federal government.[24]

The National Council's overall mission includes developing recommendations to the President for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests.[25] Since its formation, the National Council has established a number of workgroups – consisting of agency, labor, and management officials – to focus on a number of workforce issues intended to make government performance more effective. Specifically, the National Council has established workgroups to report on: 1) implementing labor-management forums at the agency level; 2) telework and mobile workdays; 3) performance management at the Federal government; 4) metrics to evaluate labor-management council's effectiveness; and 5) the Federal Advisory Committee Act. At the National Council's most recent meeting, the Employee Performance Management Workgroup released a report circulated a draft report on improving the Federal government's employee performance management system. The National Council is currently reviewing this report and is expected to take further action on it shortly.

2. Forums at the Agency Level

E.O. 13522 requires most agencies to establish department or agency-level labor-management forums by creating commissions or councils at the levels of recognition agreed to by management and labor organizations.[26] The National Council's mission includes supporting the creation of these forums and promoting partnership efforts between labor and management.[27] Currently, 25 Federal agencies – including the Departments of Defense, Education, Energy, Commerce, Labor, State, and Homeland Security – have submitted plans to the National Council describing how they intend to implement labor-management forums at their agency. Agency implementation plans were subject to public comments and can be found on the National Council's website.[28]

3. Training on Labor-Management Relations

E.O. 13522 requires the National Council to foster "successful labor-management relations . . . through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations."[29] The Federal Labor Relations Authority's (FLRA) Office of General Counsel – in partnership with the Department of Veterans Affairs – has developed a web-based interactive training program on implementing E.O. 13522 available to all Federal employees with a government email address. This training program is posted on OPM's Human Resources University website.[30] Additionally, the Federal Mediation and Conciliation Service and the FLRA have developed a "Train the Trainer" program. Under

[24] A complete list of members of the National Council on Federal Labor Management Relations can be found at: http://www.lmrcouncil.gov/about/member.aspx

[25] Exec. Order No. 13522, § 2(b)(v).

[26] *Id.* at § 3(a).

[27] *Id.* at § 2(b)(i).

[28] Agency implementation plans and public comments can be found at: http://www.lmrcouncil.gov/plans/index.aspx

[29] Exec. Order No. 13522, § 2(b)(iv).

[30] This training can be found at: http://www.hru.gov/course_catalog.aspx

this training program, agency and union representatives may jointly request training on the techniques necessary to train agency and labor officials who are involved in executing labor-management forums at the agency level.

4. Permissive Bargaining Pilot Programs

E.O. 13522 requires pilot projects to be established to evaluate the impact of bargaining over permissive subjects under 5 U.S.C. §7106(b)(1). Components of nine Federal agencies – including the Departments of Defense, Commerce, Agriculture, and Veterans' Affairs – have agreed to participate in the (b)(1) pilot projects. In total, there are twelve pilot projects currently taking place. One current pilot project involves the United States Marine Corps at Camp Pendleton and the National Federation of Federal Employees, who have agreed to bargain over the following traditional permissive bargaining subjects: 1) the number and types of employees or positions assigned to any organizational subdivision; 2) work project or tour of duty (excluding grades); and 3) technology methods and means of performing work. The National Council recently provided guidance to agencies for developing performance metrics for their (b)(1) pilot projects.[31] All pilot projects are scheduled to report to the National Council on their performance against identified metrics on March 21, 2012.

5. Case Study: Labor-Management Partnership at the Department of Defense

In 2004, the Department of Defense (DoD) created a new personnel system, the National Security Personnel System (NSPS), which was criticized from its inception for inequities and lack of stakeholder involvement.[32] The Fiscal Year (FY) 2010 National Defense Authorization Act[33] (NDAA) repealed NSPS. Although DoD was given the authority to establish new personnel flexibilities for performance management, hiring, and the establishment of a civilian workforce incentive fund, the NDAA specifically required DoD to "include a means for ensuring employee involvement (for bargaining unit employees, through their exclusive representatives) in the design and implementation" of these authorities.[34]

In September 2010, DoD hosted the "New Beginnings" Conference in Los Angeles, California, where approximately 200 participants provided feedback on the design of a new personnel management system at DoD.[35] In December 2010, DoD convened a joint labor-management planning workgroup to identify requirements for the startup of DoD "design teams," which would be established to make recommendations to DoD leadership on personnel flexibilities

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[31] This guidance can be found at: http://www.lmrcouncil.gov/meetings/handouts/10%2022%2010%20FINAL%20(b)(1)%20%20LMF%20Metrics%20Guidance.pdf

[32] U.S. Government Accountability Office, *Performance Management: DoD is Terminating the National Security Personnel System, But Needs a Strategic Plan to Guide Its Design of a New System*, GAO-11-524R (April 28, 2011), p. 1-2.

[33] Pub. L. No. 111-84.

[34] *Id.* at § 1113(d).

[35] A copy of the New Beginnings Conference Report can be found at: http://www.cpms.osd.mil/nsps/docs/NewBeginConfReportSept2010.pdf

under the NDAA.[36] In February 2011, DoD formally convened three joint labor-management design teams to develop recommendations on a new performance management system and hiring process, and the establishment of a workforce incentive fund.[37] The design teams have met consistently every two weeks since February 2011, and they are expected to complete their work and make recommendations to DoD leadership in October 2011.

FOCUS OF THIS HEARING

This hearing will examine the implementation of E.O. 13522, including efforts to establish labor-management forums throughout the executive branch. Additionally, the hearing will examine the National Council's work, including its effort to determine the effectiveness of, and potential cost savings from, labor-management forums. Finally, the hearing will examine DoD's efforts to establish a new performance management and hiring system, while ensuring employee (and employee representative) involvement.

[36] GAO- 11-524R, at p. 2.
[37] *Id.*

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National Aeronautics and Space Administration
Office of the Administrator
Washington, DC 20546-0001

October 7, 2011

The Honorable Daniel Akaka, Chair
Subcommittee on the Federal Workforce
United States Senate
Washington, DC 20510

The Honorable Ron Johnson, Ranking Member
Subcommittee on the Federal Workforce
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Mr. Johnson:

As you and your Committee consider the value and effectiveness of President Obama's Executive Order 13522, "Creating Labor-Management Forums to Improve Delivery of Government Services" (the EO), we would like to provide you with our experience at NASA, which we believe is a success story and could provide a best practice for other agencies across the Federal Government.

NASA Labor and Management created the Agency Labor-Management Forum (LMF) in 2010. It is cochaired by the NASA Deputy Administrator and the Chair of the NASA Labor Caucus (as agreed to by the International Federation of Professional and Technical Engineers [IFPTE] and the American Federation of Government Employees [AFGE], NASA's two Unions with National Consultation Rights [NCR]). The NASA LMF meets bimonthly and over the past year and a half has addressed and/or resolved a wide variety of issues (examples below). Furthermore, all NASA Centers with labor representation have established Center-level LMFs. NASA, therefore, has proactive processes in place to address Agency-level issues as well as those that need to be resolved at the local level.

Importantly, the EO does not accord any new legal rights to labor, nor does it diminish in any way the absolute management rights enumerated under 5 USC (the Statute). However, it does direct executive branch leaders to engage in a major cultural change whereby labor is included -- early on -- in management policy-making and planning discussions, when input is both more useful and effective. This pre-decisional involvement (PDI) has led to more informed and better decision-making by management while minimizing potentially disruptive implementation problems. Also, by broadening PDI to include issues deemed non-negotiable under the Statute, the labor-management conversation has become more cooperative and focused around what is best for the Agency and the taxpayers, instead of spending unnecessary resources to address procedural questions about the scope of labor involvement under the Statute. This directs time and money towards joint problem-solving, and away from posturing and litigating.

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To reap the full benefit of this major executive-branch reform, NASA's implementation of the EO embraces a number of helpful practices:

1. The NASA LMF includes senior management and labor officials, fully empowered to jointly resolve issues quickly and, when possible, in real time. Furthermore, as the cochairs of the NASA LMF, we firmly believe that the EO's primary purpose is to focus our attention on improving the efficiency and productivity of the Agency we both serve so that NASA can be more responsive to the needs of the American people. For instance, labor raised the issue that employees sometimes feel they receive conflicting direction from their Mission "program" managers who report up to Headquarters Mission Directors and their Center "line" managers who report to Center Directors. The LMF is working to formally clarify the role of the Center vs. the Program to increase productivity through more effective matrix governance, with labor and management already reaching consensus on a few of key issues.

2. When management is able to reach agreement with labor in a particular matter, such consensus agreement is recorded (to avoid future misunderstanding or the rehashing of old issues) and generally leads to labor waiving some or all of its rights under the Statute in this particular matter. The reduction or waiving of NCR or of local impact and implementation bargaining rights has reduced the timeline for implementation of new NASA policies, streamlining or even eliminating (when possible) the more "traditional" adversarial post-decisional processes legalistically formalized under the Statute. Due to successful PDI and discussion, both IFPTE and AFGE have voluntarily waived NCR numerous times over the past year and a half, thus eliminating the 30-day comment period (and management's obligation to provide a detailed written response) that labor is entitled to under law. A recent example is the detailed PDI that occurred during the merger of two of NASA's Mission Directorates which led to a documented agreement between labor and management. Because of this discussion, labor waived NCR, and the merger could occur more quickly.

3. Even when management and labor have been unable to reach consensus, PDI has nonetheless generally led to partial agreement that has improved management's final policy decisions and streamlined implementation by enhancing labor and employee buy-in. For example, NASA's new Governance of Labor Distribution (GOLD) accounting policy is substantially different from labor's original proposal yet, through frank and cooperative dialog, labor and management were still able to agree on certain components of the plan, which in turn allowed NASA to improve and expedite its implementation of GOLD.

4. PDI has played a critical role in allowing information from rank-and-file employees to flow up quickly to top NASA leaders. For example, labor's voice through the LMF was instrumental in pointing out to Administrator Bolden systemic issues with NASA's performance management system that NASA's standard equal opportunity and diversity processes did not raise to top management. The Administrator was then able to take prompt corrective action that otherwise might have taken years.

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5. PDI has played a critical role in allowing appropriate information from management to flow down quickly to labor leaders without needing to invoke the more time-consuming and resource-wasting processes of formal 7114(b)(4) information requests under the Statute. By providing labor leaders with the appropriate information prior to PDI, the labor-management dialog can thus focus immediately on the key substantive issues, with labor's proposals more effectively and creatively crafted, and, therefore, more helpful to the Agency. In this way, more innovative and practical solutions can be found.

In summary, while the implementation of the EO at NASA remains a work in progress, it has already had a significant positive impact on the Agency, whether viewed from the standpoint of senior leadership or of the "troops" on the ground. At its essence, the EO is trying to remove the legalistic procedural obstacles that have in the past impeded nimble, yet informed policy-making and implementation. This goal can only be realized when the labor-management relationship is cooperative and solution-oriented (not process-oriented) and when critical information can flow quickly back and forth. At NASA, even though we look forward to even greater cooperation in the future, management and labor can testify today that the EO is already working well to the benefit of the taxpayer, NASA, and its employees.

Sincerely,

Lori B. Garver

Lori B. Garver
Deputy Administrator
NASA Labor-Management Forum, Co-Chair

Lee Stone
President, NASA Council of IFPTE Locals
NASA Labor-Management Forum, Co-Chair

cc:
Greg Junemann, President IFPTE
John Gage, President AFGE

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STATEMENT BY

DAVID J. HOLWAY

NATIONAL PRESIDENT
OF
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,
NAGE/SEIU LOCAL 5000

REGARDING

"LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT"

PREPARED FOR

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

SUBMITTED FOR THE RECORD ON

OCTOBER 18, 2011

On behalf of the members of the National Association of Government Employees (NAGE), SEIU Local 5000, I would like to thank you for the opportunity to submit this written statement for the record on the Subcommittee's hearing on "Labor-Management Forums in the Federal Government" held on October 11, 2011. As the exclusive representative of over 100,000 federal, state and local government workers, I can tell you that there have been and will continue to be significant benefits produced for the government, federal workers and the American taxpayer by labor-management forums.

In December 2009, President Obama reestablished labor management relationships previously enacted under the Clinton administration by signing Executive Order 13522. During the previous administration, little was done to encourage productive and collaborative relationships between management and labor, evidenced by President Bush's rescission of President Clinton's Executive Order creating labor-management partnerships.

In February 2010, the National Council on Federal Labor-Management Relations (National Council), comprised of senior government executives, national labor unions, the FLRA (Federal Labor Relations Authority) and management associations, met for the first time. Much of the past two years has been spent reaffirming relationships previously forged under the Clinton Executive Order and creating a strong foundation upon which to move forward. NAGE believes that there is significant work to be done, and that the aforementioned strong foundation built since President Obama signed E.O. 13522 will facilitate substantive labor-management collaboration. NAGE further expects that the leadership of the National Council can serve as a positive example to other labor-management forums throughout the government.

Labor-Management Forums throughout Government

The National Council has served as an example of effective labor-management collaboration. This past summer, labor and management collaborated to form a joint work group to redesign the federal government's performance appraisal system. Comprised of staff and members of the National Council and the Chief Human Capital Officers throughout the government, the work group met over several months to discuss ways to transform government into an efficient and high performance institution. The framework document that was produced does not simply concentrate on substantive changes, but those steps necessary to overcome current barriers such as culture change, training, and succession management. The sincere collaboration between the group's members was integral in achieving a unified vision for a high performance government and designing a road map to implement that vision.

Although the process has not been easy, it does illustrate an excellent example of what can be accomplished through partnerships. The end product is something both labor and management are well invested in, and is clearly a step in the right direction towards addressing a major issue.

Another success of President Obama's Executive Order has been the training created by the Federal Labor Relations Authority (FLRA) and Federal Mediation and Conciliation Service (FMCS) on the Executive Order and PDI. Both agencies have spent tremendous resources to ensure that the training reaches all levels of government and labor leadership, including making the training available on the government's HR University website and open to the public through the FLRA website. NAGE is exceptionally supportive of training from a neutral third party that aligns labor and management expectations and interpretations of the Executive Order. NAGE has provided this training on the Executive Order and PDI to its local leadership, and will continue to offer this training to all of our members.

Additionally, both the VA and the Department of Defense (DOD) have implemented a "train the trainer" program. The program is designed to jointly instruct labor and management officials on how to train local forums on the Executive Order and PDI. Three NAGE representatives recently traveled to Indianapolis, IN for three days of training. In the VA, one representative from each union jointly worked with a contractor and management official to develop training on the Executive Order. This group, along with the VA National Partnership Counsel, identified 62 facilities that required training. NAGE representatives will soon provide training to the various VA local facilities where NAGE members have forums.

Pre-Decisional Involvement Is Key to Successful Labor-Management Forums

As the United States faces dire economic times and an uncertain economic future, NAGE understands the necessity of budget cuts. Including labor unions in the discussion, through pre-decisional involvement (PDI), will enable the agencies to make more informed decisions about how to operate under these restricted budgets. When labor and management can agree and negotiate before decisions are made, the need for back-end resource drains, such as litigation, grievances, and impact and implementation (I & I) bargaining is diminished.

It is imperative that agencies engage in good faith PDI, rather than simply pretending to fulfill the requirements. In 2009, a joint work group consisting of managers from the Department of Veterans Affairs (VA) and five labor unions (including NAGE) was created to discuss the limitations of bargaining and grievances for employees covered by 38 United States Code sections 7422 et. al. The interpretation and application of this statute has varied from facility to facility, thus creating a vast difference and varied impact on doctors, dentists, registered nurses, and others hired under Title 38 authority. The work group was created to discuss and develop a unified interpretation of the statute. The work group formulated recommendations to create a more consistent approach to the application of §7422. The group further developed metrics to measure the varying interpretations and applications of § 7422 throughout the agency.

In December 2010, the group presented sixteen recommendations to the VA Secretary and his executive team. The Secretary made few revisions and supported a large majority of the work group's

recommendations. Since that time the members of the original work group have continued to work closely together in developing a training program, which will be rolled out to the entire VA field stations. Building a strong partnership between labor and management is not always easy and quick, but the benefits of success denote that it should always be pursued. The partnership between the VA and labor unions, including NAGE, evidences how a long-term pursuit of a strong partnership is worth the road there, however bumpy.

While there has been some success as demonstrated by the VA example above, there continues to be resistance in some agencies. Unfortunately, NAGE has experienced too many instances of agencies pretending to engage in PDI where it was either too late to have substantive discussions, or the agency used the process in an attempt to speed up the notice requirement. This kind of engagement does not lead to the productivity that PDI can offer. PDI should be used early in the process and involve earnest discussion of the issues because true PDI promotes efficiency. Engaging in PDI prevents relationship breaks and promotes the efficient implementation of agency policies and regulations.

For example, PDI would have prevented costly and time-consuming litigation that occurred at Great Lakes Naval Station, IL. A NAGE/IBPO local at Great Lakes was forced to file several grievances and unfair labor practice charges against the agency for illegal implementation of a standard operating procedure without sufficient notice and opportunity to negotiate. The union's various attempts to engage in PDI were ignored by management, resulting in unnecessary and protracted litigation, not to mention a tense relationship that can only be repaired through conflict resolution and relationship building conducted by the Federal Medication and Conciliation Services (FMCS).

Another example where PDI has been successful is NAGE's involvement in the "New Beginnings" efforts currently underway at the Department of Defense (DOD). These efforts seek to design new performance management and hiring systems provided in the National Defense Authorization Act (NDAA) for fiscal year 2010.

NAGE members and staff worked to help plan the pre-design conferences in both Los Angeles and Arlington, Virginia. The ideas generated by these conferences helped frame the subsequent work performed by the design teams. The dialog that they created also demonstrated that DOD's workers and their managers share the same goals, and can agree on ways to achieve those goals in an atmosphere of mutual respect.

NAGE members also undertook the detailed and difficult work of studying DOD's existing systems and how those systems might be reformed. The recommendations and reports the design teams generated represent one of the best examples of pre-decisional involvement in a major project at any federal agency.

Throughout this process, management demonstrated a willingness to engage with and incorporate the concerns of the labor unions. NAGE believes that acceptance of employees and their representatives as equal partners has resulted in much more useful recommendations than could have been achieved by either party working alone. NAGE believes the process New Beginnings represents

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can provide meaningful lessons for pre-decisional involvement in other parts of the government.

Challenges

Although NAGE sees considerable benefits of labor-management forums, there is much work to be done. The National Council formed a metrics committee to measure the success of labor management forums. Metrics are essential to measure both the success and pervasiveness of the forums in the government. NAGE locals have faced numerous difficulties achieving both of these metrics.

First, the non-responsiveness of some agencies causes difficulty in assessing the success of the Executive Order. At the time of this testimony, only 46 of 51 agencies have reported metrics, despite repeated requests by the National Council. Several of those who have reported metrics were significantly late in submitting reports. In order to signal the importance of the forums, the National Council should be provided sufficient authority to enforce the Executive Order.

Another challenge in measuring the success of labor-management forums has been the formulation of what exactly is being measured. Metrics do not always reflect the goals set by the forums. Agencies will say they have a forum and have engaged in PDI, when in reality all they have really provided was notice and an opportunity to comment under NCR rights. In this sense, true collaboration has not been achieved; the Agency is simply using NCR as a way to hasten or skirt the negotiation requirement. In other instances, consultation does not occur until it's too late in the process. Although National Council co-chairs John Berry and Jeffrey Zients have issued a memorandum on the proper subjects and use of pre-decisional involvement, there continues to be a lack of commitment and application of this tool to address and resolve issues clearly appropriate for PDI. Success cannot be effectively measured when participants check a box merely to indicate that the forums are meeting; labor and management must work together to create a metric that accurately measures the goals of both sides.

Moving Forward Towards Continuing Success in Labor-Management Forums

Agencies must fully support the development and success of labor-management forums, which includes properly funding these initiatives. These are tough economic times, but the resources spent to properly fund the initiatives are well spent compared to employee/supervisor resistance, costly litigation, and other resource drains that occur when labor is not involved in early discussions.

The government must make a concerted effort towards promoting substantive engagement in labor-management forums. Decision makers, rather than human resources bodies, must be involved and at the table with labor. The Naval Sea Systems Command (NAVSEA) is an excellent example of positive results due to commitment from top-level management. The NAVSEA forum is staffed with senior level managers, including the Admiral. Labor management forums across the government should follow this example. If Agencies choose to fulfill the bare requirements and staff these forums

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with "messengers," the taxpayers lose out on a cost-saving opportunity. Furthermore, forums would benefit from regular participation from rank and file bargaining unit members - as the government's "boots on the ground" are an excellent resource to discuss realities of certain proposals, to identify needs not anticipated by managers, and to be ambassadors of any proposed changes.

As previously discussed, metrics must meet the goals of both labor and management. Success needs to be defined to accommodate the goals of both sides so that success means something to everyone at the table. The Executive Order must be given sufficient strength to enable the National Council to instill a sense of importance and priority to agencies to take reporting requirements seriously.

Conclusion

NAGE applauds President Obama for signing into effect Executive Order 13522, the work of the National Council, and those labor-management forums that are operating within the spirit of the Executive Order. There have been many successes that will lead to more efficient government, but there are many more challenges. NAGE is confident that current obstacles can be overcome through labor-management forums with the support of Congress, the President, and committed agency leaders. The labor-management relationship will never be perfect, but it will be much more successful in creating an efficient and high performance government if both sides work in a collaborative, rather than adversarial, spirit.

NAGE greatly appreciates the Subcommittee's decision to hold a hearing on this issue. I thank the Subcommittee for the opportunity to submit this statement for the record.

Sincerely,

David J. Holway
National President

STATEMENT OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (LIUNA)
To the Senate Homeland Security and Govermental Affairs Committee on Federal Labor-Management Forums

October 11, 2011

The Laborers' International Union of North America (LIUNA) represents over 500,000 workers throughout North America, including over 25,000 federal employees in the U.S. Our federal employees work at a diverse range of agencies, including the Department of Defense, the Indian Health Service, the National Park Service, the Veterans' Administration, and the Presidio Trust.

LIUNA was strongly supportive of President Obama issuing Executive Order 13522, "Creating Labor-Management Forums to Improve Delivery of Government Services," in December 2009. LIUNA believes that the concept of pre-decisional involvement in "all workplace matters to the fullest extent practicable" can increase efficiency and relationships between the Unions and management in the agencies. LIUNA is also strongly supportive of the 7106(b)(1) pilot projects to allow Unions and Agencies to determine together how to address workplace problems that would benefit from the parties bargaining over permissive subjects such as "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."(5 USC § 7106(b)(1))

Now that EO 13522 is reaching its second anniversary, LIUNA would like to take this opportunity to comment on some of the successes and challenges of the labor-management forums, and to provide some recommendations for improvement and continued success of the forums.

Recommendations for Improving Labor-Management Forums in the Federal Government

1. Have the National Council on Federal Labor-Management Relations ("National Council") recommend that every Agency fund at least one bargaining unit employee (BUE) per Union with national consultation rights (NCR) at its forum, if requested by the Unions. Provide a method for Unions to easily report challenges with Agencies resulting at their forums to the National Council.
2. Have the Secretary or highest-ranking official at each Agency send a memo to all offices and departments, not just Human Resources/Labor Relations (HR/LR), informing them of their obligation to inform HR/LR of any changes in working conditions at the pre-decisional level so the Agency can meet its obligations of EO 13522 and Chapter 71. This should reduce the number of unfair labor practices filed.
3. Have the National Council compile a list of success stories from the Clinton Administration to show Agencies that they benefit from these forums, too.
4. Have the National Council survey every labor-management forum to determine if Unions have requested disussions on budgetary issues, if management raised the issue, and what discussions occurred. Require each Agency with a forum to develop a list of issues – which could include (b)(1) pilot projects – affecting the workforce that could be addressed in a forum.

5. Require Agencies to ensure that policy or operational staff who carry out the various policies attend the forum meetings to give their expertise and experience about the policies discussed from an "on the ground" level.

Successes

FLRA/FMCS Training

One of the most positive things to come out of EO 13522 is the training on the Order provided by the Federal Labor Relations Authority (FLRA) and the Federal Mediation and Reconciliation Service (FMCS). LIUNA has participated in this joint labor-management training at a number of Agencies and praises FLRA and FMCS for its excellent training on subjects such as communications skills, the concept of pre-decisional involvement, strategic planning, and 7106(b)(1) pilot projects.

Indian Health Service

LIUNA represents over 9,000 workers at the Indian Health Service in 25 states. Over the past several years, LIUNA has filed hundreds of unfair labor practices and grievances against the Agency. It took five years to negotiate the last collective bargaining agreement with the Agency. LIUNA was very involved in the Senate Indian Affairs Committee hearing into the Agency in 2009-2010. Despite these past challenges, LIUNA and IHS formed their Labor Management Relations Committee (LMRC) in February 2011. The Union and Agency went through the FLRA/FMCS training. The Agency's Director, Dr. Yvette Roubideaux, attended the kick-off of the LMRC. The Agency and the Unions came to agreement on a comprehensive Labor-Management Charter; they agreed on a process for resolving outstanding ULPs and committed themselves to trying to prevent future need for FLRA intervention; and outlined future issues of concern, including the joint commitment of improving patient care, that should be addressed by the LMRC. While relations between the Union and the Agency are not perfect, the Union does believe that the formation and work of the LMRC this year per EO 135422 has gone a long way toward improving the relationship between the parties. LIUNA hopes and expects that the LMRC will lead to decreased filings of unfair labor practices, and also to greater efficiencies within the Agency.

U.S. Army

LIUNA joined the U.S. Army labor-management forum in Spring 2011. LIUNA is pleased that the Army has tackled a number of important issues, including involving the Unions in discussions about the downsizing initiative at the Component. The Army and the Unions have also addressed several law enforcement issues.

Challenges

LIUNA is involved in two Department-wide labor-management forums under EO 13522: one at the Department of Defense and one at the Department of Health and Human Services (HHS). LIUNA is also part of a labor-management forum at the National Guard Bureau (NGB). While there have been some benefits of each of these forums, significant challenges remain.

Overall, some common themes have emerged at these less-than-successful labor-management forums:

1. *Agencies will not to commit sufficient resources to the forums.* EO 13522 states that all Agencies must determine how they will "devote sufficient resources" to these forums.
   - DoD – Despite repeated requests by the Unions, DoD refuses to provide funding for bargaining unit employees (BUEs) to attend the labor-management meetings. Other forums such as HHS have at least funded one BUE per Union with National Consultation Rights; DoD refused this request, which would have funded 10 federal employees total once every other month. DoD has even refused Union requests to provide a phone line for these workers to call in to listen to the meetings. DoD has arrived at a number of forum meetings unprepared to brief the Unions and answer their questions, despite numerous hours spent jointly preparing the agendas for the meetings.
   - NGB – The Agency refuses to meet more often than quarterly for two hours, despite the fact that 50,000 workers are covered by this labor-management group, and despite the fact that the Unions have raised a number of important issues, such as: drug testing of employees, Agency refusal to provide the Union with a list of their bargaining unit employees (which the Union has a legal right to under 5 USC Chapter 71), and data on Wounded Warriors. NGB also refuses to fund even one bargaining unit employee per union (a total of 3 federal workers) to attend these meetings. Finally, NGB refuses to comply with properly filed information requests by the Union, even on issues as important as a new drug testing policy.

2. *Lack of coordination at Agencies.* Often, the right hand doesn't know what the left hand is doing at Agencies. For example, a new policy is often issued affecting BUEs but the policy office does not let the Human Relations/Labor Relations Offices know about this change. As a result, HR/LR does not contact the Unions to engage either in pre-decisional involvement (PDI) as required under EO 13522 or even traditional bargaining as required by Chapter 71. Several examples of this have occurred at HHS, including: a new policy to require mandatory training for employees who operate government vehicles and a workplace wellness survey; the Union found out about these changes from our represented employees after they had already gone into effect. In addition, HHS has failed to notify the Unions about other changes in working conditions in violation of our Chapter 71 rights, including: furloughs/RIFs/voluntary early retirement; a bike share program, and changes in space utilization.

3. *Management does not understand the benefits of Labor-Management Forums* – During the Clinton Administration, labor-management forums were able to identify cost savings and promote efficiencies and more positive working relationships between Unions and Agency management. However, many staff who worked on the forums in the Clinton years no longer work at the Agencies, and there are not enough examples of success stories. Further, many HR/LR Agency staff see the traditional adversarial labor-management relationship as the only one possible. At the Defense Department, the labor-management forum has had four management chairs – showing a lack of commitment to the principles in the Executive Order – since relationship-building and consistency are keys to success.

4. *Management does not bring true pre-decisional issues to the table and sees forums primarily as a way to expedite regulatory review.* The issues that management typically raise at labor-management forums tend to be draft regulations that the Unions have the legal right to comment on anyway per their NCR rights. Most Agencies rely on unions to raise other issues to be discussed. Even when the Unions raise non-regulatory issues, most forums are hesitant to discuss them. For example, LIUNA has requested that the Defense Department bring in the appropriate Agency staff to brief the Unions about Secretary Gates' Efficiency Initiative, as well as the effects of the FY 11 and FY 12 budget cuts on the civilian workforce represented by the Unions. The Unions have made multiple requests since January 2011 to no avail. This is despite the fact that the January 2011 OMB/OPM memo encouraged Agencies to work with Unions pre-decisionally on budget matters. The memo specifically states that, "During the period when Congress is considering the President's Budget proposal, pre-decisional involvement can take the form of employee representatives providing input to management on possible ways of implementing the President's proposals. Additionally, when the Agency's appropriations have been enacted into law, employee representatives may provide input to management on the use of budgetary resources to carry out its mission." LIUNA has also asked DoD and NGB to tell us what their priorities are regarding PDI; the response at both Agencies is to fulfill their legal obligations about regulatory changes. Examples the Unions have raised include at the various forums for PDI include: workplace bullying, law enforcement working conditions, the use of contract staff, etc.; LIUNA hopes to be able to better address these types of issues through PDI.

5. *Management does not bring policy experts to the forums.* Many forums are primarily composed of HR/LR staff at the Agency level. Policy experts who are in charge of the programs that affect the federal workforce should also be in attendance to share their ideas and on-the-ground experience and expertise.

Conclusion

LIUNA strongly supports Executive Order 13522. The Union has seen some good benefits to the creation of labor-management forums, including improved relationships with our management counterparts, better information sharing, and being able to jointly address serious problems at the Agency. However, some forums – especially at the Defense Department and National Guard Bureau – have been less than successful due to a lack of Agency-committed resources, a belief that the burden is on the Unions to raise issues, and failure to find ways to address issues of joint interest to both parties. However, LIUNA believes that the recommendations above will help to alleviate these problems and ensure that all Agencies in the federal government can have successful labor-management forums.

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TESTIMONY

of

CAROL BONOSARO

President

SENIOR EXECUTIVES ASSOCIATION

Before the

SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

"LABOR-MANAGEMENT FORUMS IN THE FEDERAL GOVERNMENT."

October 11, 2011

Chairman Akaka, Ranking Member Johnson and Distinguished Members of the Subcommittee:

Thank you for the invitation to testify before this Subcommittee on the issue of labor-management relations and the related issues that are considered before the National Council on Federal Labor-Management Relations. Unfortunately, I am out of the country on the date of the hearing and unable to attend in person, but I respectfully submit this written testimony for your consideration as you examine labor-management issues.

The Senior Executives Association (SEA) is a professional association that for 30 years has represented the interests of career federal executives in government, including those in Senior Executive Service (SES) and equivalent positions, such as Senior Level (SL) and Scientific and Professional (ST) positions. Over the years, SEA has played an active role in discussions on labor-management partnerships and has added the unique perspective of individual Senior Executives and their experiences as federal employees and as agency executives, and I appreciate the opportunity to share our experiences and concerns with the Subcommittee.

Background

In 1993, as part of the Clinton Administration's National Performance Review (NPR), President Clinton issued an Executive Order creating the National Partnership Council (NPC). The stated aim of the NPC was to establish a new form of labor-management relations to promote the principles of the NPR. The NPC included several agencies and unions, but no management associations. SEA, in conjunction with several other professional and management associations, fought to get a seat on the Council to ensure that career managers and Senior Executives, important stakeholders in agency missions, had a voice in decisions being made at both the Council and agency levels. Often, important issues were being discussed by the Council – leaving out executives and managers who are often tasked with helping to implement decisions agreed upon in forums or at the NPC level.

During the 1990s, SEA was concerned not only with being a part of the renewed partnership efforts at the national level, but ensuring that management association consultation rights were considered. SEA was also active in the discussion over bargaining over permissive subjects, and the implementation of agency forums. Many of these issues are applicable today. SEA was eventually successful in obtaining a seat on the NPC and was pleased when the more recently established National Council on Federal Labor-Management Relations (the "Council") included SEA at the outset.

National Council on Federal Labor-Management Relations Issues and Concerns

On the current Council, SEA has been an active participant in both Council meetings and a variety of Council sponsored workgroups, including metrics, telework, and employee performance management. While SEA has long been a supporter of partnership and engagement between unions and management, SEA does have some concerns with several issues addressed by the Executive Order and the Council, as discussed below.

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(b)(1) Pilot Programs and Bargaining over Permissive Subjects

In the 1990s, the Clinton Executive Order mandated that agencies participate in bargaining over so-called permissive subjects. This was a source of much debate and disagreement during the course of the Clinton Administration, and most agencies did not implement such bargaining. The current Executive Order, instead of mandating bargaining, allowed for the creation of pilot programs and a report back to the President on their effectiveness.

Title 5 U.S.C. 7106 (b)(1) governs permissive bargaining. The statute directs that agencies may engage in bargaining over certain management decisions including the numbers, types, and grades of employees assigned to an organizational subdivision work project or tour of duty, or the technology, methods and means of performing work. The pilot programs approved by the Council allow agencies to choose one or all of these subjects to bargain over and to select a specific topic over which the bargaining will occur.

From the outset, SEA has had concerns that such bargaining could inhibit the agility of agencies around organization structure, number of individuals required to perform agency work, the professions and professional credentials needed for the work, and the tools and training required for the work, as well as loss of ability to respond quickly to changes or upgrades in technology or protection of data. Further, management currently makes decisions on specific tools required to perform core job functions. These decisions are based upon: portable work, budget, and position requirements. Mandatory bargaining of permissive issues requires that each aspect of these decisions be negotiated. If agencies were required to constantly bargain all changes of numbers, types, and grades, agencies might well have to wait for term negotiations to make any changes in the structure of organizations and the deployment of resources – the exact opposite of agility and an infringement on management's ability to make a final decision when needed. This issue is particularly of concern in today's environment where government is challenged to use scarce resources as effectively as possible.

While the pilot programs are meant to allow for assessment of the use of bargaining over permissive subjects, SEA's concern is that very few pilot projects are bargaining over the full range of (b)(1) issues. This means that the Council will have a difficult time in assessing the impact of doing so should the pilot programs be extended or should the President consider making (b)(1) bargaining mandatory for all agencies. Allowing the pilots to select only one issue could perhaps lead to instances where the bargaining is successful, but fails to show other challenges that may arise. SEA believes that more pilot programs are needed with bargaining over the full range of permissive issues in order to garner the necessary information on the effects of allowing such bargaining to occur, thereby enabling the Council to make an intelligent recommendation to the President, as discussed below.

Creation, Implementation and Use of Metrics

SEA believes metrics are critical to determining the success of the forums and (b)(1) pilot programs and that metrics are necessary to show whether the work being done through forums and pilot programs truly increases agency performance and allows agencies to effectively meet their missions.

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Given SEA's concern with the collection of information to assess the (b)(1) pilot programs, SEA has been very involved with the Council's efforts to establish metrics by which agencies can gauge the effectiveness of both the pilot programs and the general labor-management forums. SEA served on the Council workgroup on metrics and has continued to offer suggestions as necessary.

The metrics workgroup issued an initial report outlining specific metrics and areas for assessment. The metrics were based on the Executive Order's focus on improving the delivery of government services. In terms of the (b)(1) pilot programs, these metrics included the impact of bargaining over permissive subjects on organizational performance (including mission and service delivery, cost-savings and agility), employee satisfaction, and labor relations. While SEA agrees that these are all important metrics, SEA has some concern about whether agencies have appropriate baseline data on which to base assessments and gauge the success of the pilot programs.

Another issue that SEA raised during the metrics workgroup discussions was the inclusion of data on grievances and dispute resolution as important areas for assessment to see the impact of the pilot programs. There was some disagreement about whether such data should be included, but SEA strongly believes that tracking grievances and dispute resolution will provide some correlation to the success of the forums and labor-management relations. In the end, these data points were not put in the formal metrics list, but they were included as additional points that could help agencies strengthen their metrics collection and analysis.

As data has begun to come in, SEA is concerned that agencies are having difficulty choosing, implementing and using metrics. Most metrics plans have just recently been submitted and in meetings earlier this summer, the metrics workgroup determined that training on metrics for those involved in implementing the pilot programs and forums was necessary.

Executive Order 13522 requires that "No later than 18 months after implementation of the pilot projects, the Council shall submit a report to the President evaluating the results of the pilots and recommending appropriate next steps with respect to agency bargaining over the subjects set forth in 5 U.S.C. 7106(b)(1)."

Due to the delays in ensuring agencies have strong metrics in place, SEA questions whether sufficient information will have been collected prior to the quickly approaching reporting deadline to allow agencies, and ultimately the Council, to adequately assess the effectiveness of the (b)(1) pilot programs and to make an appropriate recommendation to the President on whether the pilot programs achieved the aim of increasing government performance and effectiveness. This is true to a good degree, as well, of the labor management forums.

Inclusion of Management Associations in the Partnership

Another issue that has carried over from the Clinton Administration National Partnership Council is the ongoing exclusion of management associations from agency forums. 5 C.F.R. Part 251 allows agencies to create a framework to consult with and communicate with non-labor

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organizations representing federal employees. Several federal management associations have such consultation rights with various agencies. While the regulation does not require agencies to include management associations in forums, SEA believes that such inclusion leads to increased effectiveness when all stakeholders are brought into the decision-making process.

Although SEA and the Federal Managers Association are included at the National Council level, many management associations that are not represented at the national level within their respective agencies have been effectively blocked from having a voice on agency-level forums.

Furthermore, management associations and the employees they represent can play an important role in ensuring the success of agency labor-management forums. Although management associations do not speak for agency management, they do represent the perspective of first and second line managers who serve as a critical conduit between unions and agencies. First and second line managers and career executives are important stakeholders in many decisions that are made as a result of forum discussions and are also directly affected by the issues addressed in those forums.

Although SEA does not have consultation rights under the regulations, the Association does support the efforts of the management associations to gain a seat at the agency forums. At the very least, SEA encourages agencies and unions to open lines of communication between the forums and the management associations.

Another issue strongly encouraged by the Executive Order is pre-decisional involvement. This requires agency management to engage unions in issues being discussed before a decision has been reached and before they reach the formal bargaining table to discuss implementation. SEA believes that partnership among all stakeholders should facilitate dialogue. However, SEA is concerned that in some agencies where pre-decisional involvement is occurring, managers and executives who are not involved in the discussion, but are directly affected by the outcomes, learn of the decisions well after they have been made. In the spirit of partnership and open dialogue, SEA encourages agencies and those involved in pre-decisional involvement discussions to bring in managers and executives to the discussions in order to achieve the best outcome possible before decisions reach the bargaining stage. At the least, the outcome of pre-decisional involvement discussions should be shared quickly with managers and executives.

Involvement in Council Projects

From time to time the Council has determined that it would be beneficial to take on projects that are not directly tied to labor-management relations. SEA has been a part of two such workgroups, telework and employee performance management.

Telework Workgroup

SEA played an active role in the telework workgroup which ultimately provided guidance to the Office of Personnel Management (OPM) on the telework manual produced by the agency to provide guidance for employees and agencies on implementing telework. This guidance was

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especially critical given the recently passed legislation expanding the scope of telework throughout the federal government. The original document that the workgroup started with had not been updated for many years. After many discussions, the workgroup provided suggestions on updates and technical information that might not have been included had so many stakeholders not been involved.

Although this workgroup was a departure from the general issues considered by the Council, it was a good example of the work that can be accomplished when discussions include stakeholders from unions, agencies, and management associations. Each brings a unique perspective, set of concerns, and expertise to the table which was critical in ensuring a strong document that has been subsequently released and is serving as one of the main pieces of reference material on the telework.gov website.

Employee Performance Management Workgroup

Throughout the summer, SEA participated in the Employee Performance Management workgroup – a joint effort between the Council and the Chief Human Capital Officers (CHCO) Council. This workgroup was established following a briefing by OPM Director John Berry on the efforts of the CHCO Council to examine the current General Schedule performance management system and suggest changes. Council members asked for inclusion in the discussions and the workgroup was subsequently created. After initial discussions, the workgroup divided into three sub-groups – leadership and culture, employee and supervisor engagement, and employee and supervisor training and development. SEA played an active role in the leadership and culture and the training and development subgroups.

After several months of meetings and discussions, the workgroup released a document at the September 21, 2011 Council meeting detailing the recommendations on improving performance management throughout the government. SEA approves of many of the recommendations in the document – especially those that require engagement of and training for political appointees, mandatory training for supervisors, and the creation of oversight boards within agencies to ensure that performance management is being implemented at all levels.

However, SEA continues to have concerns that the recommendations take a stronger focus on accountability and dealing with poor performance. While the document does have some references to this issue, SEA believes it is critical that agencies will be held responsible for dealing with poor performers and that necessary support is given to managers and supervisors who do so. Given that the report is a collaboration between major stakeholders (management and executive associations, unions and agencies), SEA recommends that the report be clear that any time recommendations are made to work on performance management through agency forums, it also recommend that management associations be included in those conversations.

The report put forth by the workgroup is relatively comprehensive and contains both new suggestions and recommendations that have been made in previous examinations of performance management. SEA is cautiously hopeful that the report will help strengthen performance management and will carry some weight given that so many stakeholders were involved in this process. As with the telework workgroup, the employee performance management workgroup is

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also a positive collaboration between executive and management associations, unions, and agencies.

Conclusion

SEA appreciates the opportunity to serve on the National Council for Federal Labor-Management Relations and to bring forward the unique perspective and expertise of its career Senior Executive members. The Council provides the opportunity for major stakeholders to have open discussion about important government issues and to also lend expertise to agencies as they work on the implementation of forums, (b)(1) pilot programs and the resolution of issues through pre-decisional involvement.

As noted above, SEA continues to have concerns about many issues being overseen by the Council and hopes that these can be resolved before the report to the President is due. SEA believes that attention to these concerns will help strengthen the new era of partnership established by the Obama Executive Order and that executives have the tools they need to ensure that government is run effectively and efficiently.

A December 1997 National Partnership Council document, "A Report to the President on Progress in Labor-Management Partnerships," concluded, "The efforts of these partners are paying off as they are getting results through partnership. These results not only improve the way government does business, but also indicate improvements in quality, service, and job satisfaction."

After serving as a part of the NPC in the 1990s, examining the after effects during the Bush administration, and again being a stakeholder on the current Council, SEA has concluded that forums work when they can identify issues which are a win-win for management and unions, such as resolving specific problems to make employees' jobs easier and save money or make the organization more effective.

SEA thanks the Subcommittee for its attention to labor-management issues and looks forward to answering any questions you may have.

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