

Remarks of
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I want to thank the Society of Federal Labor and Employee Relations Professionals for the opportunity to address the organization's 37th Annual Symposium. For nearly four decades the Society has provided a forum for dialogue among labor, management and neutrals regarding federal labor and employee relations issues. I welcome the chance to be a part of your discussion. I want to make clear that I speak on behalf of the FLRA Office of General Counsel (OGC). My office is the FLRA's independent investigative and prosecutorial component. The OGC investigates, settles, and prosecutes Unfair Labor Practice charges. Through our Regional Offices, the OGC processes representation petitions from filing to Decision and Order, including the supervision or conduct of elections, and the determination of all legal and factual issues raised by representation petitions.

This past year the FLRA celebrated its 30th anniversary. Some of you may have been a witness to, or even a part of the dialogue that led to the establishment of the FLRA in 1979. If your work includes labor relations, no

doubt you are aware that during the past decade, the FLRA survived a very uncertain time, and presently is in a period of rebuilding. My work on the Obama Presidential Transition Project acquainted me with the general extent to which previous agency leadership failed to maintain the agency's core capabilities. Since assuming my duties as General Counsel, I have become painfully aware of the lasting impact of those choices.

During the several years before my appointment, FLRA presidential leadership made budget and hiring decisions that left the Office of General Counsel at less than half the pre-2000 staff level. Critical guidance, manuals and training materials intended to make FLRA services more user friendly were summarily removed from the public domain. Many thousands of hours of FLRA professional staff time had been invested in the creation of these materials, which had become the parties' common ground for dispute resolution. Yet they were simply deleted from the FLRA's website and not replaced. Parties were left with nothing more than the statute, regulations and legal forms to guide their labor relations practices and navigate FLRA processes. Shortly thereafter, key FLRA presidential leadership, including the General Counsel, resigned. When I took the oath of office on August 17, 2009 the FLRA had been without a General Counsel for nearly eighteen months. By this time, a ULP backlog of 342 meritorious ULP charges and over 800 ULP appeals awaited action. Not surprisingly, during this period,

both FLRA customer and career employee dissatisfaction reached intolerable levels.

I am proud to report that due to the hard work and dedication of career OGC employees, this backlog was eliminated within 180 days after I took my oath, and OGC employees are presently working current cases. Career FLRA employees recovered the historical guidance and manuals and made them available at the agency's updated web site. For the time being, I urge you to refer to these materials, as our agents do, until updated materials are posted. OGC employees are working diligently on revisions to our information resources, which will be published as they are ready. We expect to release a comprehensive ULP case law outline by the end of June and an updated ULP manual by the end of July.

Since August of 2009, OGC employees have conducted dozens of training sessions throughout the country. We offer quarterly statutory training in the seven cities where our offices are located, and we do our best to respond favorably to additional training requests. For those who cannot attend a regularly scheduled training, training slides are posted on the OGC portion of our website. Our scheduled training and training contacts can be found on the agency website's OGC training page, which is updated regularly. Our goal is to ensure that the FLRA's customer base (agency and union representatives as well as federal managers and employees at all levels) develop a working knowledge of the law and FLRA dispute resolution

processes. We believe that an aggressive approach to training will assist the parties in avoiding disputes, resolving disputes informally, and presenting to the OGC only those disputes that require third party intervention.

Further, we have undertaken case processing changes aimed at integrating alternative dispute resolution practices into all stages of OGC ULP and representation case processing. We recently published final revisions to ULP regulations restoring OGC agents' authority to assist parties who are willing to resolve labor-management disputes prior to a final merits decision. By the end of May, every OGC employee will have received alternative dispute resolution skills training in support of the authority granted by the amended regulations. OGC managers and agents are developing best practices regarding the application of these skills and use of their authority. In my opinion, our statutory mission is best served when we not only resolve labor relations disputes fairly and expeditiously, but also facilitate constructive, interest-based discussions between the parties.

Consistent with this policy, we recently launched a joint OGC/FMCS training initiative in support of Executive Order 13522. This two-day program is also being offered in the seven cities where the FLRA has offices. We ask that participants attend the program with their bargaining counterparts so that management and union representatives will have a common understanding and shared experience of the information and skills needed for effective labor management forums. Day one of the training will

cover statutory bargaining rights and obligations, particularly section 7106(b)(1), as well as pre-decisional involvement. Day two will be devoted to the fundamentals of establishing and maintaining an effective Labor Management Forum that meets the goals of the Executive Order. The program will be offered at least two times in seven locations between mid-May and September 30.

Later in the program, you will hear from my colleague, George Cohen, Director of the Federal Mediation and Conciliation Service. I would like to express my gratitude to Director Cohen and the entire staff at the FMCS for their contribution to this joint training initiative. The FMCS has a long and distinguished record of accomplishments in furtherance of labor management cooperation in all U.S. economic sectors and internationally. The OGC is fortunate to have them as partners in this endeavor. Together our agencies are committed to providing parties with the tools they need to comply with the President's directives, and develop more constructive labor management relationships that serve the public interest.

In further support of the Executive Order, the FLRA's Collaborative Alternative Dispute Resolution Office (CADRO) has designed a "tool kit" of materials for parties.

I would now like focus on a matter of particular concern to the OGC and parties alike – ULP and representation case processing time. When the FLRA was established in 1979, our internal case processing time targets

were 60 days for investigation and decision on ULP cases and 30 days for stipulation or scheduled hearing for representation cases. These time targets were patterned after National Labor Relations Board practice, and set by a cadre of NLRB managers and agents who were among the FLRA's first employees. While NLRB time targets have actually been adjusted downward to 49 days for the highest-priority ULP cases and 42 days from petition to election in all representation cases, OGC time targets have drifted upwards since 1979 to 120 days for both ULP and representation cases. Instead of adjusting FLRA field agent staffing to meet demand, OGC time targets have been adjusted to reflect declining staffing levels. The NLRB maintains a staffing level that results in an effective ratio of about 6-8 pending cases per agent. In contrast, the OGC presently employs 40 field agents to handle more than 4000 pending ULP cases and 300 REP cases per year, and the ratio of pending cases per agent is between 45 and 50 to one. And this staffing crisis is not getting easier, as our case intake is trending upwards.

My highest priority over the coming years is to reduce OGC case processing time. The existence of a labor dispute -- whether it is an alleged unfair labor practice or representation question -- limits the parties' ability to conduct business. Therefore undue delays that occur as a result of the OGC's dispute resolution process are costly to the parties. OGC delays can affect timely agency actions, impede meaningful remedies, and foster labor

management problems. These adverse effects are compounded by increasing delays in OGC case processing.

We will be closely scrutinizing every aspect of our internal processes to find ways to move cases more quickly. Deputy General Counsel, Dennis Walsh, who joined the FLRA in December after a distinguished career at the NLRB, and our career OGC managers, some of whom helped establish the FLRA in 1979, are committed to this effort. The Union of Authority Employees, the independent union representing all eligible agency employees, and OGC management consistently work collaboratively, on a pre-decisional basis regarding such initiatives. I am certain that our agents are in the best position to help management find the ways to improve case processing efficiency. Changes will be made with their full participation, and I anticipate that these changes will yield improvements.

Information technology can also reduce case processing time. The agency website will continually improve parties' access to relevant information and processes. In the near term, the FLRA will begin implementing electronic filing, which is bound to increase the efficiency of our operations. FLRA agents are beginning to use on-line meeting tools to facilitate investigations and conferences between the parties and to provide training. All regions are now able to offer "remote access balloting" in lieu of traditional mail balloting, which dramatically increases the reliability of the voting process, and decreases both the time needed to conduct the election

and the cost of the election process (i.e. OGC staff time, materials cost, and postage).

Still, in spite of our best efforts, it is not possible to return to 1979 time targets or match the NLRB benchmarks, until we reduce our agent to case ratio. It is my strongly held view that an investment in FLRA agents will significantly improve the effectiveness and efficiency of labor relations throughout the federal government. By resolving labor disputes not only fairly, but also more quickly, the OGC will fulfill its core statutory mission. Like all disputes, labor disputes have costs. Congress decided that these costs are outweighed by the benefit of providing federal employees the right to organize and bargain collectively. The FLRA was established to facilitate the resolution of labor disputes consistent with this legislative purpose.

There is no question in my mind that an increased investment in OGC field agents coupled with case processing improvements will result in a significant reduction in the total cost of labor relations disputes. I further believe that timely dispute resolutions contribute to stability in labor relations, support high functioning labor-management relationships, and increase the efficiency and effectiveness of government. I look forward to working with my colleagues in the OGC, labor and agency representatives, and neutrals to provide federal employees with fair, high quality, and timely resolution of labor relations disputes.