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STATEMENT OF

H. L. KRIEGER, DIRECTOR

FEDERAL PERSONNEL AND COMPENSATION DIVISION

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON

LABOR MANAGEMENT RELATIONS IN THE FEDERAL GOVERNMENT

MADAME CHAIRWOMAN AND MEMBERS OF THE SUBCOMMITTEE:

We are pleased to be here to testify on the implementation of the labor-management relations provisions of the Civil Service Reform Act of 1978 and, particularly, on the activities of the Federal Labor Relations Authority during its first year of operation. An important aspect of the change from an executive order to a statutory labor relations program is the opportunity it provides for Congressional oversight and we commend you and your staff for undertaking these hearings.

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We believe that with the enactment of title VII of the Act a new era in Federal labor relations began. With it, come new challenges and responsibilities for Federal managers, labor organizations, and for all of us with a stake in the effective and efficient conduct of Government business.

A major aspect of the Reform Act was the establishment of the Federal Labor Relations Authority as an independent, neutral third party for resolving labor-management disputes. Because of the Authority's pivotal role in the Federal labor relations program, the effectiveness of its operations are critical to the program's success. Shortly after the Act's passage, GAO was asked by the Senate Committee on Governmental Affairs to monitor and report to Congress on the first year's activities of the Authority. The results of our work were reported to the Senate Committee on June 11, 1979, and to the Congress on April 2, 1980.

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Because of the Authority's critical role under the Civil Service Reform Act, it is essential that early on it demonstrate credibility as the independent and effective body that Congress intended to establish. The Authority's inability to accomplish the responsibilities assigned to it in a timely and effective manner will not only take its toll on protecting the rights of employees and their representatives, but also on the effective and efficient operation of Government. In reviewing the Authority's activities during its first year of operation we expressed concern that delay in processing cases will increase the time and energy required of Federal managers to resolve problems arising in the workplace. Processing delays can strain and disrupt the working relationship between supervisors and their employees. Although speculative, the consequences may be costly in terms of declining morale and productivity.

The Authority assumed the third-party functions previously performed under a series of executive orders governing Federal labor relations since 1962 and was assigned additional responsibilities in title VII of the Act. Its role includes interpreting and applying title VII to

(1) provide a fair balance between employees' rights to participate in collective bargaining and the Federal Government's need to maintain the efficiency of its operations;

(2) define the extent to which employee representatives may participate in decisions affecting employment conditions; and

(3) safeguard employees' rights by adjudicating disputes alleging violations of employee protections under the Act.

Throughout its first year, start-up and operational problems impaired the ability of the Authority and its Office of General Counsel to effectively perform all duties assigned them by the Act.

Problems faced by the Authority in its first year of operation included:

(1) Insufficient resources to handle new responsibilities assigned under title VII, particularly the lack of a sufficiently skilled staff in FLRA's nine regional offices to prosecute unfair labor practice cases. The resource problem was compounded by an unanticipated high volume of cases.

(2) Delayed appointment and confirmation of the General Counsel prevented the issuing of FLRA's regulations or the taking of dispositive action on unfair labor practice cases, resulting in a substantial case backlog.

(3) Frustrating and time-consuming difficulties in acquiring suitable office space for its headquarters and several of its regional offices.

A continuing increase in caseload and a lack of suitable office space persist to date. The number of filings for almost each type of case handled by the Authority and its General Counsel has far exceeded initial estimates which were based on the number of case filings under the executive order program. The Authority began its operations in January 1979 with a backlog of almost 1,000 cases.

The bulk of the Authority's caseload consists of unfair labor practice cases filed at the regional level. In 1979, for example, they represented 3,367 of the approximately

4,300 cases filed with the Authority. In this area, however, the Authority's General Counsel and his regional directors have been very successful in obtaining settlements in the vast majority of unfair labor practice charges filed which have merit, thereby precluding formal adjudication. Recently, their settlement rate has been approximately 75 percent. Their success gives us some cause for optimism as to the ability of the regional offices to achieve and even improve on the interim time targets established by the General Counsel last fall. (The interim time target for a regional office decision on unfair labor practice cases is 60 days after the filing of the charge; the time target for implementing the decision--that is, issuing a complaint without settlement--is 75 days.) When these interim time targets were established, 1,014 ULP's, 66 percent of those on hand, did not meet the processing goals. By the end of February, this number was reduced to 578. The majority of new cases are now being processed within the 60 and 75 day time targets.

Another factor in recent progress made by the General Counsel in regional office case handling is the very efficient system he has in place to monitor the processing of cases at the regional level. This system provides for quick identification of potential or actual case backlogs which enables the General Counsel to remedy the backlogs before they become serious. It appears to us that based on the Authority's

field operations performance to date, it will be able to efficiently and effectively handle the volume of cases which they anticipate will be filed in the future.

We are less optimistic, however, that the headquarters operations will be able to handle their anticipated caseload. During 1979, 702 cases were at the Authority level for disposition. Of these, 306 cases or about 43 percent were closed. In the future, the number of cases reaching the Authority level is expected to increase to more then 800 cases per year. Therefore, the potential for a serious backlog exists. The Authority headquarters does not have the same flexibility as the General Counsel in trying to achieve voluntary settlements. While the number of case filings is beyond the Authority's control, we are hopeful that its reorganization and efforts at improving its case processing and case handling will improve the efficiency of its operations.

We also hope that as the Authority issues decisions clarifying and applying title VII's provisions the number of case filings will level off. However, if the experience of the National Labor Relations Board is any indicator, this is not likely to occur.

The Authority's problems in obtaining needed office space, unfortunately, persist. The situation remains the same as we described in our reports in June 1979 and April 2, 1980. The lack of suitable space for both FLRA headquarters and regional personnel has impaired FLRA's ability to carry

out its responsibilities. Headquarters personnel are still temporarily located at the Office of Personnel Management (OPM), the Department of Labor building, and two other Washington, D.C., locations. Regional personnel were operating out of the Department of Labor's field offices for a good part of 1979, and many continue to be housed in temporary quarters.

The lack of adequate space and dispersal of staff have seriously affected FLRA's efficiency and public image. This has resulted in:

--Staff spending considerable time commuting between various office locations.

--The lack of space in some offices for desks for professional staff and the reluctance to fill certain vacant personnel slots because there was no place to put additional staff.

--The appearance of a potential conflict of interest between FLRA, OPM, and the Department of Labor because FLRA continues to be housed in these two agencies.

--Delays in purchasing and setting up necessary new equipment, research, and reference materials.

--Inefficient handling of workload.

--Morale problems resulting from the physical separation of supervisors and subordinates.

Almost as troubling, in our view, as the lack of suitable space is the time and effort that the Authority, including its members, has had to devote to trying to resolve this problem in negotiations with GSA--which I must add have been generally unsuccessful to date.

These problems have affected the Authority's ability to carry out its responsibilities efficiently. The result has been a delay in processing cases and issuing decisions causing confusion and frustration among the parties to the collective bargaining progress.

Since we believe that certain of the Authority's start-up problems may have been minimized if more technical and advisory assistance had been available, we recommend in our report that the Office of Management and Budget enhance its capability to assist new agencies in setting up operations. An OMB transition team, assigned full-time to a new or reorganized agency for a specified time, could be of great assistance in setting up operations. The Authority endorsed the report's recommendation and observed that the it might have benefited if such assistance had been available to it.

While the problems described above were major factors contributing to the delay in processing cases and issuing decisions, most were beyond the Authority's direct control.

Factors impeding efficient case processing within the Authority's control included:

--The lengthy time involved in recruiting efforts to permanently fill the executive director position.

--The organization of headquarters into four distinct and isolated groups, limiting management's flexibility to reassign or rotate staff.

--The delay in setting and enforcing time limits for various stages of case processing.

--The failure to give priority to cases which could involve more significant and far-reaching issues.

However, the Authority has recently begun taking steps to remedy these problems. For example, it is (1) reorganizing its headquarters operations; (2) experimenting with the use of time targets for various stages of case processing; and (3) instituting some new procedures for expediting case handling. We believe that actions taken by the Authority over the next year to expedite case handling will be critical to the success of the labor relations program and especially to how it is perceived by agencies, unions, and other interested parties.

In our report to the Congress, we also discuss other aspects of the Authority's operations including the Federal Service Impasses Panel, established by the Act as an entity within the Authority to assist in resolving negotiation impasses between Federal agencies and employee unions. While the Panel appears to be generally effective in carrying out its statutory mandate, the report makes several recommendations to the Panel's Chairman which we believe will improve its operations.

So far this morning I have described many of the problems that the Authority has experienced in its first year. I, by no means, want to overlook or minimize the positive aspects of the Authority's establishment and operations. We believe there has been a noticeable change in Federal labor-management relations as a result of the Authority's leadership role.

The Authority members and the General Counsel have recognized and stressed the importance of being perceived by labor organizations, Federal agencies, and the public as a truly neutral third party for adjudicating complaints and setting policy. Their handling of cases, frequent public addresses, and their openness and availability to their clientele reflect their efforts in this respect. Moreover, while not shying away from their responsibility in prosecuting and adjudicating disputes, they have consistently emphasized settling cases before they reach the complaint stage.

This is not to say, however, that the Authority's decisions on specific issues have not created controversy in the labor-management community among advocates on both sides of the issues.

While we are certainly more optimistic today than 6 months ago as to the Authority's ability to effectively perform its statutory responsibilities, there is some cause for concern. For example, the Authority currently projects that under its fiscal year 1981 budget, negotiability cases will take a year to process, from date of filing to date of decision. Unfair labor practices cases will average more than 2 years.

The question is--Is Congress and the labor-management community willing to live with these kinds of time frames? Primary responsibility, of course, lies with the Authority. We have noted in our report some of their recent efforts

to improve case handling and staff productivity and it is essential that these efforts continue. However, the Authority cannot and should not carry the entire burden.

I would like to make several comments on this point. First I noted at the beginning of my statement that under the statute the Authority plays a pivotal role in labor-management relations. As you well know, third party dispute resolution machinery is not, however, the heart or the essence of a labor relations program. A successful program is one characterized by the bilateral resolution of mutual problems and challenges by managers and employee representatives at their work locations. The Authority is intended only as a final resort--only when the parties have thoroughly exhausted efforts at resolving these problems themselves. While from our perspective it is not possible to make any conclusive statements on this point, it does appear that since the statute's enactment, the parties, to an excessive degree, are relying on the Authority rather than on their own efforts to resolve the issues confronting them.

Secondly, we would like to underscore a point made repeatedly by Steve Gordon, the Authority's General Counsel, stressing the need for better cooperation, by Federal agencies in particular, in order to help the Authority concentrate its energies on substantive cases. Federal agencies, and unions as well, have a responsibility to insure that their representatives dealing with the Authority are informed and

trained on title VII of the Act and on the Authority's role and procedures so as to permit the most efficient use of their own resources as well as the Authority's in case handling.

Finally, we believe that the viability of the labor relations program depends on a willingness, by all of us, to recognize what a critical role labor relations plays, not as a separate component of, but as an integral part of the Federal personnel management system. Labor relations cannot be considered in isolation and it would be a mistake for Federal agencies, the Office of Personnel Management, or the GAO to view it as such. It is, rather, a vital aspect of the Government's management of its work force and has a consequent impact on the cost and effectiveness of Government operations. Effective labor relations is essential to maintaining high employee morale and productivity. Members of the Federal labor-management relations community and the Federal Labor Relations Authority face a great challenge over the next few years and the success of their efforts will, in large measure, determine the success of Civil Service Reform.

This concludes my statement Madame Chairwoman. We would be pleased to answer questions.