BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

The Federal Labor Relations Authority: Its First Year In Operation

The Civil Service Reform Act of 1978 has changed labor-management relations in the Federal Government. A principal factor in that change is the establishment of the Federal Labor Relations Authority as an independent, neutral third party for resolving labor-management disputes.

Transition and startup problems throughout the year have affected the Authority's ability to carry out its statutory responsibilities efficiently. By the end of its first year, many of these problems had been resolved, but some continue to impair the Authority's effectiveness. Overall, it is making progress in performing its statutory role.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

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This report discusses the Federal Labor Relations Authority's first year of operations in implementing the Federal Labor-Management Relations Title of the Civil Service Reform Act of 1978. It discusses the adequacy and allocation of staff resources, the designation of regional and Washington office locations, and the progress made in establishing procedures and techniques for case handling. We initiated this review at the request of the Senate Committee on Governmental Affairs.

We are sending copies of this report to the Director, Office of Management and Budget; the Chairmen, Federal Labor Relations Authority and Federal Service Impasses Panel; and the Director, Federal Mediation and Conciliation Service.

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

THE FEDERAL LABOR RELATIONS AUTHORITY: ITS FIRST YEAR IN OPERATION

D I G E S T

Throughout its first year, startup and operational problems have impaired the ability of the Federal Labor Relations Authority and its General Counsel to effectively perform all duties assigned them under the Civil Service Reform Act of 1978.

In spite of the problems, however, a noticeable change has been achieved in Federal labor-management relations as a result of the Authority's leadership role. This change is consistent with the Congress' intent in establishing the Authority as a neutral, independent third party for resolving disputes in the Federal Labor Relations Program.

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

--provide for a fair balance between employees' rights to participate in collective bargaining and the Federal Government's need to maintain the efficiency of its operations,

--define the extent to which employee representatives may participate in decisions affecting employment conditions, and

--safeguard employees' rights by adjudicating disputes alleging violations of employee protections under the act.

FPCD-80-40

The Authority has faced significant transition and startup problems throughout the year, including

--insufficient resources to handle new functions under the act;

--delayed appointment and confirmation of the General Counsel, preventing the issuing of regulations and the disposing of unfair labor practice cases;

--a continuing and unanticipated increase in case filings; and

--difficulties in acquiring suitable office space for its headquarters and several of its regional offices.

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 process.

According to Authority officials, they could have used outside technical assistance in setting up operations. While the Office of Management and Budget (OMB) assigned one staff person to monitor the transfer of people and functions to the Authority, this person did not assist in setting up the new agency. Authority officials believe that such assistance may have prevented some of their initial startup problems.

By the end of its first year of operation, many startup problems had been resolved. But problems such as the lack of adequate office space continue to impair the Authority's effectiveness.

AUTHORITY HEADQUARTERS

In addition to providing administrative and support services, the Authority's headquarters is responsible for reviewing and deciding

--representation and unfair labor practice cases filed at the regional level and

--policy questions, exceptions to arbitration awards, and negotiability disputes filed at the headquarters level.

Within headquarters, there is also an Office of Administrative Law Judges, an autonomous group, with responsibility for conducting hearings on unfair labor practice cases prosecuted by the General Counsel.

Although improvements have been made in recent months, the Authority's headquarters had difficulty in beginning its operations. The lack of trained staff, inadequate office space, delay in issuing regulations, and having to assume administrative and support services were major factors contributing to the delay in processing cases and issuing decisions. While these problems affected the Authority's ability to handle its caseload, most were beyond its direct control.

Factors impeding efficient case processing, which were 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;

--the delay in setting and enforcing time limits for various stages of case processing; and

--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 planning to reorganize its headquarters operations, experimenting with the use of time targets for various stages of case processing, and instituting some new procedures for expediting case handling.

THE GENERAL COUNSEL AND REGIONAL OPERATIONS

A significant change in title VII was its creation of the Office of General Counsel with independent authority to investigate and prosecute unfair labor practice cases. Since his confirmation on July 27, 1979, the General Counsel has moved quickly to establish nine regional offices, fill most vacant regional positions, issue time targets for processing cases, start formal staff training to insure competent case handling and standardization of regional procedures; emphasize voluntary informal settlement of unfair labor practice charges filed at the regional level; and begin developing a new and more formal case-processing and case-tracking system.

Despite recent progress, however, some problems persist, including a growing case backlog; insufficient office space; the continuing need to train newly hired staff to insure that regional office approaches, procedures, and policies are coordinated and standardized; and the necessity to inform

and familiarize agencies, unions, and employees with the Authority's procedures and policies.

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THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, a separate entity within the Authority, is generally effective in carrying out its statutory responsibility to assist Federal agencies and employee unions in resolving impasses arising during contract negotiations. The Panel's effectiveness, however, is somewhat diminished by delays in processing cases and issuing decisions.

Also, the lack of clarity regarding the respective roles of the Panel and the Federal Mediation and Conciliation Service, which under title VII has initial responsibility for trying to secure a voluntary settlement between parties, makes the process of resolving impasses less efficient.

CONCLUSIONS

Although transition and startup problems have impaired the Authority in effectively performing its statutory duties, many improvements have occurred in recent months. But many of these needed actions took nearly a year to achieve.

It is essential that the Authority quickly demonstrate its credibility as the independent and effective body that the Congress intended to establish. Its inability to timely and effectively provide for a balance of union, employee, and management rights and responsibilities will take its toll not only on protecting the rights of employees and their chosen representatives but also on the efficient operation of the Government. GAO is concerned that the delays in processing cases will increase the time and energy

required of Federal managers to resolve problems and will strain and disrupt the working relationship between supervisors and their employees. The consequences may be costly in terms of declining morale and productivity.

Several areas within the Authority's internal operations which warrant increased attention are identified and discussed in the report.

RECOMMENDATION TO THE DIRECTOR, OMB

An OMB transition team assigned full time to a new or reorganized agency for a specified period could be of great assistance in setting up operations. Enough organizational changes are taking place throughout the Federal Government to justify OMB's investment in the area. The faster that agencies can begin operating, the faster they can carry out their missions. Transition and startup problems faced by the Authority may have been minimized if more technical and advisory assistance had been available to it.

Therefore, GAO recommends that OMB enhance its capability to assist new agencies in setting up operations, especially from an administrative standpoint (space, budgets, equipment, organizational structure, and staff).

RECOMMENDATIONS TO THE CHAIRMAN, FEDERAL SERVICE IMPASSES PANEL

The Chairman of the Panel should

--set time targets for each segment of case processing,

--clarify the Panel's relationship with the Federal Mediation and Conciliation Service, and

--consider allowing Panel members to operate individually in various regions.

AGENCY COMMENTS

The Authority commented that the report accurately describes its first year's performance. It endorsed the report's recommendation that OMB have the capability to assist newly formed agencies and observed that the Authority might have benefited if such assistance had been available to it. The Authority stated that action on most, if not all, of GAO's suggestions for improving operations were being taken.

OMB, while agreeing that sufficient organizational changes are going on throughout the Federal Government to justify its investment in the area, stated that since 1977 OMB has had such capability and has used it continuously to assist agencies, including the Authority. On the basis of observations of the Authority's early experiences, GAO believes that the assistance provided was not sufficient and that the type of assistance suggested in the report is needed.

The Federal Service Impasses Panel agreed with GAO's concerns about delays in processing cases and the need to consider an alternative organization plan to expedite handling of its rising caseload. It is experimenting with different dispute resolution techniques to reduce delays and is considering acting on GAO's suggestion that time targets be included in its procedures. Also, it is exploring, with the Federal Mediation and Conciliation Service, the

possibility of making a joint public announcement concerning their respective responsibilities in the Federal labor relations program.

The Panel does not believe that the report accurately describes the Panel's role and effectiveness or that the duplication and lack of clarity concerning mediation efforts by the Federal Mediation and Conciliation Service and the Panel negatively affect the Service's ability to secure voluntary settlements. The Service, however, agreed that it and the Panel need to clarify their roles. They observed that, if such a clarification were included in the Panel's regulations, it would "go a long way toward resolving the confusion concerning the proper roles of the Service and the Panel."

Contents

ABBREVIATIONS

ALJs	administrative law judges
FLRA	Federal Labor Relations Authority
FLRC	Federal Labor Relations Council
FMCS	Federal Mediation and Conciliation Service
GAO	General Accounting Office
GSA	General Services Administration
NLRB	National Labor Relations Board
OMB	Office of Management and Budget
OPM	Office of Personnel Management

CHAPTER 1

INTRODUCTION

The Federal Labor Relations Authority (FLRA) is an independent, bipartisan, and neutral third party for resolving labor-management relations disputes in the Federal Government. Created by President Carter's Reorganization Plan No. 2, FLRA became a statutory agency on January 11, 1979, under title VII of the Civil Service Reform Act. Title VII guarantees about 2.1 million Federal employees the right to bargain collectively through their chosen representatives and establishes procedures for adjudicating complaints and enforcing rights established by its provisions. About 1.2 million Federal employees in more than 50 Federal agencies are represented by labor unions and organized in more than 3,000 bargaining units.

WHAT IS TITLE VII?

The preamble to title VII states that collective bargaining safeguards the public interest and contributes to the effective conduct of public business. While other titles of the act aim at improving the operation of Government by establishing procedures to make management as well as nonsupervisory employees more accountable for their performance, title VII recognizes the desirability of permitting nonsupervisory employees a voice in decisions affecting terms and conditions of their employment. Therefore, it establishes procedures for recognizing and certifying labor organization representatives and defines procedures for negotiating labor agreements.

In certain respects, however, title VII (as well as title II provisions dealing with employee appeals) is unique in that it balances the act's primary thrust of providing managers with tools and procedures designed to make them more effective and accountable by also establishing procedures designed to safeguard the rights of employees.

FLRA's Chairman has stated publicly on several occasions that "Title VII for the first time makes Federal employees first class citizens." It replaces a series of Executive orders which for 16 years provided the basis for labor relations in the Federal Government. Under Executive Order 11491, title VII's predecessor, third-party disputes were handled by the Assistant Secretary of Labor and the Federal Labor Relations Council (FLRC). FLRC's part-time members were the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor.

The Executive order program was frequently criticized by labor organization representatives and others as providing only limited rights for employees; inadequate protections because of the absence of a truly independent decisionmaking body; and an unstable environment for collective bargaining, as it was subject to change or extinction by the President at the "stroke of a pen." Title VII responds to many of these criticisms. But it preserves many of the distinctions between Federal and private sector employees 1/ by continuing the Executive order's prohibition on the right of Federal employees to strike and negotiate wages and other fringe benefits and by reserving certain rights of management to act unilaterally.

FLRA MAKEUP

FLRA is modeled in many respects on the National Labor Relations Board (NLRB) which has responsibility for labor relations in the private sector. FLRA has responsibility for resolving third-party disputes previously held by FLRC and the Assistant Secretary of Labor. With the passage of title VII, FLRA was given a statutory base and assigned a number of significant new responsibilities.

In establishing FLRA, the Congress stressed two objectives:

--Assuring impartial adjudication of Federal labor-management disputes and eliminating the appearance of management bias, which existed under the previous Executive order program, by establishing an independent, full-time board.

--Eliminating the existing fragmentation of authority in the Federal Labor Relations Program.

The intent, as outlined in the Senate Report, 2/ was that:

> "* * * the FLRA will have comprehensive jurisdiction in Federal labor-management relations. Merging the responsibility into a single agency will eliminate the need for continuous coordination between two separate agencies. * * * This change should result in more effective

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1/The right of private sector employees to bargain collectively was established by statute in 1935 with passage of the National Labor Relations Act.

2/Senate Report No. 95-969, July 10, 1978, pp. 7 and 8.

policymaking and administration in this area of vital importance to both Federal employees and Federal managers as well as the public at large."

FLRA's role, as defined under title VII, is to provide leadership in establishing policies and guidance for the Federal Labor Relations Program. Its responsibilities include deciding policy questions, negotiability disputes, exceptions to arbitration awards, representation cases, and unfair labor practice complaints. (See app. I.)

The act provides for three full-time members appointed by the President with the advice and consent of the Senate and removable only for cause. The three initial members have been appointed for terms of 1, 3, and 5 years. Thereafter, each member shall be appointed for a 5-year term. These three individuals are independent decisionmakers functioning primarily as adjudicators in interpreting and applying provisions of the act, primarily on a case-by-case basis.

Title VII also provides for an Office of General Counsel within FLRA, whose chief function is to investigate and prosecute unfair labor practice charges. Prosecuting unfair labor practice cases is an important change in the labor relations program. The Office of General Counsel is an independent entity reflecting the Congress' intent to keep prosecutorial and adjudicative functions separate within FLRA. Its significance is that employees, labor organizations, and employers filing charges under the act, found by the General Counsel's investigation to be meritorious, will no longer have to bear the burden of prosecuting their own case. Since rights created by title VII are now viewed as public rights, barring a settlement by the parties involved, the General Counsel can now argue the case before an administrative law judge whose decision is then either affirmed, reversed, or modified by FLRA members.

The General Counsel, appointed by the President and confirmed by the Senate for a 5-year term, has direct responsibility for FLRA's nine regional offices. Unfair labor practice cases initially filed and investigated at the regional level form the bulk of the regional offices' caseload. They also handle representation cases which includes investigating representation petitions, supervising or conducting representation elections, and certifying election results.

In addition to FLRA's adjudicative role, it also has responsibility for resolving negotiation impasses. A negotiation impasse occurs when parties, at the bargaining table,

are unable to agree on contract proposals. This role is assigned to the Federal Service Impasses Panel, a separate entity within FLRA.

SCOPE OF REVIEW

The Senate Committee on Governmental Affairs asked us to monitor activities of FLRA. We have reviewed FLRA's operations in implementing title VII of the reform act.

Our monitoring included examining FLRA's budget, the adequacy and allocation of its staff resources, its designation of regional and Washington office locations, the adequacy of its office space, and its progress in establishing procedures for case handling.

We did our work at FLRA headquarters in Washington, D.C., and at seven FLRA field offices--Boston, Atlanta, Chicago, Dallas, San Francisco, Kansas City, and Washington, D.C. We also obtained the views of Federal agencies and unions at headquarters and regional levels with respect to their experiences with and impressions of FLRA's first year activities.

CHAPTER 2

TRANSITION AND STARTUP PROBLEMS

FLRA has faced significant transition and startup problems during its first year of operation. This has affected its ability to effectively carry out its responsibilities under title VII. While many of these problems have been resolved, some continue to hamper FLRA's effectiveness.

During this transition period, no one outside FLRA was available to provide technical, specialized information and assistance essential to effectively accomplish the reorganization. According to FLRA officials, such assistance was needed in many areas, such as identifying employees to be transferred and dealing with questions on relocating employees. OMB did assign one staff person to FLRA in the latter part of 1979 whose primary responsibility was to insure that OMB's determination order transferring employees to FLRA was accomplished. According to FLRA officials, OMB's involvement, which terminated when the determination order was issued in January 1980, was to track events dealing with the transfer. Accomplishing the transfer and establishing new operations was left to FLRA.

In a June 11, 1979, report to the Chairman of the Senate Committee on Governmental Affairs we reported on serious problems FLRA was experiencing after nearly 6 months of operation. These included:

--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.

--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.

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

At the time of our June 1979 report (see app. V), FLRA's fiscal year 1979 supplemental budget request and fiscal year 1980 budget request were before the Congress. However, because of the additional functions assigned to FLRA

under title VII and an unexpected significant increase in the number of cases filed with FLRA, the funding was clearly inadequate. In our report to the Chairman we concluded that the FLRA's staffing and funding, particularly that of the General Counsel and regional operations, were not adequate for FLRA to effectively carry out its responsibilities under title VII. We recommended that FLRA's budget requests receive immediate attention.

On July 25, 1979, the Congress approved FLRA's fiscal year 1979 supplemental budget request, and on September 29, 1979, it approved the fiscal year 1980 amended budget to accomodate FLRA's increasing caseload. With these approvals FLRA increased its available funds by $3.3 million and its authorized staff by 86 positions as shown:

	Approved Budget Requests					
	Original request		Supplemental and amended requests		Amended budget	
	Full-time permanent positions	Amount (000 omitted)	Full-time permanent positions	Amount (000 omitted)	Full-time permanent positions	Amount (000 omitted)
FY 1979	a/255	$ 8,393	23	$1,789	278	$10,182
FY 1980	297	10,590	63	1,542	360	12,132

a/Under the Reorganization Plan, 255 staff positions and a supporting budget of $6,312,000 were transferred to FLRA on January 1, 1979. The supporting budget represents 9 months of an FY 1979 budget of $8,393,000.

With the additional resources, FLRA was able to hire additional staff and undertake projects which it had previously postponed. But these resources were not available for most of FLRA's first year and therefore had little impact on the problems encountered during most of 1979.

LACK OF RESOURCES

The original 1979 level of funding and the number of positions assigned to FLRA represented the resources required to continue a Federal labor-management program similar to that of Executive Order 11491, before FLRA was established. As a result, the original funding did not provide for the new functions assigned by the Civil Service Reform Act. Many of these new functions required hiring new professional staff. For example, the General Counsel's new function with

respect to prosecuting unfair labor practice cases required FLRA to hire attorneys who were not needed under the previous labor-relations program. Our June 1979 report discussed FLRA's new staffing needs in detail. (See app. V.)

In recognition of the additional functions assigned by title VII, the Congress, on July 25, 1979, approved FLRA's request for a fiscal year 1979 supplemental appropriation of $1,789,000 which provided for 23 new positions. FLRA's fiscal year 1980 budget request for $10,590,000, with 297 authorized permanent positions, was the result of the budget process concluded before the Civil Service Reform Act. It was based on workload estimates prepared before the inception of FLRA on January 11, 1979. On the basis of additional functions assigned by title VII and a significant increase in the number of case filings during its early months of operation, FLRA submitted an amended budget request for fiscal year 1980. The amended budget request, approved on September 29, 1979, provided FLRA with an additional $1,542,000 and 63 positions for fiscal year 1980.

Most employees whose positions were created with FLRA's additional funding have only been hired since September 1979. The General Counsel's Office has received most of the newly authorized staff because of the increasing rate of case filings at the regional offices. The General Counsel has kept his headquarters office size to a minimum in order to place more staff in the regional offices where the bulk of case processing will be handled.

FLRA is also using its additional funding to have private consulting firms assist in designing and implementing a computerized case-processing and case-tracking system and an accounting services system which are expected to be completely operational by the fall of 1980. FLRA believes these systems will not only improve the timeliness of case handling and the productivity of work units but will also help prepare future budgets.

DELAYED CONFIRMATION OF THE GENERAL COUNSEL

FLRA's General Counsel was not confirmed until July 27, 1979--7 months after FLRA began operations. Without a General Counsel, FLRA could not undertake many of the duties assigned to it under title VII.

The General Counsel's major responsibilities are (1) investigating and prosecuting unfair labor practice cases which are filed at the regional offices and comprise the major portion of the FLRA's caseload, (2) handling representation cases,

(3) directing the field operations, and (4) developing, approving, and issuing regulations. The absence of a General Counsel delayed FLRA in issuing its final regulations, hiring key field management staff, and organizing field operations. As required by the act, final regulations could only be developed, approved, and issued by the General Counsel. As a result, FLRA had to operate under transition regulations which basically continued the Executive order program's practices and procedures. Unfair labor practice cases filed at the regional level after January 11, 1979, were being investigated but, in the absence of a General Counsel, no complaints could be issued and no dispositive action taken. This resulted in a backlog of more than 1,000 cases by midyear.

Since his confirmation, the General Counsel has moved rapidly to fill most regional office vacancies and to speed up case processing. While a backlog persists because of a constant increase in case filings, the efficiency with which cases are processed at the regional level continues to improve. The parties are settling a large percentage of cases with the assistance of General Counsel staff, either before or after the General Counsel issues a complaint. Others are being heard by an administrative law judge (ALJ).

SPACE PROBLEMS

FLRA's serious space problems, outlined in our June 1979 report have persisted throughout the year. After devoting considerable time and effort in negotiating with the General Services Administration (GSA), FLRA has made some progress, but many difficulties persist. The lack of suitable space for both FLRA headquarters and regional personnel has, throughout its first year of operation, seriously impaired FLRA's ability to carry out its responsibilities. At present, headquarters personnel are still temporarily located at the Office of Personnel Management (OPM), the Department of Labor buildings, 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 the year, and many continue to be housed in temporary quarters.

The lack of adequate space and resultant 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. (A principle reason for establishing FLRA was to create an agency independent from what was perceived as a management bias resulting from the Executive order's third-party decisionmaking bodies' association with the U.S. Civil Service Commission and the Department of Labor.)

--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.

To alleviate the space problem, FLRA has throughout the year negotiated with GSA officials at regional and headquarters levels to secure adequate facilities. Officials at all levels of FLRA, including the members and the General Counsel, have devoted a considerable amount of time and energy, most of which has proven unsuccessful, in trying to resolve the space problem. For example, in midyear, when GSA's efforts in securing space in the Washington area proved unsuccessful, FLRA offically asked GSA for delegated leasing authority. Following months of meetings, correspondence, and telephone conversations between GSA and FLRA, GSA finally refused to give FLRA this authority.

Currently, permanent space for FLRA headquarters staff, which GSA estimated in June would be available in November 1979, will not be ready for occupancy until late 1980 at the earliest. While three regional offices (Atlanta, Kansas City, and Los Angeles) and one subregional office (Seattle) are permanently located, FLRA's remaining six regional and three subregional offices were still in temporary quarters as of March 1980. Chicago and Dallas have been offered permanent space by GSA but are awaiting required renovations. The outlook for the remaining locations is less certain:

Boston--located in temporary space. GSA has not yet found permanent space. FLRA has been given no indication of any hope for permanent space in the next several months.

New York--recently moved by GSA from its temporary location in the Holiday Inn to another temporary location at 26 Federal Plaza. Currently, 14 personnel are temporarily located in approximately 1,100 square feet of space. GSA is searching for space but has not yet found anything.

Washington--temporarily in the Riddell Building on K Street. GSA has indicated that it will be advertising for permanent space. According to FLRA officials, the outlook is not good.

San Francisco--temporary space. GSA has been looking for permanent space but has been unsuccessful to date.

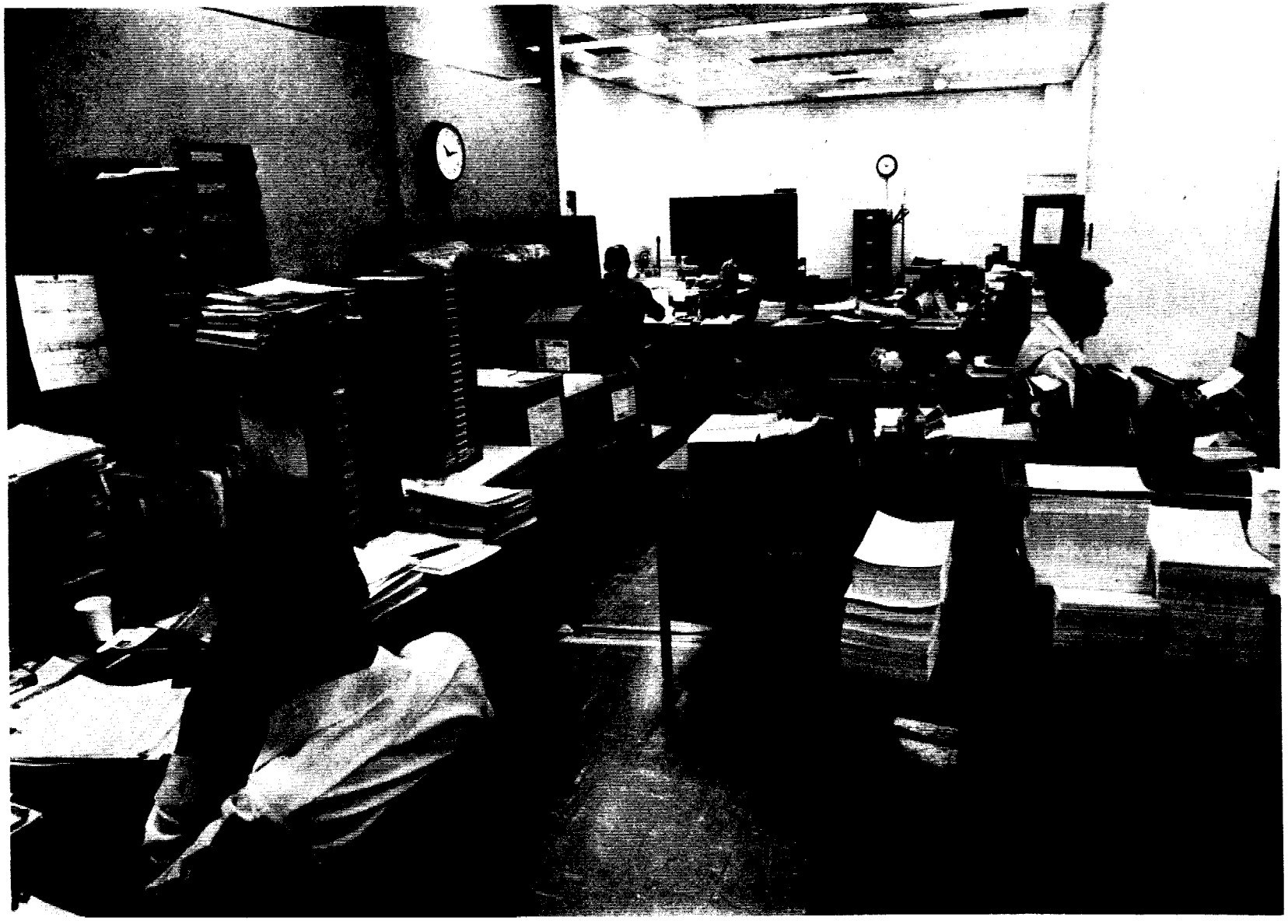
Philadelphia suboffice--requested space in December 1979.

Cleveland suboffice--GSA (Chicago) has been unable to locate any space, and the outlook appears poor for the next several months.

Denver suboffice--seven people temporarily located in approximately 600 square feet. GSA recently moved FLRA from priority #11 to priority #1. No permanent space located yet.

The space problems over the past year have seriously impaired FLRA's ability to operate efficiently. Moreover, the lack of space has in some instances compounded staffing shortages by preventing the hiring of staff; FLRA simply had no place to put them.

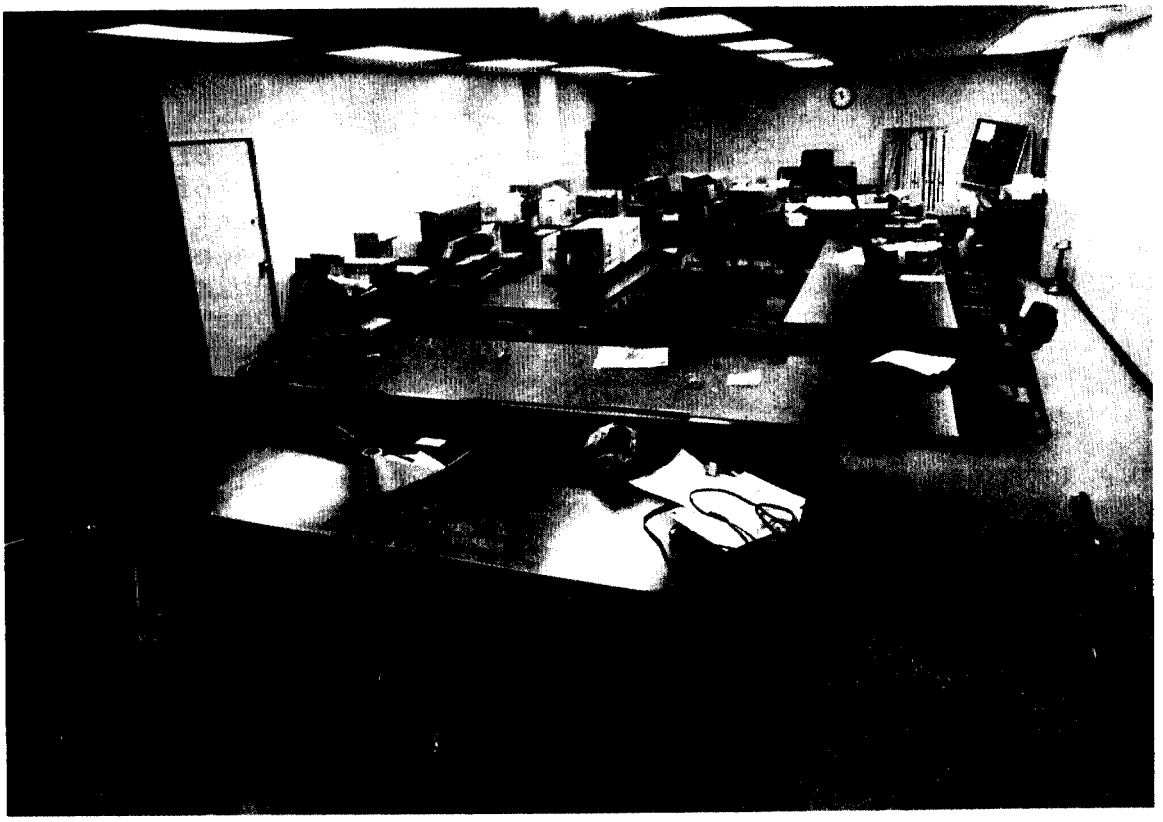
The photographs which follow illustrate some of the conditions under which the FLRA staff has been operating.



HEADQUARTERS OFFICE SPACE

OFFICE CORRIDOR USED AS STORAGE SPACE

HEADQUARTERS LIBRARY



WASHINGTON REGIONAL OFFICE HEARING ROOM

WASHINGTON REGIONAL OFFICE LIBRARY USED AS OFFICE SPACE

RECOMMENDATION TO THE DIRECTOR, OMB

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 number of changes in organizations throughout the Federal Government justifies OMB's investment in the area. The faster that agencies can begin operating, the faster they can achieve their missions. The transition and startup problems FLRA faced may have been minimized if more technical and advisory assistance had been available.

We recommend that OMB enhance its capability to assist new agencies in setting up operations, especially from an administrative standpoint (space, budgets, equipment, organizational structure, and staff).

CHAPTER 3

FLRA HEADQUARTERS

As currently organized, the headquarters operation is crucial if FLRA is to accomplish its mission efficiently. In addition to providing administrative and support services, it is responsible for reviewing and deciding (1) representation and unfair labor practice cases filed at the regional level and (2) policy questions, exceptions to arbitration awards, and negotiability disputes filed at headquarters.

FLRA's headquarters staff has experienced many difficulties in setting up its operations, causing delays in processing cases and issuing decisions. Transition problems faced in its first year of operation include the hiring and training of staff, lack of office space, delay in issuing regulations, and the taking on of responsibility for administrative and support services previously performed by other agencies. While many of these problems negatively affected FLRA's ability to handle its caseload, many were beyond the direct control of FLRA management. Other factors impeding efficient case processing, however, have resulted from FLRA's own activities and inaction. These include the

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

--organization of the headquarters staff into four distinct and isolated groups to handle each of the four types of cases handled by FLRA,

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

--failure to give priority to cases which may have a more critical or far-reaching impact on the conduct of labor-management relations.

In recent months, however, FLRA members have given these problems more attention and have taken steps to remedy them. They have (1) experimented with time targets for various stages of case processing and with various techniques such as oral briefings to expedite case handling and (2) provided training for newly hired and transferred staff.

HEADQUARTERS' ROLE AND RESPONSIBILITIES

FLRA's appellate and adjudicatory responsibilities involve deciding the following types of cases:

--Policy issues. Although title VII does not outline procedures for deciding broad questions of statutory interpretation, FLRA's authority in this area stems from its responsibility under the act for issuing policy and guidance on Federal labor relations. These questions, handled previously by FLRC under the Executive order program, are filed directly with FLRA headquarters.

--Negotiability cases. Title VII outlines, in detail, procedures for FLRA's handling of questions involving the permissibility of negotiating certain types of contract proposals and establishes the criteria upon which decisions are to be made. The act moreover, explicitly emphasizes the importance of FLRA's handling these cases expeditiously. These types of cases, previously decided by FLRC, are filed directly with headquarters.

--Representation and unfair labor practice cases. In contrast to the other types of cases handled by FLRA headquarters, both representation and unfair labor practice cases originate at the regional level. If not settled, dismissed, or withdrawn at lower levels of review, they are appealable to headquarters. The Assistant Secretary of Labor had a similar responsibility under the Executive order program. Both title VII and FLRA's regulations include detailed procedures for case processing.

--Exceptions to arbitration awards. Under the act FLRA reviews certain types of arbitration awards based on specified criteria. Arbitration awards are appealed directly to headquarters. FLRC previously had this function.

FLRA's headquarters staff is also responsible for administrative and support services. This includes the personnel and budget functions and responsibilities such as establishing agency grievance procedures and merit pay procedures. The Department of Labor and the Civil Service Commission provided most of these services under the Executive order program.

Finally, a very significant FLRA function is performed by the Office of Administrative Law Judges which operates as an autonomous group within headquarters. As provided in the act, ALJs conduct hearings on unfair labor practice cases prosecuted by the General Counsel. Their decisions are reviewed by FLRA members.

POLICY QUESTIONS

FLRA is responsible for providing leadership and guidance for the Federal Labor Relations Program. To carry out this responsibility, FLRA has begun issuing policy decisions on certain broad questions, interpreting and implementing title VII's provisions. The alternative, and FLRA's most commonly used means for resolving questions of statutory interpretation, is to handle each case individually. It is too early to assess FLRA's function of issuing policy statements. However, this function can be extremely useful in clearing up confusion over the act's provisions and in preventing a proliferation of similar cases.

Between January 11 and December 31, 1979, FLRA received 13 requests for policy guidance. It granted four requests for review and issued three policy decisions disposing of these four requests, two of which were issued in December 1979. Additionally, four other requests were withdrawn, and in one case, review was denied. No action had been taken on the remaining four cases.

According to agency and union officials, delay in processing and issuing policy decisions has led to a proliferation of unfair labor practice and negotiability cases. While 3 months elapsed between the filing and issuing of FLRA's first policy decision, the two decisions issued in December 1979 had each been filed with FLRA for more than 8 months. The executive director told us that delay in issuing these decisions was due to the newness of the process and the difficulty and importance of issues involved. He stated that, in the future, greater efforts will be made to issue policy decisions more promptly.

OPM told us that it does not believe that delay in processing and issuing policy decisions has lead to a proliferation of unfair labor practice and negotiability cases. Since some policy decisions may raise more questions than they answer, it is OPM's view that "a decision based on a full record developed in a specific case may oft times be more helpful in elucidating the law than a major policy decision."

NEGOTIABILITY ISSUES

The primary emphasis in title VII for processing negotiability cases is on their being expeditously handled. This reflects the Congress' concern that delays in resolving questions arising at the bargaining table, that prevent agreement on contract proposals, have a serious impact on the conduct of labor-management relations. However, for most of 1979, cases have not been processed significantly faster under title VII than under the previous Executive order. In fact, cases have backlogged, creating lengthy processing delays. This backlog can be attributed to an unexpectedly large caseload and an inadequate number of staff.

In recent months, FLRA members have given more attention to this backlog and have taken a number of steps toward alleviating it. However, certain factors which contributed to processing delays, such as the headquarters' organizational structure, were not addressed for most of the year. According to the executive director, FLRA members are paying more attention to using procedures for expediting cases internally, and reorganization plans are underway.

Review of negotiability issues is specifically provided for in title VII. These cases are filed by unions disagreeing with a management assertion that it is not required to negotiate on proposals introduced by the union during contract negotiations. Under title VII FLRA decides what specific matters are subject to the parties' negotiation. It follows procedures similar to those used by FLRC under the Executive order program, except for three important changes: (1) the time limits for processing cases have been shortened, (2) referral of cases to FLRA has been simplified, and (3) a hearing is now available, under certain conditions, for resolving these disputes.

FLRA currently has a staff of seven full-time attorneys handling negotiability cases. Between January 11 and December 31, 1979, it received 237 appeals of management's nonnegotiability declarations. This represents a 380-percent increase from last year's caseload. (Individual cases appealed to FLRA sometimes include more than one contract proposal.) The caseload represents both the litigation of new proposals testing the limits of title VII and the relitigation of proposals whose negotiability had previously been decided by FLRC. In light of the new act and the creation of this new agency to adjudicate disputes, parties are raising some old issues again.

Between January 11 and December 31, 1979, FLRA closed 63 negotiability cases, or an average of 5.2 a month. This low rate of productivity can be attributed to several internal organizational factors. The structure of the negotiability section has remained the same as it was under the Executive order program even though some of its functions have changed. Also, the unanticipated increase in caseload placed a tremendous amount of pressure on the supervisor of the negotiability division through whom all cases were funnelled before going to the FLRA members for final action. This caused a bottleneck at this stage of the review.

To alleviate this problem, FLRA in August 1979 created a task force of individuals from the headquarters office and implemented a mandatory overtime policy in October 1979. Attorneys are required to work a minimum of 8 hours overtime during each week. More recently, FLRA has also been experimenting with various procedures to speed up internal case processing.

Of the negotiability cases decided over the past year, few have dealt with issues which some agency and union officials believe most critical. While these issues have been raised in cases filed with FLRA, they have not been decided because FLRA generally processes cases in the order they are received.

Shortened time limits

A major change in the handling of negotiability cases is the shortened time limits included in title VII and FLRA's regulations. These time limits have caused differing concerns among agency and union officials. Agencies contend they are unduly restrictive, and unions suggest that certain time limits should be more stringent. FLRA's imposition of these time limits appears, however, consistent with the language and intent of the act.

Simplified referral procedures

A second important change from the Executive order program is simplification of the system for referring cases to FLRA. A determination by an agency head that an issue is nonnegotiable has been eliminated. Unions must now file a petition for appeal directly to FLRA from the local level following an agency allegation of nonnegotiability at the bargaining table. This change was implemented to help facilitate the processing of cases.

Hearing

A hearing is now available, under certain conditions, for resolving negotiability disputes. One hearing has been held to date. In March FLRA heard arguments on the extent to which performance standards and critical job elements are negotiable, an issue which has been raised in a number of cases currently pending.

REPRESENTATION AND UNFAIR LABOR PRACTICE CASES

The processing of representation and unfair labor practice cases is not a new function under title VII. It was previously under the Department of Labor and was transferred to FLRA under Reorganization Plan 2. The staff now responsible for this function has been operational throughout the year, with no serious problems.

The staff, which includes a director and deputy, 3 supervisors, and 15 professionals, handles both representation and unfair labor practice cases. Since the director's appointment in October 1979, the staff has given more attention to improving speed and quality of case handling. The director told us that developing staff expertise in both the representation and unfair labor practice areas gives supervisors more flexibility in handling cases faster and gives the staff greater insight into more than one narrow aspect of the collective bargaining process.

While the current annual productivity rate per professional is approximately 12 case decisions, the staff's director anticipates increasing this number to about 18. To improve productivity, informal time targets are being refined, staff members are assigned more than one case at a time, and the staff is striving for a time target of 25 days from the time the case is assigned to the time a decision is sent to the members for their signature. (This process includes the review of cases by the members at their weekly agenda meeting.)

On January 11, 1979, this group inherited 48 unfair labor practice cases. These included requests for review filed with FLRA, cases transferred by regions or ALJs, and appeals from the Assistant Secretary of Labor's decisions. An additional 173 cases reached this level of review between January 11 and December 31, 1979. As of December 31, 1979, 145 decisions had been issued, leaving 76 on hand. The staff also inherited 33 representation cases when FLRA was

established. These included requests for review, cases transferred by regions or ALJs, and appeals from the Assistant Secretary of Labor's decisions. An additional 81 cases reached this level between January 11 and December 31, 1979. As of December 31, 1979, 44 decisions had been issued, leaving 70 on hand.

The number of unfair labor practice cases reaching this level of review is expected to increase substantially in the coming year because of the increase in unfair labor practice cases filed in the region and in those going to an ALJ hearing. Additional staff members have recently been hired or transferred to accommodate the anticipated increase. To date, the cases processed have been primarily those arising under the Executive order and are based on incidents which occurred before January 11, 1979; therefore, they have not involved an interpretation of title VII.

The act appears to permit FLRA members discretion to delegate final decisionmaking authority to ALJs (for instance, adopting without review, ALJ decisions if exceptions are not filed by either party). Doing this would decrease the number of cases reaching the members for review. However, current regulations require FLRA to review all ALJ decisions reflecting the members' view that, since unfair labor practice decisions in the first year will be defining and interpreting the parameters of the new act, FLRA members should be deciding these issues. This is viewed as necessary to provide ALJs with the initial precedent on which they may base future decisions.

No serious problems have developed in FLRA's handling of representation and unfair labor practice cases. While the caseload is expected to increase, actions being taken to improve staff productivity should prevent or at least minimize the development of a large case backlog.

EXCEPTIONS TO ARBITRATION AWARDS

Title VII codifies past practice under the Executive order by authorizing FLRA to review certain arbitration awards and take whatever action is necessary to insure their consistency with the law, rule, or regulation. Delayed processing of these cases was a problem under the Executive order and continued to be a problem during the early months of FLRA's operations.

Expeditious handling of these cases is even more important under title VII because of the anticipated increase in the number of arbitration awards to be appealed to FLRA. This increase is expected to result from the act's broadening of the scope of negotiated grievance procedures and its requirement that these grievance procedures include binding arbitration as a final step. The arbitration staff of 6 attorneys received 64 petitions for review between January 11 and December 1979. This represents a 25-percent increase from last year's caseload. During this period they closed 30 cases, or an average of 2.5 a month.

In an attempt to speed up case processing, FLRA has made two changes. Exceptions to arbitration awards, which may be filed by either party within 30 days after the award is issued, are now being processed by FLRA under a new one-step procedure that it anticipates will expedite case processing. Under the previous two-step procedure, parties were required to submit a petition requesting consideration of an appeal. If accepted for review, a brief had to be filed examining the merits of the case. These two steps have been consolidated under the new procedures. In addition to consolidating its procedures for reviewing cases, FLRA has imposed informal time frames on the staff in attempt to speed up the process. The executive director told us that informal time limits are also being tried on the FLRA members' review of these cases.

OFFICE OF ADMINISTRATIVE LAW JUDGES

The Office of Administrative Law Judges is a separate unit within FLRA that hears unfair labor practice complaints prosecuted by the General Counsel's Office. It is in this area, according to FLRA officials, that FLRA is faced with its most serious staffing shortage. The initial allotment of eight ALJs to FLRA by OPM was recently increased by two, but this may still not be enough to handle the anticipated caseload. ALJs' inability to hear and decide cases expeditiously will delay FLRA's issuance of case decisions.

FLRA estimates that about 20 percent of the cases filed at the regional level will require a hearing by an ALJ. This is based on the Department of Labor's experience in processing unfair labor practice cases under the Executive order program, the NLRB's experience in handling similar types of cases in the private sector, and FLRA's assumption of factors peculiar to unfair labor practices under title VII. FLRA's current projection of its unfair labor

practice caseload for fiscal year 1980 is 4,020. Approximately 800 are therefore expected to require a hearing before an ALJ.

When FLRA was created, eight Department of Labor ALJ positions were transferred to FLRA on the basis of a decision by OMB. OMB's decision was based on the previous ALJ caseload under the Executive order program and therefore did not take into account the substantially greater volume of cases which would result under the act. This projected volume is attributable to a number of factors:

--The new prosecutorial authority of the General Counsel. If the General Counsel decides to issue a complaint after determining that the party's charge has merit, he will prosecute the case before an ALJ. Under the Executive order program, the charging party had the burden of presenting his/her own case throughout the proceeding, which may have deterred filing.

--FLRA's jurisdiction has been expanded to cover the Library of Congress, Government Printing Office, and Panama Canal employees.

--The issues constituting unfair labor practices have been expanded under the statute. (What specifically constitutes an unfair labor practice will, of course, be decided by FLRA on a case-by-case basis.)

FLRA has, since its initial allotment of ALJ positions, made several requests to OPM for additional GS-16 ALJs. On the basis of an estimated productivity rate of 24 cases a year, FLRA has requested a total of 23 GS-16 ALJ positions. (FLRA officials have observed that even these additional positions will probably not adequately cope with the increasing caseload projections.) FLRA's estimate of an ALJ productivity rate of 24 dispositions a year appears reasonable, compared with the productivity rate of ALJs in other agencies, such as NLRB. OPM officials responsible for reviewing FLRA's request told us that they do not dispute FLRA's estimates, primarily because they have not established criteria for determining what a reasonable caseload per judge should be and are not that familiar with the type of cases that judges in particular agencies handle. They have, however, turned down FLRA's requests for additional positions, stating that they may reconsider these requests if cases actually

start backlogging. We have previously reported OPM's lack of information with which to evaluate agency requests for additional ALJs. 1/

The apparent inability of the current ALJs to handle the projected caseload can potentially lead to a serious backlog of cases reaching the hearing stage. Most of the recent filings have not yet reached this stage because of the delays experienced in processing cases in the field. The General Counsel, however, is starting to issue complaints, and these cases are therefore starting to reach the hearing stage. FLRA's inability to conduct timely hearings would be inconsistent with congressional intent under title VII.

Although FLRA's need for additional ALJ positions may be warranted, we believe that its Office of Administrative Law Judges also needs to take steps to alleviate the problems resulting from a shortage of judges. Currently, the Office of Administrative Law Judges consists exclusively of judges and clerical staff. The hiring and delegation of research and administrative duties to law clerks or student assistants would probably speed up case handling. This practice is followed by ALJs in other agencies, including the NLRB where student assistants perform legal research and other tasks.

CONCLUSIONS

It is too early to make any conclusive statements on the efficiency of headquarters operations, organizational structure, and case-handling procedures. Many of the delays and difficulties experienced this past year are attributable to lack of space and of other resources and the unavoidable problems involved in setting up a new agency. However, over the next year a number of areas warrant increased attention by FLRA members. These include establishing and enforcing time targets for case processing, giving priority to cases dealing with issues critical to interpreting and implementing title VII, and reexamining the current organizational structure to insure its responsiveness to FLRA's mission. FLRA members have begun to address some of these areas, and we will be monitoring their progress in the coming year.

1/"Administrative Law Process: Better Management Is Needed" (FPCD-78-25, May 15, 1978).

Agency and union officials are concerned about FLRA's slowness in deciding cases. FLRA is trying to resolve this problem by establishing informal time targets for certain stages of case processing. We believe that establishing and enforcing time targets at all stages of review is critical if FLRA is to meet its statutory responsibilities. Moreover, certain internal case-processing procedures should be reexamined to identify factors which impede the timely processing of cases.

Cases are generally processed in the order in which they are filed. The only exceptions are unfair labor practice cases where the regulations give priority to the handling of certain types of cases, such as those involving work stoppages. Consequently, many of the more critical questions raised in certain policy and negotiability cases before FLRA are not resolved quickly. We believe that the members should consider giving priority to certain types of cases whose impact could be more far reaching and critical to the program.

A factor in FLRA's slow response to some of these organization problems at the headquarters level was the absence of a permanent executive director for most of the year. As a result, FLRA had no strong central management force to coordinate the various headquarters organizational activities and insure that they were efficiently carried out. With the appointment of an executive director in December 1979, organizational and administrative problems may diminish.

FLRA is currently planning to reorganize its headquarters operations to speed up case handling and to use staff more efficiently. Permanent assignment of staff to one of FLRA's four distinct organizational groups appears to limit management's flexibility to reassign or rotate staff as the need arises. A less stratified organization with a rotation policy among the groups could improve staff development and morale and would help to make the application of FLRA policy more uniform.

CHAPTER 4

OFFICE OF GENERAL COUNSEL AND REGIONAL OPERATIONS

Creation of the Office of General Counsel within FLRA is one of the most significant changes from the Executive Order Labor-Management Relations Program. The major importance of the General Counsel is his independent authority to investigate unfair labor practice charges and to prosecute cases before FLRA members. The Government's responsibility for prosecuting unfair labor practice complaints is new to the Federal labor-management relations program.

Since his confirmation in July 1979, the General Counsel's efforts have been devoted to establishing FLRA's nine regional offices, reducing the case backlog, and handling the increase in the number of case filings. The General Counsel has made progress in overcoming some of these problems. Despite recent progress, however, some problems persist. These include (1) a growing case backlog resulting from a continuing increase in case filings, (2) insufficient office space, (3) the continuing need to train newly hired staff in approaches, procedures, and policies, and (4) the continuing need to inform and familiarize agencies, unions, and employees on FLRA procedures and policies.

BACKGROUND

The General Counsel is responsible for investigating and prosecuting unfair labor practice allegations and for managing and directing regional offices' activities. The General Counsel is appointed by the President, with the advice and consent of the Senate, for a 5-year term and may be removed at any time by the President. Under the act, FLRA replaced the Assistant Secretary of Labor as the decisionmaker in unfair labor practice cases, and the General Counsel replaced the complainant (union, agency, or individual employee) in presenting cases before an ALJ and FLRA members for decision.

Title VII's legislative history reflects the Congress' intent to model the Office of the General Counsel after that of NLRB. In NLRB, and as statutorily required, the authority and responsibilities of FLRA and the General Counsel are separated.

The Office of General Counsel includes a headquarters and nine regional offices. His headquarters office includes a deputy general counsel and four recently created assistant

general counsel positions. Three of the assistant general counsels are each responsible for three regional offices. They will oversee field operations and provide the necessary case-handling advice to insure uniformity of procedures and policies at the regional level. The General Counsel's office also has an appeals office headed by an assistant general counsel to review regional directors' refusals to issue complaints.

The regional offices, whose key officials are the regional director and regional attorney, are responsible for processing unfair labor practice and representation cases. The regional director is responsible for supervising the investigation of unfair labor practice charges, investigating representation petitions, and conducting or supervising union representation elections. The regional attorney advises the director on legal matters and supervises the prosecution of unfair labor practice cases at hearings. (See apps. III and IV.)

The locations of FLRA's nine regional offices were chosen primarily on the basis of prior case activity under the Executive order program, while also taking into account where the majority of employees who previously administered the Executive order program were located. Regional offices are in Atlanta, Kansas City, Los Angeles, Chicago, Dallas, Boston, New York, San Francisco, and Washington, D.C. Reorganization Plan No. 2 transferred 198 Assistant Secretary of Labor positions--which handled unfair labor practice and representation cases under the Executive order program--to FLRA. Under the Executive order program, the Assistant Secretary of Labor's employees had been located in the Department of Labor's 30 field offices.

FLRA has also created suboffices to test the advantages and disadvantages of operating offices outside the nine regional cities. Factors considered in establishing these offices included FLRA's accessibility to its clientele, the travel requirements of FLRA staff, and problems in supervision with multiple locations. Currently, suboffices are in Cleveland, Denver, Philadelphia, and Seattle. In addition to these offices, FLRA now plans to keep a small office in Panama. 1/ In an attempt to equalize the caseload between

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1/Under title VII FLRA did not have jurisdiction over employees of the Panama Canal. The implementing legislation of the Panama Canal Treaty gave FLRA this new responsibility.

regional offices, Pennsylvania and Delaware were recently shifted from FLRA's Washington, D.C., regional office to the New York regional office.

WHAT CAUSED THE BACKLOG OF CASES?

During the past year the FLRA General Counsel's operations have been hindered by a number of problems which have caused delays in processing cases and have impaired the General Counsel's ability to operate the regional offices efficiently. Union and agency officials have stated that the major problem they currently experience in working with FLRA regional offices is the slowness in case processing. In recent months, however, progress has been made in organizing and staffing the offices and in reducing the case backlog.

The major problems causing the backlog of cases were:

--Delay in appointing and confirming the General Counsel.

--Lack of sufficient and skilled staff in the regions.

--Continual lack of adequate office space.

Because of the delay in appointing and confirming the General Counsel, FLRA regulations could not be issued and the regions did not have the legal authority to take final action on unfair labor practice cases, such as issuing and prosecuting complaints and dismissing cases. We found that the delay in issuing regulations caused unions, agencies, and individuals to be confused about how to approach the charges filed by or against them. Parties, as a result, required more help from the regional offices than they would otherwise have needed. The absence of a General Counsel also postponed the hiring of the regional attorneys and other staff. Thus the regions, for most of the year, lacked the legal expertise needed to handle the new prosecutorial function of the General Counsel.

Throughout the year FLRA has experienced a much greater caseload than expected, particularly in unfair labor practice cases. Before its establishment, 576 new representation case filings and 1,252 new unfair labor practice cases were predicted for fiscal year 1980. This estimate was based on the Assistant Secretary of Labor's experience with similar types of cases filed under Executive Order 11491. FLRA's original fiscal year 1980 budget request reflected these case predictions. Of the 3,985 representation and unfair labor practice cases filed between January 11 and

December 31, 1979, 3,367 were unfair labor practice charges and 618 were representation petitions. The General Counsel's Office has taken dispositive action on 2,982 cases. On the basis of the number of case filings in the last 4 months of 1979, FLRA now predicts 4,020 unfair labor practice cases will be filed at its regional offices in fiscal year 1980.

The lack of sufficient and skilled staff in the regions has caused delays in processing cases. Staff transferred from the Department of Labor could not automatically assume the new duties assigned to the General Counsel under title VII. According to FLRA officials, a number of the higher grade employees who transferred to FLRA from the Department of Labor did not have current labor relations experience. Also, FLRA initially had to use many of the vacant slots transferred to it to fill field management positions (for example, a regional director and regional attorney for each of the nine regions and their support staff). FLRA, as a result, had few vacant positions remaining to staff its investigatory and prosecutorial functions and therefore had to intensify its search for qualified staff.

The third major problem faced by the regional offices--the lack of adequate space--had caused staff to be widely dispersed. Supervisors have been separated from their employees. Also, in the Washington regional office, for example, where FLRA's clientele often come in person to file charges or deal with staff, FLRA initially did not even have enough space to provide desks for all of the professional staff. Even if FLRA had the vacancies to hire the people it needed, some of the vacant slots would not have been filled because it had no place to put additional staff, furniture, or the equipment it would have required.

ACTIONS TAKEN TO REDUCE BACKLOG

Since the General Counsel's confirmation, he has made progress in overcoming the problems that contributed to the backlog of cases. For example, the General Counsel has (1) hired staff to fill most of the regions authorized professional positions, (2) issued time targets for processing cases, (3) started to provide formalized training for his staff, (4) pushed for voluntary informal settlements, thereby resolving cases before they reach the trial stage, and (5) started setting up a formal computerized case-tracking system.

Hiring of staff

Recognizing the need for regional office staff to handle the major load of case processing, the General Counsel kept the size of his headquarters staff to a minimum by allocating most of the new positions to the regional offices. Staff has been allocated to the various regional offices according to the pattern of case filings in its first year of operations. (App. II has a map of the regional offices, listing the number of staff and number of cases filed for each region.)

Issuing of time targets

As part of the General Counsel's ongoing efforts to improve the efficiency of regional case handling, the General Counsel in August 1979 issued time targets for processing unfair labor practice cases in the regions. The time target for a regional office decision on unfair labor practice cases is 60 days after the filing of the charge; the target for implementing the decision--that is, issuing a complaint without settlement--is 75 days. The NLRB time targets for these actions are 30 and 45 days, respectively. The General Counsel has stated that his goal is to have the regions eventually reach the NLRB targets, once staff has been trained and procedures established. Because of the large backlog and delays in hiring new staff, the regions have not yet reached the time frames established, although the General Counsel has stated that he hopes they will within 12 months.

Formalized training

The General Counsel's office has made a concerted effort to hire experienced regional attorneys, primarily from NLRB, with both trial experience and labor relations backgrounds. The hiring of former NLRB employees has eliminated the need for extensive training in some areas because FLRA has patterned many of its practices and procedures after NLRB. Also, these new employees have been able to help train other staff members transferred to FLRA under Reorganization Plan No. 2. Since August many of the regional attorneys have conducted informal on-the-job training sessions with the field attorneys and agents on techniques and procedures for investigating and prosecuting cases.

Agency and union officials have stated that lower level FLRA regional staff needs specialized training. They believe that the lack of regional office standardization in using techniques in investigating and in encouraging settlements is due partly to the need for additional training. In

particular, union officials have emphasized that the regional staff working on unfair labor practice cases is not well trained. Agency officials have stated that FLRA investigators have not demonstrated adequate investigative skills, particularly in gathering relevant information through questioning of witnesses and drawing well-reasoned conclusions from their investigations. These officials stated that they developed their impressions by comparing the quality of FLRA investigations to similar investigations conducted by their respective agencies. Agency and union officials have made favorable comments, however, concerning the knowledge and capabilities of both the regional directors and regional attorneys.

In response to these union and agency concerns, FLRA's General Counsel has indicated that he will be having specialized training for his staff and he hopes this training will result in better communications and more standard service to the parties. In December 1979 the General Counsel's Office conducted a week-long intensive training session for his headquarters and regional employees. This training session emphasized investigative techniques, unfair labor practice and representation case handling, and evidence and trial techniques.

Voluntary informal settlements

Another important step taken by the General Counsel to decrease the case backlog is his emphasis on voluntary settlement of cases filed at the regional level. The General Counsel has stressed the preferability of the parties entering into voluntary settlements to resolve their own complaints rather than having a third party impose a settlement. Since July a large number of the cases backlogged at the regional level have been withdrawn or settled informally. The General Counsel's staff has taken a very active role in securing these settlements. For example, during all phases of case processing, the regional staff attempts to maintain communication with agency and union officials involved in the dispute. FLRA officials believe that these contacts have promoted case settlements and minimized litigation. Union and agency officials have noted the strong efforts by regional officials to settle cases, thereby avoiding the need for formal adjudication to resolve many disputes.

Computerized tracking system

Finally, in recent months, the General Counsel and his headquarters staff have been working with other groups in FLRA to devise and implement a computerized case-tracking

and case-processing system. The system is to be implemented in several phases and is expected to be fully operational by fall 1980.

The General Counsel plans to use the computerized case-tracking system to develop work measurement and productivity standards and to monitor how the regional offices meet time limits for processing cases.

CONCLUSIONS

The major causes of the case backlog have been transitional. The General Counsel has made progress in recent months in overcoming these problems. He has kept the size of his headquarters staff to a minimum. By hiring competent, experienced regional directors, regional attorneys, and staff for the nine regional offices, the General Counsel has been able to make the most of his initial resources. The regional directors, while hindered by resource and space problems, have made progress in establishing their offices and reducing some of the case backlog, especially through their efforts for voluntary informal case settlements. The regional attorneys, most with NLRB experience, have effectively conducted informal training of the newly hired employees. Both union and agency officials have been impressed by the knowledge and capabilities of both the regional directors and regional attorneys. While the parties have expressed some concern about delays in case processing and lack of standard practices among the regional office staffs, the General Counsel has been responsive to these problems.

CHAPTER 5

FEDERAL SERVICE IMPASSES PANEL

Title VII established the Federal Service Impasses Panel within FLRA to assist in resolving negotiation impasses between Federal agencies and employee unions. It is a presidentially appointed group composed of a chairman and six other members appointed for staggered terms.

The Panel appears to be generally effective in carrying out its statutory mandate to assist parties in resolving negotiation impasses. Union and agency officials generally expressed satisfaction with Panel procedures. The Panel's effectiveness, however, is somewhat diminished by delays in processing cases and in issuing decisions. Furthermore, the overlap of mediation efforts by the Panel and the Federal Mediation and Conciliation Service (FMCS) appears to make the process of resolving impasses less effective.

During its 9 years of existence under the previous Executive order program, the Panel performed essentially the same function in resolving impasses. The primary differences in its operations under title VII are the use of a greater variety of methods to resolve impasses, the parties' increased use of binding arbitration after approval by the Panel, and enforcement of Panel actions through the filing of an unfair labor practice charge with FLRA.

ORGANIZATIONAL STRUCTURE

A professional staff of five individuals carries out the daily operations of the Panel whose seven members are paid on a per diem basis because they do not serve full-time. The staff includes an executive director, a deputy executive director, and three staff associates.

The Panel's status as an entity within FLRA affects several aspects of its internal operations. It is provided routine administrative and support services by FLRA and uses FLRA's solicitor's office for representation in legal matters. Reliance on FLRA for certain support functions seems practical in light of the additional costs and duplication that would result if the Panel assumed full responsibility for its small staff.

PROCEDURES

When a Federal agency and an employee union reach an impasse in bargaining, either party may request FMCS'

services. This is the first step in resolving an impasse under title VII. If the dispute is not resolved at mediation, either the mediator or one or both of the parties may request the Panel's assistance. Between 1974 and 1978, about 10 percent of the 2,600 Federal sector cases FMCS closed were referred to the Panel and other agencies for final resolution.

Under the provisions of the interim regulations issued by FLRA on July 31, 1979, the Panel uses a two-phased procedure in processing impasses. During the first phase, when an impasse reaches the Panel, one of two courses of action may be followed: the parties may request the Panel to approve a procedure for binding arbitration of the impasse, or the Panel itself can recommend specific procedures for resolving the impasse. A variety of actions can be recommended, such as

--returning the parties for further bargaining or mediation by FMCS,

--consulting with the parties and then presenting informal recommendations for settlement,

--holding factfinding hearings, sometimes resulting in recommendations for settlement, or

--ordering final and binding arbitration.

The second phase begins if parties have not chosen an alternative forum or have failed to resolve their dispute. Thereafter, the Panel may take whatever action is necessary to resolve the disagreement. In the past, this generally resulted in a Panel decision and order. Such actions are binding on the parties during the term of their collective bargaining agreement.

The legislative intent of title VII is that the Panel promptly investigate and dispose of cases to minimize disruption and delay in the negotiation process. For two segments of its procedures issued on July 31, 1979, the Panel has established the following time limits: A factfinder's report must be submitted within 30 days after receiving the transcript or briefs from factfinding hearings, and the parties have 30 days to issue a response after receiving a report containing Panel recommendations. We believe, however, that the Panel could be doing more to insure that impasses are processed faster.

The absence of time limits for two crucial segments of the impasse resolution procedures seems to negatively affect the timeliness of the Panel's overall efforts. There are no limits, for example, on the time within which a factfinding hearing must be held. A survey of seven cases handled by the Panel between 1977 and 1979 shows that the average amount of time from the date an initial request for assistance was filed to a factfinding hearing was 83 calendar days. Similarly, there are no limits on how long the Panel may take to issue its report and recommendations. Currently, the average amount of time is 3 months. However, in some cases, approximately 9 to 10 months elapsed before a report was issued. It appears that the process is complicated by the fact that the Panel members have infrequent meetings, usually about every 5 weeks. The members must travel from various parts of the country to attend these sessions in Washington, D.C., and scheduling, therefore, sometimes becomes a problem. Scheduling of these meetings is done well in advance to accomodate other professional activities of the Panel members. However, this decreases members' flexibility to respond to unanticipated fluctuations in caseload activity and other urgent matters which may arise.

Federal union officials have expressed concern about the amount of time it takes the Panel to resolve an impasse. They believe that it is the union which most often suffers from these delays. The leadership becomes discouraged, membership wanes, and challenges from other labor organizations can result, according to union officials. The Federal union remains at a disadvantage because of the absence of the strike as a tool in these proceedings and also because the status quo is maintained while these issues are being resolved. Union officials contend that swifter resolution of these impasses could correct what the unions perceive as an unfair balance of power.

OPM agreed that delays in resolving disputes can adversely affect a labor-management relationship. However, OPM did not agree that delays are more damaging to unions than to agencies.

Panel officials informed us that using a greater variety of methods for resolving impasses seems to have speeded up the processing of cases during its first year of operation under title VII. According to their preliminary figures, the average time required to close all cases in 1979 was 117 days.

CASELOAD

Throughout its 9 years of operations under the Executive order program, the Panel emphasized the parties' voluntary settlement of their own disputes. It constantly sought to prevent its services from being used as a substitute for the parties' own efforts to resolve disputes. Caseload data illustrates this point. Between 1970 and 1978, 63 percent of the cases closed by the Panel were either withdrawn or settled before a report and recommendations were issued.

Panel officials continue to believe that it is in the best interests of the program to emphasize voluntary settlements under title VII. Of the 81 cases closed by the Panel between January 11 and October 31, 1979, 67 were settled with minimal or no Panel involvement.

	Number of cases	Percent
Settlement reached at prehearing conference or during factfinding hearing	11	14
Returned for further bargaining	10	12
Jurisdiction declined	10	12
Withdrawn	36	44
Total	67	82

The Panel's caseload has increased under title VII. Between January 11 and December 31, 1979, the Panel received 131 requests for assistance in resolving impasses. Approximately 27 cases were carried over from operations under Executive Order 11491. Issues appearing most frequently in Panel cases include official time allowances for union representation duties, the scope of grievance/arbitration procedures, and hours of work and tours of duty. Most of the caseload increase occurred during the final quarter of the year. During this first year of operation the Panel closed 100 cases.

Panel officials attribute this increase, in part, to the broader scope of bargaining under title VII. They believe that more disputes are likely to arise as the limits of the enlarged scope of bargaining are tested. Another possible factor in the increase is that title VII authorizes employees representing unions in negotiations unlimited official time in contrast to the Executive order's previous allowance of 40 hours, or half the time on the clock.

CHANGES FROM THE EXECUTIVE ORDER PROGRAM

The Panel has tried to decrease the predictability of methods used to settle disputes or impasses. By increasing the uncertainty in the resolution procedure, the Panel hopes to make the parties reluctant to overuse its services. This reflects what Panel officials refer to as its continuing emphasis on parties' voluntary settlement of their own disputes.

New approaches were used in 19 (23%) of the 81 cases closed by the Panel between January 11, 1979, and October 31, 1979. Among the more frequently used were the following:

--Written submissions followed by Panel recommendations and, if necessary, a decision and order: The Panel employs written submissions, in lieu of a hearing, before making its recommendations for settlement. In four of these cases, the procedures were jointly requested by the parties. In one instance, the procedure was imposed.

--Show cause order: The Panel orders the parties to show why a remedy employed in previous cases should not be employed in the case before it.

--Supplementary decision and order: In order to clarify the intent of its decision and order, the Panel issues a supplementary decision and order to the parties.

--Factfinding directed with Panel action to be determined: The Panel directs that a factfinding hearing be held, but determines later what steps will be taken to resolve the impasse.

Title VII also encourages greater use of binding interest arbitration, if approved by the Panel. The Panel's executive director has interpreted the statute as requiring that the parties get the Panel's approval each time they want to use binding arbitration. This builds an additional step and more time into the procedure for resolving these disputes. To alleviate the problem, the Panel has told us that it plans to speed up its consideration of such requests which result from a previously negotiated procedure.

Finally, an important change under title VII which will potentially give the Panel added clout is the enforceability of its decisions through the use of the unfair labor practice

procedure. It is now an unfair labor practice for either party to fail or refuse to cooperate in impasse procedures or decisions.

PANEL INTERACTION WITH FMCS

An area of some confusion in impasse procedures under title VII is the interaction of the Panel and FMCS. Agency and union officials expressed frustration with the duplication of efforts of these two agencies. They believe that the duplication adds unnecessary delays to the resolution of impasses. Moreover, union officials indicated that these delays can serve as a disincentive to using these procedures.

The situation is complicated by the fact that title VII fails to clearly specify the difference between the role of these two agencies in the impasse resolution procedure. According to some officials, title VII creates more confusion than the Executive order did because title VII gives FMCS and the Panel certain identical responsibilities (although the Panel also has decisionmaking power).

Perceptions differ as to the effectiveness of this interaction. Panel members have encouraged development of what they believe to be a close working relationship with FMCS. The aim of these efforts, according to Panel officials, has been to encourage parties to fully use voluntary efforts to settle their disputes. There has been some overlap of mediation efforts in the past. The Panel's chairman has recently stated that the Panel will no longer mediate as it has in the past during the initial investigation of a request for assistance. The mediation resulted, in part, from the Panel's perception that FMCS, with the bulk of its caseload and experience in private sector matters, did not give enough attention to Federal sector impasses. Furthermore, with the Panel's emphasis on voluntary settlement, officials stated that they have always felt more comfortable with fact-finding and recommendations and other mediation like services guiding parties to settlement.

The FMCS staff members perceive a number of problems in their relationship with the Panel. The duplication of mediation efforts has had what they believe to be a negative impact on FMCS' ability to secure a voluntary settlement. The parties are essentially given two chances to take a case to mediation. Consequently, according to FMCS staff, many parties are intentionally bypassing FMCS' mediation efforts and settling their differences with the more powerful Panel. Under these circumstances, they contend their effectiveness

in resolving cases diminishes and they become merely a conduit for cases going to the Panel. The FMCS officials believe that this is particularly unfortunate since they have made new efforts in recent months to bolster their effectiveness by training mediators in the special needs of the Federal sector.

RECOMMENDATIONS TO THE CHAIRMAN, FEDERAL SERVICE IMPASSES PANEL

We recommend that the Panel:

--Set up time targets for each segment of its operations. This would improve the overall efficiency of the impasse resolution procedure and provide a valuable tool for assessing effectiveness.

--Work more closely with FMCS to resolve the confusion resulting from what the parties perceive as overlapping responsibilities. The difference between the role of these two agencies should be clarified in their operating regulations and conveyed to the parties. This will guarantee that both agencies are optimally effective in responding to the needs of the parties.

--Consider an alternative organizational plan to speed up the handling of its rising caseload. One option to consider would be to allow members to operate on an individual basis in various regions of the country. This would alleviate delays caused by the current practice requiring Panel members to convene in Washington, D.C. Moreover, by bringing their Federal sector expertise directly to the field, Panel members could work more closely with mediators and resolve impasses faster.

CHAPTER 6

OUR ASSESSMENT

Throughout its first year, transition, startup, and operational problems have impaired FLRA and the General Counsel in effectively performing all the duties assigned them under title VII of the Civil Service Reform Act. In recent months, however, as vacancies have been filled, responsibilities assigned, and procedures put into effect, FLRA's case processing and decisionmaking have improved. In spite of the problems, however, we believe there has been a noticeable change in Federal labor-management relations as a result of FLRA's leadership role. This change is consistent with the Congress' intent in establishing a neutral and independent third party for resolving disputes in the Federal Labor Relations Program.

The FLRA members and the General Counsel, in their leadership roles, 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. FLRA members and the General Counsel have also been extremely responsive to the concerns expressed by their clientele. 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 FLRA's decisions on specific issues have not created controversy in the labor-management community among advocates on both sides of the issues.

FLRA's independence from OPM is a critical feature in establishing its credibility as a neutral and impartial third party. As envisioned by the act, OPM's role in the labor-management relations program is primarily one of promoting, strengthening, improving, and representing management. As such, FLRA maintains the same "arm's length" relationship with OPM as it does with Federal employee unions and agencies. In instances when FLRA has initiated discussions with parties in the Federal labor relations program, OPM is frequently called upon as a representative of and spokesperson for management.

Many problems persist, however, and much remains to be done. Delayed confirmation of the General Counsel; consequent delay in issuing regulations, hiring staff, and processing cases; and time-consuming difficulties in securing office space in the regions and headquarters impeded the transition and FLRA's establishment of full operations. However, noticeable progress has been made since early fall 1979, and FLRA and its General Counsel and regional offices have begun to function more normally. Progress has been made in processing the backlog of cases filed during its first 6 months of operations but, because of an unanticipated increase in the number of cases filed throughout the year, the backlog of cases continues to grow.

Title VII has created some uncertainty which awaits FLRA's clarification through its decisionmaking process. Federal unions, reluctant to assume the validity of the Executive order case precedent, are relitigating some of the issues decided by the Assistant Secretary of Labor and FLRC and are seeking FLRA's guidance in interpreting title VII. While much of this activity may be inevitable in the years following the passage of a new statute, delays in FLRA's processing and in deciding cases and issues before it appear to compound the extent to which labor relations is practiced in the courtroom rather than at the workplace.

We will continue to monitor the progress and problems experienced by FLRA and report on these matters to the Congress.

AGENCY COMMENTS

FLRA commented that the report accurately describes its first year's performance and identifies many of the problems it has faced and had to overcome. FLRA officials endorsed the report's suggestion that OMB have a capability to assist newly formed agencies and that, with such assistance, some of the obstacles they encountered may have been avoided. On the other hand, while agreeing that sufficient organization changes are going on throughout the Federal Government to justify its investment in the area, OMB stated that, since 1977, it has had such a capability and used it continuously to assist agencies, including FLRA. On the basis of our observations of FLRA's early experiences, we believe that the assistance provided was not sufficient and that the type of assistance recommended in the report is needed.

FLRA also said that it has taken action on most, if not all, of our suggestions for improving operations. This includes

--reorganizing operations,

--developing methods for giving priority to certain cases and instituting a variety of expedited case-handling procedures,

--implementing a series of time targets and a system for case tracking and statistical analysis, and

--using legal assistants to aid ALJs.

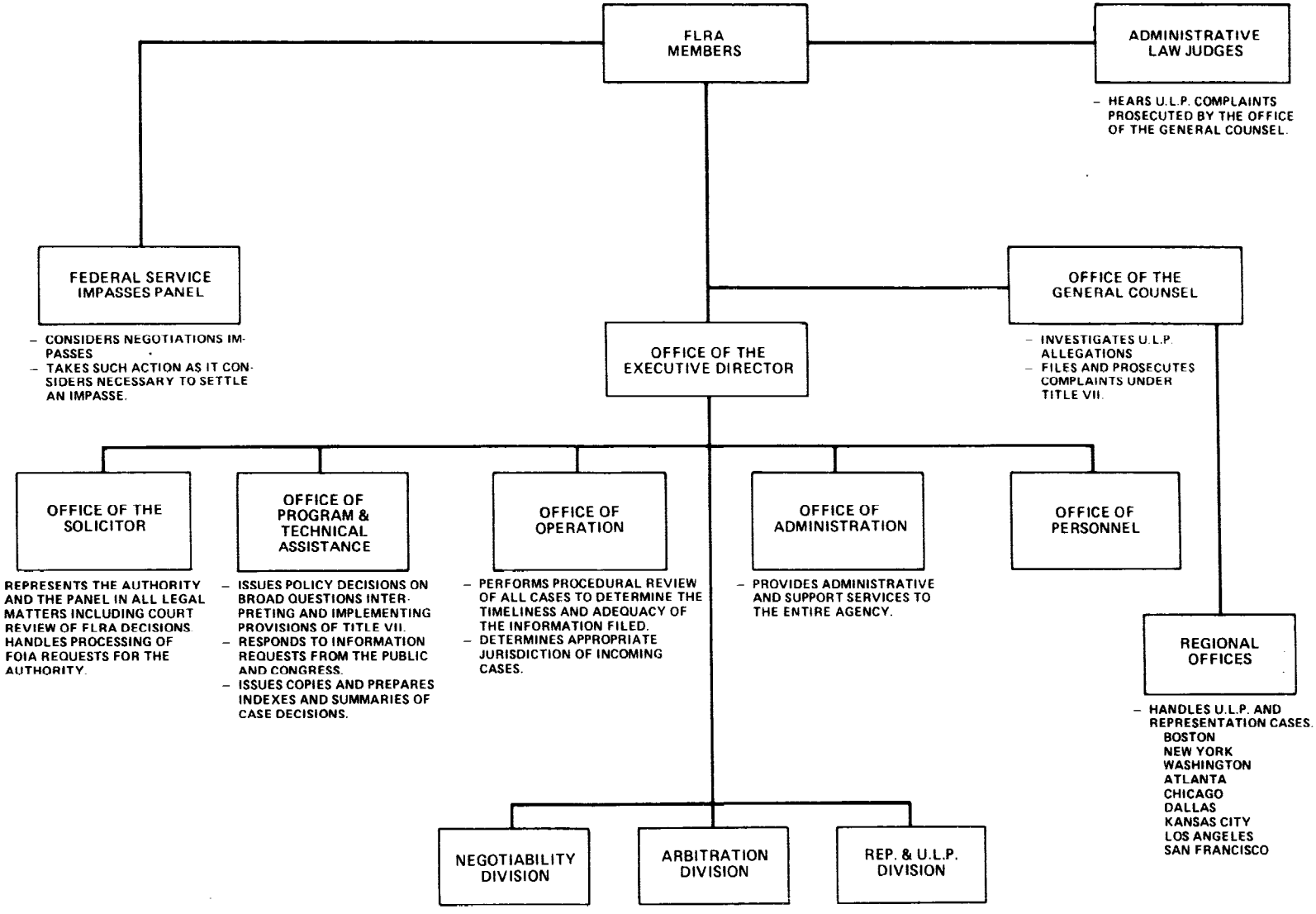
The Federal Service Impasses Panel agreed with our concerns about delays in case processing and the need to consider an alternative organization plan to expedite handling of the rising caseload. It stated that it is experimenting with different resolution techniques to reduce delays and is seriously considering our recommendations that time targets be included in the Panel's procedures. Also, the Panel stated that it has on occasion assigned members on an individual basis to meet with the parties to resolve a particular dispute and that this practice is expected to increase with the Panel's rising caseload. The Panel is also exploring with FMCS, the possibility of making a joint announcement concerning their respective responsibilities in the Federal labor relations program. This would include an affirmation of the current understanding between the two agencies on (1) mediation by Panel representatives and (2) the responsibilities of FMCS and its mediators when involved in disputes which are before the Panel.

The Panel, however, stated that the report did not accurately describe its role and effectiveness. It believes that the statistics cited in the report highlight a successful effort. Since only 10 percent of the 2,600 cases handled by FMCS were referred to the Panel, the Panel believes that the statement, "duplication of mediation efforts between FMCS and the Panel negatively affects FMCS' ability to secure voluntary settlements," was not supported. The Panel also did not agree that the lack of clarity between the roles of the Panel and FMCS makes the process of resolving impasses confusing to the parties and detracts from the Panel's effectiveness.

FMCS, in commenting on the report, however, agreed with our suggestion that FMCS and the Panel need to clarify their roles. It believes that including such a clarification in the Panel's regulations would "go a long way toward resolving confusion concerning the proper roles of the Service and the Panel."

Since the Panel's Chairman has recently stated that the Panel will no longer mediate as it has in the past during the initial investigation of a request for assistance, we believe that the differences between the roles of the two agencies should be clarified in their operating regulations and conveyed to the parties.

FLRA ORGANIZATION

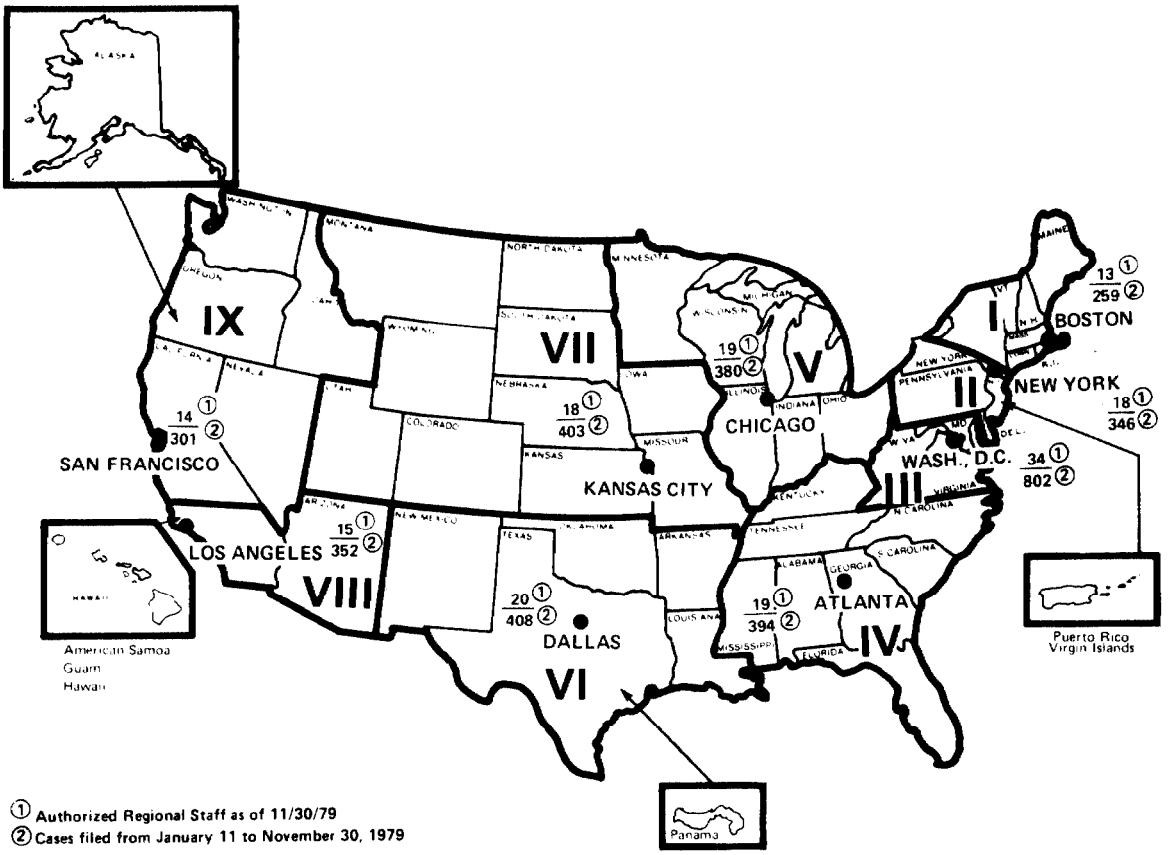


Note: This chart represents FLRA's makeup as of December 1979. "U.L.P." stands for unfair labor practices.

APPENDIX I

APPENDIX II

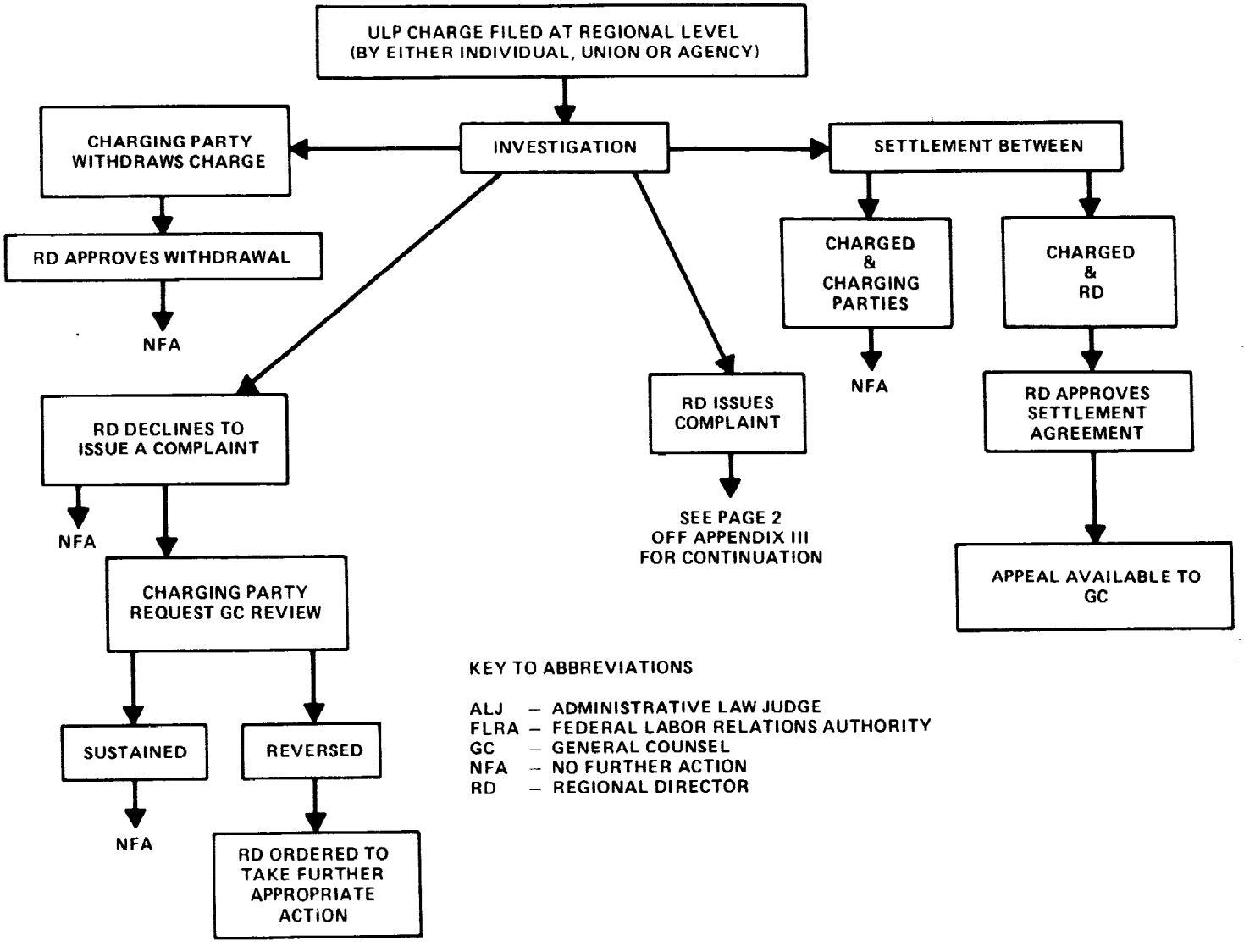
REGIONAL STRUCTURE OF FLRA



① Authorized Regional Staff as of 11/30/79
② Cases filed from January 11 to November 30, 1979

RECOGNIZED BARGAINING UNITS BY FLRA REGIONAL OFFICE AS OF JUNE 1979		
REGION	TOTAL = RECOGNIZED UNITS	TOTAL = FEDERAL EMPLOYEES IN RECOGNIZED UNITS
1	238	66,369
2	344	111,127
3	745	447,939
4	539	213,059
5	377	172,609
6	412	104,270
7	352	74,527
8	340	93,917
9	467	135,460

BASIC UNFAIR LABOR PRACTICE PROCEDURES UNDER TITLE VII



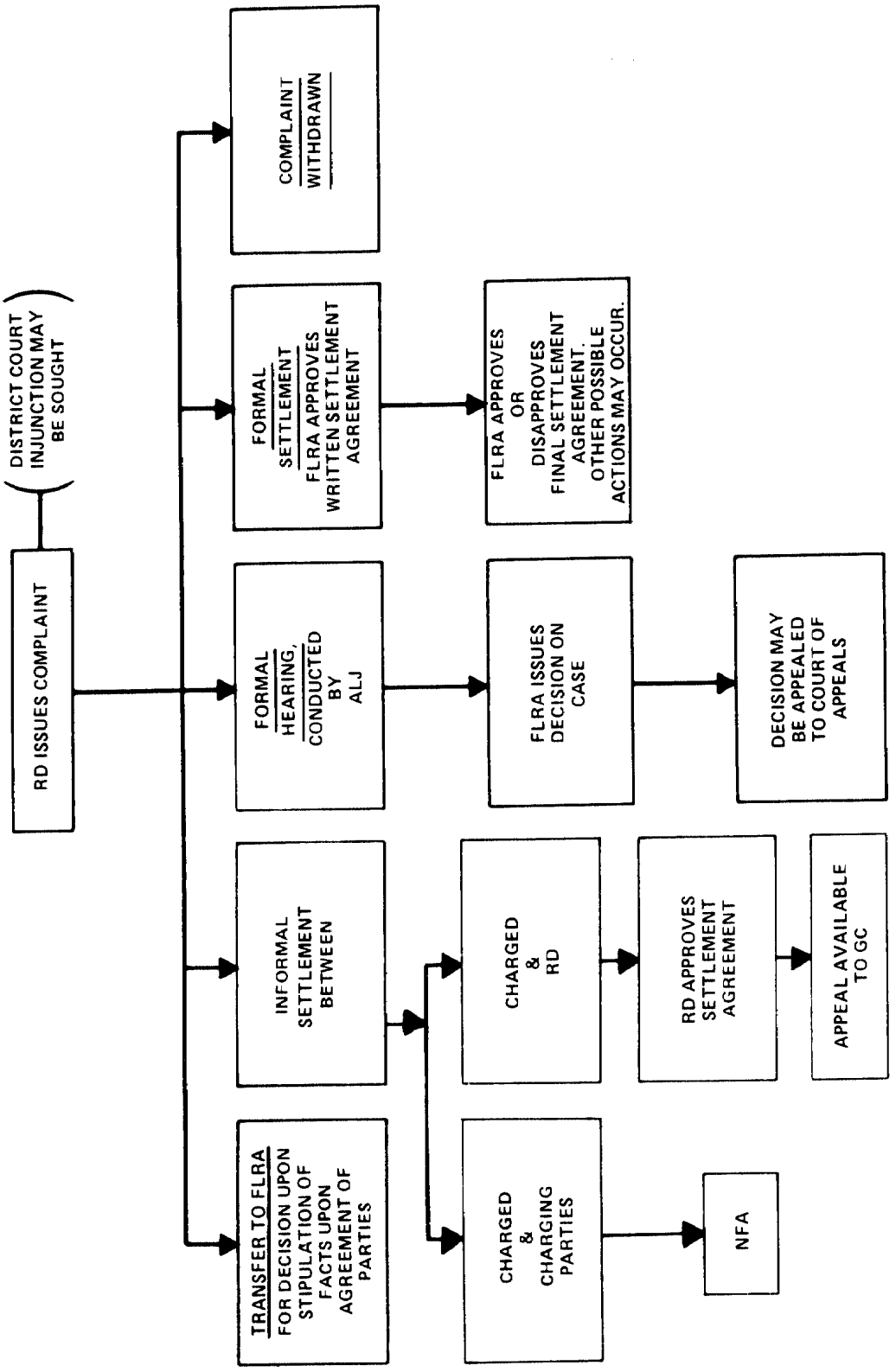
KEY TO ABBREVIATIONS

ALJ – ADMINISTRATIVE LAW JUDGE
FLRA – FEDERAL LABOR RELATIONS AUTHORITY
GC – GENERAL COUNSEL
NFA – NO FURTHER ACTION
RD – REGIONAL DIRECTOR

APPENDIX III

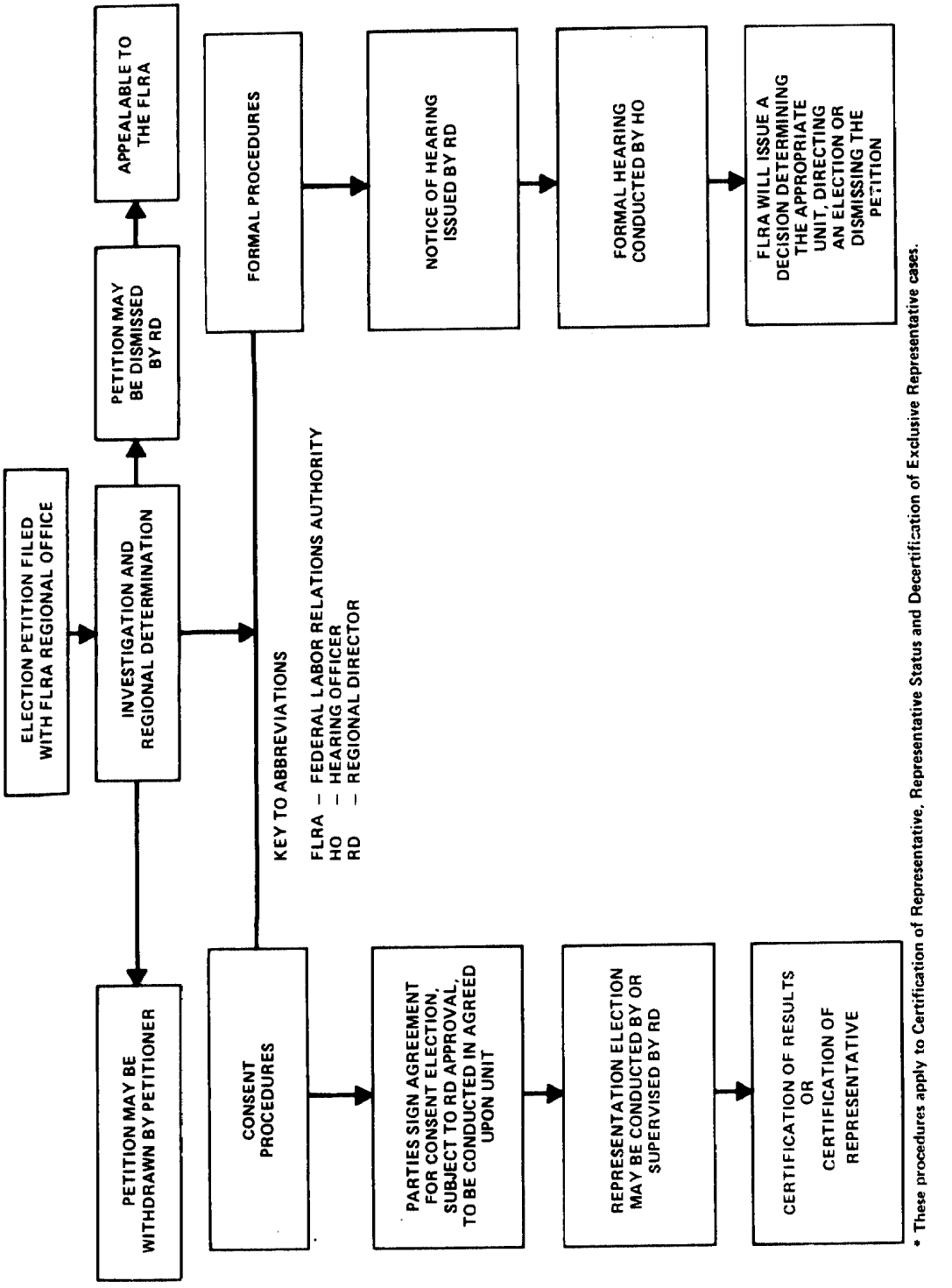
APPENDIX III

BASIC UNFAIR LABOR PRACTICE PROCEDURES UNDER TITLE VII



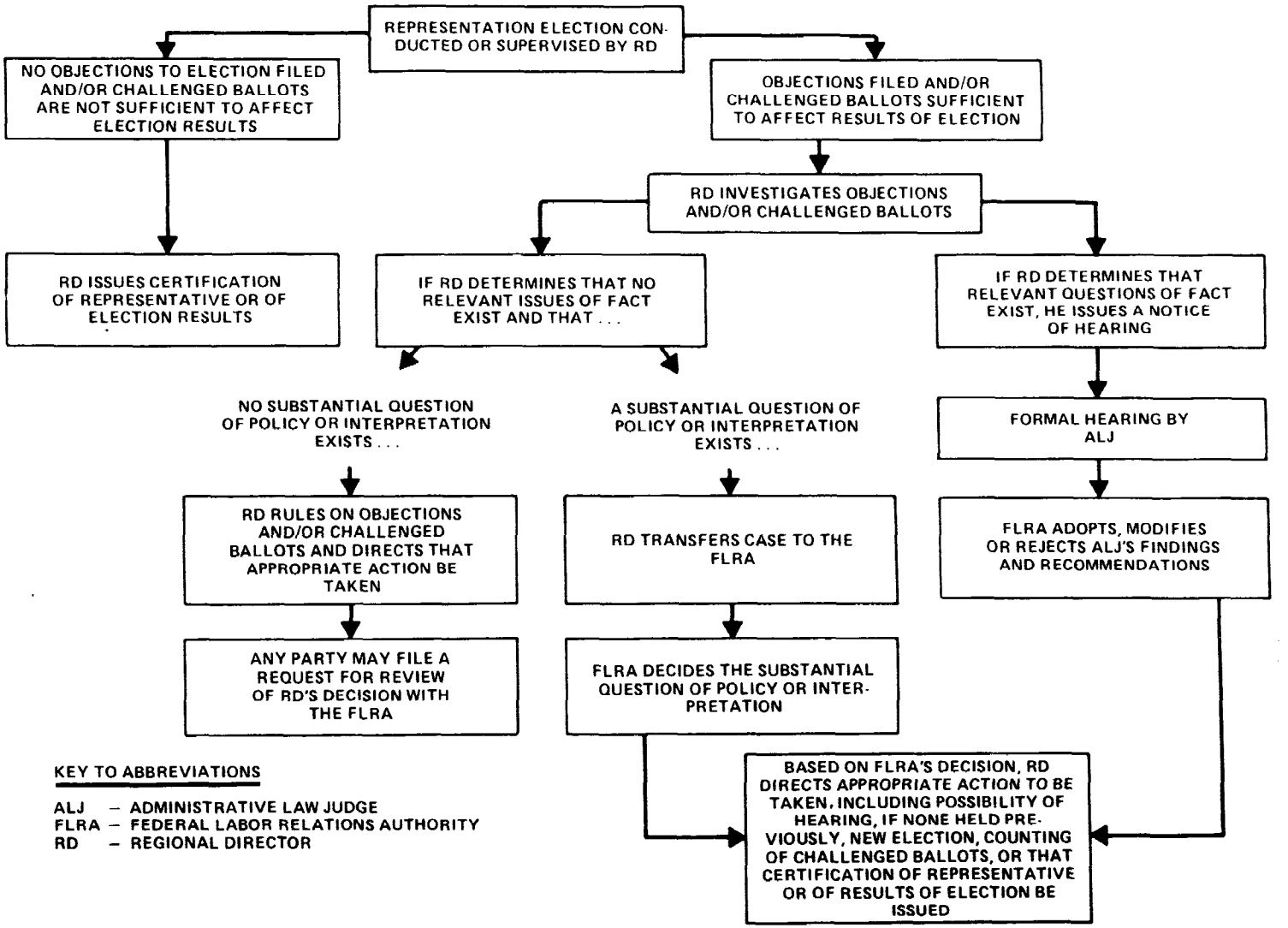
APPENDIX IV-A

BASIC PRE-ELECTION REPRESENTATION PROCEDURES UNDER TITLE VII*



* These procedures apply to Certification of Representative, Representative Status and Decertification of Exclusive Representative cases.

BASIC POST-ELECTION REPRESENTATION PROCEDURES UNDER TITLE VII



KEY TO ABBREVIATIONS

ALJ – ADMINISTRATIVE LAW JUDGE
FLRA – FEDERAL LABOR RELATIONS AUTHORITY
RD – REGIONAL DIRECTOR

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APPENDIX V

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

JUNE 11, 1979

B-115398

The Honorable Abraham Ribicoff
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

During testimony before your Committee on May 8, 1979, dealing with the adequacy of staff and resources of the Merit Systems Protection Board (MSPB) and Office of Special Counsel, you asked whether GAO was finding similar problems at the newly established Federal Labor Relations Authority (FLRA). Our work at the FLRA is revealing similar problems in terms of inadequate staff, space and resources. Some of these problems appear even more serious than those we identified to you at the MSPB.

In our opinion, with their present staffing, space and funding, the FLRA and especially its General Counsel and regional operations do not have adequate resources to establish full operation and effectively carry out the duties and responsibilities assigned under the Civil Service Reform Act (CSRA). As a result, the intent of the legislation may not be achieved. Currently, the FLRA's fiscal year 1979 supplemental and fiscal year 1980 budget requests are before the Congress. We believe that the FLRA should receive immediate attention and action on its budget requests. Furthermore, our review of the number of cases filed with the FLRA during its first four months of operations, projected on an annual basis, substantially exceeds the caseload upon which the FLRA based its initial fiscal year 1980 budget request. We believe this raises concern as to the adequacy of the resources requested in the fiscal year 1979 supplemental and the fiscal year 1980 budget to handle the workload.

Although the newly appointed FLRA members have made some progress in organizing their newly established agency, delay in appointing a General Counsel, the lack of adequate resources, and space problems have seriously impeded their efforts. Following is a brief discussion of our concerns on the problems the FLRA is encountering. A more detailed discussion of these areas is included in the enclosure to this letter.

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Office of General Counsel
and Regional Operations

To date, the absence of a General Counsel has prevented the FLRA from issuing its regulations. Moreover, in the absence of a General Counsel, unfair labor practice charges filed since January 11, 1979, when the CSRA took effect, are being investigated at the regional level but no complaints can be issued and no dispositive action can be taken. This has resulted in a backlog of more than 1,000 cases.

The FLRA has established nine regional offices across the country. The lack of sufficient and skilled staff for these regional offices is a major problem. The FLRA has had to use many of the vacant slots transferred to it to fill field management positions. As a result, few vacant positions remain to staff its investigatory and prosecutorial functions. Prosecuting unfair labor practice complaints is new to the Federal sector. Existing staff can not automatically assume these new duties. Performing the job effectively will require the hiring and training of new staff with specialized legal and prosecution expertise. Currently, the FLRA lacks the slots to hire this needed staff.

Another area of concern is the General Counsel's ability to effectively monitor and track cases being processed at the regional level. The FLRA currently lacks the resources to establish such a system.

One of the major criticisms of the third-party procedures of the Executive Order program was the lengthy time required to process cases. We believe that without additional staff and resources the General Counsel cannot adequately and in a timely manner investigate and prosecute unfair labor practice cases.

FLRA Headquarters

The headquarters operations, like the Office of General Counsel, does not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities.

An estimated 20-25 percent of the unfair labor practice charges filed at the regional level will require a hearing before an administrative law judge and many will subsequently be appealed to the FLRA. The increase in cases filed at the regional level will also require FLRA action at the headquarters level. Also the number of other types of cases,

APPENDIX V

such as negotiability appeals, filed directly with FLRA headquarters, have also markedly increased since the Act's enactment. We believe that the current FLRA's headquarters staff is inadequate to handle this increased caseload.

Title VII of the CSRA also gives the FLRA new responsibilities in the areas of judicial review and enforcement. These responsibilities will require new staff with the requisite expertise. The FLRA currently lacks this staff.

Another problem in setting up its headquarters operations is that many of the positions transferred to the FLRA must be used to fill administrative and support functions. While some of these administrative functions have been staffed, additional new positions are required. Continued reliance on the Office of Personnel Management (OPM) and the Department of Labor (DOL) for services and space may create the appearance of a potential conflict of interest since these two agencies are among the FLRA's clientele and will be parties to cases adjudicated by the FLRA.

Space Problems

Currently, the FLRA has a serious space problem. After devoting considerable time and effort in negotiating with the General Services Administration (GSA), the FLRA has made some progress, but many difficulties persist. At present, headquarters personnel are, for the most part, still temporarily located at the OPM and DOL buildings. Regional personnel are still operating out of DOL's field offices.

The lack of adequate space and resultant dispersal of staff is having a serious impact on the FLRA's effectiveness, efficiency and public image. This has resulted in

--staff spending considerable time commuting between various office locations;

--the inability to provide desks for all professional staff in some offices and the inability to fill certain vacant personnel slots because there's no place to put additional staff;

--the appearance of a potential conflict of interest;

--delays in purchasing necessary new equipment because there's no place to put it.

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The GSA has offered space to the FLRA at 1726 M St., N.W. in Washington, D.C. The space will not be available, however, until at least November. Securing new space for the regional offices is even less optimistic.

Conclusions

We believe that in order to achieve the goals of the Civil Service Reform Act, the FLRA must have the resources to expeditiously and judiciously decide complaints and issues affecting all parties to the Federal Government's collective bargaining process. It is essential that early on, the FLRA demonstrate credibility as the independent and effective body that Congress intended to establish. The FLRA'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 chosen representatives, but also on the effective and efficient operation of the government. We are concerned that the delays in processing cases resulting from insufficient resources or inexperienced personnel will increase the time and energy required of Federal managers to resolve problems arising in the workplace and strain and disrupt the working relationship between supervisors and their employees. The consequences may be costly in terms of declining morale and productivity.

We have previously called your attention to the problems of the MSPB and the Special Counsel. We also believe that the current funding and space problems at the FLRA are serious and need prompt action. We have discussed the contents of this letter with officials of the FLRA and they concur with our assessment of their current funding, resources and space problems. Your attention to this matter will be helpful. As arranged with your office, we are also sending copies of this letter to the House and Senate Appropriations Committees and to Senator Percy.

Sincerely,

Comptroller General
of the United States

Enclosure

APPENDIX V

Response to questions submitted by Senator Abraham Ribicoff on the Federal Labor Relations Authority

Question 1: The April 20 letter from Mr. Staats concerns only the MSPB and the Special Counsel. Does the GAO have similar concerns about the ability of the Federal Labor Relations Authority to perform its mission with the resources assigned to it? Please provide, for the record, an assessment of the performance and difficulties which the FLRA is currently encountering.

Answer: As we noted in our April 20,1979, letter to your Committee (in response to your earlier request for our assistance in providing oversight of the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM) and the Federal Labor Relations Authority (FLRA)), we now have a staff at each of these agencies to monitor their activities and implementation of the Civil Service Reform Act (CSRA). In that letter and in our subsequent statement before your Committee on May 8, 1979, we highlighted the staffing and funding problems of the MSPB and the Special Counsel.

As part of our monitoring activities we have also reviewed the budget, current staffing and operations of the FLRA. This includes the FLRA's Office of General Counsel and regional operations as well as the FLRA's headquarters office. In our opinion, with their present staffing and funding, the FLRA, particularly the General Counsel and regional operations, do not have adequate resources to establish full operations and effectively carry out the duties and responsibilities assigned under Title VII of the CSRA. The FLRA had an initial staff allocation of 265 positions for fiscal year 1979. Of this total, 64 positions were transferred from the Federal Labor Relations Council, 198 from the Labor Management Services Administration and 3 from the Civil Service Commission. The FLRA's budget request for fiscal year 1980 and a supplemental appropriation request for fiscal year 1979 of $1,789,000 (which includes a request for an additional 23 full-time permanent positions) are currently before the Congress. We believe that the FLRA should receive immediate attention and action on its budget requests. Furthermore, our review of the number of cases filed with the FLRA during its first four months of operations,

projected on an annual basis, substantially exceeds the caseload upon which the FLRA based its initial fiscal year 1980 budget request. We believe this raises concern as to the adequacy of the resources requested in the fiscal year 1979 supplemental and the fiscal year 1980 budgets to carry out their workload. The FLRA is aware of the problems we have raised and has done some initial work in preparing an amended fiscal year 1980 budget for the Office of Management and Budget.

To achieve the goals of the Civil Service Reform Act, we believe the FLRA must have the resources to expeditiously and judiciously decide complaints and issues affecting all parties to the Federal Government's collective bargaining process. It is essential that early on, the FLRA demonstrate credibility as the independent and effective body that Congress intended to establish. The FLRA'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 the government. We are concerned that the lengthy case processing time resulting from insufficient resources, or the staffing of functions with inexperienced personnel, will increase the time and energy required of Federal managers to resolve problems arising in the workplace and strain and disrupt the working relationship between supervisors and their employees. The consequences may be costly in terms of declining morale and productivity.

Although the newly appointed FLRA members have devoted their efforts and made progress in organizing their newly established agency, delay in appointing the new General Counsel, space problems, and lack of adequate resources have seriously impeded their efforts. Following is a more detailed discussion of our concerns on the problems encountered to date.

Office of General Counsel and Regional Operations

Delay in appointing the General Counsel, who will be in charge of most field activities, has seriously impeded the progress made in establishing this aspect of the FLRA's operations. The General Counsel's major responsibilities under the CSRA are (1) investigating and prosecuting unfair labor

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practice cases which are filed at the regional offices and comprise the major portion of the FLRA's caseload and (2) directing the field operations. To date, the absence of a General Counsel has prevented the FLRA from issuing regulations. It is therefore still operating under transition regulations which basically continue the Executive Order program. Unfair labor practice cases filed at the regional level since January 11, 1979 are being investigated, but in the absence of a General Counsel no complaints can be issued and no dispositive action taken. This has resulted in a backlog of more than 1,000 cases. Potentially, many of these cases will require unfair labor practice trials before an administrative law judge.

The FLRA has established nine regional offices across the country whose locations are based primarily on prior case activity under the Executive Order 11491 program while also taking into account where the majority of employees who previously administered the Executive Order program were located. The Assistant Secretary's employees had, under the Executive Order program, been located in the Department of Labor's 30 field offices. A number of problems have been encountered in relocating field office staffs, including the lack of space in many of the designated regional offices to accommodate any additional personnel. (See discussion in question 2.)

Another major problem is the lack of sufficient and skilled staff in the regions. One of the significant responsibilities assigned under Title VII is the prosecutorial function of the General Counsel's regional personnel. The FLRA has had to use many of the vacant slots transferred to it to fill field management positions, i.e. a regional director and supervisory trial attorney for each of the nine regions and their support staff. The Department of Labor had previously provided field management. The FLRA, as a result, has few vacant positions remaining to staff its investigatory and prosecutorial functions. Prosecuting unfair labor practice complaints, a function also performed by the National Labor Relations Board (NLRB) in the private sector, is new to the Federal sector. Staff transferred from the Assistant Secretary of Labor's Executive Order operations can not therefore automatically assume these new duties. The

hiring and training of new staff, with specialized legal and prosecution expertise will be required to perform the job effectively. Currently the FLRA lacks the personnel slots to hire this needed staff.

Another area of concern is the General Counsel's ability to effectively monitor and track cases being processed at the regional level. Your Committee has previously commended the NLRB for its procedures in tracking and expediting cases. If the FLRA is to emulate the efficiency of the NLRB, at the minimum, the resources requested in the fiscal year 1980 budget and the supplemental request will be needed.

In its first four months of operations, 927 cases, 714 of which are unfair labor practice charges, have been filed by agencies, labor organizations and employees at the FLRA's regional offices. The FLRA's request for fiscal year 1980 is for 178 full-time permanent positions to staff its field operations. Staffing requirements were based on initial projections that 1,798 representation and unfair labor practice cases would be filed at the regional level. Therefore, if the present level of filings continue, actual cases filed will exceed, by more than 50 percent, the FLRA's initial estimates upon which it based its fiscal year 1980 budget request.

Without additional staff and resources, the General Counsel cannot adequately and in a timely manner perform the functions assigned under Title VII. One of the major criticisms of the third-party procedures of the Executive Order program was the lengthy processing of cases. We believe that without adequate resources the current and future effectiveness of the General Counsel and the FLRA's field operations are likely to be seriously impaired.

FLRA Headquarters

The headquarters operation, like its Office of General Counsel, does not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities.

An estimated 20-25 percent of the unfair labor practice charges filed at the regional level will require a hearing before an administrative law

judge and many will be subsequently appealed to the FLRA. Therefore, the increase in cases filed at the regional level, which we discussed earlier, will also require action at the headquarters level.

Secondly, Title VII of the CSRA gives the FLRA new responsibilities in the area of judicial review and enforcement. These responsibilities will require new staff with the requisite expertise. The FLRA currently lacks this staff.

Thirdly, while many of the FLRA's functions are similar to those of the NLRB in the private sector, Title VII vests the FLRA with certain additional responsibilities unique to the Federal sector program. These include reviewing exceptions to arbitration awards and deciding negotiability appeals. These cases are filed directly with the headquarters office. Based on the number of cases filed in the FLRA's first four months of operations, it appears that the number of these cases, particularly negotiability appeals, will be significantly larger than similar types of cases filed with the Federal Labor Relations Council (FLRC) under the Executive Order program. The total number of negotiability appeals filed since January 11, 1979, already exceeds the total number filed in all of 1978.

Finally, another problem encountered in setting up the new agency is that many of the slots transferred to it must be used to fill administrative and support functions for which the FLRC and the Assistant Secretary of Labor, merged to form the FLRA, had previously relied on the Civil Service Commission 1/ and the Department of Labor (DOL), respectively. While some of these administrative functions have been staffed by the FLRA, additional new positions are required. Continued reliance on the OPM and the DOL for services and space may create the appearance of a potential conflict of interest since these two agencies are among the FLRA's clientele and will be parties to cases adjudicated by the FLRA.

1/Now performed by the Office of Personnel Management (OPM).

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In conclusion, we feel that the FLRA, and particularly its Office of General Counsel and field operations are experiencing difficulties similar to those of the Merit Systems Protection Board and the Special Counsel. While the FLRA's case backlog is not as high as the MSPB's, more than 1,000 cases are currently pending. While we are confident that once the General Counsel is appointed this backlog will decrease, we are concerned that the FLRA's current level of staff and funding is inadequate to carry out the responsibilities assigned to it under the CSRA.

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Question 2: While it is apparent that the Special Counsel and the MSPB have encountered problems in receiving adequate office space and services, could you tell us, for the record, what similar problems the FLRA had encountered?

Answer: Title VII merged the functions previously performed by the Federal Labor Relations Council (FLRC) and the Assistant Secretary of Labor (ASLMR). Also, additional new responsibilities requiring additional resources were assigned to the FLRA under the Act.

Previously, the FLRC personnel were located in the Office of Personnel Management's building in Washington, D.C. and the ASLMR staff was located in the Department of Labor's (DOL) main building. ASLMR regional personnel were located in 30 DOL field offices across the country. Those FLRC and ASLMR personnel transferred to the FLRA have been assigned to either its headquarters location or one of its regional offices which have been established.

Currently, the FLRA has a serious space problem. After devoting considerable time and effort in negotiating with the General Services Administration (GSA), there has been some progress, but many difficulties persist. At present, the FLRA's headquarters personnel are, for the most part, still temporarily located at the OPM and DOL buildings. Regional personnel are still operating out of DOL's field offices.

The lack of adequate space and the resultant dispersal of staff, is having a serious impact on the FLRA's effectiveness, efficiency, and public image. Headquarters staff spend considerable time commuting between the various office locations. Supervisors, particularly in the field, are separated from their employees. Also, in the Washington Regional Office, for example, where the FLRA's clientele often come in person to file complaints or deal with staff, there is not even enough space to provide desks for all of the professional staff. Moreover, we feel that continued housing of the

FLRA in agencies (OPM and DOL) which are themselves the FLRA's clientele creates the appearances of a potential conflict of interest.

Even if the FLRA's resources were adequate to hire those people they needed, some of the vacant slots in the regional offices could not be filled because there is no place to put additional staff. The FLRA is, in many cases, only able to begin personnel actions in those regional offices where space has been assigned by GSA and accepted by the FLRA.

The regional office staffs also need equipment, such as xerox machines to perform their duties. The equipment cannot be ordered yet because there is no space for it.

The GSA has offered space to the FLRA's headquarters at 1726 M St., N.W. The space will not be available, however, according to GSA, until at least November. Beginning in November, blocks of space in the M St. building will become available on a phased basis and it is therefore estimated that it will take until at least next spring before the FLRA's total Washington staff can relocate there.

Securing new space for the regional offices is even less optimistic. It will be a minimum of 5 to 6 months before the following regional offices are relocated in permanent space - Boston, New York, Atlanta, Chicago, Washington 1/, Dallas and San Francisco. The other regional offices and their proposed office occupancy dates are - Kansas City 7/79; Denver 5/79; and Los Angeles 8/79.

In summary, we believe FLRA has a serious space problem which needs prompt attention and action.

1/Plans now are to house the Washington Regional Office with the FLRA's headquarters office on M Street.

APPENDIX VI

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
1900 E STREET NW. ● WASHINGTON, D.C. 20424

February 19, 1980

Mr. H. L. Krieger
Director, Federal Personnel
and Compensation Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Krieger:

These comments on behalf of the Federal Labor Relations Authority and its General Counsel, together with enclosed comments of the Federal Service Impasses Panel, are submitted in response to your letter of February 8, 1980, which transmitted a draft of a proposed report entitled "The Federal Labor Relations Authority: An Overview and Assessment of its First Year of Operations."

The report is a first rate job. It is clear that hard, thorough and competent work went into its preparation. The report accurately describes our first year's performance and identifies many of the problems with which we had to deal with and many of the obstacles we had to overcome, including the delay in appointing the General Counsel. There also was a substantial delay in the appointment of the third Authority Member, Mr. Leon B. Applewhaite.

In light of the problems we faced as a brand new agency and of our experiences we most heartily endorse the report's suggestion found on page IX of the Digest and page 15(a), that OMB have a capacity to actually assist and aid a newly formed agency. We might have been able to avoid many of the obstacles we faced had we had such a procedure available at our inception.

With respect to the FLRA headquarters, we read with interest many of the suggestions made in the report and we are pleased to advise you that we have already moved on most, if not all, of them. Most importantly we have substantially reorganized our operation and a part of the reorganization has resulted in the creation of an Office of Case Handling under a single Chief Counsel and staffed by case handlers who will be assigned all types of cases. A chart of the reorganization is enclosed.

We have developed methods for giving priority handling to cases in appropriate situations and have instituted a variety of expediting procedures. Further, we have been implementing a series of time targets and a rather sophisticated system of case tracking and statistical analysis. Similarly, as described on page 28 of the report, the Authority Members have placed time limits on themselves so as to avoid any possible delays at this level. With respect to the suggestion on page 23 of the report that hearings can be held on negotiability disputes, we are pleased to inform you that we currently have scheduled for March 4, 1980, a hearing on a series of negotiability disputes.

The report, on page 19, suggests greater utilization of policy decisions. Although there can be advantages to issuing policy decisions in certain areas,

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there can also be disadvantages. For example, in a policy decision it is not possible to anticipate all problems and situations that might arise and thus such a policy decision might actually lead to increased case-by-case litigation in order to obtain interpretations of the policy set forth. The recommendation contained on pages 30 and 31 of the draft that the Office of Administrative Law Judges utilize legal assistants has merit and we are following up on this suggestion. In addition we urge that we need more ALJs because of the increased number of case filings, and the nature of the work-load, including the large number of unfair labor practice hearings that must be conducted only by ALJs.

Again we comment on the high quality of the report, and we are happy to be able to inform you that we have moved in many areas in order to improve efficiency and the expedition with which we can process cases.

Sincerely,

Ronald W. Haughton

Ronald W. Haughton
Chairman

Enclosures (2)

GAO Note: Page numbers refer to a draft of the report.

APPENDIX VI

COMMENTS OF HOWARD G. GAMSER, CHAIRMAN OF THE FEDERAL SERVICE IMPASSES PANEL, ON THE PROPOSED GAO REPORT TO CONGRESS ENTITLED "THE FEDERAL LABOR RELATIONS AUTHORITY: AN OVERVIEW AND ASSESSMENT OF ITS FIRST YEAR OF OPERATION."

The Federal Service Impasses Panel appreciates the opportunity to review and comment upon the proposed General Accounting Office Report to Congress entitled, "The Federal Labor Relations Authority: An Overview and Assessment of its First Year of Operation." Our comments are limited to Chapter 5 of the Report which covers the Panel, and, in particular, to the three suggestions which appear on p. 56.

As to the first suggestion, we share the GAO's concern about delays in the processing of cases and are looking for ways to achieve faster resolution of impasses which come before us. Our experimentation with different dispute resolution techniques and with being more unpredictable in the use of these procedures, as noted in the Report, are beginning to reduce casehandling time. Moreover, we are giving serious consideration to your recommendation concerning the setting of additional time targets in our procedures. Strict time limits, however, can be counterproductive in the dispute resolution process. The Panel's success in helping the parties achieve voluntary settlements is partially due to its willingness to delay formally intervening in a dispute until negotiation and mediation efforts have run their course. Were this flexibility to be limited, the number of voluntary settlements would probably be reduced, to the disadvantage of the parties and the public.

As to the second suggestion concerning the roles of the Federal Mediation and Conciliation Service and the Panel, we are currently exploring with FMCS the possibility of making a joint, public announcement concerning our mutual responsibilities in the Federal labor relations program. This would include an affirmation of the current understanding between the two agencies with respect to (1) mediation by Panel representatives and (2) the responsibilities of FMCS and its mediators when involved in disputes which are before the Panel.

In a larger context, the cited statistics show clearly that the compulsory processes available to the Panel have not chilled collective bargaining despite the absence of the right to strike in the Federal sector. Unlike the experience in some other jurisdictions where compulsory arbitration reduces the incidence of voluntary collective bargaining settlements, the experience in

the Federal sector has been just the opposite. As noted on page 48 of the Report, of the 2,700 cases handled by FMCS between 1974 and 1978, 87 percent were settled without resort to Panel impasse procedures. The number "referred" to the Panel, 13 percent, is a figure so low that it should have been highlighted, for it contradicts the allegation (p. 55) that "the duplication of mediation efforts has had what they believe to be a negative impact on FMCS' ability to secure a voluntary settlement." Certainly, these allegations should not have been elevated to the status of a GAO conclusion (Digest, pp. vi-vii) that "the lack of clarity as to the respective roles of the Panel and the Federal Mediation and Conciliation Service ... makes the process of resolving impasses confusing to the parties and, according to some [unidentified] officials, detracts from the Panel's effectiveness."

The GAO is urged to amend its Report so as to more accurately describe the role of the Panel. The raw statistics cited in the Report (p. 51) that "82 percent of the total cases [closed by the Panel] were settled with minimal*/ or no Panel involvement," demonstrate that Congress correctly recognized that the Panel had two functions: (1) To assist the parties in the settlement of their own disputes and (2) to effect a compulsory settlement when other means fail. Both roles are intimately connected. Just as settlement of law suits will often occur "at the courthouse door" because of the imminent presence of the court, the same phenomenon occurs when cases reach the level of the Panel where the presence of the statutory decision-maker is also imminent. Such settlements are thus procedurally different from those achieved through prior mediation by the FMCS.

It is a well-known truth in labor relations that mutually agreed-upon solutions to disputes are preferred over any other kind of resolution. As the foregoing figures demonstrate, moreover, FMCS has done a successful job of mediating, and the evidence cited by the Report does not support a conclusion of confusion in the minds of the parties. As to the alleged by-passing of FMCS by some parties, the experience of the Panel and its statistics indicate that this does not appear to be the case, or if it does, it is because the parties have succeeded in concealing this fact from both the FMCS mediators and the Panel, which is unlikely. The Panel does not assert jurisdiction over disputes unless the parties have first exhausted mediation efforts. In fact, the Panel has never intervened in a case until

*/ The word "limited" would be more accurate because in many of these cases Panel staff spent a considerable amount of time investigating the request for assistance and consulting with the parties.

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FMCS reported that its mediation efforts had ended. The figures cited (p. 51) indicate, for example, that in 12 percent of the cases closed by the Panel, the matter was formally "returned for further bargaining" which often included further mediation. More often, the Panel informally delayed its intervention until advised that negotiation and mediation efforts had been exhausted.

As to the last suggestion concerning "an alternative organizational plan to facilitate expeditious handling of its rising caseload," occasionally the Panel has assigned one of its members to meet with the parties to resolve a particular dispute. This practice is expected to increase with the Panel's rising caseload, and it is clearly contemplated by our new regulations. For similar reasons, the Panel expects to act more often through subpanels of its members, rather than the full Panel, when making formal recommendations and decisions in less complex cases.

The Panel respectfully urges that the Report be amended to reflect the foregoing facts and conclusions.

GAO Note: Page numbers refer to a draft of the report.

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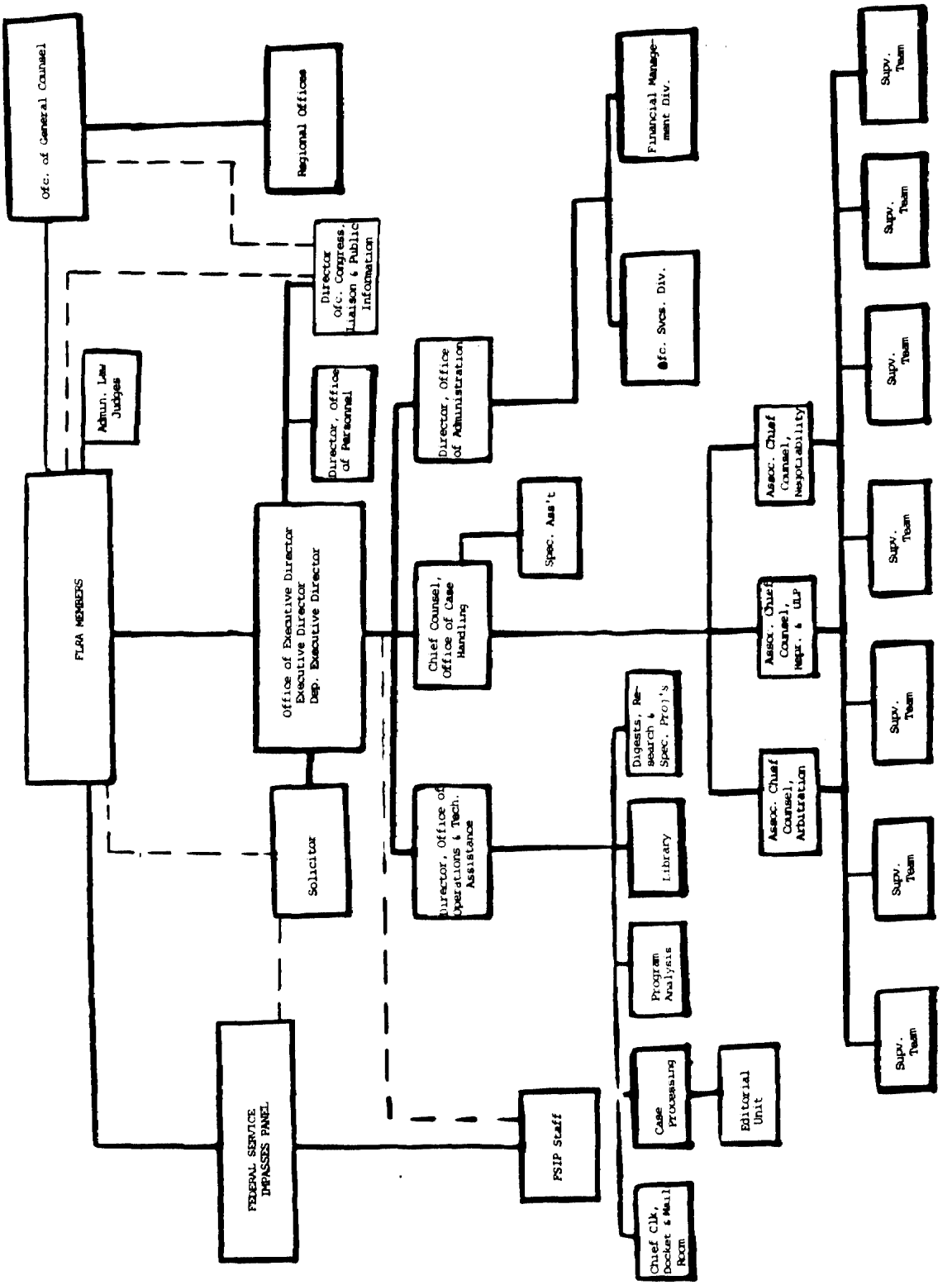
FEDERAL LABOR RELATIONS AUTHORITY



United States of America
Office of Personnel Management Washington, D.C. 20415

FEB 22 1980

Mr. Hy Krieger
Director, Federal Personnel
and Compensation
General Accounting Office
Washington, D.C. 20548

Dear Mr. Krieger:

Thank you for sending me a draft copy of your proposed report, "The Federal Labor Relations Authority: An Overview and Assessment of Its First Year of Operation." The following are my comments:

In a number of places, pp. i, viii, and 2, it is implied or explicitly stated that the Authority, and Title VII of the Civil Service Reform Act, exist for the protection of employee and union rights, with no note made of the fact that the Federal sector labor relations program is a blend of union, employee and management rights and responsibilities. It is the function of the FLRA to administer and enforce the entire body of rights and responsibilities contained in Title VII. In a related matter, the reference on page 58 to OPM's role in the labor-management relations program as solely that of promoting and representing management can be misinterpreted. Certainly, OPM is interested in and works for sound labor-management relations, including cooperative dealings with unions on appropriate matters and a concern for employee well-being.

With respect to the suggestion on pp. ix and 15(a) that Congress consider establishing, within OMB, the capability to assist new agencies in setting up operations, I would like to point out that under our newly established Agency Relations group, OPM has been performing that function. For example, members of the Agency Relations staff have worked very closely with officials of the new Department of Education, and are assisting on a wide range of matters with respect to the proposed Energy Mobilization Board.

OPM does not share the view attributed to agency and union officials that "delay in processing and issuing policy decisions has led to a proliferation of unfair labor practice and negotiability cases." The theory is that the issuance of a major policy issue will eliminate needless litigation. However, some policy decisions may raise more questions than they

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answer. It is OPM's view that a decision based on a full record developed in a specific case may ofttimes be more helpful in elucidating the law than a major policy statement.

The statements at the bottom of page 21 and in the middle of p. 59 incorrectly assert that both unions and agencies are relitigating old issues. At this point, I am not aware of any significant efforts by agencies to raise issues which were settled by A/SLMR and/or FLRC decisions. Rather, the record supports the view that unions are relitigating these issues.

In regard to the Section on "Office of Administrative Law Judges," p. 28, it must be remembered that there are a very limited number of GS-16 ALJ positions from which to draw. Notwithstanding, we recognize the growing need that FLRA has for such additional positions and we will continue to cooperate.

As background, I wish to highlight our most recent communications on this subject with FLRA. Briefly, in February 1979, four (4) GS-16 ALJ positions were allocated and in October 1979 two (2) additional GS-16 ALJ positions were allocated to FLRA. At the same time (October 1979), FLRA was advised that OPM's Office of Administrative Law Judges (OALJ) would look sympathetically at future requests. To date, that Office has not received a further request. However, the personnel staff at FLRA notified our OALJ in early February that they shortly would request additional positions.

It has been the policy of our OALJ to insure that there is a demonstrated need for any requested ALJ positions. This policy has been taken, because, as noted, of the relatively few positions to be allocated, and also to insure the full utilization of the entire ALJ corps. In this regard, it has come to our attention that there are ALJs in certain other agencies who, for various reasons, are not being fully utilized. It has been suggested to FLRA that they might wish to employ any such judges with appropriate experience on a detail basis. It has also been pointed out that experience has shown that larger support staffs, comprised of attorneys and law clerks would assist in increasing the production of the judges.

The section on "What Caused the Backlog of Cases," p. 37, does not mention one Authority policy that may have contributed to the problem. Despite repeated urgings by agencies, the Authority has refused to require a procedure, similar to that contained in the Assistant Secretary's rules, for a charge to be initially filed by the complainant against the respondent, with an allowance of thirty days for investigation and settlement by the parties. The experience with this procedure was excellent, and many agencies reported a high percentage of settlement. While the FLRA's procedures have also resulted in many settlements, they come after some, or a substantial, investment of FLRA resources.

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The problems discussed in the section, "Panel Interaction with FMCS," are inevitable when two bodies such as FSIP and FMCS have such closely related functions, with each having jurisdiction at different stages of the same impasse. In our view, both have worked hard to minimize the problems. As for other matters discussed concerning impasses, I agree that delays in resolving disputes can adversely affect a labor-management relationship. However, I do not share the view that delays are more damaging to unions than to agencies. Further, I am not aware of delays that can be attributed solely to the fact that Panel members act on a part-time basis. Further, the suggestion on page 56 that Panel members operate on an individual basis as super mediators/arbitrators would appear to exacerbate the FMCS-FSIP overlap previously cited.

I suggest one final point to be made. OPM, and agency management in general, have expressed concern at what we see as the use of peripheral legislative history and ambiguous statements to support interpretations of Title VII, which misread the essential legislative intent to codify Executive Order 11491, as amended. In this respect, I commend to your attention a speech recently given by Anthony F. Ingrassia, OPM's Assistant Director for Labor-Management Relations, copy enclosed.

I appreciate the opportunity to comment on this draft report.

Sincerely yours,

Alan K. Campbell
Director

Enclosure

GAO Note: Page numbers refer to a draft of the report.

APPENDIX VIII

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 26 1980

Mr. Arnold R. Voss, Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This is in response to your letter of February 11, 1980, asking for review and comment on the draft report entitled "The Federal Labor Relations Authority: An Overview and Assessment of its First Year of Operation."

We disagree with the draft report conclusion on page 15(b) "...that Congress should consider the possibility of establishing within the Office of Management and Budget the capability to assist new agencies in setting up operations, especially from an administrative standpoint, i.e., space, budgets, equipment, and staff."

The fact is that since 1977, the Office of Management and Budget has had such a capability and has used it continuously over the past three years to provide the kind of assistance mentioned on page 15(a) of the draft report. We agree that there are sufficient organizational changes going on throughout Federal government to justify OMB's investment in the area. Since 1977, the President has proposed 13 reorganization initiatives to Congress which were all approved and many additional organizational reforms have been made through Executive Orders and administrative action.

In addition to the President's Reorganization Project staff within OMB which has assisted in various implementation efforts, we have maintained a group of implementation experts in the Management Improvement and Evaluation Division to advise and assist not only new agencies but also new agency heads in getting started. This unit has assisted in implementation planning for virtually every new agency created since 1977 including Department of Energy, Office of Personnel Management, Merit Systems Protection Board, Federal Labor Relations Authority, Federal Emergency Management Agency, International Communication Agency, International Development Cooperation Agency, Office of the Federal Inspector, and Department of Education. The Management Improvement and Evaluation Division also has provided assistance to new agency heads during the first critical weeks or months of their sojourns in Washington

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including the Chairman of the Consumer Product Safety Commission, the Director of the Federal Emergency Management Agency, the Secretary of Education, the Administrator of General Services, and the Federal Inspector (Alaska Natural Gas Transportation Systems). The Division has also played a major role in implementing the reorganization of Federal contract compliance activities.

We plan to continue to provide advice and assistance in implementing new organizations. For example, in anticipation of favorable conference action, we have already done some implementation planning for the Energy Mobilization Board and the Energy Security Corporation which the President proposed be created in 1979.

As we have demonstrated, OMB now has the capability you would have the Congress consider establishing. We believe we have taken positive steps to be responsive to the need.

Sincerely,

Harrison Wellford
Executive Associate Director
for Reorganization and Management

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

February 26, 1980

H.L. Krieger
Director
United States General Accounting Office
Room 4001
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Krieger:

Thank you for this opportunity to comment on your proposed report to Congress entitled, "The Federal Labor Relations Authority: An Overview and Assessment of its First Year of Operation." I have several comments on Chapter 5 involving the interaction of the Federal Mediation and Conciliation Service with the Federal Service Impasses Panel.

I agree with your recommendation that the Service and the Panel should clarify their roles in the minds of the parties and reflect the distinctions in their regulations. The Service is in the process of promulgating modified regulations on its role in the Federal Sector. A copy of the draft Proposed regulations, which should be published soon in the Federal Register, is attached for your information.

As reflected in the proposed regulation, the Service is attempting to indicate to the parties its increased emphasis on providing mediation services in the Federal Sector. We now have a national representative position in Washington to act as full-time Federal Sector coordinator. We make an assignment for all federal sector cases and become active in approximately 60%.

Under an agreement now in effect between FMCS and the Panel (Attachment to this letter), the Panel has indicated it will not accept cases until the Service notifies it that mediation efforts have been exhausted. However, the Panel has not embodied the agreement in its regulations, and it is not widely known by the parties. In my view, an explicit acknowledgment of the "Gamser-Horvitz" agreement in the Panel's regulations would go a long way toward resolving the confusion concerning the proper roles of the Service and the Panel. Collective bargaining in the Federal Sector would be well served if the Panel performed its adjudicatory role and left the mediation process to the Service.

Finally, I would like to note that your statistical statement on p. 48 is not entirely accurate. According to our statistics, fewer than 10% of our cases during the period 1974-1978 were referred to other agencies. This figure includes referrals to the appropriate authority for negotiability determinations as well as to the Panel. Further, cases are normally referred to the Panel by the parties; FMCS makes such a referral only in rare cases.

I hope you find these comments useful. Please feel free to call if I can provide further information.

Sincerely,

Wayne L. Horvitz

GAO Note: Page numbers refer to a draft of the report.

* U.S. GOVERNMENT PRINTING OFFICE : 1980-620-386/107

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