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Steps Can Be Taken to Improve Federal Labor-Management Relations and Reduce the Number and Costs of Unfair Labor Practice Charges

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The unfair labor practice process protects the rights given to Federal agency management, employees, and unions by the Civil Service Reform Act of 1978. The number of unfair labor practice charges has more than doubled since 1978 and is expected to continue to increase. GAO believes that labor-management relationships could be improved and the number of unfair labor practice charges and their related processing costs could be reduced if more disputs were settled informally. In addition, unfair labor practices can be prevented by assessing the effectiveness of managerial labor relations and by monitoring and evaluating unfair labor practices.

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General Accounting Office

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GAO believes that labor-management relationships could be improved and the number of unfair labor practice charges and their related processing costs could be reduced if more disputes were settled informally. In addition, unfair labor practices can be prevented by assessing the effectiveness of managerial labor relations and by monitoring and evaluating unfair labor practices.

GAO makes recommendations to the Federal Labor Relations Authority and the Office of Personnel Management for changes in these areas.

GAO/FPCD-83-5
NOVEMBER 5, 1982

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-203039

The Honorable Ronald W. Haughton
Chairman, Federal Labor Relations
Authority

The Honorable Donald J. Devine
Director, Office of Personnel
Management

This report assesses the efficiency of the unfair labor practice process under the Civil Service Reform Act. We are concerned that the high volume of unfair labor practice charges, coupled with their attendant processing costs, has lessened the process' effectiveness and has impaired Federal labor-management relations.

This report contains recommendations to you on pages 15 and 22. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations. This written statement must be submitted to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report. A written statement must also be submitted to the House and Senate Committees on Appropriations with an agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Chairpersons of the House and Senate Committees on Appropriations, House Committee on Government Operations, Senate Committee on Governmental Affairs, and House Committee on Post Office and Civil Service.

Clifford I. Gould
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE FEDERAL LABOR
RELATIONS AUTHORITY AND THE
OFFICE OF PERSONNEL MANAGEMENT

STEPS CAN BE TAKEN TO IMPROVE FEDERAL LABOR-MANAGEMENT RELATIONS AND REDUCE THE NUMBER AND COSTS OF UNFAIR LABOR PRACTICE CHARGES

D I G E S T

The number of unfair labor practice (ULP) charges has more than doubled since the Civil Service Reform Act was passed in 1978. GAO estimates that the cost to process the 6,448 ULP charges filed in fiscal year 1981 could be $25.9 million.

The objective of GAO's review was to determine the nature of ULP charges and complaints and identify ways to avoid them.

GAO believes that many disputes between agencies, employees, and unions could be resolved informally, thereby improving labor-management relations and avoiding the high costs associated with the formal ULP process.

Many ULP charges are filed as a result of allegations that managers failed to negotiate changes in working conditions. Assessing these changes to determine whether they have a "substantial and material" effect on employees could reduce the number and cost of ULP charges. GAO brought this matter to the attention of the Office of General Counsel, Federal Labor Relations Authority (FLRA), which issued a policy statement on determining whether changes in working conditions have a "substantial and material" effect on employees. (See pp. 8-9.)

In addition to the ULP process, labor and management can also pursue disputes through negotiated grievance/arbitration procedures. The advantage of these procedures is that they offer more opportunity to resolve disputes without third-party intervention. But, because unions incur greater costs when using grievance/arbitration procedures, disputes are generally handled as ULP charges. FLRA's

Office of General Counsel is attempting to encourage greater use of negotiated grievance/arbitration procedures. (See pp. 9-11.)

FLRA decisions on some ULPs establish precedents for other similar situations. Precedent decisions can be effectively used to preclude the need to file formal charges or to further process ULP charges already filed. However, precedent decisions have not been timely. Although FLRA is taking steps to improve the timeliness of decisions, problems could reoccur in the future. (See pp. 11-13.)

Precharge discussions between parties are another way to reduce the number and cost of ULP charges. The purpose of these discussions is to try to resolve disputes informally, eliminating the need for a formal ULP. In most agencies GAO visited, precharge discussions were seldom used. (See pp. 13-15.)

ULP and labor relations training enhances managers' ability to effectively carry out their responsibilities in collective bargaining; such training can reduce the number of ULP charges and improve the labor-management relationship. However, not all managers receive this training and, when given, it is often piecemeal or sporadic. Further, agencies are not annually assessing their labor relations training needs, developing strategies for meeting these needs, and determining the effectiveness of training. (See pp. 18-19.)

Also, most agencies are not assessing managers' labor relations performance or monitoring and evaluating the ULP process. Consequently, adversary relationships, unnecessary ULP charges, and increased costs, that could otherwise be prevented, are being perpetuated. (See pp. 19-22.)

RECOMMENDATIONS

To encourage the resolution of disputes without third-party involvement and to reduce the number and costs of ULP charges being processed, GAO recommends that FLRA require parties to conduct precharge discussions to try to informally resolve issues before having a formal ULP charge investigated by FLRA. (See p. 15.)

GAO also recommends that the Director, Office of Personnel Management:

--Develop guidelines for agencies to use in assessing managers' labor relations performance, where appropriate, and in implementing systems to monitor and evaluate the ULP process.

--Work with the General Counsel, FLRA, to determine how ULP information can best be used to monitor and evaluate the ULP process. (See p. 22.)

AGENCY COMMENTS

GAO solicited comments on its draft report from the eight agencies visited and the seven unions contacted during the review. In general, the eight agencies and four unions which chose to comment supported the need for improved labor-management relationships.

Some of the agencies agreed with some of GAO's conclusions and recommendations on how the volume of ULP charges and their related costs could be reduced, while some agencies had other views. (See pp. 15-17 and 22-23 and app. IV.)

OPM characterized the report and recommendations as a positive effort toward achieving needed improvement in the unfair labor practice process. However, OPM reserved comment on the specific recommendations.

While the Chairman of FLRA believes that it should explore the development of a procedure to encourage parties to resolve ULP allegations before formal charges are investigated by FLRA, its Office of General Counsel, which alsc favors and strongly encourages precharge discussions, noted some potential legal and practical problems involved in requiring precharge discussions. GAO has noted ways to overcome these problems. (See pp. 16-17 and app. IV.)

The unions generally disagreed with GAO's conclusions and recommendations. They made some other suggestions on how labor-management relationships could be improved. (See pp. 15-17 and 22-23 and app. IV.)

Contents

ABBREVIATIONS

AFL-CIO	American Federation of Labor - the Congress of Industrial Organizations
ALJ	administrative law judge
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
LAIRS	Labor Agreement Information Retrieval System
OGC	Office of General Counsel
OPM	Office of Personnel Management
ULP	unfair labor practice

CHAPTER 1

INTRODUCTION

The Civil Service Reform Act of 1978, Public Law 95-454, legalized for the first time a labor-management relations program for about 2 million nonpostal Federal employees. 1/ The act delineated management, employee, and union rights and procedures to resolve unfair labor practices (ULPs).

ULPs: AN IMPORTANT PART OF FEDERAL LABOR RELATIONS

The ULP process is a key to sound labor-management relations. The process provides a peaceful means of resolving management, employee, and union problems. By identifying and solving such problems, the parties can improve their relationships with each other and, thereby, improve employee morale and operating efficiency.

From 1970 until the Reform Act became effective in January 1979, Executive Order 11491 provided the basic policy for Federal labor-management relationships. The order established a Federal Labor Relations Council as the central authority for the labor relations program and provided for several third parties to assist in resolving Federal labor-management disputes. It also defined ULPs and established a process for resolving them.

Many of the Executive order's provisions were included in the Reform Act. In addition, the act expanded the scope of collective bargaining and identified new ULPs. It also incorporated organizational changes made by President Carter's Reorganization Plan No. 2. These changes abolished the Civil Service Commission and Federal Labor Relations Council and established the Office of Personnel Management (OPM) and the Federal Labor Relations Authority (FLRA), both of which have major labor-management responsibilities.

FLRA AND OPM: EACH HAS MAJOR LABOR-MANAGEMENT RESPONSIBILITIES

FLRA is an independent, bipartisan, and neutral third party responsible for deciding policy questions, negotiability disputes, exceptions to arbitration awards, representation cases, and ULP charges and complaints. FLRA components include (1) three

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1/Over 1.3 million nonpostal employees in more than 60 Federal agencies are represented by 94 labor unions and organized in 2,523 bargaining units. Labor-management relations in the Postal Service are governed by the provisions of the Postal Reorganization Act (Public Law 91-375, Aug. 12, 1970).

"Authority Members" and their staff, (2) the Federal Service Impasses Panel, (3) the Office of Administrative Law Judges, and (4) the Office of General Counsel (OGC).

OGC is an independent entity whose chief function is to investigate ULP charges and prosecute ULP complaints. OGC's prosecution of ULP complaints is an important change in the labor relations program brought about by the Reform Act because employees, labor organizations, and employers do not have to prosecute their own complaints if OGC's investigation finds that their cases have merit.

OPM, as primary agent for the President, carries out the President's responsibility for managing the Federal work force. It provides policy guidance, technical assistance, training, and information to Federal agencies on labor-management relations; consults with labor organizations on Government-wide personnel rules and regulations; and assists agencies with cases before FLRA which may have Government-wide labor relations impact.

STAGES OF THE ULP PROCESS

The process for adjudicating ULPs begins when a charge is filed with an FLRA regional director. If the charge was filed within 6 months from the time the incident occurred, a regional office representative investigates to determine whether the rights established by title VII of the Reform Act may have been violated. If the charge was not filed within 6 months, or lacks merit, the director may request the charging party to withdraw the charge or the director will dismiss it. The charging party may appeal the dismissal to the General Counsel.

If the charge is timely and has merit and the parties have not reached settlement, the regional director will issue a complaint. 1/ After a complaint is issued, the parties can still agree to a settlement. However, if a settlement is not reached, OGC will prosecute the case in a hearing before an FLRA administrative law judge (ALJ). The OGC may also request permission from Authority Members to seek appropriate temporary relief with the district court.

After the hearing, Authority Members may affirm, reverse, or modify the ALJ's decision. Usually, however, if neither party files a formal objection, the ALJ's decision becomes the final decision of FLRA. If either party is dissatisfied with FLRA's final decision on a ULP, the party may request a U.S. Court of Appeals to review the decision. FLRA may also petition that court to enforce any FLRA order.

1/A complaint contains a notice of the alleged violation and the time and place of a hearing.

OBJECTIVE, SCOPE, AND METHODOLOGY

This review is part of our efforts to evaluate major aspects of the Reform Act's implementation. Our objective was to determine the nature of ULP charges and complaints and identify ways they could be avoided, thereby improving labor-management relations and reducing ULP processing costs.

We interviewed FLRA and OPM headquarters officials and national Federal employee union representatives to

--obtain an overview of how the ULP process works,

--identify changes that would make the process work better, and

--obtain statistical ULP data and cost information.

We visited the four FLRA regions of Washington, Kansas City, San Francisco, and Boston to discuss ULP processing and related issues with regional officials, collect statistical information on ULP charges, review ULP case files, and analyze regional ULP caseload. We selected these regions because they accounted for 20, 11.5, 10.5, and 7.5 percent of FLRA's total calendar year 1980 caseload, respectively--about 50 percent of FLRA's total caseload. These regions' caseloads ranged from the highest to lowest within FLRA and provided a wide geographic dispersion.

After analyzing ULP caseload within each of the four FLRA regions for the 6-month period October 1, 1980, through March 31, 1981, we selected agency field sites to visit. This time frame was selected to give ULP charges enough time to complete the ULP process. We selected 13 field sites (see app. I) from among those that had the highest to lowest number of ULP cases within each of the four selected FLRA regions. We also limited our selection by not choosing field sites that performed similar activities.

At each field site, we reviewed the ULP process and caseload and examined ULP charges in detail. We discussed the process with management and bargaining unit officials. (See app. II for unions contacted.) We attempted to identify (1) what ULP processing procedures were followed, (2) what ULP information was collected, (3) what incentives existed to preclude ULP situations, (4) what ULP/labor relations training was provided, and (5) how the ULP process was monitored and evaluated.

To gain a further understanding of and identify problems and issues relating to Federal sector ULP and their adjudication process, we also attended various symposiums, seminars, training classes, and meetings which were sponsored by OPM, FLRA, the Society of Federal Labor Relations Professionals, and the Interagency

Advisory Group Committee on Labor-Management Relations. We also conducted literature searches and observed ULP hearings before ALJs.

We performed our work in accordance with generally accepted Government audit standards and conducted our fieldwork from May 1981 to May 1982.

CHAPTER 2

RESOLVING ALLEGED ULPs INFORMALLY CAN IMPROVE LABOR-MANAGEMENT RELATIONSHIPS AND REDUCE COSTS

The formal ULP process is a key to sound labor-management relations. However, settlement of disputes by the parties themselves--informally and without third-party intervention--enhances the labor-management relationship and helps reduce the number of ULP charges and the high costs associated with their processing. The parties can resolve disputes without third-party intervention by

--closely scrutinizing potential ULP charges about changes in working conditions to insure that charges are filed only when such changes substantially and materially affect employees,

--using negotiated grievance/arbitration procedures more often,

--applying precedent decisions to alleged ULP situations before deciding whether to file a formal ULP charge, and

--discussing alleged ULP matters before filing charges.

NUMBER AND COST OF ULPs ARE HIGH

Since the Reform Act became effective in January 1979, the volume of ULP charges has increased and lengthy processing backlogs are developing. The process for adjudicating these ULP charges is very costly to the Government.

ULP charges have increased

During the first 9 months after the passage of the Reform Act, the number of ULP charges filed with FLRA averaged about 261 a month. The number increased to an average of 413 a month in 1980 and 537 a month in fiscal year 1981. (See app. III.) The Federal sector fiscal year 1981 ULP filing rate 1/ was 2.5 times that of the private sector.

As of December 31, 1981, OGC had 881 cases that were over 30 days old and for which no dispositive action 2/ had been taken.

1/Filing rate equals the number of ULP charges filed divided by the number of employees represented by bargaining units.

2/ULP dispositive actions consist of dismissal or withdrawal of a charge, issuance of a complaint, or approval of a settlement agreement.

Of these, 457 were over 75 days old. OGC officials told us that fiscal year 1982 budget cuts 1/ for FLRA could result in backlogs and increased case-processing time.

According to FLRA, the number of ULP charges being filed in fiscal year 1982 is declining somewhat. Although the reason for this decline is not specifically known, FLRA and OPM officials believe it may be attributed in part to unions' uneasiness resulting from Federal budget trimming. Management, union, OPM, and FLRA officials expect the number of ULP charges filed to increase in the future.

Processing costs are high

While Government-wide costs for processing ULP charges are unknown, the 13 field offices we visited provided fiscal year 1981 estimates of ULP processing costs. FLRA gave us its actual costs for processing ULP charges. Using these figures we estimate the average cost of processing a nonmeritorious ULP charge to be $2,062.

Normeritorious charge	Cost
Agency	$ 925
FLRA:	
OGC	a/1,137
Total cost per case	$2,062

a/OGC incurs an additional $780 for every dismissal appealed to the General Counsel.

As shown in the following table, the cost of processing a meritorious ULP charge averages $2,589 to $21,276, depending on the processing stage at which it is resolved.

1/FLRA's fiscal year 1981 budget was $16.02 million. Its fiscal year 1982 continuing resolution was $14.2 million.

Meritorious charge	Processing stage			
	Pre-complaint settlement	Complaint		
		Pre-ALJ settlement	ALJ settlement	ALJ litigation
Agency (note a)	$1,452	$3,634	$ 7,257	$ 7,257
FLRA:				
OGC	1,137	1,137	2,227	2,227
ALJs	-	-	b/624	3,754
Members and staff	-	-	-	8,038
Total cost per case	$2,589	$4,771	$10,108	$21,276

a/The agency processing costs include management and union time and travel expenses for case investigation, preparation, and presentation at hearing as appropriate.

b/ALJs attempt to get a settlement before holding a hearing.

Note: Since costs are based on limited information, they should not be considered definitive. However, we believe they are the best available indicator of the costs that are incurred in processing ULP charges.

On the basis of these estimates, the total cost for processing the 6,448 ULP charges filed in 1981 could be about $25.9 million.

	Nonmeritorious charge		Meritorious charge				Total
			Pre-complaint settlement	Complaint			
	Not Appealed	Appealed		Pre-ALJ settlement	ALJ settlement	ALJ litigation	
Percent of cases (note a)	49.3	13.2	21.2	2.8	8.3	5.2	100
Number of cases	3,180	850	1,367	181	535	335	6,448
Cost per case	$2,062	$2,842	$2,589	$4,771	$10,108	$21,276	-
Total cost in millions	$6.56	$2.42	$3.54	$0.86	$5.41	$7.13	$25.92

a/On the basis of actual fiscal year 1981 OGC experience.

MORE ATTENTION TO THE "SUBSTANTIAL AND MATERIAL EFFECTS TEST" IS NEEDED

Many ULP charges are filed over management's alleged failure to negotiate the implementation of decisions which change working conditions and the impact of these decisions on employees. The Reform Act requires that management notify the union of its intent to make changes in working conditions and negotiate with the union over the impact of these changes if the union so desires. More attention to determining whether these changes substantially and materially affect employees could reduce the volume of ULP charges and associated processing costs.

Labor relations officials at the sites we visited estimated 15 to 80 percent of the ULP charges could be precluded by addressing the substantial and material effects of the allegations. The following are examples of ULP charges that could have been precluded:

--Altering partitions in a particular work location.

--Moving a coffee pot from one area of an office to another.

--Relocating an employee from one floor to another when the employee was apparently satisfied with the move.

Management labor relations officials stated that the substantial and material effects test not only saves money but also discourages the misuse of the ULP system as a political tool. A few union officials acknowledged the use of the ULP process as an avenue for pursuing matters of principle against management, regardless of how insignificant the charges may be.

Some cases have gone through the higher levels of the ULP process, only to be dismissed by an ALJ on the basis that the actions in question were not substantial and material. For example, in one case a foreman violated a requirement. He discovered his error immediately and reversed his decision. The ALJ noted that the "fleeting violation was corrected immediately," and he therefore ruled the case lacked substantial and material effect.

FLRA's Deputy General Counsel stated OGC uses a substantial and material effects test to determine the merit of a case. Charges with no adverse effect are dismissed, and charges with minimal effect are closely reviewed before deciding whether to issue a complaint. We found, however, that actual practices regarding this test vary among FLRA regions. Two regional directors stated that the substantial and material effects test is being applied; however, another regional director expressed reservations about applying this test without a policy statement from

FLRA. When we brought this situation to the attention of OGC, it issued a policy statement to all FLRA regional directors which clarified when to use the substantial and material effects test.

GREATER USE OF NEGOTIATED GRIEVANCE/ARBITRATION PROCEDURES COULD REDUCE VOLUME OF ULP CHARGES

The Reform Act gives labor and management the opportunity to pursue disputes using a negotiated grievance/arbitration procedure as well as the ULP process. ULPs are defined as specific violations of employee, union, and agency rights established by the act. The act's definition of a grievance includes alleged violations of a negotiated labor agreement. Many disputes over the interpretation and/or application of negotiated labor agreements can be handled under either process, but not both.

The act requires that all collective bargaining agreements contain negotiated grievance procedures and that grievances not resolved under these procedures be subject to arbitration. The act also requires that, except for certain actions, negotiated grievance procedures should be used exclusively for resolving grievances which fall under collective bargaining agreements.

Negotiated grievance/arbitration procedures usually contain a number of steps that correspond to higher management decision-making levels. If a problem is not resolved at one level, then it moves to the next higher level. A third-party arbitrator is not involved until all steps have been exhausted--and then only at the option of the aggrieved party.

Although negotiated grievance/arbitration procedures provide more opportunity for resolving disputes without third-party intervention, the benefits of these procedures are not being fully realized because most disputes are being handled as ULPs rather than grievances.

Why is the ULP process used in place of negotiated grievance/arbitration procedures?

The ULP process is often used in place of negotiated grievance/arbitration procedures because it costs the unions little or nothing to use the ULP process, whereas both management and the union share the costs of negotiated grievance/arbitration procedures.

Labor relations officials at the sites we visited estimated from 20 to 100 percent of the ULP charges filed, such as the following, could be handled under their negotiated grievance/arbitration procedures.

--A union filed a ULP charge alleging that management had violated the negotiated labor agreement provisions dealing with the selection of employees to participate in temporary duty assignments. According to FLRA's OGC, this dispute involved an arguable interpretation of the labor agreement and it should have been more appropriately handled through the negotiated grievance/arbitration procedures. OGC dismissed this case.

--A union filed a ULP charge alleging that management had denied requests for "a reasonable amount of time" for employees to meet with union representatives to process grievances. According to FLRA's OGC, this dispute principally related to the proper administration of the official time provisions of the negotiated agreement and, therefore, should have been more suitably resolved under negotiated grievance/arbitration procedures. This case was dismissed by OGC.

The officials cited faster resolution of problems and the ability to be more selective of cases pursued as benefits of using the negotiated grievance/arbitration procedures. These officials believe, however, that unions are reluctant to use these procedures because of the potential costs they might incur should arbitration be invoked. However, OGC officials point out that once a case, such as those described above, has been filed as an alleged ULP, the Reform Act precludes it from being filed as a grievance. Thus, when such cases are dismissed by OGC, the aggrieved party has no remedy.

Information at one site, according to officials, indicated that the union was using the ULP process rather than the negotiated grievance/arbitration procedures. Within a 3-year period, the number of grievances filed decreased 46 percent while the number of ULP charges increased 40 percent. The officials concluded that the union's strategy is based on the fact that it can get much more visibility at less cost out of the ULP process than the grievance procedures.

Union representatives at some sites would not provide information on the volume of ULP charges they filed that could be handled through negotiated grievance/arbitration procedures. Others said that the amount is "minimal" or ranges from 5 to 10 percent. Most representatives cited the potential cost to the union for arbitration as a definite reason for using the ULP process. One representative acknowledged that many ULP charges could be filed as grievances but he uses the ULP process because arbitration costs are high.

Officials of FLRA's OGC said that they encourage parties to use negotiated grievance/arbitration procedures to resolve disputes whenever possible. It is OGC's policy to pursue ULP charges

that could otherwise be handled under negotiated grievance procedures only when there is a "patent breach" of a negotiated labor agreement. According to these officials, the most prevalent reason for the ULP charge dismissals in fiscal year 1981 was that the disputes should have been handled under negotiated grievance/arbitration procedures.

Officials in OPM, FLRA, and the other agencies we visited generally believe that negotiated grievance/arbitration procedures should be used whenever possible to resolve disputes covered by negotiated labor agreements even though the Reform Act allows such disputes to be raised as ULPs. These officials generally agree that the best possible way to resolve a labor-management dispute is one reached by the parties themselves--without third-party intervention.

QUICKER PRECEDENT DECISIONS HAVE BEEN NEEDED

The Authority Members help fulfill their role of providing guidance on Federal sector labor-management relations by making final ULP decisions which establish precedents for other similar situations. These precedent decisions improve labor-management relations by reducing the need to file formal ULP charges or to further process ULP charges already filed. These benefits, however, have not been fully realized because precedent decisions have not been timely. Although progress is being made to improve the timeliness of decisions, problems could reoccur in the future.

As of March 31, 1982, 427 ULP cases were pending at some stage in processing before the Authority Members, and these cases had a median age of 288 days. 1/ OGC officials believe that many of these cases, such as the following, could have benefited from precedent decisions:

--On January 9, 1981, an ALJ's decision concerning issues on "the duty to bargain on the scope of grievance procedures" was given to the Authority Members for a final decision. Subsequently, approximately 10 additional cases went to the Authority Members on this same issue. All 11 of these cases are still pending.

--In early 1980, two ULP cases were transferred to the Authority Members after issuance of a complaint for a decision on whether local management's failure to bargain over unilateral changes in working conditions that were directed by higher agency management regulations should be

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1/Number of days calculated from the date that all filings related to the disposition of the case have been received.

decided under the ULP procedure or the negotiability dispute procedures. As of May 1982, eight cases are pending before the Authority Members on this issue.

Our visits to FLRA regions, agency field sites, and collective bargaining units reinforced the need for precedent decisions. For example, as a result of one precedent decision on the issue of "official time and travel costs for union negotiators," OGC was able to dismiss or obtain withdrawals on approximately 20 similar cases elsewhere in the ULP processing system.

Representatives of the Authority Members agree that timely precedent ULP decisions are beneficial, and they told us steps have been taken to render more timely decisions. When the Authority Members began operations, final decisions on ULP cases were rendered chronologically. Thus, cases having precedent value generally received no more priority than any other case. In January 1982, the Authority Members established a process for handling cases on the basis of an assigned priority. They now screen all cases and render decisions as follows:

1. Cases for which precedent has been established are decided expeditiously.

2. Cases without precedent but which have analogous cases pending are decided next.

3. Cases without analogous cases pending may be decided chronologically.

Representatives of the Authority Members pointed out, however, that priority may be given to deciding any case that may have the most significant effect on Federal labor-management relations.

These representatives told us this new process was being applied to incoming cases as well as those backlogged 1/ and, at current processing rates, incoming precedent cases are being kept current and backlogs are being reduced. For example, during the first 4 months of 1982, case-handling was completed on over 60 ULP decisions compared to 30 decisions for the first 4 months of 1981. Many of the 60 cases established precedents which will

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1/Backlogged cases are those which have been available for Authority Members' processing but for which more than 90 days have elapsed without a final decision. According to the Authority Members, cases are not available for processing until the parties have had the opportunity to file exceptions, oppositions, and cross-exceptions to ALJ decisions.

be used to resolve many other pending cases, a process which is now taking place. Notwithstanding these efforts, budget reductions since FLRA's inception--coupled with increasing caseloads--have caused backlogs. Should these situations continue, untimely precedent case decisions may reoccur.

PRECHARGE DISCUSSIONS SHOULD BE REQUIRED

A precharge discussion is one which occurs between the parties before a ULP charge is filed with FLRA. Parties take part in these discussions in an attempt to resolve disputes informally. The use of precharge discussions can significantly reduce the volume of formal ULP charges and their attendant processing costs and, in turn, promote improved labor-management relations. These benefits, however, are not being realized since precharge discussions are not required.

Precharge discussions not required under current regulations

Under Executive Order 11491 (29 CFR 203.2 [1978] and Federal Register 1988 [1975]), informal discussions were required to provide an opportunity for parties to resolve issues informally. While the Reform Act did not specifically provide for informal procedures, FLRA adopted in its rules and regulations (5 CFR 2423.2 and Federal Register 3482 [1980]) a policy of encouraging the parties to resolve informally and voluntarily any allegations of ULPs.

FLRA rules and regulations on processing ULPs do not mandate that precharge discussions be held. FLRA's OGC believes it is preferable to afford parties the flexibility to resolve informally and voluntarily any allegations of ULPs. OGC's representatives believe that FLRA should not have to regulate what occurs between management and the unions before filing a ULP charge. They noted that it takes about 30 days from the filing of the charge to the beginning of FLRA's investigation, during which time the parties could communicate and settle their differences.

Use of precharge discussions can help solve potential ULPs.

Despite the potential benefits from using precharge discussions, 11 of the 13 sites we visited had no established policy of discussing alleged ULPs, and the parties generally made little or no effort to engage in precharge discussions. A primary reason cited was the lack of a specific mandate requiring the use of precharge discussions.

Labor relations officials' estimates of ULP charges which could be precluded through precharge discussions ranged from 5 to

90 percent. The types of charges that could be eliminated through precharge discussions are alleged ULPs which (1) are based on the union's or management's unawareness of certain policies, (2) involve minor misunderstandings, and/or (3) require fairly simple agreements to settle. For example, a union filed a charge that a manager failed to notify employees of an anticipated change in a smoke-break policy and did not negotiate over the impact of the change. Since a formal charge was filed, FLRA was required to investigate. FLRA found that the manager was unaware that such a policy was negotiable and, when informed of the charge, readily met with union representatives. An agreement was reached and the charge was withdrawn.

Labor relations officials at two sites believed that greater involvement in precharge discussions was primarily responsible for reducing the number of charges filed. At one of these sites, the number of formal charges filed by one union decreased from about six per month to less than one per month. At the other site, the number of charges filed decreased from nine to two per month.

In addition to reducing the number of ULP charges filed, labor relations officials believe that engaging in precharge discussions helps promote better labor-management relations. One labor-management relations director presented these views in a speech at an April 9, 1981, conference for labor relations professionals on ULPs in the Federal sector, when he stated that:

> "* * * it just makes good sense--as well as being a matter of simple fairness--for a party contemplating the filing of an unfair labor practice charge to inform the other party and be willing to engage in dialog on the subject before going to the Authority."

The director pointed out that negotiated grievance/arbitration procedures are designed to insure consideration and, if possible, resolve the problem before resorting to a third party. He stated that the same principle should apply in ULP situations--no party should be able to avail itself of the adjudicatory processes without first having provided the other party an opportunity to discuss the matter.

Union opinions regarding the benefit of precharge discussions varied considerably. Officials of four local unions we talked to were concerned that precharge discussions would give management the opportunity to obtain more information to help build its case against the union. An official of another local union viewed precharge discussions as a waste of time. Officials of nine other local unions, however, believed that a mandatory requirement was needed to force an exchange between management and unions. They agreed that simple cases involving misinformation or misunderstandings could easily be resolved without costly,

formal proceedings. One union official estimated that up to 90 percent of the local's charges may have been precluded through precharge procedures; two others estimated possible reductions of 40 and 20 percent in their ULP caseload.

Both OPM and FLRA's OGC officials agree that the use of precharge discussions can help resolve potential ULPs. OPM officials have stated that the unprecedented rate of ULP filings under the Reform Act may be traced, in part, to the elimination of the Executive order requirement for precharge discussions. They strongly support the need for a specific mandate for informal discussions by the parties as a precondition to filing a formal charge with FLRA.

CONCLUSIONS

Labor-management relationships are not as effective as they might otherwise be because the volume of ULP charges and related processing costs are increasing. Factors contributing to this situation include the limited application of the substantial and material effects test, use of the ULP process to resolve disputes over negotiated labor agreements which could be handled through negotiated grievance/arbitration procedures, untimely ULP precedent decisions by Authority Members, and limited use of precharge discussions.

After we discussed the results of our work with officials of FLRA's OGC, they issued a policy statement to FLRA regional directors which clarified the use of the substantial and material effects test and the conditions for its application. FLRA's OGC encourages parties to use negotiated grievance/arbitration procedures to resolve disputes over negotiated labor agreements, and it pursues ULP charges that could be handled under these procedures only when there is a patent breach of a negotiated labor agreement. OGC's emphasis on these efforts as well as the Authority Members' actions to make more timely precedent decisions can help resolve more disputes informally. However, additional emphasis should be placed on using precharge discussions.

RECOMMENDATION

We recommend that FLRA require the parties involved in alleged ULPs to hold discussions to try to informally resolve issues before having a formal ULP charge investigated by FLRA.

AGENCY COMMENTS

Eight agencies, including OPM and FLRA, and four national Federal unions commented on our draft report. (See app. IV.) The comments, in general, indicated support for our conclusion that labor-management relationships can be improved. The

comments varied, however, on our conclusions with regard to how the number of ULP charges and related processing costs could be reduced.

Five 1/ agencies agreed with the need for greater application of the substantial and material effects test. Three 1/ unions disagreed with this conclusion, stressing the need for greater management recognition of their bargaining obligations. Four agencies and three unions agreed that benefits can be derived from timely and well publicized FLRA decisions.

FLRA's OGC raised questions about whether greater use of negotiated grievance/arbitration procedures would be less costly to the Government than the ULP process. We recognize that there are costs associated with using the negotiated grievance/arbitration process. However, as we discussed in our report, "Federal Grievance/Arbitration Practices Need More Management Attention" (FPCD-81-23, May 5, 1981), more management attention is needed in the area of cost accountability since the total costs associated with the negotiated grievance/arbitration process is unknown. Our reason for encouraging more use of grievance/arbitration procedures is to achieve more interaction between management and unions in resolving problems without third-party intervention. Hopefully, this interaction would solve problems at the early, less costly stages of the negotiated grievance/arbitration procedures. Three agencies endorsed the benefits of using negotiated grievance/arbitration procedures, but three unions disagreed because these procedures are more costly to the unions.

Five agencies endorsed our recommendation for requiring precharge discussions before formal charges are filed. All four unions disagreed with this recommendation. FLRA agreed with "the recommendation that we explore the development of a procedure that encourages parties to attempt resolution of ULP allegations prior to an FLRA conducted investigation." The OGC also favors precharge discussions and attempts at resolution but questioned whether a regulation precluding a party from filing a charge without first engaging in precharge settlement efforts would

--be consistent with the statutory time limit for filing ULP charges;

--delay issuance of a ULP complaint where the temporary relief provisions of the statute are involved; and

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1/Every agency and union did not comment on each conclusion and recommendation.

--lead to allegations of noncompliance with the precharge settlement effort requirement, thus necessitating further investigations.

It is difficult to project what problems FLRA could encounter in implementing our recommendation. One agency noted that the question concerning the statutory time limit could be resolved by permitting a party to file a formal charge in those cases where the time limit would expire, but requiring a precharge discussion before an FLRA investigation. One union, while questioning whether precharge discussions met the intent of the Civil Service Reform Act, also suggested that a party be allowed to file a formal charge but be required to engage in precharge discussions before an FLRA investigation, as a means of motivating parties to settle alleged ULPs informally. We feel these suggestions provide an option to overcome the potential problem related to statutory time limits and, accordingly, have changed our recommendation from requiring parties to hold discussions before a formal charge is filed to requiring parties to hold discussions before a formal charge is investigated.

We believe that, over time, FLRA can gain experience and, through its decision and rule-making processes, establish (1) how the temporary relief provisions should be used in conjunction with precharge discussions and (2) what it will consider as legitimate informal settlement efforts.

OPM has reserved comment on our specific recommendation, but suggested that negotiated agreements which require either party to submit alleged ULPs to the other party before filing formal charges afford an opportunity for informal settlement. One union also suggested this approach as a means of settling charges informally. Another union also stressed the need for a cooperative relationship instead of a forced one. We endorse the use of negotiated agreements for discussing alleged ULPs as a means of motivating unions and management to solve problems informally without third-party intervention.

CHAPTER 3

MORE EMPHASIS ON ULP PREVENTION IS NEEDED

Preventing ULPs is just as important (if not more so) than adjudicating them. By reducing or eliminating conflicts, the efforts of management and employees and the financial resources that are otherwise devoted to ULP charges can be more directly channeled toward accomplishing the Government's mission. To achieve these benefits, however, greater emphasis is needed on

--providing labor relations and ULP training,

--including labor relations effectiveness as part of organizational and managerial performance assessments, and

--monitoring and evaluating ULPs.

MORE LABOR RELATIONS AND ULP TRAINING IS NEEDED

At most of the sites we visited, not all managers had received labor relations and ULP training, and, when given, it was often piecemeal or sporadic.

Officials at OPM, FLRA, and the other sites we visited agree that adequate and appropriate labor relations training is a prerequisite to a successful labor relations program. They point out that such training should not be a one-time effort but is a continuing obligation. Such training is needed to insure that managers and employees are familiar with and understand basic labor relations concepts; their rights and responsibilities, especially in collective bargaining; and what constitutes ULPs and how they can be precluded. More understanding of these areas could reduce the number of ULPs. For example, some of the ULP charges we reviewed occurred because managers did not understand the scope of their responsibility to bargain over changes in working conditions. When the managers were advised, through the ULP process, of their responsibility to bargain over the subjects causing ULP charges, action was taken to settle the problems.

The need for Federal sector labor relations training has long been recognized by agencies which have or have had central management responsibility for labor relations. In 1972, the former Civil Service Commission and the Office of Management and

Budget issued joint guidelines 1/ that stressed the need for labor relations training in Federal agencies. These guidelines, which are still applicable, 2/ encourage agencies to (1) identify agency-wide labor relations training needs, (2) develop a program to meet these needs, and (3) annually evaluate the program's success. The guidelines point out that these program evaluations should be qualitative as well as quantitative and should address the efficiency of training provided.

In a report to the Director, OPM (FPCD-81-23, May 5, 1981), we recommended that OPM emphasize to agencies the importance of labor relations training and periodically follow up to make sure agencies are complying with the 1972 labor relations training guidelines.

While OPM has taken certain actions in this regard, our work indicates that greater emphasis on labor relations training is still needed. Only 2 of the 13 sites we visited were following the 1972 guidelines for labor relations training. Labor relations officials at eight sites said they were unaware of the guidelines, and officials at three sites said they were aware of the guidelines but admitted that they were not being followed.

At all 13 sites we were told that some form of labor relations training is provided to managers. Labor relations officials said, however, such training has been limited and has not been provided to all managers. For example, at three sites we visited, labor relations training is provided only to new managers during orientation. Therefore, those individuals who became managers before the Reform Act have not had training on the provisions of the act that changed various aspects of Federal sector labor relations. At another site, we were told that labor relations training has been provided to only 40 percent of the supervisory personnel.

MANAGERIAL LABOR RELATIONS PERFORMANCE NEEDS TO BE ASSESSED

Despite the importance of a manager's labor relations performance, the sites we visited placed little emphasis on evaluating performance in this area. Eleven of the 13 sites generally did not include labor relations matters in line managers' performance evaluations. This type of evaluation is needed to curtail managerial behavior that promotes an adversarial and costly labor-management relationship. For example, at one site the actions of

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1/Guidelines for the Management and Organization of Agency Responsibilities Under the Federal Labor-Management Relations Program, CSC/OMB, 1972.

2/The guidelines are in Appendix B, Federal Personnel Manual Supplement 711-1.

four managers accounted for 10 of the 19 meritorious ULP charges filed between October 1, 1980, and March 31, 1981. In one instance, a manager refused to hear an employee's grievance. In others, managers made intimidating and threatening remarks to and about the union in the presence of bargaining unit employees.

At another site, personnel with other job classifications were being used as labor relations specialists. This occurred because the agency, in attempting to consolidate personnel functions agencywide, did not allow enough labor relations specialists to meet its needs. The personnel used as labor relations specialists did not have performance standards reflecting their basic duties nor were they evaluated in these areas.

FLRA and labor relations officials told us that a specific labor relations element with clearly defined standards is needed in managers' performance appraisals. However, as pointed out by OPM and an internal labor relations study in another agency, not all managers have direct labor relations responsibilities. Therefore, including a labor relations element in some managers performance appraisals may not be appropriate.

ULP MONITORING AND EVALUATION COULD HELP REDUCE ULP VOLUME

ULP monitoring and evaluation are essential to determine if the process is functioning efficiently. Union representatives and agency labor relations officials agree that an efficient ULP process is one in which ULP charges are resolved in a timely and equitable manner and at the lowest level and cost possible.

Agencies' headquarters need to monitor and evaluate the number of ULP charges filed, issues raised, locations and unions affected, how ULP charges are resolved, and how long it takes to resolve them. This type of information can identify problem areas for which solutions can be developed.

Little ULP monitoring and evaluation done at sites

Although labor relations officials believed that a formal ULP monitoring and evaluation system would be beneficial in managing the ULP process and preventing ULPs, they generally did not formally assess the ULP process for efficiency. Of the seven agencies included in our review, only two had formal agencywide ULP monitoring and evaluation systems, and only 1 of the 13 field sites had a formal monitoring and evaluation system. The field site used its system to identify groups of managers who needed additional labor relations training and to provide a basis for such training.

Our visits to field sites indicated a need for systematic ULP monitoring and evaluation. For example, our analysis of meritorious ULP charges filed between October 1, 1980, and March 31, 1981, at one site showed that three issues accounted for 84 percent of all meritorious ULP charges. The actions of three managers resulted in more than half of the ULP charges filed on these issues. Similar situations existed at other sites we visited.

Information available for ULP monitoring and evaluation varies by type and usefulness

While most agencies and sites we visited do not formally monitor and evaluate the ULP process, they accumulate some information that can be useful. However, the type of information varies considerably.

OPM has developed data that can be used to monitor and evaluate some ULPs on a Government-wide basis by entering Authority Members' decisions in its Labor Agreement Information Retrieval System (LAIRS). 1/ These decisions, however, account for only about 5 percent of all ULP charges. The remainder, which are resolved before an FLRA decision, are not entered into LAIRS. OPM is attempting to expand its monitoring and evaluation capability by including in LAIRS all ULP charges for which complaints are, or have been, issued. Present plans, which have been revised because of limitations on staff and finances, call for a concerted effort in the second half of calendar year 1982 to complete this project. Data and analytical results should be available before the end of the first quarter of 1983.

FLRA's OGC has the basic data needed to assist agencies in monitoring and evaluating ULPs. This data consists of such information as the parties involved in the alleged ULP, the geographic location in which the alleged ULP occurred, the FLRA region where the ULP charge was filed, the type of settlement reached and the processing point at which it occurred, and the elapsed time between each processing stage and the total time. Data is manually coded onto summary sheets which track every ULP charge filed in each FLRA regional office throughout the process. The summary sheets are periodically forwarded to OGC headquarters where selected information such as ULP charge volume, FLRA region, levels of resolution, and processing time is summarized. OGC officials told us they are computerizing this information so it can be more useful, and it will include information on ULP charges by the type of issues involved. We were also told

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1/Information from LAIRS is available to both Federal agencies and unions.

that when this information is computerized, OGC would be willing to make it available to Federal agencies and unions for ULP monitoring and evaluation. However, budget reductions are hampering completion of this project.

CONCLUSIONS

Prevention of ULPs can increase the effectiveness of Government operations by enhancing labor relations at various organizational levels and by reducing the costs associated with ULPs. However, these benefits are not being achieved because not enough emphasis has been placed on (1) training managers in ULP and labor relations processes, (2) assessing managerial performance in labor relations, and (3) monitoring and evaluating the ULP process to identify problem areas and to reduce situations that result in ULPs. Although FLRA, OPM, and agency officials realize the importance of reducing ULPs, progress in this area has been limited. OPM has taken some actions in response to our May 1981 recommendations to improve labor relations training, but more needs to be done.

RECOMMENDATIONS

To help prevent situations giving rise to ULPs, we recommend that the Director, OPM:

--Develop guidelines for agencies to use in assessing managers' labor relations performance, where appropriate, and in implementing systems to monitor and evaluate the ULP process.

--Work with the General Counsel, FLRA, to determine how ULP information accumulated by FLRA can best be used to monitor and evaluate the ULP process.

AGENCY COMMENTS

Three 1/ agencies agreed that training can help improve labor-management relationships but noted that training alone will not reduce the filing of ULP charges. Three 1/ unions agreed that more training is needed; two also suggested that agencies should train union officials.

One agency supported the need to assess managerial labor relations performance but expressed concern about how it should be

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1/Every agency and union did not comment on each conclusion and recommendation.

measured. Another agency suggested that such assessments should only be part of a manager's overall personnel management assessment. Two unions agreed with the need to assess managerial labor relations performance.

One agency said that ULP monitoring should be done only where needed since agencywide systems would be costly. One union agreed with the need to monitor ULPs and suggested that bargaining units, as well as supervisors, be monitored.

FIELD SITES VISITED DURING THE REVIEW

Department of Education

Central Office
Washington, D.C.

Department of Health and Human Services

Social Security Administration
Central Office
Baltimore, Maryland

Social Security Administration
Region IX
San Francisco, California

Department of Housing and Urban Development

Denver Area/Regional Office
Denver, Colorado

Department of the Navy

Mare Island Naval Shipyard
Vallejo, California

Portsmouth Naval Shipyard
Portsmouth, New Hampshire

Department of the Treasury

U.S. Customs Service
Region I
Boston, Massachusetts

U.S. Customs Service
Region VIII
San Francisco, California

Internal Revenue Service
St. Louis District
St. Louis, Missouri

Internal Revenue Service
Fresno Service Center
Fresno, California

Office of Personnel Management

Central Office
Washington, D.C.

Veterans Administration

Denver Regional Office
Denver, Colorado

Veterans Administration Hospital
Bedford, Massachusetts

APPENDIX II

COLLECTIVE BARGAINING UNITS CONTACTED DURING THE REVIEW

American Federation of Government Employees, AFL-CIO

Local 32
Office of Personnel Management
Central Office
Washington, D.C.

Local C-147
Social Security Administration
Region IX
San Francisco, California

Local 1557
Veterans Administration
Denver Regional Office
Denver, Colorado

Local 1923
Social Security Administration
Central Office
Baltimore, Maryland

Local 2607
Department of Education
Central Office
Washington, D.C.

International Association of Fire Fighters, AFL-CIO

Local 48
Mare Island Naval Shipyard
Vallejo, California

International Federation of Professional and Technical Engineers, AFL-CIO

Local 4
Portsmouth Naval Shipyard
Portsmouth, New Hampshire

Local 11
Mare Island Naval Shipyard
Vallejo, California

Metal Trades Council, Metal Trades Department, AFL-CIO

Metal Trades Council
Portsmouth Naval Shipyard
Portsmouth, New Hampshire

Metal Trades Council
Mare Island Naval Shipyard
Vallejo, California

National Association of Government Employees

Local R1-32
Veterans Administration Hospital
Bedford, Massachusetts

Local R1-132
Veterans Administration Hospital
Bedford, Massachusetts

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National Federation of Federal Employees

Local 1900
Department of Housing and
Urban Development
Denver Area/Regional Office
Denver, Colorado

National Treasury Employees Union

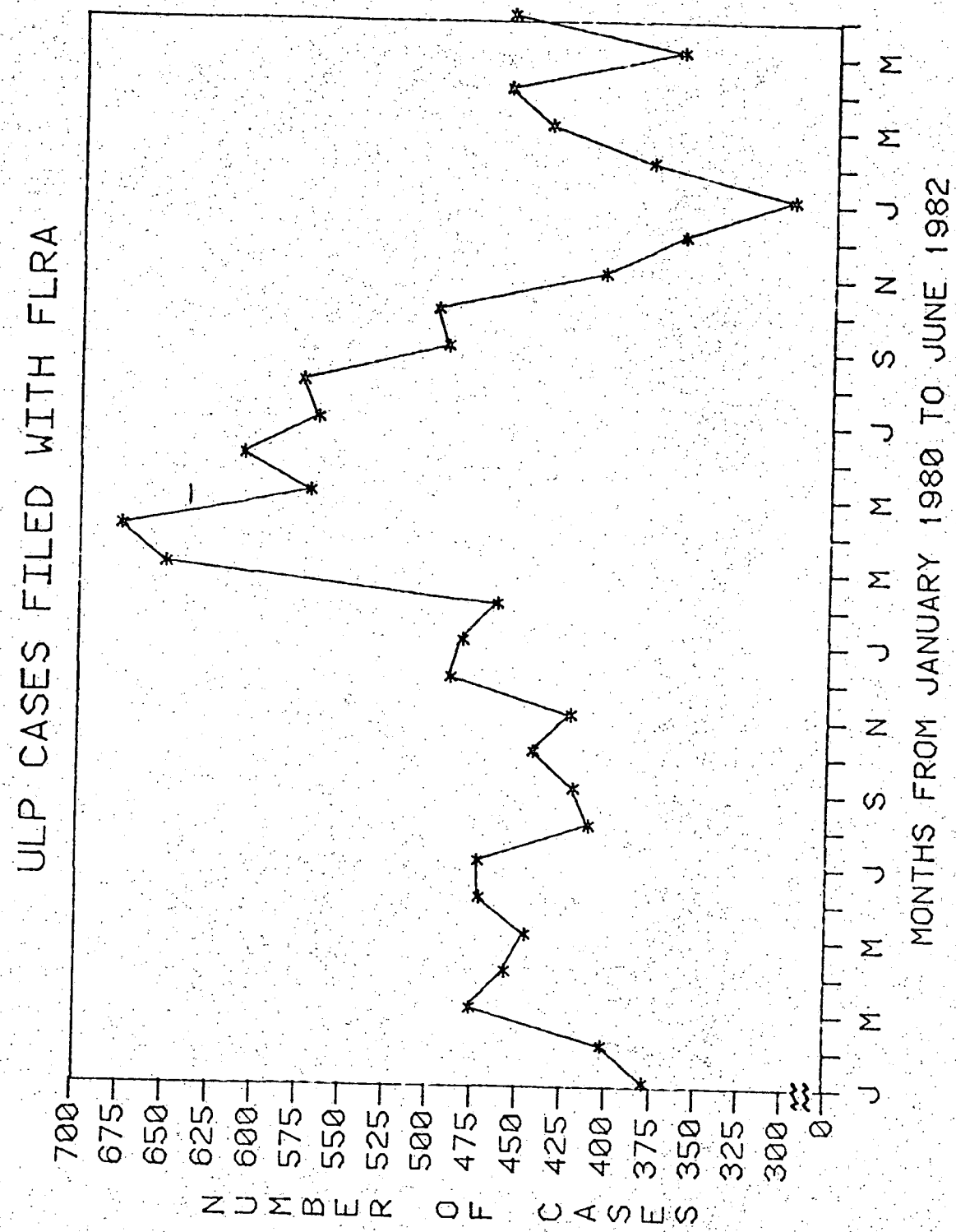
Chapter 14
Internal Revenue Service
St. Louis District
St. Louis, Missouri

Chapter 133
U.S. Customs Service
Region I
Boston, Massachusetts

Chapter 97
Internal Revenue Service
Fresno Service Center
Fresno, California

Regional Chapters
U.S. Customs Service
Region VII
San Francisco, California

APPENDIX III



APPENDIX IV

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
500 C STREET SW. WASHINGTON, D. C. 20424
(202) 382-0700

OFFICE OF THE CHAIRMAN

July 30, 1982

Mr. Clifford I. Gould
Director
Federal Personnel and
Compensation Division
U.S. General Accounting Office
441 G Street, NW.
Washington, D.C. 20548

Dear Mr. Gould:

This is in response to your request for comments on a draft report entitled, "Steps Can be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices" (GAO/FPCD-82-48). Set forth below are our comments as they relate to the operation of the Authority. The comments of the Office of the General Counsel of the Authority related to its portion of processing unfair labor practice (ULP) cases are separately set forth herein.

Page 1. The draft describes FLRA and OPM as sharing labor-management relation responsibility. More accurately, this should be expressed to show that OPM is the lead management agency which provides management advice and guidance to the management of other Government agencies and FLRA is the neutral, 3rd party agency which resolves labor-management disputes between the management of Government agencies and unions which represent the employees of those agencies.

Page 7. In the summary paragraph at the top of page 7, a projected cost of $25.9 million is shown as "the total cost for processing" ULP's in 1981. From the table on page 7, it is indicated that this is the estimated cost based on both FLRA expenditures and those of the agencies who are involved in the cases. As the focus of the report is on FLRA, there is a potential for confusion. The text on page 10 should make clear that this is a total cost figure.

More significantly, we have some concerns about the development of this cost data. The FLRA's total budget for FY 83 is under $15 million, while we have not endeavored to "break out" ULP costs, even assuming as much as two-thirds were attributable to such cases, that would mean that agencies would be spending an additional sum of $16 million for their share of processing ULP cases. We would be interested in support for such a conclusion. While we have no hard data on agency costs, the available data suggests that the cost figures are overstated. Such data, if not accurate, could project a distorted view of the program.

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With respect to FLRA costs, it should be noted that the average costs for some 90 percent of the approximately 6,000 ULP filing per year is only $1,100 for the FLRA. The higher cost figures reflected in the last column of the chart represents only 5 percent of total cases. In this regard, it would be meaningful to make comparisons with NLRB costs for processing ULP cases. The Statute and procedures in this regard are quite comparable.

Page 9. "Greater Use of Negotiated Grievance/Arbitration Procedures Could Reduce ULP Volume". The first sentence of this section states that a negotiated grievance procedure "as well as the ULP process" can be used. Section 7116(d) of the Statute provides that issues that can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice, "but not under both procedures".

Page 11. Throughout the draft, cases are characterized as being "before the Members" when they are under consideration at some stage within the Authority. The 427 cases referenced at the top of page 16 were not "before the Members," but rather were at stages of processing, most were either being worked by staff or were newly filed cases awaiting assignment.

With respect to the timeliness of precedent setting cases, as reflected in the report, major changes in processing procedures have greatly improved our ability to dispose of precedent setting cases more quickly. However, it should be recognized that our results to date, while not what we would like them to be, compare favorably with NLRB private sector experience.

Footnote 1 on Page 11 should read "Number of days from the date that all filings related to the disposition of the case have been received.

The Authority fully concurs with the recommendation that we explore the development of a procedure that encourages parties to attempt resolution of ULP allegations prior to an FLRA conducted investigation.

Yours truly,

Ronald W. Haughton

Ronald W. Haughton
Chairman

Attachment

APPENDIX IV

Comments of the Office of the General Counsel

The following are the comments of the Office of the General Counsel, Federal Labor Relations Authority, on the draft of a proposed report entitled "Steps Can be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices" (GAO/FPCD-82-48).

The comments of the Office of the General Counsel are divided into two sections. The first section pertains to technical aspects of the draft report and the second section contains our substantive comments on the contents of the draft report.

Technical Comments

1. On the report cover, reference should be made to the number of unfair labor practice charges which is expected to increase. Throughout the draft report reference is made to unfair labor practice complaints or ULPs, when reference should be made to unfair labor practice charges. Failure to distinquish between ULP charges, ULP complaints and ULPs will substantially distort the report and present inaccurate data and information. Any individual, labor organization or agency may file an unfair labor practice charge alleging a violation of Title VII of the Civil Service Reform Act of 1978; i.e., an unfair labor practice. The filing of an unfair labor practice charge does not mean that an unfair labor practice complaint will issue or that an unfair labor practice has, in fact, occurred. Only the General Counsel is statutorily empowered to make the decision to issue an unfair labor practice complaint and only the Authority is empowered to make the final decision as to whether an unfair labor practice has, in fact, occurred. These words have specific meanings in the Federal service labor-management relations program and under the law. Accordingly, it is imperative that differentiations between unfair labor practice charges, unfair labor practice complaints and unfair labor practices be vividly and clearly set forth in the report.

2. On page i of the Digest, it should be clarified in the 1st and 4th lines that reference is being made to unfair labor practice charges and not unfair labor practices.

3. On page 1, it should be noted that the Federal Labor Relations Authority was established by Reorganization Plan No. 2 of 1978 (not by "the Reform Act") and was in existence on January 1, 1979, prior to the January 11, 1979, effective date of Title VII of the Act.

4. Also on page 1, 2nd line of the 5th full paragraph, the Authority does not decide unfair labor practice charges. The Authority only determines if a unfair labor practice has occurred after the General Counsel issues an unfair labor practice complaint based on the filing of an unfair labor practice charge by an individual, labor organization or agency.

paragraph 6 on

5. There is a typographical error on line 2 of page 2 ("modify") and an extra word ("was") appears on page 4, line 6.

6. On page 5, references in the title and on lines 5, 8, and 14 should specify unfair labor practice charges rather than "ULP complaints" and "ULPs." Thus, "parties can resolve disputes without third-party intervention by--closely scrutinizing" unfair labor practice charges - not complaints. Again, references to increases in filings should be to unfair labor practice charges not ULPs.

7. The use of a "filing rate" as a basis for comparison between the Federal sector and the private sector on page 5 is distorted since a substantially larger proportion of Federal employees covered by the Statute are in exclusively represented bargaining units compared to private sector employees who are covered by the National Labor Relations Act, the large majority of whom are unrepresented.

8. The reference on page 6, line 5 should be unfair labor practice charges, rather than "ULPs". Further, in line 8, the Office of the General Counsel believes that the decline in the number of unfair labor practice charges in Fiscal Year 1982 may be attributed in part to unions' uneasiness, not necessarily "employees'" uneasiness.

9. In the table on page 7, the reference under "Meritorious" to "charge" should rather be to "Pre-complaint settlement." In the total column, the total number of cases should be 6,448, not "6408."

10. Also on page 8, under the discussion concerning the "substantial and material effects test," on lines 1 and 8, reference should be to unfair labor practice charges and not "ULPs". Similarly, on line 2 of page 8, the reference should be to unfair labor practice charges.

11. On page 11, line 2, the term "breach" is misspelled.

12. The graph in Appendix III entitled "ULP Cases Filed With FLRA" begins at the level of 275 cases. The graph, to avoid the pictorial appearance of distorting the number of unfair labor practice charges being filed, should rather begin at 0.

13. On page 11, the second example utilized to describe a precedent decision pending before the Authority is unclear and inaccurate. The case should be described as follows:

> --In early 1980, two ULP cases were transferred for Authority processing after issuance of complaint for a decision on whether local management's failure to bargain over unilateral changes in working conditions that were directed by higher agency management regulations should be decided under the unfair labor practice procedure or the negotiability dispute procedure.

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Substantive Comments

1. On page 8, in the section entitled, "More Attention To The 'Substantial and Material Effects Test' Is Needed," the draft report's premise that "[t]echnically, the Reform Act requires that management notify the union of its intent to make these changes [i.e., changes in working conditions that have little or no effect on employees] and negotiate with the union over their impact if the union so desires" is incorrect. As held by the Authority in 5 FLRA No. 45 (1981) and as stated by the Office of the General Counsel in its memorandum to the Regional Directors concerning the duty to bargain over a change in working conditions (which memorandum is referenced on page 8 of the draft report), there is no statutory duty to bargain over a change in a negotiable condition of employment or over the impact and implementation of a change in a nonnegotiable matter unless there is a substantial and material effect on bargaining unit employees. Thus, there is no statutory duty to notify the exclusive representative and bargain over a change which does not meet the substantial and material effects test.

2. On page 8, it should be noted that currently charges involving changes such as moving a coffee pot are routinely dismissed, absent withdrawal, by the Office of the General Counsel. In this regard, it should be noted that the Office of the General Counsel has no control over the types of unfair labor practice charges which are filed. Parties can file as many charges as they desire making any allegations that they choose to include. To present a fair and accurate picture of the unfair labor practice process and to discourage the filing of such patently nonmeritorious charges, it should be noted that such charges will be summarily dismissed by the Office of the General Counsel.

3. The example set forth in the fourth full paragraph on page 8 of the draft report of a case which was dismissed by an Administrative Law Judge for lack of substantial and material impact is not an example of a case involving the duty to bargain; i.e., the case does not represent the principle being discussed in the report. Thus, the case does not involve a unilateral change in a condition of employment but rather concerns a supervisor's statement which is alleged to constitute an interference with protected employee rights under the law; i.e., the right to form, join or assist a labor organization. As such, the case has nothing to do with the substantial and material effects test in regard to unilateral changes and the obligation to bargain which the report discusses.

4. The draft report recommends at page 15 that the Authority "require the parties involved in alleged ULPs to conduct discussions to informally resolve issues before filing a formal ULP charge with FLRA." The draft report acknowledges the Authority regulation and policy of encouraging the parties to resolve informally and voluntarily any allegations of unfair labor practices, notes that most unfair labor practice charges are not investigated until about 30 days from the

filing of the unfair labor practice charge thus affording the parties time to settle their dispute, and states that the Office of the General Counsel agrees that the use of precharge discussions can help resolve disputes prior to the filing of an unfair labor practice change. However, the draft report does not address itself to the possible legal and practical barriers to its recommendation to require precharge filings and discussions. While the Authority could by regulation require charging and charged parties to attempt informal settlement for a specified period after the filing of a charge, a regulation precluding a party from filing a charge with the Authority without first engaging in pre-charge informal settlement efforts with the charged party may be inconsistent with the statutory requirement in section 7118(a)(4) which establishes a six(6) month period of limitation in which to file an unfair labor practice charge. Therefore, to effectuate such a change in the unfair labor practice process may require an amendment of the Statute. Moreover, the requirement of a precharge prior to the filing of an unfair labor practice charge with an Authority Regional Office would also delay issuance of an unfair labor practice complaint by the General Counsel in cases where the appropriate temporary relief provisions of section 7123(d) of the Statute are invoked. It should be noted that section 7123(d) does not apply solely to "strike" cases (e.g., as in the PATCO case), but rather applies to all cases where appropriate temporary relief is just and proper.

It is also possible that the requirement that a charging party file a precharge with the charged party and attempt to informally resolve the dispute prior to the filing of an unfair labor practice charge with the Authority could lead to allegations of noncompliance with this requirement thus raising issues collateral to the unfair labor practice dispute necessitating further investigations, determinations and possibly litigation only complicating resolution of the alleged unfair labor practice. Although, as stated in the draft report, the Office of the General Counsel favors and strongly encourages precharge discussions and attempts at resolution, the report is incomplete in making a recommendation that such discussions be a requirement without addressing the above noted legal and practical problems involved in implementing its recommendation.

5. Although the greater use of negotiated grievance/arbitration procedures could reduce the number of unfair labor practice charges filed with the Authority, the use of such procedures may not reduce the total cost to the Government of resolving the disputes giving rise to use of such procedures as implied by the draft report. Thus, although one of the purposes of the draft report was the development of recommendations which would reduce the cost to the Government of the unfair labor practice process, the draft report does not evaluate the cost to the Government when the Government is a participant in the grievance/arbitration process. In many cases, the use of grievance/arbitration procedures could be more costly to the Government in total than the use of the unfair labor practice procedure as a means of dispute resolution. No data on the costs to the Government of utilizing grievance/arbitration procedures to resolve matters which could be processed under the unfair labor practice procedure are provided in the draft report. The high levels of productivity by the staff of the Office of

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the General Counsel, the high settlement rate, and the low cost factors for the Office of the General Counsel indicate the strong possibility that, in many cases, the use of grievance/arbitration machinery could be more costly to the Government than the unfair labor practice process. If the draft report is to make the assumption that the use of grievance/arbitration procedures will be less costly to the Government than use of the unfair labor practice procedure, the draft report should contain at least some cost data to substantiate that assumption.

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United States
Office of
Personnel Management

Washington, D.C. 20415

Your Reference

Honorable Charles A. Bowsher
Comptroller General
United States General Accounting Office
Washington, DC 20548

AUG 2 1982

Dear Mr. Bowsher:

This is in response to your request for the Office of Personnel Management's comments on GAO's draft report, "Steps Can Be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices" (GAO/FPCD-82-48).

On the whole, the report and recommendations represent a positive effort toward achieving much needed improvement in the process for resolving unfair labor practice complaints, and for stimulating more attention to prevention and early settlement of allegations and formal charges. However, we believe some additions or corrections will put the report's findings in better perspective. We also wish to call your attention to a few instances where editorial or clarifying changes seem appropriate (these are included as an attachment).

At this time we will reserve comment on the specific recommendations included in the report. However, it should be noted that the recommendations are directed almost exclusively at the third-party agencies and management, primarily OPM. Yet, as the report correctly notes, ninety percent of the unfair labor practice charges are filed by unions, which are not subject to direct GAO oversight or influence. This is particularly significant in the one recommendation (page 7) affecting both parties, union and management, in which both are urged to "insure" that ULP's are filed only on serious and substantial issues. As noted, since the overwhelming number of ULP charges are filed by unions and since more than 60 percent of the charges are found after investigation by the FLRA's General Counsel, to be without merit, it is difficult to see any direct ability of management to influence change. Yet, there is no specific mention of the unions' major responsibility for the great number of non-serious and unsubstantial filings. We believe it might be helpful to note the major burden placed on unions to improve this situation.

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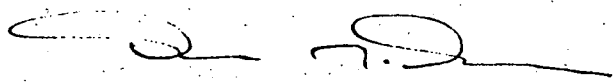
In the report OPM is said to believe that the volume of ULP's will increase in the future. This is reluctantly our view based on long-term trends in the private sector under the National Labor Relations Act as well as early experience under Title VII of the Civil Service Reform Act. We want to emphasize, however, that such increases need not be inevitable. We are heartened by the decrease in filings in the first six months of this year, but are concerned with long-range increases unless all participants make concerted, tangible efforts to reduce the causes and incidence of ULP's.

We strongly support the draft report's call for mandatory filing of unfair labor practice charges directly with charged party and requiring a 30-day period for attempts at informal settlement prior to formal filing with the General Counsel. This procedure, which was an integral part of the executive order labor relations program, resulted in some agencies reporting settlement ratios of 75% or higher. We caution, however, that such high settlement rates are unlikely under present law, where completely free processing and prosecution by General Counsel staff are available to the union if agreement is not reached during the pre-charge period.

Another option available to the parties, not mentioned in the Report, is to negotiate an agreement provision that would require either party to submit each ULP allegation to the other prior to filing a formal charge with the General Counsel. The legality of such an agreement is clear, provided individual employees are not prevented from exercising their statutory rights to file directly with the General Counsel. Bilateral agreements between the parties affords an opportunity for informal settlement not otherwise regularly available to them. Some agencies and unions have reached such agreement and, we believe, the report should urge others to consider this option.

We have no further comment on the draft report, but do look forward to the opportunity to consider and act on the conclusions and recommendations in the final, official report. We are confident that the volume and cost of ULP's can be reduced and controlled through renewed commitment by all concerned.

Sincerely,



Donald J. Devine
Director

Attachment

[See GAO note below.]

GAO note: The attachment dealt with suggested wording changes to the report. We have dealt with the comments where appropriate and have therefore not included the attachment.

APPENDIX IV

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D C 20301

MANPOWER
RESERVE AFFAIRS
AND LOGISTICS

17 AUG 1982

Mr. Clifford I. Gould
Director, Federal Personnel
and Compensation Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Gould:

This is in response to your letter of June 29, 1982, to the Secretary of Defense concerning your draft report entitled "Steps Can be Taken to Improve Federal Labor-Management Relations and Reduce the Number and Costs of Unfair Labor Practices" (GAO/FPCD 82-48)(OSD Case No. 6006).

The report makes no recommendations to the Secretary of Defense. However, it does make recommendations to the Federal Labor Relations Authority (FLRA or Authority) and the Office of Personnel Management (OPM) which impact on this Department. In view of this, we would like to take the opportunity you have provided us to comment on the draft report. Our comments are provided below.

The Department of Defense fully concurs with the premise of the report that labor-management relationships can be improved and the number of unfair labor practices (ULPs) and their related processing costs reduced by settling more disputes informally. Chapter 2 of the draft report identifies four steps that the parties to a potential dispute can take to resolve it without third-party intervention. These steps are to closely scrutinize potential ULP allegations concerning changes in working conditions to insure that ULP charges are filed only when such changes substantially and materially affect bargaining unit employees; rely more heavily on negotiated grievance/arbitration procedures in lieu of processing disputes through ULP procedures; apply precedent decisions in evaluating situations allegedly involving ULP before deciding whether to file a ULP charge; and discuss ULP allegations before filing a ULP charge.

We agree that good faith application of the above steps would strongly enhance the chances of disputes being resolved informally between the parties themselves without third-party intervention. We must recognize, however, that the

party contemplating the filing of a ULP charge bears the greatest burden, at least initially, in utilizing these steps. For it is that party which must initially analyze the relevant facts and circumstances, determine the applicability of precedent decisions of the Authority and the Authority's Office of General Counsel (OGC) including those involving the "substantial and material effects test", decide which forum to pursue the matter, and provide the other party with an opportunity to discuss the matter. The party bearing this initial burden is normally the union and/or an employee since they initiate the vast majority of ULP charges. Thus, to a very large extent, it is they who must be either convinced or required to adhere to these steps. Of course, once notified of the allegation, the charged party must undergo a parallel decision-making process.

The Authority and its OGC have taken certain measures which, we believe, will tend to promote the informal settlement of disputes. The establishment of the "substantial and material effects test" by the Authority has reduced the number and costs of unfair labor practices, particularly with regard to the issuance of ULP complaints. As your report correctly points out, however, the test will only begin to have its full impact when the party contemplating the filing of a ULP charge is knowledgeable of the test and willing to objectively apply it to the particular facts and circumstances giving rise to that party's concern.

Another positive development in reducing the number and costs of ULPs is the current policy of the OGC to pursue ULPs that could otherwise be handled under negotiated grievance procedures only when there is a "patent breech" of a negotiated agreement. Here, we would strongly urge that office to go one step further and adopt a general policy of deferring to arbitration. As with the application of the "substantial and material effects test", for the existing deferral policy to have its full effect, it must be applied prior to a charge being filed.

The Authority must continue its efforts to issue timely precedent case decisions. This is particularly important with respect to cases having a significant effect on the Federal labor-management relations programs and those which are causing similar cases to back-up in the system. Of course, it is here again incumbent upon all interested parties to be knowledgeable about, and able and willing to apply such precedent decision before filing a charge.

The sole recommendation in Chapter 2 of the Draft Report is that the Authority require the parties involved in an alleged ULP to conduct discussions to informally resolve issues

before filing a charge with the Authority. We strongly support the need for rule making by the Authority establishing a requirement that the parties meet in a good faith effort to try to informally resolve their dispute. While there may be numerous ways in which this could be accomplished, we prefer your recommendation. Requiring the parties to attempt resolution of ULP allegations under Executive Order 11491, as amended, prior to third-party intervention, resulted in a substantial number of informal settlements without any significant adverse effect on any party involved.

Under the "pre-charge" procedure, it would obviously be incumbent upon the party making an allegation to initiate the discussions and to engage in those discussions in a good faith effort to resolve the dispute and not view them as merely a necessary procedural step to further formal processing of its allegation with the OGC. Where the party making an allegation failed to satisfy this procedural requirement, the OGC should not hesitate to dismiss a subsequent formal charge.

Although not specifically addressed in the Draft Report, there are certain other matters inexorably intertwined with the informal resolution of unfair labor practice charges which invite comment.

1. We believe that the charging party should be required to furnish the charged party not only with a copy of the charge, which should contain specific facts regarding the allegations contained therein, but also with the supporting evidence and documents. Under current practice, the agents of the Office of General Counsel investigate charges which contain nothing more than bare assertions that a ULP was committed. Further, under section 2423.6(b) of the rules and regulations of the Authority, 5 C.F.R. §2423.6(b), the charging party is not required to provide the charged party with the supporting evidence and documents. We think that if charges are to be resolved informally, the charged party must know with as much particularity as possible what the allegations are and what supporting evidence and documents there are for them. Providing the charged party with such information would allow that party to better understand the allegations and make a more informed judgment and thereby would facilitate informal resolution of the dispute.

2. Second, we believe that the charging party should have to make out a prima facie case before the agents of the OGC begin their investigation. Where such a case is not presented to that office, the charge should be summarily dismissed.

3. Finally, we have several observations with respect to the encouragement of informal settlement of charges that have been filed with the OGC. We strongly believe that

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where the parties have agreed to the settlement of a charge, with or without OGC intervention, the settlement agreement should be accepted by the OGC unless contrary to law or regulation. The current Authority requirement in section 2423.9(a)(3) of its rules and regulations for the approval of settlement agreements by the OGC impairs settlement efforts. Similarly, the requirement in Section 107 012 of the OGC's ULP Case Handling Manual that "... (t)he remedy provided for in a settlement should be reasonably equivalent to the remedy which could be expected from a favorable Authority decision" also clearly impairs voluntary settlements. Such a practice discourages settlement by virtually precluding compromise, a necessary ingredient to most settlements. Stated otherwise, it removes the opportunity to achieve a more favorable outcome by settling the case which is one of the major incentives for settlement. Under the requirement, the charged party is left to believe that it will be no worse off if found guilty following full litigation of the case. Lastly, we would urge the OGC to reexamine its almost universal insistence of the posting of a notice in the settlement process. Collectively, the above practices significantly diminish the incentive to settle charges and avoid the costly litigation process.

Chapter 3 of the Draft Report, concerns those program areas where emphasis can be placed to help prevent ULPs from occurring in the first instance. Specifically, the report calls for providing more labor relations and ULP training, including labor relations effectiveness as part of organizational and managerial performance assessments, and monitoring and evaluating ULPs. The Chapter's recommendations call for the Director of OPM to develop guidelines for agencies to follow in assessing managers' labor relations performance where appropriate and implementing systems to monitor and evaluate the ULP process, and to work with the Authority's General Counsel to determine how ULP information accumulated by the Authority can best be utilized to monitor and evaluate the ULP process.

Adequate and appropriate labor relations training directed to address specifically identified training needs, while not a panacea, is one method of insuring an effective labor relations program. Where managers are unfamiliar with their rights and obligations under the program, such training can assist in preventing ULPs from arising or in remedying problem situations. It must be recognized, however, that there are practical as well as economic limitations to the amount of training that can or should be accomplished. Additionally, lack of training on the part of managers and supervisors is only one factor, and perhaps often not even one of the most important factors, creating situations which give rise to ULP allegations.

Within the Department of Defense, substantial labor relations training, including training designed to prevent ULPs, is accomplished at significant cost both in terms of money and staff resources. We continue to stress training for managers and supervisors with respect to management's rights and obligations in an effort to build constructive relationships and avoid "technical" but unintentional violations of the Federal labor law. Further, we recognize that labor relations training is a continuing obligation. This obligation is not made any easier by the fact that labor relations policy is largely established through developing case law with its inherent difficulties in understanding and reconciling the various cases, particularly ULP cases, each of which arises from different facts and circumstances. It is compounded by the lack of clear precedence in many areas upon which to inform managers and supervisors of their rights and obligations. Much testing of the scope and nature of the rights and obligations of the parties also remains and this in itself often leads to ULP allegations. Consequently, it is perhaps not surprising that particular managers or supervisors are not completely aware of the full scope of their obligations and that, particularly where a litigious relationship exists between the parties, their actions result in ULP allegations.

Effectiveness in the area of labor relations could properly be considered, where appropriate, as one aspect of overall managerial performance. We do not believe, however, that a specific labor relations element with clearly defined standards is needed in the performance appraisals of managers and supervisors. As the report correctly states, not all managers have labor relations responsibilities. Those who do, ordinarily have other equally important managerial responsibilities, including those in the other areas of personnel management. All must be considered, as appropriate, in evaluating managerial performance and generally this is best accomplished by establishing performance elements that recognize the unique requirements of each position and the setting in which it operates.

Monitoring and evaluating ULPs could be one means for identifying and then correcting specific problem areas and reducing situations that result in ULPs. We would not concur, however, with the imposition of agency systems to accomplish this task. Given the increasingly austere environment in which Federal agencies, including the Department of Defense, must operate, the budget cuts which the report notes have affected OPM and the Authority's OGC with respect to expanding their capabilities to monitor and evaluate ULPs on a Government-wide basis, could have the same effect on other Federal agencies. Such systems, with their inevitable reporting requirements, can carry a significant administrative burden and should only be implemented where there is a clearly identified managerial need for them. Thus where agencies determine that there is a need for the systematic monitoring

and evaluation of ULPs in order to improve the effectiveness of their labor-management relations programs, they could establish agency-wide or local systems to accomplish this goal. In view of the above, any guidelines established should, at best, only encourage the systematic monitoring and evaluating of ULPs as a means of assessing the labor-management relations program in the ULP area.

Information collected by OPM and the Authority's OGC would be most useful in making such assessments. To be of any benefit, however, the information would have to be timely, readily accessible at little or no cost, and easily utilized. Reports by those offices drawn from the information collected could also be of significant benefit to Federal agencies. In this regard, the Authority's OGC currently issues a quarterly report on case handling developments covering primarily ULP cases. This report, which includes certain statistical data, discusses selected cases that have come before that office. It is of value in evaluating ULP allegations and determining appropriate courses of action thereon.

Finally, with regard to the report as a whole, we noticed that the field sites visited included only two Department of Defense activities, both within the Department of the Navy. Given the size of the Department compared to all other Federal agencies both with respect to the number of bargaining units and the number of employees represented by unions, we believe that DoD activities should have constituted a larger percentage of the sites visited. This reflects our concern that such a narrow sampling of DoD activities may not accurately reflect the labor-management relations program within the Department.

We appreciate the opportunity to comment on the Draft Report.

Sincerely,

James N. Juliana

[illegible]
[illegible]
[illegible] Affairs & [illegible]

APPENDIX IV

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

AUG 4 1982

Dear Mr. Anderson:

We have been requested to respond to the draft Report prepared by the GAO Staff entitled "Steps Can Be Taken To Improve Federal Labor-Management Relations and Reduce Numbers and Costs of Unfair Labor Practices." We agree with the Staff's conclusion that the unfair labor practice procedure has become a costly mechanism for resolving labor-management disputes and we strongly support your efforts to make the system more efficient.

One of the most effective means for eliminating the numbers of unfair labor practices and associated costs is the Staff's recommendation for informal settlement discussions between the parties prior to the filing of a charge. That concept has been suggested on many occasions by the labor relations community but was resisted by the former General Counsel because of his belief that he was precluded by Statute from instituting such a procedure. The finding by the Staff that informal discussions are used infrequently by the parties may be due in large part to the fact that the General Counsel's office has not only declined to establish a procedure for informal discussions but has maintained that it would even refuse to honor bilateral agreements providing for informal settlement discussions. The General Counsel has indicated that in cases where a party waited until the end of the six month statutory time period to initiate a charge, the time limit might expire if they were first required to participate in settlement discussions. However, any statutory questions can be resolved with the procedure recommended by the Staff requiring pre-charge settlement discussions but also containing a provision permitting a charge to be filed but not investigated by the FLRA until settlement discussions have taken place in those cases where the time limit would otherwise expire. Maximum savings from informal settlement discussions will be derived only if the General Counsel's office rigorously enforces the procedure so that the parties understand that failure to follow it will result in the FLRA's refusal to begin processing the charge. Although the General Counsel may argue that an informal discussion procedure will be an additional burden, we are convinced that it will actually reduce the workload by increasing settlements and will reduce costs.

During the current fiscal year, the former General Counsel proposed to shift some of the cost for processing unfair labor practices from the FLRA to agencies by requiring witnesses to travel to the FLRA investigator's office even where it involved a number of employees and would have been far less expensive for the investigator to have traveled to the agency. Although this proposal might have alleviated the immediate budgetary problems of the FLRA itself, it would have in fact actually increased the overall cost to taxpayers for processing unfair labor practices.

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Since ultimately a substantial amount of the expense involved in the unfair labor practice procedure is borne by the taxpayers either through the FLRA or individual agencies, we believe that a more equitable solution, and one which may help reduce costs by discouraging the filing of frivolous charges, would be the establishment of a procedure to ensure that a share of the cost is borne by both parties involved, possibly by the assessment of filing fees. At a minimum, the General Counsel could alleviate the amount of staff time required to process charges by more vigorously enforcing its requirement for specificity in the charge itself and could require additional cooperation and assistance from the charging party where possible in the form of preliminary statements from available witnesses and evidentiary materials.

We are encouraged by the Staff's finding that the FLRA has established procedures this year to handle cases by priority rather than deciding them in chronological order. However, many of the decisions which are issued on significant cases, often raise more questions than they answer and generate additional cases. The numbers of unfair labor practices could be reduced if the issues were more fully developed in precedent cases. The Authority could be assisted in this endeavor by adopting a procedure, similar to the one it utilizes in deciding major policy questions outside the unfair labor practice forum, of notifying interested parties when a significant issue is presented and inviting oral arguments or at a minimum amicus briefs. Since the principles of these cases will be applied throughout government, it would be most appropriate to involve as many potentially affected parties as possible in the process and would provide the Authority with extensive information on the subject as well as complete arguments on which to base its decision at this final administrative step of the procedure.

We support the concept of evaluating managers on their labor relations performance but have some concerns that the evaluation process could easily degenerate into a numbers game because of the difficulties which may be experienced attempting to evaluate managers in an area which has many intangible aspects. We urge that care be exercised to ensure that any procedures developed provide for evaluating a manager's individual efforts and attitudes rather than relying on numbers of grievances or unfair labor practices filed during the evaluation period. We also agree that the training of managers and supervisors is an effective part of improving the labor-management relationship and therefore contributes to the reduction of caseloads. In fact, the Department's largest bureau, the IRS, is currently involved in an extensive program to train and update its management. However, we believe that it would be even more effective to have all parties appropriately trained. Our experience incidates that policies and practices vary among FLRA field offices and we believe that unfair labor practices could be processed more efficiently with increased training, direction and guidance for FLRA field agents.

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We urge that to the extent possible, the General Counsel's office handle cases on a priority basis and when processing cases involving unilateral changes, concentrate on cases involving significant and material changes. In addition, if the parties are to truely develop and maintain a good labor-management relationship, it is far preferable to defer to the negotiated grievance procedure where the parties deal face to face through several levels of management, rather than repeatedly and almost automatically using the FLRA and its limited resources to resolve problems.

In sum, we believe that positive steps should be taken to improve overall efficiency in processing unfair labor practices and to reduce costs. We appreciate the opportunity to provide you with our comments on this matter.

Sincerely yours,

D. S. Burckman
Director of Personnel

William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

APPENDIX IV

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

AUG 12 1982

Mr. Gregory J. Ahart
Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

Thank you for the opportunity to review your draft report on the processing of unfair labor practice cases. We were pleased to participate in the study and found our discussions with your representative interesting and fruitful.

The Department of Education strongly supports the draft's emphasis on informal resolution of unfair labor practice issues along with a more frequent use of the negotiated grievance/arbitration procedure as a channel for resolving them when informal discussion is not successful. We have found these methods valuable and would welcome measures which encourage their use (such as a requirement for pre-charge discussions). We agree also that the application of a substantial and material impact test could reduce both the volume and processing costs of cases. It would be important, though, for such criteria to be well known and consistently applied in order to meet these goals.

Sincerely,

Charles L. Heatherly
Acting Deputy Under Secretary
for Management

APPENDIX IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

July 27, 1982

OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION

IN REPLY REFER TO:

Mr. Henry Eschwege
Director
Community & Economic Development
Division
U. S. General Accounting Office
Washington, DC 20548

Dear Mr. Eschwege:

This is in response to your request for comments on the Draft Report entitled, "GAO Draft Report, "Steps Can Be Taken To Improve Federal Labor-Management Relations and Reduce Number and Cost of Unfair Labor Practices."

We respectfully disagree with the emphasis the report puts on potential benefits of requiring precharge discussions. Precharge discussions normally occur now; and when they happen only because they are required, the charging party may not make a real effort to resolve the issue.

We have no objections to the recommendations in the report, and we do recognize the importance of managers understanding union rights. However, we do not agree that the recommendations deal at all with the major cause of the escalating use of the ULP process.

Proliferation of unfair labor practice charges and resultant deterioration in labor-management relations is directly related to the Federal Labor Relations Authority (FLRA) General Counsel and staff entertaining frivolous charges. The need for a "substantial and material" standard has been clear. The "substantial and material" standard, if applied reasonably, can contribute significantly to the stated objectives of the study. With a rational application of the standard, ULP case costs will be reduced, and relationships will improve because both parties will have clearer expectations regarding bargaining rights.

Sincerely,

Judith L. Tardy
Assistant Secretary, A

APPENDIX IV

Office of the
Administrator
of Veterans Affairs

Washington, D.C. 20420

Veterans
Administration

AUGUST -9 1982

Mr. Gregory J. Ahart
Director, Human Resources Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Ahart:

Thank you for the opportunity to review your July 7, 1982, draft report, "Steps Can Be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices." I basically agree with the conclusions and recommendations stated in the report and strongly support some of the findings.

I am pleased that the Office of General Counsel (OGC), Federal Labor Relations Authority (FLRA), issued a policy statement to its regional managers clarifying when the substantial and material effects test should be used. A consistent application of this test should result in a reduction of man-hours and monies spent by agencies and the OGC in responding to and processing otherwise frivolous charges.

Your report states that quicker processing of cases by the FLRA is needed, particularly those having a broader impact on labor-management relations in the Federal sector. It would seem reasonable that if "landmark decisions" which set a precedent are applied to similar factual situations, the backlog and the number of unfair labor practices (ULP) requiring FLRA involvement could be reduced. It should be noted, however, that section 2423.29 of the FLRA's regulations specifically requires that exceptions to an administrative law judge decision be filed in order for the FLRA's decision to have precedential significance. I would like to have seen this matter addressed in your report because this requirement might reduce the number of decisions that could be used as precedent.

I endorse the recommendation that the FLRA require the parties involved in alleged ULP's to attempt informal resolution before filing a formal charge with the Authority. Prior to the Civil Service Reform Act, the requirement that parties explore informal resolution before filing a formal complaint was more effective than the present voluntary method.

Sincerely,

John P. Murphy

ROBERT P. NIMMO
For and in the absence of
Administrator

APPENDIX IV

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG - 6 1982

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft of a proposed report "Steps Can Be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

APPENDIX IV

COMMENTS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE GAO DRAFT REPORT "STEPS CAN BE TAKEN TO IMPROVE FEDERAL LABOR-MANAGEMENT RELATIONS AND REDUCE NUMBER AND COSTS OF UNFAIR LABOR PRACTICES"

The Department of Health and Human Services has accorded exclusive recognition to 98 bargaining units covering approximately 91,000 employees. We have working relationships with 11 separate national and/or international labor organizations. The American Federation of Government Employees (AFGE), AFL-CIO, represents some 64,000 employees in one consolidated unit in the Social Security Administration. That unit is one of the largest in the Federal sector and we have only recently signed a three year agreement with AFGE concerning conditions of employment of unit employees. We expect that the bulk of our labor relations activity will continue to be centered in the Social Security Administration.

From these brief statistics, it is evident that we have a significant interest in the Federal Service Labor Relations program and we are deeply concerned when any particular aspect of the program, i.e., unfair labor practices, has a negative impact on the overall program. We are, therefore, pleased to have this opportunity to comment on the General Accounting Office (GAO) report which deals with the issue of unfair labor practices under the Federal Service Labor-Management Relations program.

RESOLVING ALLEGED ULPS INFORMALLY CAN IMPROVE THE LABOR-MANAGEMENT RELATIONSHIP AND REDUCE COSTS

For the most part, we agree with the findings and recommendations of the report. The report objective, to determine the nature of ULP charges and complaints and identify ways to prevent the need for formal processing, is clearly a matter which needs review and we strongly support such a review. We also support the GAO observation that the ULP process is a key to sound labor-management relations and that many disputes between agencies, employees and unions could be resolved informally. However, we have some difficulty with the statement on page 7 , paragraph 2 which says, "Many ULPs are filed over management's failure to negotiate changes in working conditions that have little or no effect on employees."

In calendar year 1981, the union filed a total of 933 charges against management in this Department. Of that number, 495 were later withdrawn by the union; 62 were dismissed by the Federal Labor Relations Authority (FLRA), and 57 were settled either by direction of the FLRA or voluntarily by the parties. The remainder of the cases is pending at the FLRA level and could fall into any of the above categories. This statistical picture is fairly descriptive of the Department's ULP process over the past several years. We would note that on page 8 , paragraph one, the GAO report states: "A few union officials acknowledged the use of the ULP process as an avenue for pursing matters of principle against management, regardless of how insignificant charges may be." We feel that the majority of the above cited withdrawals and dismissals,

which account for more than half of the ULP filings in this Department, are not specific violations of employee or union rights as established by the Federal Service Labor-Management Relations Statute. We are pleased to acknowledge that the "substantial and material effects test" used by the General Counsel of the Federal Labor Relations Authority appears to us to be of positive value to FLRA Regional Directors in deciding whether or not to issue complaints of unfair labor practices. Unfortunately, the use of the test is applied rather sparingly throughout the system. We believe it should become a policy statement of the Authority, published in the Federal Register and made binding on Authority agents.

GREATER USE OF NEGOTIATED GRIEVANCE/ARBITRATION PROCEDURES COULD REDUCE ULP VOLUME

The grievance machinery of any labor contract, in either the private or public sector, affords both labor and management the due process method of resolving their differences. However, we have now complicated the process of dispute resolution by offering labor and management (it must be noted that management almost never files a ULP against the union), a system which only prolongs labor unrest -- a situation inconsistent with the intent of the statute. If we are to get back to the "basics" of dispute resolution, for the purpose of providing labor harmony and increased employee productivity, then we must look for a realistic solution for the dilemma we have created. The Federal Service Labor-Management Relations Statute provides labor and management the opportunity to pursue disputes through ULP processes as well as negotiated grievance procedures. We believe those statutory procedures should be preserved, but because they are being used so interchangeably they merit constructive consideration. Indeed the GAO finding is accurate when it notes that the somewhat costly negotiated grievance procedure, with its binding arbitration step, is being replaced by the free, unfair labor practice procedure.

When a union realizes that it has the free legal representation capabilities of the General Counsel of the Authority at its command, it is not surprising that the number of ULPs filed against management steadily increases. We have observed incidences when representatives of the General Counsel of the Federal Labor Relations Authority have offered positive assistance to the union in preparing their ULP charges. Also, by amending the original charge filed by the union these representatives of the Authority assist in strengthening the position taken by the union on a given issue. We believe this approach only serves as encouragement to the union to file a charge on practically any issue knowing that it will be placed in proper order by the General Counsel's representatives who will later recommend that a complaint be issued. If the General Counsel were to discontinue this service for both labor and management, we suspect the incidence of ULP filings would diminish to a noticeable degree.

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QUICKER PRECEDENT DECISIONS HAVE BEEN NEEDED

We are convinced that the Authority is making meaningful progress to improve the timeliness of issuing decisions. We believe, however, that there is room for improvement in the area of issuing more guidance by way of interpretation of the law. We believe agencies are relying too heavily on decisions of case law. Interpretations would provide agencies, labor organizations and employees with the meaning and intent of the law and would offer guidelines for working with each other within the parameters of such meaning and intent.

One other area, with respect to decisions, that should be reviewed by the Authority concerns the distribution of cases that are Dismissed by the Authority. At the present time, only the parties to the dismissed case receive such notification from the Authority. Other parties are generally not intentionally made aware of the dismissal and consequently are required to "reinvent the wheel" in subsequent cases. We recognize the cost savings in not printing and distributing dismissed cases, but the costs of preparation for litigation of an already decided issue generally would exceed the cost of printing and distribution.

Precharge Discussions

The issue of precharge discussions has great merit. Our experience in this area under Executive Order 11491 encourages us to suggest that we need to return to required precharge discussions. When the parties to a labor dispute know that they must continue some dialogue for a period of 30 days, the possibilities for a resolution of the dispute are greatly enhanced. Under the current procedure, the parties feel no obligation toward each other to find their own resolution of the dispute. On the contrary, it appears now that once a filing is made, the parties draw their battle lines and gird themselves for litigation. In practice, the voluntary precharge discussion simply never takes place. The parties should be required to file written statements of the positive measures taken to resolve their disputes.

MORE EMPHASIS ON ULP PREVENTION WILL DECREASE VOLUME AND IMPROVE LABOR-MANAGEMENT RELATIONS

This Department has invested a significant amount of time and money in labor relations training for managers and supervisors. We were an early supporter of the recommendations of the CSC/OMB joint guidelines referenced on page 24, paragraph one of the GAO report. As a follow on, the Social Security Administration has already trained its managers and supervisors in the provisions of the contract it signed with AFGE on June 11, 1982. Additionally, we plan continued labor relations training for managers and supervisors. This notwithstanding, we point out that this investment in labor relations training has not had much impact on the increased use of the unfair labor practice process. Nor do we believe that by including labor relations matters in line managers' performance evaluations, will we see any change of the use of the unfair labor practice process.

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To sum up, we believe that:

1. The "substantial and material effects test" should be published as a policy statement of the Federal Labor Relations Authority.

2. The General Counsel of the Federal Labor Relations Authority should discontinue the practice of providing assistance in preparing and amending charges filed by any party to a ULP.

3. The Federal Labor Relations Authority should issue more guidance through its interpretation of the Federal Service Labor-Management Relations Statute.

4. The Federal Labor Relations Authority should make the same distribution for dismissed cases as it does for all other cases.

5. The Federal Labor Relations Authority should, by regulation, require a precharge discussion period of 30 days with written statements by the parties of the positive measures taken to resolve their dispute.

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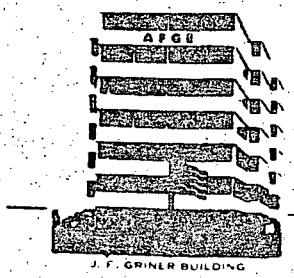

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

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IN REPLY PLEASE REFER TO

12k/GAO

August 2, 1982

Mr. Clifford I. Gould
Director
Federal Personnel and
Compensation Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Gould:

Enclosed are our comments on your draft report entitled "Steps Can Be Taken To Improve Federal Labor-Management Relations And Reduce Number And Costs Of Unfair Labor Practices." (GAO/FPCD-82-48)

Thank you again for the opportunity to comment on this report.

Sincerely,

Ronald W. Fling, acting

John W. Mulholland, Director
Labor Management Services Department

RK/pd

Enclosure

APPENDIX IV

COMMENTS ON THE PROPOSED GENERAL ACCOUNTING OFFICE REPORT REGARDING STEPS THAT CAN BE TAKEN TO IMPROVE FEDERAL LABOR-MANAGEMENT RELATIONS AND REDUCE THE NUMBER AND COSTS OF UNFAIR LABOR PRACTICES

Submitted by

the

American Federation of Government Employees,

AFL-CIO

August 2, 1982

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We appreciate the opportunity to comment on the proposed report on steps that can be taken to improve Federal Labor-Management Relations and reduce the number and costs of Unfair Labor Practices. Since unions file the majority of ULP's, the Federation is extremely interested in any elimination of the problems in collective bargaining which give rise to such charges. While our comments may be somewhat critical, we hope they are constructive. It is for that purpose they are offered.

The Federation agrees with the General Accounting Office belief that Labor-Management relationships could be improved and the number of Unfair Labor Practices and their related processing costs reduced if more disputes were settled informally. In addition, we agree unfair labor practices can be prevented by assessing managerial labor relations effectiveness, and monitoring and evaluating unfair labor practices.

However, we believe the Report has the cart before the horse. The Report is unmistakably silent regarding the real and fundamental problems which prevent improved labor-management relationships and the consequent reduction of ULP's. The first is the lack of acceptance of Collective Bargaining by Federal managers. This opposition to a bilateral relationship is prevalent within the highest levels of Agency managers. We wish we could in all good faith comment to the contrary.

Any assessment of managerial performance on the basis of labor relations effectiveness is most likely to continue to be evaluated upon the manager's success in an adversary role rather than their success in establishing a cooperative relationship. This is highlighted by OPM's change from a role, which previously professed to represent both employees and managers, to their present adversary role as the Federal managers' chief representative in limiting the scope of bargaining and protecting management rights. While this is a normal role for a personnel branch, the alarmist reaction of OPM and agency management over negotiation of the most minor issues is a matter of concern.

The centralization of labor relations from the OPM down through the headquarters of the agencies has also contributed greatly to the

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eradication of informal settlements or bilateral cooperation at lower levels. The CPM and agencies police each other and actively prevent such settlements.

This is accomplished through peer pressure such as the maxim that precedents agreed to by one agency will affect other agencies. Fortunately, some agencies, isolated military commanders, and non-military agency regional managers have not bowed completely to this concept.

Stable and mature relationships cannot occur until there is acceptance of a bilateral relationship and collective bargaining by the Agency heads and top level managers. Only then can there be a persuasive reason for acceptance by mid-level and first line managers. Once this happens, stable and mature relationships will occur and unfair labor practices will drop markedly.

This lack of acceptance is not new in labor relations. In Contemporary Collective Bargaining, Harold W. Davey, the Prentice-Hall Industrial Relations and Personnel Series, Mr. Davey recounts the three stages in the history of GM-UAW labor relations:

> Labor Relations in Flux
>
> These three stages in the history of GM-UAW labor relations dramatize the fundamental changes in our industrial economy that have accompanied the tremendous growth in unionism and collective bargaining over the past fifteen years.
>
> The first stage, marked by the sitdown strikes, was one of bitter conflict. The second stage, marked by the lengthy reconversion strike, was one in which economic issues rather than union recognition was uppermost. The issue of managerial prerogatives and the scope of collective bargaining was so important that the 1945-46 struggle appeared to one for survival on both sides. Still there was a marked change

> from 1937: the principle of union recognition and collective bargaining had been accepted by the Corporation. The strike was almost completely free from violence.
>
> The third stage witnessed the signing of a precedent-shattering 5-year contract running until May, 1955. Although the contract contains many significant provisions for both income and non-income issues, its chief importance lies in the firm acceptance of collective bargaining as a method of industrial government.
>
> The General Motors-United Automobile Workers case is perhaps the most celebrated illustration that could be used to underline the transformation that unionism and collective bargaining have made in American labor relations in a relatively short span of years.

The fight over management rights and the present reluctance to negotiate in the Federal sector is similar. This goes to the heart of the cause and proliferation of ULP's. The means to bring about the necessary acceptance of bargaining anytime soon is not prevalent unless Federal employees strike as the employees did in General Motors. The present enforcement of the obligation to bargain by the Federal Labor Relations Authority through the ULP process will not anytime soon persuade Federal managers that the obligation to bargain is here to stay. Until that happens, progress to the next stage of stable labor-management relations cannot occur.

In commenting on specific chapters of your Report, we would made the following observations:

Digest

We would suggest that the wording of the first few pages be such that it would assure the Report is as concerned with the ULP process fulfilling its purpose under the Civil Service Reoorm Act as it is in reducing the number and costs of the ULP's filed. Absence of such

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a purpose in your objectives in the second paragraph might well leave the Report open to such criticism.

Chapter 2

The "substantial and material" standard can well be troublesome. To eliminate or reduce the number of cases FLRA investigators are already forcing ineffective settlements upon the Union or face, as the alternative, dismissal of the case. Your statement on page 3 that the Regional Director will issue a complaint unless a settlement is negotiated is incorrect. What may not be "substantial or material" to an FLRA investigator may be very substantial and material to employees who must live with such conditions everyday for years. The same matters in which quality of life committees consistently recommend changes and improve productivity.

The statement that the parties can persue disputes through negotiated grievance/arbitration procedures is true on its face. However, we would hope that the Report is not recommending that the parties (including employees) go to arbitration to obtain the rights granted them by law. A large share of Agency management feels no compelling need to abide by the obligation to bargain or other rights established by law.

The problem would only be exacerbated if unions were forced to pay $1,000 every time it wanted to enforce the law. Simply by breaking the law, management could either break the union financially or destroy its effectiveness in the eyes of the employees.

We would point out the problem of grievance and arbitration costs. The problems of these costs are related in a similar review of the postal Service performed by the National Academy of Public Administration, Government Employees Relations Report number 970, dated

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July 12, 1972. The report states:

> Grievances are Expensive
>
> Reorganization was followed by more direct confrontation in collective bargaining and more aggressive public employee unions, the report says, resulting in an adversarial relationship between unions and USPS management. 'The unsatisfactory state of labor-management relations is shown by the excessive number of grievances filed and undergoing arbitration,' the report says -- grievances that cost the USPS an estimated $40 million to $143 million, and the unions between $5 million and $10 million, over the life of the 1975-1978 contract.
>
> Single copies of the report, Evaluation of the United States Postal Service, are available for $7.00 plus postage from the National Academy of Public Administration, 1120 G St., N.W., Washington, D.C. 20005, telephone (202) 347-3190.

While some adjustment in the filing of contract interpretation disputes under arbitration rather than ULP's may be possible, any major rerouting will only shift the problem from one procedure to the other. This is no solution at all. If the objective is to have employees pay part of the cost through arbitration, it would not work in the Federal sector. This is simply so because of the lack of union security and the fact that only part of Federal employees help to carry the burden. Any such shift would cause the system to collapse.

Precedent decisions by the FLRA have not been timely. We have consistently been a proponent of timely, precedent decisions for the reasons cited in your Report. Our position and the problems encountered on this matter are contained in the Statement by Kenneth T. Blaylock, National President, American Federation of Government Employees, AFL-CIO, before the House Committee on Post

Office and Civil Service Oversight Hearings on the Civil Service Reform Act of 1978. A copy of this report is attached.

Precharge discussions between parties is another way to reduce the number and cost of ULP's.

The previous Executive Order governing labor relations contained precharge discussions. These required procedures did little, if anything, to bring about informed settlement and only served to delay ULP procedures. It is our understanding that precharge discussion procedures were proposed and rejected by Congress under the Civil Service Reform Act. If this is true, the Authority might lack authority to effectuate such a mandatory regulation in that it would be in conflict with the intent of Congress.

Should such a procedure be legal and implemented, it should come after the filing of the charge. This would leave the "clock ticking." Combined with the parties knowledge that the investigator will be reviewing both parties good faith attempt at settlement, this should give the parties some motivation. These procedures also should not be imposed on per se violations in which FLRA cease and desist orders or TRO's to maintain the status quo are filed. The procedures should certainly contain short and precise time limits and requirements. For example, the moving party would serve a notice of intent to file and a proposal for settlement. The respondent would have seven working days to investigate, indicate agreement, or offer counter proposals and meet with the moving party. If agreement could not be reached within seven more working days, the moving party would report the lack of successful settlement to the Authority. Anything involving longer time limits, (except by mutual agreement),

additional steps or levels would only serve to delay procedures. We believe that such procedures would not be materially beneficial without vigorous enforcement of ULP's by the FLRA.

ULP's and labor relations training

We agree with the Report's advocacy of such training. We disagree with the degree of change such training will obtain absent a vigorous enforcement of ULP's by the FLRA. Otherwise, the agency and managers will not have the motivation necessary.

We would further propose that the Report recommend additional training for union officers on official time for processing ULP's. Such training could include the type of cases properly filed in ULP's, arbitration, etc., and how to seek informal settlement, etc.

Use of ULP information to monitor and evaluate the ULP process.

The Federation is in agreement with the necessity for the collection and monitoring of ULP data on a computerized basis.

We would further recommend that the bargaining units which show an exceptionally large number of ULP's be identified. That a list of these units be submitted to the Federal Mediation and Conciliation Service for processing under their Relationships by Objectives program. The FMCS could offer the services of this program to both the national and local parties involved in the bargaining unit. Adequate funding of such a project under the FMCS would probably go a long way towards obtaining the objectives of the Report. We believe it would be an investment which has the potential to show a highly beneficial return in improved labor relations.

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Enforcement of ULP procedures

We believe the report remains silent on the single most significant cause of the proliferation of ULP's and their resulting costs in the federal sector. That is the lack of enforcement by the FLRA.

Enforcement, as presently constituted, is either non-existent, so long in coming that the issues are dismissed as moot or too late or lax to have any meaning. For example, see the attached ULP American Federation of Government Employees, AFL-CIO, National Border Patrol Council and U. S. Department of Immigration and Naturalization Service, Border Patrol, 3-CA-1551. This condition fails to demonstrate to management any compelling need to abide by the obligation to bargain or favor any other rights established by law. It also renders the ULP system so ineffectual that it promotes the proliferation of ULP's.

If federal managers were convinced that the obligation to bargain and deal bilaterally were here to stay by meaningful enforcement they would abide by the law and reduce the need for unfair and/or increase informal settlements. This is highlighted by the effectiveness of mediation/arbitration in impasse settlement. As long as the parties, especially management, sees no alternative or reason to settle they will continue to negotiate ad infinitum. However, if the mediator has the authority to impose a reasonable proposal they have consistently shown a willingness to come to agreement and settle the contract. Conversely, the union could expect meaningful enforcement of major issues they would settle

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minor ones rather than clog the system and hold up the important decisions. An example of this is the appeal of arbitration awards. Agency management files the majority of appeals. The national unions are able to point out that the proliferation of appeals will undermine the system. This has been a credible argument since the system has been more effective than ULP's and the FLRA has stuck by their standards in reviewing arbitration awards. Presently, filing a ULP is the only reward for doing so. National unions cannot credibly point to a reward of better enforcement if less unfairs are filed. The present enforcement is ineffectual in either case.

The high number of ULP charges filed will not be substantially reversed until the FLRA provides timely and effective remedies or go into court for TRO's to keep the status quo upon issuance of a legitimate ULP complaint or to enforce FLRA cease and desist orders when agencies commit the same or like offense a second time. With ULP's having no deterrent effect, agencies commit illegal acts and challenge the union to file. Agencies then accept the slap on the wrist that they get 2 years later when the case is decided and they are found guilty.

Conclusions

A two-way campaign is necessary if ULP's and their costs are to be reduced in the federal sector. Timely and effective enforcement combined with a campaign to promote better labor-management relationships in given bargaining units and thereby promote informal settlement of ULP's.

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NATIONAL FEDERATION OF FEDERAL EMPLOYEES

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SERVING THE FEDERAL EMPLOYEE SINCE 1917

In reply refer to: GAO-CW/CB-04

August 12, 1982

HAND DELIVERED

Mr. Clifford I. Gould
Director
Federal Personnel and Compensation Division
U.S. General Accounting Office
4th & G Streets, N.W., Rm. 4001
Washington, D.C. 20548

Dear Mr. Gould:

Thank you for sending me for review and comments a copy of GAO's draft report entitled "Steps Can Be Taken to Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices" (GAO/FPCD-82-48). I appreciate Mr. Maccaroni's agreement to accord us until August 13 to provide our comments.

We have reviewed the report with care and find we are in agreement in a few areas. As you might expect, we also find several areas where we believe GAO's conclusions are substantially erroneous. My comments focus on GAO's major subject areas. At the outset, however, I might note one technical error: The draft states (on p. 1) that the Civil Service Reform Act abolished the Civil Service Commission and created the Office of Personnel Management. That is incorrect; OPM was established by President Carter's Reorganization Plan No. 2 of 1978, found in 1978 USCCAN (95th Cong., 2d Sess.) 9801.

The draft makes five basic recommendations designed to encourage informal resolution of ULPs and reduce costs. First, it is asserted that many ULPs are filed as a result of a failure by management to negotiate regarding changes in conditions of employment which have little or no effect on the employee. Consequently, it is urged that more attention be paid by the Office of General Counsel to the "substantial and material effect" test in determining whether to pursue a complaint. The draft cites management's estimate of the amount of reduction in ULPs to be

expected if management were relieved of the obligation to negotiate on matters which they deem of little concern to employees. The assertion that certain changes in conditions of employment are too trivial to warrant negotiation with the union is nothing less than an effort on management's part to restrict the scope of bargaining further than that found already in Title VII of the CSRA. The GAO should not throw its weight behind this management effort. Management's obligation to notify the union of planned changes in conditions of employment is central to the bargaining relationship under Title VII; it is not a mere "technical" requirement, as the draft implies. The GAO should not focus on whether management should be permitted to evade its obligations by asserting that changes in employment conditions are not major; rather, GAO should focus on whether management abides by its obligation to inform the union of changes in employment conditions so that the union may exercise its right to bargain. If managers abided by this simple legal requirement, the number of ULP charges based upon management's refusal to notify the union of changes and bargain on those changes could be reduced to zero.

GAO also recommends that greater use be made of negotiated grievance/arbitration procedures to reduce ULP volume. It is true that unions attempt to utilize the ULP procedure on issues which could be handled -- sometimes more appropriately -- under the negotiated grievance procedure and arbitration. NFFE regularly counsels its Locals regarding the appropriate forum. However, while we encourage the use of negotiated grievance procedures, we regard GAO's recommendation on this point as utterly empty in the absence of any provision for union security. Federal unions generally cannot afford the high costs of arbitration and until they are permitted to negotiate some form of union security to reimburse them for their work on behalf of bargaining unit members, they will continue to utilize the ULP procedure in preference to the arbitration procedure anytime they believe they might find any relief through the ULP procedures.

We agree with GAO that the FLRA's performance needs to be improved. Cases which depend upon a precedential decision should be decided expeditiously, once the precedent case has been decided on the basis of a careful review of a complete record. Precedential cases themselves need to be issued faster to provide needed guidance to the parties.

The proposed report includes a fourth recommendation that "FLRA require the parties involved in alleged ULPs to conduct discussions to informally resolve issues before filing a formal ULP charge with FLRA." We could not disagree more. Requiring pre-charge discussions between the parties would be a step backward in the Federal labor-management relations system, something the system can ill afford.

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August 12, 1982

The Federal labor management relations system was originally patterned after the system existing in the private sector. Certain actions on the part of either management or labor were considered violations of the Executive Order and therefore unfair labor practices (ULPs). Sections 19(a) and (b) of Executive Order 11491 closely followed Sections 8(a) and (b) of the Labor Management Relations Act. However, the Federal program deviated from private sector experience by providing a neutral third party, the Assistant Secretary of Labor for Labor Management Relations (A/SLMR) only to adjudicate the alleged ULP; the charging party had to prosecute the case itself. The Federal program deviated further by requiring that the charging party notify the other party of its allegation and allow time for a response, before bringing the charge to the attention of the A/SLMR. The Federal sector wished to keep its unions in a subservient role, requiring them to beg management's benevolence before entering an arena of contest. In a strange twist on the theory of sovereign immunity, the system, in essence, required the union to receive management's permission before complaining to the agency specifically empowered to receive such complaints. With the passage of the Civil Service Reform Act, the Federal sector program was brought one step closer to that of the private sector. The requirement for precharge discussions was eliminated. Now that a large number of unfair labor practice charges have been counted each year, management representatives and the GAO believe that this elimination is in large part responsible.

We find it remarkable that as the private sector labor relations framework approaches its golden anniversary, we are not aware of one serious observer from labor, management or the NLRB calling for pre-ULP charge discussions as a way of improving the program. The reason is that the law created an adversary relationship in which the Government would act as an impartial umpire. Until the adversaries decide to bring their disputes to the umpire, the Government has no business dictating the relationship between the parties.

NFFE has long preferred having cooperative and constructive relationships with management when they can be built by the parties themselves. There are a number of instances where NFFE can consistently resolve complaints without bringing a charge to a third party. But such a relationship cannot be artificially imposed from outside. In too many cases, management refuses to informally settle charges and comply with its legal obligations. The union is dared to file a charge if it does not like management's action. On page 13 of the draft report you state the nearly useless estimate of the labor relations officials interviewed that between 5 and 90 percent of ULP charges could be precluded through precharge discussions. Those management representatives who take their obligations seriously that are

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willing to deal responsibly with a union can and do avoid ULP charges through informal discussions with the exclusive representative. These are probably the same management representatives who avoid ULP charges simply by avoiding conduct which would be in violation of 5 U.S.C. 7116(a). Those who are not as responsible will see a large number of ULP charges filed against them because they will commit a larger number of ULPs.

Requiring precharge discussions between the parties will unnecessarily delay the adjudication process. The GAO's own data attest to the fact that the time between filing and adjudicating a charge is already intolerably long. This time needs to be shortened, not lengthened by adding yet another step to the process. Ample time already exists for the parties to settle informally during the 30-day average period between the filing of a charge and the start of an FLRA investigation if the parties are so inclined. Any delay in adjudication will only serve the charged party, which in the vast majority of cases is management. The longer management can delay, the more it is able to frustrate the union. With no means of venting this frustration, such as a job action, the union leadership and membership become weakened. Any labor-management "consultant" that teaches union busting will tell you that time is management's best ally.

Precharge discussions as required by the Executive Order were recognized as an error when the Civil Service Reform Act was passed. In a time when the Federal labor relations system should be maturing, it would be extremely harmful to repeat the mistakes of the past.

Finally, we endorse your recommendation that greater training be provided to managers on their labor relations responsibilities. This is a critical area to improving labor management relations and it could contribute more than anything else to decreasing the volume of ULPs filed.

I am pleased to provide these comments on the draft report and I hope they will be useful in developing the final report. Please let me know if further amplification would be helpful in any area. I look forward to reviewing the final report. In any further correspondence on this matter, please use our reference GAO-CW/CB-04.

Sincerely,

James M. Peirce
President

APPENDIX IV

NATIONAL TREASURY EMPLOYEES UNION

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Washington, D.C. 20006 (202) 785-4411

July 21, 1982

Mr. Clifford I. Gould
Director
Federal Personnel and Compensation Division
U.S. General Accounting Office
441 G Street, N.W.
Room 4001
Washington, D.C. 20548

Re: Draft of Proposed Report - "Steps Can Be Taken To Improve Federal Labor-Management Relations and Reduce Number and Costs of Unfair Labor Practices."

Dear Mr. Gould:

We have read and studied your draft report and wish to provide the following comments.

I. The Study Lacks A Professional and Appropriate Methodology

Perhaps the most striking aspect of this report is the assumption on page 6 that the costs associated with processing ULP's are high. Since it is this assumption which provides the rationale for all the recommendations for change, one would expect that it would be rigorously tested and scientifically established. That is, however, not the case.

Since costs are not only absolute, but also relative indicia of efficiency, logic seems to require that GAO study the costs associated with processing ULP's before other bodies prior to reaching such a broad conclusion. Clearly, this study cannot be premised on the fact that there are costs. That is inevitable. The need for change must flow from a conclusion that others have done it less expensively.

There is certainly no lack of situations with which to compare the current federal sector system. The NLRB has processed cases for years and surely has cost figures that can be used for comparison purposes. Many state bodies exist, such as the Public Employee Relations Commission in New Jersey which could have provided proper comparative data. Clearly, the costs associated with processing a grievance through arbitration should have been examined before GAO concluded that it would be better for government if ULP's were processed through the grievance-

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arbitration machinery. By not examining comparative costs, GAO is left only with its opinion that costs are unreasonably high and, as a result, change is needed. This is hardly an acceptable basis upon which to call for near total upheaval in the federal sector. Moreover, the lack of scientifically tested conclusions at the base of these recommendations will undoubtedly undermine the acceptability of this report and further erode the confidence federal employees have in GAO.

For this reason alone we recommend the study be redone before this report is issued. At a minimum, the flaws and shortcoming of the GAO's analysis should be listed in the report.

II. Precharge Discussions of ULP's May Not Legally Be Required and Should Not Be Required for Policy Reasons.

Perhaps the most objectionable aspect of the report is the recommendation that FLRA order the parties to engage in precharge discussions (pp.13-15). As GAO surely knows such a requirement was part of the system under E.O. 11491. This system was specifically considered by Congress in deliberations leading to the Civil Service Reform Act of 1978 and was specifically rejected by Congress. In light of such a clear action by Congress and the fact that FLRA is required to act within the intent of Congress, we believe it would be a violation of statute for FLRA to order such discussions. If Congress felt they were appropriate Congress could have required them. Since Congress not only failed to require them but also rejected them, it would be an abuse of discretion for FLRA to order precharge discussions.

Beyond the legal aspect is the policy issue. NTEU has had a wealth of experience under the old system which required precharge discussions and the new system which does not. It is our opinion that the precharge process only works if the parties have faith in it and are truly motivated to resolve complaints. In our units there were places where this process did work successfully. However, they were not many.

As a result, when the IRS recently asked us to reinstitute the process throughout our nationwide unit covering approximately 75 appointing offices, we refused. Yet we did agree to encourage our local chapters to listen to a request by local managers for the use of precharge discussions. We took the position that if local managers can convince our local chapters of their good faith intent to settle complaints rather than just hear and dismiss them, then it would be appropriate to make short-term agreements to use the precharge step. If managers can't demonstrate the commitment to use the process productively, it will have no benefit and should be avoided. We believe this voluntary approach is infinitely more likely to succeed than a forced approach. Afterall, where else in the area of human relations have two parties successfully developed relationships when they were ordered by an outsider to do so? 1/

1/ GAO fails to recognize that if this precharge step does not resolve matters, for whatever reason, it will make the ULP process even more costly.

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Finally, we note that the precharge discussion process is a negotiable item pursuant to a recent FLRA decision. Consequently, if FLRA were to order adoption of the process it would be interfering in the bargaining process by mandating certain terms and conditions of employment. This is clearly outside its power and contrary to the American system of voluntary labor relations.

We recommend that GAO change its recommendation and in the final report merely urge managers to seek the use of precharge discussions at the bargaining table. The GAO should also note that the process should not be used unless both parties have faith in it. It would be a waste of funds to automatically lock all parties into it if it is not going to produce results.

III. Several Problems, Which Were Not Recognized in the GAO Report, Inhibit the Productive Use of the Grievance Arbitration Machinery To Resolve ULP's.

The recommendation on pages 8-11 of the report concerning the use of grievance procedures is typical of what we believe to be GAO's lack of sophistication in the area of labor relations. GAO seems to have blundered through a question which is surrounded by subtle influences. Perhaps it will reconsider these.

One problem in using the grievance machinery is that grievances generally have to be filed in 15 days. Often you do not discover the ULP incident until long after that. As a result, the statutory process with its six month deadline is more appropriate. Since agencies are most reluctant to extend the deadline for filing grievances, perhaps GAO will recommend they do so in this report. There is no good reason why the deadlines should not be the same.

A second problem stems from the fact that few arbitrators are familiar with federal sector case law. The decisions are not widely reported. Consequently, how would an arbitrator in Watertown, N.Y. or Sam Ysidro, CA, research a case? Are the parties to send him/her copies of the 20 to 30 cases that might be cited in a brief? That is an enormous cost.

Thirdly, processing grievances means the union representatives need official time. Perhaps GAO remembers a prior report it issued discouraging agencies from giving official time. We believe GAO should recommend agencies provide reasonable amounts of time and other incentives to process ULP's through the grievance procedure. Otherwise, a union puts itself at a disadvantage when it uses its limited official time for which it negotiated, to do what under the statute it gets official time, not chargeable to its negotiated bank, to do.

A fourth problem is that a grievance arbitration is no faster than a ULP processed through the statutory procedures. An arbitrator's decision can be appealed to FLRA (5 U.S.C. §7122) and the courts (5 U.S.C. §7123(a)(1)). How is it going to save time or money? There should be incentives established by FLRA for use of the grievance procedures to process ULP's. We recommend the Authority establish a

policy of receiving and passing on ULP related arbitration decisions in 60 days. This would at least make the process faster.

As can be seen above, GAO needs to rethink its recommendation on the use of the grievance machinery.

IV. GAO Should Encourage The Authority To Use Tougher Penalties To Discourage ULP's.

From our perspective, the management bias of the GAO was revealled by the fact that not one word of the report concerned the use of tougher penalties against agencies which violate the Act. It is axiomatic that if violators stand to suffer more than the need to past a cease and desist notice for 60 days then they will be motivated to violate the Act less and settled charges more frequently.

To date the FLRA has taken one step toward increasing penalties when it ruled the status quo ante remedy is appropriate even in impact bargaining cases. (See Defense Logistics Agency and AFGE, 5 FLRA No. 21 (1981) and San Antonio Air Logistics Center, Texas and AFGE, AFL-CIO, Local 1617, 5 FLRA No. 22 (1981). However, it has not consistently used this penalty and in fact seems to have retreated from its early policy by making a status quo ante order more difficult to impose. (See Federal Corrections Institution and AFGE, Local 2052, 8 FLRA No. 111 (1982)). GAO could help FLRA sound a stern warning to violators if it urged FLRA to use the status quo ante penalty absent proof of great disruption of government efficiency.

GAO should also encourage the use of attorney fees and costs as a remedy against repeat offenders. Attorney fees and costs have been awarded in private sector cases (See IUER & M v. NLRB, 502 F.2d 349, 358 (D.C. Cir. 1974)), but to date not used in the federal sector. FLRA should be encouraged to examine cases for evidence pf frivolous, bad-faith defenses and toward fees and costs when found. We suspect the mere fact that GAO recommends this or that the Authority does it once or twice will have a substantial effect on violators.

Finally, GAO should encourage the FLRA to make greater use of its power to pursue an injunction to quickly remedy ULP's. (5 U.S.C. §7123 (d)). To date the Authority has not used this power in a visible way in the federal sector. If it did pursue just two or three cases to court, we believe it would substantially improve voluntary compliance with the Act. If GAO had examined the NLRB it would have seen how the Board uses its injunctive powers to remedy ULP's and, in turn, warn parties of the penalties of noncompliance.

If GAO encourages greater use of injunctions as a means to remedying the growth in violations, it should help FLRA convince appropriate courts to accept FLRA requests.

APPENDIX IV

We believe GAO must address the issue of stiffer penalties in the final report if it is to have any balance at all in its approach.

V. GAO Cannot Leave Unaddressed The Staff Shortage FLRA Has Experienced.

As GAO found cases are backlogged in the Authority's system and the lack of case precedent is a partial reason why more cases keep coming into the system. Yet, GAO makes no mention of the fact that the Authority has had to take massive budget cuts over the last year. In fairness, GAO should recommend that the staffing in the Office of the ALJ's as well as the Authority itself be increased, at least on a temporary or term basis, to improve the rate at which precedent is established.

VI. Increased Training Is Welcomed

We accept the recommendation that there be increased training, but have to wonder why no specific mention is made of training union representatives. Since it is local union representatives who start the ULP process in motion, surely it would help if they were thoroughly familiar with case law and other matters. Perhaps GAO will encourage agencies to provide official time to union representatives for training in this area.

VII. Evaluation Of Managers Based On Labor Relations Performance Is Welcomed

We applaud the recommendation that managers be evaluated on their labor relations performance. We suggest GAO order OPM to develop a plan to do so within six months.

VIII. Conclusion

If GAO is to avoid the adverse reaction its last report of federal labor relations received, i.e. dealing with official time, it needs to improve its methodology and balance its approach. The topic is indeed a worthy one, but this report is unfair to many parties and, therefore, lacks acceptability.

Sincerely,

Vincent L. Connery
National President

VLC/jew

THE LARGEST INDEPENDENT GOVERNMENT UNION IN THE COUNTRY

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES
2139 WISCONSIN AVENUE, N.W., WASHINGTON, D.C. 20007
202 965-4411

July 27, 1982

Mr. Clifford I. Gould
Director
Federal Personnel and Compensation Division
United States General Accounting Office
Washington, DC 20548

Attention: Mr. Ronald Maccaroni

Dear Mr. Gould:

This letter is in response to your "Draft of a Proposed Report on Steps to Improve Federal Labor Relations and Reduce the Number and costs of Unfair Labor Practices". We have made comments on selected portions of your report. We would be happy to meet with your representatives to further discuss these matters in more detail.

It is key to the smooth functioning of labor relations that an independant body investigate and decide labor relations controversies in an efficient and rational manner. The Federal Labor Relations Authority has failed miserably in this crucial endeavor. Long delays and inconsistent decisions have left both laber and management mystified as to the parties rights, duties and responsibilities under the law.

With long delays similar cases multiply throughout the country. Thus we urge the GAO to encourage the FLRA to take all appropriate steps to issue timely and consistent precedents. This should be the highest priority for the FLRA. Timely decisions will do more to deminish the numbers of ULP's filed than any other measure. Similarly, precedents will instruct both labor and management more completely than would seminars. More expeditions and consistent precedents would improve the current lack of confidence which both labor and management has in FLRA's decision making. This crisis of confidence has caused the parties to increasingly seek appeals and other judicial actions which is wasteful and costly.

The Authority should take appropriate steps to make more efficient use of current resources. The Authority could utilize fewer of it's resources in investigation ULP's at the precharge stage if it adopted a procedure whereby the parties presented their respective positions at an informal investigatory hearing. The petitioner would have the burden of establishing a prima facie case. The respondent would have the burden of indicating available defenses. Appropriate rules of evidence would be loosely applied. The investigating official would have both parties present to develop whatever record was needed. Utilization of this on similar process could screen meritorius from non meritorious cases more quickly. The staff would be free to investigate more cases in a shorter period of time.

NAGE is skeptical that providing greater training opportunities to federal managers and supervisors would assist much in decreasing ULP's. Current evidence suggests that any training would be directed to assisting supervisors in circumventing the law rather than complying with it.

We support GAO's suggestion of formally assesing federal managers performance in labor relations. Too often an anti union attitude has been rewarded in certain activities. The ability to carry out labor laws should be regarded as a key job element in any manager with supervisory obligations. Implementation of this suggestion would not require any additional resources.

The NAGE has serious reservations with the suggestion that ULP's demonstrate a substantial impact on working conditions in bargaining unit employees. Use of this provision would increase rather than decrease ULP charges. Predictably, agencies would attempt to make more unilateral changes under the rubric that there was no material impact.

The NAGE extends its thanks to the GAO for the opportunity to comment of this report.

Very truly yours,

Stanley Q. Lyman
Executive Vice President

SQL:ebc

GAO note: Page references have been changed to correspond with those in the report.

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