



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON, D.C. 20424-0001

SUBJECT: Federal Labor Relations Authority (FLRA) Inspector General Internal Review of the Federal Services Impasses Panel (FSIP)

METHODOLOGY:

This Inspector General Internal Review was conducted in accordance with the Inspector General Act of 1978, as amended and the 2008 Inspector General Reform Act, and is in compliance with the Inspector General Counsel of Integrity and Efficiency requirements and the FLRA Inspector General's related policy.

This Internal Review focused on mission and administrative issues in the FSIP Component which support the FLRA's mission and should be addressed to eliminate any risk assessments or negative aspects of the FLRA. This Inspector General Internal Review also pertained to positive aspects and issues that have improved the FLRA over the past year. FLRA Programs are reviewed independently and objectively by the FLRA Inspector General

REFERENCES:

The Inspector General Reform Act of 2008
The Inspector General Act of 1978, as amended
The 1998 FLRA Inspector General Internal Review of FSIP
The Federal Service Labor Management Statute
The Foreign Service Act of 1980
The Federal Labor Relations Authority 5 CFR, Chapter XIV
5 U.S.C. 7199(1)

BACKGROUND:

The Federal Services Impasses Panel (FSIP) handles impasses between Federal agencies and unions that represent Federal employees. These impasses arise from negotiations related to conditions of employment under the Federal Service Labor Management Relations Statute and the Federal Employees Flexible and Compressed Work Schedule Act. Seven Presidential appointed employees serve on the Panel in a part-time basis. One of them serves as the Chairman of FSIP. Although in the past there had been 4 Attorney Advisors, currently there is only one in addition to a detailed Labor Relations Specialist. Right now there is no Office Manager or Secretary in the staff. During the prior administration, a Special Assistant (Schedule C) was hired to assist the Chairman with the FSIP component. In addition, there is a Senior Executive Director in the FSIP Component.

Federal agency and union parties conduct bargaining with Panel Members following mediation assistance. If the bargaining is unsuccessful, the Panel has the authority to recommend procedures and actions to resolve the impasse. Under the Foreign Service Act of 1980, the Panel also supports the Foreign Service Impasse Dispute Panel (FSIDP) to resolve impasses. FSIP impasse decisions can be purchased from the Government Printing Office, and are also available on the FLRA website.

On May 1, 1998, the FLRA Inspector General reviewed FLRA FSIP to assess its mission effectiveness, procedural efficiencies, management effectiveness and customer service. This was an extensive review which included interviews with the FSIP staff and questionnaires sent to the Panel Members, as well as the FSIP staff. It was the conclusion of the Inspector General that overall the FSIP operation was managed well and addressed its mission in an efficient and effective manner. Nothing indicated risk assessments or fraud, waste, abuse or mismanagement. All Inspector General administrative findings and recommendations were immediately addressed by FSIP management.

Questions for the Chairman, Special Assistant to the Chairman and Panel Members were requested by the FSIP Chairman to be sent by mail or e-mail. This was done January 29, 2009. No response was provided by the Panel or Special Assistant prior to their release from the FLRA on March 6, 2009. The Inspector General contacted the Special Assistant before she left and requested that she provide the questionnaire information to the Inspector General before she left because it represented her, as well as the Chairman's response. She never provided it.

FACTS:

On February 24, 2009, the FLRA Inspector General began an internal Review of FSIP based on the requirements of the new administration. This Internal Review affirmed that FSIP is addressing its mission, has a majority of effective controls and has no major operational deficiencies other than there is only one Attorney Advisor and currently, there is no Office Manager or secretary employed (although a General Counsel Office Manager assists them until someone is hired).

The past administration Chairman of FSIP was Becky Dunlop-Norton who was also the Chairman of the FSIDP. Her Special Assistant was Victoria Dutcher and the Executive Director of the FSIP Impasse Panel is Joe Schimansky. The 7 Panel members were geographically located in different U.S. locations and their appointments were recently terminated on March 6, 2009. The Special Assistant was terminated on March 9, 2009. The Executive Director indicated that the new Chairman and Panel would be appointed by the President in the future, hopefully soon.

FSIP was initially established in 1969 by Executive Order 11491 and became an entity within the FLRA in 1979 as a result of the FLRA statute. The FLRA FSIP, pursuant to 5 U.S.C 7119(1), has the responsibility to resolve negotiation impasses between Federal agencies and union employees who are unable to reach an agreement with each other.

Either Federal party or the parties jointly may request the FSIP Impasses Panel to address the matter by filing a request with FLRA FSIP in writing.

The FSIP Impasses Panel facilitates voluntary resolutions by the parties but if they cannot reach a resolution, the FSIP Impasses Panel may take a final action and issue a decision. During the past administration, when the Panel Members met to conduct impasse panel meetings, the Senior Executive, Chief Legal Advisor and detailed CADRO Specialist conducted the investigations. While both parties are bound by the FSIP Impasse Panel, the Federal agency heads do have a sovereign right to review and reject the FSIP Impasses Panel's decision on the basis of illegality.

An impasse is defined as a point in the negotiation of conditions of employment at which time the parties are not able to reach agreement notwithstanding efforts by direct negotiation and by the use of mediation or other voluntary arrangements for settlement. The FSIP Impasse Panel asserts jurisdiction only if voluntary efforts have been exhausted and neither of the parties have raised a bona-fide jurisdictional issue. The Panel does not resolve bargaining obligation disputes, negotiability disputes, or questions regarding representation or grievances.

The FSIP Impasse Panel consists of at least 7 part-time Presidential appointees one of whom is the Chairman. These FSIP Impasse Panel members can be also be removed at the pleasure of the President (President Reagan was the first to do so although he did retain several.) None of the past administration Panel members had experience in Federal sector impasse resolution when they were hired but did learn how to do so during the past administration by working with the Executive Director. FSIP also contained a Special Assistant appointed by the former Chairman of FSIP who was hired at the beginning of the past administration in 2002. This individual had no impasses case knowledge or experience but also learned this primarily through the Executive Director whose authority was diminished. At the beginning of the last administration, FSIP had 7 employees including an Office Manager and Supervisory General Attorney. Currently there is only one Chief Legal Advisor, a detailed CADRO Specialist (detailed in 2007) and no Office Manager. Currently, the Washington Regional Office Administrative employee is handling much of FSIP's administrative requirements. This FSIP Office Manager position was diminished from a GS-9 to a GS-8 during the past administration.

Requests to the FSIP Panel must contain the identification of the subject parties, the amount and length (dates) of their negotiations and the specific request for the approval of a binding arbitrator if the parties jointly agree to use this procedure. The latter type if request should include the type of arbitration, the method of selecting the arbitrator and manager of the payment for the proceedings.

Once an impasse request is submitted, the FSIP Executive Director, Chief Legal Advisor or CADRO Specialist investigates the request recommends the that jurisdiction be declined they find that no impasse actually exists or that there is no cause for asserting jurisdiction. If jurisdiction is asserted, FSIP assist the parties in resolving the impasses through

whatever methods it considers appropriate. Normally, the approval of a joint request for binding arbitration is conducted by the FSIP Panel within 5 days of the completion of the investigation. The FSIP has a variety of procedures at its disposal if it asserts jurisdiction over an impasse. The procedure that is selected is designed to maximize the possibility of a voluntary settlement. If a settlement is not reached, the Panel imposes terms to resolve the impasse after full consideration of the merits of the parties' proposals.

During the past administration, the authority of the FSIP Executive Director, Chief Legal Advisor and previous attorneys was reduced significantly. The authority was totally given to the political appointees which included the FSIP Chairman, Panel Members, and to the Special Assistant. The current FSIP Executive Director does conduct Impasse Panel training for Federal agency employees and Federal union employees.

The FSIP Panel facilitates a resolution by the parties but if they cannot reach a resolution, the Panel decision but may take a final action and issue a decision. Both parties are bound by the FSIP Panel's, the Federal Agency Heads do have the sovereign right to review and reject this decision if they believe it violates a Federal. law, rule, or regulation.

Since 1993, there has been less FSIP case filing because most Federal Agencies developed better relationships with their Unions. FSIP case filing also did diminish over the last administration but are likely to increase again under the current administration. From 2006 to 2008, the amounts of impasses handled by FSIP have diminished, especially in 2008. The reduced staff was able to address the reduced cases. Already, during FY 2009, FSIP has closed 5 impasses and is currently investigating 12 requests for assistance.

Because the past administration's Chairman had a Special Assistant, the FSIP Executive Director had not been in charge of FSIP and basically provided required information to the Special Assistant. During the past administration, the FSIP Executive Director still handled 95 percent of the FSIP Executive Director's work by overseeing the FSIP staff, making sure there were no problems handling the FSIP impasses and handling cases and issuing recommendations to the Panel regarding impasses assigned to him for investigation (which were generally very extensive cases).

Under the last administration, the FSIP staff maintained a support and advisory role rather than a decision making role. The FSIP Staff does have the authority to conduct arbitrations but did not have the authority to handle the investigation of cases and recommend decisions to the FSIP Panel during the last administration. If settlements are not made by the parties, the impasse cases go to the FSIP Panel.

Previous to the prior administration, the FSIP staff members could conduct informal conferences but could not do it from 2001 to the time the Chairman of the FSIP Panel departed. There have been more Panel meetings by telephone than previous to the past administration. During the past administration the Chairman ran a very centralized operation, there virtually had been no disagreements to the Chairman's decisions by the Panel. The Panel meetings with the FSIP Chairman had been efficient during this past

administration.

During the past administration, the capabilities of Federal Unions were reduced and impasse filings with the FLRA FSIP were also reduced significantly. The budgets for the part time FLRA Panel members were also reduced during the past administration. The former FSIP Chairman spent very little time over the last administration at the FLRA but did handle the impasse decisions properly.

During the past administration, the former Chairman, FLRA and current Executive Director consistently interacted with the former FSIP Special Assistant to the Chairman only and not to the other staff. The FSIP Special Assistant did interact and responded professionally to the FSIP Executive Director who handled the FSIP staff. In spite of the fact that during the last administration, a few impasse cases were not accepted and impasses reduced, they were still handled properly. Prior to the past administration, in addition to the 7 Panel members, there were 6 professional employees, currently there are only 3 employees, the Executive Director, the Chief Legal Advisor, and detailed CADRO Specialist.

During the past administration, the excessive professional authority of the FSIP Executive Director was diminished. The Chief Legal Advisor's face-to-face contact with parties was removed with the exception of those who filed cases in the D.C. area with whom the Chief Legal Adviser maintained contact. Arbitration and travel were both removed from the Chief Legal Advisors job which she had prior to the last administration. Although the FSIP Executive Director, Chief Legal Advisor, and detailed CADRO Specialist were told what the FSIP Panel impasse decisions were made, little guidance was provided to them regarding how or why the decision was made.

Approximately 40-50 percent of the cases filed are withdrawn before they go to the Panel for a formal decision. The cases that go to the FSIP Panel for a final decision are usually closed within 50-60 days of the record's closing in a case. When the FSIP Panel handles impasse cases and they are declined by the Panel, it usually takes about 90 days to decline such jurisdiction. When the FSIP Panel handles the impasse case and it is settled, it generally involves 120 days to issue the case disposition. When the impasse case is handled and settled by the Panel, it generally takes 150 days to do so. Under the former FSIP Chairman's leadership, it took longer during the past administration to issue Panel decisions to the parties then under the earlier administrations.

Although there have been more "face-to-face" meetings in Washington D.C. with parties, meetings outside the D.C. area have been handled by telephone during the past administration. The past administration's Impasse Panel initially did have "face- to- face" meetings to consider impasses until they got to know each other and could interact by telephone. Such meetings did cause more travel expenses. Since they were able to know how to interact with each other and fewer cases had been filed, there have been more teleconference meetings with FSIP Panel Members and the FSIP travel budget was reduced during the last administration. So far during 2009, there have been two teleconference meetings by the Panel. The FSIP Executive Director stated that

teleconferences in the early stages of an impasse case were okay but during later states of a case, "face-to-face" interaction is preferable.

Although the travel budget of \$25,000.00 is currently sufficient, it was not accurate for travel during the past administration even though the Chairman, FSIP was conservative and concerned about Federal budget spending and the Panel's travel expense budget was reduced. However, during the last administration when FSIP Chairman and/or Panel Members needed additional travel budgets, the former Chairman of FLRA provided needed travel budgets to the Chairman, FSIP. The FSIP Chairman of the past administration also took less payment than previous FSIP Chairmen but also handled fewer cases.

FSIP Management was not involved in creating the FLRA's Strategic Plan and did not create a specific one for FSIP. FSIP does have a list of instructions for new FSIP employees which is not on the internet. This Inspector General review indicated that FSIP does not currently have any administrative problems. However, equipment and furniture which was not being used by FSIP because of the reduced staff was being taken for other employees who needed them.

The detailed FLRA Collaborative Alternative Dispute Resolution Office (CADRO) Specialist, was detailed to FSIP in 2007 (initially for 30 days and then continually for 120 days from the FLRA CADRO for which he was initially hired in 2001. The CADRO Specialist is still performing his previous work, as well as conducting investigations and doing work for the FSIP Panel Members. If he has a CADRO case to handle, he notifies the FSIP Executive Director and works on it but they have been reduced significantly during the past administration. The detailed CADRO Specialist consistently interacts with the Executive Director and the Special Assistant. He attends meetings with the FSIP Chairman and interacts with the FSIP Panel Members professionally after jurisdiction is asserted over cases. The CADRO Specialist has no problems in FSIP with administrative programs. When the FLRA updates the FSIP staff during the new administration, the CADRO Specialist would like to go back to his initial job with CADRO if his CADRO program is recreated.

CONCLUSION:

FSIP is conducting proper professional work without any significant problems except the staff and budget has been significantly reduced. The fact that the former FSIP Chairman, Special Assistant and Panel Members did not respond to the FLRA Inspector General and were removed on March 6, 2008 eliminated the Inspector General's review of FSIP previous political appointees.

When the new Panel Chairman and part-time Panel Members are appointed by the President and affirmed by Congress, a year later, the FLRA Inspector General will review these new employees to gain management information.

FINDINGS AND RECOMMENDATIONS:

Finding 1:

The authority of the FSIP Executive Director and Chief Legal Advisor had been diminished during the past administration even though both were extensively professional and experienced. The authority of the Panel to issue the decisions was also taken away.

Recommendation 1:

During the next administration, FSIP management should reinstate the authority of the FSIP Executive Director, Chief Legal Advisor, and Panel Members so that FSIP Panel decisions are handled properly and quickly.

Finding 2:

During the past administration, the FSIP staff was diminished including the office manager (office manager position is being processed now) and additional legal advisors.

Recommendation 2:

If FSIP cases increase during this administration, FLRA management should consider increasing the staff to address the FSIP impasses in the proper time.

Date Issued: March 17, 2009