

FLRA

20 Years



1979 - 1999



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



20th Anniversary

May 26, 1999

This year marks the 20th Anniversary of the Federal Service Labor-Management Relations Statute and the creation of the Federal Labor Relations Authority. To commemorate this occasion, the FLRA is hosting training conferences for participants in the Federal labor relations program, and publishing this brief review of the program's origins and this Agency's journey over the past two decades.

The conferences and this publication are dedicated to increasing understanding of the past and deepening knowledge of the Statute. Both are important building blocks for a vibrant collective bargaining program in the future. The goal is to promote stable, constructive labor relations that contribute to a more effective government, thereby achieving Congress' purpose when it recognized that labor organizations and collective bargaining in the civil service are in the public interest.

A handwritten signature in cursive script that reads "Phyllis N. Segal".

Phyllis N. Segal
Chair

A handwritten signature in cursive script that reads "Donald S. Wasserman".

Donald S. Wasserman
Member

A handwritten signature in cursive script that reads "Joseph Swerdzewski".

Joseph Swerdzewski
General Counsel

A handwritten signature in cursive script that reads "Dale Cabaniss".

Dale Cabaniss
Member

A handwritten signature in cursive script that reads "Betty Bolden".

Betty Bolden
Chair

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INTRODUCTION

“The right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.” Civil Service Reform Act of 1978, Sec.3(10)

The Federal Labor Relations Authority (FLRA) was born on January 1, 1979. Its structure, mission and authority were imposed 10 days later by Title VII of the Civil Service Reform Act of 1978, when Congress enacted the first comprehensive reform of the Federal civil service system in the 20th Century.

Created to preside over the first statutory labor-management relations program covering Federal employees, the FLRA was in part an amalgam of entities established by Presidential Executive Order in 1969. But it was also a brand new agency, with expanded powers and offices that were designed to enable it to carry out its mission of encouraging collective bargaining while safeguarding the “efficient accomplishment” of government operations.

To accomplish these mandates, Congress structured the FLRA as three distinct components: the **Authority**, the three-member, bipartisan administrative tribunal that, among other enumerated powers, would resolve representation claims, negotiability issues, unfair labor practice complaints and exceptions to arbitration awards; the **Office of the General Counsel**, which would investigate and prosecute unfair labor practice charges; and the seven-member **Federal Service Impasses Panel** (the Panel), which would provide assistance in resolving bargaining impasses. The Authority Members, the General Counsel and the Panel Members are appointed by the President for 5-year terms. All but the Panel Members are subject to Senate confirmation. The President designates one of the Authority Members to serve as Chair of the Authority and as the FLRA’s Chief Executive and Administrative Officer.

Twenty years later and at the brink of a new century, this publication briefly describes the FLRA’s history and where the agency is headed. No vital organization can remain unchanged after 20 years, and the FLRA is no exception. Legal decisions and regulations have defined and

clarified provisions of the Federal Service Labor-Management Relations Statute (the Statute); agency regulations — as originally adopted and subsequently revised — have enabled the FLRA to carry out its statutory responsibilities; the agency’s workforce has shrunk and been restructured; alternative methods for resolving disputes and collaborative systems to avoid escalating disputes have, to an increasing extent, become central to good labor-management relations.

As the FLRA refines its programs, it remains determined to fulfill its statutory role of providing the necessary leadership to help Federal managers, labor organizations and employees work together productively and resolve problems constructively. Entering its 21st year, the FLRA is pursuing this goal in many ways as described throughout this publication. It is continually expanding its outreach to labor and management in order to communicate its actions and understand the changing nature of labor-management relations in the Federal sector. New regulations covering all three statutory components have created procedures that make the FLRA’s programs more accessible and collaborative resolution of disputes more likely. These programs have been recognized for their creativity and effectiveness, and the Authority’s decisions are gaining increasing deference from the courts. During its first 20 years this small, but complex, independent agency has met many challenges; it recognizes that much remains to be accomplished.

The chapters that follow briefly review how and why the FLRA was created, and issues that it has faced in administering the Statute, including trends in labor law and labor relations over the past 20 years. You will read about how the agency’s decisions and judicial review have shaped the meaning and application of the Statute’s provisions. Finally, you will learn about the FLRA’s organizational structure and its employees, who have enabled the FLRA to play its leadership role in the Federal labor-management relations community.

A SHORT HISTORY OF THE STATUTE

“A well balanced labor relations program will increase the efficiency of the Government by providing for meaningful participation of employees in the conduct of business in general and the conditions of their employment.”
Rep. William Clay (123 Cong. Rec. E333, January 26, 1977)

Federal employees first obtained the right to engage in collective bargaining through labor organizations of their choice in 1962, when President Kennedy issued Executive Order 10988, which also authorized the use of limited advisory arbitration of grievances. In 1969, President Nixon expanded those rights through Executive Order 11491, which established an institutional framework to govern labor-management relations in the Federal Government, set forth specific unfair labor practices, and authorized the use of binding arbitration of certain disputes. Both Orders contained provisions reserving certain rights to agency management.

Executive Order 11491 also established two new entities. One, the Federal Labor Relations Council (Council), would oversee the entire program; make definitive interpretations and rulings on provisions of the Order; decide major policy issues; hear appeals, at its discretion, from decisions made by the Assistant Secretary of Labor for Labor-Management Relations on unfair labor practice charges and representation claims; resolve appeals from negotiability decisions made by agency heads; and decide exceptions to arbitration awards. The other, the Federal Service Impasses Panel, was given discretionary authority to assist parties in resolving bargaining impasses when voluntary arrangements failed.

Title VII of the Civil Service Reform Act

By 1977, President Carter had determined that comprehensive reform of the civil service system — the first since the Pendleton Act of 1883 — was necessary. The Congress agreed and, after extensive hearings, passed the Civil Service Reform Act of 1978. Title VII of that Act, which specifically addressed labor-management relations and established the authority of the FLRA, engendered particularly heated debate. Eventually, that title of the

bill before the House of Representatives was replaced by a substitute amendment proposed by Rep. Morris K. Udall. Members of Congress previously opposed to the initial legislation that contained a broad management rights provision supported the amendment, based on an understanding that the provision would be “narrowly construed” and would, “wherever possible, encourage both parties to work out their differences in negotiations.” (Rep. Ford, 124 Cong. Rec. H9648). The House passed the “Udall Substitute,” the Senate agreed to the conference report embodying that amendment, and President Carter signed Title VII, the Federal Service Labor-Management Relations Statute, into law as part of the Civil Service Reform Act on October 13, 1978, effective January 11, 1979.

The actual establishment of the FLRA was effected by the Reorganization Plan No. 2 of 1978, which took effect on January 1, 1979, 10 days before the Statute became law. As one commentator described, the legislative negotiations that resulted in Title VII and established the FLRA “so muddied the content and intent of the new agency that no one knew what it was supposed to do or how it was supposed to do it.” (Patricia W. Ingraham and David H. Rosenbloom, eds., *The Promise and Paradox of Civil Service Reform*, University of Pittsburgh Press (1992) at 95; quoting Carolyn Ban, “Implementing Civil Service Reform” (1984) at 219.) It was clear, however, that the functions of the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations were consolidated in an independent agency because, as President Carter explained, the arrangement under the Executive Order was “defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.” (Message from President Jimmy Carter Transmitting Reorganization Plan No. 2 of 1978, May 23, 1978.)

While the statutory program was similar in many respects to the system that it replaced, there were programmatic and structural differences that radically changed Federal sector labor-management relations. Among the more significant changes affecting the structure and operation of the new agency were:

- ❖ The independent and bipartisan Authority was established to replace the Council, whose members had been the heads of three executive agencies, and given broad powers to remedy unfair labor practices and formal rulemaking authority;
- ❖ The independent Office of the General Counsel was established to investigate and prosecute unfair labor practice charges; and

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- ❖ The Statute made the Authority's final orders — which are issued in unfair labor practice and negotiability decisions — subject to judicial review.

In addition, the Statute made significant substantive changes that would alter the dynamics of labor-management relations, including:

- ❖ Requiring that bargaining agreements contain grievance procedures terminating in binding arbitration and broadening the permissible scope of negotiated grievance procedures;
- ❖ Requiring that agencies grant official time to exclusive representatives for negotiating collective bargaining agreements; and
- ❖ Changing the nature and scope of reserved management rights and the exceptions to those rights.

FLRA Jurisdiction and Responsibilities

The jurisdiction defined for the newly-created FLRA extended throughout the world to wherever Federal agencies covered by the Statute are located. Subsequent legislation further expanded the list of entities within FLRA's jurisdiction. For example, the Panama Canal Act of 1979 extended FLRA's jurisdiction to cover employees, including foreign nationals, of the Panama Canal Commission and U.S. agencies in the Panama Canal Zone, although this jurisdiction was terminated as of July 1, 1998. More recently, the Presidential and Executive Office Accountability Act extended coverage of the Statute to additional categories of employees of the Executive Office of the President.

Coverage also has been modified over the years by Presidential Orders issued pursuant to § 7103(b) based on national security determinations. In November 1979, President Carter excluded a number of agency subdivisions, principally in the Department of Defense and Department of the Treasury. Subsequently, President Reagan suspended the program with respect to certain overseas activities, and exempted specific divisions of the Drug Enforcement Administration and the United States Marshall's Service from the Statute's coverage.

Through subsequent legislation, Congress expanded the responsibilities of components of the FLRA. For example, the Foreign Service Act of 1980 established a labor-management relations program for the members of the U.S. Foreign Service. The Chair of the FLRA also

heads the Foreign Service Labor Relations Board and appoints its members and the members of the Foreign Service Impasse Disputes Panel; the FLRA General Counsel serves as General Counsel to the Board; and the Chair of the Federal Service Impasses Panel serves as a member of the Foreign Service Impasse Disputes Panel. In 1982, the Federal Service Impasses Panel gained authority to rule on negotiation impasses regarding alternative work schedules. And, in 1994, Congress assigned the Authority specific responsibilities concerning the certification of bargaining units resulting from reorganizations within the Department of Agriculture.

In addition to statutory changes related to the FLRA's program responsibilities, legislation subsequent to 1978 has affected the administrative operations of the agency. For example, in 1984 Congress designated the Chair of the FLRA as the agency's Chief Executive and Administrative Officer, which led to more centralized management and operations.

ADMINISTERING THE STATUTE

“The Federal Labor Relations Authority exercises leadership under the Federal Service Labor-Management Relations Statute to promote stable, constructive labor relations that contribute to a more effective Government.” FLRA Mission Statement (adopted 1995)

The FLRA performs many distinct functions in administering the Statute. These functions are, for the most part, carried out by the principal independent components that together form the FLRA: the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel. The functions include: the Authority’s adjudication of disputes concerning negotiability of collective bargaining proposals, unfair labor practice allegations and representation petitions, and exceptions to grievance arbitration awards; the Office of the General Counsel’s investigation and prosecution of unfair labor practice complaints and its delegated authority to process representation petitions; the Federal Service Impasses Panel’s resolution of bargaining impasses arising from negotiations over conditions of employment; and the delivery of collaborative and alternative dispute resolution services by all components. As the FLRA enters its 21st year of operations, the focus in carrying out these functions is on promoting the practice of constructive labor relations.

The Statute defines the universe of organizations that most directly rely on the FLRA: the Federal agencies that employ workers eligible to be represented by unions and the unions that have been recognized as the exclusive representatives of these employees. The individuals who represent these organizations, and Federal employees accorded rights by the Statute, comprise the individual “customers” of the FLRA.

Agency employers subject to the Statute include the Executive Branch cabinet-level agencies, the Executive Office of the President, independent agencies such as the National Labor Relations Board and the Federal Deposit Insurance Corporation, and two Legislative Branch agencies, the Library of Congress and the Government Printing Office. Nearly 1.1 million non-postal Federal employees world-wide are exclusively represented in approximately 2,200 bargaining units. More than 90 unions serve as the exclusive representatives of these

units; the unions that represent the largest number of employees are the American Federation of Government Employees, the National Treasury Employees Union, the National Federation of Federal Employees and the National Association of Government Employees. During the past 20 years, although the size of the Federal workforce has diminished, the percentage of Federal employees who are unionized has remained essentially stable — currently at 59 percent.

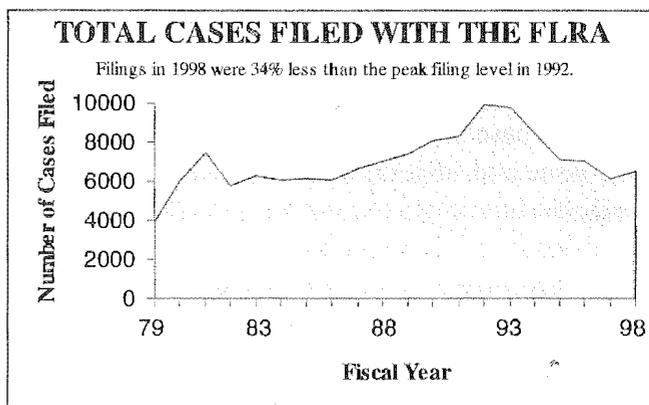
Cases Filed

When operations commenced in January 1979, each of the FLRA components was immediately faced with an inventory of cases that had been filed before the effective date of the Statute. The Authority began its first day of work with an inventory of 119 cases that were carried over from the Executive Order program; the regional offices faced 531 pending unfair labor practice charges and 247 representation petitions that had been transferred from the Department of Labor; and 27 cases were pending before the Panel. Not surprisingly, new case filings immediately began pouring in. By the end of the first fiscal year — only 9 months after the creation of the Agency — more than 3,000 new cases had been filed.

FLRA's first Presidentially-appointed leadership — the Chair and two Members of the Authority, and the General Counsel — were confirmed in July 1979. The regulations to govern the new Statutory proceedings — the processing of representation petitions, unfair labor practice charges and complaints, negotiability appeals, exceptions to arbitration awards and the resolution of negotiation impasses — were promulgated in January 1980. As discussed below, these regulations remained substantially unchanged for 15 years.

While tackling its start-up challenges, the FLRA also immediately began addressing its program responsibilities. Within months, the Authority issued its first policy statement, concerning the revocation of written dues assignment. By mid-summer, the Office of the General Counsel began issuing unfair labor practice complaints for hearing before the Authority's newly created Office of Administrative Law Judges (ALJs), and the Authority was examining complex issues such as the negotiability of performance standards. By the end of fiscal year 1980, the Federal courts of appeals had been asked to review 18 Authority decisions.

Except for a surge in cases filed in 1981, and a few years when filings remained level, overall case filings rose fairly steadily until 1992. Since the vast majority of these cases are unfair labor practice charges filed with regional offices, this trend largely reflected a steady increase in unfair labor practice charges. Beginning in 1992, however, the number of cases began to decline: from 1992 through 1998, unfair labor practice charges filed with the regional offices declined by 35 percent, with approximately 5700 charges filed in 1998.



Throughout the past 20 years, only 3 to 5 percent of unfair labor practice charges have ended up as appeals to the Authority; the remainder are dismissed, withdrawn or settled prior to hearing, or are resolved by the ALJs without exceptions to the Authority. Thus, the vast majority of unfair labor practice charges are closed without a final precedential Authority decision.

The number of representation petitions filed with the regional offices has ranged from a high of 704 in 1979 to a low of 292 in 1987. Since 1995, the number has remained relatively steady at an average of 460 per year.

All disputed representation petitions were submitted to the Authority until 1983, when the Authority delegated decision-making authority in this area to the Regional Directors, who by that time had a considerable body of precedent to follow. After this, there was a significant decline in the number and percentage of disputed representation cases filed with the Authority, and the vast majority (over 95%) are now fully resolved at the regional office level. In 1979, representation cases comprised nearly one-third of the cases filed with the Authority. Since 1984, following the delegation to the Regional Directors, representation cases have comprised no more than 8 percent of Authority case filings.

With respect to other types of cases filed with the Authority, the mix also has changed over time. For example, arbitration cases constituted 17 percent of the cases filed during the first fiscal year. By 1990, arbitration cases had increased to 42 percent of the Authority's case filings and, in 1998, rose to 47 percent. Negotiability case filings have ranged from a high of 40 percent in 1992 to a low of 13 percent in 1994. This category of cases has remained steady at approximately 25 percent of the Authority's case filings since 1995.

Impasse disputes filed with the Panel reached a peak of 293 in 1991, but declined steadily through 1997 to a low of 148. Filings rose again in 1998 to 175. Since 1993, when changes in case law limited the circumstances requiring impact-and-implementation bargaining, multi-issue end-of-term impasses have constituted an ever-increasing percentage of the Panel's caseload.

Beginning in the first years of its existence, the FLRA in general, and the Authority in particular, developed a reputation for moving too slowly in resolving disputes. Concerns about the timeliness of decisions continue to the present, as indicated in a customer survey conducted in 1997. Recent actions to expedite decision-making have included modifications of internal work processes, regulatory reform initiatives and strategic issuance goals. Changing the perception and reality of slow decision-making remains a challenge for the future.

Early Years: Statutory Enforcement Through Litigation — the NLRB Model

During the first years of the FLRA's operation, its administration of the Statute was patterned after the National Labor Relations Board (NLRB). This followed the statutory framework that provides for a quasi-judicial body (the Authority) and a public prosecutor with investigatory and prosecutorial authority (the General Counsel), which is similar to the National Labor Relations Act governing labor-management relations in the private sector.

Under this model, the General Counsel's early focus was on the exercise of statutory prosecutorial functions and the use of litigation to elucidate the Statute and develop a body of case law regarding Federal sector labor-management relations. Consistent with this focus, the regulations governing unfair labor practice and representation case processing were, in the main, modeled after the NLRB's regulations. As an example, like the NLRB's regulations, the FLRA's original unfair labor practice regulations did not require exchange of information between the litigants. This was changed in 1997, when the FLRA's unfair labor practice regulations were revised to require prehearing conferences and pretrial exchange of information.

Encouraging Interest-Based Settlement of Disputes

Steps were taken from the outset to encourage voluntary resolution of disputes at the earliest possible time. Section 2423.10 of the Interim Rules and Regulations published in 1979 set forth the policy of the Authority and the General Counsel favoring the settlement of

issues at any phase of an unfair labor practice proceeding. Indeed, even in the period during which the Office of the General Counsel placed great emphasis on litigation to elucidate the meaning of the new Statute, priority was placed on the voluntary resolution of individual cases.

Starting in the late 1980's, the FLRA began modifying existing programs and developing new initiatives aimed at fostering improved labor relations by assisting parties to resolve their own difficulties through interest-based approaches. The Office of the General Counsel, which has always encouraged settlement of unfair labor practice charges, developed specialized training and workshops for labor and management in methods of interest-based bargaining, collaborative conflict resolution and relationship building. In 1991, the Authority established the Labor-Management Cooperation Program, devoted to encouraging parties to collaboratively resolve their disputes.

Executive Branch initiatives in 1993-94 led to further expansion of these activities. In particular, the National Performance Review (NPR), established in 1993 by President Clinton and led by Vice President Gore, required Federal agencies to undertake reinvention initiatives designed to improve government services with the goal of creating a government that works better and costs less. NPR envisioned moving away from the traditional legalistic and adversarial approach to labor relations. The issuance of President Clinton's Executive Order 12871 in October 1993 spurred the formation of labor-management partnerships, and directed Federal agencies to broaden their bargaining with unions to include subjects set forth in § 7106(b)(1) of the Statute.

In 1994, the Office of the General Counsel began systematically training its entire staff in interest-based bargaining. In 1994 through 1995, the Cornell University School of Industrial and Labor Relations, in partnership with the Office of the General Counsel, provided interest-based bargaining training jointly to FLRA employees and labor and management representatives throughout the country. The two-day training sessions were conducted in every FLRA regional city to build skills in problem solving by exposing the participants to the theory behind interest-based dispute resolution and demonstrating this technique through simulated exercises. Also, the General Counsel empowered the Regional Directors to develop new and innovative approaches to remedies that address and resolve specific underlying disputes, and Dispute Resolution Specialist positions were created in each of the regional offices.

In 1995, a pilot settlement judge program was launched in the Authority's Office of Administrative Law Judges. This program was so successful that it has been made permanent, as part of the revised unfair labor practice regulations which encourage collaborative problem solving in all phases of the processing of unfair labor practice cases.

During this time period, the Panel, which always emphasized voluntary settlement of negotiation impasses, designed new methods to help parties find their own "real world" solutions to problems. Using its broad statutory authority to take whatever action it finds appropriate to resolve impasses, the Panel shifted its emphasis from the formal fact-finding and plenary decision-making of its early years to less formal and more expeditious forms of assistance. For example, in 1996, the Panel introduced expedited arbitration procedures, which guarantee a written decision within two work days after a hearing.

Initiatives also were undertaken during the 1990s to increase the parties' understanding of the Statute — which is the backdrop against which labor relations are conducted. These initiatives included programs carried out by all components to train union and management representatives on rights and obligations under the Statute. In addition, a series of seminars on arbitration law was conducted for parties and arbitrators. As part of the same effort to increase parties' understanding of how their disputes would be resolved under the Statute, the General Counsel published and widely disseminated policies to guide decisions by the Regional Directors on issuing and litigating unfair labor practice complaints, and manuals on resolving representation petitions. In addition, the Office of the General Counsel has conducted numerous town meetings throughout the country to provide information to help labor representatives and managers understand the Statute.

Mainstreaming Collaborative Dispute Resolution

In 1996, the three FLRA components joined together to establish the Collaboration and Alternative Dispute Resolution (CADR) Program, the first unified Agency-wide program dedicated to assisting parties with resolving disputes on their own terms, at the earliest possible time, through the use of interest-based problem solving. The small CADR office is charged with expanding this assistance and providing support and guidance for the interest-based dispute resolution activities of each FLRA component. The services offered to labor and management by the unified program include: training (on statutory issues, interest-based bargaining, partnership, alternative dispute resolution and relationship building); and dispute resolution assistance in pending unfair labor practice, representation and bargaining impasse

cases. Most recently, through the CADR program, the Authority has also begun to help parties resolve their negotiability disputes.

These efforts are guided by the recognition that interest-based problem solving is not merely an “alternative” to resolving disputes through traditional arbitration or litigation — it is the dispute resolution method best suited to achieving constructive labor relations. In addition to direct delivery of training and dispute resolution assistance, the FLRA’s activities to “mainstream” collaborative dispute resolution have led to incorporating principles of interest-based problem solving in procedures governing cases that are filed with the FLRA, as described below.

In April 1999, the FLRA’s Mainstreaming Collaborative Dispute Resolution program was chosen as a semifinalist — one of 98 from a pool of 1,609 applicants — in the Innovations in American Government Awards Program of the Ford Foundation administered by Harvard University’s John F. Kennedy School of Government in partnership with the Council for Excellence in Government. This awards program recognizes Federal, state and local initiatives that are original and effective.

Regulations Revised to Incorporate Principles of CADR

Except for minor, technical modifications, the regulations initially promulgated in January 1980 remained largely unchanged for 15 years, at which time the FLRA began a systematic effort to review how cases are handled and to reinvent its procedures. This initiative has resulted in major regulatory revisions adopted in:

- ❖ December 1995 for representation petitions;
- ❖ August 1996 for negotiability impasses;
- ❖ July 1997 for litigation of unfair labor practice complaints;
- ❖ November 1998 for processing of unfair labor practice charges; and
- ❖ December 1998 for negotiability appeals.

The revisions to these regulations were accomplished through a process that broadly involved labor and management in identifying ways to improve the regulations, and in shaping

the improvements. The revisions were aimed at maximizing the quality of decisions, minimizing the time it takes to issue them, and providing meaningful assistance to parties struggling to create the sound labor-management relations system that Congress contemplated when enacting the Statute in 1978.

Several objectives guided these regulatory changes:

❖ First, to make FLRA’s regulations “user-friendly” — with concise, plain English as a goal — in order to reduce delays in resolving disputes due to difficulties in understanding and complying with procedural requirements. For example, under the revised representation regulations, parties are no longer required, as they were previously, to determine which of seven different petitions they should file. Instead, parties now file a single petition, in which they simply are required to describe the problems they are trying to resolve.

❖ Second, the regulations were revised with the objective to ease procedural burdens on parties — to reduce the costs of litigation and expedite resolution of claims. For example, the revised negotiability regulations will, in most cases, result in resolution in one proceeding of issues that previously would have required litigation in several forums. As another example, many documents now may be filed with FLRA components by facsimile transmission.

❖ A third objective in revising the regulations was to narrow and sharpen the legal and factual issues in dispute. With this objective in mind, the regulations governing unfair labor practice cases now require the litigants to exchange information about each side’s claims and evidence soon after the complaint is issued, and participate in a prehearing conference with the Judge. In negotiability cases, parties are required to participate in a conference shortly after the petition is filed, to clarify the issues to be resolved, including the meaning of the proposal or provision in dispute. In addition to clarifying the issues on which they disagree, these requirements for direct communication between the parties create opportunities for them to determine whether further litigation is needed, or whether their interests could be better served by agreeing on their own solution to the dispute. Where the litigation proceeds, the clarification of issues expedites the adjudication, and enables more responsive decisions.

❖ Fourth, the revised regulations are designed to encourage and help parties to find their own solutions to disputes, where possible, rather than rely on the FLRA to impose

a decision following costly and time-consuming litigation. The changes that foster direct communication between the parties, described above, serve this objective because understanding what is in dispute is a central step in exploring whether it can be resolved with an interest-based solution. This objective is more directly advanced by other revisions. For example, the ULP investigatory regulations, in furtherance of the CADR program, provide a full range of ADR services to assist the parties in resolving their disputes. The revised ULP litigation regulations make permanent the highly successful settlement judge program. And the revised negotiability regulations expressly incorporate opportunities for CADR assistance in negotiability cases.

As just one example of the effect of the reinvented approaches to the FLRA's work: in 1997, under the revised representation regulations, the Office of the General Counsel assisted an Executive Branch Department and its unions in reorganizing bargaining units after a massive internal reorganization of the Department. The entire process took only four months and saved both the Department and the FLRA the enormous resources that would have gone into determining appropriate units and deciding related bargaining issues through representation and unfair labor practice proceedings.

In 1999, the effectiveness of the FLRA's regulatory reform initiatives was recognized with a Hammer Award to the FLRA team that reinvented the process for litigating unfair labor practice claims. One measure of the success of this initiative is that cases are settling earlier in the process and, thus, at a savings for all involved. For example, in the year before the settlement judge program was introduced, 21 percent of unfair labor practice complaints that were settled prior to the Judge's decision did so at the eleventh hour — at the hearing location immediately before the hearing began — after many of the expenses in preparing for and appearing at trial had already been incurred. In fiscal year 1998, the percentage of such last-minute "courthouse steps" settlements had declined sharply, to only 3 percent of cases settled.

Communication with FLRA Customers

Throughout its 20 years, the FLRA has made significant efforts to communicate with union and management participants in the Federal labor relations community, in addition to publishing decisions and annual reports as required by the Statute. In the early years, for example, the Office of the General Counsel issued periodic reports describing its major activities. In 1991, the Authority initiated a similar publication outlining recent decisions.

In 1996, the separate component publications were integrated into The FLRA Bulletin. At first quarterly, budget reductions led the FLRA to now publish this newsletter three times a year. It contains a comprehensive range of news about the entire agency, including Authority decisions, Panel decisions and settlements, the General Counsel's advice and settlement activity, and CADR activities. This expands both the amount of information and the audience to whom the FLRA regularly reports on its activities.

Additional initiatives have also increased the FLRA's communication with the labor relations community. As mentioned earlier, the General Counsel's guidance to the Regional Directors, and manuals explaining representation procedures and unfair labor practice litigation, are widely disseminated to provide parties additional information about how the Statute is interpreted and applied. The Panel issues brochures and pamphlets related to Panel programs and operations. The General Counsel and the Panel regularly hold "town meetings" throughout the country. The Authority has made use of focus groups and Federal Register notices to communicate with the public and to gather views on matters of general concern, such as the recent regulatory revisions. In addition, the agency has conducted surveys to solicit views of customers on program activities throughout the FLRA.

In 1997, the FLRA established its own web site, containing decisions, press releases and other pertinent information (www.flra.gov). Web site use has increased almost ten-fold in two years, with nearly 300 users now accessing the site each day. Initiatives are underway to expand this site to provide the ability to search FLRA case decisions.

DECISIONS INTERPRETING AND APPLYING THE STATUTE

“... the FLRA was intended to develop specialized expertise in its field of labor relations and to use that expertise to give content to the principles and goals set forth in the Act.” *Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 97 (1983)

Among the greatest challenges facing the FLRA from the outset has been interpreting and applying the terms of the Statute. In the course of the last 20 years, the Authority has issued nearly 7000 published decisions doing just this. Additional FLRA binding decisions have been issued in over 6000 representation cases by Regional Directors and nearly 700 unfair labor practice cases by Administrative Law Judges. Also, tens of thousands of non-precedential awards have been issued by arbitrators resolving grievances under negotiated grievance procedures. As the parties did not ask the Authority to review these Regional Director, Administrative Law Judge and arbitrator decisions, they do not serve as precedent for other cases; they are, nevertheless, binding applications of the Statute. Finally, approximately 900 decisions resolving negotiation impasses have been issued by the Panel.

Faced with a new Statute, virtually every case in the early years involved issues of first impression. For example, in 1979, the Authority ruled in *Interpretation and Guidance (1979)*, that where either party to a grievance procedure negotiated prior to the effective date of the Statute objected to its continuation, renegotiation under § 7121 was necessary. Twenty years later, issues of first impression are still being presented. In 1997, the Authority set forth for the first time the framework for determining under § 7111 of the Statute whether a labor organization is subject to corrupt influences. *Department of Military and Naval Affairs, New York National Guard (1997)*. In addition, the Authority continues to struggle with some issues that were raised and addressed in early decisions — such as what standards should be used in determining whether proposals are negotiable procedures under § 7106(b)(2); what matters are permissive subjects of bargaining under § 7106(b)(1); and the scope of the *Weingarten* right under § 7114(a)(2)(B).

Statutory Sections Considered “Clear On Their Face”

Some sections of the Statute have been easily understood and applied. For example, courts have consistently held that, under § 7118, the Authority has “a broad congressional delegation of discretion . . . to fashion appropriate remedies for an unfair labor practice.” *NTEU v. FLRA* (D.C. Cir. 1990). Consistent with this remedial power, the Authority has fashioned several remedies that, over the years, have become “traditional” in scope and application. For example, in *Federal Correctional Institution* (1982) the Authority concluded that it could issue *status quo ante* remedies in refusal to bargain cases even if the underlying decision that triggered bargaining was not itself negotiable. The Authority more recently set forth the standard by which it would evaluate requests for “non-traditional” remedies. See *F.E. Warren Air Force Base* (1996).

Sources Guiding How the Statute is Construed

There are many sections of the Statute, however, that have not been as easily construed and applied. Indeed, one section of the Statute that is frequently litigated — § 7106(b), which sets forth exceptions to management’s rights — was characterized by then-Judge Scalia as containing “confusing duplicity.” *AFGE, Local 2782 v. FLRA* (D.C. Cir. 1983). Given the negotiating process that led to enactment of the Statute, consulting the legislative history does not often clarify what Congress intended. Nevertheless, there are at least three independent sources of precedent that the Authority uses as guides for construing and applying these provisions.

- ❖ First, under § 7135(b) of the Statute decisions by predecessor entities to the Authority, such as the Federal Labor Relations Council (Council), continue unless and until they are superseded by Authority decisions. An example of the Authority’s consideration and rejection of Council precedent is *Department of the Air Force, Air Force Systems Command* (1984) (Authority stated that Council decision concerning remedial authority would no longer be followed). An example of a decision to continue Council precedent is *Sacramento Army Depot* (1994) (Authority continued Council precedent concerning use of “dual purpose” documents to establish employee support for union decertification).
- ❖ Second, decisions by Federal courts reviewing private-sector arbitration awards provide the grounds to be applied by the Authority in reviewing awards under § 7122(a)(2). Consistent with this section, the Authority has, from the beginning, resolved exceptions to arbitration awards that allege so-called “private sector grounds”

by applying private-sector law. *See, e.g., AFGE, Local 2327 (1981)* (on basis of private-sector precedent Authority rejected claim that arbitrator was required to specifically discuss disputed contractual provisions).

❖ Third, precedent of the National Labor Relations Board (NLRB) often is considered by the Authority in construing provisions of the Statute that are analogous to provisions of the National Labor Relations Act. For example, § 7114(a)(2)(B) — the *Weingarten* right to union representation during certain investigatory examinations — was intended by Congress to provide rights to Federal employees consistent with those provided in the private sector by the NLRB. Accordingly, the Authority often turns to NLRB precedent concerning the *Weingarten* right in the private sector in construing the right under the Statute. *See, e.g., Federal Bureau of Prisons, Colorado (1998)* (Authority stated that, as in the private sector, an employee's right to designate a particular representative is not unlimited). In other cases, however, the Authority has noted Congress' recognition that the *Weingarten* right might evolve differently in the private and Federal sectors. *See Federal Bureau of Prisons, Safford (1990)* (Authority discussed different approaches in Federal and private sectors to devising remedies for violations of the *Weingarten* right).

Laws, Rules and Regulations Outside the Statute Critical to Its Application

Resolving unfair labor practice complaints, negotiability appeals and arbitration exceptions often requires the Authority to interpret and apply laws, rules and regulations other than the Statute itself. Of course, the United States Constitution always takes precedence over any law enacted by Congress, including the Statute. In *Department of the Army v. FLRA (D.C. Cir. 1995)*, for example, the doctrine of sovereign immunity was relied on by the reviewing Federal court of appeals, which held that the Statute does not constitute a waiver of sovereign immunity permitting the Authority to assess money damages other than back pay. In addition, the Statute expressly gives other laws, rules and regulations precedence over collective bargaining rights under the Statute in certain situations. For example, § 7117 provides that collective bargaining does not extend to any matter that is inconsistent with a Government-wide regulation.

As a result, the three-member Authority panel — expected to develop expertise in Federal sector labor law — has been required in many cases to reach decisions based on laws far afield from the Statute itself. In addition to the Constitution and Government-wide regulations mentioned above, these include organic statutes and authorization acts governing the agency-

employer, and the rules and regulations that it has adopted. For example, in *New Hampshire National Guard* (1998), the Authority was required to interpret various provisions of the Department of Defense Appropriation Act of 1995, as well as a criminal statute, in determining whether the agency acted lawfully when it refused to permit the union to use official time for certain lobbying activities. The Authority's decision itself was reviewed, and affirmed, by the U.S. Court of Appeals for the First Circuit. *Granite State Chapter, ACT v. FLRA* (1st Cir. 1999).

The Role of the Federal Courts of Appeals

As mentioned earlier, one of the significant ways the Statute changed the Federal labor relations program was by authorizing judicial review of certain Authority decisions. The Federal courts are involved in interpreting and applying the Statute in several contexts.

- ❖ First, upon issuance of an unfair labor practice complaint, § 7123(d) permits the Authority to petition a United States district court for injunctive relief. An example of a case in which this occurred is *FLRA v. Federal Deposit Insurance Corp.* (D.C. Cir. 1991), where the agency was enjoined from refusing to recognize and enter into collective bargaining with a newly-certified labor organization.
- ❖ Second, the Statute provides in § 7123(b) for the Authority to file petitions in an appropriate United States court of appeals to enforce Authority orders. Although the Authority is not often required to pursue enforcement action, such actions have been maintained against agencies, *see, e.g., FLRA v. Department of Air Force* (D.C. Cir. 1984), and unions, *see, e.g., FLRA v. AFGE, Local 987* (11th Cir. 1994).
- ❖ Third, § 7123(a) makes certain — but not all — final orders of the Authority subject to direct judicial review in any United States court of appeals (except for the Federal Circuit) in which the party aggrieved by the order resides or does business. On an average, over the past 20 years, 12 percent of the Authority decisions that are subject to judicial review have been appealed and decided on the merits by a Federal court. The annual percentage of decisions appealed has ranged from a high of 24 percent of Authority decisions issued in fiscal year 1989 to a low of 4 percent of Authority decisions issued in fiscal year 1994. The two categories of Authority decisions that are expressly excluded from direct review are those resolving exceptions to arbitration awards (unless the award involves an unfair labor practice) and resolving representation petitions. In addition to regularly declining jurisdiction over appeals directly challenging Authority decisions

resolving arbitration exceptions, courts have declined jurisdiction over collateral challenges to an arbitration award. *See Department of Health and Human Services v. FLRA (D.C. Cir. 1992)*. Further, the “final order of the Authority” requirement has led courts to rule that they do not have jurisdiction to review either the General Counsel’s refusal to issue an unfair labor practice complaint, *see, e.g., Turgeon v. FLRA (D.C. Cir. 1982)*, or a Panel decision, *Council of Prison Locals v. Brewer (D.C. Cir. 1984)*.

Appellate Court Decisions Interpreting the Statute

Judicial review of the merits of over 435 Authority decisions over the past 20 years has produced a body of law that has significantly shaped the interpretation and application of the Statute. There are numerous examples of Federal labor law doctrines that have been greatly influenced by judicial review. In some cases courts have expanded interpretations initially reached in Authority decisions; in others, they have narrowed the Authority’s initial ruling about what a section of the Statute means.

One of the sections of the Statute that has been elucidated as a result of judicial review — sometimes to expand bargaining and sometimes to narrow it — is § 7106(b)(3), which requires bargaining over “appropriate arrangements.” In *AFGE Local 2782 v. FLRA (D. C. Cir. 1983)*, for example, the court disagreed with the Authority’s interpretation of the term “appropriate” as too limited — rejecting the Authority’s “direct interference” test in favor of one that measures whether a particular proposal interferes with a management prerogative to an “*excessive degree*.” The consequence of this ruling was to expand the scope of collective bargaining; the decision became the underpinning of the excessive interference test adopted by the Authority for determining whether a proposal is a negotiable arrangement. *Kansas Army National Guard (1986)*.

On the other hand, in *Minerals Management Service v. FLRA (D.C. Cir. 1992)*, the court disagreed with the Authority’s interpretation of the term “arrangement,” holding that § 7106(b)(3) applies “only where the Authority has identified the reasonably foreseeable adverse effects that will flow from some management action; and only when the proposed arrangement is tailored to benefit or compensate those employees suffering those adverse effects.” The same year, the same court ruled in *Office of Chief Counsel, IRS v. FLRA (D.C. Cir. 1992)* that adverse effects could not flow from the denial of a negotiated benefit. The result of these judicial decisions was to narrow the scope of collective bargaining.

Decisional law construing the meaning of the term “necessary” under § 7114(b)(4), which defines the circumstances in which an agency is obligated to provide a union information it has requested, also has been greatly influenced by judicial review. The Authority has issued nearly 200 decisions (almost 3000 pages) turning on whether requested information was “necessary,” and courts have issued over 14 decisions reviewing Authority rulings on this subject. These numbers do not include the numerous Authority and judicial decisions resolving whether agencies are obligated to provide unions with unit employees’ names and home addresses — a particular subset of information cases that clogged the Authority’s and the courts’ dockets for several years and ultimately required resolution by the Supreme Court. Prior to 1997, no Authority decision — whether finding that requested information (excluding name, and home addresses) was necessary, or finding that it was not — was affirmed in court.

In a series of decisions starting with *NLRB v. FLRA (D.C. Cir. 1992)*, the D.C. Circuit and other courts elucidated their view of the meaning of the statutory term “necessary,” ruling that the Authority must consider both the union’s “particularized need” for the information sought and the agency’s “countervailing anti-disclosure interests.” In *Internal Revenue Service, Washington, D.C. (1995)*, the Authority followed the courts’ directions and explained how it would determine when such “particularized need” was established. The Authority emphasized that both parties must be clear with each other — the union about its need and the agency about its countervailing interests — at the time information is requested. In doing so, the Authority reasoned that a policy based on direct and timely exchange about the respective agency and union interests may enable them to find a solution that accommodates both labor and management’s concerns — serving the important Statutory purposes of promoting collective bargaining and facilitating the amicable resolution of disputes.

Since this 1995 Authority decision, the new standard and its application has been challenged in the U.S. Court of Appeals for the District of Columbia Circuit in three cases. In contrast to previous appeals on the subject, the Authority’s decisions were upheld in all three cases. In two of these cases, the Authority ruled that agencies had committed unfair labor practices by failing to provide requested information to unions. *Department of the Air Force, Scott Air Force Base v. FLRA (D.C. Cir. 1997)* and *Department of Justice, INS, Northern Region v. FLRA (D.C. Cir. 1998)*. In the third, the Authority held that the union had failed to articulate a particularized need for documents and that, therefore, the agency had not improperly refused to provide the documents. *AFGE, Local 2342 v. FLRA (D.C. Cir. 1998)*.

Split Appellate Court Rulings and Supreme Court Review

The difficulty in untangling the meaning of certain sections of the Statute has led Federal courts reviewing Authority decisions to disagree in their interpretation of what the Statute requires. These “Circuit court splits” have been resolved by the Supreme Court in six decisions over the past 20 years, with a seventh case recently argued and awaiting decision by the Court. In all seven cases, the Authority was defending its view of the Statute against the arguments by the United States Solicitor General, on behalf of an agency-employer, that the Authority’s reading of the Statute was improperly expansive. It is relatively unusual for two Executive Branch agencies to appear before the Supreme Court in the roles of both petitioner and respondent — leading more than one Supreme Court Justice to express puzzlement over the situation. Of course, were the FLRA to simply agree with an agency-employer’s view of what the Statute requires, there would be no need for Congress to have established an independent adjudicatory panel to decide labor law disputes between Federal agencies and unions under the Statute.

In four of the cases decided by the Supreme Court, the Authority’s construction of the Statute was rejected:

❖ In *Bureau of Alcohol, Tobacco and Firearms v. FLRA* (1983), the Court ruled that § 7131 does not require the payment of travel expenses and per diem allowances for union employee negotiators.

❖ In *FLRA v. Aberdeen Proving Ground* (1988), the Court held that § 7117(b) provides the exclusive procedure for determining whether there is a compelling need for an agency regulation.

❖ In *Department of the Treasury, Internal Revenue Service v. FLRA* (1990), the Court ruled that the Statute precludes bargaining over proposals that would subject matters included within § 7106(a)(2)(B) to contractual grievance procedures unless those proposals involve conformity with applicable laws.

❖ In *U.S. Department of Defense v. FLRA* (1994), the Court held that disclosure of the home addresses of bargaining unit employees to a union is prohibited under the Privacy Act. This question had spawned the largest number of ULP charge filings and cases litigated in the FLRA’s history.

In two of the decided cases, the Supreme Court agreed with the Authority's construction of the Statute:

- ❖ In *Fort Stewart Schools v. FLRA* (1990) the Court upheld the Authority's determination that certain agencies were required to bargain over employee wages and fringe benefits.
- ❖ In *NFFE, Local 1309 v. FLRA* (1999), the Court agreed with the Authority that the Statute does not clearly prohibit mid-term bargaining, holding that it would defer to the Authority's determination on the issue.

Finally, the Court's decision is awaited in a case argued recently, *National Aeronautics and Space Administration v. FLRA*, involving the issue of whether an investigator employed by an agency's Inspector General is properly considered a "representative of the agency" for purposes of § 7114(a)(2)(B), which establishes the *Weingarten* right for Federal employees.

The effect on Federal sector labor law of the Supreme Court's decisions can be far reaching. Based on the Supreme Court's decision in *Internal Revenue Service v. FLRA*, described above, the Authority reevaluated the test used to determine whether an arbitration award is deficient as contrary to management's rights. The Authority held that an award that affects management rights under § 7106(a)(2) may not provide a remedy except for a violation of applicable law or a contract provision that was negotiated pursuant to § 7106(b), and that an award remedying such a violation must reconstruct what management would have done if it had acted properly. *Department of the Treasury, Bureau of Engraving and Printing* (1997).

Judicial Review of Authority Decisions

A study of the Authority's decisions reported on the occasion of the Statute's 10th anniversary, identified the Authority's failure to achieve greater judicial deference to its administrative expertise as a significant problem for Federal sector labor relations. (Patricia W. Ingraham and David H. Rosenbloom, eds., *The Promise and Paradox of Civil Service Reform*, University of Pittsburgh Press (1992) at 154). The study examined statistics as well as comments in judicial opinions reviewing Authority decisions through 1987. Among the author's basic premises was that: (1) "inconsistencies and unclarities in FLRA legal decisions and interpretations make it difficult for the parties to collective bargaining to know what the ground rules are"; and (2) molding the Statute into a "coherent body of law" is essential for the "creation and regulation of a vigorous bilateral collective bargaining system." Identifying this as an area where improvement was needed, the author concluded that "labor relations in the federal

service would benefit substantially if the FLRA could command greater deference from the federal judiciary.”

On its 20th anniversary, a review of appellate statistics and judicial comments indicates that this challenge is being met. Authority decisions issued in the last four years and reviewed on the merits by Federal courts were the subject of favorable appellate opinions in approximately 84 percent of the cases, as compared with an overall favorable rate of only 52 percent for Authority decisions reviewed in the preceding 16 years. A number of factors undoubtedly contributed to this improvement, including a reduced number of appeals due to the general reduction in the number of cases litigated before, and decided by, the Authority. The increased judicial deference was not, however, a random accomplishment: it followed a deliberate focus on the quality of FLRA decisions during the period beginning in 1995.

APPELLATE REVIEW OF AUTHORITY DECISIONS	
Fiscal Year of Authority Decision	Percent of Court Decisions Affirming Authority on the Merits in Whole or Substantial Part
1979-82	54%
1983-86	58%
1987-90	53%
1991-94	43%
1995-98	84% ^{1/}

^{1/} Does not include 10 Authority decisions issued from 1995 through 1998 currently pending Court decision.

In its decision on March 9, 1999, in *NFFE, Local 1309 v. FLRA*, the Supreme Court stated:

The Authority would seem better suited than a court to make the workplace-related empirical judgments that would help properly balance . . . policy-related considerations. . . . [T]he Agency’s policy arguments illustrate the need for the Authority’s elaboration or refinement of the basic statutory collective-bargaining obligations; they illustrate the appropriateness of judicial deference to considered Authority views on the matter

THE FLRA AND ITS EMPLOYEES

“For two decades, the men and women of the FLRA have worked with skill and dedication to ensure fairness in labor practices at federal departments and agencies.” President William Jefferson Clinton (April 29, 1999)

Organizational Structure and Operations

The FLRA is a small, but complex organization due to its structure — essentially, it is three independent agencies in one: the Authority, the Office of the General Counsel and the Panel. The FLRA Chair serves as both Chair of the Authority and the agency’s Chief Executive and Administrative Officer. However, separate lines of authority within each component established by the Statute ensure independence between the various functions performed by each, primarily the roles of prosecutor and adjudicator. The General Counsel directs all Office of the General Counsel employees, who comprise over 50 percent of the FLRA staff, including the regional offices. The Chair of the Federal Service Impasses Panel directs the Panel staff.

Since 1979, 12 men and women have served as Members of the Authority — the adjudicators who have issued final decisions in cases litigated before the agency. Six of these individuals have led the FLRA as its Chair. During these 20 years, there have been seven General Counsels. Since it was established in 1970, a total of 30 men and women have served as Members of the Panel; six of them have served as the Panel’s Chair. As this publication illustrates, under this leadership the FLRA has undergone a number of changes both to the program and to the organizational structure of the agency. What has remained constant is the commitment of FLRA’s Presidentially-appointed leadership and career staff to resolving disputes and improving relationships within the Federal labor-management community.

The Authority was originally organized around a central staff, which supported the decisional work of the Authority Members. In 1980, the Members appointed a Chief Counsel, who coordinated six teams of subject matter specialists and supervisors. After an extensive

internal study, the Authority restructured its staff in 1986 into separate staffs for each Member, each headed by a Chief Counsel. In response to reduced case filings in recent years, however, staff reductions and reorganizations have re-introduced some centralized case processing in specific areas.

The Administrative Law Judge function was transferred from the Department of Labor in 1979 to hear and render decisions in cases involving unfair labor practices. While the number of judges has been reduced over the years, consistent with a declining caseload, the structure of the Authority's Office of Administrative Law Judges remained unchanged until 1995, when a settlement attorney position was established under the settlement judge program. This program is designed to encourage and assist parties to resolve cases in a collaborative fashion, without a hearing and Judge's decision.

Initially, the regional office personnel occupied nine regional offices and a number of resident offices that had been used by the Department of Labor under the Executive Order program. These locations were chosen based on the pattern of case filings under the prior program. Experience under the Statute, as well as eventual budgetary constraints, resulted in changes over the years. By 1996, two of the original regional offices — New York and Los Angeles — had been closed, as well as all of the resident offices. Currently, there are seven regional offices and two "remote duty" stations, one of which operates from a telecommuting center. In order to ensure cost-effective case processing and meet a strategic objective of case and staffing parity among the regional offices, the geographic jurisdiction of several regional offices has changed over the years. Also, the organizational structure has been changed to include senior level employees serving as functional experts in litigation, representation and dispute resolution.

Although the Panel has changed its methods of resolving disputes by operating in a less formal fashion and introducing more flexible, case-oriented processes, the size and structure of the Panel staff has changed very little over the years.

The agency central management offices have always been housed within the Authority component in support of the chief executive and administrative officer responsibilities of the FLRA Chair. These programs include the Office of the Solicitor, which represents the Authority in court proceedings and provides in-house counsel and legal advice to all components; the Inspector General activities; External and Congressional Affairs activities; and the Office of the Executive Director functions such as human resources, information technology, budget and procurement. In addition, the Office of the Executive Director manages

agency-wide initiatives such as strategic planning, internal labor-management activities and performance management.

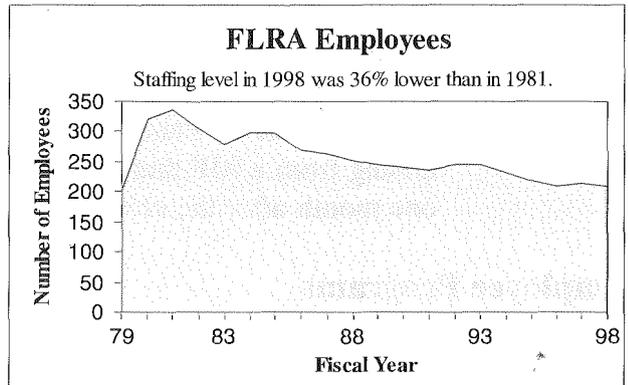
Over the years, there has been a commitment to providing quality administrative services, such as personnel, procurement and automation support, to agency program personnel in the most efficient and economical manner. This has led to reducing administrative and overhead costs, contracting with other government agencies for personnel and payroll processing functions, reinventing work processes and investing in automation.

FLRA Staff

Given the FLRA's statutory roles as investigator, prosecutor, adjudicator, impasse resolver and policy maker, its employees have always been its most important resource. Over the past 20 years, FLRA employees have investigated cases, held elections and conducted hearings throughout the world. They have persevered through a long period when the Authority had no quorum and others when, because no General Counsel had been appointed, that office had no authority to issue complaints. Employees have been relocated and offices have been eliminated or restructured. Yet, a skilled and loyal work force has remained and flourished as the FLRA has evolved to carry out its leadership role in the Federal labor-management relations community.

In January 1979, approximately 100 employees — labor relations specialists, attorneys, administrative law judges, and support staff — transferred to the new agency from the now-defunct Federal Labor Relations Council and from the program that had been administered by the Assistant Secretary of Labor for Labor-Management Relations. In addition, the Panel Members and staff transferred virtually intact to the new entity. The unification and transfer initially took place on paper, as the Washington, D.C. employees remained scattered in three locations. In October 1981, the first unified FLRA headquarters was established at 500 C Street, S.W. Since 1993, the FLRA headquarters has been located at 607 14th Street, N.W.

During the first year, some 100 additional employees were hired, many of whom were attorneys who would handle the added litigation functions. By fiscal year 1981, the FLRA had a staffing level of 336. It was never to be that large again. One year later, the FLRA suffered a 16 percent budget reduction and instituted a major reduction-in-force to meet those financial constraints. By the end of fiscal year 1983, the number of employees had dropped to 278. Staffing levels steadily declined after that year. At the end of fiscal year 1998, there were 216 employees in the entire FLRA, only a few more than worked in the Office of the General Counsel alone in 1981. Although the FLRA's caseload has also declined in recent years, the number of cases per employee today has increased by nearly 60% since 1980.



After 20 years, the demographics of the FLRA staff are similar to the rest of the Federal government. Staff consists of a mix of new and experienced employees — including 37 of the original individuals who transferred to the new agency in January 1979. In recent years, the agency has experienced turnover in both the headquarters and regional offices and has hired many new employees including recent law school graduates. It is this mix of experience and new ideas that continues to be the source of the FLRA's strength.

Some disparate memories from two decades:

- ❖ Deployment of staff in 1981 to conduct an election among approximately 8500 employees of the Panama Canal Commission;
- ❖ “Name and home address” cases that inundated Regional Offices, ALJs and Authority staffs in the mid-1980's until the issue was finally resolved by the Supreme Court;
- ❖ File cabinets full of partially prepared decisions awaiting the two Authority Members confirmed by the Senate in late 1989 after more than a year without a quorum;

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- ❖ The move of the FLRA headquarters offices to 607 14th Street in March 1993 during what was then deemed “the snowstorm of the century;” and
 - ❖ Eight months of Panel work in 1997 on a 116-page decision on 56 issues arising from a RIF that was rescinded shortly after the decision issued within one month after the close of the arbitration hearing.

Employee Programs

Understanding that leadership in Federal labor-management relations had to start in its own workplace, the FLRA from the beginning explored ways to improve relationships with its own employees. In 1980, after obtaining an opinion from the Department of Justice that it would be lawful to do so, the Agency recognized the Union of Authority Employees (UAE) — an independent, non-affiliated organization — as the bargaining representative of its employees. Although the FLRA is excluded from coverage under the Statute, it has voluntarily negotiated contracts and agreements with the UAE and has agreed to arbitration over a number of matters. Since 1995, the FLRA and UAE have worked together on the FLRA Partnership Council, which has made important contributions to the FLRA through initiatives that established such employee programs as alternative work schedules, new performance management and awards systems, and the establishment of core competencies. In addition, the FLRA and UAE have worked together in a collaborative manner to address a number of matters related to the FLRA operations including strategic planning, budget contingencies and reinvention work groups.

Policies have been designed to meet employees’ needs. Throughout the FLRA, employees have been able to choose flexible work schedules, and a leave-sharing policy has assisted a number of employees with serious health problems. Developmental training programs are offered at all levels, including training in mediation and facilitation skills. As part of this training emphasis, the FLRA recently implemented a leadership development program to provide non-supervisory employees with leadership and management skills.

Finally, despite its relatively small budget, the FLRA historically has moved to bring technological advances to its employees. In 1986, the agency components began automating their work processes, including developing a data base management system. The FLRA also dedicated resources to creating comprehensive internal research and citator tools. As a result, the FLRA now maintains a state-of-the-art computer network* that provides word and data processing, case tracking, electronic mail and research capability to all FLRA employees.

All employees in headquarters and regional offices are linked by computers, thus improving efficient internal communications and enabling employees to electronically access Authority decisions and other research data bases.

“The Federal Labor Relations Authority [aims to fulfill] its mission by enforcing and clarifying the law through sound, timely decisions and policies; using fast, simple processes to conduct its business; providing high quality training and education programs and furnishing effective intervention services; and administering its resources to ensure that services are responsive to the unique needs of its customers.” (FLRA Strategic Plan)

In 1995, the independent components of the FLRA met together for the first time to adopt a unified mission statement and begin to develop a 5-year strategic plan. This initiative was undertaken because such planning was seen as central to an effective organization, and in anticipation of the September 30, 1997 effective date of the Government Performance and Results Act, which requires all agencies to develop multi-year strategic plans. The FLRA’s initial plan was refined in 1996, and organizational performance goals and measures are set on an annual basis. These, in turn, are translated into individual goals that serve as the foundation for FLRA’s performance management plan. The FLRA Strategic Plan has been cited by the Office of Management and Budget as a model for other small agencies, and was commended by the Senate Committee Report accompanying the FY 1998 Treasury, General Government and Postal Appropriations Bill. The link to performance management was endorsed as a “best practice” by the Association of Government Accountants in 1999.

As the FLRA looks back over its first 20 years and forward into the next century, it is guided by the four goals set forth in its strategic plan: (1) to consistently provide high quality services that timely resolve disputes in the Federal labor-management relations community; (2) to effectively use and promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict in the Federal labor-management relations community; (3) to maintain FLRA internal systems and processes to support a continually improving, highly effective and efficient organization with the flexibility to meet program needs; and (4) to develop FLRA human resources to ensure a continually improving, highly effective and efficient organization with the flexibility to meet program needs.

More specifically, program plans for the FLRA's 21st year place an emphasis on increased productivity, improved timeliness and reduced backlog. In addition, initiatives anticipated include reviewing the process for resolving exceptions to arbitration awards, and a continued focus on mainstreaming collaborative dispute resolution.

The centerpiece of this blueprint is resolving disputes and improving relationships in the Federal labor-management relations community — achieving the "... stable, constructive labor-management relations that contribute to a more effective Government" that is the guiding mission of the FLRA.

The FLRA has evolved since it opened its doors on January 1, 1979. However, it has always aimed to chart a course that is true to the purposes stated by Congress when it enacted the Statute. The same deliberate attention applied to meeting the challenges in its first 20 years will stand the FLRA in good stead to meet the challenges of the future.

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APPENDIX A

FEDERAL LABOR RELATIONS AUTHORITY

AUTHORITY 1979-1999

The Authority is composed of three Members who are appointed for 5-year terms by the President with the advice and consent of the Senate. One Member is appointed by the President to serve as the Chair of the Authority and Chief Executive and Administrative Officer of the FLRA.

CHAIRS

Ronald W. Haughton	1979-1983
Barbara J. Mahone	1983-1984
Henry B. Frazier, III ^{1/}	1984-1985
Jerry L. Calhoun	1985-1988
Jean McKee	1989-1994
Phyllis N. Segal	1994-Present

MEMBERS OF THE AUTHORITY

Henry B. Frazier, III	1979-1987	Ronald W. Haughton	1979-1984
Tony Armendariz	1989-1997	Jerry L. Calhoun	1985-1988
Dale Cabaniss	1997-Present	Pamela Talkin	1989-1995
		Donald S. Wasserman	1996-Present

Leon B. Applewhaite	1979-1983
Barbara J. Mahone	1983-1984
William J. McGinnis, Jr.	1984-1985
Jean McKee	1986-1994
Phyllis N. Segal	1994-Present

^{1/} Acting Chairman

APPENDIX B

FEDERAL LABOR RELATIONS AUTHORITY OFFICE OF THE GENERAL COUNSEL 1979-1999

The FLRA General Counsel is appointed to a 5-year term by the President with the advice and consent of the Senate.

GENERAL COUNSELS

H. Stephen Gordon	1979-1982
S. Jesse Reuben ^{1/}	1982-1983
John C. Miller	1983-1987
Dennis M. Devaney	1987-1988
Kathleen Day Koch	1988-1992
Alan R. Swendiman	1992-1993
Joseph Swerdzewski	1993-Present

^{1/} Acting General Counsel

APPENDIX C

FEDERAL SERVICE IMPASSES PANEL 1970-1999

The Federal Service Impasses Panel (FSIP) is composed of seven part-time Members who are appointed by the President to serve for 5-year terms. One Member is appointed by the President to serve as Chair of the Federal Service Impasses Panel.

CHAIRS

Jacob Seidenberg	1970-1975
Robert G. Howlett	1976-1978
Howard Gamser	1979-1981
Robert G. Howlett	1982-1983
Roy M. Brewer	1984-1991
Edwin D. Brubeck	1991-1994
Betty A. Bolden	1994-Present

MEMBERS

John J. McGovern	1970-1972	Daniel H. Kruger	1982-1994
Jacob Seidenberg	1970-1975	Robert G. Howlett	1983-1990
James Vadakin	1970-1978	Thomas Farr	1983-1990
Lloyd Bailer	1970-1978	Susan Robfogel	1983-1994
Richard Epstein	1970-1978	Roy M. Brewer	1983-1994
Arthur Stark	1970-1982	John Van De Water	1988-1994
Jean McKelvey	1970-1990	Edwin D. Brubeck	1990-1994
Albert McDermott	1972-1978	Charles A. Kothe	1990-1994
Robert G. Howlett	1976-1978	Dolly M. Gee	1994-1999
Irving Bernstein	1978-1980	Betty A. Bolden	1994-Present
James E. Jones	1978-1982	Edward F. Hartfield	1994-Present
Charles J. Morris	1978-1983	Stanley M. Fisher	1994-Present
Beverly Schaffer	1978-1983	Gilbert Carrillo	1995-1999
Howard Gamser	1979-1981	Bonnie P. Castrey	1995-Present
Donald F. Rodgers	1982-1983	Mary E. Jacksteit	1995-Present
N. Victor Goodman	1982-1994		

APPENDIX D

FOREIGN SERVICE LABOR RELATIONS BOARD 1981-1999

The Foreign Service Labor Relations Board is composed of three Members who are appointed by the Chair of the Authority, who also serves as Chair of the Foreign Service Labor Relations Board. The General Counsel of the Federal Labor Relations Authority serves as General Counsel of the Foreign Service Labor Relations Board.

CHAIRS

Ronald W. Haughton	1981-1983
Barbara J. Mahone	1983-1984
Henry B. Frazier, III ^{1/}	1984-1985
Jerry L. Calhoun	1985-1988
Jean McKee	1989-1994
Phyllis N. Segal	1994-Present

GENERAL COUNSELS

H. Stephen Gordon	1981-1982
S. Jesse Reuben ^{2/}	1982-1983
John C. Miller	1983-1987
Dennis M. Devaney	1987-1988
Kathleen Day Koch	1988-1992
Alan R. Swendiman	1992-1993
Joseph Swerdzewski	1993-Present

MEMBERS

Arnold M. Zack	1981-1984
Arnold Ordman	1981-1986
Marcia L. Greenbaum	1986-1992
Tia Schneider Denenberg	1986-Present
Ira L. Jaffe	1992-1995
Richard I. Bloch	1998-Present

^{1/} Acting Chairman

^{2/} Acting General Counsel

APPENDIX E

FOREIGN SERVICE IMPASSE DISPUTES PANEL 1982-1999

The Foreign Service Impasse Disputes Panel is composed of five part-time Members who are appointed by the Chair of the Foreign Service Labor Relations Board (the FLRA Chair). One Member is appointed by the FLRA Chair to serve as Chair of the Foreign Service Impasse Disputes Panel.

CHAIRS

Margery Gootnick, Chair	1982-1997
Thomas Colosi, Chair	1997-Present

MEMBERS

Robert G. Howlett	1982-1988	Eleanore Raven-Hamilton	1992-1993
Francis J. McNeil	1982-1988	Ralph H. Ruedy	1992-1995
Rodney W. Johnson	1982-1988	Robert S. Deutsch	1993-1996
Julius Balog, Jr.	1982-1992	Betty Bolden	1994-Present
Anthony M. Kern	1988-1991	J. Douglas Marchant	1995-1996
Diane Blane	1990-1992	Dorothy Young	1996-Present
N. Victor Goodman	1990-1992	George Lannon	1996-1998
William G. Robinson	1991-1995	David W. Geiss	1997-Present
Edwin D. Brubeck	1992-1994	Allen L. Keiswetter	1999-Present

APPENDIX F

CITATIONS TO DECISIONS

Supreme Court

Bureau of Alcohol, Tobacco and Firearms v. FLRA, 464 U.S. 89 (1983)
Dep't of Defense v. FLRA, 510 U.S. 487 (1994)
Dep't of the Treasury, Internal Revenue Service v. FLRA, 494 U.S. 922 (1990)
FLRA v. Aberdeen Proving Ground, Dep't of Army, 485 U.S. 409 (1988)
Fort Stewart Schools v. FLRA, 495 U.S. 641 (1990)
NFFE v. Dep't of Interior, 119 S.Ct 1003 (1999)

Courts of Appeals

AFGE, Local 2782 v. FLRA, 702 F.2d 1183 (D.C. Cir. 1983)
Council of Prison Locals v. Brewer, 735 F.2d 1497 (D.C. Cir. 1984)
Dep't of the Army v. FLRA, 56 F.3d 273 (D.C. Cir. 1995)
Dep't of HHS, Social Security Admin. v. FLRA, 976 F.2d 1409 (D.C. Cir. 1992)
Dep't of Interior, Minerals Management Service v. FLRA, 969 F.2d 1158 (D.C. Cir. 1992)
Dep't of Treasury, Office of Chief Counsel, IRS v. FLRA, 960 F.2d 1068 (D.C. Cir. 1992)
FLRA v. AFGE, Local 987, 15 F.3d 1097 (11th Cir. 1994)
FLRA v. Dep't of Air Force, Oklahoma City, 735 F.2d 1513 (D.C. Cir. 1984)
FLRA v. Federal Deposit Insurance Corp., # 91-1207 (D.C. Cir. Oct. 9, 1991)
Granite State Chapter, ACT v. FLRA, 1999 WL 173554 (1st Cir. Apr. 1, 1999)
NLRB v. FLRA, 952 F.2d 523 (D.C. Cir. 1992)
NTEU v. FLRA, 910 F.2d 964 (D.C. Cir. 1990) (en banc)
Turgeon v. FLRA, 677 F.2d 937 (D.C. Cir. 1982)

Authority

AFGE, Local 2343, 52 FLRA 1195 (1997), *enfd.* 144 F.3d 85 (D.C. Cir. 1998)
AFGE, Local 2327 and Dep't of HHS, Social Security Administration, 5 FLRA 189 (1981)
Dep't of Air Force, Air Force Systems Command, 14 FLRA 390 (1984)
Dep't of Air Force, Scott AFB, 51 FLRA 675 (1995), *enfd.* 104 F.3d 1396 (D.C. Cir. 1997)
Dep't of Justice, Bureau of Prisons, Safford, Arizona, 35 FLRA 431 (1990)
Dep't of Treasury, Bureau of Engraving and Printing, 53 FLRA 136 (1997)
Division of Military and Naval Affairs, New York National Guard, 53 FLRA 111 (1997)
Federal Bureau of Prisons, Office of Internal Affairs, 54 FLRA 1502 (1998)
Federal Correctional Institution, 8 FLRA 604 (1982)
F.E. Warren Air Force Base, Cheyenne, Wyoming, 52 FLRA 149 (1996)
INS, 51 FLRA 1467 (1996); 52 FLRA 1323 (1997) *enfd.* 144 F.3d 90 (D.C. Cir. 1998)
IRS, Washington, D.C. and IRS, Kansas City Service Center, 50 FLRA 661 (1995)
Interpretation and Guidance, 2 FLRA 274 (1979)
NAGE, Local R14-87 and Kansas Army National Guard, 21 FLRA 24 (1986)
Office of Adjutant General, New Hampshire National Guard, 54 FLRA 301 (1998)
Sacramento Army Depot, Sacramento, California, 49 FLRA 1681 (1994)