



Evaluation of the Federal Labor Relations Authority Compliance with the Fair Act

Background:

The Fair Act requires all Federal agencies to annually issue an inventory of all commercial activities (not inherently governmental) to the Office of Management and Budget (OMB) for an initial review and consultation. Upon the completion of the review, Federal agencies are required to provide a copy of the inventory to Congress and make it available to the public. The Fair Act also created an administrative appeals process which may be used to challenge the inventory.

FLRA Mission:

The FLRA mission is to administer a labor management relations program for Federal agencies unions representing Federal employees. There are a few statutory exceptions such as the U.S. Postal Service and intelligence agencies. The FLRA is a quasi-judicial agency with a staffing level of 215 full time equivalents. Approximately 75% of the FLRA's employees are attorneys, labor relations specialists and legal technician who perform inherently government work which directly supports the FLRA mission. Over the last years, the FLRA has contracted out computer information system programming, help desk functions, management consultations, survey administrations, and court reporting. The FLRA has also contracted with other Federal agencies for travel voucher processing, payroll and personnel processing. Approximately 3% of the FLRA budget is committed to service contract support.

Methodology:

The FLRA Inspector General conducted an evaluation of the FLRA's compliance with the Fair Act by reviewing the requirements of the Act, reviewing FLRA Fair Act Submissions for FY 2000, 2001, and a draft for 2002, and having discussions with the Assistant to the Executive Director and the Executive Director who are responsible for the commercial activities program and Fair Act submissions. This evaluation was performed in May, 2002.

FLRA Inspector General Findings:

The FLRA's first submission of the Fair Act Inventory was in FY 2000. All levels of management were involved in defining inherently government and commercial positions.

Although not exempt, the FLRA has not complied with A-76 over the past years based on the rationale that the FLRA workforce is made up almost exclusively of employees whose duties were integral to the agency mission. However, FLRA management stated that "the agency believes it has always been in compliance with the 'spirit' of A-76."

FY 2000 Fair Act Inventory of commercial activities was incorrect and listed several positions/activities which were inherently governmental because of their direct involvement with the FLRA mission. These positions/activities included legal/paralegal technicians, office managers, secretaries, management's and program analysts. While most of these were eliminated from the FY 2001 submission, but the FY 2001 submission contained personnel support positions which were not listed in the FY 2000 plan.

The FY 2001 Fair Act submission identified 14 positions (6% of total number of employees) as non inherently governmental positions. These positions have not been considered for conversion.

The FLRA has not performed any cost analysis on positions/activities designated as commercial activities nor sought to contract these positions/activities out.

The FLRA has not created a competitive plan or any internal policy for the conversion of commercial activities/ positions. Nor has it justified in its Annual Report submission why it was retaining these commercial activities. Some activities, such as management consultations were contracted out not using a competitive process.

FLRA activities which were contracted out to other Federal Agencies (travel voucher processing, payroll processing) were also done without a cost analysis. The FLRA has not competed support services with other agencies with the private sector.

OMB has had telephone contact with the FLRA regarding its Fair Act compliance and submissions and has not raised any issues about the FLRA's previous submissions.

The FLRA has placed its annual Fair Act Inventory on the FLRA website. The documents have also been placed in the Federal Register (by OMB after its review). The FLRA has not received any challenges on its submissions.

Conclusion:

As a result of this evaluation, the FLRA Inspector General will recommend via a management letter that the FLRA comply with the Fair Act and Presidential Management Standards by:

Creating FLRA internal policy (to include a competition plan) for contracting out commercial activities.

Annually seeking management input to validate inherently governmental and commercial activities.

Performing cost analysis on positions identified in the FY 2002 and future Fair Act submissions

Competing commercial activities with private sector as well as Federal agencies before contracting directly with Federal agencies.

Including justifications for retaining defined commercial activities in FLRA Annual Reports.

Assigning future responsibility for competitive outsourcing, including Fair Act compliance and report submission to the FLRA Contracting Officer who also reports to the Executive Director

Conclusion:

The FLRA' current competitive sourcing and commercial activities methodology does not support the Agency's compliance with the Fair Act. In order to facilitate compliance, the FLRA must either address the specific requirements of the Act or request a waiver from OMB based on the smallness and quasi-judicial nature of the Agency.