

# EXAMINING FEDERAL LABOR-MANAGEMENT RELATIONS

---

---

## HEARING

BEFORE THE  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
OF THE  
COMMITTEE ON OVERSIGHT  
AND REFORM

HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

JUNE 4, 2019

**Serial No. 116-33**

Printed for the use of the Committee on Oversight and Reform



Available on: <http://www.govinfo.gov>  
<http://www.house.oversight.gov>  
<http://www.docs.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

36-830 PDF

WASHINGTON : 2019

COMMITTEE ON OVERSIGHT AND REFORM

ELIJAH E. CUMMINGS, Maryland, *Chairman*

CAROLYN B. MALONEY, New York	JIM JORDAN, Ohio, <i>Ranking Minority Member</i>
ELEANOR HOLMES NORTON, District of Columbia	JUSTIN AMASH, Michigan
WM. LACY CLAY, Missouri	PAUL A. GOSAR, Arizona
STEPHEN F. LYNCH, Massachusetts	VIRGINIA FOXX, North Carolina
JIM COOPER, Tennessee	THOMAS MASSIE, Kentucky
GERALD E. CONNOLLY, Virginia	MARK MEADOWS, North Carolina
RAJA KRISHNAMOORTHY, Illinois	JODY B. HICE, Georgia
JAMIE RASKIN, Maryland	GLENN GROTHMAN, Wisconsin
HARLEY ROUDA, California	JAMES COMER, Kentucky
KATIE HILL, California	MICHAEL CLOUD, Texas
DEBBIE WASSERMAN SCHULTZ, Florida	BOB GIBBS, Ohio
JOHN P. SARBANES, Maryland	RALPH NORMAN, South Carolina
PETER WELCH, Vermont	CLAY HIGGINS, Louisiana
JACKIE SPEIER, California	CHIP ROY, Texas
ROBIN L. KELLY, Illinois	CAROL D. MILLER, West Virginia
MARK DESAULNIER, California	MARK E. GREEN, Tennessee
BRENDA L. LAWRENCE, Michigan	KELLY ARMSTRONG, North Dakota
STACEY E. PLASKETT, Virgin Islands	W. GREGORY STEUBE, Florida
RO KHANNA, California	
JIMMY GOMEZ, California	
ALEXANDRIA OCASIO-CORTEZ, New York	
AYANNA PRESSLEY, Massachusetts	
RASHIDA TLAIB, Michigan	

DAVID RAPALLO, *Staff Director*

WENDY GINSBERG, *Subcommittee Staff Director*

ELISA LANIER, *Chief Clerk and Director of Operations*

JOSHUA ZUCKER, *Assistant Clerk*

CHRISTOPHER HIXON, *Minority Staff Director*

CONTACT NUMBER: 202-225-5051

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

Gerald E. Connolly, Virginia, *Chairman*

Eleanor Holmes Norton, District of Columbia,	Mark Meadows, North Carolina, <i>Ranking Minority Member</i>
JOHN SARBANES, Maryland	THOMAS MASSIE, Kentucky
JACKIE SPEIER, California	JODY HICE, Georgia
BRENDA LAWRENCE, Michigan	GLENN GROTHMAN, Wisconsin
STACEY PLASKETT, Virgin Islands	JAMES COMER, Kentucky
RO KHANNA, California	RALPH NORMAN, South Carolina
STEPHEN LYNCH, Massachusetts	W. STEUBE, Florida
JAMIE RASKIN, Maryland	

# C O N T E N T S

---

Hearing held on June 4, 2019 .....	Page 1
WITNESSES	
The Honorable Colleen Duffy Kiko, Chairman, Federal Labor Relations Authority Oral statement .....	4
<i>Written opening statement and statement for the witness are available on the U.S. House of Representatives Document Repository at: <a href="https://docs.house.gov">https://docs.house.gov</a>.</i>	

## INDEX OF DOCUMENTS

---

*The documents entered into the record for this hearing are listed below/ available at: <https://docs.house.gov>.*

- \* Letter from Members of Congress to the House Appropriations Committee; submitted by Rep. Lynch.
- \* Letter from Members of the Senate to Colleen Duffy Kiko, chairman, Federal Labor Relations Authority; submitted by Rep. Lynch.
- \* Letter from the National Air Traffic Controllers Association; submitted by Rep. Lynch.
- \* Letter from the AFL-CIO and about 30 affiliated unions; submitted by Rep. Lynch.
- \* QFR: from Rep. Raskin.
- \* QFR: from Del. Norton.
- \* QFR: from Chairman Connolly.
- \* QFR: response from Chairman Colleen Kiko, Federal Labor Relations Authority.



## EXAMINING FEDERAL LABOR-MANAGEMENT RELATIONS

Tuesday, June 4, 2019

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
COMMITTEE ON OVERSIGHT AND REFORM  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:48 p.m., in room 2154, Rayburn House Office Building, Hon. Gerald E. Connolly (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Norton, Sarbanes, Khanna, Lynch, Raskin, Meadows, Grothman, Comer, and Jordan.

Mr. CONNOLLY. The subcommittee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

The Subcommittee on Government Operations is convening today to hold this hearing, "Examining Federal Labor-Management Relations."

And I apologize on behalf of the U.S. House of Representatives, Chairman Kiko. We had votes called around 1:45 and they just got over. So we came back as fast as we could, and we are sorry to keep you waiting.

I now recognize myself for five minutes to give an opening statement.

More than two million Federal employees work on behalf of the American people. They care for veterans, enforce the law, ensure the safety and quality of our food and drinking water, conduct scientific research, and repair our warfighting equipment, among many other important tasks on behalf of the American people.

They are also represented in many cases by unions because Congress—Congress—determined by law that giving Federal workers the right to join unions and bargain collectively over their conditions of employment was "in the public interest."

In fact, that law states, and I quote: "The statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interests, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment."

Congress created the Federal Labor Relations Authority to administer, interpret, and enforce the system of labor management relations. The FLRA is part judicial, with a three-member authority; part enforcement agency, with its Office of General Counsel;

and part arbitrator, with its Federal Service Impasse Panel. Under the law, the FLRA “shall provide leadership in establishing policies and guidance” relating to the system of labor management relations that Congress established in law.

Today, this subcommittee, the Subcommittee on Government Operations, will examine the Trump administration’s leadership of this small but very powerful and influential agency and the consequences of the practices and operations on our system of labor management relations.

The Trump administration has made no attempt to disguise its hostility toward collective bargaining, unions, and Federal service labor laws. But one year ago President Trump issued three sweeping executive orders that stripped employees, including whistleblowers, of union representation at grievance proceedings, physically expelled unions from Federal offices, and imposed dramatic cuts to the ability of Federal employees to represent their coworkers on work time, known as official time.

A Federal judge struck down key provisions of those executive orders, finding that they were, quote, “an improper exercise of the President’s statutory authority,” and illegally—illegally—conflicted with the rights, duties, and procedures that Congress had established in law decades earlier.

The judge also wrote that: Many of the challenged provisions of the orders at issue here effectively reduce the scope of the right to bargain collectively as Congress has crafted it, or it impairs the ability of agency officials to bargain in good faith as Congress, in law, has directed.

Much like the President who appointed this Chairman, the FLRA Chairman has exhibited unprecedented anti-union bias. Chairman Kiko decertified the Federal employee union that has represented employees at the FLRA since 1980. No previous Chairman in the history of the FLRA, under any administration of either political party, has ever done that, or presumed to do it.

This single act reveals, I think, a personal and disqualifying anti-union bias. The explanation for this blatantly anti-union decision is at odds with the Department of Justice’s Office of Legal Counsel guidance, which characterized the position taken as unreasonable.

As a judge, Chairman Kiko and the other Republican Authority members have disregarded longstanding Supreme Court precedents and, in my view, violated the FLRA’s own regulations to rule against the unions.

Persistent vacancies in the top position in the FLRA’s Office of General Counsel have also allowed a backlog of more than 200 documented violations of Federal labor law to go unaddressed or unresolved.

As a manager, Chairman Kiko has earned a failing grade from the employees of the Authority itself. According to the Partnership for Public Service’s analysis of OPM’s Federal Employee Viewpoint Survey, employee engagement during Chairman Kiko’s tenure fell 31 points in one year, from 2017 to 2018, a drop more precipitous than any other agency measured and of any small agency.

I also have serious concerns about the reliability of representations made to Congress. In a March 2018 letter, Chairman Kiko told Congress that her reorganization of the regional offices of the

FLRA, which closed offices in Boston and Dallas, would increase the number of agents and have almost no net impact on staffing. In fact, those decisions led to a 21 percent cut in staff and placed unreasonable burdens on remaining employees.

Chairman Kiko's statutory interpretation is, as the Office of Legal Counsel said, unreasonable. It contradicts and disregards longstanding precedent.

The anti-union bias seems to be present, if not extreme. The agency she leads has not prosecuted a single violation since 2017. And her mismanagement has demoralized and dismantled the capacity of the principal enforcement agency of Federal service law.

Forty years ago, Congress codified collective bargaining rights and labor management practices as a critical component of civil service reform to foster an effective, merit-based Federal work force. Congress, and in particular this committee and subcommittee, will continue to value and protect those rights.

I look toward to this hearing as an opportunity to put the administration and the FLRA Chairman on notice.

With that, I yield to the distinguished ranking member, my friend from North Carolina, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

At the outset, obviously, Chairman Kiko, I'd like to welcome you and thank you for appearing here today.

As you well know, this committee is charged with rooting out waste, fraud, and abuse in our Federal Government, and usually when someone comes before this committee it's because they have done something wrong.

I have a good friend in the chairman, and so I would disagree with some of his opening statement, and I do that respectfully, and I think he knows that. And, yet, at the same time, you've laid out in your opening testimony some of the examples of how an agency can be highly effective and how it should be highly effective in the changing times of technology, and for that I applaud you.

Everyday Americans would be forgiven for not knowing exactly what the FLRA is or does, but that doesn't mean that the Authority's mission is not vitally critical. So I just want to say thank you for your service.

Now, through its three components the FLRA adjudicates, investigates, prosecutes, and resolves disputes between Federal agencies' management and their employees and unions, and this helps us make sure that the Federal work force runs smoothly and serves our constituents back home.

Obviously, since the year 2000, the FLRA has seen its number of unfair labor practices fall by more than 40 percent. And yet, as we have seen this number, the cases, also since 2000, FLRA has seen its number of representation cases fall by more than 50 percent.

And so as we look at this, faced with this decline, it's only reasonable that you would look to consolidate and reorganize. That decision, Congress would hope that you would look at agency heads when faced with something that is difficult and challenging. From your testimony, it appears that you have done that. Obviously, we had a phone call yesterday where we talked about some of those initiatives.

And, listen, this is all about being effective and efficient. And the full chairman, of the full committee, uses those two words consistently. And so as we look at that with information technology and how the committee works, we need to encourage those realignments.

And so I want to just say that, as you made a decision recently with respect to its quasi-union representation, I think you ought to be applauded for that. Applying and complying with the law is certainly an obligation that all agency heads and personnel should abide by, and I just want to say thank you for that.

Simply put, if the agency is tasked with calling balls and strikes in the Federal labor disputes, it's a member of one of the teams before them that can't give rise to the appearance of a conflict of interest. So in our conversations, hopefully we can have that illuminated a little bit more today as you provide your testimony.

You've shared with me personally, and I have no reason to believe that there is any personal motivations in any of this other than trying to indeed apply the law and apply it fairly for an efficient and effective work force.

So with that, I look forward to hearing, and I yield back to the chairman.

Mr. CONNOLLY. I thank my friend from North Carolina, the distinguished ranking member.

We have before us today our witness for today's hearing, the Honorable Colleen Duffy Kiko, Chairman of the Federal Labor Relations Authority.

Chairman Kiko, if you wouldn't mind rising and raising your right hand to be sworn in, which is our practice in this committee.

Do you swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. KIKO. I do.

Mr. CONNOLLY. Let the record show the witness answered in the affirmative.

Thank you.

The microphones are sensitive, so if you would speak directly into them, which I think you already got.

Also, without objection, your written statement will be made part of the formal record of this hearing.

With that, you're now recognized for five minutes for an oral summary of your statement.

Welcome, Chairman Kiko.

**STATEMENT OF THE HONORABLE COLLEEN DUFFY KIKO,  
CHAIRMAN, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. KIKO. Chairman Connolly, Ranking Member Meadows, and members of the subcommittee, I would like to thank you for holding this hearing to allow me the opportunity to highlight the good work being done at the Federal Labor Relations Authority.

As a Federal employee for more than 30 years, I'm thankful to the men and women who have chosen to dedicate their lives to public service. I would like to again express my appreciation to the FLRA staff for all the great work they do each day.



My first role model of a Federal employee was my father, Lawrence Duffy, who proudly spent over 49 years in Federal service as a railway mail carrier for the U.S. Postal Service and as an inspector for the U.S. Customs Service. His work ethic, the great pride he took in his job, and impeccable character were examples for me.

My career with the Federal Government began after I moved here from North Dakota in 1972, and I soon found myself at the FLRA when it was created in 1979. Since then, I have worked in almost every component of the agency, and from 2005 through 2008, I had the privilege of serving as its general counsel.

I mention this history to you to try to convey the respect and pride I have for the agency, its mission, and the men and women who work there.

As you know, a key function of our agency is issuing quality legal decisions or work product in a timely manner. One of our goals in this area is to ensure that the case law is as clear as possible and consistent with the plain wording of the statute.

One of my highest priorities has been the development of our staff-driven Strategic Plan. The plan is being implemented through a number of employee-led teams. I'm excited about seeing and implementing the recommendations of these teams at the agency, and would be happy to discuss them in more detail during the course of the hearing.

Examples of these initiatives include aligning performance standards with our strategic goals, improving our quality, productivity, and timeliness, customer outreach, expanding the use of electronic filing for our parties, providing useful tools for our customers, and ensuring our employees have the best technology and training they need to do their jobs.

While I take pride in the quality of our legal work products and the productivity of our staff in carrying out our mission, I've had to make some difficult management decisions during my first 18 months as Chairman. One of the most difficult decisions was to close the Boston and Dallas regional offices.

As a formal general counsel, I know firsthand what the work of the agency's regional offices entails, as well as how to work has changed over the four decades. And although assessments to further consolidate began before I became the Chairman, I approved the consolidation after carefully reviewing the plan and the underlying data. I was convinced that consolidation would enhance our ability to carry out our mission in a more cost-effective and efficient manner.

For example, in 2017 our annual intake of cases had drastically declined. In the face of the data, it was hard to justify maintaining regional offices in seven cities when the agency's work could be carried out just as efficiently in fewer locations. In addition, technological advancements changed the way we do work. As such, there is much less of a need for our agents to conduct onsite investigations.

Finally, I want to emphasize that the consolidation was accomplished without a reduction in force. At the end of the day, the decision to close these two offices was a decision to cut buildings, not people.

The other difficult decision I made that was not popular with many employees was my decision last December to no longer recognize the employee organization at the FLRA, the Union of Authority Employees, or the UAE.

The decision was based on the fact that Congress excluded the FLRA from the reach of the statute, explicitly carving it out of the list of agencies that enjoy the benefits of collective bargaining under the statute.

Despite this fact, the agency and the UAE had executed a collective bargaining agreement before my tenure. We followed in good faith the terms of the agreement and continued to honor its terms until its expiration in December 2018.

As Chairman, I'm not comfortable perpetuating a program that I believed was at odds with the letter and spirit of the law that created our agency and that we are tasked with administering. I consider the impartiality and neutrality of the agency to be of paramount importance, and I believe the statutory exclusion enhances the agency's position of neutrality because we do not participate in the labor-management-relations system we administer.

However, I firmly believe that all of our employees have valuable, innovative ideas on how to accomplish the FLRA's mission, and I look forward, through our teams, to find new and innovative ways to engage with our employees. I'm confident that we can work collaboratively to create solutions that reflect the unique perspectives of our staff.

I would like to thank this committee and subcommittee for your support of our agency and our mission throughout the years, and I look forward to working with you in the future. I would be pleased to answer any questions you may have.

Mr. CONNOLLY. Thank you so much. Right on time.

If I may begin with the last point you made. You cite as legal underpinning, statutory underpinning for your decision to de-recognize, if you want to put it that way, the union at FLRA, the fact that your agency is exempted from the Federal Labor Relations Act. Is that correct?

Ms. KIKO. That is correct.

Mr. CONNOLLY. You need to make sure that is on.

Are there other agencies also exempted?

Ms. KIKO. Yes, there are.

Mr. CONNOLLY. Can you name them?

Ms. KIKO. I believe there are CIA—I have the statute with me, so I could read them if you'd like.

Mr. CONNOLLY. Well, let me give you one that is known to my friend, the ranking member, and myself: TVA.

Ms. KIKO. Yes.

Mr. CONNOLLY. It's exempted.

Ms. KIKO. Yes.

Mr. CONNOLLY. Do they have a union?

Ms. KIKO. Yes.

Mr. CONNOLLY. Why?

Ms. KIKO. Because they exempted themselves from the statute so they could have their own labor-management-relations system.

Mr. CONNOLLY. But the point is, there are many ways of interpreting, or at least there is more than one way of interpreting the law, correct?

Ms. KIKO. Most likely, yes.

Mr. CONNOLLY. Well, given the fact TVA did not make the decision you did on its face, there is a second way of looking at the law.

Ms. KIKO. Right.

Mr. CONNOLLY. You would concede.

Ms. KIKO. I would concede.

Mr. CONNOLLY. So why did you choose to interpret it this way instead of the way TVA did and not be subject to the concern that you're anti-union and that you all about vitiating collective bargaining?

Ms. KIKO. I believe that the statute was created to have one entity separate from the statute in order to maintain neutrality and manage the disputes between all of the other agencies in the Federal Government that are covered by the statute. There are several parts of the statute that specifically exempt us.

Mr. CONNOLLY. I understand that. But, Chairman Kiko, your argument would have some cogency if it were new, if we had just passed the statute and you were the first to have to interpret it. But we have precedents here. We have 40 years plus of precedent that would belie what you just asserted. None of your predecessors, Republican or Democrat, ever interpreted the law the way you have interpreted the law, nor did any of them take the action you took.

Are you, what, are you especially gifted in interpreting the law in a way that your predecessors were not? Or are you asserting they actually misunderstood and misinterpreted the law?

Ms. KIKO. Well, the first thing I did when I took this job was I raised my hand and I said that I would uphold the statute and the Constitution of—the Constitution and the statutes that I had to honor in front of me. When I did that, I read the statute and I realized that it's very clear that the FLRA is exempt from the collective bargaining process in the statute.

To have a collective bargaining office in the agency that I was handling, to me, felt as if it was completely inappropriate.

Mr. CONNOLLY. I understand. But my question is, I understand—

Ms. KIKO. And why—

Mr. CONNOLLY. That is your reasoning, but now you have to an account for the fact that none of your predecessors arrived at the same conclusion that you did.

Ms. KIKO. I can't speak for the people before me. I can only speak to myself and what I have to do when I'm wearing the Chairman's hat. I feel as if I have to follow the law that is written in front of me.

Mr. CONNOLLY. Well, Chairman Kiko, we write the laws around here.

Ms. KIKO. That's right.

Mr. CONNOLLY. And now you're in front of a committee—

Ms. KIKO. Yes.

Mr. CONNOLLY [continuing]. that has jurisdiction over this particular law and your agency. And, obviously, many of us pretty

strongly disagree with your interpretation. In fact, we argue it's unique, misguided, and certainly misinterprets the law.

Ms. KIKO. Uh-huh.

Mr. CONNOLLY. And we hearken back to a ruling by the Office of Legal Counsel that goes back to 1980, we hearken to the fact that there are judicial rulings already that have been issued with respect to executive orders that ultimately impinge on this subject and more maybe to come. And so I'm giving you the opportunity besides saying "I took an oath." So did I. I took the same oath you did.

Ms. KIKO. Right.

Mr. CONNOLLY. I interpret the law quite differently than you do. So I'm trying to give you the opportunity to explain, how did you arrive at this unique conclusion no one else arrived at?

Ms. KIKO. Well, I looked at the 1980 opinion of the Office of Legal Counsel, and I disagree with its reasoning. I believe that it is not appropriate. I don't follow the logic of where they said that even though the statute excluded the FLRA from the coverage of the statute, that they really believe that perhaps they didn't mean it. That they looked at another section in the statute to suggest that perhaps because of that part of the statute they meant that they didn't really mean to exclude the FLRA from the collective bargaining rules of the statute, but said that when you are going to—if you are going to have a labor relations system in your office, make sure you're not violating the statute.

Mr. CONNOLLY. Okay. Well—

Ms. KIKO. To me, that's just inconsistent.

Mr. CONNOLLY. Yes. Thank you. You've answered what I was trying to get at. You disagree with that legal opinion?

Ms. KIKO. I do.

Mr. CONNOLLY. And were you able to rely on a current legal opinion that was different than that one?

Ms. KIKO. No.

Mr. CONNOLLY. So this was something you came to?

Ms. KIKO. Yes.

Mr. CONNOLLY. As the head of the organization?

Ms. KIKO. Yes.

Mr. CONNOLLY. One more question, because my time is up.

Dallas and Boston, you arrived at the conclusion based on what, the workload, volume?

Ms. KIKO. The four factors that were considered in the reform plan were the number of cases that were intake, the number of cases that came in each of the regions, the number of employees in each of those regional offices, the locality of the regional office to see if it was close enough to another location to be geographically located, and then also the rent costs. Those were the four factors that were looked at in the reform plan to determine which regions to close.

Mr. CONNOLLY. Was there ever a discussion among the three judges—I believe it's the three that ultimately arrived at that conclusion. Is that correct?

Ms. KIKO. Yes.

Mr. CONNOLLY. Was there ever a discussion among the three of you to close all of your regional offices?

Ms. KIKO. No.

Mr. CONNOLLY. Never?

Ms. KIKO. Not—not with me, no.

Mr. CONNOLLY. Okay. That's your sworn answer?

Ms. KIKO. If I had any conversations with the current members on whether to close all of the regions?

Mr. CONNOLLY. Yes.

Ms. KIKO. No.

Mr. CONNOLLY. Okay.

You talked about the fact that this was an efficiency measure to close the Dallas and Boston offices.

Ms. KIKO. Say it again.

Mr. COLLINS. It was an efficiency measure to close those two offices?

Ms. KIKO. Yes.

Mr. CONNOLLY. You had other reasons, but—

Ms. KIKO. It was an efficiency reason to consolidate regional offices, not necessarily to pick those two out of the blue?

Mr. CONNOLLY. And the argument was it would free up staff to actually do more and better work. Is that correct?

Ms. KIKO. To close the regions was to free up staff to do different work?

Mr. CONNOLLY. Well, what happened to the staff in those two offices who had assignments and were working on cases?

Ms. KIKO. There were 16 employees in those two regional offices. Of the 16, seven stayed with the office, stayed with the Federal Labor Relations Authority, and 9 of them chose to go somewhere else, either they went to other Federal agencies in their location or they chose to retire or leave the government for other reasons.

Ms. KIKO. Okay. So that's the 21 percent cut in staff, what you just—

Ms. KIKO. Well, where are you getting the 21 percent cut in staff? I'm not following that.

Mr. CONNOLLY. Well, the argument was made that it would increase—it would have almost no net impact on staffing, and as a matter of fact, it did have an impact on staffing.

Ms. KIKO. We hoped it wouldn't, yes. We hoped all 16 of them would come with the agency.

Mr. CONNOLLY. And what about a backlog? Is there a backlog in cases for your agency?

Ms. KIKO. There's a backlog in the Office of General Counsel, if that's what you're referring to. We do not have a general counsel, as you are aware.

Whenever the regional office recommends a complaint be issued on a particular case, and you referenced that in your opening statement, that we do have about 200 cases that are pending a decision by the general counsel to issue a complaint on those issues, those matters. So that is a backlog, yes.

And there's also a backlog on cases that a regional director has dismissed and that is still pending an appeal before the general counsel. There's also a backlog in that area as well.

Mr. CONNOLLY. And a final point, if I may, and then I'll call on my good friend from North Carolina.

The Partnership for Public Service, looking at the Employee Viewpoint Survey, which it does routinely for Federal agencies, found that in your two-year tenure employee engagement fell 31 points as measured from 2017 to 2018, a very precipitous drop. Can you account for that?

Ms. KIKO. Well, I would like to say that I understand exactly why it is, but I'm not exactly sure. I can point to some factors that could have affected those numbers.

Most importantly, I believe, was I announced to the agency on February 2018 that I would be closing the two regional offices, and the survey itself was taken in May—in June 2018. And so I'm sure that that had an effect on the feelings of the agency.

The scores in the Federal Employee Viewpoint Survey are much lower in the Office of General Counsel than they were in the overall Authority. So I believe that could be a factor that could reflect those scores.

But I am doing everything in my power in my agency to look at those questions, to find out which ones were the challenges, and to find out ways to find out the source of that, and to see if we can turn it around. That's very important to me.

Mr. CONNOLLY. Thank you very much.

And my time is up. I call upon the distinguished ranking member.

Mr. MEADOWS. Thank you, Mr. Chairman.

Chairman Kiko, let me come back to that last point, because one of the areas that is very important to both the Chairman and I is really the opinions of our public servants. And that survey—actually I was unaware of that survey before I came to be a Member of Congress, and now I come to rely on it. Max, we have conversations regularly. And I was real concerned, as we started to change the perimeters of how that survey is done, that we might change the benchmark.

So here is my ask of you, I guess, on that. Employee engagement, employee satisfaction, there are a number of things that can affect that. Would you be willing to look on and provide to this committee in the next 60 days an action plan on how you can look at more employee engagement for the FLRA and commit to getting that action plan back to this committee?

Ms. KIKO. I'd be happy to, sir.

Mr. MEADOWS. And I think here's—listen, at that very table a few hours ago we had a number of officials that actually work for this administration that I don't know that they were exactly giving us the straight scoop when we were talking about facial recognition and some of the back and forth.

I do believe that you're being honest in your testimony. The one area that, obviously, the Chairman took pause on was about the closing of all the offices. So I would ask if you would get with your staff and make sure that, in the spirit of the question that he asked, that you get back to this committee within seven days.

Because I could tell that there was—well, I play poker occasionally, and I would not have wanted to go against him on that particular one. So, obviously, he has information that is contrary to your testimony here today. And so if in the next seven days either

you can confirm that testimony or, if you need to change it, get with the chairman on that.

Ms. KIKO. I would have to say that my answer was: not to my recollection. I would have to look back and see if there's ever been at a time. I don't have any recollection of that.

Mr. MEADOWS. Well, for us to properly evaluate this, if you'll get with your team and do that. And is it accurate, though, in the closing down of these two offices and your reorganization plan, it was never your desire to eliminate any employee, any Federal employee? Is that correct?

Ms. KIKO. That is correct.

Mr. MEADOWS. So in the reorganization, it was your hope that they could actually stay with your agency and continue to serve, although you probably knew that if you were closing an office, the chances of them going to another office would be sometimes difficult. Relocation is not something that some families want to do. Is that correct?

Ms. KIKO. That's correct.

Mr. MEADOWS. As you look at this statute, do you have attorneys on your staff?

Ms. KIKO. Yes.

Mr. MEADOWS. With the attorneys looking at your interpretation of the statute, and my good friend the chairman indicated that it's different than both Republican and Democrat predecessors, but your attorneys on staff, do they feel like that you are going well beyond what they interpret the statute to mean? Do they think that you're in uncharted territories and have they expressed caution?

Ms. KIKO. Well, the Chairman—the Acting Chairman of the FLRA, prior to my tenure here had also believed that this agency should not have a union and sent a request to the Office of Legal Counsel for an additional opinion. We have not received a response from that at this time, but I believe that would suggest that someone else had that same interest in interpreting the statute.

But I don't make any decision by myself. I look to my staff and my attorneys, and I had good legal advice that I was standing on terra firma on this decision.

Mr. MEADOWS. All right. So the employees that lost their jobs, were they—they were offered jobs at other—either other FLRA locations—

Ms. KIKO. Yes.

Mr. MEADOWS [continuing]. before they made a determination to go to another agency or retire. Is that correct?

Ms. KIKO. Yes. Every employee was offered a position in an office that—it was their—they actually had some preferences and were allowed to say where they would like to go based on the staff, the space that we had in each of the regions. So, yes, everyone was specifically offered a position—

Mr. MEADOWS. And you said it was Dallas and Boston. Is that correct?

Ms. KIKO. Yes, Dallas and Boston.

Mr. MEADOWS. So if someone was having to move from Dallas, let's say, to Washington, DC, I mean, was there help with moving

expenses? I mean, would that have been something that your agency would have offered to them for the moving expenses?

Ms. KIKO. Absolutely, yes.

Mr. MEADOWS. Okay. So here is where—I believe you're an earnest, honest public servant, and it's in your DNA. I didn't realize that until your testimony, it's in your DNA.

Here is the concern. I think for the Chairman, and I don't want to speak for him, but sometimes there is a slippery slope that a number of us on both sides of the aisle, for different reasons, worry about those slippery slopes. And if this is the initiation of an anti-union really *modus operandi*, then we have got a real problem. And you even have a problem with me.

And so is it your sworn testimony today that your motivation was not an anti-union motivation, but that it was more of an efficiency in your reorganization plan?

Ms. KIKO. I have no anti-union bias in any regard in any of the decisions that I make in this agency. My job here is to interpret the statute, and I will do that as long as I'm sitting here in this agency. And this statute says that collective bargaining is in the best interests of the Federal Government, and I believe that, and I will follow the statute.

So there is no anti-union bias. Certain decisions suggest that, I understand, but that is not true.

Mr. MEADOWS. And I'll finish with this, Mr. Chairman.

Are you committed then to work with this committee to, one, help us understand the decisions better, and then also look to make sure how we protect those rights, those collective bargaining rights going forward? Are you willing to do that?

Ms. KIKO. Absolutely.

Mr. MEADOWS. All right. I yield back.

Mr. CONNOLLY. If the gentleman would allow, just before I call on Ms. Norton.

I want to clarify your answer to Mr. Meadow's question. I thought you testified in answer to my question that you relied on your own counsel. You had decided without anybody telling you otherwise that the 1980 opinion was wrong and that, whatever the thinking of your predecessors, you took an oath and you read the statute and your reading was what it was. And it was done without—I even asked about relying on legal counsel, was there counter legal counsel giving you that confidence of that opinion, and I thought you said: No, I arrived at it by myself.

Ms. KIKO. Well, I misinterpreted the question. I thought you meant was there other Office of Legal Counsel opinions that I relied on.

Mr. CONNOLLY. Okay.

Ms. KIKO. I apologize if that was—

Mr. CONNOLLY. No, no. Okay. I just wanted to give you the chance to clarify. Thank you very much.

Ms. NORTON.

Ms. NORTON. Thank you very much, Mr. Chairman. I think this hearing is important to clarify and would help our Federal workers to understand how to interpret recent decisions of the Authority.



Ms. Kiko, do you agree that collective bargaining is a rational way to solve problems within the Federal Government and to promote peace—what is commonly called labor peace?

Ms. KIKO. Yes, I do.

Ms. NORTON. You have testified you show no anti-union bias, so I would like to ask you questions based on some of your recent decisions.

I was struck by your interpretation of the labor service—the Federal Service Labor-Management Relations Statute which defines collective bargaining, and I’m going to read its definition: A good faith effort to reach agreement with respect to conditions of employment. It seems pretty straightforward to me.

In a couple of your recent decisions, you made decisions that—distinctions that I’ve seldom seen. These distinctions were between the words—so follow me—“conditions of employment” and “working conditions.”

Now, I’m not going to indicate what I think the average American, how they would read those words, I’m going to go to the decisions of the Authority. And there are any number of precedents where this matter has come before. And what I am trying to understand is what appears to be a departure from precedent.

So let me just ask you, since they came during your watch, what is the difference between working conditions and conditions of employment?

Ms. KIKO. Well, thank you, Congresswoman.

I believe the statute very clearly uses the terms conditions of employment and working conditions in two different—in different ways. The term conditions of employment is defined by personnel policies, practices, and matters affecting working conditions. In the past the precedent has synonymous—or made the two terms synonymous. The conditions of employment and working conditions were the same thing.

I believe they are two different things, and that is the case law that’s coming out now, is looking at those terms to see if we can’t more clearly define them.

Ms. NORTON. So you are conceding that no distinction until your own decisions had been made between those two phrases?

Ms. KIKO. I would concede that there were—they were synonymously, had been defined in the same terminology in the past.

Ms. NORTON. And, of course, Chairwoman Kiko, when people try to follow the law, they don’t have anything really to guide them except precedent. And I just want to cite to you and ask you whether this precedent is something that you looked at before essentially making a contrary—a contrary interpretation.

And I’m quoting now from the Authority’s decision, the one I’m quoting from is GSA Eastern Distribution Center, Burlington, New Jersey. And there the Authority stated: “a purported distinction between ‘conditions of employment’ and ‘working conditions’ to narrow the parties’ bargaining obligations directly conflicts with the congressional intent.”

So essentially what you’re going to have to show is that what Congress intended is the interpretation you are now making, not what the decision I just quoted said was consistent with congressional intent.

So how is your reversal of how this statute was interpreted before your changes, how is your interpretation consistent with congressional intent? Because you just can't change a statute.

Ms. KIKO. Right. Right.

Ms. NORTON. And you certainly just can't turn your own precedents around. So you have got to go to something authoritative. Last time I looked, Congress is the authoritative—has issued the authoritative words that the authority must look to in deciding whether or not it agrees with existing precedent.

Ms. KIKO. Yes, I believe the first thing we look at in determining any case before us is the statutory language. And we also look at precedent. But, to me, when I look at precedent, I look at it and use it if it is consistent with the plain language of the statute. If it is not consistent with the plain language of the statute, then I would look to the precedent as to changing the precedent because I would feel that it is not consistent with the language of the statute.

Ms. NORTON. I understand that, Ms. Kiko, but it's not simply what the Authority has found. Both the courts and the Authority have accorded these terms: a broad interpretation that encapsulates a wide range of subjects that is effectively synonymous with conditions of employment.

Now, either we want to interpret this statute so as to give those who must abide by it some understanding of what they're supposed to do or we send a message don't rely on past precedent or even your reading of the statute because somebody in the Authority may disregard their own precedents and to simply decide to read the statute in an entirely different way. I still don't understand the difference between those two terms.

Ms. KIKO. Well, I think—

Ms. NORTON. I mean, you know, you can give us a cramped interpretation, the way we would do in my law school classes where I taught as a tenured professor of law at Georgetown. And this is the kind of hypothetical I would give them and dare somebody in the class to tell me what is the difference and how you would defend that difference.

I suppose that's what I'm doing here today, Ms. Kiko, because I need to know why in the face of precedent, and the use of words which appear to be similar, you have found it necessary to overturn existing precedent.

Mr. CONNOLLY. I thank the gentlelady.

And, Ms. Kiko, you may respond, and then I'm going to call on the distinguished ranking member, Mr. Jordan.

Ms. KIKO. Thank you, Congressman. I appreciate the hearkening back to law school. I do recall many times answering types of questions like that. I appreciate it.

I believe that the way the wording of the statute says when it says conditions of employment mean any personnel policies and practices affecting working conditions. I don't believe that Congress would have used the same word in working conditions to mean conditions of employment unless they—I believe they didn't—they used two words for a reason.

And so what I'm trying to do is to look at the precedent and find out how that precedent applies to the words of a statute. And, frankly, I think it needs some clarification for the parties.

Precedent in the FLRA has changed over the years in lots of different areas. I'm looking at the precedent, but I don't change precedent unless I feel it's not true to the statute. And that's where I would look now to see how best to define the term "working conditions" in that context so that parties understand it.

That's one of the main thing I'm trying to do in this, as the Chairman of the Authority working with the other members, is to make sure that our decisions are clear, easy to read, understandable, so that anybody can understand them.

Mr. CONNOLLY. Thank you.

I now call upon the distinguished ranking member of the full committee, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman. And I appreciate you and Mr. Meadows, the work you're doing here, and the whole committee doing oversight like this committee is supposed to do.

But I'll be real brief. I just want to thank Chairwoman Kiko for being here today.

I've heard nothing but good reports about the work you're doing, and we appreciate the public service and the devotion you bring to your task. And I just wanted to stop down and say thank you for your good work.

And with that, Mr. Chairman, I yield back.

Ms. KIKO. Thank you, Congressman.

Mr. CONNOLLY. You're not from Ohio, are you?

Ms. KIKO. Well, some part of my family is from Ohio.

Mr. CONNOLLY. I suspected.

Thank you, Mr. Jordan.

And I call upon Mr. Sarbanes from Maryland.

Mr. SARBANES. Thank you, Mr. Chairman.

Chairman Kiko, thanks from being here.

I'm concerned about the reports of your tenure that we are taking from these surveys. The chairman mentioned it a minute ago, that the Employee Viewpoint Survey results have pretty much tanked recently. I'm just going to go over some of those numbers.

In 2018, only 24 percent of the employees of the Authority believed senior leaders generate high levels of motivation and commitment. That was down from 86 percent in 2015.

In 2018, only 26 percent had a high level of respect for senior leaders, down from 85 percent in 2015.

Twenty-seven percent in 2018 believed senior leaders maintain high standards of honesty and integrity. Again, this is down from 85 percent in 2015.

So this huge drop in terms of the way employees feel about the Authority, where they're working, appears to be associated with your tenure, your taking over of the role as Chair.

You're the leading Presidentially appointed, Senate-confirmed official. You were sworn in as Chairman December 1—or 11—of 2017. Do you think these survey results, these opinions about senior leaders, are a reflection on your first year of leadership? Can you speak to that?

Ms. KIKO. Well, I would like to say that I didn't have the full year, because I had only been in the office at the time for five months when the survey was taken. But I'll take full responsibility for those surveys. And I want to do everything in my power to make sure that those scores improve.

I have a chart here that I have been working from on a regular basis that has a list of all of the 19 challenge questions that I have before me in my Federal Employee Viewpoint Survey, and each one of those problem questions I have attempted to address through some effort by employee engagement in my office and in my agency. And so I'm very aware of those scores and I'm doing everything in my power to improve those scores.

Mr. SARBANES. Mr. Chairman, I have a letter here from Dr. Todd Dickey, who is the assistant professor of public administration and international affairs at Syracuse University, that was addressed to you, which analyses these results. And I ask unanimous consent to enter that into the record.

Mr. CONNOLLY. Without objection.

Mr. SARBANES. Chairman Kiko, getting to this question of doing what you can to get to the bottom of the survey results, I appreciate that. The results were so disastrous that the deputy general counsel took it upon herself in March, I gather, to issue a followup survey to the Office of General Counsel and regional office staff to try to figure out why the employment engagement is as low as it is. And did you have anything to do with the deputy general counsel's initiative in doing that?

Ms. KIKO. Well, I had something to do with it in that once we get scores that reflect that there had been a significant drop, we look at the questions that have a negative 35 percent or higher, and those questions are then determined to see what corrective action plan we are taking as an agency, and we need to report that to both OPM and OMB. And in that process we are required to determine which entity of the agency is in the lowest percentile and then find that corrective action plan.

Mr. SARBANES. I guess what I'm asking is, did you say, good grief, look at these results, we need to get to the bottom of it, we need an initiative to reach out inside the agency and learn more and kind of spearhead trying to get to the bottom of this and make the changes that needed to be made to address it, or was that an initiative that came from the deputy general counsel?

Ms. KIKO. Well, because the general counsel's office was the lowest scoring entity in the agency, I sat and had a conversation with the deputy general counsel and said that this is the area that we need to improve. We're going to do it for the whole agency, but we have to specifically do a corrective action plan for this. And she said she would take care of it, and we were going to make sure that those scores were improved for the future.

Mr. SARBANES. So the committee, I know, has asked for the results of the latest survey that came in, and we asked that—we said you can go ahead and redact any personally identifiable information so the responses would be anonymous and so forth.

But the staff, your staff, hasn't provided that so far, citing confidentiality concerns, even though I think most employees would understand that confidentiality means that their managers will not

be able to connect survey responses to individuals, that is an obvious understanding, but it doesn't mean that only you and other management will see the results, especially given the crisis level when it comes to people's feelings about what's going on inside the Authority.

You can send a signal right now, Chairman Kiko, to the employees of FLRA that you value their opinions so much that you will share them with the Oversight Committee. You have the authority to share those results right now with Congress. And I want to ask you if you will do that.

Ms. KIKO. Well, it is my understanding, and I have offered to the deputy general counsel that I would follow whatever decision she and the solicitor made with respect to the release of those documents, it is my understanding that they were held as deliberative process in the agency, as the agency is trying to figure out how best to get to the bottom of these scores.

When those apparently—I have never seen the—I have not seen the survey, nor have I seen any results. I have not seen the email that went out asking for the survey. But I honored—I stand by my solicitor's opinion that this is a deliberative process, whereas the agency is attempting to understand the process, and I stand by that decision.

Mr. SARBANES. Well, I'm out of time, so I'm going to have to yield my time back. But I don't see why the deliberative process you're alluding to can't happen simultaneously with your providing the information that we're asking for. And if you do that, I think that would send the right kind of signal. And if you don't do that, I think it sends the wrong signal.

With that, I yield back.

Mr. CONNOLLY. I thank the gentleman from Maryland.

And, Mr. Lynch, from Massachusetts, thank you for your patience, and we're going to interrupt your five minutes very flexibly.

Mr. LYNCH. Thank you very much, Mr. Chairman.

As a matter of just housekeeping, I have a number of submissions here I would like to make. I'd like to ask for unanimous consent to enter into the record four letters that are opposed to the regional office closures. One is a letter from Members of Congress to the House Appropriations requesting that no funds be used to implement the FLRA's consolidation plan in Dallas and in Boston.

Mr. CONNOLLY. So ordered.

Mr. LYNCH. Thank you.

One is a letter from 13 United States Senators to Chairman Kiko basically asking for the same result.

Mr. CONNOLLY. So ordered.

Mr. LYNCH. Third is a letter from the National Air Traffic Control Association, which basically asked for the same result.

Mr. CONNOLLY. So ordered.

Mr. LYNCH. And also a letter from the AFL-CIO and about 30 affiliated unions asking that the consolidation not be—

Mr. CONNOLLY. Without objection, so ordered.

Mr. LYNCH. Thank you, Mr. Chairman.

So I'm trying to get this right. You say that you have no anti-union bias, and I'll just have to take that at face value.

So you come into your position and the first thing you do is you reach back 40 years, basically 40 years of precedent, to overturn a decision that the result of which strips your employees from union representation so that they cannot collectively bargain, they cannot collectively represent each other, they have to go up against the agency one individual at a time.

Is that correct?

Ms. KIKO. Well, I did make the decision to no longer recognize the Union of Authority Employees—

Mr. LYNCH. Right. So you stripped them of their collective bargaining rights. That's what you did, right?

Ms. KIKO. Well, the statute doesn't provide them collective bargaining rights. But I did—

Mr. LYNCH. No, but this is what you did, though. You know, you can say the statute did it, but the statute didn't do it for 40 years until you got there. So you're the secret sauce that made this stuff happen, right? Okay.

Ms. KIKO. Yes.

Mr. LYNCH. So you basically did that.

I looked at the previous decisions, and it says that—it says that an individual in the agency cannot be represented collectively if that union also represents other unions that are either associated or affiliated. So it doesn't say that they can't have any representation, it basically says that they can't have representation that would invite a conflict of interest.

And as a legislator, it says: Employees engaged in administering—administering, excuse me—a labor-management relation law or this Order . . . shall not be represented by a labor organization which also represents other groups of employees under law or this Order, or which is affiliated directly or indirectly with an organization.

So they're trying to get at conflict of interest among your employees, not—or the unions representing your employees.

And if that were not clear enough, Representative Udall, who at the time proposed this language—he proposed this language. So it's not like you have to do a deep interpretation word by word. He tells you. He tells you why he offered the legislation.

In this particular section he says that subsection (c) of the substitute provides that any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization which represents other individuals to whom such provisions apply, or which is affiliated directly or indirectly.

And then he goes further and he says: This provision, which is not found in the report at title VII, is intended to help prevent conflict of interest and appearance of conflict of interest.

So that's the purpose. So in decertifying this union, basically, rejecting this union, stripping your employees of the ability to bargain collectively, are you saying that they're not entitled to any representation or representation that also has this conflict of interest that Representative Udall pointed out is a possibility?

Ms. KIKO. I look to the Section 7112(b) of the statute, which says that there shall be no unit determined to be appropriate if it includes an employee engaged in the administration of the provisions

of this chapter. I do believe that that is controlling in this situation.

The section that you're referring to, which is section (c), an employee who is engaged in administering any provision of law relating to labor management relations may not be represented by a labor organization, I would think that that referred to people who are not administering this particular chapter, such as the National Labor Relations Board. There's some legislative history that refers to the Federal Election Commission not having unions that also were lobbying for particular results of the election.

Mr. LYNCH. But the overriding interest in government and in the public is to allow employees to be represented by unions. Do you—

Ms. KIKO. I agree.

Mr. LYNCH. Okay. So you would agree with that.

Ms. KIKO. I would agree with that, yes.

Mr. LYNCH. So there's an overriding wish or directive or mission here to provide employees with representation?

Ms. KIKO. That's correct.

Mr. LYNCH. And you're coming up with this one instance for your employees where they are severed from that right, and your reasoning is that they are administrating this law and therefore there might be conflict of interest?

Ms. KIKO. I'm not exactly saying why the statute was written the way it was.

Mr. LYNCH. Or you're not giving a reason.

Ms. KIKO. I do believe that the statute specifically excludes the FLRA from collective bargaining. Yes, I do.

Mr. CONNOLLY. Would my friend yield just for a second?

Mr. LYNCH. Sure.

Mr. CONNOLLY. Just an observation to add to your point. As I indicated earlier in my questioning, that would be an interesting and maybe even cogent point if we were looking at a brand new law.

Mr. LYNCH. Right.

Mr. CONNOLLY. But Chairman Kiko is the first Chairman ever to interpret the law the way she has chosen to interpret it, and I think that is important in context.

I thank my friend for yielding.

Mr. LYNCH. Yes, if I could courteously reclaim my time.

Here is the problem. Your interpretation leaves your employees with zero representation, no rights, no recourse. Under Taft-Hartley they are stripped of the right to strike. Under your interpretation, under civil service law, they don't have a right to strike, they're stripped of that. They don't have rights to arbitration. They don't have any rights to collectively, you know, group and bargain.

So under your severe interpretation, we get a result that is clearly not intended by Congress. You said yourself the idea is to make sure that employees have the right to be represented. That's where you believe, you said you believed that the overriding interest is to have people represented. And you have 40 years of precedents to look back upon where those employees had that protection.

So you believe in that. They have the right. It's in the public interest. They had it for 40 years. But you come up with this con-

struction that is new and unique and totally different that leaves your employees in a position where you agree they shouldn't be.

Do you have any—I mean, where's the underlying, you know, basis for that. What's the public service that's being provided or the public mission that's being completed here if you believe, as you say, that they should have representation?

Ms. KIKO. Well, I believe that the way the statute was worded—and I did not write the statute, but I attempted to—

Mr. LYNCH. No, no, but we have an opinion of someone who did.

Ms. KIKO. No, I do.

Mr. LYNCH. I just read you what Mr. Udall said. And his interpretation is different than yours, and he wrote the bill. He wrote it. He's not a stranger. He wrote the bill, said what it means, and you've come up with a different—after 40 years, you've come up with a different interpretation. I do have to say, I got to go with Mr. Udall on this since he wrote it.

Ms. KIKO. Okay.

Mr. LYNCH. You know? And the end result is, you leave your employees with no protections at all. You strip them of their rights. And I cannot believe that the source of this is not anti-union bias. I just cannot believe that.

Let me ask you a closing question. Do you agree that you don't have the right to issue advisory opinions?

Ms. KIKO. Excuse me?

Mr. LYNCH. Advisory opinions. Do you have the right—do you believe your agency has the right to issue—

Ms. KIKO. We do not issue advisory opinions.

Mr. LYNCH. Have you issued advisory opinions?

Ms. KIKO. Not according to what I would say, no, absolutely not.

Mr. LYNCH. Okay. I'd like to get into this, but my time is expired. I'll yield back.

Mr. CONNOLLY. I thank my friend from Massachusetts. What a cogent point about the author of the law having a certain opinion. I thank my friend for reminding us of that.

I now call on the gentleman from Maryland, our good friend Mr. Raskin.

Mr. RASKIN. Mr. Chairman, thank you very much.

And, Chairman Kiko, delighted to be with you today.

You're making some history also in terms of the unprecedented reversal of arbitrator awards in your tenure at the FLRA.

Tell me—well, let me—first of all, I'll give you my sense of the role of the arbitrator and you tell me if you agree with this or not.

The Federal courts have always said that they're obligated to give deference to arbitrator awards, and this follows a series of rulings in the U.S. Supreme Court in the so-called Steelworkers Trilogy, which was handed down in 1960. And there the court stated famously, and I quote: "The question of interpretation of the collective bargaining agreement is a question for the arbitrator, and the courts have no business overruling his construction of the contract."

And that principle that the arbitrator does the interpretation and the construction of the collective bargaining agreement is standard boilerplate concept unless you get some interpretation that is con-



bitrary to law or regulation, which, of course, would bind an arbitrator in any, you know, appellate review.

Is that generally your sense of what should take place?

Ms. KIKO. The arbitrator does get a significant amount of deference in an arbitration award, yes.

Mr. RASKIN. Okay.

Now, there's an article written recently by a professor Dr. Helburn called "The Trump FLRA: Fair or Foul?" And, Mr. Chairman, with your permission, I'd like to submit it to the record.

Mr. CONNOLLY. Without objection.

Mr. RASKIN. In there, there's a fascinating table on page 6 which shows the number of arbitration awards that were set aside under President Bush's FLRA and under President Obama's FLRA and then under the Trump FLRA under your leadership. And, amazingly, under both the Bush and the Obama FLRAs there were eight arbitrator awards that were set aside, and in both cases that was for 26.7 percent of the overall awards.

Under your FLRA, the Trump FLRA, there are 23 arbitrator awards set aside for a total of 76.7 percent. In other words, three-quarters of the arbitrator awards were set aside and reversed by the board, by the authority in these cases, and a disproportionate number of those were—a vastly disproportionate number were when there was a pro-union ruling by the arbitrator.

So how can you explain that tremendous disparity in what's taking place in your FLRA and what took place under Bush and under Obama?

Ms. KIKO. Well, I've seen some of those statistics and I'm not sure I agree with all of them.

But I think what I do when I look at a case is I look at the decision, the facts in front of me and the case law, and also all of the facts and the law, and each case I look at, I look at specifically before me. I don't look at what I did before or how many times I've done it. I don't keep a scorecard on that.

Mr. RASKIN. I got you. You just do an ordinary de novo review in each case?

Ms. KIKO. No, I do a deference to the arbitrator. But, as you said, if the arbitrator has violated contrary to law or regulation, we would certainly look at that. We'd look under other opportunities of bias, denying of a fair hearing, exceeded its authority, failing to draw its essence from the contract.

So there are certain areas where we do have to look at whether the arbitrator did, in fact, go outside of its authority.

Mr. RASKIN. Well, most of these arbitrators are pretty professional folks who specialize in doing this. Most of them don't make, simplistic legal errors.

But what are the kinds of legal errors that you've found that have justified overruling the vast majority of arbitration decisions and awards?

Ms. KIKO. Well, I'm not—I don't have a recollection of each of the cases in front of me, but I do have a couple of maybe examples that I could show you where I felt that they were—had gone beyond their authority.

And one is a case about the mercy ship that travels around to give health benefits to countries, where the arbitrator overruled a

decision of the captain of the ship that the captain had made for the benefit of the employees on the ship or the team on the ship.

I've also seen where an arbitrator overruled an agency on its own security policies as to who could or could not get a personal—a PIV card.

I feel that some of those cases were examples of where an arbitrator had exceeded their authority.

Mr. RASKIN. Okay. Just one final question, if I may. This is about an apparent anti-union bias surfacing in your decision to render advisory opinions.

I understand there's a regulation providing that the Authority and general counsel will not issue advisory opinions, and yet last year the Authority issued two advisory opinions and, therefore, violated its own rule to do so. The case numbers were 70 FLRA 452 and 70 FLRA 465.

Why did you make a decision to issue advisory opinions?

Ms. KIKO. Well, I don't agree that they were advisory opinions. I do believe that the dissent in those decisions characterized them as advisory positions, but I do not agree with that.

Mr. RASKIN. Well, in each case one of the parties had withdrawn its petition for review making the matter moot, and then when you proceeded to render an opinion it was by definition advisory. Now isn't that right?

Ms. KIKO. I believe that our decisions speak for themselves and I don't really believe it's appropriate for me to engage in an analysis of why I reached the decision I did.

Mr. RASKIN. But in other words, you think it would be acceptable practice to render a decision in a moot case?

Ms. KIKO. I did not issue a decision in a moot case.

Mr. RASKIN. Okay. Mr. Chairman, I yield back. Thank you.

Mr. CONNOLLY. I thank the gentleman. I know he's chairing another subcommittee hearing, so thank you for taking time to join us here today.

Are there any additional questions? If not, there is—I want to ask unanimous consent to insert in the record the congressional testimony for this hearing from the American Federation of Government Employees. And there may be additional items for the record.

Mr. CONNOLLY. We have 5 additional legislative days within which to submit such additional material or additional written questions for the witness, which will be forwarded through my office to her for responses.

I want to thank our witness for coming today and trying to be responsive to our concerns and questions. And hopefully we can look for remedy to some of the concerns that have been raised here today either through policy changes or legislation.

If there are additional questions, I'd ask the witness to respond as promptly as you are able. Again, thank you for coming here today.

Thank all my colleagues for participating.

We are adjourned.

Ms. KIKO. Thank you, sir.

[Whereupon, at 3:58 p.m., the subcommittee was adjourned.]