

Questions for Mr. Everett B. Kelley
National President, American Federation of Government Employees
Questions from Chairman Gerald E. Connolly, Subcommittee on
Government Operations

February 23, 2021, Hearing: “Revitalizing the Federal Workforce”

- 1. On January 22, 2021, President Biden reversed the Trump-era anti-workforce executive orders (EO 13957, EO 13836, EO 13837, and EO 13839). What are the lasting effects of the anti-union orders that must be addressed?**

Answer: One of the lasting effects of the Trump EOs was a “brain drain,” the loss of thousands of federal employees who quit or retired in frustration over either the politicization of agencies or the atmosphere of general hostility against federal workers. Many union leaders retired as well. Their collective knowledge and experience will take a long time to restore, and their colleagues miss them terribly. It will take a substantial amount of time to replace these employees and for them to achieve the “journeyman” status of those they are replacing.

Another lasting effect is that the response to the EOs and the politicization of the agencies revealed the true colors of far too many managers, supervisors, and labor-relations officials. Federal management shouldn’t change much when there is a change of administration; agency management should be apolitical. However, in many agencies, we saw career managers take up the Trump agenda with a vengeance, particularly with regard to the treatment of unions, women, and people of color. Employees of the Department of Veterans Affairs experienced this, as did employees in some components of the Department of Homeland Security, the Defense Department, EPA, and the Department of Education.

- 2. What other actions and policies by the Trump administration have had a negative effect on collective bargaining rights and labor–management relations? For instance, what effect did the seven Trump appointments to the Federal Service Impasses Panel have?**

Answer: The Trump administration's banning of partnerships/forums and discouraging agencies from maintaining any relationship with unions was very damaging. President George W. Bush rescinded the partnership EO that was issued under President Clinton, but President Trump not only rescinded the Obama forums EO, but prohibited agencies from working with the union. This initial message was very clear and resonated throughout the next 4 years.

Additionally, the Trump appointments to the Federal Services Impasses Panel arguably had the most devastating effect of any of President Trump's actions. The FMCS in concert with the FSIP, expedited the collective bargaining process, leaving us without independent third-party review as the statute provides. Most importantly, the FSIP acted with impunity because the law does not provide any avenue to seek redress from their decision. The FSIP openly referenced the Trump Executive Orders as guidance, and now our Federation is still only able to seek limited redress because agencies generally only have to act as soon as practicable.

3. What additional steps are necessary to repair the damage done by the Trump administration to restore labor-management relations?

Answer: We have asked for a restoration of labor-management partnerships in the agencies, but not until agencies have come back to the bargaining table to carry out the full spirit and letter of President Biden's EO 14003. We must also see the revocation of all policies outside of the collective bargaining process that reflect or were influenced by the 2018 Trump EOs.

Agency leadership has to make sure that labor-relations offices at every level of their organizations get the message that compliance with the Biden EOs is mandatory. If we see foot-dragging and excuse-making so that no one can even see any kind of difference on the local level, the damage will worsen. On issues ranging from clean record agreements to use of agency communications equipment to restoration of official time, we will need to see actual progress. "As soon as practicable" can be a giant loophole; as such, we need to see concrete action from the very top of each agency to make sure that compliance occurs.

4. In what ways did the Trump-era Federal Labor Relations Authority (FLRA) abandon its mission and damage collective bargaining rights?

Answer: The previous Chairman unilaterally closed two Regional Offices which will hamper the ability to move through the backlog of approximately 450 ULP complaints that are waiting to be issued. FLRA GC has lost staff and that means fewer agents to prosecute the cases.

The three-member Authority undertook a systemic process of overturning precedent, some of which had been well settled for almost 50 years. The two majority Republican members *claimed* in several cases that they needed to offer “clarity” about the law, instead brought chaos and confusion to the process. They attacked unions and their rights in some of their decisions. For example, these two members abandoned 40 years of precedent and created a new, unsubstantiated interpretation of the union’s rights to bargain over dues collection. This was a clear attempt to destabilize a union’s ability to maintain membership.

They also tried to limit the right of federal employees who are union officials from communicating with Congress. As we saw during the Trump Administration, union officials were often the only employees willing or able to raise an alarm about dangerous conditions or radical changes in policies. AFGF is challenging many of these outrageous, unlawful decisions in federal court to try and force the FLRA to follow the law and not engage in a partisan re-writing of the law to bust unions.

5. What steps can the federal government take to attract young talent to the federal workforce?

Answer: The single most effective step that the federal government can take to attract young talent to federal employment is to raise pay. That does not mean the government should replace its pay systems with ones that give more discretion over pay to managers and supervisors; it means that salaries at all levels need to be higher. The purchasing power of federal pay has declined over the past decade even as private employers have raised pay substantially. The mission of federal agencies and public service in general remains attractive. The cuts in FERS should be repealed, and if they are, benefits will be competitive, especially now that there is paid parental leave. But wages and salaries are too low.

Substantial pay increases, year after year, will do more to attract young people to government than any changes in hiring procedures.

6. What concerns did you hear from members of your union who worked at the Office of Personnel Management (OPM) throughout the Trump Administration about the agency's operations and engagement with its workforce?

Answer: As the Trump Administration wanted to dismantle OPM and send its work to OMB and GSA, it was clear to the OPM workforce that they were neither valued nor respected and that their agency was seen as something to be done away with. Further, the agencies that used OPM's services on a fee basis got the message that there was no support for OPM's existence and that the agency was unlikely to obtain the resources necessary to execute its mission. This made other agencies reluctant to use OPM's services and threatened a downward spiral. In the meantime, in spite of Congress' prohibition on the Trump plan to dismantle OPM, the agency moved forward with piecemeal transfers of function (via interagency agreements) to GSA and FAA.

Apart from the efforts to dismantle the agency, agency employees complained of racist and sexist attitudes from supervisors and hiring officials that resulted in blocked access to career advancement for women and people of color.

Lack of investment in information technology was used as a rationale for dismantling the agency. OPM employees want upgrades in IT and know that their work is hampered by poor quality procurements, and antiquated IT systems.

As far as "engagement" with the union at OPM during the past four years, there was none, except to implement the 2018 executive orders and threaten employees hired competitively with categorization under the excepted service Schedule F.

7. What would a fully functioning and successful OPM look like, from your membership's perspective? How could OPM most effectively serve federal employees?

Answer: As described in my written statement, a fully functioning and successful OPM would discontinue the fee-for-service funding structure. Fee for service would be replaced with full appropriations funding for *all* of OPM's statutory functions. OPM should also be fully-staffed so that the workload can be handled efficiently and effectively without recourse to contractors. If all these conditions are met, if its problems with diversity and inclusivity are addressed, and if the agency negotiates a good collective bargaining agreement with AFGE that fully reflects the spirit and letter of EO 14003, then OPM will be in a position to serve federal employees well.

8. The minority witness seems to believe that federal government is rife with poor performers. Is there data or evidence to support his assertion?

Answer: There are no data and there is no evidence to support the assertion that the government is full of poor performers. In fact, Mr. Sherk bemoans the fact that such data do not exist by complaining about the prevalence of good performance ratings. The examples he does cite are almost always cases of misconduct, not poor performance. The two are not the same thing. It is worth noting, however, that the government is not full of people who engage in misconduct either. The incidents he cites are rare.

9. Is the Federal Employee Viewpoint Survey a tool that should be used to determine the volume of poor performance in government?

Answer: The Federal Employee Viewpoint Survey, like all surveys, is biased. The respondents to that survey include both rank and file federal employees and managers. The responses are in no way representative of the views of the federal workers we represent. Over the years, we have asked that some of the questions be altered because they ask for opinions on items that are not subject to opinion. On performance issues, the questions gauge resentment on the part of employees. FEVS asks whether employees feel as if they are adequately recognized for their own excellence and whether those they dislike or disdain are punished

sufficiently. Measures of pettiness and resentment of co-workers are not proxies for measures of actual productivity or efficiency. Measures of managerial frustration are not proxies for measures of actual productivity or efficiency either. Uninformed opinions are not valid measures of individual performance or agency performance. They are just opinions.

10. The Preventing a Patronage System Act (H.R. 302) is designed to prevent a future president from unilaterally implementing a Schedule F–like executive order. Do you think this bill is effective in protecting our merit-based civil service?

Answer: The Preventing a Patronage System Act would be an important step in protecting the competitive service, but the merit-based civil service needs much more protection as well. We believe that the VA Accountability Act undermines the merit-based civil service by virtue of its use of the low evidentiary standard for upholding adverse actions, its abandonment of Douglas Factors and consistency in discipline, and the time frames it imposes on employees seeking to appeal adverse actions. Direct hiring also imposes a risk to the merit-based civil service's requirement of open competition for federal jobs. Efforts to replace the current pay and classification system with pay systems that give discretion over base pay and pay adjustments also undermine the merit system's principle of equal pay for equal work. Thus, while H.R. 302 is extremely important and welcome, Congress should take additional measures to strengthen the merit system.