



CONGRESSIONAL TESTIMONY

STATEMENT BY

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HOUSE SUBCOMMITTEE ON GOVERNMENT OPERATIONS**

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Mr. Chairman and members of the Subcommittee:

My name is Everett Kelley, and I am the National President of American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 700,000 federal and DC government employees represented by AFGE, I thank you for the opportunity to testify today.

You have asked me to discuss the question of how to rebuild the trust, morale, and capacity of the federal workforce after the four-year trauma of relentless attack from the Trump administration. Before such a discussion proceeds, it is important to acknowledge that our era's serious attacks on the federal workforce did not begin with Trump and are unlikely to end with his re-election defeat.

One could reach back to President Reagan's firing of the air traffic controllers, or his claim that "The nine most terrifying words in the English language are: I'm from the government and I'm here to help." Similarly, President Clinton declared that "the era of big government is over" even as he replaced federal employees with a service contractor workforce double its size. President George W. Bush took it from there and subjected hundreds of thousands of federal employee jobs to a costly, disruptive, and politically-influenced outsourcing threat and this was followed by President Obama's pay freezes, his embrace of various retirement system cuts, and the earliest steps toward VA privatization.

President Trump thus inherited a situation where attacking the federal workforce, its rights and compensation, was a well-established practice and he had an easy time taking matters to the next level. Indeed, during his reign the VA Accountability Act which was a blueprint within the Department of Veterans Affairs (VA) for some of the worst elements of the Trump Executive Orders (EOs) with regard to employee appeal and due process rights. This legislation was championed under the banner of "modernization" and "making it easier to fire a federal employee," slogans that obscure insidious anti-

civil service intent. President Biden has taken several important and welcomed steps, at AFGE's urgent request, that will help immensely to restore the trust, morale, and capacity of the federal workforce.

I would be remiss if I did not commend Chairman Connolly (D-VA) for his legislation, introduced with Representative Brian Fitzpatrick (R-PA) which was aptly named the Preventing a Patronage System Act, a bill that would have blocked one of President Trump's worst executive orders, EO 13957, which created a new schedule in the excepted service, Schedule F, that could have transferred as many as hundreds of thousands of positions from the competitive service into the excepted service and in so doing take away all due process rights on removal. This would have relegated a substantial portion of the career federal workforce into "at will" status, putting them on the same footing as political appointees. AFGE very much appreciated your introduction of this legislation to stop implementation of the Schedule F executive order.

However, while the Trump executive order on Schedule F was considered controversial, a large part of the controversy had to do with the fact that it took away rights from federal employees who already had due process protections by virtue of their competitive service appointments. There are currently numerous efforts underway at the Department of Defense (DoD) to pursue excepted service status for all new hires in cybersecurity and other STEM fields, a category that will someday soon comprise the majority of the DoD civilian workforce. The expansion of the excepted service and relative shrinkage of the competitive service pose a threat almost as serious as that of the executive order on Schedule F.

Indeed, actions such as overuse of direct hiring and expansion of the excepted service have the potential to be almost as destructive of trust and morale on the part of federal workers as derisive rhetoric from Presidents or anti-federal employee lawmakers. This is especially true in cases where veterans' preference is undermined. I want to emphasize, however, that AFGE members and the federal workforce

very much appreciate efforts by the Chairman and other lawmakers who work to counter negative characterizations of federal employees and the work they do. All such efforts are welcome, remembered, and treasured. They are an important counterpoint to “bureaucrat bashing.” But clearly, they need to be combined with strict adherence to statutory protections and good faith bargaining where there is a union; otherwise, they are not enough to counter the concerted efforts of those who would weaken the system.

Protecting the Rights of Federal Employees: The Number One Way to Restore Trust and Morale

One would have hoped that the experience of the past four years would have taught those interested in civil service issues that nibbling at the edges of the merit system in ways that give political appointees and agency management unchecked power over the federal workforce rendered it extremely vulnerable to destruction. I refer here to the civil service system itself and the federal workforce as a whole, not the jobs and lives of individual civil servants even though these are an important priority as well.

Unfortunately, the fragility of the merit-based civil service is still not adequately appreciated. Some would still like to argue that what America needs is a civil service with a minimal number of rules. We expect to see numerous proposals for “civil service reform” presented in the next months. The kinds of reform proposals we can expect to see may be piecemeal, or far more comprehensive. Some so-called civil service reform proposals would make all federal employees at-will political appointees and while others would replace elements of the current system in order to make hiring, firing and compensation subject to far more discretion on the part of agency management.

Groups that advertise themselves as neutral supporters of “good government” will place themselves in the middle of a spectrum that runs from complete politicization to complete discretion to agency managers. Advocates of “reform” will attempt to frame the question as where to place power over the civil service: Should it reside with appointees of the President or career managers who supervise the people who carry out the mission of agencies?

Both will be contrasted with the current system which eschews placing discretionary power in the hands of either political appointees or agency managers and instead relies on the merit system principles and third-party adjudicators to enforce a rule-based system that aims to be scrupulously apolitical, consistent, and objective.

The voices claiming to occupy the middle of the reform spectrum are funded by the government's service contractors. It is thus no surprise that they advocate for a system that makes extensive use of private firms to perform much of the government's work and that would re-make the civil service so that it resembles their non-union corporate personnel practices. Advocates for this type of civil service "reform" clothe themselves in the rhetoric of respect for government. They claim their only interest is in better, more efficient and effective delivery of services. Their favored branding is as "good government" advocates.

This allegedly middle-of-the road, common sense agenda often includes replacing the federal pay system with one that reallocates payroll toward the highest earners and gives managers discretion over pay raises, eliminating the defined benefit from the Federal Employees Retirement System, turning the Federal Employees Health Benefits Program into a voucher system, and streamlining hiring so that managers can avoid veterans preference and open competition, and making firing "easier" with fewer opportunities for employees to appeal unjust terminations or improve performance so that they can retain their jobs.

Their trump card is to cast opponents of their agenda as either anti-democracy fascists or stodgy old dinosaurs who are so mired in the past that they cannot appreciate the need to change with the times, and do not understand that the government workforce is no longer dominated by "clerks" and "typists." Of course, the opponents they mischaracterize in this way are usually federal employee unions. Thus,

unions such as ours are left not only to defend our union rights, but also to defend the statutory basis of the merit system.

This constant need to protect and defend a system that should be the pride of every American is exhausting for federal workers. It is a burden that federal employees and their unions should not have to shoulder by themselves. Everyone who values not even having to think about corruption in government agencies should be defending our civil service system. Everyone who wants to rest assured that those entrusted to carry out federal law enforcement, federal scientific and medical research, the application of federal standards for clean air and water, safe food and consumer products, national security and homeland security, workplace safety and health, fair housing and safe transportation systems should be a proud defender of our civil service system.

Weakening civil service protections and merit-based processes and procedures in the name of speed and ease is a terrible mistake. Hiring and firing federal employees requires deliberate rule-based steps for a good reason: to make sure that the federal workforce is hired and fired based solely on merit factors such as demonstrable skills and credentials. Likewise, a rule-based pay and classification system in the federal government exists for good reason: to make sure that the federal workforce is paid according to objective data on market rates for similar jobs in the private sector and state and local government, not on the basis of political affiliation or the whims of managers.

The would-be reformers love to say that the GS pay system was designed in the late 1940s, when most employees were in the lower technical and clerical grades. While it may be true that the system was designed in the late 1940s, and many more employees were in lower grades, the system has endured precisely because of its flexibility and inclusion of the higher grades, anticipating a time of increasing work complexity. Though higher grades (above GS-7) were much less common in the 1940s and 1950s,

today because of the increasing complexity of federal work, higher grades predominate, and the GS pay system accommodates this extremely well.

The virtues of the current system are rarely acknowledged. A December study by the Government Accountability Office (GAO) confirmed that the federal pay system does a far better job of avoiding pay discrimination by gender than private sector pay systems that allow broad discretion in pay-setting and pay adjustments. The GAO study (<https://www.gao.gov/assets/720/711014.pdf>) found that the gender pay gap in the federal government was \$.07 on the dollar as of 2017; similar studies of private sector gender pay gaps that also adjust for occupation and education show the gap that is 61 percent higher than the federal government's gap: \$.18 on the dollar as of 2018 vs. \$.07. To take this out of the realm of pennies on the dollar: on average, for every \$35,000 earned by males, women in the private sector are paid \$28,700 and in the federal sector are paid \$32,550. Of course, these are broad averages and should not exist at all. But the differential in pay equity between the federal pay system and private sector discretionary pay systems is stark.

This relative advantage in the area of pay equity is not the only systemic virtue of the current pay system. Its structure is designed to create a good balance among several factors: market sensitivity, career mobility, internal equity, flexibility, and recognition of excellence. All of these are attributes of a functional pay system if the system receives adequate funding. However, budget politics, "bureaucrat bashing," and lack of understanding of the statistical processes used to measure the federal-non-federal market pay gap combine to deprive a very fair system of the funds it needs to operate at an optimal level. There is no problem with the GS system that adequate funding does not solve.

Chairman Connolly, your introduction of The FAIR Act, is an extremely welcome step in recognition of the hardships that have been imposed on the federal workforce, financial and otherwise, during the past four years. The bill includes a 3.2 percent pay adjustment for 2022 which will not only

restore some of the purchasing power lost during the past years but would send a hugely important message to the federal workforce that their work and well-being is a priority of this Congress and this administration.

Rebuilding Capacity in Federal Agencies by Restoring Adequate Staffing Levels

The hollowing out of federal agencies during the past administration's reign has been well-documented. The Departments of Labor, State, Interior, Agriculture, Energy, Transportation and Justice all suffered the loss of employment. Health and Human Services, Housing and Urban Development, and the Environmental Protection Agency (EPA) also lost substantial percentages of their workforces. Ironically, the Department of Veterans' Affairs, which was a conscious target for privatization and still has almost 50,000 unfilled authorized positions, did not have an actual decline.

Behind these statistics are some grim realities for those who remain. Corrections Officers in the federal Bureau of Prisons (BoP) are forced to work enormous quantities of mandatory overtime and administrative personnel are being used excessively to supplement the Corrections workforce. The severe understaffing of prisons combined with the dangers of the pandemic raging through the close quarters of these institutions have created almost unbearable working conditions.

The BoP tries to recruit but is hampered by low salaries. President Trump's "Pay Agent" blocked the Federal Salary Council's recommendations that would have alleviated some of the most dire recruitment and retention situations in Pennsylvania, Minnesota and Illinois. The agency tries to use every flexibility in the book, including recruitment and retention bonuses as well as payment to current staff who manage to persuade a good candidate to come on board. The recruitment and retention problems in the Bureau of Prisons might be the most acute, but they are in many ways a microcosm of the challenges federal agencies face in hiring.

It cannot be stated strongly enough that hiring challenges are not because of veterans' preference and thus cannot be solved by direct hiring that avoids veterans' preference. Hiring challenges are not because the competitive service requires hiring officials to hold actual competition for job openings and take the time to evaluate, test, compare, and interview candidates. All of the most successful private sector firms do this with job candidates, and the thoroughness and seriousness of their candidate assessments would make even the loudest complainers about the federal hiring process blush. If the government wants to hire high quality candidates, it must evaluate them and encourage competition, both of which take time. However, money talks.

On behalf of the 700,000 represented by AFGE who already have federal jobs, I am here to tell you that the biggest obstacle to hiring is pay. Denigration of the federal workforce is somewhat of a deterrent, risks and heavy workloads are also issues. But the reality is that federal wages and salaries are too low. The FAIR Act is an important step to help hiring, but substantial pay adjustments are necessary to bring federal pay up to the level where it is no longer an obstacle to hiring.

For decades think tanks and contractors and academics have written lengthy reports about the obstacles to federal hiring, but when the same job in the private sector pays 20 percent to 40 percent more, we lose candidates. We lose candidates when the whole package is compared as well because until last year, federal contractors but not federal agencies provided paid parental leave. Federal contractors, many funded entirely or almost entirely by federal dollars, provide similar benefits and higher salaries. There is no justification for underpaying federal employees and we will continue to press the case for higher pay across-the-board.

Implementing Presidential Executive Orders

I stated earlier a concern that agencies' human resources offices may be an obstacle to implementing President Biden's executive orders, particularly the order that revoked the previous

administration's executive order on collective bargaining, union representation, and employee appeal rights. Although it has been barely one month since President Biden's January 22 revocation, almost every element of the Trump executive orders remains in place. We have asked agencies to come to the bargaining table to undo the terms of sometimes unilaterally-imposed "agreements" and to restore office space and use of agency computers and other means of communication with our members, among other requests.

The response has been, in many cases, that they cannot act until they receive guidance from the Office of Personnel Management (OPM). We have been in contact with OPM and have emphasized the importance of accountability for implementation of President Biden's executive order. Simply put, we have conveyed our view that if the new administration is not just as aggressive in enforcing its executive order as the previous administration was in enforcing its executive orders, then not much will really change.

We are already hearing excuses from some agencies as to why they cannot or should not be required to re-negotiate Trump era "contracts" that all but eliminate official time, grievance procedures, office space, performance improvement opportunities and associated issues if these contracts merely reflect positions that management has favored for some time. Indeed, bogus arguments like these completely ignore the fact that no union had ever unilaterally given itself any of these provisions. Instead, they had been mutually agreed to by agencies and unions over the years and reflected trade-offs among union and management priorities.

What the Trump EOs did was allow agencies to walk away from agreements and commitments to the union while keeping every single thing that the union had given up in return for those commitments. We believe it is this inherent imbalance, unfairness, and permit for expropriation that the Biden executive order seeks to correct. It is clear that President Biden did not intend to require the union to have to trade

what little remains of our contracts in order to regain ground taken away unilaterally under the aegis of the Trump executive orders.

The words of President Biden's executive order are truly encouraging, particularly its statement in favor of organizing, collective bargaining, and the notion of the federal government striving to be a model employer.

We believe that this reflects the President's belief that a model employer is one that has a respectful and constructive relationship between management and the union representing its employees. Indeed, we look forward not only to a restoration of our collective bargaining agreements and re-set of the relationship between AFGE and the agencies on the national and local level, but to the formation of a real partnership that will allow us to work together to promote the mission of the agencies.

The sad truth is that the previous administration introduced a toxic level of unfairness, distrust, and disrespect between management and labor in most, if not all, federal agencies. Every element of the relationship has suffered. Racial intolerance was inflamed at the Department of Veterans Affairs and reportedly at other agencies as well. The Equal Employment Opportunity Commission (EEOC), the very agency charged with enforcing the laws that bar discrimination and harassment in the workplace tried to impose a rule that would have deterred victims of harassment and discrimination from coming forward with claims by excluding union representatives from the use of EEO official time. This in the era of racial reckoning and #metoo accountability was just unconscionable. The authorities granted under the VA Accountability Act and the Trump executive orders prompted an atmosphere where fear and intimidation were management's most potent tools. The damage to morale has been extensive and goes beyond what was written in the executive orders.

The tumultuous events of 2020 have left so much of America shaken to the core, and federal employees are no exception. Women, Black and Brown people, religious minorities, immigrants and others who have been the targets of hatred and policies meant to marginalize them continue to feel especially vulnerable.

Repairing that damage is an enormous challenge. The old adage “once bitten, twice shy” applies in this instance because trust and respect were so badly harmed. The administration can begin to repair that harm by being the model employer that President Biden has stated he wants the government to be. That again is why we have urged the administration to require agencies to report on their progress in implementing the Biden revocation. We ask that this committee conduct oversight to ensure compliance with the revocation of the 2018 EOs as well. Agencies must be required to comply because it is already clear that discretion can be abused to the detriment of the workforce and agency mission.

Strengthening the Office of Personnel Management

The previous administration’s effort to dismantle the Office of Personnel Management (OPM) and distribute its parts to the General Services Agency (GSA) and the Executive Office of the President prompted serious attention to the agency’s problems. Most derive from the fee-for-service model imposed on OPM in the 1990’s. It has become quite clear that this has been a failed experiment. This model has required agencies to expend their own funding for OPM services and/or go to contractors for services that should be provided by OPM consistent with statutory intent. As such, restoring direct appropriations for all of OPM’s statutory functions will minimize costs for the government overall and reduce reliance on costly contractors.

In addition, in order to strengthen the merit-system from efforts to corrupt or otherwise politicize federal workforce policies, agencies must be required to recognize OPM as the primary, if not sole, human capital resource entity for the federal government. The lack of policy consistency across the

federal government threatens the merit system, and it is facilitated in part by the gradual outsourcing of OPM's core statutory functions.

Only a strong and independent OPM can ensure that each agency follows government-wide rules, policies, and administration directives. To fulfill this role, OPM's own staffing levels must be increased and diversity and inclusion must be strengthened. Efforts to strip away or contract out OPM's functions undermines the overall management of the civil service and are a dangerous substitute for full-staffing of OPM.

Information technology (IT) remains a problem for OPM. Its IT systems need investment so that extensive paper processing can be eliminated where possible. This is especially true for retirement claims. The lack of investment in OPM's IT capacity has left the agency with severely outdated and inadequate systems. To remedy these problems, OPM needs direct appropriations to allow the agency to update its IT infrastructure.

COVID-19 and the Federal Workforce

I would like to thank the Members of the committee for their continued efforts to keep the American public safe during the pandemic, and all of your work last Congress to help keep the federal workforce safe as we continue to provide vital public services both remotely and from the frontlines. AFGE also thanks, the Chairman for introduction of the "Chai Suthammanont Remembrance Act," legislation that not only emphasizes the importance of workplace safety during the pandemic, but also the need for transparency as agencies are developing and implementing new policies in relation to worker safety during a pandemic. This legislation would require federal agencies to develop and disclose reopening plans that incorporate specific safety standards and protocols before resuming normal work protocols during a public health emergency like we are in today. I believe this legislation, if enacted into

law, will help prevent the spread of COVID-19 in the federal workplace and save lives. Our thoughts continue to be with the Suthammanont family.

AFGE also strongly supported the provision of the Oversight and Reform Committee's section of the COVID-19 relief package for the Budget Reconciliation bill that provided fifteen weeks of paid emergency sick leave for federal workers. Legislative efforts like this revitalize the morale of the federal workforce and reassure us that our safety and well-being is a priority to Congress.

President Biden's executive order regarding protection of the federal workforce in the face of the continuing pandemic is another extremely welcome sign that this administration values the lives and well-being of federal employees. In essence, the executive order makes mandatory all the important ideas that have been advanced to protect federal employees who must continue to report to their regular duty stations in order to carry out the missions of their agencies. Mandatory mask-wearing, early access to vaccination, ample supplies of personal protective equipment, an emergency safety standard from the Occupational Safety and Health Administration (OSHA), the erection of physical barriers and enforcement of social distancing are all included and are all necessary to protect us from the spread of this deadly disease.

AFGE continues to advocate for automatic presumption of workplace illness with respect to those seeking compensation under the Federal Employees Compensation Act (FECA) for contracting COVID-19. In addition, as a model employer, the federal government should provide all those who have had to risk infection with COVID-19 by continuing to work at their regular worksite throughout the pandemic should receive hazardous pay differentials, retroactive to March 2020. We believe that these two measures are the least the federal government can do to show that it does truly value the commitment and sacrifice made by the heroes of this pandemic, the frontline workers who put their lives on the line every day for the American people.

Conclusion

I want to thank you very much for holding this hearing to mark this new moment for our government and its workforce. Like other Americans, I watched the events of January 6 in horror and in sorrow. I am grateful that none of you suffered any physical harm and that we are able to meet in a hearing like this so soon after the Congress and the Capitol were under direct attack. I consider the members of Congress to be quasi-civil servants and as such, deserving of the highest level of care and respect. I am truly sorry that you and your staff members experienced such a terrible ordeal.

The past four years have been traumatic for federal employees and their unions as well. It is now up to all of us to make compliance a top priority because it will be impossible to move forward to a revitalized federal labor-management relationship if that does not occur.

We are extremely grateful to the Chairman for his continued support of the economic well-being of the federal workforce with the introduction of the FAIR Act. We intend to make certain that fair pay as well as fair play are achieved in the coming year because we believe that both are absolutely necessary for the success of all federal agencies going forward.

Fair play, of course, means requiring federal agencies to go back to the bargaining table to eliminate every single trace of the previous administration's union-busting executive orders. It will also entail some reform of the two pieces of legislation that have harmed the VA workforce, the Accountability Act and the Mission Act. These two laws have had serious unintended consequences and it will be important for Congress to address the harm they have done to the VA workforce and the agency.

Thank you for your time and I would be happy to answer any questions you may have.

