U.S. FEDERAL LABOR RELATIONS AUTHORITY

STATEMENT OF
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before the

SUBCOMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND REFORM
U.S. HOUSE OF REPRESENTATIVES

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June 4, 2019

Chairman Connolly, Ranking Member Meadows, and Members of the Subcommittee, I would like to thank you for holding this hearing to review the management and policies of the Federal Labor Relations Authority (the "FLRA" or "Agency"). It is an honor to serve as the Chairman of the FLRA and lead the Agency entrusted by Congress with protecting the rights of, and facilitating stable relationships among, Federal agencies, labor organizations, and employees, while advancing an effective and efficient Government through the administration of the Federal Service Labor-Management Relations Statute (the "Statute").

As a Federal employee for more than 30 years, I am thankful to the men and women who have chosen to dedicate their lives to public service. We recently celebrated Public Service Recognition Week at the FLRA and recognized our incredible employees for their diligent work on behalf of our Country. Now, in this public forum, I would like to reiterate my thanks to the FLRA staff for all the great work they do each day, much of which we will be discussing today.

My first role model of a Federal employee was my father, Lawrence Duffy, who proudly spent over 49 years in Federal service before he retired. He was a railway mail carrier for the U.S. Postal Service on the Soo Line Railroad that ran from Enderlin to Portal, North Dakota. He later became an inspector for the U.S. Customs Service at the North Dakota/Canada border. He always considered Federal service to be an honorable profession. His work ethic, the great pride

he took in his job, and impeccable character were examples for me, and I have always tried to live up to his standards.

My career with the Federal government began after I moved here from North Dakota in 1972, and accepted a job as a GS-3 clerk typist in the Department of Treasury's Office of Personnel. My next job led to my first position at the FLRA, where I have been fortunate to spend a significant amount of my career.

When Congress created the Agency as part of the Civil Service Reform Act of 1978, I was working as a GS-12 Labor Relations Specialist in the Department of Labor office that was transferred to, and became part of, the FLRA. As I said at my confirmation hearing, I was at the FLRA on its first birthday, which we celebrated with a cake. Since then, I have worked in almost every component of the Agency. In a Regional Office, I investigated unfair labor practice ("ULP") charges, held hearings on representational disputes, monitored Federal union elections, and conducted training for both agencies and unions. I left the Agency in 1983 to attend law school. From 2005 through 2008, I had the privilege of serving as the General Counsel of the FLRA. For the last 18 months, I have had the honor to serve as the Chairman and Chief Executive and Administrative Officer of the Agency.

I mention this history to try to convey to you the respect and pride I have for the FLRA and the men and women who work there. Although I am only in my second year of a five-year term, it is my sincere intent to leave the Agency in a stronger position than when I arrived. I have the utmost respect for the mission of the Agency and for the Federal workforce itself. I am aware that not everyone will agree with every decision I have made or will make, but I can assure you, every decision is heartfelt – made with the best intentions and interests of this Agency and of the Federal government at large.

Before discussing some of the more difficult decisions that I have had to make, I would like to take this opportunity to highlight some of the great work that FLRA employees have accomplished during these past 18 months. We may be the smallest Federal agency that will testify in front of you – we have a staff of just over 100 people, working in Washington, D.C. and in five Regional Offices around the Country, with a combined budget of just over $26 million. By comparison, the National Labor Relations Board has more than 1,200 employees and a budget of $250 million, nearly 10 times that of FLRA. The Department of Labor employs more than 15,000 people with a budget of more than $9 billion. Despite its small size, the FLRA is extremely productive and provides enormous value to the Federal labor-management relations community and, in turn, the other Federal agencies and employees working on behalf of our Country.

As you know, the FLRA has three statutory components – the Authority; the Office of the General Counsel ("OGC"), which includes our Regional Office staff; and the Federal Service Impasses Panel ("FSIP"). Each component possesses a unique adjudicative or prosecutorial role.

Our Regional Office staff investigate and resolve more than 3,000 allegations of ULPs each year. Those allegations, or charges, come from Federal agencies and employees across the Country, or their representatives, and are relatively easy and inexpensive to file. Despite not having a General Counsel or Acting General Counsel since November 16, 2017, the Regional Office attorneys continue to investigate cases and deliver strong results in responding to alleged violations of the Statute. In fiscal year 2018, the OGC met its strategic performance measures for the timely resolution of ULP and representation cases, having resolved 88 percent (2,682/3,060) of ULP cases within 120 days of the date they were filed, and 82 percent (195/239) of representation cases within 120 days of filing. Of those ULP cases adjudicated in 2018, the OGC resolved over 590 of them through voluntary settlement during the investigative process.

After a period during which the Authority had only two Members – which sometimes resulted in deadlocks – the Authority regained a full complement of Members on December 11, 2017, and focused on issuing decisions. The Authority issued a total of 110 decisions from December 2017 through September 2018 (an average of 11 decisions per month), as opposed to issuing only 53 decisions during the same time period in the previous fiscal year (an average of five decisions per month).

While we strive to decide cases in a timely manner, we also aim to ensure that the case law is as clear as possible and consistent with the plain wording of the Statute. For example, we have been working on clarifying the meaning of the Statutory distinction between conditions of employment and working conditions; the scope of rights that are preserved for management under the Statute; and what constitutes a confidential employee for purposes of exclusion from a bargaining unit. Examining those kinds of important statutory principles – without shying away from questioning and reexamining longstanding assumptions – has proven to be a time-consuming process. I am, however, confident that our thoughtful, deliberative process will help develop and invigorate the statutory standards we are responsible for administering.

The FLRA provides guidance to the parties who appear before it primarily through its written decisions; however, it also provides valuable education and training to the Federal labor-management-relations community regarding all aspects of its case law and processes. In 2018, the FLRA, as a whole, provided over 100 training sessions to nearly 5,000 participants. The Authority, the OGC, and the FSIP provided in-person case-law updates and training at several nationwide, annual conferences. We consistently receive positive feedback from agencies and labor organizations who attend these sessions.

While I take pride in the quality of our legal work products and the productivity of our staff, I have had to make some difficult management decisions during my first 18 months as Chairman. One of the most difficult was the decision to consolidate Regional Offices by closing the Boston and Dallas Regional Offices. The Authority voted in early 2018 to close the Boston and Dallas Regional Offices, and the closures were implemented later that year. I want to spend a few minutes explaining some of the reasons for this difficult decision.

As I mentioned, I was at the FLRA when it first opened its doors in 1979. I served as General Counsel from 2005 to 2008, overseeing all of the seven Regional Offices that existed at that time. Thus, I know firsthand what the work of the FLRA's Regional Offices entails – at all levels – as well as how the work has changed dramatically over the past four decades.

In 1980, the FLRA promulgated regulations creating nine FLRA Regional Offices and several Sub-regional Offices. Over the years, the needs of the FLRA's customers changed. As a result, the FLRA consolidated its Regional and Sub-regional Offices in the 1990s. The FLRA in 1990 designated two of its Regional Offices as Sub-regional Offices. Those Sub-regional Offices were closed in 1995 and an additional two Sub-regional Offices were closed in 1996. At the end of the changes the FLRA had seven Regional Offices, and no Sub-regional Offices.

Although assessments to further consolidate began before I became the FLRA's Chairman, I wholly endorsed the need for consolidation after carefully reviewing the plan's underlying analysis and ensuring it was thorough, data-driven, and fully consistent with Presidential and Office of Management and Budget ("OMB") guidance, including Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch* (March 13, 2017), and OMB Memorandum M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce,* which asked the heads of each agency "to identify how she/he proposes to improve the efficiency, effectiveness, and accountability of her/his respective agencies." (April 12, 2017). In other words, I was convinced that consolidation would enhance and improve the FLRA's ability to carry out its mission and to do so in a more efficient manner. It was also consistent with the following three realities.

First, there is the reality of declining caseloads. Since 2000, as reflected in our Congressional Budget Justifications, our highest total annual intake of ULP charges – across all seven regions – was 6,167 in 2001. In 2017, our annual intake of ULP charges was 3,655, a decline of over 40 percent. Our highest total annual intake of representation ("REP") petitions was 435 in 2000. In 2017, our annual intake of REP petitions was 208, a decline of over 50 percent.

In the face of this data, it was hard to justify maintaining Regional Offices in seven cities when the FLRA's work could be carried out just as efficiently in fewer locations. In fact, to address declining caseloads in particular regions, the OGC had been routinely transferring cases among the seven regions for at least a decade to ensure parity in caseloads. In light of that fact, there was not – and there had not been for many years – a guarantee that a case filed in Boston would be investigated by a Boston agent.

Just as Congress said that the law we administer must be interpreted in a manner consistent with the requirement of an effective and efficient Government, the FLRA, too, must ensure that it is managing its operations in a way that is most effective and efficient for the American taxpayer. I was, and remain, convinced that this plan enhanced our ability to carry out our mission even more effectively.

Second, we and the Federal labor-management-relations community are beneficiaries of technological advancements that enable us to perform our mission very differently than in the past. With the introduction of technological modernization, the majority of the FLRA's customers – and all of the FLRA's staff – enjoy constant access to internet, email, cell phones, and even video teleconferencing. As such, there is much less of a need for FLRA agents to conduct on-site investigations. Those technological advancements facilitate communication and allow agents to build trust with our parties in ways that were impossible 40 – or even 20 – years ago. They also facilitate the investigation of cases that were routinely transferred among the then-seven regions as described above. These technological initiatives are in keeping with Congress's and the past several Administrations' intent to leverage technology to the maximum extent feasible.

Third, there is a fiscal reality. When 80 percent of the FLRA budget is personnel costs, and 10 percent is rent, we must be prudent with every taxpayer dollar appropriated by Congress. By planning ahead and reducing rental costs, we are proactively managing resources *and* freeing up resources that can be used to better our employees.

Moreover, while consolidation closed two physical Offices, implementation directly reassigned *every employee* – a total of 16 (four managers, ten attorneys, one administrative officer, and one legal assistant) – to positions in the other five regions or at headquarters. All 16 employees – attorneys, administrative staff, and managers − who were working in the Boston and Dallas Offices were offered their preferred positions in one of the other regions or headquarters with paid relocation. Seven employees relocated within the FLRA – one to Headquarters, two to the Washington Regional Office, two the Chicago Regional Office, and two the Denver Regional Office. Of the remaining nine, three retired, three transferred to other Federal agencies, and three chose to leave Federal service for other opportunities. This consolidation was not a reduction-in-force. Our goal was the opposite: to reduce our physical footprint due to changing mission needs in ways that did not adversely impact the employees we depend on to meet our mission.

Continuity on specific cases in Boston and Dallas was also not compromised. Further, by working hard to retain our current employees and by continuing to have them provide training to the same customers, relationships with parties that have been developed over the years in those regions will remain intact. At the end of the day, the decision to close these two Offices was a decision to cut buildings, not people.

The other decision which was not popular with many employees was my decision to no longer recognize the employee organization at the FLRA, the Union of Authority Employees, or UAE. The Statute that created the FLRA – the Federal Service Labor-Management Relations Statute – states that collective bargaining "safeguards the public interest," "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." As I told the Senate at my confirmation hearing, I heartily agree with that premise.

At the same time, Congress clearly excluded the FLRA from the reach of the Statute, explicitly carving the FLRA out of the list of agencies that enjoy the benefits of collective bargaining under the Statute. The Statute further provides that no collective bargaining unit can be appropriate (even in an agency included under the Statute) if it includes "an employee engaged in ***administering the provisions of*** [the Statute]." The sole mission of the FLRA is to administer the provisions of the Statute. Thus, Congress made clear in two separate and unambiguous provisions that FLRA employees were not authorized to participate in, or engage in, collective bargaining under this new framework it created in 1978. Accordingly, the Statute's carefully constructed accountability provisions and dispute resolution mechanisms are not available to the management or employees of the Agency or the UAE, and the obligations of the parties set forth in the Statute are not applicable to the FLRA or any labor organization it might choose to recognize. Despite those limitations and constraints, prior FLRA administrations had recognized the UAE as part of a separate labor relations program on a voluntary basis, and the FLRA and the UAE had executed a collective-bargaining agreement ("CBA") before my tenure.

This was the dilemma I faced as I began my term. As Chairman, I was 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. But because a bargain is a bargain, we followed in good faith the terms of the CBA, and continued to honor its terms until its expiration in December 2018. As the expiration of the CBA approached, the FLRA had two options: continue its contractual relationship with the UAE for another year through inaction or, under its terms, terminate the contract.

As Chairman, I consider the impartiality and neutrality of the FLRA to be of paramount importance. I believe that the statutory exclusion of FLRA employees from collective bargaining enhances the FLRA's position of neutrality because we operate outside of – and without any participation in – the labor-management-relations system we administer. And while I understand the desire for the FLRA to model a labor-relations program, I did not agree that continuing such a program would carry out the expressed policy of Congress as enacted in the law regarding the role of the FLRA. I also remained troubled that the FLRA could be seen as violating the very Statute it is charged with administering. Trying to administer a labor relations program "modeled" on the Statute while staying outside of its coverage was a perilous task. For example, the Statute authorizes official time for employees of agencies for certain purposes under the Statute, but explicitly excludes the FLRA from the definition of an agency. Yet the program as it had been operated in the past, allowed for FLRA employees to use official time as that term is used in the Statute.

After extensive reflection and consultation, I informed the UAE and our employees that the FLRA was invoking its right under the current CBA to terminate that contract upon its December

21, 2018, expiration. The timing of the decision, announced before the holidays and the partial government shutdown that included the FLRA, was driven by the expiration date in the CBA. The timing made it more difficult to mitigate the effect of the termination and respond to concerns of employees and former members of the UAE. Nevertheless, I am confident that we can work collaboratively to create solutions that reflect the unique perspective of our staff and I am taking steps to provide alternate vehicles for this purpose. I firmly believe that all of our employees have valuable, innovative ideas on how to accomplish the FLRA's mission, and I look forward to creating new ways to engage with our employees to ensure that we maintain avenues for constructive two-way discussions on matters involving the Agency and its employees.

Consistent with those goals, one of my highest priorities has been the development and successful implementation of the staff-driven FLRA 2018-2022 Strategic Plan. The plan is being implemented through a number of employee-led Teams. About one third of the FLRA's employees have participated as members of these Teams and they are well positioned to address challenges related to employee concerns. For example, our Professional Development Team is looking at ways to improve developmental opportunities for attorneys and staff both in Washington and the Regional Offices. Our Customer Engagement Team is reviewing FLRA training available to outside parties, updating the instructional materials on our website, and developing and preparing targeted video training modules that we hope to make available online.

Another new initiative relates to the use of Alternative Dispute Resolution, or ADR. In the past, we have had staff available as part of our Collaboration and Alternative Dispute Resolution Program to assist parties in mediating and resolving some of their disputes. Variations in ADR caseload and staffing have forced the Authority to critically reexamine the most effective way to provide ADR resources to its parties. We are currently discussing an increased role for the Federal Mediation and Reconciliation Service ("FMCS") to assist with this function. I look forward to sharing more information about our plans in this area as decisions are made.

Other priorities we have advanced include implementing the goals in our Strategic Plan related to case processing; customer outreach; expanding the use of electronic filing for our parties; and ensuring our employees have the best technology and training they need to do their jobs. We are also in the process of hiring additional staff to continue to meet the demands placed on us. We have been fortunate to have an impressive pool of applicants for the various positions for which we are hiring.

I mentioned that we are a small but highly productive Agency. That will not change. I believe, however, that our efforts will enable the FLRA to fulfill its Statutory responsibilities in a manner that reflects the possibilities and efficiencies of a modern work environment.

I would like to thank this Committee and Subcommittee for their 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 to any questions the Subcommittee may have.