

**National Council on Federal Labor-Management Relations
29th Public Meeting
January 15, 2014**

The National Council on Federal Labor-Management Relations held its 29th meeting at the Office of Personnel Management (OPM) on January 15, 2014. Co-chairing the meeting were Ms. Katherine Archuleta, OPM Director, and Ms. Beth Cobert, Deputy Director for Management, Office of Management and Budget (OMB). The following Council members also attended the meeting:

Council Member	Title
Ms. Carol Bonosaro	President, Senior Executives Association
Mr. J. David Cox	President, American Federation of Government Employees
Mr. William Dougan	President, National Federation of Federal Employees
Mr. Michael Filler	Director of Public Services, International Brotherhood of Teamsters
Mr. David Holway	National President, National Association of Government Employees
Mr. Gregory Junemann	President, International Federation of Professional and Technical Engineers
Mr. H.T. Nguyen	Executive Director, Federal Education Association
Ms. Patricia Niehaus	National President, Federal Managers Association

The following individuals sat in for absent Council members:

- Mr. Rafael Borrás, Under Secretary for Management, Department of Homeland Security, for Mr. Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security.
- Mr. Ernie DuBester, Member, Federal Labor Relations Authority (FLRA), for Ms. Carol Waller Pope, Chair, FLRA.
- Ms. Robin Heard, Deputy Assistant Secretary for Administration, United States Department of Agriculture, for Ms. Krysta Harden, Deputy Secretary of Agriculture.
- Mr. Steve Keller, Senior Counsel, National Treasury Employees Union (NTEU), for Ms. Colleen M. Kelley, President, NTEU.
- Mr. T. Michael Kerr, Assistant Secretary for Administration and Management, Department of Labor, for Mr. Seth David Harris, Deputy Secretary, Department of Labor.

- Mr. Samuel Retherford, Principal Deputy Assistant Secretary, Department of Veterans Affairs, for the Department of Veterans Affairs.
- Mr. Frederick E. Vollrath, Assistant Secretary of Defense for Readiness and Force Management, for Ms. Christine H. Fox, Acting Deputy Secretary of Defense.

The Designated Federal Officer, Mr. Tim Curry, OPM Deputy Associate Director, Partnership and Labor Relations, was present, as was one media representative and 40 other members of the public.

Agenda Item I: Welcome

At 10:03 a.m., Mr. Curry began the meeting with, “Good morning and Happy New Year. Thank you for your attendance today. Welcome to the first National Council meeting for 2014. Before we begin today’s Council meeting, I would like to make one administrative announcement. This Council operates as a committee under the Federal Advisory Committee Act or FACA. To facilitate opportunities for those of you who are not members of the Council and any other members of the public to address the Council directly, we have set aside time on the agenda for you to make brief statements to the Council. If you wish to address the Council regarding any topics presented today or any other matter, we request that you wait until the appropriate time on the agenda when we ask if any member of the public wishes to make any brief statements to the Council. Before we move on to today’s agenda, we have some Council business to address. We previously shared the draft minutes of the November 2013 meeting with you via e-mail. We’ve adopted all edits and corrections that were submitted. We recommend that the Council approve the minutes for the November 2013 meeting. Do I have a motion to adopt the November 2013 meeting minutes?” The Council unanimously approved the minutes without further revision, and proceeded with the meeting agenda.

Mr. Curry continued, “Before we hear from the problem resolution subcommittee, I am going to turn it over to the Council co-chairs who wish to make a few remarks. Ms. Katherine Archuleta addressed the Council by first wishing everyone a Happy New Year, “We are 15 days in and New Year’s seems like a long time ago. I wish you all a successful and prosperous New Year.” She continued that this is the time to recommit to working with employees through their representatives to improve the productivity of the federal government and remain strong. “Executive Order 13522 calls for us to work collaboratively to develop solutions. In the past year we have developed tools and guidance to meet the objectives of this Executive Order. However, we continue to have a lot of work ahead of us.” Ms. Archuleta concluded by noting that she looked forward to the agenda and working with this Council as everyone comes together.

Ms. Beth Cobert began by stating that she does not think there is a day that goes by that she and Ms. Archuleta do not work together. She went on to say that it is wonderful to have a part in the enterprise of this Council: “I reflected over the holidays – I have not completed 100 days yet – as I was in California and I told everyone about the incredible, talented individuals in public service. While I was not in government for most of it, there is no doubt that 2013

was a tough year. That said, I'm cautiously optimistic about 2014. I am heartened by the one percent pay increase we were able to deliver for 2014 ending the pay freeze. And, we are also returning to regular order for employee performance awards, now that the sequester is over. The sequester had an impact on individuals and their work – and how their work was impacted everyday was shown through the Employee Viewpoint Survey (EVS). We are working with OPM and the President's Management Council to ensure leadership attention to federal workforce issues. Working on the President's Management Agenda, people and the workforce remain the focus. Through this process, four broad themes have emerged as core pillars: Effectiveness, Efficiency, Economic Growth, and People & Culture." Ms. Cobert concluded that she is looking forward to sharing more with the Council as they continue to work on these elements and that she looked forward to today's report from the Problem Resolution Committee and the discussion about workplace flexibilities.

Agenda Item II: Report of Problem-Resolution Subcommittee

Mr. Curry continued, "As you may recall from the November 2013 meeting, we ran short on time for all our presentations. As a result, we did not hear all the updates from the Problem Resolution Subcommittee. Today, we will hear from multiple presenters. First, we will hear from Phil Roberts and Temple Wilson with the FLRA and Katherine Hannah from OPM. The Council previously released a labor-management forum reporting tool. These presenters will give us an update on the information reported to the Council so far. After we hear from Phil, Temple, and Katherine, we will hear from the Tool Kit Working Group. Julia Clark from the FLRA leads this group. Julie and her team will give us an update on the various tools and guidance under development. I will ask Julie to introduce her group members once we get to this portion of the presentation. Phil, Temple, and Katherine, welcome. We look forward to hearing your presentation."

Ms. Wilson began the LMF Reporting Tool Data Analysis Working Group presentation by introducing herself and stating that she works at the FLRA for Mr. Ernie DuBester. She stated that she would be speaking to the Council to give an update on the Reporting Tool noting that a robust group is working on the Tool – several of the largest unions and agencies in the federal government. "In 2013, the Problem Resolution Subcommittee came together and developed the labor management forum Reporting Tool with the purpose of (1) providing a mechanism for labor management forums to bring specific problems to the attention of the National Council; (2) identifying common barriers; and (3) finding examples of best practices of successful forums." She explained that unions and agencies were asked to fill out the web link report which included questions such as: Do you have a forum? If you do, how is the forum working? If it is not working as good as you would like, what are the barriers? Are you engaging in PDI? If so, is PDI working? Ms. Wilson explained that the working group tried to narrow the barriers down and that even though parties experienced common problems, it does not mean that there are no other barriers. Additionally, she said that they are currently trying to reach out to help unions and agencies and that the web link is still live.

Ms. Wilson stated that "Reports were collected from May 2013 through January 2014. A total of 780 reports were received. We requested that the responding parties (labor and

management) submit a report for each labor-management forum. Because the parties do not identify their forum the same way, it was difficult to match up the labor and management responses. Therefore, we do not know the total number of forums throughout the government. However, of the 780 total reports, 191 were submitted on behalf of labor; 508 were submitted on behalf of management; and 45 were submitted on behalf of “other,” such as facilitators. The remaining respondents did not identify on whose behalf the report was submitted.”

Ms. Hannah said that the Subcommittee feels strongly about speaking on data limits and that this tool was not intended to be statistically valid. In terms of the data limitations, she said, “The response rate is difficult to calculate; it is not possible to know the response rate because forums do exist at other levels of recognition. It is difficult to match up labor and management responses, based on lack of standardization in how respondents identified forums. It is difficult to control for responses covering forums that exist either at, above, or below the level of recognition. Lastly, all responses are given the same weight, regardless of how many bargaining units or employees are covered by each report.”

Next, Ms. Hannah discussed slide six of the Problem Resolution Subcommittee PowerPoint, asking: Does the labor-management relationship about which you are reporting have a forum, committee or council in accordance with Sec. 3(a)(i) of Executive Order 13522 (Creating Labor-Management Forums To Improve Delivery of Government Services). She said that 545 respondents said that they have forums. Additionally, Ms. Hannah said that of the respondents that indicated they did not have a forum, they are using some other method to achieve the goal of the Executive Order; Two Hundred and thirteen of the respondents answered “no”, and of this number, 20 percent explained other methods they used.

The presentation transitioned to Mr. Roberts who said, “I am going to talk about the data and what we can derive from it. There are different response rates between management and union. If you look at the aggregate data and break it up between union and management, the one thing that is similar is the response on whether or not you have a forum, which was 77 percent. This is not a significant skew that would hurt the numbers.” He went on to explain that in analyzing the responses related to frequency of use of Pre-Decisional Involvement (PDI) and barriers, the group considered labor and management responses separately: “This was done by calculating percentages of responses received in each category; total, labor, management, no response, other.”

Mr. Roberts referred to slide eight of the PowerPoint and discussed the following question from the tool: How frequently does your forum engage in PDI? “A significant number say they engage often and not often. He stated that he found this interesting because, if you look at the numbers broken down between labor and management 44 percent of the total stated that they say they constantly engage in PDI while 35 percent of the total say they never do. However, 52 percent of labor says that they often do not engage in PDI and 28 percent say they do; 53 percent of management says they constantly engage in PDI; and 29 percent say they do not. This is a mirror image.” He explained that this needs more analysis, but that there could be many reasons for this. Mr. Roberts stated: “You could have differences in perspectives in the type of PDI or a difference in what people think PDI is – people could say

they brought the union in and other people say that no agreement was reached so there was no PDI.”

Mr. Roberts transitioned to a discussion of slide nine of the PowerPoint saying that there are significant barriers encountered by forums. “Both labor and management see trust or relationship issues as a significant barrier. At the FLRA we see this as we deal with a lot of ULPs. Fourteen percent of total respondents said that scheduling is a barrier with 16 percent of management and seven percent of labor agreeing this is a problem. Lack of involvement of decision-makers is another barrier with 12 percent of labor feeling this way while only two percent of management said this is a barrier. It is difficult to get a labor-management forum to work because you want decision makers involved in the process, but it is difficult to get them in the process because of their schedules as they are high ranking in the organization. Both are legitimate concerns. This can be worked out, but it is useful to see it as a problem. The barriers to PDI are what we are hoping to address with the work of the Problem Resolution Subcommittee.”

Ms. Hannah then addressed the Reporting Tool recommendations stating that the Problem Resolution Subcommittee would like to take the following actions:

- Continue to develop resources and tools to help forums overcome barriers
- Identify respondents in the following categories:
 - Where it is possible to match up reports from labor and management for the same forum or labor-management relationship
 - Where labor, management, or both parties seek assistance
 - Where there is no forum or working substitute
- Give agencies and unions an opportunity, at the national level, to provide assistance to respondents
- For forums reporting successes, attempt to identify best practices

Ms. Julia Clark then began the Tool Kit Working Group presentation by giving a shout-out to all the hard work of the working group members who, she indicated, worked through the holiday. “The tools will provide support in PDI and the development of metrics. This is part of culture change and doing it requires support. The PDI products that are anticipated to be released are: (1) Confidential information in PDI, which we have support from OMB, agencies, and unions; (2) PDI and collective bargaining – the forum rose out of the collective bargaining relationship and the Executive Order brought rise to the discourse on the subject; and (3) Metrics Tool, which provides for the culture change and is the frontline to performance improvement while helping with accountability.”

Ms. Wilson continued the presentation noting that the Tool Kit Working Group is very close to being finished with the Metrics Quick Tip. “It is a labor of love. FMCS has been very helpful and I would also like to give a shout-out to all who have supported this effort. I am going to give an overview because we are close to completion. The basic structure is to demystify the metrics process. Before we talk about the objectives slide, we realize that forums across the government deal with issues that vary, so we acknowledge that and then point to skeletal structure and tailor it to an agency’s needs.” Referring to slide 12 of the

PowerPoint, Ms. Wilson said that the objectives of the Quick Tip are to discuss what metrics are; why metrics are important; how to develop and use metrics; and resources available to assist in metrics efforts.

Referring to slide 13 of the PowerPoint, Ms. Wilson said that how they focus on the third objective – how to develop and use metrics – is by going through a 5-step process. “First, you identify your issue – identify the significant issues; even those you may already be working on. It does not need to be new. You should refer to your agency Performance Improvement Officer if you have questions on issues that you are working on – talk to the Performance Improvement Officer and management to see if you can get going at this stage.” Next, Ms. Wilson discussed slide 15 and said that the second step is to identify your goal and that “stretch” goals are encouraged: “If your goal is to drop processing time on veterans’ claims to six months, then your stretch goal might be three months. It does not mean that you will meet this goal, but reach for the stars. If you have questions about what your goal should be look at your agency’s mission to make it mission related or reach out to your Performance Improvement Officer.” Referring to slide 16, Ms. Wilson continued that step three is to identify the best way to measure progress: “The National Council guidance reiterated that you should tailor this to what you do in the agency.” Referring to slide 17, she continued with step four, collect and consider data. “This is where you apply measurement. It might not need to be created, because you may be able to use data that already exists. Again you can reach out to the agency leadership or Performance Improvement Officer.” Referring to slide 18, Ms. Wilson said the final step is to record and report the outcome of your efforts: “This is a structured review of what you are doing. You could meet quarterly or monthly and you should be adaptable if there are changes or tweaks as you record your progress. When you are finished, you report the results to the Council at the end of the calendar year, it should be very simple to report out. Why is this important? Because it gives forums the opportunity to tout success – to show off – to see what happened (so we can help) through anecdotal and verifiable data.” She finished the presentation noting that the working group hopes to have the tool out soon.

Mr. Frederick Vollrath asked Ms. Wilson a question about setting goals and how she highlighted making it a “stretch” goal. He asked her to expand a bit on the “stretch” goal concept because if you are not performing highly now, then a “stretch” goal could set you up for failure. To this, Ms. Wilson replied that the working group spoke with someone from the Performance Improvement Council early on and they suggested the idea of a “stretch” goal. “Focus on little wins – on the goals and what you can achieve, but to also think about stretch goals. Then, if you discuss these stretch goals sometimes people come to the realization that they think it could be possible. But, basic goals are OK too.”

Ms. Cobert thanked the Problem-Resolution Subcommittee for their presentation. She stated that she “is intrigued by the difference in perspective on how things are working in the labor management forums – in how people think forums are there but they are not. I’d like to explore whether this is an actual difference or if this is just a difference in perception.”

Ms. Archuleta continued the conversation with a discussion of substantive areas the Council could speak about later, such as the recommendations. She wanted to know what resources the Council can bring to problem solving. She stated that the difference between perspective versus reality is so widely different. "I'd like to understand this better and sit down with management and labor to discuss this. The more we know the better we can determine what resources and tools are needed."

Mr. William Dougan pointed out to the Council that the Council members owed the Subcommittee a decision, "They requested that we do an activity." To this, Mr. Curry noted that Mr. Dougan is referring to the recommendations that were presented by the Subcommittee. Mr. Dougan made a motion to give the Subcommittee support. Mr. Vollrath said, "I am comfortable moving forward. To Director Archuleta's point regarding the recommendations, I think we need to flesh out the first bullet of the recommendations so we have a definite path forward." Ms. Carol Bonosaro then asked if the Subcommittee can come back with additional recommendations and tools and Ms. Archuleta reiterated again that she wants to understand the differences in perspectives. To this, Mr. Steve Keller said, "The differences in perspectives, in my experience are from two things. First, the difference in expectations in frequency in when PDI is used. Unions want to use PDI all the time while management does not think PDI is appropriate in some cases. Second, the difference in how you define PDI and what it really entails. Unions think it means getting in on the ground floor of the discussion while agencies still fall back on working out their own plan, then thinking, what would the unions think? So, it is before it is finalized, but it has already gone through the planning and identifying what to do. This is the other area that could underline the difference." Ms. Archuleta asked Mr. Keller if he knew of a solution or common practice to fix this. He replied, "Part of the problem is a communication difference – people need to explain what they want. Agency and management need to get comfortable with bringing in the union sooner and knowing what to expect."

Ms. Archuleta said, "From the OPM side, I am wondering where is the magic moment in this step? When there is a problem, issue, or challenge, what does the challenge really mean? When do you bring the union in? You need to analyze for yourself with what the impact is. From the manager's side, the magic piece is to bring in labor at the point where I understand and have done my own analysis of the problem. Do you have an example to help us as managers and I as to where the magic moment is so we can begin? And, I know that every issue is different." Mr. Keller said that he understood: "For the union it is the sooner the better. Unions and employees bring perspective to help understand the problem, scope of the project, and what is needed to undertake and address it."

Mr. David Holway contributed, "Before the Executive Order, people were empowered to make decisions by themselves. Before the Executive Order, unions were seen as gnats. The Executive Order calls for unions to be brought to the table because they might have an idea that makes sense. This is where the labor-management forums come in and decisions are discussed and made. It is discouraging that four years later only 40 percent of metrics reports are in. This talks to how upper level management might look at the problem and there is frustration from labor that nobody is paying attention. The co-chairs need to get the agencies

in line to get to 100 percent. The system is breaking down and we need to be making a push.” Ms. Archuleta said, “How can OPM help? That number should be 100. If people don’t understand the value or who should be in the forum, we need to change that. I want to be sure OPM is doing everything we can to fully implement the Executive Order. What do the numbers mean? Why is this not occurring?” Mr. Holway said, “We need compliance at the top. Not reporting is a lack of respect for the Executive Order and the heart and soul of our work.”

Mr. Nguyen said, “I agree. The decision is made by agencies – it is more likely that it is made and then the union is brought in later. For example, if you purchase a program and the agency already has the money, the union feels the program won’t meet the goal. They might think what PDI if they already spent the money? The union needs to be involved earlier or there is no point to have PDI. From some agencies there is agreement on using PDI in certain issues and that it is not so important – for crucial issues management makes decisions and does not use PDI, which is another area. If we want better solutions and services to the America people, we need to expand the PDI process.”

Mr. Vollrath transitioned the conversation back to the point Mr. Dougan raised earlier, “Do we agree on the recommendations? Personally I am fine with them.” Ms. Cobert added, “We should think about these and how we can get these practices embedded.” Mr. Dougan said, “If the Council has additional information around the work group items, then let’s give them marching orders. Why is labor so much different? Maybe it is a matter of interviewing a sample and reporting back – if there is a problem then what do we do about it. Let these folks go forward, get on the table, give them marching orders.” Ms. Archuleta concluded the discussion by noting that the Subcommittee heard the discussion today. Mr. Curry added that since the Council’s consensus is to pursue the recommendations, the Problem-Resolution Subcommittee, which meets regularly, can take this information back to the subcommittee and discuss it in preparation for the March Council meeting.

Agenda Item III: 2013 Telework Report Presentation

Mr. Curry introduced the next agenda item by stating, “In December 2013, OPM released its 2013 Report to the Congress on the ‘Status of Telework in the Federal Government.’ He further stated that “This report gives an overview of the federal government’s expanding and successful use of telework for achieving agency mission and goals. He continued by stating that “while the report acknowledges the government has made significant strides in realizing the strategic benefits of telework, there continue to be some barriers to participation. Last year, this Council identified telework as a topic this Council would like to address. The recent publication of this report makes this an ideal time for the Council to be provided an overview of the report and then discuss how this Council can further support the use of telework in the federal government. Mr. Curry continued by stating that “After we hear from today’s presenters, I will turn it to our co-chairs to lead the group in a discussion regarding the topic of telework. With us today are two representatives from OPM’s Employee Services Work Life policy office. Please welcome Ms. Veronica Givens and Dr. Kim Wells.”

Ms. Givens began her presentation by stating “We are here to talk to you today about the 2013 Telework Status Report to Congress. The Telework Enhancement Act of 2010 gave us the efforts needed to collect this data, which demonstrates how federal agencies determine telework eligibility, the number of people teleworking, rates of participation, frequency of telework, and barriers. The telework program is important for agencies to achieve outcomes such as attracting talent and cost reduction. OPM data assess agency’s goals and whether they are reaching them. The report gives a government overview of where the government stands with telework. The report is over 200 pages so we are only going to highlight the important information that the data demonstrated.” Ms. Givens continued, “The first source of information is the data call. We received telework records from 90 Executive branch agencies (of 99 invited) and 179 sub-agencies. The data call was administered from October 7 through December 7, 2012 and the results describe program implementation, employee eligibility and participation, and agency goals. The second source of information came from the Federal Employee Viewpoint Survey. Employee perspectives from a census survey of 82 agencies (97 percent of Executive branch); 46 percent response rate government-wide (1,622,375 employees invited). The Federal Employee Viewpoint Survey was administered from April through June 2012 and the results describe the relationship between telework and employee attitudes and perspectives such as job satisfaction and turnover intentions.”

Ms. Givens then introduced Dr. Wells, the lead researcher. Dr. Wells referred to page three of the PowerPoint in saying, “The Telework Enhancement Act advances telework because its goal is to have people participate in telework. A number of the questions ask about participation – it is comprehensive data. Looking at the second row – employees deemed eligible to telework – the number of agencies increase the number eligible in that they have changed their stand on telework over the past year and the effect of the dismissal and closure policy has also helped increase the number from 32 percent to 47 percent in 2012. In terms of the eligible employees with telework agreements in 2011, 21 percent did, and in 2012 the number was 26 percent. The percentage of employees eligible to telework in September went down to 21 percent in 2012 from 25 percent in 2011. The higher percentage of employee from 2011 could be because of the September time period – the Telework Enhancement Act was signed and agencies were given until December, but there was not time to collect data so September was picked as the timeframe. This gives a good snapshot and helps with a trend analysis. Moving toward the Fiscal Year data, 30 percent of employees were eligible to telework in FY 2012.”

Next, Dr. Wells referred to pages four and five of the PowerPoint giving the cabinet level snapshot saying that it looks at the percentage of employees eligible by cabinet level. She noted that two agencies have more than 50 percent telework eligibility – Health and Human Services and Department of Treasury – the rest of the agencies are under this. Dr. Wells then transitioned to page 6, the barriers to participation: “When asking agencies what the barriers to participation were, the largest barrier was management/cultural resistance – the value of face time plays into this. The second highest barrier was information technology – agencies need to budget the capacity to support the numbers.” Referring to slide seven, Dr. Wells said the Federal Employee Viewpoint Survey showed that 24 percent of respondents’ teleworked, “This was a consensus in the survey. This also gives us an opportunity to think about barriers

because the survey showed that 35 percent are not able to telework because they need to be physically present on the job. The question is: Who can we convert? The Report reveals that 13 percent of employees do not telework by choice and 22 percent do not telework because it is not approved, Dr. Wells stated that she believes it is time to work on management resistance.”

In referring to slide eight Dr. Wells discussed ways that agency management is promoting their telework programs. She stated that “Agencies are working to align telework with agency strategic goals and mission. Telework is an organizational change initiative that should align with leader, mission, and goal.” In 2011, 35 agencies promoted telework programs in this way and in 2012 41 agencies did. Dr. Wells then stated that in 2012, 68 agencies promoted telework programs by emphasizing telework as part of COOP (Continuity of Operations Plans) events, compared to 66 agencies in 2011. Third, Dr. Wells stated that 15 agencies in 2012, compared to 12 in 2011, promoted their telework program by using telework goal setting and measurement to hold managers accountable: “So, many are held accountable, yet management is resistant.”

In referring to slide nine, Dr. Wells said, “There are many benefits to telework. It is a cost cutting measure, reduces employee absences, and helps with retention because it helps keep the best talent. It also saves money – GSA is leading the push to saving money by reducing office space with telework – they are reducing the utility expenditure. A lot of agencies have not set goals with telework because it is hard to do – agencies should be measuring immediate wins for motivation.” In referring to slide 10, Dr. Wells continued with the telework goal of emergency preparedness: “Emergency preparedness is about what agencies are doing to integrate agencies into the telework policy, planning, and operations including aligning it with training. She reported that 15 agencies conducted telework exercises with all employees (up from 8 in 2011), which is a little disappointing, but this number is double than what it was previously. When the government declares the option for unscheduled telework due to inclement weather, telework is a natural experience.” In referring to slide 11, Dr. Wells discussed telework and job satisfaction: She stated “We analyze the EVS to see how we are doing as a government. In relating telework to job satisfaction – there is a strong relationship, but I am not implying there is causation. Overall, teleworkers agree that their job satisfaction is higher compared to these employees who cannot telework due to barriers. Those that choose not to telework are also satisfied with their job, which helps with employee retention.” In referring to slide 12, Dr. Wells said, “The goal of telework is to attract new talent – it is a proxy measure. The higher the number of teleworkers, the more people will recommend their organization as a good place to work.” Concluding the presentation, Dr. Wells noted that the data call will be issued in later February 2014 and that data for the 2014 report will be drawn from 2013 agency records and the EVS to assess how agencies achieve results through the EVS. Additionally, there will be an increased focus on goal setting and results of goal assessment. Finally, Dr. Wells asked the Council members to please access the telework report on www.telework.gov.

Mr. J. David Cox asked, “Looking at the data, it seems that all employee groups are together. Is the data broken down by management, bargaining unit employees, etc.? They did this at

DHS and it showed that management employees had a high opportunity for telework. If it snows tomorrow, I have an iPad, etc., so I can still work, but most of the employees are not similarly situated. If the data can be broken out in management it could be helpful. Job satisfaction and recruitment are correlations of telework so that is positive.”

Mr. Michael Filler noted that in April 2012, GAO had a report on telework and made recommendations to OPM. He asked, “Are we categorizing and collecting data recommended by the GAO?” After asking for clarification by Dr. Wells, Mr. Filler asked, “Are there different ways data is collected throughout the government? Is OPM categorizing the data or is OPM following the GAO recommendations?” Dr. Wells answered, “OPM developed the data call in accordance to the Telework Enhancement Act and we worked with GAO closely.” Mr. Filler then followed up with another question, “Is there a quantifiable measure on how many participated?” Dr. Wells noted the emergency preparedness measure and how telework is being integrated into emergency preparedness. Mr. Filler asked about aligning telework with a future goal/mission. Dr. Wells noted that this was qualitative data, “The CHCO Council was tasked with developing agency data and Kathryn Medina was asked to collect questions. Each agency was descriptive.” Mr. Filler said, “So, this is just anecdotal. I would recommend a balanced approach – do what the CHCOs do.”

Mr. David Holway noted that the 82 percent increase in participation is a great job and something that everyone should be proud of. Mr. Dougan referred back to Dr. Well’s remarks on telework eligibility by cabinet agency: “Why are a few agencies lower in eligibility? If this was anecdotal, I’d think it was higher. I am surprised.” Dr. Wells said she could speculate as to an answer, “I do not know what the population at the agency did. Agencies learn – remember the Telework Enhancement Act was signed in December and agencies had until June to tell employees – imagine DoD. Eligibility criteria changed over time so it fluctuates in the change standard.” Mr. Dougan replied, “I could understand if work changed. I do not think it is that radical. DoD is a large agency so if they can do it, every agency can follow.” Dr. Wells said, “In the Telework Enhancement Act, eligibility is not defined, but it speaks to the ineligibility criteria. Agencies can determine if they want to include performance as a criteria. Agencies are constantly working on this. Ineligibility records are not good.” Mr. Gregory Junemann joined the discussion by stating, “Perhaps participation last year was affected with sequestration, the government shutdown, and furloughs.” Dr. Wells said that this was not tracked in the data because the data is from 2012 but it will be interesting to see the 2013 data. Mr. Junemann continued that telework should address the agency’s mission. “Are we adjusting on performance evaluation where employees teleworked? For example, if you are a biologist at NASA and your job consists of reading reports, you can do that anywhere. Let’s make sure we are not evaluating nine out of 10 days on the job. The emphasis on management should be: is this person doing exactly what they want?” Dr. Wells responded that the telework report highlights the performance management issue, but that OPM is not collecting data around at this point.

Ms. Cobert said, “The area with real opportunity here is (1) smart spending and (2) employee satisfaction at the same time. We need support to do so such as more flexibility on devices so employees can login at home – this will help make more people eligible, doing this in a way

that is important for information security – we can use technology tools. I’d like to see the number system in a way shrink. This is a big opportunity on many levels.”

Mr. Curry then noted to the Council that the meeting is behind schedule, but that one of the discussion points we wanted to talk about was what can the Council do to help facilitate telework? After this meeting, Mr. Curry noted that he would circle back with the Council. Ms. Archuleta added that if there is more information OPM can give to the Council members regarding telework, OPM would be happy to do so. She mentioned that members should email Mr. Curry if they wanted any more information.

Agenda Item IV: U.S. Patent and Trademark Office and NTEU Labor-Management Forum Success Story

Mr. Curry said, “For the final presentation today, we have representatives from the labor management forum between the U.S. Patent and Trademark Office (PTO) and the National Treasury Employees Union, Chapter 245. They will be discussing the workplace flexibilities at PTO, including telework, implemented due to effective labor-management relations. As many of you may know, the PTO was recently named number one out of 300 agency subcomponents in the 2013 Best Places to Work in the Federal Government rankings by the Partnership for Public Service. Please welcome Mr. Howard Friedman, President of NTEU, Chapter 245, and Mr. Fred Steckler, Chief Administrative Officer for PTO.”

Mr. Friedman opened the presentation with a short anecdote about Norma Rose, an employee within the Director’s Office who recently retired from PTO. He said that their presentation will answer the question of why Ms. Rose stayed at PTO for so many years. Mr. Steckler stated “We are honored to be here and are anxious to share our story with you today. As with all good stories, we are a work in progress.” In referring to slide two of the PowerPoint presentation, Mr. Steckler described the work of the PTO as background. “The United States Patent and Trademark Office (USPTO) is an agency within the U.S. Department of Commerce that examines and grants patents and trademarks. There are probably tens of thousands of patents or trademarks in this room and on your person. So, it has a great effect on the economy. There are 12,000 employees at USPTO including engineers, scientists, attorneys, and support. It is a younger workforce compared to the rest of the federal government. We have a \$3.0 billion budget. Intellectual property-intensive industries accounted for about \$5.06 trillion in value added, or 34.8 percent of U.S. gross domestic product in 2010. Our main campus is in Alexandria and we have four new satellite offices opening up across the country. We are fee funded and production oriented. The nature of our work is part of our success story.”

In referring to slide three, Mr. Steckler continued, “In just six years, the USPTO improved in the Partnership for Public Service’s Best Places to Work in the Federal Government ranking from 172nd in 2007 to number one in 2013 out of 300 agency subcomponents. In that same period mission results increased dramatically. The patent application backlog was reduced 31 percent while annual patent application filings increased from 467,000 to over 600,000 per year. Trademark application processing time also decreased – from 13.4 months to 10 months,

while annual trademark application filings also increased from 394,000 to 433,600 per year. There was a correlation between the Best Places to Work ranking and business results.” Mr. Steckler continued with slide 4 saying, “Our scores were high in every index this year. It did not happen overnight and USPTO did not start at the top – it took time, dedication, and a shared commitment between management and our unions to improve.”

In discussing slide five, Mr. Steckler continued to talk about the relationship between management and union at USPTO. “We have a very strong labor-management relationship. We have three unions at PTO. The Patent Office Professional Association (POPA) has 8,500 in the bargaining unit including patent examiners and other professional employees. National Treasury Employees Union (NTEU) Chapter 245 – Howard’s chapter – has 400 employees in the bargaining unit including trademark examining attorneys and TTAB Interlocutory attorneys. NTEU Chapter 243 has 1,300 employees in the bargaining unit including paralegals, Legal Instrument Examiners and Assistants, IT specialists, and other support staff. In total, 85 percent of the workforce population is in the bargaining unit.” In discussing slide six, Mr. Steckler continued, “Union participation is critical to our success. Unions ensure employees’ needs and viewpoint are a vehicle to reach management. Everyone is effective if the union is effective in its ability to carry out the duty of the union, which is having insight into the employees and helping management produce better results. NTEU and POPA’s strong presence in the workplace ensures that employees’ needs and concerns are raised with management. Both NTEU and POPA have a dedicated cadre of volunteer leaders who are responsive to employees and, through their union, employees feel that they have a voice about what is important to them and what they need to get the job done.”

In discussing both slides seven and eight, Mr. Steckler said that unions and leadership working together is the secret to their success. Mr. Steckler continued by stating “Senior management and unions need to be on the same page and all other folks in the organization will fall in line. This will help engage and commit both sides. We have a regular labor-management meeting, usually on Mondays, where we look for a solution first and then figure out the format later. PDI is the way we get our work done.” In addition, Mr. Steckler talked about their success “toolbox” which includes:

- Senior leadership driving change – both USPTO management and union leaders
- Engagement and commitment from both sides
- Regular monthly labor-management meetings...more as necessary
- Look for solutions first...then agree on format for next steps
- Transparency and teamwork
- Joint communications
- Pre-Decisional Involvement (PDI)

Mr. Steckler concluded that the bottom line is that it all comes down to trust and respect.

Mr. Friedman continued the presentation by saying that he will answer when union and management should do PDI – a question that Ms. Archuleta raised to the Council during an earlier discussion. In discussing slide nine, Mr. Friedman discussed how they use PDI at

USPTO: “We talk about everything at any time. The cornerstone of the Executive Order is PDI – PDI meets all three goals of E.O. 13522: employee satisfaction, improvement in labor-management relations, and increase productivity. PDI hits all three of the things called for in the Executive Order. One of the primary reasons PDI works at the USPTO is because either party, the unions or management, can raise or develop an issue and discuss mutual interests. In talking about ‘anything at any time,’ often it is the union that brings up issues before management does. Really PDI begins by anyone bringing up ideas and that is one of the reasons we have improved our metrics and goals. So, don’t forget that unions should be able to bring up issues. That leads to a lot of brainstorming and a lot of decisions. We are involved in just about every aspect of PDI and it’s worked very well.”

In continuing to slide 10, Mr. Friedman discussed the trust and benefits of PDI, “The union is involved in the beginning. We intersect management products and the union is involved sooner – you cannot advance either interest unless both interests are advanced. Get the unions involved – we’ve never burnt them and they’ve never burnt us. Two months ago I filed a request to bargain – this is the first time in years. We have not filed an unfair labor practice in about 10 years and very few grievances. We did not file one performance grievance last year. We haven’t had to bargain in a number of years. The less litigation money helps PTO.” Mr. Steckler chimed in, saying: “This goes for all three of our unions. Bargaining is low. However, this is not the old story at the PTO – the FLRA made a ruling years back saying ‘We have no illusion that this or any decision will assist these parties in building a constructive labor-management relationship...’ We actually negotiate all the time and PDI conversations are really upfront problem solving joint sessions. We have a room at PTO called the bunker where we lock in representatives of leadership and management. We work through better solutions before things are finalized. By the time we get to a new program, or something like that, we have already worked through the problems. This may take longer but progress is better at the end.” Mr. Friedman explained that early communication between the parties helps with PDI because it:

- Builds trust
- Allows management to consider the union’s concerns and ideas earlier when there may be more flexibility in addressing them
- Creates a problem-solving atmosphere, which considers both the efficiency of the agency and working conditions for employees
- Frequently leads to better solution with reduced (or no) bargaining prior to implementation

Mr. Steckler continued to slide 11 giving examples of PDI partnership success. He noted that the parties: (1) changed how attorneys and examiners receive credit for work performed; (2) refined performance plans to more closely align evaluation standards with agency goals; and (3) added a new top bracket for patent examiner production incentive, and concluded that the results speak for themselves. Mr. Friedman said that a lot of the things they discuss are (b)(2) and (b)(3) matters, but they also do (b)(1).¹ He gave the example of a focus group dealing

¹ Referring to 5 U.S.C. 7106(b).

with automation and software tools. He also noted that the telework program saves the agency millions of dollars. Mr. Steckler continued, “We use PDI where we are bargaining an issue or not. PDI comes to a collective better solution.”

Next, Mr. Steckler continued to slide 12 to discuss the America Invents Act: He stated that “PDI allowed the agency to complete discussions with POPA prior to the statutory deadlines for implementation of the act, allowing the agency to timely implement the most significant changes to the Patent system in generations. Through PDI the following topics/processes were facilitated: (1) how the required changes would be implemented; (2) employee training; (3) communications with the user community; and (4) the transition between the old and new systems/requirements.” He continued, “This was a fundamental change in how the whole patent system worked. We implemented the Act within the one year timeframe through PDI collaboratively.”

Mr. Friedman continued to slide 13 saying, “Management and unions have also worked on a number of pilot programs to drive positive change that actively involved gathering employee feedback – these are great to get your feet wet. Management was concerned about implementing the programs completely, so we piloted telework, patent hoteling for telework, creativity and innovation – employees provided suggestions and it was evaluated by management and the union.” In referring to slide 14, Mr. Friedman discussed the Telework Enhancement Act Pilot Program (TEAPP) saying, “The Telework Enhancement Act authorized the PTO to conduct a seven year test travel program that allows our employees to live anywhere in the 48 states. The PTO is negotiating with Alaska and Hawaii. In the last two years no one has been called back after they moved/changed duty stations. The program allows 15 percent of the bargaining unit employees to live anywhere.” Mr. Steckler added, “Employees can work anywhere and they do not have to come back every bi-week – they come back up to five times each year through their own expense.” Mr. Friedman said, “They generally move to less expensive areas, so their salary at the new duty station is lower. Their performance standards are the same – productively is better for those who work at home.

In referring to page 15, Mr. Friedman continued, “This has been a 17 year process. We started in 1997, in partnership with NTEU 245, with 18 Trademark attorneys working most of their week at home. Today 91 percent of the positions at USPTO are eligible to telework (10,694 positions eligible to telework) and 80 percent of eligible employees at USPTO participate in telework (8,554 employees teleworking).” In referring to slide 16, Mr. Friedman said, “The metrics show that people are happy to be at home, labor-management relations are good, and the agency is meeting its goals. In terms of real estate, recouping space from full-time telework employees results in real estate cost avoidance of over \$24,000,000 annually. It is expensive to train employees so this telework program helps with attrition because patent examiners participating in a full-time telework program have a lower attrition rate than patent examiners not on a full-time telework program. A lower attrition rate results in less re-work allowing examiners instead to direct their efforts towards reducing the backlog of unexamined applications and reduced ‘new examiner’ training costs. We hit the metrics the Executive Order was looking for.”

In focusing the discussion on slide 17, Mr. Friedman and Steckler stated that, “PDI has been used at the individual union level and on an ad hoc basis with all three unions. Labor-management forums with each individual union continue to enhance communication and build trust. Thus far, our efforts have been focused on TEAPP and with individual unions. Based on the success of these efforts, management and all three unions have agreed to establish a USPTO-wide labor-management forum for discussion of issues that are important to all parties. Both management and labor wanted this because we have enough issues that we can address agency-wide. We hope this is a sustaining thing and it gives us some additional structure. Also, our goal is to fully incorporate PDI into our business processes, both now and in the future.” Mr. Friedman continued, “We have a strong interest in nailing down an MOU or an agreement allowing us to do exactly what we’ve been doing for the last five years in the future, regardless of whatever change in Administration may occur. We are always involved in PDI and are happy to speak to other forums.”

Mr. Keller said, “Congratulations on your accomplishment. You demonstrate what can be accomplished when labor and management demonstrate commitment to address problems and challenges – you give meaningful solutions to real problems and do not dance on the edge...the issues pertain to the agency’s mission. You are committed to PDI and a problem solving approach which we need to replicate in other agencies. A lot of hard work and trust does not appear – communication needs to be open and candid, focusing on the interests that are important. You can undermine trust if you are not open, etc. This is the best example we have had so far.”

Mr. Friedman responded, “We are in a really good place. We want to keep our ranking. The challenge is that our people are spread so we are concerned about losing connections so are focusing on ways to keep the connection and IT channels improving together and not separate.”

Mr. H. T. Nguyen said, “I am impressed with this success story – it shows the real commitment of both management and union and demonstrates a truly win-win.” He also mentioned that he hopes Mr. Friedman and Mr. Steckler can be representatives through OPM and go on the road with the FLRA and FMCS to give agencies and unions an incentive to work together. Ms. Archuleta concluded by saying, “Wow!” And, noting that OPM would have Mr. Friedman and Mr. Steckler to OPM to hear more about their story and how OPM can learn from it.

Agenda Item V: New Business

Mr. Curry said, “Before we ask about new business, this is to remind you that we previously proposed a meeting schedule for 2014. We did not receive any concerns about this proposed schedule. Therefore, we will continue the same schedule of meetings – every other month. This schedule was published in the Federal Register, is included in your handouts today and was provided to you in the read ahead email we sent last week. The next Council meeting is scheduled for Wednesday, March 19, 2014, here at OPM from 10:00 a.m. to 12:00 noon. Now we will cover new business. Does anybody on the Council wish to raise any new business?”

Ms. Bonosaro asked Ms. Cobert, “Beth, do you have a projection on when the President’s Management Council’s plan will be shared with the Labor Management Council?” To this, Ms. Cobert replied that she could not promise this Council a date, but is aiming for March.

Mr. Filler then said, “I support the annual metrics report. If there is not 100 percent participation by all agencies, then I think a representative from labor and management needs to be present at the March meeting where they were unable to provide responses.”

Lastly, Mr. Junemann added that he sent an email to the Council and had two judges with him at today’s meeting who are ALJ’s at SSA. However, he noted that they will try to resolve this problem outside of the forum.

Agenda Item VI: Acknowledgement/Receipt of Public Submissions

As promised at the beginning of the meeting, Mr. Curry provided an opportunity for public comment: “As a FACA committee, we offer opportunities for members of the public to make brief statements to the Council. Does any member of the public wish to make any brief statement to the Council?” Hearing none, he turned the meeting back to the co-chairs.

Agenda Item VII: Adjournment

In her closing remarks, Ms. Cobert thanked the Council for their participation and robust discussion. She concluded, “I am encouraged. We will have to have PTO back and other success stories like this that hit the mark.”

Ms. Archuleta also thanked the Council, “Thank you for continuing to communicate with Beth and me. We use this forum to get issues resolved. I look forward to the next meeting.”

Mr. Curry adjourned the meeting at 12:08 p.m.

CERTIFIED

Katherine Archuleta
Co-Chair

Beth Cobert
Co-Chair