

# FEDERAL WORKERS ALLIANCE

COLLECTIVELY REPRESENTING OVER 300,000 FEDERAL WORKERS

August 3, 2020

Erika Dinkel-Smith  
Director of Labor Engagement  
Joe Biden 2020

Dear Ms. Dinkel-Smith:

We, the members of the Federal Workers Alliance, call upon the incoming Biden administration to quickly reinstate and confirm the rights of federal workers by undoing the wrongs that have been perpetrated upon them for the past four years. We hope to serve as a resource to the incoming administration so that federal workers can again work in an environment of peace and security.

## **1. Immediately rescind the Executive Orders issued by Trump in May 2018, and Return to Status Quo Ante**

President Biden should immediately withdraw EOs 13836, 13837, and 13839 which unconstitutionally and illegally denied federal employees essential workplace rights. Further, President Biden should issue instructions to all agency heads that each should re-open any collectively bargained agreement (CBA) it signed since the beginning of 2017, at the union's request. Following any request to re-bargain a CBA bargained under the illegal executive orders, the agency should repudiate the illegal CBA and reinstate the predecessor CBA covering those bargaining units during the pendency of the re-negotiations process. This will apply regardless if the CBA was bargained for, imposed by FSIP, or imposed on agency head review. Congress has [chastised](#) a number of Agencies for flouting the requirements under Chapter 71 and implementing the terms of unsigned CBAs prior to completing bargaining.

The President has the authority as the Chief Executive of Federal Agencies to order Agencies to participate in permissive bargaining (bargaining that is permitted but not mandated by Chapter 71) and to voluntarily agree to comply with the terms of the last signed agreement.

## **2. Reinstate Labor-Management Partnership Forums**

The President has executive authority to encourage sectorial peace between unions and agencies, and to reinstate [Executive Order 12871](#) (1993). Labor-Management Partnerships were objectively successful endeavors which created good working relationships and exchanges of mission-critical information between management and workers. Labor-Management Partnership Forums encourage communication and identification of potential issues to be solved before they become actionable grievances or unfair labor practices. See also:

<https://www.govexec.com/management/2017/12/opm-tells-agencies-stop-working-collaboratively-unions/144617/>

### **3. Direct Agencies to Avail Themselves of Interest Arbitration**

The President should order all agencies to allow, at the union's election, to bypass the Federal Service Impasses Panel and instead proceed to binding interest arbitration when there is an impasse in contract negotiations. This is permitted pursuant to 5 U.S.C. 7119(b)(2). This will expedite and streamline the impasse resolution process and allow agencies and unions to avoid what many characterize as cumbersome, outdated processes at FSIP.

### **4. Give the Federal Services Impasses Panel a Fresh Start**

The current FSIP has taken extraordinary measures to weaken bargaining rights and employee protections by ordering unions to adopt anti-union provisions in their CBA's. The FSIP is racing against the clock to issue as many orders as possible before being removed from office.

The President should immediately remove all members of the Federal Services Impasses Panel (FSIP or the Panel), leaving the positions vacant until new members may be appointed. The President is free to remove and appoint new Panel members at any time without Senate confirmation. 5 U.S.C. 7119(c) (2) & (3).

### **5. Take Immediate Action to Prevent a Republican Majority through 2022 at the FLRA**

The Federal Labor Relations Authority is a quasi-judicial body with three full-time Members who the President appoints for fixed, five-year terms, with the advice and consent of the Senate. The President designates one Member to serve as the FLRA Chairman, and as the Chief Executive and Administrative Officer of the agency. Currently at the FLRA, there are three appointed members: Jim Abbott, Ernie DuBester, and the FLRA Chairperson, Colleen Kiko-Duffy. Members Abbott and Kiko are the Republican appointees, member DuBester is the Democratic appointee.

Member DuBester's term expired in summer 2019, he is in what is known as "holdover status" and will remain on the FLRA until Summer 2021 unless he is reconfirmed. The FWA urges the Biden administration to re-confirm Member DuBester as soon as possible.

More problematic, however, is the holdover status of Member Abbott. For reasons addressed below, Member Abbott is a dangerous ideologue whose actions have undercut the validity of the Authority. Member Abbott's term expires this summer and the FWA vehemently opposes his re-nomination. If Member Abbott is renominated before the end of this year – Member Abbott could stay on the FLRA through Summer 2022, **granting Republicans majority representation on the FLRA for at least half of a Biden first term.** For this reason, it is imperative that

Member Abbott not be reconfirmed. He should be removed at will, at the President's first opportunity. See below.

As for Chairperson Kiko, her term expires in 2022. The FWA urges the Biden administration to have a nominee for these positions in the pipeline, ready to be confirmed, along with a nominee for the FLRA's long vacant General Counsel position. The FWA offers its services in vetting nominees for these positions.

## **6. Investigate and Remove Colleen Kiko-Duffy and Jim Abbott for Disqualifying Anti-Union Bias**

The President may remove members of the FLRA for cause after providing notice and hearing. 5 U.S.C. 7104(b). The current republican majority in the FLRA has managed to reverse basic tenets relied on by federal sector practitioners over the last 30 years and greatly limited federal sector unions' ability to attain relief when an Agency violates the contract or law. A study conducted by a respected federal sector arbitrator found that the Trump FLRA has [greatly disturbed the predictability](#) necessary for stable labor relations.

While the evidence for FLRA Chairwoman Colleen Kiko-Duffy is [evident](#) in the House record, both Republican appointed members should be removed for cause. There is always some degree of "partisan lean" when an Administration appoints the FLRA members, however, the FLRA Republican appointed majority has gone well beyond the norm, ruling in favor of Agencies in an overwhelming majority of its decisions.

Kiko and member James Abbott have both created extraordinarily bad precedent at the Authority that must be immediately rectified. [The U.S. Circuit Court for the District of Columbia](#) recently censured Abbott and Kiko for misapplying basic U.S. Supreme Court precedent in an FLRA decision regarding the difference between the phrases "terms and conditions of employment" and "working conditions" (there is no legal difference).

There [have been calls](#) within the federal sector to review the law licenses of Kiko and Abbott because of the legal deficiency of the pair's decisions in their time at the FLRA. At least one FLRA watcher has described Abbott as a "[hypocrite extraordinaire](#)". Kiko herself [repudiated](#) the Authority's longstanding relationship with its staff union, showing contempt for organized workers even in her own shop. Together, they have issued some of the most intellectually bankrupt and corrupt decisions ever contemplated – and they are unabashed in their willingness to twist the facts and the law to suit their anti-union purposes.

Abbott and Kiko-Duffy must be investigated, exposed, and removed as their very presence on the FLRA delegitimizes it.

## **7. Instruct the VA to Utilize Chapter 75 and Chapter 43 Instead of the Alternative Framework Created by the VA Accountability Act**

The VA Accountability Act (VAAA) has been an objective failure to meet its stated goals of improving the VA workforce. The VAAA created an alternative framework for the VA to deal with an employee facing adverse actions or performance issues. However, the VAAA gives the agency a choice and the incoming administration should direct the VA to pursue adverse actions under Chapter 75 and performance actions under Chapter 43 – as is the protocol for the majority of Title 5 employees throughout the government.

#### **8. Affirm the Rights of Title 38 Employees to Join and Serve their Local Unions**

In November 2018, the VA unilaterally repudiated contracts with its unions as to the rights of Title 38 employees – medical professionals. In one move, the VA told doctors, RNs, and other medical professionals that they could no longer serve as a union representative or endeavor to solve workplace problems during the working day or even when they have bargained for official time out of their daily duties to assist a fellow employee with an issue. Medical professionals are now treated as “less than” their Title 5 non-professional counterparts, and face illegal discrimination for exercising their statutory and constitutional rights to participate in their union. The VA must immediately rescind this repudiation and agree to bargain with its affected unions to restore the rights of Title 38 employees. The VA must further be instructed to cease litigating the lawsuit brought by the unions to enforce these employees’ rights, and seek a settlement to make the affected parties whole again.

#### **9. Restore full Title 5 Rights to Department of Defense (DoD) Employees**

Over the past few years, Congress has passed a series of provisions that have greatly reduced Title 5 protections for DoD employees compared to other federal employees. These changes have been ill-advised and harmful to those employees supporting America’s war fighters. Legislation restoring full Title 5 rights for these employees should be enacted. First, the requirement of a two (2) year probationary period for DoD employees should be repealed and replaced with a one (1) year period, as other non-DoD federal employees are subject to only a 1-year period. A 1-year period is a sufficient amount of time to assess whether an employee is able to satisfy his or her job requirements. See: <https://www.govexec.com/management/2016/10/longer-probationary-periods-new-defense-hires/132088/>. Second, the DoD reduction-in-force rules, which essentially eliminate experience as a retention factor, should be repealed. Under the current rules, an employee who has been with the Agency for only 1 year and has been given an outstanding rating could be retained over a 30-year employee with a current excellent rating. Finally, the official time restrictions for DoD employees should be repealed. Unlike other Title 5 employees, DoD employees cannot lobby on official time as provided in the National Defense Authorization Act.

#### **10. Sign an Executive Order to Protect Retirement Benefits for Disabled Workers**

President Biden should execute an Executive Order to permit duty-related disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court

Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled, and to reinstate without penalty retirement benefits for formerly covered employees who were involuntarily transferred after incurring a duty-related disability to a non-covered position resulting in a loss or forfeiture of covered retirement benefits.

We believe these are actions that the incoming administration is empowered to enact immediately upon taking office. We further ask for support for needed legislative fixes to Chapter 71. We are at your service to discuss any executive and legislative reforms that can further the federal government's goal to be the model American employer.

Respectfully,

American Federation of State, County, and Municipal Employees (AFSCME)  
American Federation of Teachers, AFL-CIO (AFT)  
Antilles Consolidated Education Association (ACEA)  
Federal Education Association/National Education Association (FEA/NEA)  
International Association of Fire Fighters (IAFF)  
International Association of Machinists and Aerospace Workers (IAMAW)  
International Brotherhood of Electrical Workers (IBEW)  
International Brotherhood of Teamsters (IBT)  
International Federation of Professional and Technical Engineers (IFPTE)  
International Organization of Masters, Mates and Pilots (MM&P)  
Marine Engineers' Beneficial Association (MEBA)  
Metal Trades Department, AFL-CIO (MTD)  
National Association of Government Employees, SEIU (NAGE)  
National Federation of Federal Employees (NFFE)  
National Weather Service Employees Organization (NWSEO)  
Overseas Federation of Teachers, AFT, AFL-CIO  
Patent Office Professional Association (POPA)  
Seafarers International Union/NMU (SIU)  
Service Employees International Union (SEIU)  
Sheet Metal, Air, Rail and Transportation Workers (SMART)  
SPORT Air Traffic Controllers Organization (SATCO)  
United Power Trades Organization (UPTO)