



United States Merit Systems Protection Board
Susan Tsui Grundmann, Chairman

Implementation Plan of Executive Order 13522

March 9, 2010

I. Introduction

Pursuant to Section 3(b) of Executive Order 13522 entitled "Creating Labor-Management Forums to Improve Delivery of Government Services," and as Chairman of the U.S. Merit Systems Protection Board (MSPB), I am pleased to submit this report outlining the plan for implementation of the Executive Order at the MSPB. The plan and this report have been developed in careful consultation with the Executive Committee of the Merit Systems Protection Board Professional Association (PA), a labor organization under Chapter 71 of Title 5, United States Code.

II. The Merit Systems Protection Board

The MSPB is an independent Executive Branch agency charged with protecting the federal government's merit systems of employment and the individuals within those systems. The MSPB completes its statutory mission by: 1) adjudicating appeals of certain personnel actions for most civilian federal employees and some applicants for federal employment; and 2) conducting studies of the federal merit systems and other human resource management issues to help ensure effective and efficient personnel management free from prohibited personnel practices and in accordance with the merit systems principles. Among the types of matters that the Board hears and decides as part of its adjudicatory function are appeals of:

- 1) removals, reductions in grade (demotions), and suspensions of more than 14 days based on allegations of employee misconduct;
- 2) reductions in grade or removals based on allegations of unacceptable performance;
- 3) allegations that a personnel action was taken in reprisal for whistleblowing under the Whistleblower Protection Act;
- 4) determinations affecting the rights or interests of an individual under the Civil Service Retirement System or the Federal Employees' Retirement System;
- 5) matters brought under the Veterans Employment Opportunities Act; and
- 6) matters brought under the Uniformed Services Employment and Reemployment Rights Act.

The Board may also adjudicate allegations of unlawful discrimination as part of an appeal of another matter within its jurisdiction.

The MSPB is headed by three Board Members appointed by the President, with the advice and consent of the Senate, for overlapping terms of up to seven years. As Chairman, I have served as the Chief Executive of the Board since taking the oath of office on November 12, 2009, for a term that will expire on March 1, 2016. The Vice Chairman, Anne M. Wagner, also took the oath of office on November 12, 2009, for a term that will expire on March 1, 2014. The third Board Member is Mary M. Rose, who took the oath of office on December 28, 2005, for a term that will expire on March 1, 2011. By statute, no more than two of the Board Members may be adherents of the same political party.

The MSPB employs approximately 215 employees at its headquarters in Washington, D.C. and in eight regional and field offices located in: New York, New York; Philadelphia, Pennsylvania; Alexandria, Virginia; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Denver, Colorado; and San Francisco, California. For Fiscal Year 2010, the MSPB's operating budget is \$42,918,000.¹

III. The Merit Systems Protection Board Professional Association

The sole labor organization at the MSPB is the MSPB Professional Association (PA). The PA represents approximately 75 MSPB employees, all of whom are attorneys in the 0905 occupational series. Approximately 52 members of the bargaining unit are GS-14 and GS-15 non-supervisory attorney-examiners (with the working title Administrative Judge) employed in the MSPB's regional and field offices. These employees initially hear and decide appeals brought before the MSPB. Approximately 20 members of the bargaining unit are GS-13 and GS-14 non-supervisory attorney-advisors in the Office of Appeals Counsel located at MSPB Headquarters. These employees review the petitions for review of the initial decisions issued by MSPB administrative judges and prepare recommended dispositions for the Board Members. Finally, there are three employees in the MSPB Office of General Counsel who are members of the bargaining unit. These employees are involved in defending the Board's final decisions before the United States Court of Appeals for the Federal Circuit, preparing recommendations for the Board members in petitions for enforcement of decisions or settlement

¹ The MSPB received \$40,339,000 in direct appropriations and \$2,579,000 in a transfer from the Office of Personnel Management Civil Service Retirement and Disability Fund.

agreements, and/or in conducting the Board's petition for review settlement program.

The leadership of the PA consists of a five-member Executive Committee elected by the members of the bargaining unit. These employees serve as PA officers as a collateral responsibility to their MSPB position. Some offices within the MSPB also have local PA Chapter Representatives.

IV. Creation of Labor-Management Forums

During a January 19, 2010, meeting at MSPB Headquarters, the General Counsel of the MSPB and the PA Executive Committee agreed upon the creation of an agency-wide Labor Management Council to address matters of agency-wide significance raised by either Agency management or the PA as they relate to conditions of employment. The Council will consist of up to five members from the PA and up to five members from management at a party's discretion. During the January 19, 2010 meeting, it was also agreed to create two Labor-Management Committees, one to address matters regarding the regional and field offices and one to address matters regarding the Office of Appeals Counsel and the Office of General Counsel at MSPB Headquarters.

The two Committees will each consist of up to three members from the PA and up to three from management at a party's discretion. Where a matter before one of the two Committees cannot be resolved, it may be referred to the agency-wide Council. The goal of the Council and the two Committees is to give the PA a meaningful opportunity to provide pre-decisional input or to engage in interest-based processes that will allow both parties to discuss and articulate their interests as they relate to conditions of employment. Both agency management and the PA have agreed to utilize the Labor-Management Forums in good faith to address conditions of employment, but there is a recognition that there may be some issues that require the invocation of the statutory processes set forth in Chapter 71 of Title 5, United States Code. As Chairman of the MSPB, I fully embraced the creation of these labor-management forums and their creation was jointly announced by the President of the PA and me in an e-mail to all MSPB employees on January 19, 2010.

V. Baseline Assessment of the Current State of Labor Relations

During a January 19, 2010, meeting between the PA Executive Committee and the MSPB Chief of Staff, General Counsel, and me, the

members of the PA Executive Committee indicated that prior to my assuming the position of Chairman on November 12, 2009, they felt excluded from discussions and the decision-making process regarding significant matters effecting the terms and conditions of employment of bargaining unit members. According to the PA Executive Committee members, they were routinely presented only final management proposals for consideration and their requests for information necessary to understand management's actions and develop meaningful bargaining proposals were often denied.

Because my tenure as Chairman of the MSPB only began in November 2009, I am not in a position to provide my own view of the state of labor relations in years past. I am hopeful that with the creation of the Council and Committees, we will greatly improve the state of labor-management relations at the MSPB and make the Board a model of how an agency can work in cooperation with its employees. The Executive Committee of the PA has indicated that it shares my hopes.

VI. Development of metrics to monitor improvements in labor-management satisfaction, productivity gains, and cost savings

As mentioned above, in addition to adjudicating individual appeals, the MSPB is charged by statute with conducting studies of the federal merit systems of employment and other human resource management issues. This function is completed by the MSPB Office of Policy and Evaluation (OPE). Among other things, to complete its studies, OPE uses a variety of information-gathering tools, including surveys and focus group interviews of federal employees and subsets of employees. OPE is widely recognized for the quality of its research in civil service related matters.

To develop the appropriate metrics required by the Executive Order, the PA Executive Committee and MSPB management agreed at the January 19, 2010, meeting to form a Joint Task Force of PA and management representatives.² It was also agreed that the expertise and experience of OPE would be invaluable in the development

² MSPB management and the PA have also agreed that the Joint Task Force will develop a recommendation regarding the "limited number of mission-linked or process-improving performance goals" as directed in OPM Director John Berry's January 29, 2010, memorandum to department and agency heads. The joint task force will make its recommendation to the Labor-Management Council. It is my hope that the Joint Task Force will hold its first meeting by May 31, 2010.

process. Accordingly, the Director of OPE will assist the Joint Task Force to develop the appropriate metrics. The Joint Task Force will report its recommendations to the MSPB Labor-Management Council. Once there is agreement on the appropriate metrics, OPE will oversee their use. To the extent that information from other areas of the Board, such as budget and finance, is necessary to meet the requirements of the Executive Order, I will direct the heads of those functions to assist the Joint Task Force and OPE in complying with the requirements.

VII. Plan for devoting sufficient resources to implementation of the plan

As Chairman of the MSPB, I am committed to a positive and healthy relationship between MSPB management and the MSPB PA that will improve the work-atmosphere at the MSPB and better serve both the MSPB's customers and the American taxpayers. To ensure that sufficient resources are devoted to this important work, both in terms of Agency funds and in terms of time and energy, senior managers, many of whom report directly to the Chief of Staff, will serve on the Labor-Management Council.

Because the PA and management representatives on the Labor-Management Committee for the Office of Appeals Counsel and the Office of General Counsel are all located at MSPB Headquarters, they will be able to routinely meet in-person. The members of the Labor-Management Council and the Labor-Management Committee for Regional and Field Offices will be located across the country, making routine in-person meetings prohibitively expensive and time consuming. Based on discussions with the PA Executive Committee, I believe that much of the important work of the Labor-Management Council and the Labor-Management Committee for Regional and Field Offices can be completed through the use of e-mail, teleconference and/or video-conference. All MSPB offices have such technology and employees are well-versed in their use. However, when in the interests of the Government and in accordance with MSPB policies and the Collective Bargaining Agreement between the MSPB and the PA, reasonable and necessary travel and per diem payments will be authorized for the Labor-Management Council and the Labor-Management Committee for Regional and Field Offices to hold in-person meetings. I expect that the Labor Management Council will hold one (1) in-person meeting per year. In addition, I hope that the first Council and Committee meetings will be held by June 30, 2010.