

## **BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES**

### **A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.)  
  
Julia Akins Clark. My maiden name is Julia LoRene Akins. I am known to my family, friends and coworkers as Julie.
2. **Position to which nominated:**  
  
General Counsel, Federal Labor Relations Authority
3. **Date of nomination:**  
  
June 4, 2009
4. **Address:** (List current place of residence and office addresses.)  
  
Home: -REDACTED-  
Office: 501 3<sup>rd</sup> Street, NW, Suite 701, Washington, D.C. 20001
5. **Date and place of birth:**  
  
August 29, 1956  
Shawnee, Oklahoma
6. **Marital status:** (Include maiden name of wife or husband's name.)  
  
Married to Nicholas W. Clark
7. **Names and ages of children:**  
  
Lisa Nichole Clark (stepdaughter) 37  
-REDACTED-
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
  
McLoud High School, McLoud, Oklahoma  
Attended 1970-1974, High School Diploma May 1974  
  
Oklahoma Baptist University, Shawnee, Oklahoma  
Attended summer 1973, and 1974-1977  
BA Political Science, *summa cum laude*, August 1977

American University, Washington College of Law, Washington, D.C.  
Attended 1977-1980, J.D. May 1980

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Spring-Summer 1978, Investigator, D.C. Superior Court Pilot Program (provided pre-indictment investigative services to indigent defendants charged with felony crimes), Washington, D.C.

Fall 1978 – Spring 1980 (except summer 1979), Law Clerk, Arnold and Porter, Washington, D.C.

Summer 1979, Law Clerk, Federal Trade Commission, Washington, D.C.

1980-85, Honors Program Trial Attorney, Antitrust Division, Department of Justice, Washington, D.C.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988-1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988- 1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Current Memberships:

Edgemoor Citizens Association

Bethesda Chevy Chase High School PTSA

International Federation of Professional and Technical Engineers, Local 4  
NAACP

Lawyers Coordinating Committee- AFL-CIO

District of Columbia Bar Association

Former Memberships:

Westland Middle School PTA

Bethesda Elementary School PTA

Chesapeake Bay Foundation

Oklahoma Baptist University Young Democrats

Oklahoma Baptist University Athenians

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

None.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

2009 Hillary Clinton Committee \$50

2008 Obama for America \$1000

2008 Hillary Clinton for President \$490

2008 Democratic National Committee \$50

2008 Al Franken for Senate \$100

2007 Hillary Clinton for President \$100  
2006 Brad Henry for Governor \$250  
2006 Valerie Ervin for Montgomery County Council \$100  
2004-09 International Federation of Professional and Technical Engineers  
LEAP PAC \$750

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Robert S. Kerr Scholar in Public Affairs, Oklahoma Baptist University, 1974-77

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Copies of the following articles are provided:

*White Collar Exemptions*, Presented to the ABA Section on Labor and Employment Law, September 12, 2008

*Developments in NLRB Representation Cases: April 2005 through March 2006*.  
Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2006

*NLRA Protected Concerted Activity in Cyberspace: Union and Employee Use of Employer-Owned Technology for Organizing, Grievances, etc.* ABA, Technology Committee, Section of Labor and Employment Law, April 21, 2004

*NLRA Protected Concerted Activity in Cyber space*, Labor Law Exchange Volume 21, November 2003

*Use of Electronic Mail in Union Organizing Campaigns*, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2002

*Legal Developments under Chicago Teachers v. Hudson and Communications Workers v. Beck*, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 1999

*Pending Amendments to the Fair Labor Standards Act*, Presented to the ABA, Federal Labor Standards Committee, February 1996.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics

relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None of the speeches delivered in the last 5 years included written texts.

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

*The Role of Collective Bargaining in Protecting ALJ Qualified Judicial Independence*, Federal Administrative Law Judges Conference, April 17, 2009 (no written text)

*Union Perspectives on Current Issues in Federal Labor Relations*, Interagency Labor Relations Forum, approximately March 2007 (no written text)

*Role of Professional Associations in Influencing Public Policy*, Department for Professional Employees, AFL-CIO, March 15, 2005 (no written text)

*Knowledge Workers in the New Economy: from Cliché to Contract*, Chicago-Kent College of Law, April 20, 2004

*Use of Electronic Mail in Union Organizing Campaigns*, ABA, Technology Committee, Section of Labor and Employment Law, May 15, 2002

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe I was selected based on my background and experience in federal sector labor relations. For additional information, please see my response to question 17(b) below.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of

this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.

## **B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?  
  
Yes
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.  
  
No
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?  
  
No
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?  
  
No
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?  
  
Yes
6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.  
  
No

## **C. POTENTIAL CONFLICTS OF INTEREST**

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into

with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.
  - Consulted with House Committee on Oversight and Government Reform staff regarding a technical aspect of proposed amendments to the GAO Personnel Act.
  - Briefed staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, and the House and Senate Legislative Branch Appropriations Committees on union election and collective bargaining at GAO.
  - Consulted with staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, regarding the GAO Comptroller General selection process.
  - Assisted union representatives and individual employees in meetings with Senators regarding the Employee Free Choice Act by answering questions regarding technical aspects of the legislation.
  - Briefed Senators about how proposed Department of Labor regulatory changes would impact white collar employees' Fair Labor Standards Act coverage.
  - Assisted union representatives in briefings with White House, FAA officials and Members of Congress regarding the impact of the Boeing Company engineers' strike on the certification of commercial aircraft.
3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

#### **D. LEGAL MATTERS**

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No
2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.



No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I was a party in a divorce proceeding in D.C. Superior Court in 1981.

In 1995, I was a witness in an arbitration in which an IFPTE-affiliated local union, sought to recover overtime wages for its members. I testified on the question of whether union-represented workers were entitled to bring overtime claims under the arbitration clause of their collective bargaining agreement.

In addition, IFPTE was involved in routine litigation, arbitration, and agency administrative proceedings during my twenty year tenure. IFPTE and its affiliated labor organizations have been parties to litigation, arbitrations and agency administrative proceedings in connection with constitutional, statutory, collective bargaining and representation matters, as well as individual employment matters (e.g. pay, discipline, discrimination, promotions etc.). None of these proceedings involved actions taken or omitted by me, nor did I testify in any of these matters.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

#### **E. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

-REDACTED-

**AFFIDAVIT**

Julia Akins Clark being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Julia Akins Clark

Subscribed and sworn before me this 24<sup>th</sup> day of June,  
2009

Heather D. Vackin

**NOTARY PUBLIC  
DISTRICT OF COLUMBIA**

Notary Public

**MY COMMISSION EXPIRES OCTOBER 14, 2013**

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Julia Akins Clark to be General Counsel of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as General Counsel for the Federal Labor Relations Authority (FLRA)?

I believe I was selected based on my background and experience in federal sector labor relations. For further information, see responses to questions 3 and 11 below.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No

3. What specific background and experience affirmatively qualify you to be General Counsel for the FLRA?

For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel for the FLRA? If so, what are they and to whom have commitments been made?

No

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

## **II. Role of the General Counsel for the FLRA**

6. What in your opinion is the role of the General Counsel and the Office of General Counsel?

The essential statutory role of the General Counsel is specified in 5 U.S.C. § 7104 (f) (2) (a) and (b) of the Federal Service Labor-Management Relations Statute (Statute). It is the responsibility of the General Counsel to protect and enforce employee, union and agency rights under the Statute through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. The General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel, including the seven regional offices of the FLRA. 5 U.S.C. § 7104 (f) (3). Finally, the FLRA Chair has delegated to the General Counsel responsibility under 5 U.S.C. § 7104 (f) (2) (c) for fulfilling the FLRA's responsibility to handle representation matters, *i. e.*, determine appropriate units, investigate and hold representation hearings, direct elections, and conduct and certify secret ballot elections. These responsibilities are carried out primarily by FLRA regional office staff under the direction of the General Counsel.

In addition to these statutory and delegated responsibilities, I believe the General Counsel should provide training, guidance and leadership in the area of federal sector labor relations to employees, unions and agencies. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the Statute. It is incumbent upon the General Counsel to provide them with clear, up-to-date and accessible information about their rights and responsibilities under the Statute and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. I believe this purpose is served by providing training, published guidance, alternative dispute resolution services, and where necessary, timely formal investigations, hearings and decisions.

7. What do you believe are the biggest challenges facing the Office of General Counsel? What steps do you plan to take, if confirmed, to address these challenges?

The greatest challenges facing the General Counsel are: (1) addressing the backlog of approximately 300 ULP complaint cases (ULP charges that have been investigated and recommended for prosecution) and the backlog of approximately 700 ULP appeals (ULP charges that have been dismissed by Regional Offices and appealed to the General Counsel); (2) coping with the current and likely increasing workload and in light of attrition and budget constraints; and (3) improving FLRA employee morale.

Backlog: If confirmed, I will make elimination of the pending backlog the highest priority. I would ask first that career staff group the pending cases in ways that would expedite the General Counsel's review of their recommendations for disposition. It is my expectation that by collaborating with career staff we can triage and manage the backlog in a manner that will reassure the parties that the FLRA will, within a reasonable period of time, be back in the business of providing timely ULP processing services.

Workload Management: The FLRA staff has decreased by 50% since FY 2001. The Office of General Counsel's (OGC) FTE number has declined over this period from 125 to 64. This reduction occurred primarily through attrition and the failure to fill vacancies. Similarly, the FLRA budget authority declined from 25.1 million in 2001 to 22.7 in 2009. Work load increases are anticipated as a result of a number of factors, including the return of customers who chose not to seek FLRA assistance given the lack of a fully functioning OGC. In addition, Presidential or Congressional actions under consideration (e.g. the grant of bargaining rights to Transportation Security Agency employees, restoration of labor management partnerships, and the Public Employee's Cooperation Act) would dramatically increase the demand for OGC services.

It will be very difficult to address the above-described backlog, newly filed cases and expected workload increases under these circumstances. A first priority will be filling vacant OGC positions to the extent permitted by the current budget. Consistent with budgetary limitations, existing staff must be provided with the tools (training, technology, and case handling support) to maximize their effectiveness and efficiency. If confirmed, I would collaborate with FLRA Presidential appointees, senior staff and OGC employees to utilize existing resources to improve performance and productivity.

Employee Morale: The pressing need to improve FLRA employee work satisfaction is, in my view, among the biggest challenges facing the next FLRA General Counsel. While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack

of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

8. What will be your long-term priorities as General Counsel?

If confirmed, my long term goal will be to restore customer confidence in the OGC as a responsive, fair, and impartial protector of employee, union and agency rights and responsibilities under the Statute. In this regard, I believe all undertakings of the General Counsel's office should be evaluated based upon their likely contribution to the promotion of stable, constructive labor relationships between employees and unions and unions and agencies. I believe that publishing clear, precise, up-to-date guidance and training materials, fully staffing the OGC (including Regional Offices), providing targeted training and critical resources to career staff, making effective use of alternative dispute resolution services, and taking full advantage of information technology will further this goal. It will be essential to maintain a dialogue with customers as well as monitor performance to measure progress toward this goal. If confirmed, it is my hope that by the end of my term, the FLRA will be considered a leader in labor relations and a model to which others can look to for ideas and innovation.

9. The position of FLRA General Counsel has been vacant since February 2008. Have there been effects of this office being vacant for well over a year? How would you plan to address these matters?

The obvious concrete consequence is an ever increasing backlog of ULP complaints and appeals awaiting disposition by the General Counsel. In addition, this extended vacancy has contributed to a dramatic slide in confidence in the agency and morale among agency employees. Furthermore, absent a General Counsel there is no OGC official authorized to provide policy leadership with regard to the protection of employee, union and agency rights and responsibilities under the Statute.

Among the most meaningful first steps I would take as General Counsel would be to adopt a plan to address the backlog within a reasonable period of time. My preliminary thoughts are described above. In addition, I would ensure that the position of Deputy General Counsel is filled as quickly as possible, and remains



occupied. An essential function of the Deputy is to fulfill the General Counsel's statutory and delegated responsibilities in the absence of the General Counsel. It would be a principal goal to make sure that the OGC is always staffed with an individual who can act in the absence of the General Counsel.

10. Please describe your vision of what the relative roles and relationships should be between the Office of General Counsel and other agencies with government-wide civil service responsibilities, including the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Office of General Counsel and the Chairman and members of the Federal Labor Relations Authority?

Other Agencies: Each of the identified agencies -- Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel -- has a distinct role and responsibility. Each is authorized to play a vital role and make a significant contribution to the functioning of the federal government by managing federal personnel or ensuring compliance with federal employment laws. These agencies may collaborate on the effective use of resources, and developments in alternative dispute resolution techniques. As General Counsel, I would be open to opportunities to work collaboratively, where appropriate, with these agencies recognizing that these agencies may appear as parties in cases before the FLRA.

Chairman and Members: The FLRA Chairman is the Chief Executive of the agency and is responsible for all administrative and staff functions of the agency such as budget, personnel, finance and central services including information technology. The staff performing all of these functions report ultimately to the Chairman, along with the FLRA Solicitor. Further the Chairman, together with the Members make up the "decisional component" of the FLRA, which adjudicates negotiability appeals, exceptions to arbitration awards, petitions for review of Regional Director decisions in representation matters, and review of Administrative Law Judge decision in a ULP cases.

The General Counsel is a part of the FLRA management team together with the Chairman and Members, but also has a distinct and independent statutory function. As described above, the General Counsel has statutory authority for the investigation and prosecution of ULP allegations and direction of Regional Office operations, and delegated authority to direct the processing of representation matters. As the Chairman and Members are responsible for adjudication of appeals from OGC decisions, it is critical that the OGC safeguard its decisional independence thereby preserving the integrity and independence of both the OGC and the Authority decision-making processes.



At the same time, I would be committed to developing a collaborative relationship with the Chairman and Members regarding all other aspects of agency operations, e.g., budget, technology improvements, training, public relations, staffing, alternative dispute resolution programs, interagency cooperation and information sharing.

11. How does your prior experience prepare you to serve as General Counsel and to deal with the issues and challenges of this office?

Transition Team: I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges.

Labor Relations Expertise: During my over twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA.

Leadership/Management Experience: As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's relationship with its staff unions.

Dispute Resolution: I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, as well as other significant settlement negotiations, I have gained relevant experience with alternative dispute resolution methods.

Prosecutorial Experience: Finally, I have significant prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

### **III. Policy Questions**

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

The FLRA plays a crucial role in Federal sector labor relations. The FLRA has been weakened by attrition and budget reductions and paralyzed by vacancies in key positions. Consequently, employees, unions and agencies have been left without the benefit of this neutral third party to assist in the resolution of disputes. This void has adversely effected good labor relationships and aggravated difficult relationships.

I believe that a fully staffed and functioning FLRA can make a meaningful improvement in Federal sector labor management relations. In my responses to the questions above and those that follow, I further describe my views about FLRA priorities and goals.

13. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

I am not currently prepared to recommend amendments to the Federal Service Labor-Management Statute. Should I be confirmed, I am willing to engage in an open and collaborative approach to the evaluation of possible improvements and offer my views as appropriate.

14. In many situations, federal employees work side-by-side with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel is having an effect on federal labor-management relations, and, if so, what? Do you believe that changes are needed in labor-management policy, and, if so, what do you believe would be appropriate?

The FLRA does not currently play a role in determining the appropriate balance between federal civil service employees and contract workers. The FLRA's role is to assist federal agencies and unions in their efforts to constructively address their interests through collective bargaining. I am committed to ensuring that the parties fulfill their bargaining obligations under the Statute.

15. If confirmed as General Counsel, you will have wide prosecutorial discretion in determining whether to pursue allegations of unfair labor practices and will operate, to a large extent, without review by the members of the Authority or any court. Federal courts have held that a decision by the General Counsel not to issue an unfair labor practice complaint is not judicially reviewable. Given this great responsibility, what factors will you consider in deciding whether or not to pursue unfair labor practice allegations?

The OGC has published criteria in its ULP Case Handling Manual for the exercise of prosecutorial discretion. These criteria include, but are not limited to, the seriousness of the violation, degree of harm to the bargaining relationship between the agency and the union, harm to employees, whether the violation is

an isolated one or part of a pattern, whether the violation has been cured, or whether the circumstances preclude an effective remedy, and whether the alleged violation presents a novel issue, the litigation of which may contribute important legal precedent. While these factors seem reasonable, I will evaluate the criteria and update it as needed with the assistance of senior staff. I believe that clear, published guidance based upon input from experienced senior staff regarding the exercise of prosecutorial discretion and transparent, consistent decision making will ensure that this important statutory responsibility is carried out in the public interest.

16. When Regional Directors determine, on behalf of the General Counsel, to issue an unfair labor practice complaint, they are required to make decisions on the remedy that will be sought in litigation. What kinds of remedies do you believe should be available to an aggrieved party and what type of evidence would be necessary to establish the appropriateness of each remedy?

The essential purposes of a remedy in a ULP proceeding are to recreate the conditions and relationships that would have existed had there been no unfair labor practice; and to deter future violative conduct, while not being punitive. It is important to note that OGC guidance in this area has been lacking for many years. If confirmed, I will consult with staff and issue updated guidance to Regional Offices and parties regarding OGC policy on remedies as quickly as possible. That guidance will be consistent with the Statute and Authority precedent in all respects.

The broad outline of an appropriate OGC remedies policy is prescribed by Statute and the Authority's interpretive decisions. If confirmed, my policy would be consistent with both. The Statute (5 U.S.C. § 7118 (a) (7)) provides the following specific remedies: cease and desist orders; orders requiring parties to negotiate a contract and to give it retroactive effect; and orders reinstating an employee with backpay. The Statute and Authority precedent also permit further innovative remedies, as long as the Statute is effectuated, the evidence establishes the need for such a remedy, and the remedy is not otherwise inconsistent with the Statute or other external law.

17. Do you have a sense for the issues and other factors that give rise to unfair labor practice (ULP) complaints? If so, what are the issues and other factors that underlie ULPs and what can be done to help reduce the number of ULP complaints?

Issues that frequently give rise to unfair labor practice allegations include: a party's refusal to respond to a request for information; unilateral implementation of changes to working conditions; bad faith bargaining; infringement on self organizational rights; discrimination/retaliation for engaging in protected activity; breach of the duty of fair representation; bypass of the exclusive bargaining representative; failure to provide the union with the opportunity to be

present at a formal discussion with represented employees; and failure to provide union representation at investigatory meetings.

Among the factors that contribute to the commission of ULPs by agencies and unions is the lack of a fully functioning OGC. Many ULP disputes are the result of misunderstandings about the applicable law and procedures. The General Counsel can contribute to a reduction in the number of ULP allegations, and consequently ULP complaints by educating FLRA customers about their rights and responsibilities under the Statute and FLRA processes. The OGC should publish clear, precise, up-to-date guidance and training materials, and provide outreach to customers (employees, unions and agencies) urging them to familiarize themselves with this information. It is reasonable to expect that as a result of these efforts, parties will be better equipped to avoid committing ULPs and file only meritorious claims. In addition, the General Counsel can provide leadership and guidance in alternative dispute resolution techniques that will serve to strengthen labor management relationships and support the parties' efforts to resolve disputes short of formal litigation.

18. The backlog of cases and difficulties meeting performance goals have been persistent problems for the Office of General Counsel. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

- a. In your view, what is the relationship between the timeliness of case investigation and disposition by the Office of General Counsel and the quality of decisions and actions taken?

I believe there is a strong correlation between timely case investigation and disposition and the quality of decision making. It is critical that OGC staff be allowed adequate time to investigate and dispose of allegations if we are to expect high quality results. However, ULP allegations do not arise in a static environment. Instead, facts and circumstances related to the allegations continue to change. Consequently, to have a meaningful and positive impact on labor relations, the OGC must carry out these functions in a timely manner. The General Counsel is responsible for providing guidance and monitoring and improving performance in this regard.

- b. Do you believe that the quality of case processing and disposition should be measured? If so, how?

I believe that the General Counsel, in consultation with staff, should endeavor to develop measures for quality of case processing and disposition. I understand the importance of developing quality measures and am committed to doing so should I be confirmed.

- c. Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why.

I believe that the OGC should develop performance goals related to case processing and decision quality. While I am not prepared to recommend specific goals at this time, I believe they should be developed in consultation with staff.

19. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships. ||| What are your views on labor-management partnerships? Generally, do you believe it is desirable to promote collaborative, as opposed to arms-length, labor-management relationships in the federal government?

Whether mandated by Executive Order, statute, or based upon bi-lateral agreement, labor-management partnerships can mutually benefit employees, unions and agencies and further the public interest. It is my view that collaborative labor management relationships are desirable and can result in mutually beneficial solutions to complex problems. Often collaborative decision making not only yields better outcomes, but also requires fewer resources than more formal rights oriented decision making.

20. Under 5 U.S.C. § 7118(a)(5), the General Counsel may prescribe regulations providing for informal methods by which an alleged unfair labor practice may be resolved prior to the issuance of a complaint. What kind of methods do you feel would be most effective in enabling the parties to resolve disputes prior to the issuance of a complaint?

It is premature for me to comment on specific regulatory proposals in this regard. However, as stated in response to other questions, OGC efforts to avoid the occurrence of factors that result in ULP allegations and resolve ULP disputes short of litigations are in the public interest. I would evaluate potential regulatory changes in light of their potential to achieve these goals.

21. There has been increasing use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law.

- a. What do you believe are the advantages and disadvantages of ADR, from the point of view of the employee, of the employing agency, and of the public interest?

In my view the advantages and disadvantages of ADR apply in largely the same way regardless of the stakeholder's point of view. Among the advantages are the preservation and improvement of labor management relationships by reaching mutually agreed, rather than imposed solutions and a reduction in litigation, which is a resource-intensive activity. On the other hand, each litigated ULP complaint provides an opportunity to clarify the



law, create precedent, and thereby provide parties with guidance on compliance with the Statute and/or deterrence from violating the Statute.

- b. What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

It is my view that the use of ADR to resolve workplace disputes contributes positively to labor management relationships and, therefore is in the public interest. Before making specific recommendations about changes to these policies and practices, I would collaborate with the Chairman, Members and FLRA staff, look to guidance from other successful ADR programs and make such recommendations at the appropriate time.

22. The Office of the General Counsel offers training on rights and obligations under the labor-management relations statute, relevant case law, and regulatory filing requirements. In addition, the Office of the General Counsel provides training in such areas as labor-management partnerships, relationship building, interest-based negotiations and problem solving, alternative dispute resolution design, labor relations strategic planning, and pre-decisional involvement. What do you think are the principal results that such a program should achieve? Do you have any views on the current training program, and have you considered what changes, if any, you would make?

I am aware of an extensive training program offered by the OGC prior to 2001. That program assisted parties in understanding their respective rights and responsibilities, building productive labor management relationships, ADR, and more. In my view the principal goal of such training is to promote stable, constructive labor relationships between employees and unions and unions and agencies. I do not have sufficient information to evaluate the current training program or recommend changes at this time. If confirmed, I would make it a priority to evaluate this program and, in consultation with staff, make appropriate changes and implement the best possible training program.

23. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last for all small federal agencies that submitted data. In your view, what can be done to help improve the situation at FLRA, and, if you are confirmed, what steps would you recommend to address these human capital challenges and improve employee morale?

While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA

employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

24. Much has been said about the graying of the federal workforce and the proportion of the workforce at or near retirement eligibility. Given the current situation within the Office of General Counsel, what role should succession planning play and what approach would you take to dealing with this challenge?

I am aware of the importance of succession planning to ensure that the OGC is staffed with appropriately trained and experienced employees at every level. I believe the General Counsel should consult with appropriate FLRA staff, obtain necessary factual data, and develop a succession plan in consultation with the FLRA Chairman, Members, senior staff, and FLRA employee representatives.

#### **IV. Relations with Congress**

25. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes

26. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

I am committed to communicating and working with Congress in carrying out my responsibilities at FLRA.

#### **V. Assistance**

27. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

These answers are my own. I also consulted with current FLRA personnel designated by the FLRA Chairman for this purpose.

**AFFIDAVIT**

I, Julia Akins Clark, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

J A Clark

Subscribed and sworn before me this 22<sup>nd</sup> day of July 2009.

Pamela R. Oxley  
Notary Public

Pamela R. Oxley  
Notary Public, District of Columbia  
My Commission Expires 11/30/2013

Executive Order 13203 of February 17, 2001 (reprinted at 66 Fed. Reg. 11227, Feb. 22, 2001), revoking Executive Order 12871 of October 1, 1993, as amended by Executive orders 12983 and 13156, and revoking the Presidential Memorandum of October 28, 1999, entitled "Reaffirmation of Executive Order 12871 – Labor-Management Partnerships."



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Opening Statement of Julia Akins Clark  
Nominee for General Counsel of the Federal Labor Relations Authority**

I would like to express my appreciation for the opportunity to appear before the Committee for the purpose of being considered for confirmation as the General Counsel of the Federal Labor Relations Authority (FLRA). It is a great honor to be asked to serve one's country as a public official. If confirmed, I will do my utmost to fulfill my statutory responsibilities in a manner that will serve the public interest, by providing federal employees, unions and agencies with high quality labor relations services.

The FLRA General Counsel is primarily responsible for the protection and enforcement of employee, union and agency rights under the Federal Service Labor-Management Relations Statute (Statute) through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. Further, the General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel including the FLRA regional offices, which handle representation matters. In furtherance of these responsibilities the General Counsel may also provide training, guidance and leadership in the area of federal sector labor relations. The General Counsel is part of the FLRA management team, together with the FLRA Chair, Members and senior staff.

My professional experience has prepared me well for this role. I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges. During my over

twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA. As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's employment relationship with staff and labor relationship with staff unions. I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, I have gained relevant experience with alternative dispute resolution methods. Finally, I have significant federal prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

I have the deepest respect and admiration for federal government employees. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the federal labor relations statute. I believe that it is incumbent upon the FLRA General Counsel to provide them with clear, up-to-date and accessible information about their labor relations rights and

responsibilities and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. If confirmed, I look forward to the opportunity to contribute to the overall mission of the federal civil service, by serving as the FLRA General Counsel.

I wish to express my appreciation to the Committee and staff for making this hearing possible and look forward to answering any questions.