

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

### A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)  
Ernest (Ernie) William DuBester
2. **Position to which nominated:**  
Member, Federal Labor Relations Authority
3. **Date of nomination:**  
June 4, 2009
4. **Address:** (List current place of residence and office addresses.)  
Residence: -REDACTED-  
Office: National Mediation Board, 1301 K St, NW, Ste 250E, Washington, DC 20005.
5. **Date and place of birth:**  
9/4/50; Passaic, NJ
6. **Marital status:** (Include maiden name of wife or husband's name.)  
Married to Karen Marie Kremer
7. **Names and ages of children:**  
No children.
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
Boston College, 1968-72, A.B. May 1972;  
Columbus School of Law, Catholic University of America, 1972-75, J.D.  
Received May 1975;  
Georgetown University Law Center, 1979-80, LL.M. (Labor Law) received 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.)

July 2005-Present: Mediator, National Mediation Board. Permanent duty station-Washington, DC. Primary responsibilities involve mediation of collective bargaining disputes in the airline & railroad industries. Work also includes grievance mediation, helping parties to resolve grievances without having to use the arbitral process. Also train parties in facilitated problem-solving and bargaining, grievance mediation, and specialized areas of negotiation requested by parties;

August 2001-July 2005: Distinguished Professor of Law (and Chair of Dispute Resolution Program), George Mason University School of Law (GMUSL), Arlington, VA. Developed curriculum, taught courses, and supervised co-curricula activities in the dispute resolution area. Taught a variety of courses including Negotiation, Mediation, and Alternative Dispute Resolution (ADR);

August 2001-July 2005: While at GMUSL, worked as an arbitrator & mediator of labor and employment matters;

November 1993-August 2001: Chairman (and Member) of the National Mediation Board (NMB). First nominated to the NMB by President Clinton on Sept. 24, 1993 and unanimously confirmed by the U.S. Senate twice.

Responsibilities included participation in issuance of representation decisions that determine and certify the employees' choice of representative, that determine the appropriate craft or class (bargaining unit), and that ensure that the process occurs without interference, influence, or coercion. This responsibility is similar to that performed by Members of the Federal Labor Relations Authority.

Responsibilities also included mediation of many national collective bargaining disputes in the airline & railroad industries.

Also, worked individually and jointly with fellow Board Members to introduce and promote innovative approaches to collective bargaining, including the creation of an ADR program that

includes bargaining training, facilitation, grievance mediation, and interest-based bargaining;

- 1997-2001: Adjunct Faculty Member, Catholic University School of Law, Washington, DC. Taught Graduate courses in Collective Bargaining & Arbitration;
- 1984-1993: Legislative Counsel, AFL-CIO, Washington, DC. Primary responsibilities included core labor law & transportation issues. This encompassed most matters arising under federal employment laws such as the National Labor Relations Act, Railway Labor Act, OSHA, Federal Service Labor-Management Statute, and Civil Rights Laws;
- 1981-1984: Associate, Washington, DC law firm of Highsaw & Mahoney. Represented labor unions in labor relations, legislative, administrative, and civil rights matters. Handled many arbitrations and argued cases before numerous federal appellate and district courts;
- 1975-1981: Counsel, National Labor Relations Board. Served most of period as counsel to Chairman John Fanning. Analyzed and recommended disposition of cases, usually in the most difficult categories; performed special projects which served as a basis for the Chairman's or the Board's decisions in cases of significant precedent or procedures. Analysis of cases and preparation of opinions typically involved study of the trial record, assessment of statutes, prior opinions and legislative history, and making preliminary oral briefings to the Chairman and the full Board.
- Also worked as a field attorney in the NLRB's Regional Office, Los Angeles. Duties included trial work, brief writing, and case investigations (1978);
- Summer, 1974 & part-time fall of 1974-spring of 1975: Legal Assistant, NLRB.

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.

- 1994: Representing the U.S. Government, Chaired the International Labor Organization's Tripartite Conference on the "Consequences

for Management & Personnel of the Restructuring of Railways” held in Geneva, Switzerland. Labor, management and the governments of fifteen countries were represented.

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.

2005-2008: Board of Directors, Virginia Mediation Network (non-profit), Richmond, VA. No compensation;

2003-2008: Board of Directors, Northern Virginia Mediation Services (non-profit), Fairfax, VA. No compensation.

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

Since 1976: New Jersey State Bar Association;

Since 1976: Florida State Bar Association;

Since 1980: District of Columbia Bar Association;

Off & on American Bar Association (currently a Member);  
Since 1976:

Since 1976: Boston College Alumni Club of Metropolitan Washington, DC.  
President- 1984-1992;

2002-2009: Association of Conflict Resolution;

1994-2001: University Club, Washington, DC;

Since 2003: Society of Federal Labor & Employee Relations Professionals (SFLERP);

Off & on Labor & Employment Relations Association  
Since 1994:

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.

2008- Worked as a volunteer in Virginia for the Presidential campaign of Barack Obama. Services rendered include phone banks, canvassing, and literature distribution.

- (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.

2008 - \$500 to Presidential campaign of Barack Obama.

- 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.

While at the National Labor Relations Board, received Sustained Superior Performance Awards in 1979 and 1980 and a Commendation for Distinguished Service to the Chairman in 1980.

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

None.

- 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.

- (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.

None.

17. Selection:

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

In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity." As set forth more fully in my response to question 17(b), I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector.

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

As reflected by my response to question nine, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. It is also noteworthy that my practical experience is complemented by my Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing the spirit of one of the federal statute's primary purposes, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the federal statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have considerable experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act- the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued (at the NMB) representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked several years as an arbitrator. Moreover, I taught arbitration for several years in law school.

Finally, the high-level nature of my prior experience with the federal government would be of assistance if I were to assume the responsibilities of a Member of the FLRA. I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House at the highest levels, as well as working collegially with certain Cabinet-level Agencies.

## **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.

None.

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, though I became an additional focus of an ongoing ethics inquiry from November 2001 to April 2002. In May of 2001, I left the National Mediation Board (NMB) and was hired by George Mason University School of Law (GMUSL). An interdisciplinary academic Center for Dispute Resolution had recently been established between the GMUSL and another GMU school, the Institute for Conflict Analysis and Resolution. Apparently, questions were raised about the solicitation of funding for the Center which led to an Ethics inquiry by the NMB. As to me, apparently, the question was whether I had solicited funding for the Center while I was still a Member of the NMB. I did not solicit funds for the Center and, as to me, the matter was dropped (not referred for further investigation or prosecution). In fact, I continued to teach at GMUSL the next four years. In 2005, I was rehired by the NMB, the investigative entity, where I currently work.

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.

Yes. I was a plaintiff in a civil suit after I was injured in a car accident in 2002. I sued the person responsible for causing the accident. The case settled prior to trial in 2005.

In addition, in 1999, while I was a board member on the National Mediation Board (NMB), two female mediators brought a suit in U.S. District Court for the District of Columbia alleging that they had been discriminated against by certain senior level employees at the NMB. As a member of the Board, I was named as a defendant. However, the case involved no personal allegations related to me. The NMB eventually settled with the plaintiffs in 2001.

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

No additional information.

#### 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**

ERNEST W. DUBESTER 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.

Ernest W. Dubester

Subscribed and sworn before me this 29 day of June, 2009

[Signature]

Notary Public

My commission Expires 9-31-09

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Ernest W. DuBester to be a Member 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 a member of the Federal Labor Relations Authority (FLRA)?

I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector. In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity."

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 a member of the FLRA?

As noted above, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. I have also earned a Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing a goal shared by the Federal Statute, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the Federal Statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act – the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked for several years as an arbitrator. Moreover, I taught arbitration for several years at a law school.

Finally, I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House as well as working collegially with certain Cabinet-level agencies.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of 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.

No.

## **II. Role of a Member of the FLRA**

6. What in your opinion is the role of the FLRA, of the three-member Authority within the FLRA, and of a member of the Authority?

When Congress enacted Title VII of the Civil Service Reform Act of 1978, it established a permanent, full-time, independent and neutral agency to resolve disputes involving rights of Federal employees, labor organizations, and agencies so as to reflect the public demand for the highest standards of employee performance and the efficient accomplishment of the operations of Government. The FLRA's role is to execute five primary statutory responsibilities that include: resolving representation questions and, where appropriate, certifying unions as exclusive representatives based on the results of

secret ballot elections; resolving unfair labor practice complaints; resolving negotiability disputes; resolving exceptions to arbitration awards; and resolving impasses during negotiations.

The three-member Authority is a quasi-judicial body that adjudicates cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. Each Member of the Authority has this adjudicative responsibility.

Moreover, consistent with its statutory directive to provide leadership in establishing policies and guidance to participants in the Federal labor-management program (5 U.S.C. Sec. 7105(a)(1)), each Member of the Authority also assists Federal agencies and unions in understanding their rights and responsibilities under the Statute through statutory training of parties.

In addition, each Member of the Authority is responsible for appointment of an Executive Director, regional directors, and administrative law judges as deemed necessary (5 U.S.C. Sec. 7105 (d)).

As noted below, however, only the Chairman serves as "the chief executive and administrative officer of the Authority" (5 U.S.C. Sec. 7104 (b)).

7. The Federal Sector Labor Management Relations statute provides that the Chairman of the Authority is the "chief executive and administrative officer of the Authority." What, in your opinion, should be the respective roles and prerogative of the Chairman and the members in management of the FLRA and in the administration of the Authority and of its decision-making processes?

As set forth above, all three Members of the Authority share equally in certain responsibilities. In other management or administrative matters, I envision the Member providing the Chairman with support and assistance in whatever way requested or deemed appropriate.

8. What do you believe are the biggest challenges facing the FLRA and the Authority? What steps do you plan to take, if confirmed, to address these challenges?

In my view, the biggest current challenges are meeting performance goals, especially to address the existing case backlog; ensuring that there are adequate resources to meet those goals; ensuring that employee morale within the Agency is high; and ensuring that there is confidence among all Agency stakeholders that the FLRA is performing its mission effectively.

I understand that the Authority already has an initiative to reduce, and eliminate, the backlog. If confirmed, I plan to work hard and to work collaboratively with my colleagues to ensure that performance goals are met.

If confirmed, I will support the Chair in any effort to ensure that there are adequate resources to meet performance goals. This includes working to ensure that the most modern and effective tools, including in the IT arena, are available to all Agency employees.

Regarding employee morale and stakeholder confidence, if confirmed, I will convey quickly my strong commitment to the mission of the FLRA. With employees, I will also convey my appreciation for their work and my support for the utilization of their talents to the greatest extent possible. This includes support for their professional development through appropriate training opportunities.

If confirmed, I will convey to stakeholders my receptivity to their ideas and suggestions regarding how the Agency can better serve their needs. I recognize that stakeholders have an enduring interest in the Agency's effective operations while those holding leadership positions at the Agency may change.

9. What will be your long-term priorities as member of the Authority?

If confirmed, I hope to address the challenges discussed in my response to question eight. In addition, my priority will be to ensure that accomplishments are enduring. In addition, hopefully, I will make a contribution in some small way to improving the quality of labor-management relations in the federal sector. Overall, my long-term priority is to work with my colleagues to establish the FLRA as one of the stellar independent agencies within the Federal government.

10. The federal labor-management and employment programs are administered by a number of different agencies and offices. Please describe what you believe the relative roles and relationships should be between the FLRA and (a) the Office of Personnel Management, (b) the Merit Systems Protection Board, (c) the Equal Employment Opportunity Commission, and (d) the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Authority and (i) the Federal Service Impasses Panel and (ii) the FLRA General Counsel?

Each of these other agencies and offices has a unique statutory mandate or charge. To the extent that the FLRA has related interests to these agencies and offices, I think that a collegial relationship with key leadership personnel from those agencies and offices, that includes the sharing of pertinent information of interest, can help us all to do our jobs more effectively.



The Federal Service Impasses Panel (FSIP), the FLRA General Counsel (GC), and the three-Member Authority, are distinct components within the FLRA. The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment. The GC is responsible for the general management of the Office of General Counsel (OGC), including the management of the FLRA's seven Regional Offices. The OGC is the FLRA's independent investigator and prosecutor of unfair labor practice allegations and representation matters filed with the FLRA. The Authority's primary role is adjudicative. I believe that a collegial relationship among the people comprising the Authority, the FSIP, and the OGC, can contribute to the effectiveness of the Agency's operations. Such collegiality can also have a positive effect on employee morale and stakeholder confidence as discussed in my response to question eight.

11. You have extensive experience working with the National Mediation Board, both as a Member and Chairman. How will your experience with the Board assist you in serving as a Member of the Federal Labor Relations Authority and addressing federal sector labor relations issues?

As Chairman and Member of the NMB, I gained an appreciation of the importance of employee morale and stakeholder confidence and their relationship to the effectiveness of an agency's operations. When I began my tenure as Chairman of the NMB, both employee morale and stakeholder confidence were at a low point. During my first few weeks, I reached out to every Agency employee in order to get to know them and invite their input. Throughout my tenure, I tried to maintain an emphasis on the importance of individual professional development.

Similarly, with respect to the NMB's stakeholders, all the labor and management parties of interest, early in my NMB tenure we convened a series of focus groups facilitated by professionals to seek the parties' input as to how the NMB could better serve their needs. Throughout my tenure, I tried to maintain this receptivity to appropriate stakeholder input.

In addition, as Chairman and Member of the NMB, I had responsibilities for the management and administration of the Agency that included such matters as budget authority, staffing levels, and performance goals. I will support and assist the FLRA Chairman in any way requested or deemed appropriate.

I also worked collegially with other Agencies that had an interest in matters coming before the NMB. Finally, one of my NMB responsibilities was adjudicative, similar to that of an Authority Member.

### **III. Policy Questions**

*Federal Service Labor-Management Relations*

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?

It is my sense that the relationships among various agencies and federal sector unions varies. I hope that a unified message from the three-Member Authority of its commitment to the Agency's mission and to addressing the challenges discussed in question eight will have a positive effect on Federal labor-management relations. It is also my hope that the Agency's statutory training of parties is beneficial.

The key word in this question is relations. I am a strong advocate for any mechanisms that place an emphasis on the importance of the relationship, particularly through more effective communication and dialogue. This would include use of the FLRA's ADR program, as discussed in question 23. It might also include a mechanism such as partnerships, as discussed in question 15.

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

I intend to work to the best of my ability given the existing statutory framework. If confirmed, I would study this issue and, if desired, consult with Members of Congress about any potential changes contemplated by Congress.

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?

In general, the highest standards of employee performance are often achieved when employees who work side-by-side have the same status. A key consideration is the effect on employee morale.

15. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships.<sup>a</sup> What are your views on labor-management partnerships based on your experience with the National Mediation Board and the National Labor Relations Board?

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<sup>a</sup> 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."



My only experience with labor-management partnerships occurred during my tenure as Chairman and Member of the NMB. Based on that experience, I believe that, as a companion to the collective bargaining process, such partnerships can help to improve the working relationships between labor unions and federal agencies.

The key, in my view, is the mindset that federal agency officials and employee representatives bring to the process. If those participants are willing to work collaboratively to learn new skills and techniques in interpersonal relations and more effective communication, then partnerships can assist in avoiding problems or resolving existing problems. Such an approach could also lead to a decline in some of the cases filed with the FLRA.

*Management of the FLRA and case processing*

16. FLRA revised its strategic plan for FY2004-2009 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular that part of the goal relating to prompt resolution.

It is my understanding that simplification of its strategic goals was designed to reflect the FLRA's purpose or mission namely, to process cases efficiently. Striving to establish meaningful measures for the various FLRA components in case processing (Authority, OGC, FSIP and certain executives within each component), the FLRA structured objectives based upon type of case (representation, unfair labor practice, arbitration, negotiability, and bargaining impasse). It is my understanding that structuring its case processing goals in this manner will enable the FLRA to track and align costs to specific categories of cases, and thereby better plan for future staffing and training needs.

- a. What role do you see for yourself as an Authority member in helping achieve this goal?

I would have a direct role in each of the Authority case processing performance goals for cases involving unfair labor practices, representation matters, negotiability issues, or exceptions to arbitrator awards.

- b. Do you believe additional goals should be articulated within the strategic plan? If so, please briefly state what those goals would be and what FLRA should do to achieve them.

The FLRA's Performance Plan for fiscal year 2010 includes a new goal of developing, managing, and utilizing the Agency's human resources to meet program needs. It is my understanding that this goal will seek to establish collaborative internal workgroups to address agency human capital needs, to improve employee

morale, to issue updated internal policy instructions, and to increase staffing levels. If confirmed, I will work collaboratively with my colleagues in support of this goal.

17. According to the FY2010 Performance Budget Submission to Congress, there has been a growing backlog of cases that are decided by the Authority. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

It is my understanding that the Authority has a backlog reduction strategy that includes a collaborative approach among Authority Members to manage the backlog, an initiative to contact the parties in the oldest cases, innovative decisional formats to streamline the process by which Members review decisions, training stakeholders in their statutory rights and responsibilities to reduce frivolous filings and to improve the quality of the parties' presentations, use of ADR to resolve disputes without formal decision-making thereby reducing litigation resources and costs, and staff training and development.

It is my further understanding that the Authority has a corrective action plan to address the backlog. Related to performance goals, this plan seeks to eliminate the backlog by fiscal year 2012.

18. The strategic and performance plans give much attention to the timely processing of cases. However, these plans are silent with regard to the quality of case processing and decisions.

- a. In your view, what is the relationship between the timeliness of case resolution and the quality of decisions?

In my view, timeliness is one objective measure of quality that is directly responsive to the Congressional finding within the Federal Statute that the public interest demands "the efficient accomplishment of the operations of Government."

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

As an Authority Member, I would be interested in any appropriate measure of the quality of case processing and decisions. Based on my experiences at the NLRB and NMB, I believe that one assessment of quality is achieved through the performance appraisals of employees involved in decision writing and case processing.

- 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.

Noteworthy in this regard is that the FLRA's Performance Plan for fiscal year 2009 identifies for the first time the responsible Senior Executives for each goal, thereby providing a direct link between SES performance and achievement of the Agency's strategic goals. This is one illustration of efforts to include checks on quality within performance goals.

19. One measure of quality not included in the strategic and performance plans is the outcome of court reviews of Authority decisions. Do you believe that such a quality measure might be of value? Why or why not?

If confirmed, I will be open to consideration of any appropriate measure of quality, including the outcome of court reviews. However, there may be reasons why courts may affirm or overturn Authority decisions that may have nothing to do with quality.

20. What is your understanding of, and opinion about, the FLRA's track record with regard to timeliness of decision making? What actions, if any, do you believe the FLRA should take to help process cases more expeditiously?

My understanding and opinion is that the FLRA's recent record needs improvement. To help process cases more expeditiously, two keys are ensuring an adequate budget authority, including for IT investments such as a case management and tracking system with performance accountability and analysis as well as increasing staffing levels so more FTE's could be assigned to decision writing and case processing.

While directed primarily to the backlog, many of the elements that are part of what I understand to be the Authority's Backlog Reduction Strategy and the Corrective Action Plan, discussed in my response to question 17, should also assist in more expeditious decision-making. Also, the Authority's new goal of Managing Human Capital should be of assistance.

21. Do you believe that reducing the number of adjudicated cases would help the FLRA to reduce case processing time? Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities?

Yes, reducing the number of adjudicated cases should help the FLRA to reduce case processing time somewhat. It is my understanding that the Authority, consistent with its statutory charge to provide leadership in establishing policies and guidance to participants in the FLRA's labor-management relations program, has a plan to train customers aggressively on their statutory rights and responsibilities with one consequence hopefully being the reduction of frivolous or unnecessary filings.

In addition, continued use of the FLRA's Collaboration and Alternative Dispute Resolution Program, as discussed below, will also resolve disputes without formal decision-making.

22. 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. In this labor-management context, 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? 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?

I have trained hundreds of labor-management representatives on the use of ADR techniques as well as teaching ADR and related processes in law school. Accordingly, I am a strong advocate for the use of ADR in appropriate situations.

In my view, there are mainly two situations in which ADR may not be advisable. First, to be effective, all parties of interest should be willing (voluntarily) to use ADR and to take training in problem-solving approaches that will include training on more effective communication and more effective interpersonal relations. If employees, employee representatives or agency officials are not open to changes in behavior and new approaches to resolving differences, then they may become disillusioned by ADR. In addition, there are some issues in disagreement that require a decision by a third party if the disputing parties are going to move forward in their relationship.

As the Committee knows, the FLRA's Collaboration and Alternative Dispute Resolution Program (CADR) is voluntary and is provided by all FLRA components. If confirmed, I will be a strong supporter of CADR within the Agency and I will be a strong advocate for its use whenever I speak to the labor-management representatives in the federal sector.

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?

If confirmed, I will express both within the Agency and in my contacts with stakeholders my strong commitment to the FLRA's mission and my appreciation for the work performed by all FLRA employees. I will also support the new performance goal for Human Capital Management and its emphasis on employee morale, employee training and development, and improved communication throughout the Agency.

#### IV. Relations with Congress

24. 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.

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

If confirmed, I will communicate and work with Congress by responding to Congressional requests.

#### V. Assistance

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

Yes. I have consulted with the FLRA.

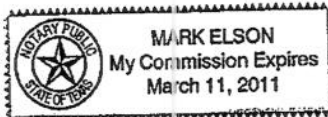
#### AFFIDAVIT

I, Ernest W. D. Bester, 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.

Ernest W. D. Bester

Subscribed and sworn before me this 22nd day of July, 2009.

Mark Elson  
Notary Public



**OPENING STATEMENT OF ERNIE DUBESTER OF VIRGINIA TO BE A MEMBER  
OF THE FEDERAL LABOR RELATIONS AUTHORITY  
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
JULY 29, 2009**

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to come before the Committee for its consideration of my nomination to be a Member of the Federal Labor Relations Authority (FLRA). I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer. When I first met Karen 22 years ago, she was working for Senator Howell Heflin on the Senate Judiciary Committee. She now works for the Administrative Office of U.S. Courts and recently observed a milestone of 25 years of federal government service. Sitting with Karen is our friend George Honyara, a retired federal government employee.

Mr. Chairman, it is an honor to appear before you as President Obama's nominee to be a Member of the FLRA. It is also a great pleasure to appear alongside Julie Clark, the President's nominee to be the FLRA's General Counsel.

I am strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the federal sector. In my 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, nearly 20 of those years were in the federal sector.

When I was still in law school and considering my first professional opportunity, I decided to join the staff of a Member of the National Labor Relations Board (NLRB). In fact, it was during my tenure at the NLRB that Congress enacted the Federal Service Labor-Management Relations Statute, a law generally modeled after the National Labor Relations Act. Indeed, this year marks the 30<sup>th</sup> anniversary of the FLRA.

During President Clinton's Administration, I was also privileged to serve as the Chairman and Member of the National Mediation Board, the independent agency that oversees labor relations in the airline and railroad industries. There, I was responsible for harmonizing the goals of another collective bargaining statute with the public demand for the highest standard of employee performance and the efficient accomplishment of the operations of government.

If confirmed, I will dedicate myself to working to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously and by providing quality decisions that enhance the stability of federal sector labor relations. An important part of this effort will be to make sure that the Authority has the resources to fulfill its responsibilities.

Indeed, if confirmed, I look forward to working with each and every person on the FLRA staff, including my colleagues on the Authority, as well as the federal sector's labor and management representatives, to help establish the FLRA as one of the stellar independent agencies within the Federal Government.

Again, I appreciate the opportunity to appear before you and I would be pleased to answer any questions that you may have.