"Executive Order Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining." May 25, 2018

The Executive Order avers that agencies have been interpreting the Federal Service Labor-Management Relations Statute in a manner that is inconsistent with its mandate that the Statute be construed in a manner which promotes an effective and efficient government. Among the provided examples are: difficulty in rewarding high performers and prolonged negotiations before relocating office space.

This may be true in the opinion of the current President but I have yet to hear of any difficulties in rewarding high performers who are career employees (with the emphasis on "career") or in bargaining over office relocations since we are prohibited from negotiating over the fact of a physical office move.

Of course, I don't watch Fox News. I may have missed the newscast on career employees not being rewarded but I did read the news, in the Wall Street Journal or the New York Times, about the EPA Administrator being caught illegally or unethically raising the salaries of his personal and, obviously, high performing staff. I think it is unfair for unions to be blamed for Pruitt being caught.

The more important point to be made is the Labor-Relations Statute states its "purpose… [is] to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government." This language eliminates employment at will where an employee can be terminated for looking at a manager cross-eyed and allows employee input, through collective bargaining, into the conditions of employment.

It is this statute, intended by Congress to give federal employees a voice in their working conditions, that is being turned on its head.

Although collectivism is often described as Marxist in origin to denigrate unions, in federal employment practice, it is more akin to the democratic form of government still practiced in New England after more than 300 years where Town Meeting Members collectively act through a Board of Selectmen just as Federation members act through the Board. Most Americans prefer to have a say in how they are treated as employees and collective action is simply an efficient way to do this.

An analysis of the Executive Order follows. The EO cites to various statutes and where the citation affects the interpretation of the Executive Order, an explanation of the cited law is included. Certain sections of the EO are not cited because of their limited impact.

Executive Order

The EO requirements are to be imposed upon all bargaining, both for term collective bargaining agreements, such as our Labor-Management Agreement, as well as for mid-term bargaining

agreements (all supplements and MOU's are the result of mid-term bargaining, also known as impact and implementation bargaining).

Section 3: There is created an Interagency Labor Relations Group headed by the OPM Director to include representatives from each participating agency to be selected by the agency head in consultation with the Director of OPM (in other words, everyone in this Group will be hand selected by the OPM Director). OPM provides administrative support to the Labor Relations Group subject to appropriations.

HUD is required to participate in the Labor Relations Group and must designate an employee as a point of contact to the Group, providing the Group as well as OPM with sample proposals, counterproposals and to discuss the effects of proposals.

The Labor Relations Group is to assist the OPM Director (Comment: The group is hand picked by the Director so is just a proxy for the Director and provides cover for unilateral action by the Administration) who shall identify significant subjects of bargaining which have been included in at least one CBA and to establish acceptable language (the EO calls this establishing an inventory of language).

(Comment: The EO allows OPM to draft acceptable language to be used in all CBA's based upon a supposed proposal in a single CBA. As an example, if OPM does not want telework, it can set forth language that all agencies must use to eliminate telework. Additionally, this EO allows OPM to become involved in any and all bargaining to centrally direct every negotiation. HUD, for example, which is building a customer response application that is unique to HUD, and which is being bargained, must defer to OPM on all proposals).

OPM is given discretion to decide which proposals in collective bargaining to examine but it will focus on proposals that infringe on what it considers to be management rights.

Within 18 months after the first meeting of the Labor Relations Group, OPM must submit a report to the President, through OMB, for meeting the goals of this EO including recommendations for "improving the organization, structure and function of labor relations programs across agencies."

(Comment: This is a threat to the office of labor relations that if they don't comply with what OPM prescribes, they are in danger of being restructured.)

Section 4: One year prior to the expiration of a term CBA (presumably this requirement applies to CBA's with less than one year before expiration at the time the EO was issued as well as all expired CBA's), each agency is to submit an analysis as well as proposed revisions consistent with guidance issued by OPM. Any proposed revisions shall not be disclosed to unions.

(Comment: All collective bargaining agreements will be subject to bargaining to include proposals created by OPM. Generally, expired CBA's remain in place until employees demand to reopen bargaining. This Administration intends to reopen all CBA's to impose its set of working conditions. Under this EO, HUD's Office of Employee Labor Relations will be expected to start working on modifying our LMA immediately. However, since the Labor Group

has not been convened to provide cover for OPM, it is not clear how much will occur anytime soon.)

Section 5: Ground rules proposals are to be exchanged in advance of negotiations. Ground rules bargaining are given a time limit of 6 weeks with FMCS mediation and referral to the Impasses Panel to be completed within the 6 weeks.

(Comment: Practically, this means that ground rules bargaining must be completed within 5 weeks after which time mediation and, where necessary, referral to the Impasses Panel must be made. The Impasses Panel now consists of Trump appointees and unions should not expect any favorable decisions. Hence, Unions will have to either capitulate early to ground rules or have ground rules imposed upon the union. For example, HUD may decree that LMA bargaining take place continuously until completed at a location requiring travel. The agency will be able to rotate managers through the bargaining keeping its bargaining team fresh but the union does not have this luxury and our bargaining team will be exhausted after a few weeks or months giving HUD a significant advantage.)

Term bargaining (for CBA's) has a time limit of 6 months, with referral for FMCS mediation and to the Impasses Panel within 9 months. If bargaining is not concluded by 9 months, the agency is allowed to declare that the union has not been bargaining in good faith and impose a contract upon the employees.

(Comment: The EO has alternatives that the agency may pursue after 9 months but since imposing a contract is permitted, there is little chance of anything else occurring.)

The EO requires the agency head, by June 24th if practicable, to review all binding agreements with unions to determine if the provisions are consistent with applicable laws primarily concerning negotiability.

(Comment: This review already occurs under existing law. However, the EO appears to direct a further review by the Secretary who may change his decision and declare a supplement or MOU to be invalid).

Section 6: The EO prohibits HUD from bargaining over permissive subjects. The Labor Relations statute allows HUD to bargain over matters such as tour of duty.

(Comment: While NFFE does not bargain over many permissive subjects, it does bargain over tour of duty. In the future, this means that anything related to tour of duty such as flexitour, credit hours, alternative work schedules and teleworking, may not be bargained. Tour of duty matters are left to the complete discretion of the agency as dictated by the Administration. Decades of progress incrementally improving working conditions could be reversed under the next LMA. Remember Sign In sheets?)

Section 7: Provisions contained in a term CBA (our LMA is a term CBA) that reflect a procedure or an appropriate arrangement shall not be bargained by the agency in future negotiations. Where it is necessary to bargain over a procedure or an appropriate arrangement, the agency is instructed to ensure that there is no encroachment on management rights.

(Comment: Many procedures such as applying for annual leave or sick leave or arrangements that allow for mitigation of a potentially harsh result such as a hardship transfer, may not be bargained by HUD, pursuant to this EO, under the rationale that these items are already part of the LMA. This is good and bad news for NFFE. Many of the items in our LMA are procedures or appropriate arrangements and must be left intact. The potentially bad news is that we often find that the items need to be modified to make them work better but the agency will declare that these items already exist in the LMA and, therefore, do not have to be bargained. This section of the EO is the least onerous for employees and may even be beneficial. I may have missed something because nothing else in the EO is good for employees. So, if anyone has ideas of what I may have missed, please let me know.)

Section 9: Nothing in this EO abrogates existing CBA's and is to be implemented subject to the availability of appropriations.

(Final comment: Our Labor-Management Agreement expires in 2020 and the terms of the EO do not disturb the LMA. The Executive Order contemplates OPM involvement in all stages of negotiating collective bargaining agreements. The federal government has approximately 3.6 million employees, most of whom are covered by CBA's negotiated by numerous locals. For this EO to be fully implemented, OPM will need to massively increase its staffing. Hence, it is unlikely that this EO will be fully implemented anytime soon. There is no appetite in Congress for increased numbers of federal employees.

OPM will need to determine which mandates are to be effectuated given its existing budget. Disseminating proposals to be imposed require little expense. For example: "All employees shall begin their tour of duty at 7:00AM and end at 3:30PM." This costs nothing.

Time limits on collective bargaining; prohibiting bargaining on permissive subjects; reviewing existing binding agreements (supplements and MOU's) to possibly invalidate them, have few associated costs and HUD should be able to immediately implement these.

How HUD chooses to implement this EO—we will have to wait and see. But, NFFE will not be sitting down waiting for the hammer to drop. I will be not only looking for ways to legally thwart the impact of this EO but will be reaching out, also, to our Representatives and Senators for help in stopping the unprecedented assault on us.

We are not slaves or serfs. We are not factory workers in the 1800's.

We are the only employees in America who swear to protect and to defend the Constitution as a condition of employment.

We have earned the right to be treated with respect.