

MANAGEMENT TRENDS IN PROBLEM SOLVING

INTEREST-BASED BARGAINING, PARTNERSHIPS, LABOR-MANAGEMENT FORUMS



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Today's topics include interest-based bargaining, partnership, labor-management forums and – some hands-on problem-solving. You might think that the things I am going to lay on the table for you today are – well--unrelated. They are not unrelated topics but are, in fact, simply means to solve problems.

Management always has been and still is constantly faced with solving problems. There is no “right way or a correct process” to solve all problems. There are many business management theories or approaches and these are evolving all the time. The processes used to solve problems are simply tools and depending on what you are attempting to solve, you may use any one of the many tools or processes designed to help you solve problems you are confronted with.

Let me share with you some of my experiences regarding problem solving and perhaps you will be better able to see how interest-based bargaining, partnership and labor-management forums are all simply problem solving tools.

My undergraduate degree was in Business Administration. During the years I studied business management, the key process for problem solving was to:

1. Clearly define the problem
2. Determine the cause of the problem
3. Identify ways in which the problem could be solved
4. Identify who should be responsible for spear-heading resolution of the problem

When I went to law school – the process used to solve problems or to analyze cases was to apply a system I came to call “FIAR” (perhaps my first introduction to “fire science”):

1. facts – succinctly state the facts
2. issue or question – what is the issue
3. answer to question – set forth the legal conclusion or answer to the question
4. rationale or argument – provide the argument based on the facts that supports a legal conclusion

Sound similar to the Business School process? It is.

1. Articulate the problem
2. Determine the cause of the problem
3. Identify things that would fix the problem
4. Figure out who should spear-head the effort to fix it

Fifteen Years later in 1993 along came “PARTNERSHIP” and I was asked to “do it”. My first question was “what is it”. There was no cogent definition only a description of a process. I soon learned that, in reality, Partnership was just another “tool” to solve problems.

The difference between Partnership and the means I had learned in college and law school is that it involved a “process” as well as it had specific goals. The process was to formally involve employees and their union representatives as equal partners with management to achieve the overall goal of “delivering the highest quality services to the American people”. The specifically articulated goals of the Clinton-era Partnership mandate were to:

1. Help reform Government;
2. Identify problems and crafting solutions to better serve the agency’s customers and mission;
3. Provide training for managers and union representatives in consensual methods of dispute resolution; and
4. Negotiate over the so-called permissive bargaining subjects.

About the time Clinton-era Partnership movement was getting into full swing, one of the changes in federal sector labor-relations was an overt move to change the collective bargaining process from the traditional bargaining to a process termed “interest-based” bargaining. It is a process which, in general, enables traditional negotiators to become joint problem solvers. The intent is aimed at satisfying mutual interests by consensus, not just one side’s interests at the expense of the other. It assumes that mutual gain is possible; that solutions which satisfy mutual interests are more durable; and, that the parties should help each other achieve a positive end-result. Its basic assumption is that decisions based on objective criteria obviate the need to rely only on power.

With traditional bargaining, it is often a confrontational process. Each side may have firmly entrenched positions on how they think about and have been trained to negotiate workplace arrangements and relationships. Union and employer representatives usually arrive at the negotiating table with their positions and predispositions and play them out in what is often a win-lose, or lose/lose exchange. Narrowly conceived productivity gains are traded off against wage rises to secure a deal. By the time later rounds of bargaining are underway the “game” is often ritualized, fractious and unimaginative.

Traditional or positional bargaining involves, in essence, each party trying to maximize how much they can win out of the negotiations. A gain for one side invariably means a loss for the other. In this framework each party will strategically adopt polarized positions asking for more than it expects to receive so that it will have something to “give” away when concessions are demanded.

By contrast interest-based bargaining emphasizes cooperation. Rather than viewing each other as adversaries, the parties are challenged to work together in a collaborative way to achieve a result that is mutually desirable. Negotiation is over “interests” (what each party needs and wants), rather than on “positions” (each party’s “bottom line”) which stresses the concept of entitlements and/or rights. In interest-based bargaining it is the problem, rather than the opposing party, that is the adversary, shifting the negotiation focus to finding a solution that meets the needs of all wherever possible.

At the beginning of the Bush era, the Executive Order maintaining that Partnerships be established was revoked but for many that found Partnerships to be an effective tool for use in problem-solving, the established Partnership forum remained.

As I said at the beginning, problem solving as a management theory is constantly changing, constantly evolving just as the tools or processes used are constantly changing most usually to achieve

specific goals. Just shy of a year after President Obama was elected, he issued an Executive Order setting forth a process which he believed would work toward reaching a specific goal. That process was to create non-adversarial forums for managers, employees, and employees' union representatives to discuss Government operations that will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.

If the Partnership Executive Order and the Labor-Management Forums are placed side-by-side, one can easily see that the processes are very similar but there are subtle differences between the two that we will discuss shortly. The organizational structure envisioned by each is much the same:

Partnership

National Partnership Council

Members:

7 Mgmt: OPM, DoL, OMB, FLRA, FMCS,
+ 2 others

4 Labor: AFGE, NFFE, NTEU, and AFL-
CIO Pub Employees, Dept.

Responsibilities and Functions:

1. Support and promote partnerships throughout government
2. Make recommendations to President for the creation of a flexible and responsive hiring system and reform of the General Schedule
3. Collect and disseminate info on partnership efforts throughout government including results achieved
4. Utilize the expertise of individuals to foster partnership arrangements
5. Work with the President's Management Council toward reform consistent with National Performance Review recommendations.

Labor-Management Forums

Nat'l Council on Federal Labor-Mgmt Relations

Members:

8 Mgmt: OPM, OMB, FLRA + 5 others

7 Labor: AFGE, NFFE, NTEU, IFPTE, + 3
others

2 Assn: SEA, FMA

Responsibilities and Functions:

1. Support creation of dept or agency-level I-m forums and promote partnership between labor and mgmt in the Exec. Branch
2. Make recommendations to President for implementation of pilot programs for bargaining over permissive subjects
3. Collect and disseminate info on I-m improvement efforts in the Exec. Branch including results achieved
4. Utilize the expertise of individuals to foster I-m relations
5. Develop recommendations for innovative ways to improve delivery of services and products to public while cutting costs and advancing employee interests
6. Develop suggested metrics for evaluating Council and agency L-M forums
7. Serve as a venue to address failures of Dept-or agency-wide forums

Labor-Management Partnerships

Head of each agency to create at appropriate levels

Goals:

1. Involve employees and union reps with mgmt. reps to identify problems and craft solutions to better serve the agency's customers and mission
2. Provide systemic training in consensual methods of dispute resolution
3. Negotiate permissive subjects
4. Evaluate progress and improvements in organizational performance resulting from the partnerships

Labor-Management Forums

Head of agency to create at level of recognition or other appropriate levels

Head of agency and union reps to prepare written implementation plan describing:

- (i) how it will conduct baseline assessment of state of labor relations in agency;
- (ii) the extent to which it has established l-m forums or may participate in pilot projects on bargaining permissive subjects within agency
- (iii) address the development of metrics to monitor improvements in areas such as l-m satisfaction, productivity gains, cost savings, and other areas identified by l-m forum
- (iv) explain agency's plan for devoting resources sufficient to implement the plan.

Goals:

1. Help identify and propose solutions to better serve the public and agency mission

2. Evaluate and document changes in employee satisfaction, manager satisfaction and organizational performance resulting from the labor-management forums

3. Allow employees and their union reps to have pre-decisional involvement in all workplace matters regardless of whether issue is negotiable

As I said before, the processes are similar but there are subtle differences. While the organizational structures are much the same the responsibilities given to the labor-management forum at the agency level is greater in that it is clearly specified that the agency must have a plan to implement the forums and it must document and measure the workings and results. Further, the emphasis under the Partnership process was on facilitating negotiations; hence, the mandate to negotiate over permissible subjects. Under the Labor-Management Forum process, the emphasis is on resolving issues of concern to both management and employees and that involves a different approach and frankly, a different mindset than is held by many who enter into the negotiation arena.

The important thing is that both processes, the Partnership process and the Labor-Management Forum process, have the same over-all goal namely, the involvement of employees, union representatives and management in all workplace matters to decide upon courses of action that will foster the continuance of delivering the highest quality services to the American people.

This background should provide you with a generalized understanding of the tools that are now being used to solve problems. But, your next question might be “who is using the tools and how are they doing?”

First of all, let’s talk about DoD. It developed its implementation plan and a memo dated May 18, 2010 was sent to the head of all Defense Agencies setting forth the following “Guiding Principles for Labor and Management Forums established under E.O. 13522”:

- Labor-management forums should contribute positively to the performance of the agency
- Labor-management forums should promote the economic and workplace interests of employees and managers
- Labor-management forums should operate with a clear charter that grants the parties broad authority to develop solutions jointly on issues that fall outside the scope of bargaining
- Employees and their union representatives should have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. §7106
- Management and union officials and participants in labor-management forums should receive training on the requirements of the E.O., the guiding principles and tools and processes that could assist with problem-solving and conflict resolution
- Labor-management forums should set goals, measure performance, and communicate results
- Managers and union representatives at all levels should be committed to making labor-management forums work, which means being personally engaged
- In the spirit of the larger labor-management engagement process, all parties should take a cooperative approach to collective bargaining
- Labor-management forums should be led by relevant decision makers and supported by appropriate staff
- The parties should devote sufficient resources to the implementation of the E.O.

In addition, DoD has identified the metrics for use with Labor-Management Forums established pursuant to the Executive Order and this listing is attached to this paper.

These guiding principles highlight what at first blush appeared to be only subtle differences between the Partnership process and the Labor-Management Forums process. In a nutshell, Partnership focused more on solving problems, generally those involving issues that could be negotiated, to everyone's mutual satisfaction without the necessity of litigation. It focused more on ending grievances and ULP's. The Labor-Management Forums process focuses on having total involvement in addressing all issues so that any decisions reached are collaborative and consensus-based. The other key distinction is that Partnership focused more on dealing with decisions already reached whereas the Forums indicate that involvement should be around focusing on the scope and nature of problems or issue is still being investigated as opposed to after solutions have been considered and reached and then making a decision (pre-decisional involvement). For example, take the issue of a physical fitness/wellness program. Under the Partnership process, the more likely approach would be for you, as Chief, to design a program and then present it to the Partnership for discussion. Under the L-M Forum, the approach would be to raise the issue of physical fitness at a forum meeting and then ask what should be done about it and why. The members should then suggest ways in which the issue could be addressed. With good input from all members of the Forum, you should be able to arrive at a consensus-based decision on the design of a physical fitness/wellness program. The risk is that the program that you believe to be the best may not be the one the Forum members agree with but the reasons why should be apparent. You as a manager should be prepared to yield to the majority.

I also want to focus a bit more on interest-based bargaining. It is more in line with the Labor-Management Forum process and nothing illustrates this better than a graphic comparison between Adversarial Negotiations and Interest Based Negotiations/Consultation that appeared in *The Journal for Quality & Participation*, Sept-Oct, 1998. It is included as an attachment to this paper.

To recap on when it is appropriate to use each of the problem-solving tools, the following is a guide:

- Interest-based Bargaining – when the parties agree to bring **negotiable issues** or problems to the table rather than specific proposals, discuss them and attempt to reach an agreement.
- Partnership – when either management or employees recognize a problem that generally is negotiable but may not be, usually have a **proposed solution** to it that meets the goal of delivering quality service/products to the American public and furthering the Agency's mission.
- Labor-Management Forums – when either management or employees perceive a problem or an issue that is hindering the achievement of the delivery of quality service/products to the American public or is hampering accomplishment of the Agency's mission and agree to investigate it and jointly develop a solution to it and by consensus agree to its resolution – **pre-decisional involvement**.

Having learned a basic problem-solving process in undergraduate school, then perfected that process for analyzing issues that could be the basis for legal action by my own problem solving process that I call FIAR, as well as lived, breathed and worked through Partnership and now Labor-management Forums, there is one essential key to successful use of each of these problem-solving tools. That key is not how or when these problem-solving tools should be used but who should use them. In short, they will only be successful if all of the individuals involved are absolutely committed to making a collaborative effort work and that includes accepting without reservation a consensus-based decision. Such a commitment would entail these principles enumerated by the FMCS:

- A willingness to share relevant information that is critical for effective solutions
- A willingness to focus on issues, not personalities
- A willingness to focus on the present and future, not the past
- A willingness to focus on the interests underlying the issues
- A willingness to focus on mutual interests, and helping to satisfy the other party's interests as well as your own
- A willingness to evaluate options developed to satisfy interests by objective criteria rather than by leverage

Now, your next question may be “would it be appropriate for me, as the Chief, to establish a Labor-management Forum at the fire department level and if so, how do I do it?” The answer is yes, you should establish a L-M forum within the Fire Department. It is easily done and as pointed out by the FLRA in its Labor-management Forum Training Script, “A Labor-Management Forum is simply a labor-management committee.” The Training Script is an excellent resource and can be found at www.lmrcouncil.gov. You should not worry about the mandate to develop and use metrics and to report the results. The requirement for metrics is based, in part, on the fact that there was no formalized directive to measure the results of Partnership. There were, as most of us know, tremendous Partnership successes but they are purely anecdotal. So, the Labor-management Forum Executive Order mandated the use of formally developed metrics to measure the success or failure of the efforts of the Forums.

Once the issues are raised in the Forum, it can decide what metrics should be used to measure your success. In many cases, you will find that your Agency is already measuring, e.g. cost savings, and that the metrics are available to you.

In sum, total involvement and jointly reached conclusions are always more satisfying to all than decisions reached either by mandate or by a third party after litigation.

Try it! You might like it! And, it can't hurt!

PRESIDENTIAL EXECUTIVE ORDER No 12871

Dated: 10-01-93

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LABOR-MANAGEMENT PARTNERSHIPS

The involvement of federal Government employees and their union representatives is essential to achieving the National Performance review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people. By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the Executive Branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1: The National Partnership Council

- a. **Establishment** **and** **Membership**
there is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:
1. Director of the Office of Personnel Management ("OPM");
 2. Deputy Secretary of Labor;
 3. Deputy Director for Management, Office of Management and Budget;
 4. Chair, Federal Labor relations Authority;
 5. Federal Mediation and Conciliation Director;
 6. President, American Federation of Government Employees, AFL- CIO;
 7. President, National Federation of federal Employees;
 8. President, National Treasury Employees Union;
 9. Secretary-Treasurer of the Public Employees Department, AFL- CIO; and
 10. A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

b. **Responsibilities and Functions:**

The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

1. supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;
 2. proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;
 3. collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;
 4. utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and
 5. working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.
- c. Administration:**
1. The President shall designate a member of the Council who is a full-time Federal employee to serve as the Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.
 2. The Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.
 3. To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.
 4. Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.
 5. All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.
- d. General.**
1. I have determined that the Council shall be established in compliance with the Federal advisory Committee Act, as amended (5 U.S.C. App. 2).
 2. Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.
 3. The Council shall exist for a period of 2 years from the date of this order, unless extended.
 4. Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Sec. 2. Implementation of Labor-Management Partnerships Throughout the Executive Branch.

The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

- a. create labor-management partnerships by forming labor- management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;
- b. involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;
- c. provide systemic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;
- d. negotiate over the subjects set forth in 5 U.S.C. 7106(b) (1), and instruct subordinate officials to do the same; and
- e. evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Section 3: No Administrative or Judicial Review

This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

Executive Order 13522: Creating Labor-Management Forums To Improve Delivery of Government Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a cooperative and productive form of labor-management relations throughout the executive branch, it is hereby ordered as follows:

Section 1. Policy. Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people. A non-adversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government. Labor-management forums, as complements to the existing collective bargaining process, will allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people. Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.

The purpose of this order is to establish a cooperative and productive form of labor-management relations throughout the executive branch.

Sec. 2. The National Council on Federal Labor-Management Relations. There is established the National Council on Federal Labor-Management Relations (Council).

(a) Membership. The Council shall be composed of the following members appointed or designated by the President:

(i) the Director of the Office of Personnel Management (OPM) and Deputy Director for Management of the Office of Management and Budget (OMB), who shall serve as Co-Chairs of the Council;

(ii) the Chair of the Federal Labor Relations Authority;

(iii) a Deputy Secretary or other officer with department- or agency-wide authority from each of five executive departments or agencies not otherwise represented on the Council, who shall serve for terms of 2 years;

(iv) the President of the American Federation of Government Employees, AFL-CIO;

(v) the President of the National Federation of Federal Employees;

(vi) the President of the National Treasury Employees Union;

(vii) the President of the International Federation of Professional and Technical Engineers, AFLCIO;

(viii) the heads of three other labor unions that represent Federal employees and are not otherwise represented on the Council, who shall serve for terms of 2 years;

(ix) the President of the Senior Executives Association; and

(x) the President of the Federal Managers Association.

(b) Responsibilities and Functions. The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include, to the extent permitted by law:

(i) supporting the creation of department- or agency-level labor-management forums and promoting partnership efforts between labor and management in the executive branch;

(ii) developing suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies;

(iii) collecting and disseminating information about, and providing guidance on, labor-management relations improvement efforts in the executive branch, including results achieved;

(iv) utilizing the expertise of individuals both within and outside the Federal Government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations;

(v) developing recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests;

(vi) serving as a venue for addressing systemic failures of department- or agency-level forums established pursuant to section 3 of this order; and

(vii) providing recommendations to the President for the implementation of several pilot programs within the executive branch, described in section 4 of this order, for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

(c) Administration.

(i) The Co-Chairs shall convene and preside at meetings of the Council, determine its agenda, and direct its work.

(ii) The Council shall seek input from nonmember executive departments and agencies, particularly smaller agencies. It also may, from time to time, invite persons from the private and public sectors to submit information. The Council shall also seek input from Federal manager and professional associations, companies, nonprofit organizations,

State and local governments, Federal employees, and customers of Federal services, as needed.

(iii) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(iv) Members of the Council shall serve without compensation for their work on the Council, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701-5707), consistent with the availability of funds.

(v) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may require for purposes of carrying out its functions.

(vi) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Director of OPM in accordance with the guidelines that have been issued by the Administrator of General Services.

(d) Termination. The Council shall terminate 2 years after the date of this order unless extended by the President.

Sec. 3. Implementation of Labor-Management Forums Throughout the Executive Branch.

(a) The head of each executive department or agency that is subject to the provisions of the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 et seq.), or any other authority permitting employees of such department or agency to select an exclusive representative shall, to the extent permitted by law:

(i) establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions;

(ii) allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums; and

(iii) evaluate and document, in consultation with union representatives and consistent with the purposes of this order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

(b) Each head of an executive department or agency in which there exists one or more exclusive representatives shall, in consultation with union representatives, prepare and submit for approval, within 90 days of the date of this order, a written implementation plan to the Council. The plan shall:

(i) describe how the department or agency will conduct a baseline assessment of the current state of labor relations within the department or agency;

(ii) report the extent to which the department or agency has established labor-management forums, as set forth in subsection (a)(i) of this section, or may participate in the pilot projects described in section 4 of this order;

(iii) address how the department or agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants; and

(iv) explain the department's or agency's plan for devoting sufficient resources to the implementation of the plan.

(c) The Council shall review each executive department or agency implementation plan within 30 days of receipt and provide a recommendation to the Co-Chairs as to whether to certify that the plan satisfies all requirements of this order. Plans that are determined by the Co-Chairs to be insufficient will be returned to the department or agency with guidance for improvement and resubmission within 30 days. Each department or agency covered by subsection (b) of this section must have a certified implementation plan in place no later than 150 days after the date of this order, unless the Co-Chairs of the Council authorize an extension of the deadline.

Sec. 4. Negotiation over Permissive Subjects of Bargaining.

(a) In order to evaluate the impact of bargaining over permissive subjects, several pilot projects of specified duration shall be established in which some executive departments or agencies elect to bargain over some or all of the subjects set forth in 5 U.S.C. 7106(b) (1) and waive any objection to participating in impasse procedures set forth in 5 U.S.C. 7119 that is based on the subjects being permissive. The Council shall develop recommendations for establishing the pilot projects, including (i) recommendations for evaluating such pilot projects on the basis, among other things, of their impacts on organizational performance, employee satisfaction, and labor relations of the affected departments or agencies; (ii) recommended methods for evaluating the effectiveness of dispute resolution procedures adopted and followed in the course of the pilot projects; and (iii) a recommended timeline for expeditious implementation of the pilot programs.

(b) The Council shall present its recommendations to the President within 150 days after the date of this order.

(c) No later than 18 months after implementation of the pilot projects, the Council shall submit a report to the President evaluating the results of the pilots and recommending appropriate next steps with respect to agency bargaining over the subjects set forth in 5 U.S.C. 7106(b)(1).

Sec. 5. General Provisions.

(a) Nothing in this order shall abrogate any collective bargaining agreements in effect on the date of this order.

(b) Nothing in this order shall be construed to limit, preclude, or prohibit any head of an executive department or agency from electing to negotiate over any or all of the subjects set forth in 5 U.S.C. 7106(b)(1) in any negotiation.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or
(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE
December 9, 2009.

WHITE

HOUSE,