

Docket Number NSPS-2005-001 and RIN 3206-AK76 or 0790-AH82

## SUBPART 1 – LABOR-MANAGEMENT RELATIONS, SUPPLEMENTARY INFORMATION, PAGE 7569 (70 FR 7569 [FEB. 14, 2005])

### March 16, 2005-Comments

#### PURPOSE OF COMMENTS

The purpose of these comments is to offer an alternative to the National Security Labor Relations Board (Board) to contract with an organization, other than the Federal Labor Relations Authority (FLRA), to provide investigative and other services subject to the Board's proposed regulations.

#### SOLICITATION OF COMMENTS IN SUPPLEMENTARY INFORMATION

These comments relate to the solicitation in the supplementary information on alternatives to enable the Board to issue decisions on “unfair labor practices, to include scope of bargaining, duty to bargain in good faith and information requests; certain arbitration exceptions; negotiation impasses; and questions regarding national consultation rights.” Subpart I – Labor-Management Relations, page 7569 (70 FR 7569 [Feb. 14, 2005]).

However, DOD and OPM specifically solicit comments on other alternatives, such as requiring (or

entering into a service level agreement with) FLRA or some other organization to provide investigative and other services, subject to these regulations.

#### ALTERNATIVE - CONTRACT WITH FPMI SOLUTIONS, INC.

FPMI Solutions, Inc. (FPMI) provides an alternative for the Board to provide investigative and other services, while maintaining complete control over the delivery of those services and independence over all phases of decision-making based on timely, complete, fair and expeditious investigations and, if required, other related services, for all types of labor-management disputes that may arise under its jurisdiction.

These comments are divided into three parts. Initially, we describe FPMI and the services and expertise that we are capable of providing. The comments then suggest alternatives to providing the types of services which the Board may be required to undertake to fulfill its mission. In conclusion, the comments note why the employ of



#### WHY FPMI SOLUTIONS, INC.

- Timely, complete, fair and expeditious investigations
- Seasoned HR professionals with proven expertise in Federal sector labor-management relations
- Experience, skills, knowledge and ability to provide a timely and quality work product
- Talent to manage a nation-wide investigative process delivering consistent results
- Instant expertise with a wide variety of services

FPMI to provide these services is in the best interests of the Board.

### **1. FPMI Solutions, Inc. Offers Unique Federal Sector Labor-Management Relations Experience and Expertise**

FPMI is a premier, global provider of human capital performance solutions to the federal government and commercial marketplace. FPMI is a respected leader in providing human resources services to the federal government in the areas of human resource management services, staffing services and workforce development. In particular, FPMI is a leader in providing the full array of labor-management relations services to Federal agencies and departments, and in presenting nationwide and regional conferences and training on all aspects of the Federal service labor-management relations program.

What is of particular significance, is the ability of FPMI to provide seasoned individuals with proven expertise in the Federal sector labor-management relations program who possess the experience, skills, knowledge and abilities to provide a **timely and quality** work product to the Board, consistent with its needs and specifications. FPMI has a unique core of Federal sector experts in the labor-management relations community throughout the country averaging more than twenty years of on-the-job experience in day-to-day Federal sector labor-management relations. This is the core of individuals from which FPMI would draw to provide whatever services are needed by the Board, whether in the area of investigating unfair labor practice (ULP) allegations and providing investigative reports, providing analytical reports where facts are applied to case law and Board regulations, conducting fact finding hearings, drafting decisions, or engaging in alternative dispute resolution. Many of these individuals are retired high ranking executives and leaders in Federal department and agency labor and employee relations offices and retired executives of the Office of the General Counsel (OGC), FLRA. FPMI has the talent to manage a nationwide investigative process delivering consistent results regardless of the locus of the investigation and which will meet the quality and timeliness standards dictated by the Board. FPMI already has in its employ individuals that can manage and deliver the work product required by the Board.

In sum, FPMI can offer instant expertise and a wide variety of services, dependent upon the Board's needs.

### **2. The Types Of Nation-Wide Services That May Be Required By The Board That FPMI Solutions, Inc. Can Provide.**

The proposed regulations grant the Board broad jurisdiction to resolve myriad types of labor-management disputes. For example, by proposing to minimize the number of forums currently available under the Federal Service Labor-Management Relations Statute administered by the FLRA, the Board proposes to decide all facets of a labor-management dispute in one process. Under the current system, a single dispute can be processed in many different forums simultaneously (ULP, negotiability, grievance/arbitration, and impasse). The regulations, however, propose to deal with all issues in one forum. As such, it will be necessary for any investigator of disputes to be experienced, if not an expert, in all of these subject matter areas. Although these matters will be processed simultaneously in one forum, the applicable case law and Board regulations still enumerate different elements to the various rights and obligations. In sum, to provide a timely, fair and quality work product, regardless which product is delivered, it is critical that the individuals performing those services have the requisite expertise, and in essence, know the law (60 volumes of FLRA decisions and the Board regulations).

For example, the Board may decide that it needs some, or all, of the following types of services, delivered on a nationwide basis, to fulfill its mission:

#### **Investigative Services**

The provision of investigative services certainly includes gathering and marshalling the facts surrounding a dispute. However, in the ULP arena, where each allegation is composed of different, and oftentimes confusing, elements that need to be investigated for the decision making body to decide if a ULP occurred, it is necessary for the investigator to be able to ask "the right questions" to elicit relevant information necessary for the decision maker to decide whether each element of the alleged ULP has been met.

Further, asking the right questions may result in less costly and more expeditious investigations when the responses to those questions indicate early in the investigation that, although there may be a dispute, no ULP has occurred. In essence, investigations of alleged ULPs require individuals gathering the evidence to be investigators knowledgeable of both investigative techniques as well as the underlying substance, rather than merely being “note takers.”

### **Analyses**

The Board also may determine that it requires a service that provides an analytical application of the facts to the specific elements of the alleged violation. For example, an analytical report consistent with the Board’s requirements could contain a statement of the applicable case law and Board regulations and an application of the facts to that applicable law and regulation. A report also could provide alternatives analyses depending upon the particular facts and applicable law and regulations.

The proposed regulations also make some subtle and some significant departures from the Federal Service Labor-Management Relations Statute and FLRA case law. It is imperative that any investigator be aware of those differences and their significance.

### **Fact Finding Hearings**

Sometimes material questions of fact are in dispute and credibility issues arise. In such circumstances, the Board may determine that it requires a fact-finding hearing to enable it to determine the controlling facts. Hearings can be held that result in a transcript that can be evaluated by the Board and its staff and/or a hearing officer report may be prepared by the hearing officer in accordance with the Board’s requirements.

### **Negotiation Impasses**

The current Federal Service Impasses Panel utilizes a number of different techniques to resolve negotiation impasses. Such techniques include, for example, informal conferences, facilitated negotiations, mediation-arbitration, written submissions, fact finding investigations and even hearings. The Board may decide that it requires some or all these services.

### **Alternative Dispute Resolution Services**

Many labor-management disputes may be resolved during the investigative process. The Board may decide that it is in the interest of the National Security Personnel System to utilize ADR in its processes, when appropriate. However, the Board also should note that many ULPs that are resolved or settled by the OGC, FLRA are not meritorious ULPs. There are two distinct schools of thought in this area. One is that resolution of disputes, regardless of their legal merits, is in the best of employees, their union and the employer. For example, the OGC, FLRA specifically encourages the resolution of ULP allegations regardless of their merits. See 5 CFR Section 2423.1. The other is that resolution of disputes which have no legal basis require the employer to take remedial action when there has been no violation of any rights and only encourages future nonmeritorious claims. As a new entity not bound by FLRA practices, the Board has a plethora of options available to it.

**3) FPMI Can Deliver Any Or All Of These Service Time** is of the essence in labor-management relations disputes. In labor-management relations, tomorrow will always come quickly and employees, union officials, supervisors and managers will react to ongoing events, even if the dispute is still unresolved and “pending” before some third party. The Department and OPM recognized this fact when it proposed time limits on the FLRA decisional body when reviewing Board decisions on appeal. Particularly at the local level where the dispute arises, it is imperative to the operation of the employer that allegations be resolved quickly and fairly. Due process and complete investigations and fact finding hearings do not necessarily need to translate into delay and untimeliness. The use of expert and experienced individuals to conduct investigations, analyze issues, draft reports and conduct hearings is a necessity for a quality and timely work product. The day-to-day management of that process by individuals experienced in leading a geographically dispersed investigative organization also is a requirement for success. FPMI can immediately deliver that leadership, quality and timeliness. Regardless of the degree or type of services that the Board determines is required, FPMI already has

available the executive and other human resources who are known and respected in the labor-management relations community to deliver that product.

FPMI can implement any directives and processes that the Board issues. FPMI also has no interest other than performing those tasks assigned to it, consistent with the Board's directions, and provides a viable alternative to a servicing agreement with the OGC, FLRA. On the other hand, the OGC, FLRA represents the public interest and even provides pre-ULP charge assistance to potential charging parties. (OGC, FLRA ULP Case Handling Manual, Part 1, Chapter A). Since most ULP charges are filed by unions against agencies and the OGC, FLRA is not only the investigator of the allegations, but also is the decision maker determining whether to issue a ULP complaint and the public prosecutor of ULP complaints. As such, some parties have the perception that the OGC, FLRA is the unions' representative or that the OGC, FLRA attorneys seek litigation experience at their expense. Although these perceptions are unfounded, the fact remains that the OGC, FLRA is statutorily required to protect the public interest, and the Office's operations, policies and management are subject to change based upon the particular General Counsel appointee in office. Moreover, the OGC, FLRA, in effect, is stymied when there is no sitting General Counsel or Acting General Counsel, as has happened twice in the past few years and as is currently the situation.

In sum, FPMI can deliver whatever type of labor-management services the Board deems necessary and in accordance with its specifications. The Board has a unique opportunity to define how it will implement on a day-to-day basis its responsibilities and mandate. FPMI has the experience, leadership and human capital resources to deliver timely and quality results to the Board, and encourages the Board to consider our

services as an alternative to the OGC, FLRA or some other organization. FPMI's services are accessible through multiple federal contract vehicles, including GSA MOBIS , GSA Schedule 70 – IT, GSA HR Management & EEO Services, FedSource and OPM/TMA.

Thank you for considering our comments.

Joe Swerdzewski  
President and Chief Executive Officer  
FPMI Solutions, Inc.

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### **ABOUT FPMI SOLUTIONS, INC.**

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FPMI is committed to offering our Federal customers best-in-class products and services to help them achieve their human capital performance goals. FPMI delivers the superior solutions that Federal Government customers expect from a trusted business advisor. We are dedicated to providing innovative answers to your complex workforce challenges. Whether you need assistance with HR management, contract employee task support, training solutions, conference development or other workforce issues, FPMI stands ready to meet your needs.

