UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424
(202) 218-7900
www.FLRA.gov

OFFICE OF THE CHAIRMAN

December 21, 2018

VIA EMAIL

Patricia Kush, Field Office Vice President
Daniel Duran, National Vice President
Union of Authority Employees
1400 K St., NW
Washington, D.C. 20424

Dear Ms. Kush and Mr. Duran:

As Chairman of the Federal Labor Relations Authority (FLRA or Agency), I am charged by the Federal Service Labor-Management Relations Statute (the Statute) with the responsibilities of chief executive and administrative officer for the Agency. *See* 5 U.S.C. § 7104(b) ("The Chairman is the chief executive and administrative officer of the Authority."). In accordance with my obligation to faithfully carry out my duties as Chairman, I have thoroughly assessed the Statute as it relates to labor-management relations and the FLRA.

The Statute, created in 1978, states that collective bargaining "safeguards the public interest," "contributes to the effective conduct of public business," and "facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment." *See* 5 U.S.C. § 7101(a)(1). As I told the Senate at my confirmation hearing, I heartily agree with this premise.

At the same time, Congress clearly excluded the FLRA from the reach of the Statute; explicitly carving the FLRA out of the list of agencies that enjoy the benefits of collective bargaining under the Statute. *See* 5 U.S.C. §§ 7103(a)(3)(F). The Statute further provides that no collective bargaining unit can be appropriate (even in an agency included under the Statute) if it includes "an employee engaged in ***administering the provisions of*** [the Statute]." *See* 5 U.S.C. § 7112(b)(4) (emphasis added). The sole mission of the FLRA is to administer the provisions of the Statute.

The FLRA and the Union of Authority Employees (UAE) had executed a collective-bargaining agreement (CBA) before my tenure. Because a bargain is a bargain, we followed in good faith the terms of that agreement, and have continued to honor its terms to this day. For example, we engaged in good-faith negotiations and entered into a Memorandum of Agreement with the UAE as we worked together to shape the details surrounding the closure of two regional offices.

The existing state of affairs was enabled by a 1980 Department of Justice Office of Legal Counsel (OLC) memorandum opinion allowing the FLRA to choose to create a labor relations system if it could do so without violating the law. *See Establishment of a Labor Relations System for Employees*

of the Federal Labor Relations Authority, 4B Op. O.L.C. 709, 710, 1980 WL 20976 (July 1, 1980). The OLC did not (and could not) mandate a labor relations system for FLRA employees. The OLC acknowledged statutory limitations and paradoxically cautioned that should the FLRA choose to establish a labor relations system for FLRA employees it *could not violate* "any of the prohibitions in [the Statute] . . ." However, as stated above, the FLRA is categorically exempted, by the express wording of the Statute, from the rights provided to employees in other Executive Branch agencies. Therefore, by establishing a labor relations system, the FLRA *already* violated the Statute. As Chairman, I cannot ignore Congress' plain exclusion of the FLRA from the Statute.

Under the terms of the CBA, the FLRA had two options: continue the contractual relationship with the UAE for another year through inaction or, under its terms, terminate the contract. The UAE was informed on October 19, 2018 that the FLRA invoked the right under the current CBA to terminate that contract upon its December 21, 2018 expiration. The expiration date unfortunately coincides with the holiday season. Given the plain language of the very Statute by which the FLRA was created, the Agency cannot continue to engage in a collective bargaining relationship with the UAE or any other labor organization. The FLRA will not negotiate or enter into a successor agreement. The FLRA will not recognize the UAE, or any other labor organization, as an exclusive representative of the employees.

Because of the energy and dedication of the Agency's workforce, FLRA employees are highly engaged. The new staff-driven FLRA 2018-2022 Strategic Plan is already being implemented. Along with other duties, the existing Strategic Plan Implementation Team (with representation from each Region and component of the FLRA) is addressing challenges related to employee concerns and is working to improve every one. Over one third of the FLRA's employees are members of the Team, and more are welcomed.

On a personal note, I assure all FLRA employees that this change does not affect my ongoing desire as Chairman to treat all of you with respect, honor, and admiration and to hear your concerns, hopes, and wishes. I am confident that we will work collaboratively to create solutions that reflect the unique perspective of our vibrant Agency. Employees have valuable, innovative ideas on how to accomplish the FLRA's mission, and I look forward to hearing more ideas on a continuing basis.

In the interest of transparency, after this is sent to the UAE it will also be sent to all FLRA employees.

Sincerely,

Colleen Duffy Kiko
Chairman