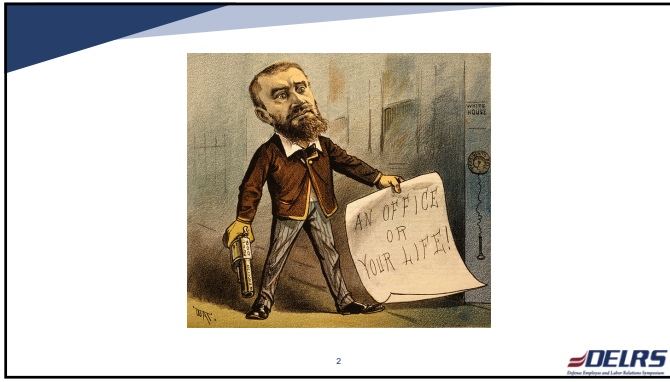
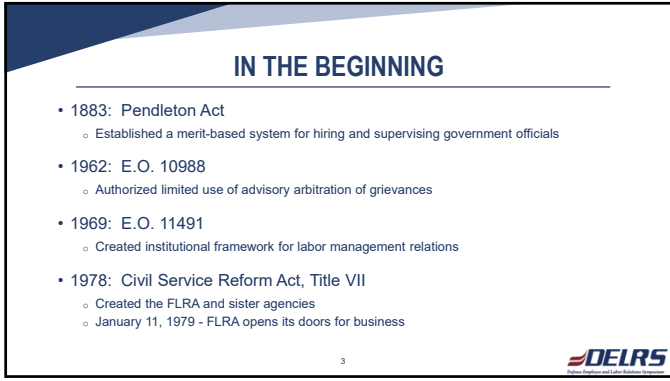




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“... so muddled the content and intent of the new agency that no one knew what it as supposed to do or how it was supposed to do it.”

Carolyn Ban, Implementing Civil Service Reform (1984)





4




5

SOME THINGS *DON'T* CHANGE

- 3 Components
- Types of Cases
- Best practices
- Standards for review of arbitration awards (codified into regs in 2010)
- Encouragement of voluntary resolution of disputes
- Change is constant: Cases of first impression





6

FIVE BEST PRACTICES

- **Watch your clock**
 - Many timeframes cannot be extended or waived
- **Do your homework**
 - Take advantage of training tools (videos, webinars, in-person training) made available through flra.gov
- **Understand burdens of proof**
 - Not every argument can be raised for the first time before the Authority
- **Be conscientious**
 - Failure to address or reply to assertions made by the other party are deemed admitted
- **Be precise in your arguments**
 - The Authority will generally decide cases only on the arguments that you make, and only on recognized grounds for review.

** For FSIP and CADRO: Leave your relationship baggage at the door*



7


FY 2024 FUNDING LEVELS

Appropriations Then and Now

2004	\$29,611,000	(213 FTE)
↓		
2023	\$29,400,000	(116 FTE)
Less Funding 19 Years Later Loss of 97 Employees		

Possible Budget vs. Amount Needed to Avoid Workforce Cuts

2024 <small>Flat minus 1%</small>	\$29,106,000	(109 FTE)
Cut = -7 FTE		
2024 <small>FLRA Needs</small>	\$30,970,000	(116 FTE)
No Cuts		



8

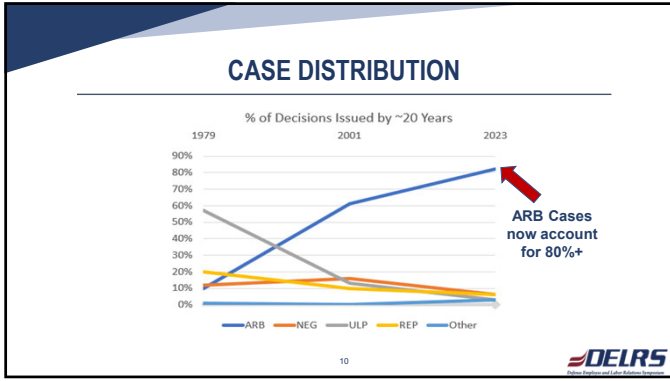
SOME THINGS *HAVE* CHANGED

- Case Type Distribution
- Staffing
- Vacancies
- Case Law
- Leadership





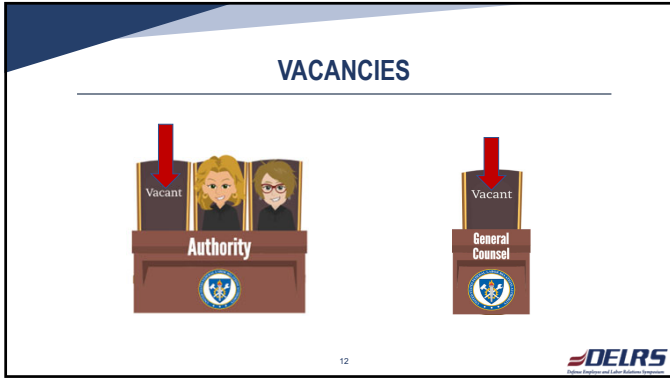
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10




11



12

VACANCIES: AUTHORITY


- Third Member position vacant January 2023 - present
 - Cases held in abeyance for non-split reasons
 - CADRO; pending resolution of rule making or other proceedings
 - Approximately 30% of cases are in abeyance due to split votes in as of Feb 29, 2024



13

VACANCIES: GENERAL COUNSEL

- No actual or Acting General Counsel (GC) from November 2017-March 2021 and from August 2023 - present
 - Acting GC issued 691 complaints between March 2021-August 2023
 - 119 complaints waiting for a GC (as of February 2024)



14

THE AUTHORITY: DEFERENCE


From Jan 2021 through May 2022	From May 2022 through February 2024
Arbitrator overturned in 25.2% of decisions	Arbitrator overturned in 14.8% of decisions



15

CONSUMER FINANCIAL PROTECTION BUREAU
73 FLRA 670 (2023) (CFPB I)


- Revised management-rights test for arbitration cases involving CBA violations
 - Does Arb's interpretation/application of CBA, and/or awarded remedy, affect a management right?
 - Is CBA provision, as interpreted and applied, enforceable under § 7106(b)?
 - Does excepting party challenge remedy, separate and apart from CBA violation? If so,
 - Does remedy "reasonably correlate" to the CBA provision, as interpreted and applied?



16

CFPB II
73 FLRA 781 (2024)


- The test defers to Arbitrator's CBA interpretation unless award fails to draw essence
 - Q 1: Authority assumed without deciding that Arbitrator's interpretation/application of CBA affected right to discipline (Union did not dispute)
 - Q 2: Union showed CBA provision, as interpreted/applied by Arbitrator, was enforceable as a procedure (§ 7106(b)(2) (requiring Agency to give employee notice and opportunity to be heard, then wait a minimal amount of time to consider employee's explanation)
 - Q 3: Agency didn't challenge remedy separate and apart from CBA violation, so inquiry ends
- **Result:** Deny management rights exception -- Uphold award



17

CFPB APPLIED
U.S. DHS, U.S. CBP, U.S. BORDER PATROL, RIO GRANDE VALLEY SECTOR, EDINBURG, TEX., 73 FLRA 784 (2024)

- Q 1: Arbitrator's interpretation/application of CBA -- restricting Agency's authority to determine duration of an administrative work assignment -- affected right to assign work
- Q 2: As Arbitrator didn't address § 7106(b)(2) (and neither party argued for remand), Union had burden to show § 7106(b) -- but made no § 7106(b) arguments, despite opportunity to brief; Inquiry ends
- **Result:** Set aside finding of CBA violation and related remedy -- Set aside award



18

SSA v. AFGE, LOCAL 2023
73 FLRA 708 (2023)


- Arbitrator requested permission to file amicus briefs to supplement the record and bolster his own award
- Authority denied request, finding it wouldn't be "appropriate" under Authority's regulations (5 CFR § 2429.9)
- Arbitrator's role is impartial decisionmaker, not appellate advocate



19

AFGE, LOCAL 2338
73 FLRA 756 (2023)


- After parties resolved several issues, Union brought grievance regarding remaining compensation issues to arbitration
- Arbitrator found Union failed to establish grievant was entitled to additional compensation
- Union excepted, arguing:
 - 1) Award was ambiguous or contradictory, contrary to law, and failed to draw essence; and
 - 2) Arbitrator exceeded authority
- Authority denied exceptions



20

AFGE, LOCAL 792
73 FLRA 792 (2024)


- Arbitrator found Agency didn't violate CBA or § 7106(b) of the Statute by requiring grievant to complete certain trainings, and by issuing the grievant an oral admonishment for failing to complete one of the trainings
- Authority partially dismissed Union's exceptions for raising arguments it failed to raise below
- Authority denied remaining Union exceptions for failing to support the grounds raised



21

EXECUTIVE ORDER 14119

- Issued March 6, 2024
- Revokes E.O. 13812 and supersedes E.O. 13522
- Requires agencies covered by the Statute to:
 - Establish Labor-Management Forums (LMFs)
 - Engage in pre-decisional involvement (PDI) in workplace matters
 - Evaluate and document, in consultation with Union representatives and OPM guidance, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from LMFs
 - In consultation with Union representatives, submit (within 180 days) implementation plans for OPM certification (within 60 days), and faithfully execute certified plans



22

LABOR MANAGEMENT FORUM




<https://youtu.be/5oO6S9qpEUc?si=H041XQ3jP8tO0s5j>



23

PDI: FOUNDATIONAL CONSIDERATIONS


- Forum membership and member roles;
- Obtaining necessary training;
- How meetings are run;
- How issues are selected;
- When/how information is shared;
- Whether provided information may be shared outside the LMF;
- Whether LMF members will have authority to reach agreements or only to make recommendations; and
- When, if ever, statutory bargaining will be unnecessary




24

POWERS AND DUTIES OF THE AUTHORITY

Pursuant to 5 U.S.C. § 7105(a)(1), the FLRA "shall provide leadership in establishing policies and guidance" for the labor relations program of the federal government.

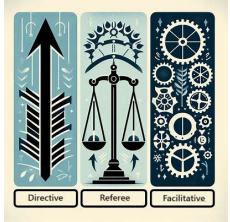


The FLRA exercises leadership to ensure that the federal government's labor relations program is a model for employers across the country.



25


THREE FORMS OF LEADERSHIP UNDER 5 U.S.C. § 7105(A)(1)



Directive

Referee


Facilitative



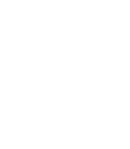
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CONTACT INFORMATION

- **The Authority**
 - Case Intake & Publication: 771-444-5805
 - Website: www.flra.gov
- **Office of the General Counsel**
 - Atlanta Regional Office: 470-681-7630
 - Chicago Regional Office: 872-627-0200
 - Denver Regional Office: 303-225-0340
 - San Francisco Regional Office: 510-982-5440
 - Washington, D.C. Regional Office: 771-444-5780
- **Federal Service Impasses Panel**
 - 771-444-5762
- **CADRO**
 - 771-444-5802



27



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