

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

601st FPRAC

SHELDON FRIEDMAN, Chairperson, Presiding

Thursday, January 15, 2015

Room 7H31
Office of Personnel Management
Washington, D.C. 20415

ATTENDANCE:

Members/Alternates:

Management Members:

Mark Allen, OPM
Jim Davey, DoD
Luis Lynch, Air Force
David Pedersen, Navy
Arleen Romba, VA

Labor Members:

Bill Fenaughty, MTD/NFFE
Jacque Simon, AFGE
Candace Archer, AFGE
Robert Shore, NAGE

Staff Specialists and Visitors:

Brenda Roberts, Designated Federal Officer, OPM
Madeline Gonzalez, OPM
Jim Brady, DoD
Gary Buck, Army
Thurstan Hunter, VA
Donovan Collins, VA
Emell Monlyn, NAGE

Recording Secretaries:

Mike Eicher, OPM

[Transcript prepared from digital audio produced by FPRAC.]

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P R O C E E D I N G

CHAIRMAN FRIEDMAN: Good morning, everyone, and welcome to this, our 601st meeting of the Federal Prevailing Rate Advisory Committee. My name is Sheldon Friedman, Chair of the Committee, and I'd appreciate it if we could go around the room and introduce ourselves. Why don't we start with you today, Mark?

MR. ALLEN: Mark Allen with OPM.

MR. DAVEY: Jim Davey with DoD.

MR. LYNCH: Luis Lynch, Air Force.

MR. PEDERSEN: David Pedersen, Navy.

MS. ROMBA: Arleen Romba, VA.

MR. FENAUGHTY: Bill Fenaughty, Metal Trades and NFFE.

MR. SHORE: Robert Shore with NAGE.

CHAIRMAN FRIEDMAN: I know we're expecting the folks from AFGE. I hope they'll get here soon. Somebody is going to meet them, right?

MS. GONZALEZ: Yes. There's somebody downstairs waiting.

CHAIRMAN FRIEDMAN: Okay. And we don't have anyone on the phone today, do we?

MS. GONZALEZ: No.

CHAIRMAN FRIEDMAN: Okay. If the other people in the room could please introduce themselves also for the recorder.

MR. BRADY: Jim Brady, DoD.

MS. ROBERTS: Brenda Roberts, Designated Federal Officer.

MR. BUCK: Gary Buck, Army.

MS. GONZALEZ: Madeline Gonzalez, OPM.

MR. EICHER: Mike Eicher, OPM.

MR. MONLYN: Emell Monlyn, National Guard Bureau, DoD.

MR. COLLINS: Donovan Collins, VA.

MR. HUNTER: Thurstan Hunter, VA.

CHAIRMAN FRIEDMAN: Okay. Well, thank you, everyone. I circulated a couple of announcement items. First is the memo from OPM Director Archuleta to the agency heads about the fiscal year 2015 prevailing rate pay adjustments, 601-OPM-1. I imagine everybody has seen that already. Any questions about it, certainly raise them.

[No audible response.]

CHAIRMAN FRIEDMAN: Also, our current roster for FPRAC.

I am pleased to announce that I think next month we'll be back in our regular quarters with new recording equipment. I probably shouldn't have said that.

MS. GONZALEZ: I'll believe it when I see it.

CHAIRMAN FRIEDMAN: We're told that that's going to happen.

Unless there's anything on any of those announcements, we will move on to review of the minutes of our last meeting.

MR. ALLEN: Mr. Chairman, just for the record, I can explain FPRAC document 601-OPM-1. It's the fiscal year 2015 prevailing rate adjustments. What that does is provides information for agencies to implement a section of the Consolidated Appropriations Act for 2015. It provides for, basically, a 1 percent across-the-board pay adjustment for Federal Wage System employees, retroactive back to the beginning of the fiscal year as necessary to comply with the normal effective date of each wage schedule's issuance date.

CHAIRMAN FRIEDMAN: Any other questions on that?

[No audible response.]

CHAIRMAN FRIEDMAN: No? Okay.

That brings up the review of the minutes of our last meeting. Are there any corrections that people want to provide other than those you have already sent in to us?

[No audible response.]

CHAIRMAN FRIEDMAN: Hearing none, is there any objection to adopting the transcript of our last meeting?

[No audible response.]

CHAIRMAN FRIEDMAN: Hearing no objection, the transcript is adopted.

Well, I'm not sure what to do given that we don't have AFGE yet. I guess we're hoping to at least address our Committee rules today. Let me ask if there's anything under Old Business items (a) through (f) that people want to talk about this morning.

MR. ALLEN: Mr. Chairman, under item (f), that is the proposal to move a portion of Joint Base McGuire-Dix-Lakehurst from the Philadelphia wage area to the New York wage area. That was introduced by ACT. OPM staff are continuing their work on the regulatory analysis criteria. Hopefully, we will have something for the Committee at the next meeting, but we don't have anything today to share on that.

CHAIRMAN FRIEDMAN: Okay. I know Steve would want to be here for that. He's sick, by the way. He let us know he's sick today.

MR. ALLEN: I've been sick this week as well.

CHAIRMAN FRIEDMAN: Oh, okay. Good timing. Come on in. Welcome.

As soon as you folks have a chance to catch your breath, please introduce

yourselves for the recorder.

MS. ARCHER: Candace Archer, AFGE.

MS. SIMON: Jacque Simon, AFGE.

CHAIRMAN FRIEDMAN: And we are in Old Business, and I just asked whether there was any items between (a) and (f) that people wanted to address before we get on to (g).

[Pause.]

MR. FENAUGHTY: Why don't you tell them what Mark said, or Mark can tell them.

CHAIRMAN FRIEDMAN: Yes. Well, what you missed is that Mark mentioned under F that OPM staff were working on an analysis. Hopefully, it will be ready — hopefully — at the next meeting.

Is there anything on (a) through (f) that you would want to discuss this morning? If not, we could move on to (g), consideration of the updates to our Committee rules that we've been talking about.

MS. SIMON: Is everything in red new, not just a change but new?

CHAIRMAN FRIEDMAN: I guess it depends which version you're talking about. I'm not sure.

MS. SIMON: Okay. I am really interested in the items under section 4, conduct of meetings.

MS. ARCHER: Do we have the most recent copy of this? I know it was given to us at last month's meeting. I just want to make sure we had the — is it in the folder?

CHAIRMAN FRIEDMAN: Do you have some extras, Madeline? Who needs them?

MS. GONZALEZ: I have four extra copies.

MS. ARCHER: The problem is there's been so many circulated, I'm not certain we have exactly the right one that's under consideration now.

CHAIRMAN FRIEDMAN: We need more copies.

MS. GONZALEZ: There are no more copies. Can you share, please?

CHAIRMAN FRIEDMAN: 600-OC-2 is the latest version.

MR. DAVEY: There's red on page 4.

MS. SIMON: But not on page 2, and that's really my question.

CHAIRMAN FRIEDMAN: And the question is?

MS. SIMON: So here, it says in this new version that it was revised on the 18th of December. Did we vote on that?

CHAIRMAN FRIEDMAN: No, no, no.

MS. SIMON: Revised just means there was a proposed revision made.

CHAIRMAN FRIEDMAN: Yes. This whole thing is still a proposal.

MS. SIMON: Okay.

CHAIRMAN FRIEDMAN: We have voted on nothing about the rules yet.

MR. SHORE: To clarify, those revisions occurred between the November and December meetings?

CHAIRMAN FRIEDMAN: Yes.

MS. GONZALEZ: The revisions showing December 18 were approved at the last Work Group meeting. Since there was the expectation that this document would be approved at the December meeting, I wrote December 18th. That day would change to today if the document is approved today — or next month if it's approved next month.

MS. ARCHER: Right. So 12/18/2014 is just a placeholder.

MS. GONZALEZ: Right.

CHAIRMAN FRIEDMAN: So the floor is open for discussion of our Committee rules. Do people need a couple minutes to look them over?

MS. SIMON: Well, okay. It seems like there's been various proposed revisions to Section 5 also, Consensus of Voting Procedures. I am seeing like several different versions here on the definition of consensus, et cetera.

So these two other — I am looking at three documents. All three are different, and all three have various insertions, shall we say, edits under the section — I guess it's under A, under voting procedures, and the one that you guys are handing out now has that A no longer highlighted in red —

CHAIRMAN FRIEDMAN: That would be the latest.

MR. FENAUGHTY: Yeah.

CHAIRMAN FRIEDMAN: So that would be what we are actually considering.

MS. SIMON: And that was written by OPM staff?

CHAIRMAN FRIEDMAN: Right, but it reflects discussions that we've had.

MS. SIMON: Okay. December 18th, as of December 18th.

I just want to make sure I know what the current language is as compared to the new language, and I think our current quorum is eight people; isn't that correct?

CHAIRMAN FRIEDMAN: Well, the quorum for voting, we actually didn't change that from the previous rules. The previous rules didn't address questions of what is a quorum for a meeting, what is a quorum for a consensus when there isn't a vote, what is the quorum for adopting a transcript. Those are things that had not been spelled out previously, and

those are now spelled out. The quorum for voting is unchanged from the old rules.

That's my understanding. Does everybody have the same understanding as me?

MR. FENAUGHTY: Yes.

MS. SIMON: Very confusing.

CHAIRMAN FRIEDMAN: Yes, it is confusing because we've gone through different iterations, but the one that was just passed out is the latest.

I made the mistake of reading the draft one more time, so I guess I am the source of the confusion.

MS. SIMON: The voting procedures, you're saying are not changed at all from the previous bylaws?

CHAIRMAN FRIEDMAN: Right. That's my understanding.

MR. SHORE: It looks like the only difference, though, is D in the new one was part of A previously. The Chairman of the Committee may vote only —

CHAIRMAN FRIEDMAN: Yes. I mean, the wording was rearranged —

MR. ALLEN: Yes, just streamlined it a little bit, the way it was worded.

CHAIRMAN FRIEDMAN: It says the same. The content hasn't changed, meaning hasn't changed.

MS. SIMON: Oh, 2008. Okay. I wondered where this came from.

CHAIRMAN FRIEDMAN: So we could defer this if people aren't ready to make a decision. It would be nice to get this wrapped up. It doesn't mean we can't revisit it again in the future.

MS. SIMON: Was there any previous discussion on proxy voting?

CHAIRMAN FRIEDMAN: We didn't make any change in that.

MR. SHORE: There was a discussion, if I remember correctly, that Candace had brought up because of AFGE's situation of having two members, and my recollection was that, for example, if Jacque couldn't be here, it was said that Candace could vote for both AFGE positions. That was in November, I think.

CHAIRMAN FRIEDMAN: We don't spell it out in here, though.

MR. SHORE: That's correct.

MS. SIMON: On the contrary, it's prohibited.

CHAIRMAN FRIEDMAN: Prohibited? Well, has there been a past practice in that?

MS. GONZALEZ: If only one AFGE member is present and the two AFGE votes are required, past practice has been to have the AFGE member present vote twice. This happened once or twice when all five votes were required—before the change to four votes per side.

MS. SIMON: I mean, that wouldn't be the only circumstance for a proxy vote, obviously.

CHAIRMAN FRIEDMAN: It would not be?

MS. SIMON: No. I mean, I wouldn't propose that only AFGE have the ability to allow a proxy.

CHAIRMAN FRIEDMAN: Well, how would we word it? It is a little bit of a slippery slope, I think.

MR. ALLEN: Proxy voting kind of conflicts with the idea of having a quorum.

MS. SIMON: It does.

MR. ALLEN: If we have the idea that, say, DoD can't be present for a meeting, we can say OPM could vote for DoD, and DoD might not like what we vote for.

MS. SIMON: Well, that would be your problem.

[Laughter.]

MR. ALLEN: Yes, it would.

MR. DAVEY: And how would the Committee know that I agreed to that?

MS. SIMON: I think you'd have to be explicit about that. You'd have to inform the Chair in advance of that meeting that you were giving your proxy to VA, OPM, whoever.

MR. PEDERSEN: I would just also say that having a primary and alternate and the ability to call into the meeting, if worst-case scenario you can't attend it in person, I mean, those things somewhat alleviate the need to have that proxy option too.

MS. SIMON: Right, that's true. I mean, given we've gotten some flexibility on being present.

MS. ARCHER: And I think some of that stuff is why we ultimately decided not to change the proxy voting section.

MR. SHORE: And the alternate allows for a second, you know, multiple people to attend on behalf of whatever organization. I think that was the other part of the discussion.

MS. SIMON: Well, on this consensus thing, obviously, it's sometimes hard for any of us to get to these meetings, but this new language on consensus doesn't seem to be really necessary in the sense that it's not addressing a problem that we are having. I mean, there are probably a couple of instances where we might have reached consensus if we'd had a full attendance, but I don't know how often that's occurred. If it's occurred, it's very, very rare.

CHAIRMAN FRIEDMAN: So what are you suggesting? To be silent on it and then have it what, whoever —

MS. SIMON: Yes. Well, I am just looking at the — I am trying to figure out what

the old language is.

CHAIRMAN FRIEDMAN: The old language was silent, so there was ambiguity.

That's the whole reason we put something in it.

MS. SIMON: And at one point, the language was consensus means —

MR. ALLEN: The past practices.

MS. SIMON: — everybody present is in agreement?

MR. ALLEN: Yes. It is basically if nobody objected to it, then that was consensus.

MS. SIMON: I was just at a strategic planning meeting the other day where the facilitator said 70 percent will call it consensus. The room went wild.

MR. DAVEY: In this case, it could be 80 percent will call it consensus.

MS. SIMON: Right. I think we have — I mean, I am looking here at a version where consensus means 100 percent.

CHAIRMAN FRIEDMAN: What do you mean?

MS. SIMON: I am looking at an old copy.

MR. ALLEN: Yes, that's the way it used to be.

MS. SIMON: I am just looking at a version that says consensus is reached when all of the Labor members present and all of the Management members present agree.

CHAIRMAN FRIEDMAN: Yes. Well, I guess this is not a question of what's defined in the bylaws here. It is not a question of what constitutes a consensus, but of what is a quorum for purposes of determining whether there is consensus.

MS. SIMON: Exactly.

CHAIRMAN FRIEDMAN: I think it's clear that if any one person objects, it is

not consensus —

MS. SIMON: But if there are eight people present —

CHAIRMAN FRIEDMAN: — could be a vote, then you just have a vote, and then it would carry. But how many people need to be here?

MS. SIMON: Four on each side.

CHAIRMAN FRIEDMAN: Four to be a consensus, yes, and then it says —

MR. DAVEY: I am reading this a little differently, though. To me, if we have five Management members, but four of us could express agreement, that would be consensus — even if one of us says we don't agree, so it's 80 percent.

MS. SIMON: I think that's not the intention.

MR. DAVEY: Right, exactly.

MS. SIMON: It needs to be — what does it say?

CHAIRMAN FRIEDMAN: It says a quorum exists for consensus or voting purposes if at least 8 of 10 members are recognized as being in attendance, either in person or by telephone.

MR. FENAUGHTY: There is a minimum number.

MS. SIMON: But I think James is making a good point: What if five are present and only four agree? This language would allow us to declare consensus if four out of five on either side agreed.

MR. ALLEN: No, I am not reading it that way.

MS. SIMON: I do.

MR. DAVEY: Consensus is reached when at least four members present express agreement.

MR. FENAUGHTY: Well, suppose it said a minimum of four members?

MR. DAVEY: Wouldn't it say all members?

MS. SIMON: No, but if you read this, four of five members agree. So, you know, I mean, I'm not saying I oppose that concept, but it does allow for that.

MR. SHORE: It doesn't say consensus is reached; it says a quorum exists when four — top of page four.

CHAIRMAN FRIEDMAN: I see the problem. I see the problem, yes.

MS. SIMON: Consensus is reached. Five may be present and only four expressing agreement, then you —

MR. SHORE: Well, shouldn't it say at least when all members present at a meeting express agreement —

MS. SIMON: Yes.

MR. SHORE: — and wouldn't that resolve the issue?

MS. SIMON: Yes, I think so.

CHAIRMAN FRIEDMAN: I think that's correct.

CHAIRMAN FRIEDMAN: The earlier sentence is the one that really matters. It is the one about the quorum.

MS. SIMON: Right.

CHAIRMAN FRIEDMAN: I think this is an improvement.

MS. SIMON: Just change it to "all."

CHAIRMAN FRIEDMAN: Yes. Okay.

MS. SIMON: I don't know if I want that because what if we could persuade four of you and not the fifth.

CHAIRMAN FRIEDMAN: Well, but then you could vote. Voting is always an alternative, right? If you have all of one side and four out of five of the other side, then it would pass a vote.

MS. SIMON: Right. Exactly. So I'm not sure we should push this change.

MR. DAVEY: Well, I would think that we'd want to push the change. You originally were talking about all.

MS. SIMON: I know. I'm just thinking out loud here.

MR. DAVEY: Consensus is all, yes. And that's been the practice of the Committee, I believe, that consensus has always been all, and the idea of changing it to 80 percent, I don't think that's the intent.

CHAIRMAN FRIEDMAN: Personally, I feel uncomfortable not having something in the rules about what is a quorum for consensus. Now, it doesn't have to be the numbers we've chosen, but if, for example, we only had one person on a side on a given day, which would be terrible, but if that happened, could we really adopt anything by a consensus? We might have five on one side and one on the other. That is six for a quorum for the meeting, okay? So we'd have a meeting, but if something came up and it's adopted by consensus, would we be pleased with that? I don't think so. So, therefore, I think we need to have some minimum as to what constitutes a quorum for a consensus.

But I also think this change just suggested is an improvement in that second sentence.

MS. SIMON: Starts with the word "Consensus is"?

CHAIRMAN FRIEDMAN: Yes. We can fix that.

MR. DAVEY: To read all?

MS. SIMON: Well, there has got to be four on each side present and all agree.

MR. FENAUGHTY: The starting point is the quorum.

CHAIRMAN FRIEDMAN: Yes, the quorum is already spelled out in the previous — well, it says 8 of 10.

MR. SHORE: And then the next sentence says at least four Labor and at least four Management members must be present.

CHAIRMAN FRIEDMAN: Yes.

MR. SHORE: So then in the consensus sentence, if you change at least four to all there and then you have to change it again later in that sentence to say —

MS. SIMON: Yes.

CHAIRMAN FRIEDMAN: All the Management.

MR. SHORE: All Management, yes.

CHAIRMAN FRIEDMAN: I think that addresses it.

MS. SIMON: I think it does.

CHAIRMAN FRIEDMAN: Are there any other changes that we need to consider?

MR. DAVEY: Do we need to change the last part, the last sentence?

MS. SIMON: Where are you?

MR. DAVEY: The same paragraph.

MR. FENAUGHTY: Should five, that where you start the meeting?

MR. DAVEY: Right.

CHAIRMAN FRIEDMAN: How would we need to change that one, Jim?

MR. DAVEY: I don't know. I just started reading it.

CHAIRMAN FRIEDMAN: That is on voting.

MR. DAVEY: Since we made all above, I am just wondering if there is an impact on that sentence. I don't know if there is or not.

CHAIRMAN FRIEDMAN: I don't think so.

MR. FENAUGHTY: I don't think so.

CHAIRMAN FRIEDMAN: That is the sentence that has been in the rules about voting and would not change.

MR. DAVEY: Okay.

CHAIRMAN FRIEDMAN: Is there anything else on this? I think we just made an improvement. If we keep at this, we may keep finding things to tinker with, but at some point, we need to adopt it and move on.

MR. DAVEY: I am just wondering, now that we've made all above that, maybe the reason four members was because of the last sentence there. I think we'll have to look at it a little longer is all I'm saying.

If consensus is reached, if there is, let's say, five Labor and four Management, but the last sentence says four votes for Labor —

MS. ARCHER: Two separate things, consensus versus voting, so it's rules for consensus versus rules for voting.

MR. DAVEY: Okay. This is the voting part at the bottom?

CHAIRMAN FRIEDMAN: Yes.

MS. ARCHER: So rules for voting is four of five, but rules for consensus is all who are present need to agree.

MR. DAVEY: Gotcha. Gotcha.

CHAIRMAN FRIEDMAN: Are we okay on this now?

MR. DAVEY: It would be clearer if we made that a separate paragraph.

CHAIRMAN FRIEDMAN: And separate the voting from the consensus?

MR. DAVEY: Consensus, right.

CHAIRMAN FRIEDMAN: I don't know. Do we need to do that?

MR. FENAUGHTY: Don't need to do it for me, but it is probably not a dumb idea.

MR. PEDERSEN Mr. Chairman, the only recommendation I had was removing the exact hyperlink, having the exact address as it is today. It may limit the permanence of the document under reports where it lists the full URL. My experience, give it 2 years, that address will probably be changed, so perhaps changing that language just to indicate they will be available on OPM's website.

CHAIRMAN FRIEDMAN: Well, we could have the exact one or whatever —

MS. SIMON: Or its successor.

MR. PEDERSEN: Okay. Otherwise, every time that link changes, we would have to make an amendment to —

CHAIRMAN FRIEDMAN: Yes. I don't know how often that changes, but —

MR. PEDERSEN: I'm not sure. I just know most policies that I've looked at when I try to use the hyperlink that's in the policy, I always get —

CHAIRMAN FRIEDMAN: It's dead, yes.

MR. PEDERSEN: Address is no longer there, 404 error.

CHAIRMAN FRIEDMAN: Well, all right.

MR. ALLEN: They do change on OPM's website. I don't think they're going to

change for the next couple years because we just went through a revamping of OPM's website structure, but it will change at some point in the future.

CHAIRMAN FRIEDMAN: So can we just put in verbiage to the effect of "or subsequent"? Because it is correct now. It is correct for the foreseeable future, so add subsequent link or subsequent address. Okay?

Any other refinements or improvements?

[No audible response.]

CHAIRMAN FRIEDMAN: So do we have consensus to adopt this as refined this morning?

MR. ALLEN: I think we're still operating under the old rules for consensus.

[Laughter.]

CHAIRMAN FRIEDMAN: Whatever those are.

MR. ALLEN: As long as nobody objects.

CHAIRMAN FRIEDMAN: Any objection? Is there any objection to adopting our new rules, our revised rules, our newly revised rules?

MS. SIMON: There's no objection. Do we want to say for the record that the revision will include the change we've discussed today under item 5, part A? Right?

CHAIRMAN FRIEDMAN: Yes. Do you want me to say it?

MS. SIMON: Sure. "Like she said."

CHAIRMAN FRIEDMAN: Yes, what she said.

[Laughter.]

CHAIRMAN FRIEDMAN: So we are going to fix that sentence at the top of page 4, near the top of page 4. It starts with the words "Consensus is reached."

Does somebody have the exact new wording they would like to read?

MS. SIMON: "When all four."

CHAIRMAN FRIEDMAN: "When all four Labor members present" —

MR. DAVEY: I think it's all members.

MS. SIMON: You can say "all members present."

MS. ARCHER: Or all Labor members and then all Management.

CHAIRMAN FRIEDMAN: Yes.

MS. SIMON: So you get rid of "at least four" and change it to "all."

MS. ARCHER: There and also where it says —

MS. SIMON: And then also "at least four" with Management, you change that to "all."

CHAIRMAN FRIEDMAN: Yes. I guess it is clear to everybody, right? And then also the other changes about the URLs.

With those two sets of changes, do we have consensus to adopt this, 600-OC-2, our rules? Can somebody speak up?

MR. SHORE: Yes.

MS. SIMON: I move to accept these changes.

CHAIRMAN FRIEDMAN: Okay. And there is consensus, I believe.

Okay. I hear no objection. Hearing no objection, we have consensus, so thank you. All right.

Well, unless there's something else today, I am not aware of any New Business items. Does anybody else have anything else they want to bring up?

Jim?

MR. DAVEY: I think it is worth mentioning for the members of the Committee that even though I had mentioned the possible minority report last meeting that we had and I requested extra time, there is no minority report that I drafted.

CHAIRMAN FRIEDMAN: Okay. I guess we have a recommendation to our Director on the Mississippi issue.

Well, unless, there is something else, unless there is some objection, we can adjourn.

MS. SIMON: Okay.

CHAIRMAN FRIEDMAN: Hearing no objection, we will see everybody next month. All right. Thank you all.