INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL ENGINEERS
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GAO Personnel Processes Do Not Meet Expectations for Accountability, Integrity, and Reliability

My name is Gregory Junemann. I am president of the International Federation of Professional and Technical Engineers. IFPTE represents over 65,000 highly skilled professional and technical workers in the private and public sectors throughout the United States and Canada. Among our members are all nonsupervisory employees of the Congressional Research Service (CRS), who have been a part of our union for more than 20 years. In addition, IFPTE represents thousands of NASA and Department of Defense scientists, engineers, and related techncial employees as well as more than a thousand federal adminstrative and immigration judges.

Before I get started I wanted to extend a note of thanks to both Chairman Davis and Chairman Akaka for giving me the opportunity to testify before your respective subcommittees. As a union representing tens of thousands of federal workers, I commend you both for your staunch support of our nation's civil servants and I look forward to addressing you each, and the members of the subcommittees here today.

Overview of Union Organizing Work at GAO

During the past year, we have been working with employees from the Government Accountability Office (GAO) to help them gain union representation. On May 8, 2007, we filed a petition with GAO's Personnel Appeals Board and submitted union authorization cards signed by a majority of GAO's Band I and Band II employees, including employees from every mission team and each of GAO's 13 field locations. I am here to speak on behalf of these GAO employees, many of whom, I have had the honor to work closely with on this testimony, and to express their concerns about personnel policies at the agency. The employees asked me to thank you for holding these hearings and for showing that you care about GAO workers and the work they do on behalf of Congress and the American taxpayer.

I am devoting my testimony to informing you about the circumstances that convinced hundreds of normally reticent GAO analysts, auditors, statisticians, IT specialists, and others to band together

to form a union. Apart from these circumstances, there are many other conditions at GAO that the employees hope to address through their union, such as how engagements are staffed, the distribution of workload and opportunities, the quality of supervision, lack of transparency, and management's tendency to dismiss employee concerns. Further, the GAO employees' concerns are not just about what has happened in the past. The past is prologue. GAO employees are concerned that management does not recognize the long-term, adverse consequences that its actions may have on the institution. Consequently, they believe that, unless adequate checks and balances are put in place, GAO management will be prone to making similar mistakes in the future. The employees have a vision of an agency with a fair, credible, and equitable performance management system that is transparent, supports teamwork and diversity, and will truly merit having GAO placed at the top of the best places to work in the federal government. GAO employees are proud of the mission of GAO and want to ensure that they can continue to successfully carry out that mission.

Background

This story began in 2002 when the Comptroller General began talking about splitting one of GAO's pay bands—Band II. Since the late 1980s when GAO implemented a pay-for-performance system, GAO has not used the Office of Personnel Management's General Schedule but has placed employees in three broad pay bands and promised employees that they would not be any worse off than they would have been under the General Schedule. Employees from the grades of GS-7 through GS-12 were placed in the lowest band--Band I. Employees from GS-13 and GS-14 were placed in Band II, and GS-15 employees were placed in Band III. The Comptroller General has described the Band II staff as the backbone of the agency. They are the senior, non-supervisory staff who do the bulk of GAO's work reviewing federal programs and writing reports for Congress. Band II employees often hold the role of Analyst-in-Charge. Employees in this role have certain responsibilities for shepherding an engagement through the GAO processes; however they exercise no authority over personnel-related matters. For example, the Analyst-in-Charge **does not** assign staff to the engagement, or determine how staff on the engagement will be rated under the performance management system.

In 2003, the Comptroller General submitted a legislative proposal to Congress that included, among other things, that he be given authority to decouple from the GS schedule annual pay adjustments for GAO staff. In July 2004, Congress approved the GAO Human Capital Reform

Act of 2004 giving the Comptroller General the authority he requested.[1] The Comptroller General then commissioned a study by the personnel and financial consulting firm Watson-Wyatt to determine comparable pay rates in the marketplace for the type of work performed by GAO employees.

In December 2005, GAO management implemented the Band II split by creating two levels—A and B. Band IIA, the lower level, was given a pay cap lower than the current salary level of many of the Band II employees who were reclassified as Band IIAs. Because their reclassified positions had pay caps lower than their current salary, the Comptroller General also denied annual pay adjustments to hundreds of GAO staff. As the Congressional Research Service documented in its testimony before you in March 2007, this action contradicted promises the Comptroller General had made to GAO employees and Congress that he would provide annual pay adjustments to all staff performing at the meets expectations level and above.[2]

As the Congressional Research Service also testified, the Comptroller General's action puts many GAO employees at a distinct disadvantage in annual pay and implications for employees' pensions when they retire when compared to other federal employees. Further, the Comptroller General's action violates the promise made to employees that they would not be any worse off in pay bands than they would have been under the General Schedule. Although the Comptroller General cited the Watson-Wyatt pay study as the foundation for his decisions regarding the Band II split, he refused to share the study with GAO staff until only a couple of weeks ago—about 17 months after the reclassification. GAO employees appreciate the actions taken by your House Subcommittee to encourage the Comptroller General to release the study, and we look forward to hearing about any analysis of it that the Congressional Research Service may have conducted. However, GAO employees have asked me to explain, not problems with the study itself, but an equally important concern, which has not heretofore been adequately examined – specifically, the invalid process that GAO management devised for the Band II split. Reasonable people could never have expected this process to achieve a sound result. GAO employees believe that the use of this process and the Comptroller General's cavalier disregard for his past commitments to staff violated GAO's core values of accountability, integrity, and reliability.

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1 P.L. 108-271, July 7, 2004.

2 Curtis W. Copeland, Congressional Research Service, "Implementation of the New Pay System at the Government Accountability Office", March 8, 2007.

Employees' Concerns--Implementation of Personnel Legislation

Concerns about the agency's personnel processes are widespread, coming from newer and more experienced workers, from almost all organizational levels. Many employees who were not placed under a lower pay cap and were not denied annual pay adjustments have supported and helped lead the movement to get a union at GAO. After all, GAO is an analytical organization and its employees can see when the system is broken. And when the system is broken everyone under that system suffers. GAO employees do not oppose the principle of rewarding staff commensurate with their contribution; they oppose the invalid process that GAO management implemented in the name of this principle.

If you listen to the Comptroller General explain the reclassification, you may think that he conducted a study to determine a market-based pay range for employees in different jobs in the agency and then simply reclassified staff based on the jobs they were performing. He says he did it to achieve equal pay for equal work. You might think that was a reasonable thing to do. But that is not what was done.

In devising the Band II split, GAO management developed criteria to determine which employees would be placed in Band IIA and which in Band IIB that employees had never been told were critical factors in their career development or performance assessments. The past was given new meaning as these criteria were applied retroactively over the prior 3 years to determine employee placements. The first criterion for placement in the higher level, Band IIB, was to have frequently held the role of Analyst-in-Charge.[3] It had been commonly understood that holding the role of Analyst-in-Charge was helpful but not necessary to career advancement in GAO. Staff who had held other roles instead had often been promoted to the Band III level. When GAO implemented pay for performance it promised employees that they would be rewarded for the skills they brought to the assignment and that the system would afford GAO more flexibility to utilize staffs with varied skills to complete assignments.

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3 This statement addresses the approach used for the Band II split for those in the Senior Analyst position, the most common position held by Band II staff at GAO. However, Band II staff hold other positions, and the Band II split was conducted differently for different positions. For example, placement of Band II methodologists in the Applied Methods and Research team was determined solely on the basis of where employees fell in the rankings of performance appraisal scores, and Communications Analysts were told they were not eligible for placement into Band IIB.

The second criterion used to determine employee placements involved the statistical manipulation of performance appraisal scores. The performance appraisal system uses various performance dimensions such as "critical thinking" and "communicating in writing" and describes different levels of performance. In September 2002, Mr. Walker told employees that they should not fear being rated as "meets expectations" and that "GAO personnel are a cut above and the market recognizes this." Over the years, GAO management has repeatedly assured staff that "meets expectations" is a high standard and that employees with appraisals at the "meets expectations" level would receive annual pay adjustments. However, for the Band II split, meeting expectations was irrelevant. The new determinate of performance was whether the employee received a performance appraisal that ranked in the top 50th percentile of performance appraisals. This created an automatic group of potential winners and losers regardless of the individuals' contributions. Many of those in the bottom 50 percent had received appraisals well above the meets expectations level, and when they received those appraisals they were told they were performing at a high level. It did not matter that when their supervisors prepared those appraisals one, two, or three years ago, the guidance they followed had nothing to do with how the employees would be classified in some future band assignment. It did not matter that the performance appraisal scores used to rank employees are an extremely sensitive measure and that a very slight difference could switch an employee from one half to the other.

The GAO Human Capital Reform Act of 2004 requires that GAO's system for appraising employees' performance include "effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews,
internal assessments, and employee surveys." However, GAO employees understand that GAO's current performance appraisal system does not meet these requirements. Much of GAO's performance appraisal process is based on unwritten standards and methods that GAO management shares only with the SES and Band III staff who prepare performance appraisals. Also, the different GAO mission teams have their own unwritten rules for performance appraisals, with the result that appraisal averages are inconsistent across mission teams. GAO employees know that the written standards for performance appraisals leave room for widely divergent interpretations of how an employee should be rated. When GAO held classes on the appraisal system and asked participants to prepare ratings based on case examples, they found the participants' ratings differed widely. The first "Frequently Asked Question" listed in a training manual for these classes asked about how the performance standards could be used to prepare

good appraisals when the language was so vague. The provided answer was that the performance standards are not vague, and it described the process used to develop the standards.[4] However, employees know that some supervisors prepare appraisals that are much less generous than others and that having a supervisor who likes you is very helpful in obtaining a high appraisal. GAO staff has heard from Band IIIs about efforts by management to achieve the results they want from the appraisal process, including setting quotas for marks above "meets expectations" and manipulating draft appraisals to ensure that the desired ranking of staff is achieved before the appraisals are finalized.

The performance appraisal process that GAO goes through each year is widely disliked by managers and staff alike.

Moreover, while the performance appraisal system is unfair and inequitable for employees of all types throughout GAO, there is strong evidence that African-American employees may have suffered disproportionately because their appraisal scores are statistically significantly lower than those of other groups. Because performance appraisals were such a significant factor in the reclassification of staff, we believe that African-American employees may have been more adversely affected by the Band II split than employees in other groups. This result is of particular concern, in light of the fact that the Comptroller General received ample cautions and advice from the Blacks-In-Government, GAO Chapter and the Comptroller General's own Employee Advisory Council, of this potential adverse impact, but chose to proceed with the Band II restructuring as planned.

A third new criterion used to determine where staff would be placed in the Band II split was the risk level of engagements. GAO management assigns one of three risk levels—low, medium, and high—to each engagement and requires that engagements with medium and high-risk levels receive more scrutiny by management than low risk engagements. A primary factor used to determine the risk level of an engagement is the political sensitivity of the topic. Low-engagements can be difficult and complex, but they are less likely to deal with hot topics in the news. In the criteria established for the Band II split, GAO management asserted that only those analysts who had been in the role of Analyst-in-Charge for engagements classified as high or medium risk could be placed in the Band IIB. GAO staff did not understand why employees

4 *GAO Analyst and Specialist Performance Management and Appraisal System, Performance Standards Workshops, Participant Manual,* August/September 2003, p. 51.

should be penalized if they chose—or were asked by management—to lead engagements on subjects that were not currently a hot news topic but were difficult, of significance to our nation, and of interest to the members of Congress who requested the engagements. Staff repeatedly expressed their concerns to management that risk level was not a valid criterion for the Band II split, but management chose to disregard their views.

Applying the new criteria, GAO management placed in the lower Band IIA many highly skilled and experienced staff who had frequently or exclusively carried out the role of Analyst-in-Charge. GAO's restructuring efforts also placed in the Band IIA highly respected staff who were performing roles that, prior to the Band II split, had been considered of high value. For example, several well-respected senior staff who had taken positions in the Professional Development Program (PDP) as advisers to new employees were summarily placed in Band IIA because they had not been performing the role of Analyst-in-Charge while they were PDP advisors. As if to advertise the arbitrariness of its original placement decisions, after the split, GAO management announced that all new candidates for the PDP advisor positions must be Band IIBs or Band IIIs. Another group of employees who were summarily placed in Band IIA without any scrutiny of their individual contributions were the Communications Analysts. Communications Analysts work directly with Directors, Band IIIs, Analysts-in-Charge, and other team members to help write GAO reports to make sure the message is clear and well-supported. Communications Analysts play different roles across mission teams, but some perform very sophisticated work, including substantially revising or writing reports, testimonies, and speeches for their supervisors. Management has never clarified why it thought all Communications Analysts should be placed in Band IIA regardless of the functions they performed.

After employees were told about their placement in the Band II split, employees were given 30 days to contest the decision. Twelve senior employees filed complaints with GAO's Personnel Appeals Board (PAB) contesting their placement in Band IIA, and the PAB General Counsel supported them with a strong brief contending that their placement in Band IIA had been unlawful. At the same time, another group of 30 or more employees filed complaints about their placement with GAO's Office of Opportunity and Inclusiveness. Last month, GAO settled the 12 cases that had been filed with the PAB. Although GAO stipulated that the terms of the settlement must be confidential, it is our understanding that, in return for withdrawing their complaints from the PAB, GAO agreed to place each of the 12 complainants in Band IIB and to retroactively adjust their pay to the level it would have been if they had been placed into Band IIB at the time

of the split. We believe that the settlement demonstrates that GAO did not want to undergo a public hearing before the PAB on the criteria and processes used for the Band II split and had a reasonable expectation that if such a hearing were held, GAO would lose. While we are happy that the 12 who filed cases with the PAB were made whole by the GAO settlement, we are concerned that the many other employees who had their pay frozen and were, in effect, demoted unfairly as a result of the Band II split have received no remedy. Over 200 more employees have recently petitioned the PAB seeking remedy for their loss in pay. We do not know the status of these petitions or of the complaints filed with GAO's Office of Opportunity and Inclusiveness or the process being used to address them.

The terminology GAO management uses to describe the Band II split raises concerns for the future. GAO management insists that no employee's pay was cut as a result of the Band II split, in spite of the fact that salaries were frozen and therefore were reduced in real terms.[5] GAO management insists that the Band II split resulted in "placements," not promotions or demotions. Since the original Band II split, GAO has advertised a limited number of Band IIB positions, allowed employees to apply for the positions, and selected employees to fill the positions from best qualified lists. The process that it used to fill these positions is the same one it uses to promote staff. Nevertheless, GAO management says those selected for Band IIB are not receiving promotions, and in the placement do not receive pay increases, although they will fall under a much higher pay cap. Because placements are, presumably, not covered by due process rules that would apply to demotions, many Band IIBs are concerned that management's terminology signals its intention to move some Band IIBs back to the Band IIA level at some point in the future based on their performance appraisals or some other criteria.

Conclusion

In conclusion, the invalid process used for the Band II split and the denial of annual pay adjustments to staff performing at the meets expectations level and well above that level, contrary to repeated promises made by the Comptroller General, indicate that the Comptroller General has too much discretion under the GAO Human Capital Reform Act of 2004. Also, the Comptroller General has not complied with provisions of the Act requiring accountability measures to ensure that the performance management system is fair, credible, and equitable. We ask you to consider

5 In GAO reports, it is common to adjust dollar amounts to control for the effects of inflation over time. It is highly likely that, if Congress chose not to take inflation into account in setting GAO's annual appropriation, the Comptroller General would consider that the agency had received a budget cut.

repealing or substantially revising the authority given to the Comptroller General under the Act. We also ask that you decline to provide the Comptroller General any additional discretion over personnel policy at the agency, such as discretion to set Reduction In Force (RIF) rules independent of OPM rules. We ask that you consider requiring an independent review—a review not controlled by GAO—of the criteria and processes GAO management used to implement the Band II split. This will need to be done by an independent outsider. GAO's Office of Inspector General (OIG) cannot be tasked with this review because it is an administrative office created by the Comptroller General, has no independent authority.

GAO employees are now looking forward to having an expeditious election to obtain union representation. The Comptroller General has made statements to the press that suggest he plans to work to minimize the number of employees who can be represented by a union. In particular, his staff have, at times, suggested that Band IIB employees are not entitled to union representation because they are allegedly "supervisors." The term "supervisor" under GAO Order 2711.1 refers to the type of responsibility exercised by GAO's Designated Performance Managers, not the job duties GAO requires Band IIB employees to perform. GAO staff, including all Band I, Band IIA, and Band IIB staff deserve union representation. A union will give the employees an organization with legal standing to represent their interests and obtain a binding contract to ensure that management cannot change conditions of employment without prior notice, full disclosure and good faith negotiation. A union will provide a much needed safeguard against arbitrary and unfair treatment. Most importantly, a union will bring GAO employees to the table as equal partners with the Comptroller General in the creation and implementation of personnel management at GAO.

GAO employees working to form a union share a common goal with GAO management-- to effectively, efficiently, and reliably carry out GAO's mission on behalf of Congress and the taxpayer. Moreover, GAO employee shares many of the core principles of personnel management articulated by the Comptroller General. Unfortunately, these employees have been subjected to personnel management policy changes that suffer from significant shortcomings, as today's proceedings clearly demonstrate. Nevertheless, we do not believe that these inequitable, ill-advised, and at times arbitrary outcomes were intended by the Comptroller General when he undertook personnel management change at GAO. Instead we believe these shortcomings are directly attributable to flaws in the deliberative processes that led to the changes. Had GAO employees had union rights during the formulation and implementation of these changes, we

believe the results would have met GAO's analytical standards for accountability, integrity, and reliability. We believe that working together GAO employees and the Comptroller General can create a personnel management system that lives up to their common principles and the agency's aspiration to be a model federal workplace. When GAO's employee union is certified, its representatives will seek a positive, productive working relationship with the Comptroller General and his management team so that, together, they can identify effective approaches to face GAO's current and future challenges, in the best interest of Congress and the taxpayer.

I want to thank you for holding this hearing and giving me the opportunity to speak on behalf of GAO employees.