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Report to Congressional Committees

Implementation of GAO Human Capital Reform Act of 2004 and Its Impact on Employees

Comments from GAO Employees Organization

Local 1921, IFPTE

July 27, 2010

Executive Summary

GAO Union Report to Congress on GAO Human Capital Reform Act of 2004

In September, 2007, GAO analysts, who represent about 70 percent of all GAO employees, voted to join together in a union and affiliate with the International Federation of Professional and Technical Engineers. While GAO was and is a great place to work, the impetus for this election came from the manner in which the Comptroller General chose to exercise the flexibilities in human capital management provided under the GAO Human Capital Reform Act of 2004 (PL 108-271). Since then, the union and GAO management have worked toward a productive relationship and Congress has enacted some improvements. However, GAO's equitable implementation of the Human Capital Reform Act remains a work in progress.

GAO employees and management share a commitment to the goals of encouraging and rewarding high performance. Indeed, GAO's mission and reputation attract high-caliber staff who have high expectations both for their own performance and for the opportunity to make a difference through their work. However, the current performance appraisal system fails to foster shared confidence of employees and management.

Any pay-for performance system, reduction-in-force, or workforce restructuring program requires a fair, equitable, creditable, and transparent performance appraisal system that fosters shared confidence of employees and management; however, the current system falls short of these necessary conditions.

1) In 2009, GAO conducted a Performance Appraisal Study (PAS) which found that the agency's performance system violated federal regulations; did not meet its objectives; was not consistently applied; and was "universally disliked."

2) Around the same time, a GAO-contracted African American Performance Assessment Study found statistically significant disparities in performance ratings between African American and Caucasian Analysts.

3) Moreover, GAO's 2010 Diversity Plan also reported statistically significant differences in performance appraisal averages of its banded staff 40-years old and over compared to those less than 40-years old. Further, GAO reported a growing difference in the appraisal averages for Hispanic staff compared to non-Hispanic staff.

The findings from these studies are especially critical, given that employee performance appraisals are tied directly to compensation, as well as to other personnel decisions that affect how GAO exercises the personnel flexibilities granted in the 2000 and 2004 Acts. Despite being aware of the rating disparities between African Americans and their non-minority counterparts, the Comptroller General used these ratings as a critical component in placement decisions in a recent major restructuring. In 2005, GAO used performance appraisals to split its band II employees into two newly created bands—two-thirds were placed in a new Band IIA and one-third were placed into a new Band IIB position. This reversed the broadbanning system in place for these employees at GAO since 1989. The restructuring resulted in a reduction of the pay ranges for those placed into Band IIA and a reduction of responsibility and denial of annual pay adjustments for many of those placed in Band IIA. Employees in the IIB category had the opportunity to grow their salaries, but they still faced a “speed bump” from growing their salary beyond the old Band II pay system.

Congress passed the Government Accountability Act of 2008 (PL 110-323) that provided Band IIA's affected by the restructuring with annual pay adjustments both retroactively and prospectively. However, continued oversight is needed to ensure that the flexibilities Congress has provided the agency are not used inappropriately or in ways that were not intended. The problems identified by GAO require large-scale and extensive changes to the GAO performance management system; immediate measures are needed to mitigate the impact of the current flawed system while these comprehensive changes to the system are considered. For example, the flawed rating system that was used to place a disproportionate number of African Americans during the restructuring into the lower category continues to be used in determining pay, placement decisions into the bands, and would be used should the agency implement a reduction-

in-force (RIF). GAO's reduction-in-force (RIF) policy places much more emphasis on the performance appraisal system than does the Office of Personnel Management (OPM) in establishing retention factors during a RIF.

The Union has worked to further address employee concerns through regular labor-management meetings and negotiated agreements with management on annual pay agreements and other workplace issues. One of the most significant indicators of the development of a positive relationship between union and management is the continuing commitment to a collaborative problem-solving approach to negotiating our first collective bargaining contract. Through this process, using an expert facilitator, we have identified our shared interests and are making significant progress toward completing the contract while building a productive relationship.

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Edolphus Towns
Chairman
The Honorable Darryl Issa
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Ben Nelson
Chairman
The Honorable Lisa Murkowski
Ranking Member
Subcommittee on Legislative Branch, Appropriations
United States Senate

The Honorable Debbie Wasserman Schulz
Chairwoman
The Honorable Robert B. Aderholt
Ranking Member
Subcommittee on Legislative Branch, Appropriations
House of Representatives

The Honorable Daniel K. Akaka
Chairman
The Honorable George V. Voinovich
Ranking Member
Subcommittee on Federal Workforce
United States Senate

The Honorable Stephen F. Lynch
Chairman
The Honorable Jason Chaffetz
Ranking Member
Subcommittee on Federal Workforce
House of Representatives

This report presents comments and evaluation from the GAO Employees Organization, International Federation of Professional and Technical Engineers (IFPTE) Local 1921—GAO Union—on the implementation of the GAO Human Capital Reform Act of 2004 (PL 108-271) and its impact on employees. We represent a bargaining unit of about 2,000 employees of the Government Accountability Office.

As the Acting Comptroller General indicated in GAO’s final report on the 2004 Act¹, we are presenting our report directly to you. The 2004 Act requires GAO to include assessments of the Act from the Personnel Appeals Board (PAB) or any interested groups or associations representing officers and employees of GAO, which includes the GAO Employees Organization, IFPTE Local 1921. It is for this purpose—providing an assessment as the employees’ representative, as stated in the 2004 Act—that we are presenting this report to you.

Our report encompasses the following sections of the 2004 Act: Section 2, Voluntary Early Retirement Authority and Voluntary Separation Incentive Payments; Section 3, annual pay adjustments; Section 9, performance management system; Section 4, pay retention; and Section 10, consultation. We discuss our concerns related to GAO’s performance management system in a slightly differing order than the Sections are presented in the 2004 Act, because it is integral to our concerns regarding pay retention.

Background

Independent personnel management has been in effect since 1980 at GAO

Over the past three decades, under the General Accounting Office Personnel Act of 1980,² the Government Accountability Office (GAO)³ has operated its own personnel management and pay system.⁴ The 1980 Act provided the Comptroller General authority to establish by regulation GAO’s own personnel management and pay system consistent with merit principles and other employee protections. Under the 1980 Act, GAO’s system was to be independent from oversight

¹ GAO Human Capital Reform Act of 2004: Final Report on GAO’s Use of Provisions in the GAO Human Capital Reform Act of 2004, GAO-10-811SP, (Washington, D.C.: July 2010).

² PL 96-191, 94 Stat. 27.

³ GAO, now named the Government Accountability Office, was previously named the General Accounting Office.

⁴ The Act of 1980 gave the Comptroller General authority to “appoint, pay, assign, and direct such personnel as the Comptroller General determines necessary to discharge the duties and functions of the General Accounting Office.”

and regulation by executive branch personnel agencies such as the Office of Personnel and Management (OPM). The change was seen as necessary to remove even the appearance of a conflict of interest, as GAO had increased oversight of OPM and related agencies and the executive branch's personnel system under the Civil Service Reform Act of 1978.

Pay banding system instituted at GAO promoted flexibility

In 1989, GAO was among the first federal agencies to institute pay banding, converting employees serving in analyst, related specialist, and attorney pay classifications from its 7-level GS system (GS-7, 9, 11, 12, 13, 14, and 15) to a 3-level broad-banding system (Bands I, II, and III). This conversion to broad bands freed the agency from restrictive grade distinctions, and allowed GAO greater flexibility in getting the work done (e.g., staffing audit projects). The broader salary ranges of the GAO broad bands allowed the agency 1) to set salaries designed to attract and retain the skilled analysts needed to do GAO work and 2) to move people faster through broader salary ranges based on their performance without being encumbered by as many competitive promotion hurdles.

At the same time as the move to broad-banding, GAO instituted a pay-for-performance system (PFP) now known as "performance-based compensation" and eliminated the provision of regular step-increases associated with the GS-system. The conversion to PFP and the broad-band system raised employee concerns about how they would fare under the new system compared to the former GS system. To ameliorate such concerns about instituting PFP and eliminating step increases, then Comptroller General Charles Bowsher guaranteed (in a memorandum and GAO regulation) that under the new broadband and PFP system "those who continue to perform fully satisfactorily will not fare worse financially than they would have at their current grade under the General Schedule."

Reduction in force impacted GAO institution

In the mid-1990s, GAO saw a reduction in its personnel levels due to budget cuts. Because employee compensation constitutes about 80 percent of GAO's budget, its cost-saving actions resulted in a sizable staff downsizing of 39 percent, from 5,325 in FY 1992 to 3,245 in FY 1998.

The impact of the budget cut included “a reduction-in-force in HQ among support (non-audit) staff; closure of the New York, Detroit, and Cincinnati regional offices; a 5-year hiring freeze; elimination of performance rewards; curtailed technology investments; and reduced travel, training, supplies, and other support costs to achieve the overall mandated reduction in spending.”

New GAO human capital management flexibilities gave rise to controversy

In 2000, the Comptroller General’s powers over personnel were enhanced through a 3-year pilot program (PL 106-303, 114 Stat. 1063-1070). This legislation gave qualified authority to the Comptroller General to offer certain voluntary separation incentives, along with early retirements, and to implement a reduction in force.

In 2004, Congress granted the Comptroller General additional authority over pay and personnel in *The GAO Human Capital Reform Act of 2004*. The 2004 Act granted permanent authority for voluntary early retirement and voluntary separation incentive payments established in the 2000 Act and authorized additional flexibilities in the following areas; annual pay adjustments; pay retention; increased annual leave for key employees; executive exchange program; and performance management system.

The implementation of GAO’s human capital flexibilities was not without controversy, especially with respect to workforce restructuring, annual pay adjustments, pay retention, and performance appraisals. In 2007, in large part due to the controversy, GAO Band I and II auditor/analyst employees voted to form a union. Also, in 2008, Congress passed the GAO Act of 2008 (PL 110-323, 31 USC 701) to address issues regarding the 2004 Act. The 2008 Act provided clarification, rescinded some of the discretion afforded the Comptroller General to make annual pay adjustments, and rectified pay concerns stemming from implementation of the Comptroller General’s pay discretion. In particular, the 2008 Act corrected the denial of annual pay adjustments in 2006 and 2007 that affected more than 300 GAO analysts.

Assessment of the 2004 Act

The 2004 Act requires GAO to include assessments of the Act from the Personnel Appeals Board (PAB) or any interested groups or associations representing officers and employees of GAO, which includes the GAO Employees Organization, IFPTE Local 1921. It is for this purpose—providing an assessment as the employees’ representative, as stated in the 2004 Act—that we are presenting this report to you.

Section 2 – Voluntary Early Retirement Authority and Voluntary Separation Incentive Payments

The 2004 Act makes permanent GAO’s authority to offer voluntary early retirement and voluntary separation incentive payments. The Union supports the use of these authorities as a way for GAO to reshape its workforce and for the benefits they provide to GAO employees. However, it is important that the implementation of this authority also provide employees adequate time, information, and resources to consider whether to take voluntary early retirement, as well as a reasonable timeframe before the effective date of any early retirement offer. Barring unforeseen, catastrophic circumstances, the Union’s position is that GAO should be required to provide employees with adequate time to make such a major life decision and to make plans for changes related to retirement. More time than the 45 days minimum time prescribed in GAO Order 2831.1 from date of notice to employee decision should be provided, unless there are catastrophic compelling reasons to the contrary.

GAO has reported that to use the authority that Congress granted to provide voluntary separation incentive payments “is simply too costly,” so GAO has not adopted an implementing regulation, or agency order, for such payments. However, since the 2000 Act provides that one of the purposes for granting early retirements is to “meet budgetary constraints,” it would seem prudent that GAO consider whether providing such incentive payments might encourage additional early retirements and therefore provide a net benefit to the agency in addressing budgetary constraints. The Union supports the use of voluntary separation incentive payments as a means of encouraging early retirements.

Since there was not a Union at GAO at the time of the 2000 and 2004 Acts, there were not provisions included in the law or the GAO order on voluntary early retirement authority requiring that GAO provide timely notification to the Union and provide the Union adequate time to respond to such a notice, as well as to negotiate to the extent provided by law, before announcing an early retirement opportunity. As part of ongoing master contract bargaining between the Union and management, the Union will seek to obtain agreement on provisions that provide for Union participation and for changes to the current policy to make it more responsive to employees' needs, while continuing to address the agency's needs.

Section 3—Annual Pay Adjustments

The 2004 Act extended GAO's pay flexibilities to include annual adjustments to pay and locality adjustments. Congress found it necessary in 2008 to limit GAO's pay flexibilities, and the establishment of a Union has provided further checks and balances to GAO's discretion in making annual pay decisions. Among particular provisions, the Union has an interest in working with GAO to find a common measure for locality adjustments; currently there is one locality adjustment used for the annual adjustment and a different locality adjustment used for performance-based compensation. The Union also believes that GAO's compensation system adjustments, including both the annual adjustment and performance-based pay increases, should be at least equal to those provided under the GS system, under which most other federal employees are covered. The GS system includes an annual adjustment (sometimes referred to as the COLA) as well as "within grade" increases, quality step increases, and increases due to promotions between grades.

The 2004 Act allowed the Comptroller General to set the annual pay adjustment (COLA) without regard to the General Schedule (GS) annual pay adjustment and effective date, which are used for most other federal employees. For calendar years 2006 and 2007, the Comptroller General unilaterally chose the amount of the annual pay adjustments and the effective dates. With the establishment of the Union, for each calendar year, 2008 through 2010, the Union and management have negotiated the annual pay adjustments and the effective dates. For the years, 2006, 2007, and 2008, the GAO annual adjustment was less than what would have been provided

under the GS system for most GAO employees. In 2006 and 2007, the effective date was also later than the GS system's effective date. For the years 2009 and 2010, the Union and management negotiated a GAO annual adjustment that was the same as the GS annual adjustment (COLA) for each locality and for the same effective date used by the GS system. The 2009 and 2010 agreements for the annual adjustment also satisfied the GAO Act of 2008 requirement that GAO provide employees with a total annual increase to base pay that was at least equal to the GS annual adjustment and that the increase be effective on the same date as under the GS system. The Union will continue to negotiate the annual pay adjustment with GAO for future years to ensure that GAO employees are appropriately compensated.

A component of the negotiated 2009 and 2010 annual adjustments is the use of the GS system locality adjustment for pay. Using the GS locality adjustments satisfied a requirement of the GAO Act of 2008 and provided an increase similar to that received by other federal employees in the same localities. However, GAO uses a different type of locality consideration for determining performance-based pay increases whereby GAO clusters multiple localities into "geographic zones" and sets a common pay range and competitive salary rate for each geographic zone. The Union will work with GAO to find a common measure of locality/geographic differences that can provide consistent locality adjustments for multiple purposes.

The 2004 Act did not make any legislative changes to GAO's other annual pay adjustment—that is, performance-based compensation. GAO provides employees performance-based compensation in lieu of GS "within grade" increases, quality step increases, and promotion pay increases between grades that are now included in bands. A core principle of the Union is that GAO employees be treated at least as well for purposes of total pay increases, including both the GAO annual adjustment and performance-based pay increases, as employees would be if they were under the GS system, taking into account all the GS system's components. The Union will continue to assert this principle in annual pay negotiations with GAO management.

Section 9—Performance Management System

GAO’s Performance Management System Has Significant Problems and Has Resulted in Rating Disparities between African Americans and Other Employees

In November 2009, GAO’s Performance Appraisal Study (PAS)⁵ found that the agency’s performance system violated federal regulations; did not meet its objectives; was not consistently applied; and was “universally disliked” by staff and management alike. According to a summary statement in the report,

“...managers are using relative ranking to assess employee performance, are adjusting ratings to meet perceived rating average targets, and do not consider the competencies [standards] equally when making personnel decisions.”

Around the same time, the Ivy Planning Group, LLC, under contract with GAO, issued an African American Performance Assessment Study final report on April 25, 2008,⁶ that found statistical disparities between the performance ratings of African American and Caucasian analysts and identified various factors that contributed to these rating disparities. In addition, GAO recently reported in its 2010 Diversity Plan that there are statistically significant differences in performance appraisal averages of Bands I, IIA and IIB staff 40-years old and over compared to those less than 40-years old. Further, GAO reported a growing difference in the appraisal averages for Hispanic staff compared to non-Hispanic staff. The findings from these studies are especially critical given that employee performance appraisals are tied directly to compensation as well as other personnel decisions. Although the problems identified by GAO require large-scale and extensive changes to the GAO performance management system, immediate measures are needed to mitigate the impact of the current flawed system while these comprehensive changes to the system are considered. We are concerned that GAO does not identify the studies’ findings and their serious consequences in its report to Congress, *Final Report on GAO’s Use of Provisions in the GAO Human Capital Reform Act of 2004*, but rather provides information that may lead the reader to believe that issues are being adequately addressed.

⁵ GAO, Performance Appraisal System Study (Washington, D.C.: November 2009).

⁶ Ivy Group, LLC, African American Performance Assessment Study: Final Report (Washington, D.C.: April 25, 2008)

GAO Performance Appraisal Study Found Significant Problems

The GAO Performance Appraisal Study found that employees were not being rated appropriately using performance standards, but that instead GAO managers used relative ranking of employees to determine employees' ratings, which is prohibited in the federal government. The study states that:

“...we found that performance standards could not be consistently applied in practice without additional criteria and the use of some form of relative ranking which is prohibited in the government for purposes of determining performance ratings...” and “...managers are using relative rankings to assess employee performance....”

The GAO performance appraisal study indicated that the system has not met its objectives. It stated that less than 40 percent of survey respondents across the agency indicated that they believed GAO was accomplishing any of its objectives for the performance appraisal system. The objectives included: providing staff with candid and constructive information designed to maximize their individual potential and contributions to the agency; providing management with the information needed to recognize and reward top performers; and providing management with information and documentation needed to deal with poor performers.

The GAO performance appraisal study found that GAO employee performance standards are not consistently applied or easily understood. It reported that

- Inconsistent interpretation and application of the performance standards is a consistent theme throughout the [study] content analysis, focus group, and interview data.
- Half of DPMs [designated performance managers, or raters] reported that, to at least a moderate extent, the performance standards did not allow the DPM [rater] to effectively distinguish levels of performance.
- Many managers also commented on the inability to reach consensus on the interpretation of these standards, even in training sessions designed to assist [raters] and reviewers in consistently applying the standards.

According to the study, performance management literature shows that over time, employee satisfaction with performance appraisal systems generally increases from an initial low during implementation to about 60 to 70 percent after five or more years. However, the study results

show that after more than five years since implementation, only 23.5 percent of GAO-wide survey respondents were generally or very satisfied with the performance appraisal system. There was virtually no difference in satisfaction for DPMs (raters) and non-DPMs (non-raters).

In July 2010, GAO issued its final report on its use of flexibilities granted in the 2004 Act, but GAO's Report on its use of human capital flexibilities failed to identify and address important aspects of the Performance Appraisal Study findings. The report stated that GAO completed a comprehensive study of the performance appraisal system, which resulted in extensive findings and short- and long-term recommendations for improving GAO's performance appraisal system. GAO highlights that it is planning to implement 50 percent of the Performance Appraisal Study's (PAS) short-term recommendations, but does not highlight that it is continuing to use "the heart of the current performance assessment system" that its own study found to have flaws in how employees are rated, with a direct link to how pay and promotions are determined. In addition, GAO highlights that it is continuing to provide training to address concerns, while failing to explain how such training will improve the system, since its own study faulted training as not being helpful in applying rating standards.

Ivy Study Found Disparities in African American Performance Ratings

In 2008⁷ and 2009⁸ the Union testified before Congress regarding concerns about the performance assessment system and disparities in ratings between African Americans and Caucasian analysts that were highlighted in the Ivy Study. The Ivy study highlighted the inconsistency in GAO's human capital processes across the agency "despite the availability of thorough documentation and training." The Ivy Study found that ratings for African American analysts, as compared to Caucasian analysts, were lower across all pay bands and were statistically significantly lower across all teams and geographic locations with few exceptions. Although GAO made no significant changes to the performance appraisal system, in 2009, GAO

⁷ IFPTE, Statement of Jacqueline Harpp, Prepared for House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, Hearing on "GAO Reforms and the Government Accountability Act of 2007" (Washington D.C.: March 13, 2008)

⁸ IFPTE, Statement of Ronald La Due Lake, Prepared for the Subcommittee on Legislative Branch, Committee on Appropriations, House of Representatives, "Comments on GAO's Fiscal Year 2010 Budget Request and Issues of Concern to Agency Employees" (Washington D.C.: May 5, 2009)

reported in its 2010 Diversity Plan that the average ratings for African American analysts across Band I and IIB had improved, but a statistically significant difference continued to exist at the Band IIA level. In 2009, the Union requested help from the Subcommittee on Legislative Branch, Committee on Appropriations, House of Representatives in getting performance related data, which we received from GAO and are in the process of analyzing. Our preliminary assessment appears to corroborate our concerns about the disparities in the ratings of African Americans.

Given that ratings are used to determine compensation and for other personnel actions, such as workforce restructuring and RIFs, it is imperative that GAO African American employees not be disadvantaged in the current performance management system and any future system. Under the GAO pay-for-performance system, lower ratings lead directly to lower compensation. In addition, lower ratings affect promotion selection and other personnel actions that are based on performance ratings. An unfortunate example of such a link is that the GAO Band II workforce restructuring discussed later in this report continues to have a more negative impact on African American employees, because of the use of ratings, which was executed even though the Comptroller General was aware of rating disparities between African Americans and their non-minority counterparts. The restructuring was the basis for discrimination complaints brought by some African American employees. Some of these discrimination complaints were settled by the agency; the GAO Act of 2008 helped others. The Union's concern is that a rating system that does not treat all employees fairly and equitably can do irreparable harm when it is linked to pay, promotions, awards and other personnel actions that rely on performance appraisals.

Section 4—Pay retention

Through a workforce restructuring action in 2005, GAO placed about two-thirds of Band II employees into a newly created Band IIA category, which reduced these employees' pay range, and the other one-third into the IIB category. GAO instituted a form of pay retention that kept many of the newly placed Band IIA employees' salaries at their current levels and denied them annual pay increases, until Congress intervened to require both back pay and a future guarantee for annual pay increases for all employees with performance appraisals at meets expectation or better. The Union also has pay retention concerns about how GAO has used its discretion in

developing GAO Reduction In Force (RIF) policies that define how zones of consideration are determined, how performance ratings are used in the RIF retention register, and how salary adjustments are made for geographic relocation. The Union is also seeking to clarify the agency's responsibility to collectively bargain to the extent permitted by law in the case of a RIF action.

The 2005 Workforce Restructuring

In late 2005, GAO placed its Band II employees into newly created Band IIA or Band IIB positions – in what is often referred to as the Band II split. This reversed the 1989 broadbanding which created the band II category, and which encompassed the pay and responsibilities performed previously by GS-13 and GS-14 employees. About two-thirds of these employees were placed as band IIA and about one-third were placed as band IIB. The split was accompanied by new pay ranges, a reduction from the existing pay ranges for the employees that were placed as Band IIAs. Employees placed into the band IIB range now had the potential to grow their salaries, though they still faced a "speed bump" from growing their salary beyond the old band II pay ceiling.⁹ The "speed bump" is a design of the system so that only those employees who receive ratings above the average rating for their cohort are able to grow their permanent salary above a set point in the IIB salary range. Meanwhile, GAO provided a transition pay range for employees placed as Band IIAs, which was higher than the new Band IIA range; the transition range cap was fixed and would not be adjusted or increased with each year's annual adjustment, unlike the regular pay ranges. Under the transition rules, Band IIA employees whose salaries were above the new Band IIA pay range maximum were not allowed to receive any annual adjustment increase and were only allowed to receive part of their performance-based compensation as a permanent pay increase up to the fixed Band IIA transition maximum.

⁹ GAO has determined that placement to band IIB does not constitute a promotion; however, employees must go through a competitive placement process, and upon placement, they are given greater work responsibilities and have a higher salary range. In pay negotiations for recent years, the Union and GAO management have agreed to waive the band IIB speed bump.

Some employees who were designated as Band IIAs in 2005 filed charges with the PAB General Counsel's office challenging their alleged demotions as a result of GAO's restructuring of the single Band II into Band IIA and Band IIBs. The PAB General Counsel filed petitions on behalf of 12 employees challenging the legality of several aspects of the GAO restructuring process and the specific placement decisions. Prior to trial a settlement was reached with the employees. In her testimony before Congress, the PAB General Counsel said that had the cases not been settled she was prepared to argue before the PAB that the employees had been demoted without cause in violation of federal law. In addition to the petitions filed by the PAB General Counsel, some employees who GAO had placed as Band IIAs pursued discrimination claims with the GAO's Office of Opportunity and Inclusiveness; GAO settled with these employees. However, many employees designated as Band IIAs did not file charges or claims with the PAB or OOI, or did not do so within prescribed timeframes. At that time, any employees whose pay exceeded the new Band IIA pay range did not receive any annual adjustments nor did they receive their full performance-based compensation as a permanent pay increase.

To address outstanding pay concerns regarding the Band II split, the Union worked with the Congress and GAO on a legislative fix. The resulting legislation, *The Government Accountability Act of 2008*, supported by both the Union and the Acting Comptroller General, provided back pay with interest and permanent pay adjustments to many of those who had been denied annual adjustments and/or had received reduced PBC increases in 2006 and 2007. The 2008 Act also provided that all staff performing satisfactorily would receive future annual pay adjustments, regardless of other limitations, such as the Band IIA salary maximum.

In addition to actions against Band IIs, GAO's pay restructuring also reduced the Band I pay range maximum salary. The 2008 Act also provided back pay with interest and adjustments to Band I employees' permanent pay who were harmed by the lowering of the Band I salary range. As is the case for all employees, the 2008 Act also guaranteed future annual adjustments to Band I employees, regardless of their salary and the Band I salary range.

The Union has continued to address the remaining adverse effects such as limitations on applying performance-based pay increases to permanent pay -- in the 2010 pay agreement the Union negotiated a minimum performance-based pay percentage increase to be applied to permanent pay. With Congressional limitations on GAO flexibilities, continued Congressional oversight, and with a Union now serving as the legal representative of GAO employees, we are hopeful that GAO will not repeat such mistakes in the future. Based on our evolving and generally constructive and productive relationship with GAO management we are hopeful that we can work together to address any necessary workforce restructuring in the future.

Reduction in Force

Since the 2008 Act requires that the Comptroller General provide a “minimum required percentage” permanent pay increase for employees with satisfactory performance, it is our understanding that employees subject to pay retention under a RIF or other workforce restructuring action would continue to receive an annual permanent pay increase equal to the GS locality adjusted increase. We feel it is also important to alert the Congress regarding problems with GAO’s RIF policies, particularly because the Union was not in existence at the time of the passage of the 2000 Act that provided GAO with additional flexibilities for prescribing RIF policies - or at the time of the required report on GAO’s use of such flexibilities. Although we are thankful that GAO has not conducted a RIF since the passage of the 2000 Act, it is important that we not wait until GAO conducts a RIF to address the problems in how GAO has used the legislative flexibility in crafting its policy.

There are three primary areas of concern regarding the current GAO RIF policy. The current GAO RIF policy: 1) narrowly targets zones of consideration; 2) places inordinate weight on the current employee performance appraisal system—with which GAO management has identified significant problems—in developing a retention register; and 3) does not adjust pay for geographic relocation due to RIFs. GAO’s RIF policy also does not acknowledge the role of the Union in any obligation to collectively bargain to the extent provided by law, in the circumstance where the agency may determine a RIF is necessary.

1) Zones of consideration. GAO has narrowly defined targeted zones of consideration that do not recognize the common and shared skills of employees within the same job series, teams, and offices. On March 31, 2010, GAO published the “GAO Zones of Consideration” policy, which states that employees subject to a RIF can compete only with employees in the same zone of consideration and that a zone includes employees in the same pay plan, that are also working in the same GAO issue team and the same location. If, for example, a GAO issue area team chose to pull out of a particular field office, the employees in that team that work in that field office could be subject to a RIF. Because of the GAO zone of consideration policy, an analyst in the affected team could not compete with other analysts in the same team that work in other locations. In addition, the analyst could not compete with other analysts in the same location, but who work in different issue area teams.

It is unclear why GAO would not allow highly trained and performing employees who desire to continue to work with the same issue area team to be able to compete with employees who work in the same team but in other offices. GAO management has repeatedly stated that location of employees is not essential to carrying out our work and routinely allows persons to transfer to other office locations.

It is also unclear why GAO would not allow employees to compete with other employees in the same location, but who work in different issue area teams. Even though employees may currently work in different teams, they have the same job title and job series. In addition, these employees do the same type of work, conducting evaluations of government programs (planning, conducting field work, performing analyses, and writing reports), are subject to the same professional standards, and follow the same internal procedures in carrying out GAO’s work. Although the employees may currently have differing familiarity with the work of the other issue area team this is by no means a significant barrier to transitioning to another team. When GAO hires analysts, they are generally not hired to work exclusively on a particular team. In fact, during the first few years an analyst is employed, most rotate among different issue area teams, and only later does management decide what team to place someone in. Also, employees may elect to transfer to other teams. Many employees who have worked at GAO for awhile have

worked in multiple teams over the years. In addition, even within issue teams, the same employees may work on very different types of engagements addressing a breath of different issues and dealing with different agencies. Further, there is significant overlap among teams which results in employees in different teams doing work in the same areas; for example, an engagement looking at food recalls in schools could be conducted by the team that covers food safety issues or the team that covers education issues.

Intended or not, while the GAO policy on zones of consideration may make for efficient administration, it is inconsistent with how GAO operates and does not treat employees fairly.

2) Inordinate Weight Placed on Employee Performance in RIF consideration. GAO’s RIF retention policy provides inordinate emphasis on performance ratings, which is problematic given the significant problems in GAO’s performance appraisal system found by its own study, as well as the Ivy study findings of ratings disparities for African American employees in the appraisal system. Unlike the standard OPM process, with scoring that provides a range of 12 to 20 additional years based on employee performance, the scoring in the GAO policy provides a range of 9- 65 additional years. To illustrate the potential effect of this difference, the following example is provided.

Example: Assume employee A has 3 years of service and has a performance rating of “exceeds” performance and employee B has 10 years of service and a performance rating of “meets” performance.

Employee A Rating of “Exceeds” Performance Expectations	Years of Service	Performance Credit	Total Retention Credit
GAO	3	33	36
OPM	3	12	15

Employee B Rating of "Meets" Performance Expectations	Years of Service	Performance Credit	Total Retention Credit
GAO	10	9	19
OPM	10	12	22

In this example GAO would retain Employee A with 3 years of service whose performance exceeded expectations and release Employee B with 10 years of service whose performance met expectations. In contrast, OPM would retain Employee B with 10 years of service whose recent performance met expectations and release Employee A with 3 years of service whose performance exceeded expectations. Given that GAO's own study showed fundamental problems with the performance appraisal system and that the Ivy study found disparities that adversely affected African American employees in the system, it is clear that GAO provides too much weight to performance ratings in developing a RIF performance register.

3. Pay Retention in Geographic Relocation Due to RIF. Employees that move to another geographic location as the result of a RIF, other workforce adjustment, or voluntary reassignment should have their pay adjusted to reflect the pay differential for that location. Currently GAO policy does not automatically provide such an adjustment, but states that the employee's pay remains the same, even if the employee is reassigned to a geographic zone with a higher salary range. GAO policy provides for granting an exception at the prerogative of the Chief Human Capital Officer if the relocation action is initiated by GAO and not at the request of the employee for personal reasons. Other federal agencies make adjustments to employees' salaries when employees relocate; increasing an employee's salary if he/she moves to a higher cost locality and decreasing an employee's salary if he/she moves to a lower cost locality. The practice of other federal agencies makes common sense, given that the rationale for having locality adjustments is to reflect the differences in costs of living among localities. The Union will work with GAO management to change the current policy so that salaries of employees who move to another locality (because of a RIF or other reason), will be based on the pay differentials used in the different localities.

Sec. 10—Consultation

Although it was important that Congress included a consultation provision in the 2004 Act given the additional flexibilities that were granted the Comptroller General, this provision proved insufficient to protect the interests of GAO employees since they were not given meaningful input. Meaningful input involves not only actively seeking employee's views, but also demonstrating how those views were translated into establishing policy. As a result of a lack of meaningful input, on September 19, 2007, by a 2-to-1 margin, GAO analysts and specialists (PDP and other developmental employees, Band I, Band IIA and Band IIB) formed GAO's first Union to provide employees with the legal standing to serve as a check on the Comptroller General's broad discretion. In addition to meaningful consultation, GAO is now required to negotiate with the Union, in accordance with the law, for issues regarding compensation and working conditions. Congress also found it necessary to correct and restrain GAO from overreaching in its application of pay flexibilities, culminating in the 2008 GAO Act that awarded back pay and granted future pay protections to all GAO employees.

The Union and GAO management have developed a working relationship that is generally constructive and which continues to evolve. Beginning with pay for calendar year 2008, the Union and GAO management have annually negotiated pay agreements. GAO management regularly consults with Union officers through weekly meetings with workforce relations managers and staff. In addition, the Union leadership meets regularly with the Acting Comptroller General and other members of the GAO Executive Committee. The Union has also negotiated an initial interim agreement with management, including a process for negotiating changes to working conditions for GAO employees. One of the most significant indicators of the development of a positive relationship between union and management is the continuing commitment to a collaborative problem-solving approach to negotiating our first collective bargaining agreement. GAO and the Union have committed resources to use a facilitator with expertise in Federal labor law and an interest-based problem solving approach. This facilitator and process is greatly aiding the negotiation process in terms of putting our combined resources to productive use and improving the quality of the resulting contract. Importantly, commitment by GAO senior management to participate in the negotiation has been critical to its ongoing success. The Union seeks to have a constructive relationship with GAO management and it

embraces the principles recently laid out for executive branch agencies in the President's Executive Order on Labor-Management Forums to collaborate in continuing to deliver the highest quality services to the American people.

While the Union represents the interests of the bargaining unit employees in matters allowed by law, Congressional oversight of GAO is needed to ensure that GAO management is not exceeding the flexibilities that Congress has granted or is not using the flexibilities in ways that were unintended. The actions of Congress to correct the overreach of the Comptroller General's exercise of pay setting flexibilities and to ensure future pay protections through the 2008 GAO Act serve as a reminder of the importance of vigilant Congressional monitoring of GAO's use of human capital flexibilities.