

# **DHS Human Resources Management System**

## **Senior Review Committee Meeting**

**Held October 20–22, 2003**

### **Summary Report of Proceedings**

**October 2003**

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## **SRC Member Affiliations**

### **DHS Human Resources Management System Senior Review Committee (SRC)**

#### Members from the Department of Homeland Security:

Janet Hale, *Undersecretary for Management*  
Robert Bonner, *Commissioner of Customs and Border Protection*  
James Loy, *Director, Transportation Security Administration*  
Eduardo Aguirre, *Director of the Bureau of Citizenship and Immigration Services*  
J. Michael Dorsey, *Chief of Administrative Services*  
Ralph Basham, *Director, United States Secret Service*

#### Members from the Office of Personnel Management:

Steven R. Cohen, *Senior Advisor for Homeland Security*  
Doris L. Hausser, *Senior Policy Advisor to the Director and Chief Human Capital Officer*  
Ronald P. Sanders, *Associate Director, Division for Strategic Human Resources Policy*  
Marta B. Perez, *Associate Director, Division for Human Capital Leadership and Merit System Accountability*

#### Members from Unions:

John Gage, *President, American Federation of Government Employees*  
Colleen Kelley, *President, National Treasury Employees Union*  
Michael Randall, *President, National Association of Agricultural Employees*

#### Technical Advisors:

Robert Tobias, *Distinguished Adjunct Professor, American University*  
Patricia Ingraham, *Professor of Public Administration, Maxwell School, Syracuse University*  
Maurice McTigue, *Visiting Scholar, Mercatus Center, George Mason University*  
Bernard Rosen, *Distinguished Adjunct Professor in Residence Emeritus, American University*  
Pete Smith, *President and Chief Executive, Private Sector Council*

## INTRODUCTION

The Senior Review Committee (SRC) met October 20 through 22 to discuss possible options for the Department of Homeland Security's (DHS) Human Resources Management System (HRMS). The specific topics covered, as designated in the Homeland Security Act, included pay, performance management, classification, labor relations, adverse actions, and appeals. The meeting was open to the public and was conducted in association with Federal Advisory Committee Act (FACA) rules and regulations. Mr. Albert Hyde, a professional facilitator, led the meeting.

The following report summarizes the viewpoints expressed by the SRC members on the options forwarded by the joint DHS/Office of Personnel Management (OPM) Design Team. This document is not a verbatim transcript of the session, but rather a summary of SRC members' perspectives on the various issues discussed. The goal is to capture the essence of the ideas expressed. The summary is not intended to reflect consensus, but to reveal common perspectives and key distinctions among the participants. The common form of address is used throughout this document rather than ranks or titles. The document is intended to provide information to Secretary Tom Ridge and OPM Director Kay Coles James as they deliberate over human resources options for DHS; it does not represent final decisions on the HRM systems.

SRC members first introduced themselves and provided some opening remarks to highlight their initial views as they related to the design of a DHS HRMS.

DHS members emphasized the criticality of the Department's mission, which is to protect the country from terrorists and keep terrorists' weapons from entering the country. Maintaining the security of the homeland is so crucial, they said, that the Department cannot afford to fail. Mr. James Loy asked members to recognize the responsibility entrusted to them and to keep the harsh realities of the post-September 11 environment in the forefront of their minds. Mr. Ralph Basham added that the mission of his organization has expanded to historic proportions in that the U.S. Secret Service (USSS) is responsible for protecting more people and events than ever before. DHS members emphasized the need for human resources systems to support this critical mission. Mr. Michael Dorsey noted that DHS needs a good HR system to support the Department and that the system must also support employees, and he agreed that a good system will do both.

OPM members focused on the need to develop a modern, merit-based system that is responsive to the DHS mission. They stressed that the concepts of "modern" and "merit" are not mutually exclusive and that DHS has, according to Ms. Doris Hausser, a "golden opportunity" to prove that this is the case. OPM members observed that the flexibilities given to DHS are allowing them to rewrite the system, which is too homogenized and longevity-focused, according to Mr. Ronald Sanders. These members also highlighted the inextricable link between merit and mission and the impossibility of achieving one without the other. Mr. Steven Cohen emphasized the need to address the challenge of an outdated, unresponsive civil service system and their opportunity to do so.

Union members cautioned, however, against creating change for its own sake or rushing to implement changes too quickly. Mr. John Gage agreed that the mission is critical, and he emphasized that DHS should not be a testing ground for new policies nor can the country afford to have operations disrupted or managers distracted. Ms. Colleen Kelley emphasized that the Homeland Security Act requires that merit system principles be preserved and promoted.

## Structure of Report

The remainder of this section outlines several core areas that relate to the DHS HRM systems in general, and about which strong views were shared. The sections that follow provide more detailed information and insights into SRC members' perspectives on the specific elements of the future systems. The final section is an overview of the guidance provided by the SRC technical advisors.

## Core Design and Process Principles

During the 3-day meeting, a great deal of discussion and debate centered on the best design for the DHS human resources system. Although several topics evoked wide-ranging perspectives, some core areas and principles related to system design and the design process drew a great deal of consensus among members. Many of these topics parallel the Design Principles that the SRC ratified in its first meeting, which was held on July 25, 2003.

- Mission-focused
- Fair, transparent, credible
- Tailoring, where appropriate
- Participation and communication
- Investment of resources
- Training and development.

In addition, one point received unanimous agreement, that is, DHS employees are doing an incredible job every day to protect our country.

**Mission-focused.** SRC members agreed that above all else, the HRMS must be mission centered, and its design must facilitate mission performance. According to Mr. Robert Bonner, the new HRMS should be equal to the DHS mission and the men and women who perform that mission. He felt strongly that “whatever system DHS develops must be mission centered first and foremost.” Mr. Loy observed that a change in human resources policy was required to meet DHS mission requirements. Ms. Kelley pointed out that no matter what changes are made, they should minimize the burden on managers, supervisors, and employees, enabling them to remain focused on the primary mission. Ms. Marta Perez observed that DHS has been given a rare opportunity—and responsibility—to develop and deliver a system that optimally supports its mission. She noted that the system should clearly communicate the deep connection between performance and results.

**Fair, transparent, credible.** Members of the SRC agreed that the future HRMS should be fair, transparent, and credible. They felt that these principles must be the foundation of the system's creation and pervade implementation and operation. Ms. Kelley emphasized that employees want a system that is fair, transparent, and credible and asked that their voices be heard. Any system should be designed to provide both internal and external equity. She also stated that there must be accountability for managers on pay and performance determinations, with the right to appeal to an independent third party. She emphasized that employees must trust both the concept and the implementation. Ms. Janet Hale agreed that, in developing the new system, fairness must be maintained and the process to get there will also need to be seen by employees as fair and credible.

**Tailoring, where appropriate.** Members agreed that establishing broad general principles as a foundation for the future system will be important to ensure integration; however, they acknowledged that human resources options might need to be tailored to specific parts of the DHS organization. It was recognized that this tailoring might be critical to ensure that the systems optimally support the DHS mission in each of the ways the mission is carried out. All agreed that in creating the new system, simplicity is a critical goal.

**Participation and communication.** SRC members agreed that employee and union participation will be critical to creating, implementing, and operating a successful HRMS. Members described town hall meetings across the country as an important mechanism for building goodwill and recognized that these meetings established a strong pattern for participation. Members agreed that involvement was an important component of the process and that it would be crucial for employees to believe in and support the new system. Ms. Hale commented that whatever system was selected would be developed collaboratively—with involvement by employees and their unions.

Effective communications was also highlighted as a critical part of the design and implementation of the new HRMS. Although all noted that Design Team communications efforts to date were very good, those communications must be ongoing; and employees must continually be given the opportunity to provide feedback.

**Investment of resources.** Members recognized that creating a new system would take time and require substantial investment. Ms. Hale and Mr. Cohen stated that DHS and OPM were committed to doing what was needed to go forward with budget requests with strong justifications. In addition to expressing budgetary concerns, the members agreed that the detailed design and full implementation of the system will require a long-term perspective and it must be managed well. Mr. Eduardo Aguirre stated that "it is a very complex issue that will require more than money—it will require commitment from all parties."

**Training and development.** The need for development and training as part of any new HR system was strongly emphasized. Management members expressed a need for tangible and intangible resources to effectuate the initiatives they had been discussing. Mr. Aguirre, for example, emphasized that training is a critical and costly component that must be recognized. Mr. Loy felt that having adequate resources to train leaders was important, but the importance of training is often underestimated. He suggested

that the Office of Management and Budget be included in future discussions. Ms. Hale mostly agreed, but added that it is not all about money but also about effort and holding managers accountable. Ms. Hale also indicated that while final dollar amounts will be a congressional decision, she recognizes that DHS's new systems will not work if the investment in time and money is insufficient. Mr. Cohen expressed support for these statements and indicated that OPM understands that resources are needed to effectuate change and will provide support for them to the extent that they can.

## **PAY, PERFORMANCE, AND CLASSIFICATION**

SRC members discussed a range of ideas related to pay, performance, and classification. The key topics covered were as follows:

- Time-focused options
- Performance-focused options
- Competency-focused options
- Other options.

### **Time-focused Options**

DHS and OPM members strongly agreed that options based on the current General Schedule, where time in grade is the primary standard for progression, would not meet the needs of DHS. The general opinion of these members was that the General Schedule system was outdated and required substantial modernization, because it was designed originally to meet the needs of a very different federal workforce. Mr. Loy stated that the federal workforce is dependent on HR processes that may have worked well at one time, but that these processes are no longer effective in the current environment. DHS and OPM members supported taking full advantage of the flexibilities granted by Congress without compromising merit system principles.

One major flaw of the current system that DHS and OPM members identified was its focus on time-based as opposed to performance-based salary progression. Mr. Loy, citing numerous mission needs, advocated flexible, adaptable, responsive systems that reward excellence, eliminate mediocrity, and promote workplace values. According to Ms. Hausser, “skills and technologies and initial competencies are changing so rapidly that the fundamental premise underlying the G[eneral] S[chedule]—that the longer you do [a job] the better you get—is something I question whether we want to keep in place.” Mr. Cohen discussed the need to get away from the rigidity of the present system to be able to reward employees appropriately for performance. He advocated creating a measurable system that is results-oriented to help DHS retain high performers. Ms. Kelley countered that the current system offers performance-based tools that are not used appropriately or frequently enough. For example, she said that the Quality Step Increase (QSI) authority is not used as much as it should be.

Several DHS members also expressed concern about the current system’s ability to enable DHS to be competitive in the marketplace. Mr. Basham discussed the need for greater consideration of external economic forces and greater flexibility to set pay, citing the difficulties his organization experiences in competing for talent with the private sector. Mr. Loy felt that market-based pay is necessary to help DHS attract the very best talent for these enormously important missions. According to Mr. Sanders, the “process is irrelevant if pay is not competitive in the marketplace.”

Mr. Michael Randall discussed problems he has experienced with the current classification system in that it does not recognize expertise across a range of skills. For example, he stated that agriculture professionals with diversified skills are needed, but soil specialists are paid more than agriculture professionals with diverse skills. Ms.

Hausser echoed Mr. Randall's criticism that the classification system does not allow organizations to effectively reward employees with diversified skills. For example, if a job had 67 duties, but all of the duties were graded at the same grade, employees with more skills could not receive higher compensation.

Mr. Gage and Ms. Kelley both expressed concern about abandoning the General Schedule. Mr. Gage said that the American Federation of Government Employees (AFGE) will support improvements to the current system but is skeptical about any major change, stating that the "mission of this Department does not include serving as a testing ground for radical change." As an alternative, Mr. Gage voiced support for a proposal that would remove time-in-grade requirements to allow employees to move up in salary faster through career ladders. He described that approach as a type of "broadband" within the current system. Ms. Kelley cautioned against "change for change's sake." She agreed that the current system may not be perfect, but reasoned that it is familiar and comfortable to employees. She advocated using the General Schedule as a foundation for change.

Ms. Kelley stated that the National Treasury Employees Union (NTEU) supports Options 2 and 3. Those options do not require cost neutrality (cost neutrality is impractical), are performance-sensitive, and allow DHS to reclassify positions without OPM review. Ms. Hausser, however, cautioned that Options 2 and 3 suggest that existing statutory definitions be retained, and that work currently being performed is not adequately represented in those statutory definitions. Ms. Hale supported the open pay range element listed in Option 4 because it would allow people to be rewarded faster for performance. Ms. Kelley did not support Option 4 because some employees could cap out at the equivalent of step 7.

### **Performance-focused Options**

A great deal of discussion centered on the performance-focused options, with DHS and OPM members voicing strong support and union members expressing skepticism. The discussion focused on the following topics:

- Mission alignment
- Pay for performance culture
- Classification system
- Open pay structure based on market conditions
- De-linking individual and structural increases
- Communications and employee involvement
- Options for measuring performance
- Forced distribution of performance ratings
- Supervisor discretion
- Oversight process
- Funding.

**Mission alignment.** DHS and OPM members expressed support for performance-focused approaches, citing the ability to more strategically align HR systems and individual performance with the DHS mission as a primary rationale. They believed that

employees who contribute more to the mission should be paid more. Mr. Bonner voiced strong interest in pay systems that promote increased skills and mission accomplishment. Mr. Loy offered several examples of the positive effects that a performance-focused system has had on his organization to date, including the ability to meet 30 strict performance deadlines imposed by Congress.

**Pay for performance culture.** Several DHS and OPM members supported performance-focused options because these options help instill a more performance-oriented culture. Mr. Bonner advocated performance-focused systems that “enable managers to meaningfully recognize exceptional performance in ways we do not currently do.” Mr. Cohen also expressed the need for a mechanism that would ensure that individuals or teams that achieve more would receive greater rewards. These options tie pay to performance to reward high performers through higher pay rates, faster movement through the range, or some combination thereof. Regarding these approaches, Ms. Perez felt that they help create an “environment of performance.” Ms. Hausser stated, “We are saying that performance matters. That’s the contrast to the time-based approach. It’s an important cultural, strategic value shift that we have the opportunity to make.” Mr. Gage cautioned that “when you look at the complexity of the systems and how they really play out in the workplace, you might find that these systems don’t promote the culture you want.” Ms. Kelley also stressed that, in reality, it is difficult to make meaningful distinctions between employees and the levels of their performance under the current performance system. Linking pay decisions more directly to performance-rating decisions would be even more problematic.

Some SRC members also noted that these options also impose greater consequences for poor performance. For example, in some of these options, pay structure increases would not be automatically given to those not performing acceptably, a feature that would aid in the shift to a more performance-focused culture. Mr. Sanders mentioned that additional consideration of the link between performance appraisals and adverse actions was needed.

**Classification system.** A simplified classification system was another feature of performance-focused options that DHS and OPM members strongly supported. These options rely on occupational groupings, which implies a collapse, or merging and modernization, of the General Schedule grading criteria. They felt that tying pay to simplified occupational groupings would facilitate a job-based approach to market pay. That was seen as a real benefit by Mr. Sanders, who suggested it would offer “a degree of precision that we don’t enjoy today.”

**Open pay structure based on market conditions.** DHS and OPM members and Ms. Kelley supported options that would tie pay ranges and structural increases to market conditions. OPM and DHS members supported options under which market-based pay increases could vary by occupation. Mr. Loy noted the need to be competitive in the marketplace for talent. Ms. Hale supported performance-focused pay bands and was concerned about employees who could not afford the cost of living in some areas. Mr. Sanders agreed with the need to be more market-sensitive, suggesting that variation by location or occupation may be needed. Mr. Randall supported maintaining locality pay. Ms. Kelley said, “even if the act doesn’t say so, DHS employees deserve to be compensated fairly.” She said some elements in Option 9 are “worth noting.” For

example, she liked the fact that this option included a wider pay range. Also, although this option did not allow for automatic increases, it did provide for a minimum payment of 2 percent, and anything above that to high performers. She also noted that, under Option 9, poor performers would not be entitled to pay raises.

**De-linking individual and structural increases.** OPM members suggested maintaining a distinction between annual increases to a pay range and increases to individual salaries. Mr. Sanders said that organizations had formerly considered these factors synonymous, and that DHS should think about decoupling these two elements of a pay system. Ms. Hausser discussed this as an important element of using pay more strategically. She offered the example of the Department of Defense (DoD) having more strategic flexibility, because what DoD achieved for military increases in pay, summarized as 4.1 percent, was actually delivered as highly differentiated adjustments to pay.

**Communications and employee involvement.** SRC members agreed about the importance of employee involvement and communications in performance management. Mr. Sanders said that while he is not particularly a fan of the 360-degree review process, he agreed that some form of employee input in performance management is important. For example, he suggested that front-line employees and managers work together to define performance standards. Ms. Hale agreed about the importance of involving employees and managers. Ms. Perez felt that many concerns voiced by union representatives would be addressed because these options compel regular communication between employees and managers. She acknowledged that it would require a great deal of investment in training and time, but stated that, in light of its mission, DHS should make that investment and not take the “path of least resistance.”

**Options for measuring performance.** DHS and OPM members felt that using performance measures would help maintain employee focus on the mission, but opinions varied about what to measure. Mr. Sanders pointed out that the options allow for various performance measures, aside from the current elements and standards, including competencies or management objectives. Mr. Loy offered that performance measures could be based on a menu of opportunities, skills, knowledge, competencies, results, and longevity, with varying emphasis or use of these measures throughout an employee’s career (e.g., novice through journey). Mr. Aguirre and Mr. Sanders supported Option 11 because of its focus on organizational balanced measures. Mr. Aguirre stated that customer satisfaction, employee satisfaction, and business results could be easily measured and were very important to the work they do. Mr. Dorsey said he preferred rewarding teams rather than individuals. Ms. Hausser suggested that team- or organizational-based rewards be distributed as variable pay. Ms. Hale agreed that performance measures could be individual based, team based, or organizational based, and that there could be ways to implement all three. Whatever approach is used, Mr. Sanders argued that it was important for employees to know with great clarity what those expectations were.

**Forced distribution of performance ratings.** Some SRC members did not support pay progression based on forced distribution of ratings mechanisms, such as those based on a bell curve. Mr. Gage objected to forced distribution mechanisms of any

kind, stating that these systems would create competition and would have an adverse impact on more people than they would actually motivate. Mr. Sanders agreed that forced distribution could be challenging. He offered that ratings distribution could be linked to organizational unit performance, but this would require a sophisticated and disciplined approach.

**Supervisor discretion.** Ms. Kelley and Mr. Gage voiced skepticism over performance-focused systems that provide management sole discretion to determine individual base pay increases, the number of pay bands, or the job families and pay ranges associated with these bands. Ms. Kelley stated that there should be collective bargaining if DHS wants to pursue things like pay bands. Mr. Gage, for example, doubted the supervisors' ability to make performance distinctions. Although the "rhetoric" sounded good, he felt the "devil is in the details." Mr. Bonner disagreed that managers are incapable of managing performance. He stated that if managers are trained, receive effective direction, and are held accountable, performance and competencies could be measured and evaluated and thoughtful decisions could be made.

**Oversight process.** SRC members agreed that the performance appraisal system must be fair, equitable, and credible, but they disagreed about the best way to ensure that. Mr. Aguirre mentioned that until they know what the system will look like, it is difficult to know what is appropriate.

Union members stated that pay, classification, and performance management decisions should be subject to independent review and/or an appeals process. They consider the appeals process as an essential factor for ensuring that the system is fair, credible, and transparent. Mr. Randall stated that "placing a new system with the possibility of no or highly modified appeal process on a group that largely expects one, that is what I call a big experiment." Ms. Kelley said these changes will impact every employee in the Department, and she believed it is important to make sure that employees retain appeal rights. She suggested that an internal panel of three (see labor relations section) could provide the same type of review and opportunity for fairness. She suggested that expedited processes be used for appeals if DHS members were concerned about speed. Mr. Gage also strongly supported having "checks and balances."

Mr. Basham recommended independent review of performance ratings for consistency and fairness, such as the system used by the Senior Executive Service (SES), described in Option 23. He recognized, however, that this approach could be labor-intensive. Mr. Sanders agreed that approach could help guard against potential rater bias. Ms. Perez stated that while she is not a proponent of appeal rights for performance, she believed that if the process leads to an adverse outcome, employees should be able to appeal the process, not the results. Mr. Cohen said that systems must be given an opportunity to work before being subjected to external appeals.

**Funding.** SRC members discussed funding issues related to pay-for-performance systems. One approach that was discussed involved pay pools, where employees would receive a proportional share of the annual salary increase budget based on their performance. Ms. Hale suggested funding performance pay pools using locality adjustments or other factors, such as that provided in Option 6. Mr. Randall advocated maintaining locality pay increases. He suggested that performance-based pay be

drawn from the annual salary increase budget. With this approach, not everyone would receive an equal or proportional share of the salary increases; instead, it would be distributed differently based on performance ratings. Ms. Kelley said that NTEU would not support including locality pay raises in pay-for-performance pools, such as that described in Option 8. She also found it unacceptable to fund pay pools with the January pay raise. She believed that acceptable performers should receive those increases as recognition of doing the job that is expected.

### **Competency-focused Options**

Although DHS and OPM members supported performance-focused systems, they agreed that these systems also needed a competency focus. They expressed support for competency-focused systems because of their ability to link clearly with the strategy and mission of DHS. For example, Ms. Perez said that the mission requires that DHS always be in a state of readiness and that competencies could facilitate planning for current and future human capital needs. Similarly, Mr. Bonner was supportive of competencies, stating that his organization requires new skill sets that go beyond traditional missions, such as protecting against bio-terrorism and agro-terrorism and the ability to use strategic intelligence information to better manage risk. Mr. Loy discussed specialty pay used to reward teams, such as rescue swimmers, in military pay systems as an example to consider. Mr. Dorsey agreed there is a role for competencies. He suggested that competencies and training required to attain these competencies must be defined for new employees as they enter the agency at every level of their job. There must be a testing or certification process. Competencies should also be measurable, and the training must enable employees to apply these competencies to the job.

In addition to focusing on competencies, DHS and OPM members emphasized that these systems must be performance focused, and the use of competencies may vary across the Department. Ms. Hale said that in parts of DHS, competencies will be a factor, and she described competencies as “part of the toolkit.” Mr. Randall felt that it might be difficult to use competencies as a way to measure performance for some jobs; but he agreed that employees who acquire additional skills, such as an inspector with experience with cargo, passengers, maritime, and airport inspection requirements, should be compensated accordingly.

Ms. Kelley voiced concern about competency-focused systems, stressing the need to ensure equal access to training and development opportunities for all employees. She cautioned that competencies might sound good in theory, but they require testing and validation, which does not always happen. Ms. Kelley stated that front-line managers, employees, and their unions need to be involved in the design of any competency-based system. She also cautioned that competencies could result in adverse impacts or have other pitfalls.

### **Other Options**

**Rank in person.** There was a brief discussion and some interest expressed for Option 17, particularly for law enforcement and related occupations. Mr. Basham, who has experience with this type of system, noted that rank in person provides a great deal of

flexibility with respect to a mobile workforce; however, he also recognized that cost might be an issue. Ms. Hausser said that rank in person is attractive because it is “person-based rather than position-based pay.” She said that an up-or-out element is an important part of this system, particularly in terms of managing the workforce and budget. Ms. Perez agreed that this option has some merits and could be combined with other features. Ms. Kelley said that if Option 17 was adopted, there would have to be union involvement in issues like market surveys and pay ranges and that employees would also need appeal rights (not currently featured in this option). She also questioned what would happen if the budget did not support the requirements.

**Collective bargaining.** Ms. Kelley suggested that pay, classification, and performance management be bargained. She said that whether minimal or major changes took place—especially if there is a move from the General Schedule—DHS would need input from employees. She acknowledged that unions do not currently bargain over pay because pay is set by statute. She believed that if the system is changed, unions would have the right to collectively bargain over pay. Ms. Hale expressed concerns about collective bargaining over pay and performance. She stated that the system would be developed with input from employees “and their unions” and expressed a commitment to continuing to work with unions.

**Gainsharing/goalsharing.** Option 26 provides for payment of cash awards to team members based on goal accomplishment or cost savings in a production environment. Ms. Kelley noted that NTEU is not opposed to considering it as a stand-alone issue but does not view it as a total system. She said this option could be utilized if ways existed to truly measure and truly reward. Although Mr. Gage could support gainsharing, he stated that in his experience at the Social Security Administration, it came down to a management information system, and gainsharing didn’t translate, so it was abandoned.

**Managing to budget.** Ms. Hale said that whatever system is selected, the Department would have to ensure that it took fiscal constraints into account by managing to budget. At the same time, she emphasized that the Department clearly intended to ensure that any system selected would have the appropriate budget associated with it. Ms. Kelley voiced concern that a manage-to-budget approach may affect system transparency.

## LABOR RELATIONS

SRC members expressed a range of views on topics related to labor relations. Discussion included the following areas:

- Scope of bargaining and duty to bargain
- Time limits on bargaining
- Labor relations administration
- Collaborative initiatives
- Level of issue resolution and bargaining unit structures.

### Scope of Bargaining and Duty to Bargain

With regard to this subject, members from both DHS and OPM highlighted the criticality of the Department's mission and expressed concern about the bargaining provisions currently in place. Many emphasized that the post-September 11 environment is worthy of new tools and flexibilities, including a modernized labor relations program that complements the environment. Several managers underscored a need to revisit current scope of bargaining and duty to bargain provisions to ensure that the labor relations system is flexible enough to meet the significant demands and high stakes of their new operating environment.

Ms. Hausser challenged the members to think about the historical foundations of the labor relations statutes and their appropriateness in today's environment. She stressed that Congress directed the establishment of a modern human resources system and, in a way, signaled that non-traditional approaches may be appropriate.

Union members took exception to any suggestion that mission accomplishment and unionization were somehow incongruous or contradictory. They emphasized their unions' collective interest in supporting DHS and its mission. Mr. Randall said unions are appropriate in a modern human resources system and that full bargaining rights would not inhibit mission accomplishment.

**Ability to act in emergency situations.** DHS, OPM, and union members agreed that management must have the right to act immediately in emergency situations, without regard to collective bargaining. All agreed that this management flexibility already exists under the current labor relations system; however, there was some disagreement over how to proceed in situations that may be viewed as critical by management but fall short of the "emergency situation" criteria.

In general, DHS and OPM members favored union consultation before making decisions but indicated a need to be more agile in the current environment. They stressed that issues related to homeland security should not be subject to bargaining and that managers should be able to make decisions immediately when they deemed it necessary. Mr. Sanders expressed a need to empower DHS managers to act without hesitation and asserted that full collective bargaining may be incompatible with departmental requirements, such as the need to deploy individuals quickly and, in some instances, without being able to communicate the rationale for the deployment. Mr. Loy

noted that Congress gave the Transportation Security Administration (TSA) exclusive personnel authority as a means of offering maximum flexibility to best meet its national security mission.

**Duty to bargain in critical, but non-emergency situations.** Union members agreed that managers may need to act in some critical non-emergency situations, but suggested those types of decisions should be the exception rather than the rule and that the vast majority of decisions should be subject to collective bargaining. Ms. Kelley suggested developing a list detailing the types of issues not subject to bargaining, recognizing that the list may need to be dynamic to accommodate the Department's changing circumstances. Some DHS and OPM members responded that it would be impossible to presuppose all events and issues that may fall under this category, and they reemphasized the need for flexibility.

In instances when management feels it must act immediately, union members, including Mr. Gage and Ms. Kelley, offered a couple of solutions to mitigate the effect of eliminating predecisional impact and implementation bargaining. First, they asked to be notified and consulted before a decision was implemented. Second, Ms. Kelley highlighted the need for post-implementation bargaining and review to ensure that management did not abuse authorities and that the decisions made were not in conflict with the spirit of the Homeland Security Act. To accomplish the review, Ms. Kelley suggested using an internal panel, made up of one member appointed by the Secretary, one member appointed by the unions, and one member who was jointly appointed. Mr. Gage concurred, adding that a post-implementation review would add credibility to this system. Ms. Kelley said that these special procedures should be the exception, and not the rule.

Mr. Sanders, however, responded that no third party is ultimately responsible for homeland security and that given the DHS managers' enormous accountability, they need to be able to quickly make decisions and deploy response teams to address security needs. Mr. Loy indicated that he supported consultation and notification but did not want panels making critical operational decisions.

Mr. Gage offered an additional suggestion that all decisions have a natural business exigency date of implementation. If unions were aware of that date, they could bargain beforehand or continue negotiations after the fact. Such a date would, in Mr. Gage's estimation, address management's need to act yet also provide an avenue for employee input. Ms. Hale, a DHS member, expressed a concern that those natural business exigency dates of implementation might not work in a classified environment. According to Mr. Gage, "We will be flexible. You don't have to tell us why." Mr. Sanders expressed an additional concern that developing a new terminology would make an already difficult process more complex and litigious.

DHS members also expressed specific concerns regarding potential information disclosures that could impact homeland security and might be an outgrowth of the bargaining process. Mr. Basham expressed concern that such disclosures could jeopardize mission accomplishment. Mr. Gage responded that he accepted the fact that the USSS was not going to release sensitive information.

**Scope of bargaining.** Ms. Kelley stated that many of the options developed appear to conflict with provisions of the Homeland Security Act. She added that consultation with unions is not a substitute for collective bargaining, and that while consultation can run parallel or sequentially with collective bargaining, it cannot replace it. Furthermore, Ms. Kelley said narrowing or eliminating bargaining rights would be offensive to employees and their unions and, therefore, NTEU supports options that do not restrict bargaining rights. Ms. Kelley expressed specific support for Option 34, adding that it meets the unions' needs and makes business sense.

Mr. Bonner contended that some issues should not be subject to bargaining. He used the deployment of technology as an example, stressing that this technology should be able to be implemented without any bargaining given the nature of the issues and the classified information involved. Another example offered by Mr. Bonner was staff deployment. He highlighted the need to act, in some cases, without delay to ensure the security of the homeland. Mr. Loy indicated that he supported consultation and notification, but did not want critical operational decisions being constrained by anyone but DHS management. He emphasized that the new labor relations system should include some post-event resolution of issues but also allow for preempting bargaining when it is in the best interest of the DHS mission.

In response, Ms. Kelley disagreed and suggested that bargaining should occur prior to the implementation of the aforementioned decisions. According to her, areas that should be bargained include the safety of employees, selection for temporary duty (TDY), and training for different types of equipment.

**Restrictions based on number of employees or magnitude of issues.** Ms. Hale articulated an interest in discussing options that limit bargaining based on the number of employees affected or the comparative magnitude of the issues involved. Ms. Kelley and Mr. Gage expressed concern that changes affecting a small number of employees would be thought of as unworthy of collective bargaining. They felt that collective bargaining could still have a significant impact, even if only for a small number of employees. Ms. Kelley also said that such restrictions are too vague. For these reasons, she stated that NTEU would not favor such options. Mr. Gage added that such restrictions might lead to increased litigation and would be completely arbitrary.

Mr. Sanders suggested revisiting the de-minimis standard established by the Federal Labor Relations Authority (FLRA) given the prevalence of "unnecessary churn" that currently exists. Mr. Gage responded that such issues can be resolved at the local levels and that while they should not become federal cases, employees need to have a voice and that revisiting the de-minimis standard would be "splitting hairs."

### **Time Limits on Bargaining**

With regard to mid-term bargaining, management members stressed the need for time limits so that bargaining does not take an interminable amount of time, impeding the Department's ability to focus on mission accomplishment. Mr. Bonner expressed a concern about the length of time required to negotiate seemingly small matters. Ms. Kelley responded that NTEU had suggested 45 days as a limit for negotiating mid-term issues and 180 days for negotiating term contracts. Although there was relatively little

discussion about time frames, most SRC members agreed that the bargaining process should and could be streamlined.

### **Labor Relations Administration**

**Use of an internal panel.** Much of the discussion on labor relations administration focused on potentially replacing the FLRA as the primary body overseeing the DHS labor relations system with an internal panel or administrator. Some members saw benefits in this type of administration, in that an internal panel might be more focused on the importance and urgency of the DHS mission and could streamline the process. However, others expressed concern about the increased number of full-time equivalents (FTE) and deepened bureaucracy that could accompany such a system. Mr. Bonner expressed some concerns with the process and indicated he wanted to discuss it further.

DHS and OPM members expressed mixed views on the benefits of an internal panel. Mr. Sanders indicated that an internal panel may be preferable to an outside agency because it could focus solely on DHS and its unique needs, whereas an outside entity would have wider ranging responsibilities that may override the DHS focus at times. Usability was another benefit to the internal panel given that, as noted by Mr. Sanders, the FLRA writes decisions with appellate courts and not users of the labor relations systems in mind.

Union members were largely supportive of an internal panel, though their level of support and types of concerns varied. Ms. Kelley indicated that NTEU would support an internal three-person panel comprising one member appointed by the Secretary, one member appointed by the union, and one member jointly appointed. She believed the panel could handle most labor relations and collective bargaining issues, but she added a caveat that their decisions should be subject to judicial review and not be able to be overridden by the Secretary. She explained that implementing any labor relations system that did not have a review process built in would not be viewed as credible. Mr. Loy also supported the idea that panel decisions could be challenged.

Mr. Gage said that AFGE would support Ms. Kelley's panel concept, but he worried about the increased FTEs and bureaucracy that such a system might create. Mr. Gage noted that an independent third party was essential and indicated that his preference was to use arbitrators. Mr. Randall said that the National Association of Agricultural Employees (NAAE) would support an internal panel and offered a suggestion that could bridge conflicting interests in arbitrators and panels. He recommended developing a list of labor relations experts from which the third person would be picked. Mr. Sanders disagreed with this approach, reiterating previous concerns that labor relations experts may not have expertise on the mission of DHS.

Mr. Loy expressed general opposition to using outside arbitrators, suggesting that it was difficult to get uniform and consistent decisions from arbitrators.

### **Collaborative Initiatives**

SRC members largely agreed on the importance of collaboration between managers and unions, though some had concerns about the role of collaboration and the distinction and relationship between collaboration and collective bargaining.

DHS and OPM members generally supported collaboration but wanted to draw clear lines between collaboration and collective bargaining. Ms. Hale indicated that she was in favor of collaboration and the benefits it could provide. She said that DHS is highly supportive of collaboration and specifically commended the unions for their help in bringing together and communicating with 180,000 employees during the DHS formation. However, Ms. Hale stated that there was a need for management to retain exclusive authority and not have to bargain over some areas. Mr. Sanders agreed that collaboration was an excellent trust building mechanism but also emphasized the need to be specific about what is subject to bargaining and what is subject to collaboration. , He was concerned that without effective boundaries collaboration could result in “two bites of the apple” in that managers may feel that they have reached consensus with the union on a predecisional basis only to find that collective bargaining has been invoked.

Union members supported collaboration, though they did not believe it was a substitute for collective bargaining. Ms. Kelley stated that NTEU supports collaboration and believes that the process has supported many other agencies and their employees well, but that collaboration can only be on a parallel track with, and an enhancement to, collective bargaining. She stressed that predecisional involvement greatly enhances bargaining because unions can influence the way changes are made and, as a result, issues in bargaining tend to be much narrower than they otherwise would have been. Mr. Gage said use of collaboration and collective bargaining does not represent “two bites of the apple” and labeled collaboration an essential ingredient to the union-management relationship and dealing with problems that arise. He emphasized that collaboration could in some cases shorten the amount of time spent bargaining and that often unions support management “right out of the box” as a result of collaboration, eliminating the need for negotiations.

DHS and OPM members did not agree or disagree that collaboration would speed up the collective bargaining process but were generally supportive of collaboration as a means for enhancing relations and decisions. They expressed interest in working with the unions. Likewise, Mr. Gage acknowledged that he had a greater appreciation for the stakes involved and an interest in working with management in the future.

### **Level of Issue Resolution and Bargaining Unit Structures**

**Level of issue resolution.** Much discussion revolved around the organizational level at which labor relations disputes are resolved, with many SRC members citing a need for and interest in resolving matters at lower levels. Mr. Loy emphasized the need for leaders to invest in their people so that they would be more effective at resolving issues at the lowest levels possible. He expressed his commitment to Alternative Dispute Resolution (ADR) and general conflict management resolution and suggested that such measures can influence what goes to an internal panel.

In response, Mr. Gage suggested that AFGE was “ambidextrous” and could work at any levels necessary to resolve issues in the interest of expediency. He indicated a need to

begin direct and fruitful conversations now. Mr. Gage acknowledged that NTEU is a little more centralized, which may make multitiered problem resolution more difficult. Ms. Kelley responded that she supported resolving issues at the lowest levels and has trained the NTEU union stewards to do so, but that success largely depends on the individual.

**Bargaining unit structures.** DHS members indicated that the current structure was cumbersome and unwieldy from a management perspective. They suggested using a “most appropriate unit” standard may be more suitable in the DHS environment. Mr. Bonner stated that dealing with three unions and five collective bargaining agreements at the U.S. Bureau of Customs and Border Protection (CBP) was a management challenge and that he would support a new system that “rationalized the bargaining unit structure.”

Mr. Gage stated that the unions would work together and with management to address structural issues. He also indicated a willingness on his and his colleagues’ part to play an active role in the labor relations process so that critical decisions could be made at the highest levels in the interest of expediency. At the same time, he acknowledged that practicality might drive the level at which some issues are dealt with, with many likely being addressed at the lower levels. Ms. Kelley concurred that strategic decisions need to be made at the national level but suggested that implementation is often better at the lower levels. She stated that she would not want to see a loss of recognition of the value of front-line employees and their managers in bargaining.

Ms. Hale concluded the discussion on bargaining unit structures by saying that it is an area in which unions and DHS managers will continue to have discussions and that she will want various stakeholders to weigh in on the subject.

## **ADVERSE ACTIONS AND APPEALS**

SRC members expressed a range of views on topics related to adverse actions and appeals. Discussion included the following areas:

- Employees covered
- Actions covered
- Adjudication
- Time limits on actions.

### **Employees Covered**

DHS and OPM members recommended increasing the probationary period from the current standard of 1 year for some occupations. They based this recommendation primarily on the belief that it often takes more than 1 year to develop and train an employee and, therefore, more time is needed to ascertain whether that employee is a good fit with the agency. Two union members, Mr. Gage and Ms. Kelley, were opposed to extensions of the probationary period, mainly citing that a year was sufficient time to assess an employee and that the new system should not reduce or eliminate any current employee rights.

OPM members expressed support for extending the probationary period. Ms. Hausser reminded the committee that probationary periods were designed to be extensions of the examination period, which is partly why no rights are associated with probation. She added that an examination period might need to take longer than an arbitrary 12-month period. Mr. Sanders was hesitant to put a time limit on the probationary period but agreed that flexibility was necessary. He said that the end of a probationary period may be more of a qualitative event than an amount of time, and it may vary by occupation. Mr. Sanders said that as long as an employee was in a “developmental state,” the agencies should have greater leeway in terms of separation. Ms. Perez agreed with Ms. Hausser’s comment that probationary periods are designed to allow employers to assess the contributions of employees on the job and also suggested that the periods may need to be variable based on occupations. Mr. Cohen emphasized that OPM sought to recognize that DHS requires additional flexibilities.

DHS members offered practical examples of the need for more flexibility around the probationary period. Mr. Aguirre indicated that employees of Citizenship and Immigration Services are administering a complex set of laws and require 2 years to complete the learning process. Mr. Aguirre felt a probationary period should be commensurate with that organizational reality. Mr. Basham also supported a lengthier probationary period, explaining that in the USSS it is difficult to assess someone until that person is ready to go out on his or her own. Mr. Bonner indicated that while he expects CBP inspection officers to acquire competencies within a year, it takes longer for them to demonstrate them. He stressed that he does not think that a manager can judge an employee’s competency after a year and, therefore, probationary periods should be commensurate with the length of time it takes to make that very important judgment.

Some union members took exception to the need for extended probationary periods. Ms. Kelley indicated that she would not support extending the probationary period, given that she had not seen any persuasive examples of occupations where such an extension was necessary. Ms. Kelley said she believed it was important that all current rights remain in place, including the right to mitigation, to be consistent with the language in the act protecting merit system principles and to preserve due process. Mr. Gage also disagreed with extensions, saying that if good people are hired, employers should know within a year whether they should be retained. He also suggested that extended probationary periods would be a recruiting concern because new recruits might find it disconcerting to be on probation for an extended number of years.

Mr. Randall felt that longer probationary periods were perhaps needed in certain occupations, but added that simply because someone was on probation did not mean that person's rights should be eliminated. Mr. Randall asked the committee to consider the employee's investment as well as the organization's investment.

Mr. Dorsey suggested a system where probationary periods are based on the training periods and a period of time after training until a person has acquired a certain level of competency. Mr. Gage countered that such a system would not work with the current jobs, because the 5-7-9 career ladder is too long for a probationary period. Mr. Gage then asked if competence can delay someone from reaching permanent status, why could it not also work in reverse—that employees could achieve permanent status earlier. Mr. Sanders stated that Mr. Gage's second point was a valid one and should be considered.

In addition, Mr. Basham posed the question of whether individuals under probationary periods should have appeal rights. Ms. Kelley responded that they had considered offsetting probationary period extensions with some appeal rights.

Limited discussion occurred concerning the distinctions between employee types that were presented in the appeals and adverse actions options presented to the SRC. Ms. Hausser indicated that fewer distinctions among employee groups may make more sense to the employees themselves.

### **Actions Covered**

SRC members discussed the potential for establishing a list of offenses that were of such a serious nature that they would preclude an employee from appealing a termination decision, such as the "ten deadly sins" approach required by the Internal Revenue Service (IRS) Restructuring Act.

Union members were largely against establishing such a list of offenses. Ms. Kelley felt that restricting appeal rights would drive employees to other forums for resolution, including the Equal Employment Opportunity Commission or the courts. In addition, she expressed concern over the wide range of examples of "deadly sin" infractions offered as examples by Mr. Sanders and wanted to emphasize that people make mistakes. Ms. Kelley expressed familiarity with the system at the IRS and suggested that results could have been, and could still be, arbitrary and capricious had it not been for the process established by the Commissioner.

Mr. Gage urged the SRC to think about the implications of restricting employees from having the right to appeal. He argued that no matter how egregious an offense may seem, there are always additional facts to consider. Furthermore, he stressed that the system cannot rely on management, particularly when final termination decisions are at issue. Mr. Gage agreed that employees committing serious infractions impacting national security should be immediately removed from their jobs but said an appeals process, during which the employee can present facts that may mitigate or disprove the allegation, was fair and credible. Ms. Kelley agreed that if an act warranted immediate termination, the employee should be terminated, but that summarily terminating someone without review was a violation of due process. She also indicated that management should not be so concerned with a review process because employees lose the vast majority of termination cases brought before the Merit Systems Protection Board (MSPB). Mr. Randall argued for a certain tolerance level and expressed concern that strict regulations would make employees leery of making decisions on the job because they might be concerned they would then lack the backing of management.

Several DHS members supported the concept of bright line offenses. Mr. Bonner, for example, suggested that someone who accepts money for overlooking the law should not have appeal rights, a provision that is especially important in a border agency. Similarly, Mr. Loy suggested that there are absolutely things that warrant immediate termination simply because the stakes are too high. Mr. Sanders expressed his support for a system that recognizes bright line offenses.

### **Adjudication**

Mr. Dorsey suggested that the new appeals system should use the MSPB to some extent and that it would not be credible for DHS to eliminate MSPB completely. In short, Mr. Dorsey said that the process required some level of outside party involvement.

Mr. Sanders stressed the importance of having a mechanism for review that puts the DHS mission first. Mr. Sanders also reiterated the complexity of dealing with outside oversight bodies. As an example, he explained that the MSPB has a four- or five-part test for theft and that the language of their decisions is written for the courts.

Mr. Gage and Ms. Kelley supported arbitration as the primary means for resolving appeals, indicating that it provides the best means for settling disputes. Ms. Kelley indicated that an internal three-member jointly appointed panel option was developed in response to the Department's expressed interests but would also be suitable to NTEU. Mr. Gage indicated that he could support the internal three-member jointly appointed panel, but he also expressed concern about the bureaucracy that would accompany internal panels.

### **Time Limits On Actions**

Mr. Gage stated that there was an interest in reducing delays and reaching decisions more quickly, but suggested that taking away the basic rights of employees was not the way to do it. DHS and OPM members also expressed support for a faster and more streamlined appeals process. Mr. Sanders suggested that there are some cases, ones

with direct homeland security impact, for which due process may need to be truncated. Ms. Hausser agreed that a better process is needed for dealing with employees and that DHS has to uphold a higher standard in the Federal Government given its mission and the consequence of error by its employees. Mr. Bonner stated that the process must be speedier.

## **TECHNICAL ADVISORS OBSERVATIONS**

Each SRC technical advisor provided unique and valuable insights into the requirements of a new DHS HRMS. Their comments are summarized below:

### **Bernard Rosen**

Mr. Rosen expressed appreciation for the variety of options produced and the work completed by the team to date. He also expressed optimism regarding the team's ability to identify important policy areas and make decisions regarding implementation of options that are in the national interest.

Mr. Rosen brought attention to the importance of meeting the statutory requirements of fairness and equity in designing a new DHS HRMS and adhering to the merit system principles. As such, he suggested that the system be adaptable, that DHS implement effective training and monitoring, and that OPM make periodic on-site reviews focusing on the HRM systems' performance with regard to meeting merit system principles. Mr. Rosen advised that such reviews focus on the system's ability to meet statutory requirements and system goals.

Mr. Rosen suggested the use of compensation flexibilities, relocation bonuses, and the use of alternative work schedules in meeting recruitment and retention needs. He also advocated providing training for managers on conducting meaningful evaluations, providing feedback, and establishing employee development plans. With respect to the length of probationary periods, Mr. Rosen suggested that reducing the probationary period and confirming employees as "permanent" and fully committed to their positions can be an advantage in securing a stable workforce, especially during times of personnel shortages and hiring freezes.

Mr. Rosen advised the implementation of a plan that includes a constructive and collaborative relationship with employee unions to further ensure an effective and equitable HR system that meets statutory requirements and promotes the Department's national security mission.

### **Pete Smith**

Mr. Smith expressed his view that any DHS HR program design should be strongly integrated with the Department's overall strategy, not made to "fit" after implementation.

Mr. Smith also indicated that whatever is done for the SES must be integrated and coordinated with the systems now being developed for the general workforce. He felt it was important for the same principles to apply and stated that he has never seen a successful system implemented from the bottom up.

Mr. Smith also addressed the need for open channels of communication between DHS management and employees, including them in each step of the transition to a new HRMS. Specifically, he recommended communication from Secretary Ridge to employees updating them on the recommendations of the committee and soliciting

feedback from employees before making any final decisions. Feedback from employees could be used to make modifications to the system, or not, as appropriate.

Mr. Smith promoted the use of a performance management system that rewards high achievers and does not restrict the Department to paying all employees in the same position the same wage. He acknowledged that moving to such a system would require a commitment to improved training for leaders on the part of the Department and making available the necessary resources. In addition, Mr. Smith indicated that the team should focus on options that favor pay for performance with a base salary range set by market demand and the need for pay adjustments dependent on locality. He was also concerned that any reductions in pay would have negative effects on the workforce.

Mr. Smith suggested that streamlining or “sharpening” the process through which employees may appeal an adverse action could be more beneficial than restricting any rights. He also commented that the DHS team should be considerate of the sensitivity needed when addressing union rights. He promoted the implementation of a system that works collaboratively with employee unions and felt that their input would be valuable.

### **Patricia Ingraham**

Ms. Ingraham brought attention to the fact that virtually no successful organizations exist that do not have successful HR systems. As such, she stated, the team’s work in selecting a new system is critical to the Department’s mission.

Ms. Ingraham expressed frustration with the current classification system, stating that it results in narrow job descriptions that do not allow organizations to effectively reward employees with diversified skills. She expressed concern that without classification changes, it will be difficult to make other improvements.

Ms. Ingraham discussed the importance of career development for employees as well as recognition for work well done in the form of financial and nonfinancial incentives. To that end, she felt a more broadly defined performance tool is necessary, so that managers can reward employees for all the functions they perform, within or outside of the narrowly defined duties of a particular job.

Ms. Ingraham also concurred that a successful DHS HRMS is contingent on collaboration and cooperation between DHS management and union representatives.

Ms. Ingraham was excited about the opportunity to create the first real change in government human resources in more than 100 years; and for that reason, thought it was critical to ensure that the change be strategic and complete.

### **Robert Tobias**

Mr. Tobias promoted the need for an HR system that can produce and maintain a “high performing agency” to meet the country’s needs. He said that in selecting and designing this system, the parties should conduct a serious business case evaluation of

the following: should they develop a labor management strategy based on compliance with law, rules, regulations, and negotiated collective bargaining agreements, or should they develop a collaboration strategy that relies on building a labor-management relationship. This labor-management relationship, he said, would recognize that each participant has value necessary for creating a high-performing agency, include predecisional involvement in all aspects of the DHS business decisions, and create credible independent problem-solving mechanisms when necessary. Mr. Tobias advocated establishing specific obligations, guarantees, and milestones for the system and to measure its credibility and efficacy. Ensuring the accomplishment of certain goals and steps, he felt, will be critical to stakeholder acceptance of the system. He further advised that the DHS and OPM SRC members should continue the dialogue started during the public meetings and attempt to reach agreement on a proposal to submit to Secretary Ridge and Director James.

Mr. Tobias stated that the new DHS HR system will need to provide management with flexibility, while maintaining credible and effective union involvement. He advised that the opportunity to bargain in certain circumstances should be maintained, with post-implementation consideration for other circumstances, as well as the mandate for a review. He suggested that any successful system implementation would require building an atmosphere of trust and collaboration between DHS management and union representatives, as well as “an environment of continuous learning.” Unions, he advised, “can be a great way to assist agencies in fast implementation,” because they can promote the implementation of regulations or resolutions through local representatives.

Mr. Tobias called attention to the need to ensure that good employees are not discouraged by a system that would penalize poor performers. Decreasing salary for good performers to pay higher wages to great performers could lead to good performers feeling “lumped in” with the poor performers, as would forced rankings, he stated.

Mr. Tobias also called for a system that provides for employee appeals, to ensure a fair, transparent, and credible process.

### **Maurice McTigue**

Mr. McTigue argued that the Department is obligated to be a “good employer and a good leader.” He advised the team to consider a performance-based system that looks at “achievements” and “contributions” that benefit the public and that further the Department’s mission. Competency and performance, he advised, are “not mutually exclusive; both can and should be used.” Competencies are core to the Department’s mission; therefore, employees should be recognized, rewarded, and trained for skills, and competencies should be expanded to include many not currently recognized to be in furtherance of the Department’s mission.

Mr. McTigue emphasized that human capital strategies—ones that ensure that the right people with the right skills are in the right place at the right time—require planning and do not happen by accident. He stressed that organizations need to determine where skill gaps exist and how to close them.

Mr. McTigue advised that the selected system should also look at fair market compensation to allow the Department to attract and retain the most qualified employees, and that the system must be viewed as “fair, just, and accountable.” He felt strongly that the government and private sector markets must be brought closer together.

Finally, Mr. McTigue advised, the team should move forward with a strategy that includes a “competent communications plan” and ensures collaboration between DHS managers and union representatives.