Statement of Ben Konop

Before the Committee on Financial Services

Oversight and Investigations Subcommittee

U.S. House of Representative

May 21, 2014

First, I would like to thank the committee for taking the time to examine the important issues of race and gender discrimination as well as other issues of equality which are a problem not only at the CFPB, but throughout our society.

For the last three years at the CFPB I have served as an Enforcement Attorney in the Office of Supervision, Enforcement, and Fair Lending. I am honored to enforce our nation's laws with a group of talented, hard-working and passionate colleagues who dedicate their professional lives to fighting for fairness in the financial marketplace.

In late 2012, I also helped organize a chapter of the National Treasury Employees Union (NTEU) at the CFPB. In May of 2013, workers voted overwhelmingly for the Union, with 80 percent of those casting ballots voting in favor of organizing.

Shortly after the election, I was asked by NTEU's national representative to serve as the Interim Executive Vice President of the Chapter and was eventually elected by our members to that position for a two-year term. As the Executive Vice President, I represented the Chapter in negotiations for our 2013 pay, advocated for dozens of employees in grievances and EEO proceedings, and currently serve on the bargaining committee charged with negotiating the first collective bargaining agreement in the Bureau's brief history.

During my time at the Bureau, I've witnessed great accomplishments by our unionized workers. For example, members in Enforcement have led cases that resulted in 3.5 billion dollars being returned to American consumers. Union members in Supervision have traveled thousands of miles every week to ensure that banks and other financial institutions are following the law. Members in Consumer Response have overcome significant obstacles to staff a robust complaint system that helps give the American consumer a fair shake. And union members in Fair Lending have made sure that financial institutions throughout our nation are held accountable if they discriminate on impermissible factors like race and gender.

Unfortunately, I've also witnessed Bureau management struggle, at times, to live up to the mission, ideals, and achievements of the CFPB, notably in regards to Performance Management Review (PMR). PMR ratings are vitally important for our workers as they determine pay raises, bonuses, and make up the permanent employee record that is relied upon by the bureau to award promotions and other benefits. These ratings can also be accessed by potential future employers when former Bureau members apply for a job outside the agency.

In August and early September of 2013, just weeks after the union was recognized, the chapter asked for and was given the 2012 PMR ratings distribution between labor and management. The 2012 data that we requested revealed managers were far more likely to receive the highest ratings, and less likely to receive the lowest ratings than bargaining unit employees. To me this seemed like managers were, in essence, receiving "Coach of the Year" awards while their employees had only a mediocre winning percentage. I, along with other members of the bargaining team, repeatedly raised these fairness concerns during September of 2013 and were assured by management that these inequities would be remedied. Sadly, this was not the case.

In November 2013, employees were given their new PMR rating for the preceding year, after which our fledgling chapter was overwhelmed with members seeking to file grievances over their ratings. Several chapter stewards and board members observed that the bulk of potential grievances were being reported by minority and female employees. In addition, it appeared that employees over forty years of age were also adversely impacted by the rating system. In response to our members' concerns, the chapter filed a comprehensive information request on November 22nd, 2013 seeking from management a detailed PMR breakdown by categories such as race, gender, age, and bargaining unit status. It was this request, and the agencies response to it nearly two months later in mid-January, that I believe has led to this hearing today.

The 2013 ratings showed marked disparities for minority employees. For example, a white employee was twice as likely to receive the highest rating at the bureau as compared to a black or Hispanic employee. The odds were similarly stacked against workers over 40. And ratings continued to be badly skewed in favor of management when compared with the ratings of the bargaining unit, who do the bulk of the work at the bureau.

Immediately upon receiving this data, on January 15th, 2014, our chapter's leadership made the members aware of these troubling disparities and called on management to make wholesale changes in PMR going forward while compensating those who were adversely affected in the past. In response, management was largely silent. We then entered into collective bargaining negotiations in late January. Throughout the first several months of bargaining, the union raised these issues with management representatives sitting across the table and called on them to discard the current system. And once again, surprisingly, management refused to acknowledge the documented unfairness in the system and, instead, defended PMR. In fact, at one point during negotiations, a management representative asked me unironically whether, by advocating for a new rating system, I "did not believe in a meritocracy?"

While the chapter was raising PMR issues through grievances and bargaining, we also pursued approximately fifteen pay equity grievances. In these filings, we alleged that women and minority employees were being underpaid when compared to similarly situated white male colleagues. To date, the Bureau has denied each of these grievances at all stages, often using inconsistent reasoning, despite what I feel is convincing evidence of low pay for numerous women and minority workers.

In the last several weeks, however, there does appear to be recognition by management that we ought to be doing better as a Bureau. For example, we recently reached a tentative agreement on a new PMR system that, in large part, accepts the union's proposal and scraps the system that yielded the disparities.

In addition, just days before this hearing, Director Cordray issued an important directive, for the first time acknowledging that "there were broad-based disparities in the way performance ratings were assigned across our employee base in both 2012 and 2013." He confirmed the union's belief that "these differences indicate a systemic disadvantage to various categories of employees that persisted across divisions, offices, and other employee characteristics." In particular, Director Cordray agreed with the union's findings that there was a "broad-based, statistically significant disparit[y] in many areas, including race/ethnicity, age, [and] bargaining unit membership eligibility…"

As a result of this directive, which retroactively compensates the majority of employees harmed by the PMR system, it appears that the Bureau has made a solid first step in the process of holding itself accountable. This is what the Bureau is in the business of doing in the financial marketplace, and that is all the Union has asked of Bureau management since our chapter's inception.

I look forward to a productive discussion on these and other important issues at the CFPB. Thank you.