# Trump’s Pick to Lead OPM Has an Unusual Management Record for the Job

         By [Erich Wagner](https://www.govexec.com/voices/erich-wagner/12880/)

         April 19, 2019

The March announcement that President Trump would nominate former Federal Labor Relations Authority Chairwoman Dale Cabaniss to be director of the Office of Personnel Management prompted a mixed response from stakeholder groups. Organizations representing federal managers and the Partnership for Public Service expressed support for the choice, while labor unions mostly focused on what her nomination might mean for the administration's [plan to dismantle OPM](https://www.govexec.com/management/2018/06/under-reorganization-plan-opm-would-lose-its-independence-service-functions/149190/) and transfer its functions to other federal agencies.

But the announcement turned heads among those who once worked at the FLRA, the independent agency tasked with handling labor-management disputes. Former officials at the agency were puzzled that the White House would nominate someone to the government's top HR position whose previous executive branch leadership experience was marked by an exodus of employees and ballooning case backlog. Morale at the agency, as measured by governmentwide employee survey data, was the lowest in government by the time Cabaniss left the top job there.

“Needless to say, I was quite surprised to see she had been nominated to lead OPM,” said a former senior official at the agency who spoke to Government Executive and requested anonymity. “There was a deficit of leadership” when she was in charge.

The White House declined to comment on Cabaniss’ tenure at FLRA and OPM did not respond to multiple requests for comment. Cabaniss could not be reached for comment. (Government Executive reached out to Cabaniss on Facebook as well as requested comment through the White House and a family member.)

**Morale and Productivity Issues**

Cabaniss first joined the FLRA in 1997 as the minority party member of its three-person board responsible for issuing decisions in labor-management disputes. In March 2001, then-President George W. Bush appointed her chairwoman of the agency, a post she held until March 2008.

Workforce data show that while she was chairwoman, Cabaniss oversaw declines in both the size of its workforce and its ability to serve as an independent arbiter of workplace disputes.

The[Partnership for Public Service](https://bestplacestowork.org/rankings/detail/AU00) began collecting and analyzing federal workforce survey data in 2003, but it did not compile comprehensive agency rankings until 2005, midway through Cabaniss’ tenure at FLRA. Using employee engagement scores derived from OPM’s then-biennial survey of federal employees’ job satisfaction, the non-profit, non-partisan group found that morale at the agency fell sharply during the final years of her time in charge.

In 2005, the Partnership measured the FLRA’s employee engagement score as 41.4 out of 100, based on responses to what was then called the Federal Human Capital Survey (now the Federal Employee Viewpoint Survey). That was well below the average among small agencies of 62.5. That year marked the first time that the Partnership began comprehensive rankings of agencies as part of its Best Places to Work in the Federal Government report. By 2007, FLRA’s score fell to 18.1—last in the federal agency rankings.

The FLRA also lost a large portion of its staff on  Cabaniss’ watch. According to the Partnership, the number of people who worked at the agency dropped by more than 40 percent during her tenure, falling from 187 employees in September 2001 to 112 in September 2008.

Rather than investing in new employees to replace those heading for the exits, Cabaniss consistently underspent her budget. According to a[2009 article](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/06/AR2009010602937.html) in The Washington Post, in each fiscal year between 2003 and her departure in 2008, she returned between $1 million and $1.5 million to the U.S. Treasury, and congressional appropriations subsequently decreased each year. Following her departure, her successors sought, and received, a 9 percent budget increase in fiscal 2010.

Productivity of the FLRA board, which issues decisions in a variety of labor-management disputes, dropped significantly  during Cabaniss’ time at the helm of the agency, creating a significant backlog of pending cases. By 2008, the FLRA was issuing around 60 decisions per year, down from more than 200 decisions in 2003. After her resignation, the board made a concerted effort to resolve the backlog, issuing 215 decisions in fiscal 2009, which the agency said was the most it had resolved [since fiscal 2003](https://flra.gov/system/files/webfm/FLRA%20Agency-wide/Public%20Affairs/PAR/FLRA_FY_2009_PAR_11-16-09_FINAL448_pm.pdf). And in fiscal 2010, that total rose to 220 decisions.

When decisions from Cabaniss’ FLRA were appealed, federal judges overturned them more often than not. A Government Executive analysis of FLRA decisions brought before the U.S. Court of Appeals for the D.C. Circuit between March 2001 and March 2008 found that, excluding cases where the petitioner voluntarily withdrew their appeal and instances where the court found it lacked jurisdiction to consider the merits of an appeal, 55 percent of decisions during her tenure were overturned.

Of the 29 cases that made it to a ruling on the substance of an appeal, the FLRA ruled 26 times in favor of agency management, and were overturned by appellate judges in 15 instances. A second former senior FLRA official told Government Executive that statistic illustrated the worst performance for the FLRA in court since the Reagan administration.

**Harsh Words from the Courts**

Decisions from the FLRA not only were overturned more often on appeal under Cabaniss than other chairs, but federal judges criticized FLRA’s actions as “absurd,” “baffling,” and at times counter to Congress’ assertion in the 1978 Civil Service Reform Act, which created the FLRA, that collective bargaining at agencies is “in the public interest.”

In the 2004 case[National Treasury Employees Union v. FLRA](https://cdn.govexec.com/media/gbc/docs/pdfs_edit/041619ew2a.pdf), NTEU lodged an unfair labor practice complaint against the Internal Revenue Service because the agency refused to issue awards stemming from a previous arbitration case. The FLRA under Cabaniss ruled against the union, finding that it had missed the six-month window in which it could demand enforcement of the arbitration award, despite the fact that the IRS did not inform the union that it would not comply until after the deadline had passed.

U.S. Circuit Court Judge David Sentelle wrote the ruling that overturned the FLRA’s decision, finding that the six-month enforcement window in the case did not begin until the moment the IRS informed the union that it would not comply with the arbitration decision.

*“If we were to accept the authority’s interpretation, we would be left with the absurd situation of charges that could never be filed because the limitations period would expire before they became ripe,” Sentelle wrote. “[This] is neither supported by the statutory language that requires that a ULP actually*occur *before the limitations period can begin to run, nor is it a workable policy.”*

In another 2004 case,[National Federation of Federal Employees v. FLRA](https://cdn.govexec.com/media/gbc/docs/pdfs_edit/041619ew2b.pdf), U.S. Circuit Court Judge David Tatel chided the FLRA over a decision stating that the U.S. Army was not required to provide 10 days’ notice of the closure of a child care center at a depot in Pennsylvania because it had previously floated the idea to the union several years prior.

*“Congress passed the Federal Labor Relations Act to encourage collective bargaining between federal employees and their employers,” Tatel wrote. “It did so after finding that such bargaining is ‘in the public interest.’ . . . While the act imposes obligations as well as benefits on federal employees, obligations with which the authority must ensure compliance, we believe the authority’s reasoning in this case reflects an inappropriate willingness to erect barriers to collective bargaining that are inconsistent with the text and purposes of the statute.”*

**‘The Most Miserable 14 Months of My Life’**

Rich Zorn, a career FLRA employee who retired as assistant general counsel for appeals in 2016, said he remembers some trepidation when Cabaniss was first confirmed as chairwoman of the agency. But he saw her willingness to engage in an annual State of the FLRA tradition, where the leadership speaks to the workforce about their vision for the coming year, as an auspicious sign.

“She hadn’t been chairwoman for very long, but she gave a speech that was maybe 10 minutes,” Zorn said. “It wasn’t very long, but I thought it was quite adequate, and even good. She actually said how much she appreciated civil service employees, and when I left, I said to myself, ‘Gee, this might be fine.’

“She never held another one as long as she was there,” Zorn said.

Former FLRA employees interviewed by Government Executive said Cabaniss’ management style was marked by a lack of communication and avoidance of career employees.

At one point, Cabaniss contracted with a consulting firm to conduct an audit of all positions in the agency. It concluded that some of the jobs should be downgraded. Zorn said he thought the initiative was “mean-spirited,” although he noted that Cabaniss did not immediately implement the recommendations, and waited until an incumbent employee left the agency before downgrading a position.

“We thought she was there to destroy the agency,” Zorn said. “If a Republican had been elected [in 2008] instead of Obama, I’m not sure the agency would still be there.”

David Feder, a former FLRA employee who worked at the agency for 27 years, said Cabaniss seemed to distrust career employees and sought to isolate herself from the rest of the agency.

“She had her cadre of two or three people that she surrounded herself with, but if you asked anyone on the authority side or the general counsel side during that period, the remarks would not be favorable,” Feder said. “I’m not speaking of her as a Republican or Democrat, but just as a human being, and it’s just my feeling that she didn’t trust the career employees, didn’t like the agency, and she was there to destroy it.”

Feder said that he had been serving as deputy general counsel until the post became vacant in late 2001. He served as acting general counsel under the Vacancies Act “off and on” for around 14 months until he transferred to a post in the Social Security Administration in 2003.

The FLRA general counsel is responsible for vetting unfair labor practice complaints before they reach the FLRA board for consideration, but he said he never had a face-to-face conversation with Cabaniss. Instead, he worked solely with her deputies.

“Maybe she thought I was a Democrat,” said Feder, “but I’ve worked for numerous general counsels from both political parties . . . I just couldn’t breathe. It was the most miserable 14 months of my life when I was acting general counsel.”

**Presiding Over a Breakup?**

Cabaniss’ nomination comes amid a push by the Trump administration to dismantle the Office of Personnel Management altogether. First proposed as part of the president’s management agenda in 2018, the White House said earlier this year that it plans to move forward with plans to transfer the duties of OPM to other agencies beginning later this year.

Under the plan, the Defense Department will handle all security clearance applications going forward. Most of OPM’s other functions, including HR Solutions, the administration of federal retirement programs and the Federal Employees Health Benefit Program, would be transferred to the General Services Administration. And three members of OPM’s policy staff would be transferred to the Executive Office of the President to handle strategic personnel planning governmentwide.

Former FLRA employees and senior officials expressed concern that Cabaniss’ confirmation could lead to the dissolution of OPM.

“If you’re looking for someone to dismantle OPM and not lose any sleep over the programs or the people, she’s a good candidate,” Feder said.