

Union lawyer appointed OPM general counsel

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OPM announced on Tuesday that Elaine Kaplan, a former special counsel appointed by President Clinton, will become the agency's top lawyer.

Kaplan is now senior deputy general counsel for the National Treasury Employees Union.

"With Kaplan's appointment, OPM gains the expertise of an individual with more than 25 years of legal experience in the fields of federal sector labor and employment law who is uniquely qualified to serve the agency in its role as the president's chief adviser on federal human resources issues," the agency said in its announcement.

This is Kaplan's second stint at NTEU. She worked at the union between 1984 and 1998, when she left to run the Office of Special Counsel until 2003. Kaplan led President Obama's agency policy review team at OSC during the transition.

While at NTEU and OSC, Kaplan focused on employees' rights, said Bill Bransford, general counsel for the Senior Executives Association.

At NTEU, she was a member of a team that argued before the Supreme Court that employees applying for transfers or promotions to positions that involved seizing drugs, carrying guns or accessing classified information should not be subject to mandatory drug testing. She lost that case, but won another Supreme Court First Amendment case, which struck down a rule banning federal employees from receiving honoraria for speeches.

At OSC, Kaplan was a staunch advocate for whistleblowers, Bransford said.

And though NTEU and the American Federation of Government Employees sometimes compete for members and differ on policy, AFGE was quick to praise Kaplan's selection.

"Elaine Kaplan is a terrific choice for OPM general counsel," said Mark Roth, AFGE's general counsel. "The team of John Berry and Elaine Kaplan signifies a new and positive change. We look forward to working with her as a partner in good government."

Berry's and Kaplan's appointments could signal a shift in federal personnel policies that affect gay and lesbian employees. During Kaplan's term at OSC, the agency treated all [sexual orientation discrimination](#) as illegal, a policy the Bush administration reviewed and ultimately decided to keep, after her departure. Berry also worked to change a range of policies that treated gay and lesbian employees differently than their heterosexual counterparts during his stint as an assistant secretary at the Interior Department under Clinton.

Colleen Kelley, president of NTEU said she was sorry to see Kaplan leave, but looked forward to working with her at OPM.

"Elaine has a deep and abiding respect for federal workers, and NTEU members have benefited not only from her dedication but from her skilled application of federal law on critical workforce issues," Kelley said. "OPM and the entire federal government will now benefit from her experience and knowledge."

Kaplan's appointment could yield benefits for NTEU as the union [seeks to end](#) the Federal Career Intern Program.

NTEU sued OPM in U.S. District Court for the District of Columbia, arguing that the intern program was an illegal exception to the competitive hiring process. OPM moved to have the case dismissed on procedural grounds in 2008, and that motion is pending. Last week, Whipple said in an announcement that OPM was still considering its response to another lawsuit against the intern program, *Gingery v. Department of Defense*.

The union filed an amicus brief in *Gingery*, and Kaplan argued against the legality of FCIP. She now will be in a position to help determine OPM's future approach to the program.

Kaplan also helped draft NTEU's amicus brief in support of the union lawsuit that sought to halt the implementation of the National Security Personnel System. The Defense Department on Monday [put the brakes on the expansion](#) of the pay-for-performance system, pending a review by OPM, Defense and the Obama administration.

But Bransford said while Kaplan's personal beliefs might have made it natural for her to work for a union, she would not show favoritism to unions in her position as OPM general counsel.

"While she was special counsel, I never had any sense that Elaine favored unions," said Bransford. "I thought she was a government official impartially performing her duties."