

NFFE-IAM TALKING POINTS ON THE NATIONAL SECURITY PERSONNEL SYSTEM

Scope of Bargaining

DoD has proposed radically reducing the scope of collective bargaining. The proposal effectively eliminates collective bargaining by greatly expanding the management rights clause as compared to current law, thereby rendering most previously negotiable issues to be “off the table.” These are often important family issues. They include:

- Procedures and arrangements for overtime
- Shift rotation
- Flexible and compressed work schedules
- Safety and health programs
- Deployment away from the regular worksite

In addition, DoD will be able to unilaterally override provisions of collective bargaining agreements simply by sending out “issuances.” The scope of bargaining must be restored so that meaningful employee participation can continue to exist in DoD. The proposed regulations do not follow the authorizing legal mandate to safeguard collective bargaining rights for eligible DoD employees.

When the legislation authorizing NSPS was under consideration in 2003, Secretary Rumsfeld assured the Congress that his only intent with regard to collective bargaining was to establish national-level bargaining over most issues. Unions are not opposed to this. But we can not support the NSPS draft because it reduces the scope of bargaining to virtually nothing – far beyond any real or imagined national security concerns.

Labor-management Disputes

The board that hears labor-management disputes arising from NSPS must be independent of DoD management. In the proposed regulations, DoD would establish an internal board made up entirely of individuals appointed by the Secretary. This board will be paid by and thus beholden to DoD management. It would have no independence or credibility within the workforce.

Secretary Rumsfeld promised the Congress, prior to the enactment of the law authorizing the establishment of NSPS, that any board established to hear labor-management disputes would be independent. There is no reason for DoD to have an internal labor board which duplicates the functions and costs of the Federal Labor Relations Authority. If it must exist at all, then as a safeguard, it should be entirely separate and distinct from DoD management.

Adverse Action

The standard for mitigation in discipline and adverse action cases under NSPS in the proposed regulations is virtually impossible to meet and effectively removes the possibility of mitigation. DoD must change the standard from “wholly without justification” to “unreasonable,” the court-imposed standard established over 25 years ago, in order for employees to have meaningful due process and a safeguard against arbitrary and capricious actions.

Further and in contrast to current law, the proposed NSPS adds additional bureaucratic delay by declaring that adverse action arbitrations will no longer be final and binding. Instead, they will have to be reviewed by the MSPB, thereby reducing the authority of arbitrators. This we can not support. It is contrary to Congressional intent, and it weakens an important safeguard for employees.

Performance Appraisals

Under the NSPS, employee performance appraisals will be the crucial determinant of salary, salary adjustment, and job security. Yet under the proposed regulations, there is no requirement for management to present written standards against which performance will be measured. In addition, employees are denied the right, available to all current federal employees, including those under the new Homeland Security Personnel System, to use a negotiated grievance and arbitration system to present evidence to an impartial body as a critical safeguard for fairness and transparency.

Pay

The proposed pay regulations open the door for a general reduction in salaries for all DoD personnel compared to rates they would have been paid under current statutory systems. An ability to reduce entry level salaries, in addition to an ability to refuse annual adjustment of salaries for those who perform satisfactorily, as permitted in the draft regulations, will by definition conspire to reduce DoD salaries.

Strong and unambiguous safeguards must be in place to prevent overall lowering of pay for the DoD civilian workforce. There must be constraints on the ability of DoD to lower salaries or withhold salary adjustments across the board. These safeguards must be established not only to protect the living standards of the civilian DoD workforce relative to the rest of the federal workforce, but also to guarantee the ongoing economic vitality of communities with DoD installations.

Reductions in Force

Procedures for deciding who will be affected by a (RIF) must be based on more than a worker's most recent performance appraisal. Incredibly, the proposed NSPS regulation would allow an employee with one year of service and an outstanding rating to have superior retention rights to an employee with 10 years of outstanding appraisals and one year of having been rated merely "above average." Such RIF rules are patently unfair and must not be allowed to stand.

Conclusion

The approach DoD has taken thus far, exhibited by the above examples, has been profoundly demoralizing for its civilian workforce. These dedicated and patriotic Americans are extremely unsettled by the harsh prospects set forth in the proposed regulations (see comments about NSPS in the Federal Register). They see fundamental rights stripped away and a pay system rigged to lower overall DoD pay.

We strongly urge Congress to take action, either legislatively or through oversight, to require DoD to correct the many problems with the draft regulations. Unless substantial changes are made to the regulations, the NSPS will become a recruitment and retention problem rather than a solution that will deflect the agency from its important mission for years.