Donald Rumsfeld's NSPS:
A Costly and Unnecessary Reform

In 2003, under the guise of national security, Congress granted the Department of Defense (DoD) the authority to establish a new human resources system and to modify certain labor relations provisions under what was called the National Security Personnel System (NSPS).

When then-Defense Secretary Rumsfeld appeared before Congress, he stressed the need for flexibilities in order to defend our nation against the new threats of terrorism. Yet, when draft regulations were finally issued on February 14, 2005, the agency put forward a plan that scarcely resembled the one brought to Congress.

The law required DoD officials to engage in meaningful discussions with the unions concerning the development of NSPS. Moreover, Congress mandated that NSPS be created jointly with employee representatives through a "meet and confer" process before any changes to existing personnel and labor relations policies could be implemented. In light of this, shortly after the law was created, 36 labor organizations came together to form a coalition called the United Department of Defense Workers Coalition (UDWC). The UDWC went to work not only to defend federal employee rights but to work with DoD to find real solutions to real problems.

In April of 2005, the UDWC sat down with DoD to begin the meet and confer process. The unions representing the federal civilian workforce made a good-faith effort to address the needs of DoD and revise the current personnel system. Rather than trying to collaborate with the UDWC, the agency chose to ignore virtually all of the proposals offered by the unions. DoD insisted that the authority granted to them by Congress allowed them to use national security as a pretense to do whatever the agency wanted. This approach was encouraged by the Office of Personnel Management (OPM). Then-OPM Director Kay Cole James stated in a letter to Secretary Rumsfled that we "…strongly support the objective of assuring DoD's discretion to act without being burdened by collective bargaining obligation…"

DoD published its final regulations on November 1, 2005. Remarkably, despite nearly 58,000 comments from the public and federal workers and a 30 day meet and confer period, DoD only deviated slightly from the originally proposed regulations. The end product was a set of regulations that lacked in specificity and thus resulted in an unbalanced set of employment directives that were neither objective nor fair for federal employees.

On November 7, 2005, 10 member unions of the UWDC filed suit against the DoD in the United States District Court for the District of Columbia, challenging the new NSPS regulations as exceeding congressional intent and being contrary to law (*AFGE, et al. v. Rumsfeld).*

On February 27, 2006, Judge Emmett G. Sullivan issued a decision on the case. He determined that several key components of NSPS, including those concerning collective bargaining and third-party review of labor-management disputes, were "legally deficient." Sullivan's ruling was consistent with an earlier ruling by Judge Rosemary Collyer in a similar lawsuit that challenged the personnel changes attempted by the Department of Homeland Security (DHS). The DHS decision was later unanimously affirmed by a court of appeals decision.

On April 18, 2006, DoD appealed Judge Sullivan's decision. In December of 2006, the appeal was heard before a three-judge panel and a decision is expected to be rendered by the court of appeals in the spring of 2007.

Mismanagement

The Comptroller General of the United States, David Walker, and the staff at the Government Accounting Office (GAO) has analyzed the development of NSPS. In published reports and testimony before Congress, Mr. Walker has criticized the manner in which DoD has failed to effectively manage the design and implementation of NSPS.

The following are observations noted by the GAO:

- The process used to advance major initiatives is critical to a successful transformation. DoD faces a significant challenge in implementing NSPS. The inclusion of employees and their representatives must be meaningful, not just pro forma.

- By including employee representatives in the process, DoD can improve policies and procedures, increase acceptance within the workforce, and minimize potential adverse effect on morale. Unfortunately, the final regulations do not identify a process for the continuing involvement of employees and other key stakeholders.

In April of 2006, GAO began a review of the costs associated with NSPS. As of March 14, 2007, a final report has not been issued.

Congressional Action

For nearly three full years, DoD has misused the authority granted by Congress to design and implement a contemporary human resources management system. As the record reflects, there has not been meaningful involvement of employee representatives and several proposed changes have been found contrary to law. In fact, much of NSPS has been patterned after the illegal program used by DHS called the Max HR which Congress has refused to fund.

DoD's overreaching regulations under NSPS do not maintain collective bargaining in the federal sector, and, as such, are contrary to Congressional intent. Nonetheless, the Department will continue to spend billions of taxpayer dollars on plans to implement significant personnel changes affecting more than 700,000 federal employees.

With our country in the midst of a global war against terrorism, this is hardly the time to institute another one of the former Secretary's ill-conceived reforms; much less one that has demonstrated that it will demoralize the federal workforce and take much needed resources away from our men and women in uniform as they defend our country.

It is time for Congress to repeal NSPS and compel DoD to once again comply with Chapter 71 and the merit system principles.