

May 17, 2005

Mary Lacey
PEO
National Security Personnel System
Department of Defense
1400 Key Boulevard
Arlington, VA 22209

Dan G. Blair
Acting Director
Office of Personnel Management
1900 E. Street, NW
Washington, D.C.

Dear Ms. Lacey and Mr. Blair:

Since January of 2004, the undersigned labor organizations who represent Department of Defense (DoD) employees have attempted to participate in the collaborative process required by Statute with regard the development of the National Security Personnel System (NSPS). Initially, for many months, we sought without success to engage DoD and Office of Personnel Management (OPM) representatives in statutorily required meaningful discussions concerning the development of a labor management relations system. While you have met with us, you have consistently maintained that your initial concepts were “pre-decisional” and that meaningful discussion would occur at a later time. That “later” time to which you have referred is *now*. As of April 18, 2005, we, in good faith, joined you in the statutory “meet and confer” process created under Public Law. That process, too, has proven frustrating and next to meaningless. As of this late hour, meaningful discussion has yet to take place, let alone evidence any attempt by DoD to reach agreement on the proposed system.

Under the law, the Secretary and the Director shall, meet and confer for not less than 30 calendar days with employee representatives in order to, *attempt to reach agreement on whether or how to proceed* with those parts of the proposed system which the employee representatives did not accept during the public comment period. As you and your representatives have stated, the concept of meet and confer presumes that the parties act in good faith, exchange proposals, and engage in a discussion of ideas and concepts which those proposals reflect. Good faith demands that representatives have the authority to engage in discussion and reach agreement. Instead, your representatives declined to grapple with the substantive issues, steadfastly maintained that they cannot bind either the Secretary or the Director, were initially unwilling to memorialize any of our agreements with respect to the proposed system, and even now – at the eleventh hour – will only agree to forward such agreements as “recommendations”. Moreover, they have made no commitment to resume attempts to reach agreement if and

when such “recommendations” are rejected by the absent decisionmakers. Clearly, there has been a notable lack of good faith participation by the agencies in the meet and confer process. While you have maintained that you are not engaging in collective bargaining with us, your actions, in word and deed, demonstrate that you are not acting in good faith as you have professed and the law requires.

By way of example, you put us on notice that “we are far apart” on issues that are essential to our bargaining unit employees as well as to unions in general. These topics range from an independent authority to hear labor disputes to providing due process in an appeals process for bargaining unit members. When we sought to discuss points on which your proposed regulations were hopelessly vague, such as pay, classification, and performance management, you and your representatives offered hollow assurances our concerns have been “heard” and that implementing issuances, which have yet to be reviewed, or even drafted, will “flesh out the details”. You and your representatives have advised us that these *same* issuances have the ability, which you intend to use, to supercede and nullify any collective bargaining agreement or memoranda of understanding. Your position flatly conflicts with your regulations, policies, and issuances, which profess to retain the concept of collective bargaining, as required by the law. Nothing in your proposed regulations or your actions, in word and deed, demonstrate that any concept remotely resembling collective bargaining has been retained in your new system.

On May 5, 2005, at your request, we presented you with a proposal on national level bargaining. In response to your concerns regarding scope of bargaining, we gave you additional proposals which would allow you address your interest to act quickly and with flexibility. On your behalf, Undersecretary Abell, advised us that it would be difficult to find “middle ground” given the “rigid position of the administration.” These words, as well as your actions, do not reflect any “attempt to reach agreement” as required by the law.

Under these circumstances, the undersigned representatives believe that no purpose will be served by our further participation in “meet and confer” as it is currently functioning. The process has failed to fulfill its statutory mandate, as a direct result of the unwillingness of management to engage in any true dialogue over the central issues. It is abundantly clear that the approach of DoD and OPM has been to carry on surface discussions while moving ahead toward a preconceived result. Accordingly, we are suspending our involvement in the meet and confer process unless and until the agencies demonstrate an intention to participate in the meaningful collaboration required by the letter and the spirit of the Statute.

Please be further advised that we specifically reserve any and all legal rights to challenge any aspect of the NSPS process to date, or the final regulations once they are issued. This includes, but is not limited to, our pending legal challenge to the government’s failure to abide by the requirements of 5 U.S.C. § 9902(m). Be further advised that we stand by all proposals adopted by the United DoD Workers Coalition as of the date of this correspondence and will honor all

agreements we have made to date, but we will not be bound by any discussion, concessions, understandings, or agreements reached hereafter.

We regret that this process has compelled us to take this step. However, based on the unfortunate manner under which the meet and confer has been conducted, we do not believe that it serves our interests and the interests of our members to remain at the table with you while you have persistently refused to discuss, in any meaningful fashion, the system you have already proposed. We are further unwilling to allow our good name and reputation to be sold to our membership, Congress, and the public, as collaboration in good faith in designing a system which is both flawed and illegal. To remain in meet and confer is futile given that the last three weeks demonstrated that this process is a merely a sham and will be used against the employee representatives as evidence of your superficial collaboration and compliance with only the letter but not the spirit of the law.

Sincerely,

Ron Ault
President, Metal Trades Department, AFL-CIO

R. Thomas Buffenbarger
International President, International Association of Machinists and Aerospace Workers

Richard N. Brown
National President, National Federation of Federal Employees, IAMAW

David J. Holway
National President
National Association of Government Employees/SEIU

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Vice President, International Association of Fire Fighters