

STATEMENT BY

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BEFORE

THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

REGARDING

COLLECTIVE BARGAINING AND ADEQUATE FUNDING:
THE KEYS TO SUCCESS FOR ALTERNATIVE PERSONNEL SYSTEMS

ON

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My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal and District of Columbia employees represented by AFGE, I thank you for the opportunity to testify today on lessons learned from demonstration projects involving alternative personnel systems in federal agencies.

My testimony will focus on the experience of only one AFGE local because you have asked about cases where alternative personnel systems have been “successfully employed and what steps have been taken in their development to ensure effective implementation and operation.” While I appreciate the premise that what is learned from relatively successful experiments is valuable, in the context of personnel management and union rights, what is learned in relatively unsuccessful experiments might prove to be even more valuable? Indeed, the majority of AFGE locals that have tried demonstration projects have regretted it and voted as soon as they could to end the experiments.

I will focus my remarks today on the experience of AFGE Local 1904 at the Army’s Fort Monmouth in New Jersey, which has had about five years of positive experience with the Acquisition Demonstration Project. At the same location Local 1904 agreed to participate in a Science and Technology Laboratory Demonstration Project less than a year ago, so it is too soon to report on that experience.

The alternative personnel system in place at Fort Monmouth works relatively well for two primary reasons:

- **Collective Bargaining:** Crucial aspects of the system are established through the process of collective bargaining and the resulting collective bargaining agreements are fully enforceable. Labor and management have a respectful relationship at Fort Monmouth, and the collective bargaining agreements that have been jointly negotiated between AFGE Local 1904 and local management reflect the good faith efforts of both parties.
- **Funding:** A substantial portion of the pay system that is subject to alternative procedures is funded separately from regular pay adjustment system and is treated as a supplement. Virtually every employee covered receives his or her regular Employment Cost Index (ECI) and locality increase each year, and the demonstration project-based pay adjustments are on top of these regular across-the-board increases. Although the salary account money used for within-grade increases and quality step increases is allocated to the alternative pay system, at Fort Monmouth additional program funds have supplemented the salary accounts allowing the alternative to provide improvements in overall pay levels.

These are necessary, but not sufficient conditions for the success of federal alternative personnel systems. Success also requires a legal infrastructure that

upholds *all* the merit system principles, and provides strong, accessible, independent legal avenues for holding the political appointees responsible for managing agencies accountable for implementing the project in ways that are transparent and not designed to lower anyone's pay.

Neither of those two necessary conditions for success exists in either the Department of Homeland Security's MaxHR, or the Department of Defense's National Security Personnel System (NSPS). As a result, we know that both MaxHR and NSPS are guaranteed to fail. The only questions are the size of the scandals and lawsuits that arise from the inevitable corruption and mismanagement these systems encourage, and how much taxpayer money that is sorely needed elsewhere will be wasted on "Human Resource" contractors and other cronies. Furthermore, the version of NSPS and MaxHR that DoD and DHS have put forward deserve to fail because their flaws are well-known to DoD and DHS and have been repeatedly described to the Congress.

What follows is a description of some of the terms of the contract between AFGE Local 1904 and Fort Monmouth management that our members and local officers believe make the system work. As you know, the provisions I will describe below will eventually become unenforceable once the NSPS goes into effect throughout DoD. Indeed, managers will not have the authority or flexibility to negotiate with the local union or use a contract such as this to navigate the inevitable conflicts that arise over how to implement a pay system that requires one person to

evaluate another. This contract, like all collective bargaining agreements, reflects a balance between the rights of management and workers, subject to the constraint of mission accomplishment. It reflects the joint acknowledgement of various roles and responsibilities and their limits.

The “Acquisition Demo” differs from the NSPS outline and DoD’s opinion of what constitutes “best practices” in the area of alternative personnel systems published in April, 2003 not only because its primary feature is not the elimination of the union, but also because it focuses a portion of the annual salary adjustment on an employee’s “contribution” to the agency’s mission rather than an employee’s “performance” relative to long lists of “competencies.” As such, its rationale seems more objective and less political than schemes based on subjective assessments of an employee’s personal attributes.

The Collective Bargaining Agreement at Fort Monmouth Covering the Acquisition Demonstration Project

The collective bargaining agreement between AFGE Local 1904 and Department of the Army management at Fort Monmouth that addresses the operation of the alternative personnel system was first negotiated in 1999. The current agreement was signed in 2003 by seven managers and the union president, and America was not made less safe, and DoD was not impeded in the conduct of war.

The Evaluation of an Employee's "Contribution"

The contract includes an article setting forth how an employee's contribution to mission is evaluated. The evaluation forms part of the basis for an employee's eligibility for a general pay increase (GPI), a contribution rating increase (CRI) and a (CA) contribution award. The GPI and the CRI are base salary adjustments, and the CA can either be a base salary adjustment or a bonus. This latter decision is under the discretion of the Pay Pool Manager, although a supervisor can make a recommendation regarding whether to make the CA a bonus or a salary adjustment.

The collective bargaining agreement requires that the "contribution-based compensation and appraisal system provide "to the maximum extent possible a fair, objective, accurate, and job-related evaluation of employee contributions to the mission." It states that these evaluations be carried out in a "fair and equitable manner" and that employees be given "periodic counseling" to help them meet their contribution goals.

Discussions between Employees and Supervisors

Under the contract, each employee is guaranteed to receive his or her evaluation in accordance with the demonstration project procedures. This means that a supervisor is required to discuss the six factors which will be evaluated sometime during the first 45 days of an appraisal period. If an employee obtains a new supervisor within three months of the end of a rating period, no changes in

expectations regarding the employee's contribution relative to the six factors discussed with the previous supervisor can be made. However, during this period of change, the new supervisor must discuss many issues relative to "contribution evaluation" with the employee, including "career path, broadband level, factors and weights...expected contribution level and the expected range corresponding to current salary. In addition, each employee has to be "informed that all six factors are critical."

Employees' "Self Assessment" Given Weight in Final Evaluation

Each employee is required to make a "self assessment" in writing in accordance with the demonstration project procedures. "Self assessments" must include a summary of the employee's contribution to each of six factors and make use of an official demonstration project form. This "self assessment" is attached to the "appraisal packet" considered by managers who will make decisions regarding the employee's eligibility for contribution-based salary increases and/or bonuses. At the end of the rating period, a "rating official" will submit an assessment of the employee's contribution relative to each of the six factors which may include reference to the employee's "self-assessment." This submission is considered a "draft" until a higher official, the "pay pool manager," approves it.

All Supervisors With Input into Evaluation Must be Known to Employees

The contract further requires that each employee be clearly informed of the identity of the "supervisory chain" involved in the production, approval, and use of

their contribution evaluation. Employees are guaranteed that all of their assignments will be made by individuals within this chain or other “designated authorities” in order that those evaluating them will have been involved in assigning their work.

Description of Contribution Categories

The managers who comprise the “supervisory chain” place the employee in one of three regions on a simple graph depicting pay, which I have attached for your review. The three regions are described as follows: Region A, “inappropriately compensated above the rails”, Region B “inappropriately compensated below the rails,” and Region C “appropriately compensated within or on the rails.” Their “overall contribution score” is the factor that decides their place on the graph and thus their eligibility for general pay increases, contribution rating increases, and contribution awards.

All Evaluation Requirements and Information Must be in Writing

In the midst of all this, supervisors are required to inform employees in the bargaining unit, one by one, of the mission requirements and any changes to mission requirements. This occurs, according to the contract, during both the initial and midpoint counseling sessions that the supervisor must conduct using official documents.

In order to assure transparency and avoid corruption, the collective bargaining agreement guarantees each employee the right to be given “the originals” of their contribution appraisals and their final evaluations as well as “counseling notes.” The date on which the employee is given the originals with the required signatures is the date when time limits to file any grievances relative to the contribution appraisal begin to apply. Time limits regarding the Alternative Dispute Resolution process for issues involving the employee’s evaluation that are excluded from grievance procedures also begin on this date.

Holding Management Accountable for Contribution Evaluations

The contract sets forth the minimum of what should occur at the three meetings between supervisors and employees which must take place over the course of a rating period. The first meeting establishes the employee’s goals and their connection to the agency’s mission. The mid-point meeting provides the employee with feedback, guidance, and recommendations. If at the second meeting things aren’t going well, the supervisor has to document alleged shortcomings and give the employee at least 90 days to improve. At the final meeting, the employee has the opportunity to discuss his or her contributions to the mission.

The employee’s actual score is not discussed even at the last meeting. Why not? Because contrary to popular belief, the supervisor who has monitored the employee and worked with the employee to set goals and discuss the

employee's six criteria will not be making the final assessment. Rather, the next level of management – the Pay Pool Panel – and the Pay Pool Manager have to approve the score. In fact, the Pay Pool Manager has wide latitude to change the score given to an employee by his supervisor. But an employee has the right to grieve such a change under a negotiated grievance procedure, which keeps the system somewhat honest. In the context of the investigation of a grievance, the justification for the original score as well as the Pay Pool Manager's change will be thoroughly examined. As a further means of holding the Pay Pool Manager accountable, a union representative is entitled to be present during all deliberations of the Pay Pool Panel.

In the event that an employee is judged to be making an "inadequate contribution" according to the rules, definitions, and procedures peculiar to the Acquisition Demonstration Project, the employee is guaranteed in the collective bargaining agreement that he will receive a written notification telling him that he must improve his contribution and how. The employee will receive a Contribution Improvement Plan (CIP) that is at least 90 days long. If the employee is found not to have improved during this period, management may propose a pay cut or removal.

Under the terms of the contract, any "adverse information concerning performance" in a manager's files cannot be used as the basis for a change in an employee's rating unless the employee has been told about the information, and

given the chance to review it. Thus, no secret data or appraisal can be sprung on the employee or used against him in his evaluation report.

Employee Rights with Regard to Negative Evaluations

In cases where an employee has an up and down record and has been through an improvement plan, for example: His contribution declines, then improves as a result of the improvement plan, but declines again within two years; a pay cut, demotion, or removal can be proposed. However if this variation occurs more than two years after an improvement plan, the employee has the right to a new CIP period.

All of the provisions of the collective bargaining agreement involving the procedures and rights of the employee with regard to the evaluation of contributions are subject to the union's negotiated grievance procedure. In addition, the final contribution assessment, which is called the "overall contribution score" or OCS rating as well as the scores on individual factors are grievable. Only the dollar amounts of a contribution rating increase (CRI) and a contribution award (CA) are excluded from the grievance procedure. Disputes arising from these issues may be handled by the Alternative Dispute Resolution (ADR) procedures, which are also described in the collective bargaining agreement.

Both the negotiated grievance procedures and the alternative dispute resolution procedures set forth in the contract provide for independent third party review. Neither DHS nor NSPS provides this basic protection to the employee or accountability to the taxpayer. Whether it is an arbitrator analyzing whether the procedures for evaluating employees have been followed, or a “moderator” analyzing whether an employee’s overall contribution score has been calculated accurately and in accordance with the procedures set forth in the contract, the employee has some assurance that neither his supervisor nor the Pay Pool Manager, nor the Secretary of an agency, will be the perpetrator, judge, and jury with regard to everything, as is the case with the new personnel systems at DHS and DoD.

Financial Results from the Fort Monmouth Acquisition Demonstration

While the procedures for setting each employee’s contribution goals and defining and weighting the six factors against which his or her contributions will be measured are laborious and time-consuming, there is a substantial potential payoff for the employee. The data from Fort Monmouth show that the unionized employees who have participated in this program are *as a group* better off financially than they would have been without the extra resources provided through the project.

It is important to note, however, that the money used for the contribution-based payments have come in part from regular salary accounts. It includes funds that

under the GS system would have been used for within-grade increases, quality step increases, and some promotions. The extra money is only available at Fort Monmouth when other programs have surpluses. Thus, there is no guarantee of extra funding beyond what the regular GS system provides.

Although the justification for destroying collective bargaining rights and denying federal employees an annual market-based salary adjustment in DoD and DHS has often been the “poor performer” and the beleaguered federal manager’s difficulty in punishing or otherwise terminating him, at Fort Monmouth, the data do not indicate that type of focus. Instead, it seems actually to have been about improving pay.

Between 1999 and 2004, only two employees have ever been denied a contribution rating increase or contribution award because of inadequate contribution. Both of those employees missed out on contribution payments in 2004. These instances of “poor performance” constitute about 0.02% of all contribution scores calculated over the period.

Over the years, the Contribution Rating Increases (CRI) paid to bargaining unit members at Fort Monmouth under the program have ranged from less than 1% to as much as 7.67%. These increases are adjustments to base salaries. In cases where an employee, because of promotions and/or seniority is at the top of a pay band defined by the limits of General Schedule salaries e.g. a GS-15-10,

the earned CRI is provided to the employee as a bonus. In both 1999 and 2000, the bargaining unit as a whole received CRIs equivalent to 2.4% of payroll. In 2001 and 2002, the amount was 2.0% of payroll. And in 2003 and 2004, the amount was 4.0% of payroll.

The dollar value of these CRIs has varied from \$583 to \$1,530 in 1999 (and 1999 dollars). By 2004, the year with the only two workers ever to have been denied a CRI increase, the dollar amounts varied from nothing to \$7,334. During those years the averages have varied somewhat: In 1999, the average CRI was 2.75% and was worth \$1,530 (1999 dollars). In 2003, the average was 3.94% and was worth \$2,732 (2003 dollars).

The Contribution Awards (CA) are similar. These bonus payments are not salary adjustment, but rather one-time payments. They are tied to an employee's Overall Contribution Score just as is the case with the CRI. The average CA in the bargaining unit in 1999 was \$2,075; in 2000 the average was \$2,426; in 2001 the average CA was \$2,970; in 2002 the average CA was \$2,340; in 2003 the average CA was \$1,735 and in 2004 the average CA was \$2,629 despite the fact that two employees brought down the average by not receiving any CA at all. All the numbers described here are nominal, and not adjusted for inflation.

Has the Demonstration Project Improved Contributions to Mission?

One constant criticism of merit pay, contribution pay, performance pay and other such systems is the difficulty and questionable validity of making small distinctions among employees, and what the distinctions mean or encourage. The data from Fort Monmouth demonstrate the truth of this criticism. Among the Overall Contribution Scores, an employee can receive as low a rating as negative four (-4) and as high a rating as positive nine (+9). In 1999, more than half of all employees measured were in the top third; in 2002 only 8% were in the top third of the range; and in 2003 just 13% were in the top third of the range. Yet averages were higher in the later years. What does this mean? We cannot say that employees were responding to different financial incentives because they never know how much a particular score is worth until after the fact. Thus in 2003 when a top score was worth more than it was in 1999, fewer people reached it. But can we ever say fewer reached *for* it or that their actual contributions were smaller or of less significance?

Some Dangers of Relaxing General Schedule Rules

One way of describing the impact of the Fort Monmouth Demonstration Project is that it allows employees to obtain promotions non-competitively. While this is undoubtedly a positive attribute of the program from the perspective of those who are in it, it is not particularly defensible from the outside. Under the current procedures for federal agencies that are not experimenting with alternative personnel systems, an entry level employee who, for example, was hired to

provide general administrative support would be hired at anywhere from a GS-02 to a GS-04.

Under ordinary circumstances, in order to be promoted to the next level for that position, a GS-05, the candidate for promotion would have to apply for the new position, be interviewed and tested, and compete against other qualified applicants from inside and outside the government. In that way, the federal government, spending the taxpayers' money, would be sure to have the most qualified applicant selected for the position. Under the alternative personnel system in place at Fort Monmouth and other locations with similar flexible authorities, the person hired to provide general administrative support could be promoted as far as the equivalent of a GS-08-10 without ever having to compete for a promotion.

Understandably, employees who benefit from this rapid advance up the salary scale appreciate it. But the bigger picture must also be considered. Who is excluded from opportunities for these positions and the associated salaries by virtue of this system? Inevitably, qualified veterans are excluded. Inevitably, candidates who might improve the diversity of the federal workforce are excluded. Inevitably, the merit system principles will be violated.

Conclusion

The Demonstration Project at Fort Monmouth is far from perfect. Like all pay schemes that seek to individualize pay adjustments, it raises the question of what the system is aiming to accomplish, whether those aims have been met, whether the pay system can be fairly credited with contributing to the accomplishment of those aims, and whether the costs associated with the administration of a complex, multi-faceted pay adjustment process are offset by measurable benefits.

The most important point is that the crucial protections for employees that are included in the Fort Monmouth Acquisition demonstration are absent from both NSPS and MaxHR. The classification system at Fort Monmouth still provides a floor for an employee's salary based upon the duties and responsibilities of the job which are entirely objective criteria. Collective bargaining rights are intact and fully exercised.

But the question of its efficacy in changing even one employee's contribution to the Army's mission remains unanswered. The members of Local 1904 are deeply ambivalent about the value of the project. They stress the fact that it is an extremely inefficient and time-consuming process for allocating a relatively small amount of money, most of which would have been allocated identically under the General Schedule through within-grade increases and Quality Step increases. They understand that the college-educated scientists and engineers that make

up the bargaining unit at Fort Monmouth are in a far better position to hold management accountable for administering the system and adhering to the collective bargaining agreement than other groups at DoD and DHS that will soon be subject to the harsh, Wal-Mart style systems of MaxHr and NSPS.

The Acquisition Demonstration Project at Fort Monmouth has far more in common with the General Schedule than it does with either the DHS MaxHr or DoD's NSPS. Time and again, the employees at Fort Monmouth urged me to tell the Subcommittee that they oppose the NSPS in the strongest possible terms, and that the only reason that their project works as well as it does is the strong, fair, and reliable system of checks and balances achieved and maintained through collective bargaining.

This concludes my statement. I will be happy to answer any questions the Chairman or other Members of the Subcommittee may have.