

Testimony
of
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The National Security Personnel System Is Not About Security

INTRODUCTION

Thank you for this opportunity to express the views regarding the National Security Personnel System (**NSPS**) on behalf of the United DOD Workers Coalition (**UDWC**), the unions affiliated with the Metal Trades Department and the men and women represented by those labor organizations.

SUMMARY

NSPS is driven by disdain for workers and their rights, disregard for justice, disrespect for Congress, and pure arrogance. It is time for Congress to step in and stop this injustice now!

In our testimony today, we wish to emphasize five key points:

First: The National Security Personnel System is not about security: it is about control. As you know, the blueprint for NSPS was written not in the Pentagon, but at the Heritage Foundation. It was embraced by the White House within the first few days after the inauguration of President Bush—a full nine months before 9-11. It was proposed, not as a tool of national security, but as a means for “controlling the bureaucracy.” 9-11 was not the reason for NSPS: it was the excuse.

There is a fundamental disconnect between the leadership of the Pentagon—embodied in the views of Secretary Rumsfeld—and the workers that we represent. Secretary Rumsfeld holds workers in disdain. He distrusts our motives. He demeans our knowledge and contributions. He clearly believes in command and control supervision. These are views that are widely held within the Executive Branch, clearly articulated by George Nesterzuk, a key architect of NSPS, reflecting a broad suspicion of unions as interlopers at the work site.

Here is Nesterzuk describing unions in government: *“At worst, they represent the permanent government, acting on its own self interest rather than on the desires of the electorate.”*

We have heard Secretaries England, Chu and Rumsfeld repeatedly defend NSPS by describing what it is not. But, we also have, in their own words, a description of what it is, and that description should give lawmakers and citizens alike a substantial cause for alarm. Again, in the words of Mr. Nesterczuk:

“The ‘core’ federal workforce would include expert, highly compensated individuals who serve as executives and managers. The “spokes” of the new system would be a new class of temporary employees to deal with increased workloads or changing priorities of government and professional experts to do specific jobs or projects in-house. The “rim” would be contractors performing the great majority of the work on the “rim” of government.”

A “new class of temporary employees”? There is no reference in that description to the people we represent, and that, we believe, is exactly the objective: to get rid of the career civil service.

We strenuously disagree with those viewpoints. Giving voice to workers to both exercise their inherent rights and to express insight and experience about how work is accomplished can increase productivity and efficiency.

Furthermore, and more importantly, that attitude disparages the concept of freedom of association and representation as a fundamental workplace right, and a significant element of a democratic society.

The Metal Trades Department's experience with collaborative work processes within the Department of Defense supports our contention. The Metal Trades Department, for example, negotiated with the Navy to develop a wide-ranging cross training program within federal shipyards a few years ago to improve efficiency and reduce downtime. We collaborated with the Navy to establish an innovative safety and training program for crane operations. We also negotiated a highly regarded apprenticeship training program with the Navy to address the chronic problem of an aging workforce in the area of ship repair and maintenance. None of those agreements would have been possible under the NSPS, as it has been developed because NSPS systematically restricts opportunities for unions to communicate, negotiate and collaborate with Pentagon management.

Second: The institutions of collective bargaining and union representation present no threat to national security. Consequently, there is no reason to reduce or further limit union representation for Defense Department personnel.

By now, we are familiar with the hackneyed complaints by DOD about the impediments that union representation presents when the Department needs to respond quickly to a crisis. They range from the inability to hire, fire or assign personnel on short notice. We heard the Secretary complain to this Committee that an unspecified number of DOD workers had used government issued credit cards to make illegal purchases.

Let's set aside the sense of proportion that this charge ignores—such as how it compares to the flagrant abuses that Halliburton and KBR perpetrated since the start of the Iraqi war—involving billions, not thousands or even millions, of taxpayer dollars. Let's set aside for a moment the fact that the individuals who flagged this corruption and brought it to the public's attention were federal employees who could much more easily be muzzled under the NSPS system than under the current civil service system.

Let's set those considerations aside and just examine what it would take to achieve the same "flexibility" and "rapid response" capability that the Pentagon says its needs. Let's ask, "What role do unions play in the hiring of new personnel?" The answer, of course, is none. Let's ask, "How does collective bargaining affect the Pentagon's capability for responding to a crisis in real time?" The answer is, we enhance it.

Look, again, at history. We have multiple examples where union agreements have established procedures for setting up tiger teams or special work groups—volunteers with requisite skills and experience—who can be deployed to locations on short notice for vital tasks. A year ago, just such a team was deployed to Kuwait to re-fit vehicles with additional armor for duty in Iraq. The truth is that the only impediment to flexibility and rapid response capabilities within the Pentagon is poor management. If the Pentagon cannot address that issue under the authority it already has, then Congress should hold Secretary Rumsfeld and his subordinates responsible, not the rank and file personnel of the Defense Department.

Union representation and a voice on the job for workers are part of a widely recognized and significant fabric of freedoms that America should foster and

encourage. Ostensibly, these are among the freedoms that our troops are fighting to establish in Iraq and Afghanistan. It is the height of hypocrisy to advance such freedom half way across the world and restrict it at home.

Third: The Department of Defense has been less than candid with Congress about what this NSPS contains and they have been equally duplicitous about their compliance with your instruction to “ensure” that DOD employees would be involved in the development of NSPS.

They claim they have been inclusive and open in the development of NSPS rules. That is simply a lie. I attended 95 percent of all of the NSPS meetings called by the Pentagon. In every case—the meetings served no other purpose except window dressing. Our recommendations were ignored. Our objections were disregarded. I challenge DOD to show one example where a **significant** union proposal was adopted in the final package.

There were some 58,000 comments generated during the public comment period last summer. DOD dismissed **almost** all of those comments with the claim that most were simply form letters.

Similarly, DOD claims that they have not restricted collective bargaining. With all due respect, Senators, I believe it is up to you to refute that lie. The final rules are replete with areas restricting the free operation of unions at every level. They have told us that every collective bargaining agreement is subject to the Secretary's discretion. Given our experience with this Secretary, how can that not be the death knell for any meaningful collective bargaining? I find it ironic that DOD management decries the current picayune nature of bargaining about lines in the parking lot, but they then establish rules that would make such topics virtually the only subject matter that they would cede any authority to negotiate.

Veterans Preference is another glaring example of DOD's failure to acknowledge the authority and the wishes of Congress. By law, those who served in the Armed Forces or "preference eligibles" are to receive superior standing in certain personnel matters, thereby affording them an advantage in being retained over other Employees during a reduction-in-force (RIF).

The UDWC attempted to reaffirm such protections by proposing that a RIF of a work unit comprised solely of veterans be prohibited. In the final regulations, DoD rejected such protections, electing instead to allow maximum flexibility to adjust staffing--including the displacement of veterans-- based on "organizational needs."

Under NSPS, civilian DoD workers with veterans' preference will be able to displace other workers holding the same special status approved by Congress, and DoD management will be able to eliminate an entire work unit of veterans while retaining non veterans in the exact same job titles, duties and pay system by “gerry mandering” these veterans in a specific, geographic area within the same organization. I’ll give you an easy to understand example; consider a group of 15 WG-10, inside machinists working at the Norfolk Naval Shipyard in the optic shop area are all veterans and let’s go even farther and say they all have 30% compensated service connected disabilities. The shipyard decides to have a Reduction in Force (RIF) in only the optic shop area of the shipyard. Under NSPS, those 15 inside machinists will lose their jobs while the other 650 inside machinists working in other shop areas will not be affected, included those non-veterans with less than three years of federal service. Do you support that sort of “Veterans Preference?”

Moreover, the final NSPS regulations also reduce the appeal rights for DoD workers that veterans throughout the rest of the federal government have to challenge an improper reduction-in-force action. Despite a UDWC proposal that would permit an affected worker to contest a wrongful RIF to either the Merit

Systems Protection Board (MSPS) or through a Negotiated Grievance and Arbitration Procedure, DoD has decided that the MSPB will be the only forum for review of an individual appeal. In doing so, DoD veterans have been deprived of other avenues of redress, including the right of appeal to the Secretary of Labor under the Veterans Employment Opportunity Act of 1998.

I submit that DOD's position here is contrary to the longstanding federal policy blessed by both Congress and the Executive Branch in years past, to provide special consideration to veterans in recognition of their service to the country. Furthermore, it exceeds the authority Congress granted to DOD to establish this system.

In its treatment of veterans and in many other areas, the Defense Department has gone way beyond the charter for change, which you provided.

Senators, you established a bright line regarding the level of authority you were willing to give the Secretary with regard to changing the personnel system within the Department of Defense. The Secretary stepped beyond that line the day after you drew it. Will you stop him, or not?

Fourth: The costs of implementing this system have not been addressed. This is particularly important in light of other much more critical demands for taxpayer funds—including the cost of providing adequate equipment and resources for our troops in Iraq and Afghanistan and for recovery to storm stricken areas around the Gulf states.

The Department of Homeland Security estimated that the transition to a nearly identical personnel system would cost some \$10,000 per employee. Additional costs will include training materials and programs for both management and covered workers, the cost of setting up a parallel Federal Labor Relations Authority within the Pentagon and the cost of utilizing outside contractors, as was done by Homeland Security. We generously estimate the Pentagon's cost for this new system will be around \$4 billion. In Pentagon terms, that does not look like much. But, when our nation is struggling to deal with a treasury groaning under the weight of three major catastrophes in the Gulf Coast, a growing bill for fighting a war in Iraq and another in Afghanistan in addition to the lost revenues from tax breaks for the nation's wealthiest taxpayers, we must ask—is NSPS worth it?

Fifth and finally: I cannot say this more strongly. We resent, resent, resent, the implication inherent in this National Security Personnel System that the men and

women of the career civil service within the Pentagon are somehow less worthy of the rights of free association, union representation and due process than other American workers.

We resent the inherent implication that to oppose NSPS is to oppose progress. As we have repeatedly asserted, we would embrace positive, progressive change that would make the system more transparent, that would provide a better balance between the rights of workers and the needs of management, that would more effectively address the concerns we have about subjective decision-making, continuing problems of discrimination and injustice on the job. We maintain that a first step in that direction would be to expand rather than to constrict collective bargaining and representation rights for government employees.

As I said, NSPS is driven by disdain for workers and their rights, disregard for justice, disrespect for Congress, and pure arrogance. When we last testified before Congress on NSPS, it was after DOD had issued its proposed NSPS regulations. During that testimony, many of you asked Secretary England direct questions about the very same issues I raise in my testimony today. Do you see any of his assurances to you incorporated in the final NSPS regulations? Neither do we. When thousands of our members wrote, called and visited Capitol Hill seeking

Congressional help combating the removal of workers' rights, you advised us to wait and see the final regulations. Well, I can tell you that the final regulations look every bit as bad if not worse than the proposed regulations. The cosmetic changes made by DOD actually worsen the plight of DOD workers. We believe that the courts will validate our perspective, but it is within your powers to make that happen sooner rather than later. It is now the proper time for Congress to step in and stop this injustice!

Thank you for this opportunity to address you on this important topic.