

----- Original Message -----

From: Mark Roth <ROTHM@afge.org>
To: Mark Gibson <gibsom@afge.org>;
Sent: Tue Jan 29 08:58:15 2008
Subject: FW: actual text

Our DOD Bill rewriting NSPS and restoring our bargaining and appeal rights was signed by Bush last night.
Congrats to everyone who played any part in getting us here after 4 L O N G years.

From: J. Ward Morrow
Sent: Tuesday, January 29, 2008 8:54 AM
To: Chuck Hobbie
Cc: Mark Roth; Joe Goldberg
Subject: actual text

H.R.4986

National Defense Authorization Act for Fiscal Year 2008 (Engrossed as Agreed to or Passed by House)

SEC. 1106. MODIFICATIONS TO THE NATIONAL SECURITY PERSONNEL SYSTEM.

(a) In General- Section 9902 of title 5, United States Code, is amended to read as follows:

`Sec. 9902. Establishment of human resources management system

`(a) In General- The Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. The human resources management system established under authority of this section shall be referred to as the `National Security Personnel System'.

`(b) System Requirements- Any system established under subsection (a) shall--

`(1) be flexible;

`(2) be contemporary;

`(3) not waive, modify, or otherwise affect--

`(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

`(B) any provision of section 2302, relating to prohibited personnel practices;

`(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

`(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by--

`(I) providing for equal employment opportunity through affirmative action; or

`(II) providing any right or remedy available to any employee or applicant for employment in the public service;

`(D) any other provision of this part (as described in subsection (d)); or

`(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

- `(4) not apply to any prevailing rate employees, as defined in section 5342(a)(2);
- `(5) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established pursuant to law;
- `(6) not be limited by any specific law or authority under this title, or by any rule or regulation prescribed under this title, that is waived in regulations prescribed under this chapter, subject to paragraph (3); and
- `(7) include a performance management system that incorporates the following elements:
 - `(A) Adherence to merit principles set forth in section 2301.
 - `(B) A fair, credible, and transparent employee performance appraisal system.
 - `(C) A link between the performance management system and the agency's strategic plan.
 - `(D) A means for ensuring employee involvement in the design and implementation of the system.
 - `(E) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system.
 - `(F) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.
 - `(G) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.
 - `(H) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.
 - `(I) A pay-for-performance evaluation system to better link individual pay to performance, and provide an equitable method for appraising and compensating employees.
- `(c) Personnel Management at Defense Laboratories-
 - `(1) The National Security Personnel System shall not apply with respect to a laboratory under paragraph (2) before October 1, 2011, and shall apply on or after October 1, 2011, only to the extent that the Secretary determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided to those laboratories pursuant to section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721) and section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note), respectively.
 - `(2) The laboratories to which this subsection applies are--
 - `(A) the Aviation and Missile Research Development and Engineering Center;
 - `(B) the Army Research Laboratory;
 - `(C) the Medical Research and Materiel Command;
 - `(D) the Engineer Research and Development Command;
 - `(E) the Communications-Electronics Command;
 - `(F) the Soldier and Biological Chemical Command;
 - `(G) the Naval Sea Systems Command Centers;
 - `(H) the Naval Research Laboratory;
 - `(I) the Office of Naval Research; and
 - `(J) the Air Force Research Laboratory.
- `(d) Other Nonwaivable Provisions- The other provisions of this part

referred to in subsection (b)(3)(D) are--

`(1) subparts A, B, E, G, and H of this part; and

`(2) chapters 41, 45, 47, 55 (except subchapter V thereof, apart from section 5545b), 57, 59, 71, 72, 73, 75, 77, and 79, and this chapter.

`(e) Limitations Relating to Pay-

`(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53.

`(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed the total annual compensation payable to the Vice President under section 104 of title 3.

`(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.

`(4) To the maximum extent practicable, for fiscal years 2004 through 2012, the overall amount allocated for compensation of the civilian employees of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System shall not be less than the amount that would have been allocated for compensation of such employees for such fiscal year if they had not been converted to the National Security Personnel System, based on, at a minimum--

`(A) the number and mix of employees in such organizational or functional unit prior to the conversion of such employees to the National Security Personnel System; and

`(B) adjusted for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

`(5) To the maximum extent practicable, the regulations implementing the National Security Personnel System shall provide a formula for calculating the overall amount to be allocated for fiscal years after fiscal year 2012 for compensation of the civilian employees of an organization or functional unit of the Department of Defense that is included in the National Security Personnel System. The formula shall ensure that in the aggregate, employees are not disadvantaged in terms of the overall amount of pay available as a result of conversion to the National Security Personnel System, while providing flexibility to accommodate changes in the function of the organization, changes in the mix of employees performing those functions, and other changed circumstances that might impact pay levels.

`(6) Amounts allocated for compensation of civilian employees of the Department of Defense pursuant to paragraphs (4) and (5) shall be available only for the purpose of providing such compensation.

`(7) At the time of any annual adjustment to pay schedules pursuant to section 5303, the rate of basic pay for each employee of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System who receives a performance rating above unacceptable or who does not have a current rating of record for the most recently completed appraisal period shall be adjusted by no less than 60 percent of the amount of such adjustment. The balance of the amount that would have been available for an annual adjustment under section 5303 shall

be allocated to pay pool funding, for the purpose of increasing rates of pay on the basis of employee performance.

`(8) Each employee of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System who receives a performance rating above unacceptable or who does not have a current rating of record for the most recently completed appraisal period shall receive--

`(A) locality-based comparability payments under section 5304 and section 5304a in the same manner and to the same extent as employees under the General Schedule; or

`(B) the full measure of any other local market supplement applicable to the employee if locality-based comparability payments referred to in subparagraph (A) are not generally applicable to the employee.

Nothing in this paragraph shall be construed to make locality-based comparability payments or other local market supplements payable to any category of employees or positions which were ineligible for such payments or supplements (as the case may be) as of the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

`(9) Any rate of pay established or adjusted in accordance with the requirements of this section shall be non-negotiable, but shall be subject to procedures and appropriate arrangements of paragraphs (2) and (3) of section 7106(b), except that nothing in this paragraph shall be construed to eliminate the bargaining rights of any category of employees who were authorized to negotiate rates of pay as of the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

`(f) Provisions Regarding National Level Bargaining-

`(1) The Secretary may bargain with a labor organization which has been accorded exclusive recognition under chapter 71 at an organizational level above the level of exclusive recognition. The decision to bargain above the level of exclusive recognition shall not be subject to review. The Secretary shall consult with the labor organization before determining the appropriate organizational level of bargaining.

`(2) Any such bargaining shall--

`(A) address issues that are--

`(i) subject to bargaining under chapter 71 and this chapter;

`(ii) applicable to multiple bargaining units; and

`(iii) raised by either party to the bargaining;

`(B) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, be binding on all affected subordinate bargaining units of the labor organization at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

`(C) to the extent agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, supersede conflicting provisions of all other collective bargaining agreements of the labor organization, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition; and

`(D) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, not be subject to further negotiations for any purpose, including bargaining at the level of recognition.

`(3) Any independent dispute resolution process agreed to by the parties for the purposes of paragraph (2) shall have the authority to address all issues on which the parties are unable to reach agreement.

`(4) The National Guard Bureau and the Army and Air Force National Guard may be included in coverage under this subsection.

`(5) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

`(g) Provisions Related to Separation and Retirement Incentives-

`(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

`(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) shall not be included in that number.

`(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

`(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

`(3) For purposes of this section, the term `employee' means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include--

`(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

`(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

`(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

`(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

`(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of --

`(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

`(ii) \$25,000.

`(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

`(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

`(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

`(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

`(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

`(h) Provisions Relating to Reemployment-

`(1) Except as provided under paragraph (2), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of subchapter III of chapter 83 or chapter 84.

`(2)(A) An annuitant retired under section 8336(d)(1) or 8414(b)(1)(A) receiving an annuity from the Civil Service Retirement and Disability Fund, who becomes employed in a position within the Department of Defense after the date of enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), may elect to be subject to section 8344 or 8468 (as the case may be).

`(B) An election for coverage under this paragraph shall be filed not later than the later of 90 days after the date the Department of Defense--

`(i) prescribes regulations to carry out this subsection; or

`(ii) takes reasonable actions to notify employees who may file an election.

`(C) If an employee files an election under this paragraph, coverage shall be effective beginning on the first day of the first applicable pay period beginning on or after the date of the filing of the election.

`(D) Paragraph (1) shall apply to an individual who is eligible to file an election under subparagraph (A) and does not file a timely election under subparagraph (B).

`(3) The Secretary shall prescribe regulations to carry out this subsection.

`(i) Additional Provisions Relating to Personnel Management-

`(1) Subject to the requirements of chapter 71 and the limitations in subsection (b)(3), the Secretary of Defense, in establishing and implementing the National Security Personnel System under subsection (a), shall not be limited by any provision of this title or any rule or regulation prescribed under this title in establishing and implementing regulations relating to--

`(A) the methods of establishing qualification requirements for, recruitment for, and appointments to positions; and

`(B) the methods of assigning, reassigning, detailing, transferring, or promoting employees.

`(2) In implementing this subsection, the Secretary shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, as provided for in subsection (b)(3).

`(j) Phase-in- The Secretary may not, in any calendar year, add any organizational or functional unit to the National Security Personnel System which would cause the total number of employees added to such System in such year to exceed 100,000.'

(b) Implementation-

(1) The requirements of section 9902 of title 5, United States Code, as amended by this section, may be implemented through rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment or through Department of Defense rules or internal agency implementing issuances. Rules promulgated jointly by the Secretary and the Director under this paragraph shall be treated as major rules for the purposes of section 801 of title 5, United States Code.

(2) Both rules and implementing issuances shall be subject to collective bargaining consistent with the requirements of chapter 71 of title 5, United States Code. Rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment and in accordance with the requirements of section 801 of such title 5 for a major rule shall be treated in the same manner as government-wide rules for the purpose of such collective bargaining, if such rules are uniformly applicable to all organizational or functional units included in the National Security Personnel System.

(3) Any rules and implementing issuances that were adopted prior to the date of the enactment of this Act--

(A) shall be invalid to the extent that they are inconsistent with the requirements of section 9902 of title 5, United States Code, as amended by this section;

(B) shall not supersede a collective bargaining agreement that was in place prior to the date on which the rule or implementing issuance was promulgated; and

(C) shall be subject to collective bargaining--

(i) in the case of rules which are uniformly applicable to all organizational or functional units included in the National Security

Personnel System and issued jointly by the Secretary of Defense and the Director of the Office of Personnel Management pursuant to subsection 9902(f)(1) of title 5, United States Code (as in effect prior to the enactment of this section), only as to impact and implementation, when applied to employees of the Department of Defense from any bargaining unit; (ii) in the case of any other rules or implementing issuances, to the extent provided in chapter 71 of title 5, United States Code.

(4) The availability of judicial review of any rules or implementing issuances that were adopted prior to the date of the enactment of this Act shall not be affected by the enactment of this section.

(c) Comptroller General Reviews-

(1) The Comptroller General shall conduct annual reviews in calendar years 2008, 2009 and 2010 of--

(A) employee satisfaction with the National Security Personnel System established pursuant to section 9902 of title 5, United States Code, as amended by this section; and

(B) the extent to which the Department of Defense has effectively implemented accountability mechanisms, including those established in section 9902(b)(7) of title 5, United States Code, and internal safeguards for the National Security Personnel System.

(2) To the extent that the Department of Defense undertakes internal assessments or employee surveys to assess employee satisfaction with the National Security Personnel System in any such calendar year, the Comptroller General shall--

(A) determine whether such assessments or surveys are appropriately designed and statistically valid; and

(B) provide an independent evaluation of the results of such assessments or surveys.

(3) To the extent that the Department of Defense does not undertake appropriately designed and statistically valid employee surveys, the Comptroller General shall conduct such a survey and provide an independent evaluation of the results.

(4) The Comptroller General shall report the results of each annual review conducted under this subsection to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives.

SEC. 1107. REQUIREMENT FOR FULL IMPLEMENTATION OF PERSONNEL DEMONSTRATION PROJECT.

(a) Requirement- The Secretary of Defense shall take all necessary actions to fully implement and use the authorities provided to the Secretary under section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-315), to carry out personnel management demonstration projects at Department of Defense laboratories that are exempted by section 9902(c) of title 5, United States Code, from inclusion in the Department of Defense National Security Personnel System.

(b) Process for Full Implementation- The Secretary of Defense shall also implement a process and implementation plan to fully utilize the authorities described in subsection (a) to enhance the performance of the missions of the laboratories.

(c) Other Laboratories- Any flexibility available to any demonstration laboratory shall be available for use at any other laboratory as enumerated in section 9902(c)(2) of title 5, United States Code.

(d) Submission of List and Description- Not later than March 1 of each year, beginning with March 1, 2008, the Secretary of Defense shall submit to Congress a list and description of the demonstration project notices, amendments, and changes requested by the laboratories during the preceding calendar year. The list shall include all approved and disapproved notices, amendments, and changes, and the reasons for disapproval or delay in approval.