

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO

NSPS

CAMPAIGN

---

DOUBLE CROSS

SEPTEMBER 2008

# DEFCON NSPS CAMPAIGN

## BACKGROUND AND ARGUMENT FOR CONTINUED ACTION

While we made great strides in our fight against NSPS, it still lives and breathes and has the soul of DOD's quest for impunity and protection against having to bargain with employees' unions. Our previous successes were limited only by the degree of pressure we could apply to Congress, and unfortunately, this was not sufficient enough to get what we wanted.

DOD is deliberately misreading the law so that they can give the employees only the most basic and limited protections and move their pay for performance system forward.

Congress did not intend to leave room for DOD to define itself out of its obligations to bargain over matters of importance to employees. And now is the time to find out where the double cross occurred, DOD double crossing workers and Congress.

## KEY CONSIDERATIONS IN DEVELOPING THE CAMPAIGN

It is imperative that we generate a tremendous amount of grassroots action on this issue. Locals are encouraged to create a deafening level of noise to ensure that this Congress takes action to ensure that what they started and intended to do, is done and not ignored by DOD.

Our efforts over the last five years in fighting NSPS may have created a sense of protection among some DOD employees represented by unions as we have been successful in keeping them from going under NSPS. Our message needs to be clear that DOD is planning and intends to move bargaining unit employees under NSPS starting in 2009, and that this DOUBLE CROSS is directed at them and their rights to the protections afforded under collective bargaining.

**STOPPING THE DOUBLE CROSS** requires action by this Congress. While the harm is done to federal employees and the unions that represent them, the insult was to this Congress and the American people. This Congress must reinforce the intent of their previous action in the National Defense Authorization Act for 2008 and not let these final regulations go unchallenged.

Congress needs to move to block the final regulations once provided to them by DOD. They need to send a strong message to DOD that they will not be allowed to further oppose Congressional intent by applying definitions to rate of pay that go far beyond any reasonable definition and creating a "bargaining blockade" to narrow the issues that Congress mandated be bargained.

**A CHANGE IN ADMINISTRATIONS** presents the opportunity that a new Secretary of Defense will move to correct the ill conceived National Security Personnel System. Working to ensure that a federal employee friendly administration takes office in January 2009 is the insurance to federal workers if we are unable to stop the DOUBLE CROSS. We need to make sure we take out the insurance and elect a federal employee friendly administration and Congress.

**But we can't rest with a new administration taking action alone. Congress needs to act and not be allowed to pass the buck to a new President. We can't afford to rest hoping that our**

election efforts result in a complete victory. We also can't afford to on the cheap and pass on the insurance. Our actions in getting a solution from Congress, and our efforts in electing a federal worker friendly President need to work together.

## CAMPAIGN COMPONENTS AND OBJECTIVES

**MESSAGE:** National President John Gage said it best on July 22<sup>nd</sup> when he testified before Congress on Pay for Performance, “It is an act of cynicism and defiance on DoD’s part to think it can define itself out of its statutory obligation.” “This double cross is unfortunate, but predictable.”

This Congress MUST take action to stop the DOUBLE CROSS and ensure that its intent for full and meaningful collective bargaining occur in the establishment and implementation of NSPS.

**TARGETS:** All members of the House and Senate Armed Services and Appropriations Committees (List Attached). Our first priority has to be directed towards members of the House and Senate Defense Appropriations Subcommittee.

**ASK:** We strongly urge the Congress to block the implementation of the May 22<sup>nd</sup> proposed regulations.

**OBJECTIVE(S):** Block the final regulations for NSPS or as a reasonable alternative, establish a one year moratorium and eliminate the limiting definition of rate of pay contained in the final regulations.

## SUGGESTED ACTIONS FOR LOCALS AND COUNCILS

The following are suggested activities that locals and councils can take which will help generate the level of grassroots action by represented employees;

- Commit to doing a mailing to each member of the local asking them to take action and participate in the “Stop the Double Cross” campaign.
- Conduct non-duty time early morning leafleting and desk drops asking employees to take action against NSPS.
- Schedule and hold “Lunch and Learns” informing employees of the “Double Cross” and asking them to join AFGE and join the fight against NSPS.
- Schedule Congressional visits for a delegation from the local. Invite workers who are under NSPS and supportive of AFGE’s fight against NSPS to attend these meetings with you.
- Get involved with the election and get others in your local to “Walk, Knock, and Talk”.

- Complete a “Stop the Double Cross” commitment form if your local or council needs mentoring in helping build a comprehensive effort by your local. We will get someone assigned to help your local build a program in your local.

## CAMPAIGN LOGISTICS

Campaign Materials	Are available at <a href="http://www.afge.org">www.afge.org</a> or by calling 202-639-6406
Printed materials	For shipping to a non-post office box address contact FSED at 202-639-6406.
Organizing help	Contact your district office or the Membership and Organizing Department.
DEFCON Volunteers for events	Contact – Mark Gibson at 830-935-2206 or by email at <a href="mailto:gibsom@afge.org">gibsom@afge.org</a>

**REPORT YOUR RESULTS.** By reporting the results of your grassroots efforts, you will be providing valuable information to AFGE’s headquarters in helping them follow up on your efforts with members of Congress. **Reports should be sent via email to [gibsom@afge.org](mailto:gibsom@afge.org). PLEASE use NSPS DOUBLE CROSS REPORT in the subject line.**

# Status of the DoD National Security Personnel System

## ***Background***

The FY 2008 National Defense Authorization Act greatly reformed the National Security Personnel System as created under DoD regulations. The Act restored collective bargaining and civil service protections for employees. However, the Act permitted DoD to go forward with its controversial new pay-for-performance system, with the following restrictions:

- All employees under NSPS rated above “unacceptable” (1 out of a 5-point rating) must receive 60% of the nationwide General Schedule (GS) adjustment and 100% of the GS locality adjustment for their area.
- For employees in their bargaining units, unions **would not** be able to negotiate over the “rate of pay,” i.e. how much employees would receive as pay raises.
- For bargaining unit employees, unions **would** be permitted to bargain over “procedures and appropriate arrangements,”<sup>1</sup> as defined in chapter 71 of Title 5, the statute governing collective bargaining in the federal sector. The ability to bargain over procedures and appropriate arrangements will allow unions to negotiate for the pay systems to be fair, transparent, and accountable.

## ***Current Situation***

On May 22, 2008, the day the House passed its version of the FY09 NDAA and ten days after the SASC completed action on its version, the DoD issued draft regulations. Among other things, it defined “rate of pay” so broadly that it would be impossible to negotiate over any procedures or appropriate arrangements. To make matters even worse, the department has announced that it intends to finalize the regulations in **October**, and assumes that there will be only 15 days remaining of a 60-day Congressional review period when Congress returns in January.

---

1

*“Procedures” involve the methods by which a system is established or operated. “Appropriate arrangements” are negotiated if employees are harmed in some way by a system, so that they can be made whole.*

on moving forward now to install a new personnel system that excludes collective bargaining directly conflicts with Congressional intent to enact legislation in *support* of the hundreds of thousands of civilian employees who uphold the mission and maintain the operations of the Department of Defense.

## ***Congressional Intent***

In writing the FY 08 NDAA, Congress clearly intended to reinstate collective bargaining for DoD employees covered by NSPS. The department's insistence

## ***Impact on the Next Administration***

The department's decision to move forward hastily and unilaterally will force the current administration's agenda on the next administration, regardless of the outcome of the election this November. The next President and his appointees must be given a chance to scrutinize these draft regulations which, when finalized, will profoundly determine the future of NSPS.

## ***Request***

There are three legislative alternatives to solve this problem for the short term.

### **1. Include language in the FY 09 National Defense Authorization Act to define "rate of pay":**

*The term "rate of pay" in 5 U.S.C. 9902(e)(9) means--*

- (1) Base salary rates, and local market supplement rates; and*
- (2) The rates comprising the structure of the pay system, including the amount of each rate in the pay structure (expressed as a dollar amount or a percentage).*

### **2. Include language in the FY09 defense appropriations bill to delay implementation of the regulations until nine months following enactment:**

*The Department of Defense shall not implement, administer, enforce, or apply the rule entitled National Security Personnel System published by the Department of Defense and the Office of Personnel Management in the Federal Register on May 22, 2008 (5 CFR Part 9901; RIN 3206-AL62; Docket Number NSPS-OPM-2008-081) until 270 days after enactment of this act.*

### **3. Include a limitation amendment in the FY09 defense appropriations bill which would block funding for the May 22<sup>nd</sup> NSPS regulations:**

*None of the funds made available by this or any other Act may be used to implement, administer, enforce, or apply the rule entitled National Security Personnel System published by the Department of Defense and the Office of Personnel Management in the Federal Register on May 22, 2008 (5 CFR Part 9901; RIN 3206-AL62; Docket Number NSPS-OPM-2008-08).*

*LIST OF ALL DOD MEMBERS BY STATE AND CONGRESSIONAL DISTRICT Sorted by state*

*BLACK TEXT = ARMED SERVICES    BLUE TEXT = APPROPRIATIONS*

**EASTERN TIME ZONE CALL TEAM** (20 states)

<b>Connecticut</b>	Joseph I. Lieberman, Joe Courtney (D-2), Rosa L. DeLauro (D-3)
<b>Florida</b>	Bill Nelson (D), Mel Martinez (R), Jeff Miller (R-1), Kendrick Meek (D-17), Kathy Castor (D-11), C.W. Bill Young (R-10), Allen Boyd (D-2), Debbie Wasserman Schultz (D-20), Dave Weldon (R-15), Ander Crenshaw (R-4)
<b>Georgia</b>	Saxby Chambliss (R), Jim Marshall (D-8), Phil Gingrey (R-11), Hank Johnson (D-4 ), Jack Kingston (R-1), Sanford Bishop (D-2),
<b>Alabama</b>	Jeff Sessions (R), Terry Everett (R-2), Mike Rogers (R-3), Robert E. "Bud" Cramer, Jr. (D-5), Robert B. Aderholt (R-4), Jo Bonner (R-1 ), Richard Shelby (R)
<b>Kentucky</b>	Geoff Davis (R-4), Harold Rogers (R-5), Ben Chandler(D-6), <u>Mitch McConnell (R)</u>
<b>Maine</b>	Susan M. Collins (R)
<b>Maryland</b>	Roscoe G. Bartlett (R-6), Elijah Cummings (D-7), C.A "Dutch" Ruppersberger (D-2), <u>Barbara Mikulski (D)</u> ,
<b>Massachusetts</b>	Edward M. Kennedy (D), Niki Tsongas (D-5), John W. Olver (D-1)
<b>Michigan</b>	Carl Levin (D), Joe Knollenberg (R-9), Carolyn C. Kilpatrick (D-13)
<b>New Hampshire</b>	Carol Shea-Porter (D-1), <u>Judd Gregg (R)</u>
<b>New Jersey</b>	Jim Saxton (R-3), Robert Andrews (D-1), Frank A. LoBiondo (R-2), Steven R. Rothman (D-9), Rodney P. Frelinghuysen (R-11),
<b>New York</b>	Hillary Rodham Clinton (D), John M. McHugh (R-23), Kirsten Gillibrand (D-20), Nita M. Lowey (D-18), José E. Serrano (D-16), James T. Walsh (R-25), Maurice D. Hinchey (D-22), Steve Israel (D-2),

<b>North Carolina</b>	Elizabeth Dole (R), Walter B. Jones (R-3), Robin Hayes (R-8), Mike McIntyre (D-7), <a href="#">David E. Price (D-4)</a> ,
<b>Ohio</b>	Michael Turner (R-3), <a href="#">Marcy Kaptur (D-9)</a> , <a href="#">Ralph Regula (R-16)</a> , <a href="#">David L. Hobson (R-7)</a> , <a href="#">Tim Ryan (D-17)</a> ,
<b>Pennsylvania</b>	Robert A. Brady (D-1), Bill Shuster (R-9), Patrick Murphy (D-8), Joe Sestak (D-7), <a href="#">John P. Murtha (D-12)</a> , <a href="#">Chaka Fattah (D-2)</a> , <a href="#">John E. Peterson (R-5)</a> , <a href="#">Arlen Specter (R)</a> ,
<b>Rhode Island</b>	Jack Reed (D) <a href="#">Patrick J. Kennedy (D-1)</a> , <a href="#">Jack Reed (D)</a>
<b>South Carolina</b>	Lindsey O. Graham (R), John Spratt (D-5), Joe Wilson (R-2),
<b>Vermont</b>	<a href="#">Patrick Leahy (D)</a> ,
<b>Virginia</b>	John W. Warner (R), Jim Webb (D), J. Randy Forbes (R-4), Thelma Drake (R-2), Rob Wittman (R-1), <a href="#">James P. Moran (D-8)</a> , <a href="#">Frank R. Wolf (R-10)</a> , <a href="#">Virgil H. Goode, Jr.(R-5)</a> ,
<b>West Virginia</b>	Robert C. Byrd (D), <a href="#">Robert Byrd, (D)</a> , <a href="#">Alan B. Mollohan (D-1)</a> ,

**[CENTRAL TIME ZONE CALL TEAM](#) (16 states)**

<b>Arkansas</b>	Mark L. Pryor (D), Vic Snyder (D-2), <a href="#">Marion Berry (D-1)</a> ,
<b>Indiana</b>	Evan Bayh (D), Brad Ellsworth (D-8), <a href="#">Peter J. Visclosky (D-1)</a> ,
<b>Illinois</b>	<a href="#">Jesse L. Jackson, Jr. (D-2)</a> , <a href="#">Ray LaHood (R-18)</a> , <a href="#">Mark Steven Kirk (R-10)</a> , <a href="#">Richard Durbin (D)</a> ,
<b>Iowa</b>	David Loebsack (D-2), <a href="#">Tom Latham (R-4)</a> , <a href="#">Tom Harkin (D)</a> ,
<b>Kansas</b>	Nancy Boyda (D-2), <a href="#">Todd Tiahrt (R-4)</a> , <a href="#">Sam Brownback (R)</a> ,
<b>Louisiana</b>	<a href="#">Rodney Alexander (R-5)</a> , <a href="#">Mary Landrieu (D)</a>
<b>Minnesota</b>	John Kline (R-2), <a href="#">Betty McCollum (D-4)</a> ,
<b>Mississippi</b>	Roger F. Wicker (R), Gene Taylor (D-4), <a href="#">Thad Cochran (R)</a> ,
<b>Missouri</b>	Claire McCaskill (D), Ike Skelton (D-4), W. Todd Akin (R-2), <a href="#">Jo Ann Emerson (R-8)</a> , <a href="#">Kit Bond (R)</a> ,
<b>Nebraska</b>	E. Benjamin Nelson (D), <a href="#">Ben Nelson (D)</a>
<b>North Dakota</b>	<a href="#">Byron Dorgan (D)</a> ,



**Oklahoma** James M. Inhofe(R), Tom Cole (R-4), Dan Boren (D-2),

**South Dakota** John Thune (R), [Tim Johnson \(D\)](#),

**Tennessee** Jim Cooper (D-5), [Zach Wamp \(R-3\)](#), [Lamar Alexander \(R\)](#),

**Texas** John Cornyn (R), Solomon P. Ortiz (D-27), Silvestre Reyes (D-16), Mac Thornberry (R-13), Michael Conaway (R-11), [Chet Edwards \(D-17\)](#), [Ciro Rodriguez \(D-23\)](#), [John Abney Culberson \(R-7\)](#), [Kay Granger \(R-12\)](#), [John Carter \(R-31\)](#), [Kay Bailey Hutchison \(R\)](#)

**Wisconsin** [David R. Obey \(D-7\)](#), [Herb Kohl \(D\)](#),

**[MOUNTAIN/PACIFIC TIME ZONE CALL TEAM](#) (10 states)**

**Alaska** [Ted Stevens \(R\)](#)

**Arizona** John McCain (R), Trent Franks (R-2), Gabrielle Giffords (D-8), [Ed Pastor \(D-4\)](#)

**California** Duncan Hunter (R-52), Buck McKeon (R-25), Loretta Sanchez (D-47), Ellen O. Tauscher (D-10), Susan A. Davis (D-53), [Jerry Lewis \(R-41\)](#), [Lucille Roybal-Allard \(D-34\)](#), [Sam Farr \(D-17\)](#), [Barbara Lee \(D-9\)](#), [Michael Honda \(D-15\)](#), [Adam Schiff \(D-29\)](#), [Ken Calvert \(R-44\)](#), [Dianne Feinstein \(D\)](#),

**Colorado** Mark Udall (D-2), Doug Lamborn (R-5), [Wayne Allard \(R\)](#),

**Hawaii** Daniel K. Akaka (D), Neil Abercrombie (D -1), [Daniel Inouye \(D\)](#)

**Idaho** [Michael K. Simpson \(R-2\)](#), [Larry Craig \(R\)](#)

**Montana** [Dennis R. Rehberg \(R-at large\)](#),

**New Mexico** Tom Udall (D-3), [Frank Lautenberg \(D\)](#), [Pete Domenici \(R\)](#),

**Utah** Rob Bishop (R-), [Robert Bennett \(R\)](#)

**Washington** Adam Smith (D-9), Rick Larsen (D-2), Cathy McMorris Rodgers (R-5), [Norman D. Dicks \(D-6\)](#), [Patty Murray \(D\)](#),