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Elnora IN 47529  
7 March 2005

SUBJ: Comments on Proposed NSPS Regulations-RIN 3206-AK76/0790-AH82

I invite your attention to the above subject line.

I don't believe Congress will stand by and permit one individual, who is appointed and not elected, to destroy the Civil Service System which has been active since 1883. Surely Congress does not intend to return to patronage or the Spoils System.

Some serve their country in a military capacity, others through Civil Service. Do the commercial businesses insist on their employees taking an oath of loyalty when they enter employment? Civilian Personnel does take that pledge without reservation. Because our government is concerned about continuity, no matter how many presidents or secretaries come and go, the civilian force has its mission and must accomplish that mission. There is always accountability.

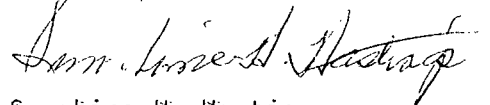
Sometimes an individual will walk into an office and immediately wants the file cabinet over there, the computer right here, my desk facing this way and the liquor cabinet in the corner. After a surprisingly short time, it is discovered that the original arrangement was best.

I had written a much longer letter but then my AARP magazine arrived and I read the article, "Compassion Fruits". As a result you now have a much shorter version. I do hope you will give this your best attention. It is deeply hoped that Congress will re-assume their control.

Consider: if an individual is going to re-invent the wheel, he should at least be a qualified wheelwright.

Blessing is found along the pathway of duty.

Sincerely,



Sunshine H. Hastings

9901.355 Setting Pay Retention

The rules have not been written yet. Do not trust DoD to make rules that are fair to employees.

9901.361 Premium Pay

Gives Secretary of Defense the authority to do anything they want to pay, overtime, and benefits. Congress is totally abrogating their responsibility.

**Subpart D - Performance Management**

9901.405-406 Setting and Communicating Performance Expectations

Expectations can change throughout the year. Can be used to manipulate outcome.

9901.407-408 Monitoring Performance and Providing Feedback

This is no different than the present and is what they say is the problem. If this isn't done properly, the rest is doomed to failure. So what is the point in doing this at all?

9901.409 Rating and Rewarding Performance

Doing away with Veterans preference and RIF. They are going to use your rating of record for RIF, but don't know how. Appeals are a joke! Another trust me deal.

9901.511 Appointing Authorities

Will create new positions and appointments for DoD. Would allow Supervisor to intentionally give low rating to a good performer to reward a non-performer friend with additional pay points. If this is appealed and won by good performer it wouldn't change their payout.

9901.512 and 516 Probationary Periods and Internal Placement

Currently probation periods are set for 1 year. With this spiral the probationary period will change whenever you change positions. If they move you from one job to another you will always be a probationary employee and would have no rights at all.

**Subpart F- Workforce Shaping**

9901.601-604 Purpose and Applicability

This give the Secretary of Defense the authority to change anything he wants, whenever he wants with no accountability.

9901.605-606 Competitive Area and Competitive Group

Adding additional criteria, which will make it impossible to advance.

9901.607-608 Retention Standing and Displacement

Doing away with bumping and retreating. This section will also make Veterans Preference meaningless.

**Subpart G-Adverse Actions**

9901.703 Definition

This is in conflict with 9901.343

Comments regarding NSPS

Subpart A - General Provisions

9901.102 Eligibility and Coverage

Personnel Demonstration Laboratories are supposed to be exempt from both Human Resources and Labor Relations aspects until October 2008. DoD is trying to implement the Labor Relations sections across the board beginning in July 2005.

9901.106 Continuing Collaboration Process

Collaboration without any obligation to an agreed outcome is meaningless for employees and unions

Subpart B - Classification

9901.201 - 231 General, Classification Structure, Classification Process, Transitional Provisions

These sections give no detail, only ideas that will be figured out later. This is unacceptable since there is only collaboration and no binding negotiations on these subjects.

Subpart C - Pay and Pay Administration

9901.301 - 334 General, Overview of Pay System, Setting and Adjusting Rate Ranges, Local Market Supplements

Even though total money for salary will remain the same thru 2008 there is no objective way of distribution. After 2008 the money may not even be there.

By not adjusting the minimum rate in pay band DoD avoids having to pay a cost of living raise.

Within a single pay band there can be multiple pay levels depending on job series

Locality pay or Local Market Supplement, which is supposed to be an adjustment for the cost of living in a particular area, will be used as a manipulative tool to pit different segments of the workforce against each other. This will cause significantly lower pay of technicians in an area where there are not already high paying complex electronics jobs in that area. This would reduce standard of living in those areas and produce less tax base and revenues and further depress these areas of our country

Locality Pay (Local Market Supplements) can be withheld for performance, when it is a cost of living for the area, which has nothing to do with performance

9901.343 Pay Reduction Based on Unacceptable Performance and/or Conduct

Supervisor can reduce your pay by 10% at their whim on purely subjective material and opinions.

9901.344 Other Performance Payouts

Can increase pay based on purely subjective opinions.

9901.352 Setting Pay Upon Reassignment

This can be used to either reward or punish, without any oversight, by randomly allowing managers to reassign people without merit or cause.

9901.353 Setting Pay Upon Promotion

It will be possible to get promoted but actually have a reduction in pay.

9901.354 Setting Pay Upon Reduction in Band

Loss in pay or grade is no longer an adverse action.

9901.917-918 Duty to Bargain and Consult and Multi-Unit Bargaining

Basically does away with bargaining. Sets unrealistic time frames. Allows going to third parties at anytime, that is always favorable to management. If management decides they don't want to talk to the union about anything all they have to do is write a regulation about it and this makes it non-negotiable. Can force more than one union to be bound by whatever one unit and management conspire about.

9901.919-920 Collective Bargaining Above the Level of Recognition and Negotiation Impasses and Grievance Procedures

Secretary has sole discretion to determine what will be negotiated and at what level. If negotiation don't go the Secretary's way it is then submitted to a board he appoints for resolution. This makes impasses a joke.

9901.922 Grievance Procedures

This adds restrictions to what can be grieved at all.

9901.923 Exceptions to Arbitration Awards

Makes a joke of the Arbitration process. If something were to go to arbitration and the employee and union wins, the agency can deny the arbitrators award by making false accusations about National Security etc.

9901.924 Official Time

DoD will try to restrict Official time for unions to represent.

9901.925 Compilation and Publication of Data

DoD doesn't have to live up to any remedies to appeal processes if not completed by date this goes into effect.

9901.704 Coverage

Probationary employees are not covered by adverse action procedures and in other sections they can make you a probationary employee at their whim through reassignment. So therefore you could remain a probationary employee forever.

9901.712 Mandatory Removal Offenses (MRO)

Gives sole authority to Secretary of Defense to determine what offenses would be considered mandatory removal offenses. Only the Secretary can change the decision on appeal.

9901.713-716 Mandatory Removal Offenses (MRO)

An employee's notice period can be as short as 5 days if employer believes there has been a crime committed, even if there is no proof. It would now give the agency the authority to disallow employee's representation of choice based on agency discretion.

**Subpart H-Appeals**

9901.807 Appellate Procedures

MSPB and the appeals process would be rendered meaningless under this section. You would have to show that an adverse action decision was totally without merit and egregious in nature. The agency is no longer responsible for the cost you incur in your appeal, including attorney fees and lost wages.

**Subpart I-Labor Management Relations**

9901.905 Impact on Existing Agreements

Current negotiated agreements will be null and void if they disagree with any part of the regulations or any part yet to be published, guidance or implantations requirements from DoD.

9901.907-909 National Security Labor Relations Board (NSLRB) and Federal Labor Relations (FLRA)

The Secretary of Defense will appoint the National Security labor Relations board and they will answer to him. No accountability for their actions. They will replace FLRA in all hearings.

9901.910 Scope of Bargaining

It prohibits management from bargaining subject matter that is currently permissible by law. This section states that all collective bargaining is gone.

9901.912 Determination of Appropriate Units for Labor Organization

It limits the ability of employees to be represented by a labor organization based on voting requirements of the regulation.

9901.914 Representation Rights and Duties

Doing away with employee's rights to have union representation when discussing personnel policies, working conditions, organizational practices, etc. It also restricts union's rights to be present during criminal investigations. Imposes standard of conduct or representative ability of a union representative to express themselves when performing their representative duties. Restricts ability to represent employees by denying information necessary to pursue the case on top of shortening the cycle times.

9901.916 Unfair Labor Practices

If our contract or collective bargaining agreement conflicts with rules or regulations, there will no longer be a ULP to enforce those regulations.

Anthony McElroy  
1706 Lincoln Drive  
Wylie, TX 75098

March 4, 2005

DoD/OPM

Opposition to Aspects of the NSPS

Sir or Madam:

I am a current DoD employee in the Acquisition Corps and I am opposed to many aspects of the way DoD proposes to implement the NSPS. I am particularly opposed to the removal of seniority in RIF procedures. As proposed, the NSPS reliance on performance ratings to determine retention in RIFs will result in:

- unfair removals;
- favoritism;
- excess subjectivity; and
- likely descrimination against older employees.

Background:

I am currently a DoD GS-13 Supervisory Auditor. I am a CPA with an MBA with an emphasis in Information Systems. My last performance rating was Outstanding (the highest rating) and I received a bonus award. I have over 25 years service with the agency for which I proudly work.

Comments:

In financial/acquisition field, it is often difficult to create realistic and objective performance standards. There is a great deal of subjectivity in any rating system used with professional-type employees. Because of this, the over reliance upon performance ratings to determine RIF retention will be rife with favoritism, distortion, errors, and out right cronyism.

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The subjectivity in the rating system reflects such things as poorly written performance standards, differences in the application of the performance rating systems by different managers, personality conflicts, and in some instances reprisal against persons whom may be trying to protect public interest but who may run afoul of a particular manager or straw-man metrics.

I believe that in RIF situations, the balance between performance ratings and seniority should be used. The use of seniority as the largest weighted factor would result in a more objective and fair RIF system.

Seniority is:

- Objective
- Readily determinable
- Not subject to management manipulation
- Historically accepted.

Bear in mind, that I believe performance should be considered in RIF situations, but the wholesale failure to consider seniority will result in poorer public service.

Note also, there are many other features of the NSPS that I do not like. Frankly, the system seems to be anti-employee while not really doing anything to enhance the ability of public servants to do their jobs. Other than some administrative changes that likely would remove some due process, there is no improvement in the actual measurement or performance of federal employees.

Regards,  
Anthony McElroy

