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I am opposed to the following new Proposed National Security Personnel System rules, Docket #NSPS 2005-01, RIN - 3206-AK76 or 0790-AH82:

Subpart B - Classification

Para 9902.211-212, 9901.221-222 - Pay Bands.

The proposed regulations do not actually provide details; they merely say that DoD will issue internal policies covering the classification system at some future date. OPM's final determination will not be subject to further review or appeal.

Para 9901.231 and 9901.373 - Conversion.

There are no assurances in the regulations that they will be made whole, however, and given pro-rated amounts towards their next step or career ladder promotion.

Subpart C - Pay and Pay Administration

Para 9901.313 - National Security Compensation Comparability.

DoD gives itself the right to lower overall payroll amounts to less than other federal agencies. DoD makes no promises to try to ensure that any individual employee is not disadvantaged because of conversion to NSPS.

Para 9901.311, 9901.321-323 - Setting and Adjusting Rate Ranges.

As a Federal employee under the GS system, I might be getting 3.5% that year, but DoD will not have to give that amount to NSPS employees.

Para 9901.331-334 - Local Market Supplements.

Locality pay would no longer be given equally to all employees in the same local area.

Para 9901.341-342 - Performance Payouts

The regulations provide little detail. At DoD's discretion, some pay pools might have proportionally less money than others, leaving smaller amounts for even the top performers.

Para 9901.344 - Other Performance Payouts.

Give one excellent employee 4 shares and give another excellent employee with the same rating 5 shares. The second employee will get a bigger pay increase than the first based solely on that supervisions decision--total inequality!

Subpart D - Performance Management

Para 9901.405-406 - Setting and Communicating Performance Expectations.

It is hard to imagine managers, many of whom fail to have any performance discussions with their employees, now communicating constant changes in expectations. Supervisors will be expected to involve employees in the development of their performance expectations, however, the final performance expectations are at management's discretion.

Para 9901.407-408 - Monitoring Performance and Providing Feedback.

DoD implementing issuances will set up procedures for supervisors to use to develop employee performance and address poor performance. This is no different from the current appraisal system, which is notorious for its failure to adequately document, motivate, deal with poor performers, or reward employees, with no indication of why NSPS would be different.

Para 9901.409 - Rating and Rewarding Performance.

There will be an internal process, not a negotiated grievance process, to challenge a performance appraisal rating. And there will be no process, not even an internal one, for challenging a performance payout. While NSPS will make the rating far more important than it is now, it will take away the right that bargaining unit employees currently have to appeal that rating to an outside arbitrator.

Subpart E - Staffing and Employment

Para 9901.512 - Probationary Periods.

No criteria are included for determining the appropriate length of probationary periods. Since probationary periods will be set for employees and not jobs, persons appointed to the same position could serve different probationary periods. An employee appointed to a given position in one part of the country could serve a different probationary period from someone appointed somewhere else. A preference eligible, who has completed 1 year of a probationary period, would have adverse action and appeals rights.

Para 9901.516 - Internal Placement.

The proposed regulation does not say what happens to an employee who does not complete an in-service probationary period successfully.

Subpart F -Workforce Shaping

Para 9901.516 -601.604

This means a supervisor could give one excellent employee 4 shares gives another excellent employee with the same rating 5 shares. The second employee will get a bigger pay increase than the first based solely on that supervisions decision--total inequality! The regulation is stated very broadly. Conceivably, one could compete for retention based on one's "loyalty" or how well one "gets along."

Para 9901.605-606 - Competitive Area and Competitive Group.

Current OPM regulations include only geographic location and organizational unit. "Competitive Group" is the NSPS term for competitive levels. OPM regulations base placement in a competitive level only on the employee's official position description (PD). The proposal allows the PD to be supplemented by "other applicable records that document the employee's actual duties and responsibilities."

Para 9901.607-608 -Retention Standing and Displacement.

Performance rating is now of a greater weight than seniority.

Subpart G - Adverse Actions

Para 9901.704 - Coverage

Employees serving a probationary period will not be covered by the adverse action procedures, except for preference eligible veterans who have served one-year of a probationary period. Adverse action procedures also will not cover terminations of temporary of term promotions that return an employee to the position promoted from *or a different position in a comparable pay band.*

Para 9901.712 - Mandatory Removal Offenses.

The Secretary has the sole, exclusive, and unreviewable authority to determine what offenses will require removal as the only acceptable penalty or to migrate that penalty.

Para 9901.713-716

Under NSPS, an employee's ability to reply appears to end prior to the end of the proposed notice period.

Employees believed to be a threat to themselves, others, or government property can be reassigned, required to take leave, or placed in a paid, non-duty status. Notice periods can be shortened to 5 days if the employer has reasonable cause (not defined). There are no indications that the employer would have to have any actual knowledge of a criminal investigation being conducted or actual charges being filed against the employee.

Apparently, the Department also will be granted the power to determine for itself what causes constitute precedent.

Attorneys Fees.

If management says that an employee is guilty, but he or she is found innocent on appeal, it can always quibble that facts came out in the hearing that it didn't know, so DoD should not have to pay attorney fees. Once again, DoD is trying to avoid accountability for its actions.

DoD also will be granted the power to determine for itself what cases constitute precedent.

Subpart H - Appeals.

Appellate Procedures.

Employees will not be afforded interim relief or stays of actions unless ordered by the full MSPB, not just an administrative judge. Department has the sole, exclusive, and unreviewable authority to place the employee in an alternative position or on excused absence pending final disposition of the case.

Communication of Charges and Performance Expectations

If management mistakenly accuses an employee of one thing, but then claims it really meant something else, the employee is supposed to be able to figure out what management really meant, and present a good case on his or her own behalf.

Under NSPS, managers will be expected to change and modify performance expectations all during the year. DoD seems not to want them to be held accountable for their communication of those expectations, rather, their miscommunication must be upheld by MSPB.

Subpart I - Labor-Management Relations

Para 9901.905 - Impact on Existing Agreements.

Any provision of a collective bargaining agreement that is inconsistent with NSPS will be unenforceable once it is covered. The Secretary can cancel that provision at any time.

Para 9901.910 - Scope of Bargaining

Para (a)(1)

Not only would managers not be required to bargain over the procedures they will observe in exercising their authorities in paragraphs (a)(1) and (2), they would be prohibited from bargaining over them. Management would only be allowed to consult over those procedures. The regulations say, "Management retains the sole, exclusive and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in paragraphs 9901.910(a)(1) and (2) to deviate from such procedures, as necessary." Management is not even required to abide by any procedures it develops unilaterally.

Para (a)(2) and (3)

Determine the numbers, types, pay schedules, pay bands and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, method, and means of performing work.

The rights in *italics* above, used to be things managers were allowed, but not required to bargain. NSPS would tie their hands and prohibit them from bargaining these things. It is hard to see this As contemporary and flexible.

"Foreseeable," "substantial," and "significant," are undefined and subject to abuse by managers who want to evade their bargaining responsibilities.

The proposed regulation removes any duty to bargain over arrangements for the routine assignment to specific duties, shifts, or work on a regular or overtime basis.

The proposed regulations allow but do not require managers to give any advance notice at all.

Para 9901.912 - Determination of Appropriate Units for Labor Organization Representation.

Office of Special Investigations. **Note:** A similar provision was removed during the DHS Meet and Confer. This right does not apply to meetings for the purpose of discussing operational matters where any discussion of personnel policies, practices or working conditions is a reiteration or application of existing personnel policies, practices, or working conditions; is incidental to the announced purpose of the meeting; or does not result in an announcement of or a promise to change an existing personnel policy(s), practice(s), or working condition(s). Under NSPS, a manager could call a meeting to discuss ways to better accomplish a task and exclude the union because it is strictly about operational matters.

Para 9901.914 - Representation Rights and Duties.

The employee will still have the right to request a union representative, but, the right will not apply to investigations conducted by the Offices of the Inspectors General and other independent Department or Component organizations whose mission includes the conduct of criminal investigations, such as Army Criminal Investigation Division and the Air Force Office of Special Investigations. **Note:** A similar provision was removed during the DHS Meet and Confer.

Standards of Conduct for Union Representatives.

The standards of conduct for employees include an expectation of deference to superiors. A union representative who bangs on the table while loudly insisting, "NO!" is displaying behavior that might not be tolerated by a subordinate. The whole idea of protected activity is threatened here. This is another provision that DHS put forward and then dropped.

DoD managers will not have to disclose information if they believe that adequate alternative means exist for obtaining the information, or that proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without the information. Managers would just say, "You don't need that to talk to me."

Information Requests.

DoD managers will not have to disclose information if they believe that adequate alternative means exist for obtaining the information, or that proper discussion, understanding,

Para 9901.917 - Duty to Bargain and Consult.

Either party may refer the matter to FMCS for assistance at any time. **Note:** The supplementary material in the beginning of the regulations says, "Midterm bargaining...must be completed within 30 days or management will be able to implement the change after notifying the union." It goes on to say that either party may refer the matter to the NSLRB for impasse resolution. This appears to be an inconsistency. Not only will Department-wide regulations or policies be a bar to bargaining under NSPS, but even Component-wide regulations will preclude bargaining.

Para 9901.918 - Multi-Unit Bargaining.

Any party may request the services of FMCS to assist with these negotiations. The unions may request multi-unit bargaining, but the Department has the sole and exclusive authority to grant the request.

Multi-bargaining will not be subject to ratification because, according to DoD, "...such efforts contradict the basis for such negotiations: timely, uniform application of policies."

Para 9901.919 - Collective Bargaining Above the Level of Recognition.

The Secretary has sole and exclusive authority to grant the labor organizations' request. The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this section.


These agreements will be subject to agency head review but not to ratification.

Para 9901.920 - Negotiation Impasses.

Nothing in this section precludes judicial review of any portion of a decision addressing a negotiability dispute or unfair labor practice charge.

Para 9901.919 - Grievance Procedures.

NSPS excludes performance appraisal ratings and mandatory removal offenses from the scope of the grievance procedure.


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