

16 March 2005

Program Office
National Security Personnel System
Attn: Bradley B. Bunn
1400 Key Boulevard
Suite B-200
Arlington, Va 22209-5144

Dear Sir:

Enclosed are Comments on the National Security Personnel System.

Respectfully,

A handwritten signature in cursive script, appearing to read "Marilyn Merry".

MARILYN MERRY
5520 Scotts Pond Drive
Williamsburg, Va 23188

P-0306

"Comments on Proposed NSPS Regulations -RIN 3206-AK76/0790-AH82."

For the Record - I attended the Senate hearing in 2003 on the NSPA and I was offended by the way Secretary Rumsfeld, Dr. Chu and other attendees bashed DoD employees with comments about misconduct, sexual harassment and credit card fraud. It was as if DoD employees had not taken a direct hit on September 11, 2001. The director of GAO and unions called for oversight. The need for changes in the system seemed to be completely the fault of the employees and not because of out of date policies, inefficiencies or poor management. Also, the unions seemed to have been blamed for obstructing national security. To the best of my knowledge, the union has never stood in the way of national security. Those union members in DoD are employees too, loyal, dedicate, hard working and patriotic employees.

I urge and beg Secretary Rumsfeld not to discontinue annual pay raises because of the price DoD employees have paid since 9/11. Many employees cannot afford homes, to send their children to college or have the things they deserve because of their existing pay. To recommend cutting out annual raises would be adding insult to injury especially since pentagon employees took a direct hit and many died on 9/11 and just days ago face another threat to their safety and security. The annual pay increase would be a small price to pay our military and civilians employees since neither history or this new system can change the fact that they took a hit during 9/11 and still face challenges and dangers in war zones like IRAQ. They continue to do a fine job.

The Case for Action

September 11, 2001 and subsequent events after that were cited as part of the reason and need for the changes to the personnel system when in fact changes have been discussed for years. OPM published a report titled, "**Broad Banding in the Federal Government**," prepared by Brigitte W. Schay, PhD in February 1993. The report referenced the Navy demonstration projects implemented in 1980 and the National Institute of Standards and Technology demonstration project legislated by Congress and implemented in 1988. Another project "The Pacer Share" demonstration project began in 1988 at McClellan Air Force Base in California. The report also referenced (3) three non-title 5 agencies: the DoD Non-Appropriated Fund (NAF) activities, GAO and the CIA bands for Secretaries.

Another report titled, "**Modernizing Federal Classification: Operational Broad-Banding Systems Alternatives**" by the National Academy of Public Administration, dated 1995 and 1996 printings, ISBN-0-9646874-9-6(pbk) list Diane Disney as a DoD agency advisor. It also list other DoD agency advisors such as Steve Freeman, Wynn Hasty, George Morgan, Al Ressler, James Rhoads, Carol Ashby Smith, and Betty Welch. Other DoD officials were listed as classification advisors.

The point is that the changes in the DoD Personnel system had been in the works for years and not because of September 11, 2001 or national security. Also, in 1997 I was part of a team when the National Imagery and Mapping Agency (NIMA), now the National Geospatial-Intelligence Agency (NGA) changed its personnel system.

General Provisions—Subpart A

§9901.106 My proposal is that the Secretary consult/meet with the largest government employee representative (AFGE) and the same number of unions (41) and union leaders (80) as he met with in 2004 to discuss the design elements of NSPS. Another option would be to allow all the unions represented in DoD to participate. Since over 10,000 comments, suggestions, and ideas were considered 41 unions and 80 leaders seem to be a small number to consult.

Pay and Pay Administration---Subpart C

Annual pay raises should continue. The country owes DoD employees, especially those at the Pentagon. I strongly urge a continuation of the annual pay raises.

Adjusting Rate Ranges and Local Market Supplements: DoD will determine rate range adjustments and local market supplements considering...availability of funds...and other relevant factors. If this means it is possible that employees **may not get raises at all** notification should be provided to them well in advance and not at the date of a performance pay out.

Rating Methodology/Performance Payout: The contribution factor, control points and shares seem to be methods of adjusting the performance ratings unfairly, thus, denying employees of money they deserve. The Extraordinary Pay Increase (EPI) seems to be a good idea, however, a specific timeframe should be set to grant this type of increase which would greatly impact a pay pool unless funded from another source. Hopefully, one person would not be granted all the money in a pay pool causing alienation and isolation. The rationale of the other employees could become that if one employee received the maximum shares or got most of the money let him/her do all the work.

Reduction in Band: For an unsatisfactory performance rating the proposal of a **10% Reduction in Pay or larger** if needed to place the employee at the maximum rate of the lower band is a slap in the face of all DoD employees. They already paid the ultimate price for most of us in the country during 9/11. I suggest what I will call "**Recovery Pay**" for the loss of 10% or more if action must be taken as a last resort and after all efforts are exhausted to improve the performance/conduct of an employee. The recovery period should be no less than (5) five years.

Performance Management —Subpart D

Performance and Behavior Accountability: Accountability is a yes, conduct should remain separate from performance issues. If performance is due to lack of training, poor supervision, inability to perform because of skills or resources, etc. management has an opportunity to correct itself and the employee. This is double jeopardy for the employee to have a disciplinary record or charge and possibly receiving no performance pay. **If you considered attitude and behavior, many people would give Secretary Rumsfeld an unsatisfactory rating.** Also, attitude does not mean a lack of talent, poor performance, lack of knowledge, nor does it mean there is no commitment to the mission or that a person is unpatriotic.

§9901.341(a)(2) and §9901.409(b) seem to allow a change to an employees' rating at **any time** and is subject to a determination that an employee's current performance is inconsistent with that rating and that an official may prepare a more current rating of record...is unfair and a timeframe should be given to it if the appraisal score is lowered which would deny an employee money and possibly a promotion, training and other opportunities.

For the design and internal administrative process of employees seeking reconsideration of their performance ratings I suggest that as well as the employee representatives being involved that a cross-section of DoD employees be involved, employees at all levels.

Staffing and Employment—Subpart E

Require contractor to staff jobs with DoD employees once determinations have been made to outsource, downsize, reshape the workforce, realign and close bases and RIF. Also ask those contractors to hold job fairs on the premises for affected employees or at a central and convenient location to be determined later.

§9901.607(4) Tie breaking procedures should be established well in advance of a RIF and published.

Workforce Shaping—Subpart F

Great emphasis was also placed on performance under the old system. The highest rating such as an Outstanding Performance Rating granted **20 years** for RIF purposes; The rating just below the highest granted **16 years** for RIF purposes and the Satisfactory/Success Rating granted **12 years** for RIF purposes. Will the new system grant more time since more emphasis will be placed on performance?

Subpart G—Adverse Action

§9901.715(a) The 10 day reply period running concurrently with the notice period seems unreasonable. My proposal is that the reply period be after notification is received. Also, 5 days to reply to a criminal charge seems unreasonable since most of the facts probably cannot be gathered in 5 days. My proposal is that the reply period be after notification, especially if imprisonment is possible.

Subpart H—Appeals

It appears as if the Secretary or Department has more jurisdiction than the MSPB or boards. The first time an unfavorable decision is reached against the Department the administrative judges will not be retained and the board members will be sent packing after their terms expire.

The appeals systems seemed to be bias and suggest that employees or employee representatives need not appeal, there is no chance of winning.

Labor-Management Relations—Subpart I

6. National Security Labor Relations Board: Appears to be a conflict of interest already and not credible if the Secretary is able to appoint all members? Board should probably be a **nonpartisan** group. NSLRB appointed by the Secretary in consultation with the OPM Director is a joke because the Secretary is not forced to accept anyone's recommendations.

7. Management Rights: My proposal is not to expand the list of nonnegotiable subjects in section 7106 to include...the numbers, types, and grades of employees and the technology, methods, and means of performing work because of upcoming BRAC determinations, contracting out, and hiring of non U.S. citizens, etc. Will contractors and non U.S. citizens be subjected to the same scrutiny as DoD employees such as drug testing, specific behavior, conduct, performance and security requirements?

10. Grievance: My proposal is that the three additional matters (pay, rating of record issued under Subpart D and mandatory removal actions) **not be excluded from the negotiated grievance process until development of the formal appeal processes and notification to the employees of the impact the performance rating will have on their pay**. Employees should be notified that a rating of record with a score less than a certain value could mean smaller performance pay or no performance pay. Also, in as much as a promotion involves money as proposed in Subpart C with a "fixed percentage" and equivalent to the value of a promotion to a higher grade within the GS system I am sure the best or worst rating an employee can receive will be a factor in the promotion process.

§9901.912(b)(7) A mechanism should be put in place to **fully verify** that the employees are engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security. This is the language that enabled the Director of NIMA, now NGA to declare that all employees in the agency had those duties, thus, terminating the bargaining unit when all employees covered by the union bargaining unit did not have those duties. Some notice should be provided to the union prior to the announcement (not the day before the public or official

announcement) and union officials should be granted time to complete all issues on the table as well as time (no less than 2 years) to vacate any premises depending on the number and locations of bargaining units.

§9901.914(d)(4) If the level of bargaining is delegated, who gets to delegate for the union, the Secretary?

Other Comments

NSPA is an ambition effort, unless using existing systems, 2009 will not be enough time to design, implement, test, adjust and correct system. Experts state that (5) five to (7) seven years is about the right timeframe. NGA when I retired was still tweaking its system. The promotion process changed every year, the performance pay angered people when the contribution factor was used, thus, causing the current Director to have to allow a higher one for all employees one (1) year. The name of the system WF21 had to be changed.

Marketing of System

There is no mention of marketing this new system to employees thus making buy-in difficult. Training for managers and employees on this system is extremely important, especially on the new performance management concepts and terminology.

Improvement in benefits

Additional life insurance for DoD employees at no cost to them since national security responsibilities are greater since 9/11 and DoD employees were directly attacked.

Additional monies for transit subsidies – Increase to \$600 per quarter to offset fare increases.

Other discounts and incentives, especially since their pay is being tampered with.