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March 15, 2005

Program Executive Office
National Security PE System
(Attn: Bradley B. Bunn)
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Subject: Comments on proposed regulations - RIN 3206-AK76/0790-AH82

Dear Sirs:

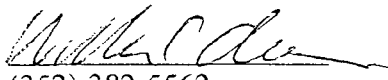
In accordance with the instructions published in Federal Register on February 14, 2005, the undersigned submits the attached comments regarding the draft regulations published by the Department of Defense on that date which would, when finalized, establish the "National Security Personnel System."

My interest in the proposed regulations stems from my years of service with the U.S. Department of Justice as the Assistant Director of Personnel for Labor-Management and Employee Relations, and the experience acquired as a federal sector LMR consultant during the years since my retirement from the Department in 1996.

[An earlier draft of these comments which failed to take into account that the Department was precluded from "waiving" the applicability of 5 U.S.C. 6120-32 to its employees by 5 U.S.C. 9902(d) (1) was submitted a short time ago. Accordingly, it is requested that this version, amended to reflect this limitation, be accepted in lieu of the earlier draft.]

Sincerely,

William C. Owen, Esq.


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BY: Vicki Fuller

The National Security Personnel System (NSPS) gives total discretion to the Department. It is understood the Department may be the Department of Defense or the Department of Army. In addition, the language in the Federal Register is so vague it is difficult to respond to it. With what is listed, it appears there is no real due process in the system and it has gone back 50 years to the 'spoil system'. The entire NSPS is open to be abused by favoritism and no impartial third party decisions (sole discretion by the Secretary of Defense or Department).

The NSPS destroys team work. It will be each individual out for herself/himself. One must make sure that he/she looks better than his/her counterpart even at the expense of the counterpart(s). This must be done in order to receive good performance appraisals which in turn may ensure monetary increases and promotions. Also, good performance appraisals help ensure protection in Reduction in Forces (RIFs).

In Reduction in Forces, one whose performance appraisals are great may just be in an area that is not as important to the mission as another area, and that employee could be affected by the reduction in force via narrow competitive areas. Under NSPS, the Department has the right just to cut off this function and RIF the employees who may have better performance appraisals and retention than other employees who are located in a more favored function and are not affected by the RIF.

It appears that one of the reasons NSPS was placed in to effect was to destroy the Federal labor unions. The restrictions on collective bargaining in essence have the potential to destroy any effect that labor unions have now.

The grievance and appeal routes are all in house with no outside due process---'fox in hen house effect.' "The Secretary, in his sole and exclusive discretion....."!!

Again, the National Security Labor Relations Board will be composed of at least three members who are appointed by the Secretary of Defense. This will not be an impartial third party. They are appointed by the Secretary of Defense and will work at the desire of the Secretary of Defense. If they were to decide anything that the Secretary of Defense was not in favor of, they would in all probability be removed from the Board.

In the management's rights part, the language is similar to today's language. However, in responding to the contracting out issues, this language is to do away with federal employees. Federal installations and the cities economy could be wiped out with this language. Contractors can move at will. It is not necessary for them to physically stay in the city or at the federal installation in order to do their job.

In pay bands, an employee could move from one area to another and lose pay (in a comparable pay band). This could be a voluntary transfer or an involuntary transfer. As many times as the agencies reorganize, it is conceivable that an employee who is moved

in reorganizations could lose pay through no fault of his/her own. Again, this is a tool that could be used via favoritism.

It appears the job descriptions are going to be so broad that a federal employee can be asked to do anything even if does not relate to his/her job.

In the performance-based pay system it states that pay for performance will result in a distribution of available performance pay funds based upon individual performance, individual contribution, organizational performance, or a combination of these elements. Again, the individual does not have a lot to say to where they are assigned within the organization. Also, performance appraisals could be based on favoritism by the rater. In addition, the question is available performance pay funds. Are there limitations to funds which may be given? Thus, it will leave some employees out of the distribution in favor of other employees who are favored by the Department.

Pay reduction based on unacceptable performance and/or conduct. It states that such reduction may not exceed 10 percent unless the employee has been changed to a lower pay band and a greater reduction is needed to set the employee's pay at the maximum rate of the pay band. To what extent will the NSPS allow the employee an opportunity to increase his/her performance whereby it will not be unacceptable? What is the conduct that can reduce salary? The 10 percent is false. It can be so much more. This is in place to motivate the employee to leave.

The unstricted hiring will allow the Department to hire at will and in essence violate any merit principles which are left (if any) under NSPS. It also allows the Department to be able to hire at any salary level they desire.

DOD has not yet issued implementation issuances regarding additional pay i.e., premium pay, overtime pay, compensatory time off, Sunday, Holiday, night pay, Annual premium pay for standby duty, criminal investigator availability pay, and hazardous duty differentials. Employees could conceivably be working way beyond 40 hours per week with no compensation. What will keep a manager from giving an employee work to do (almost at the end of the day) and state I need this first thing in the morning? The employee has the option of working over with no compensation or not doing the work after working hours and then being penalized via performance and/or conduct.

Now probationary periods are one year. The NSPS states the Secretary may establish probationary periods as deemed appropriate.....No one knows how long each employee's probationary period will be and if it will vary from position to position.

What are the Mandatory removal offenses? Will these be decided on a case by case basis? This is just another example of potential abuse. It states "the Secretary has the sole, exclusive, and **unreviewable**.....Again, there is no due process. This section goes

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on to say “Nothing in this section limits the discretion of the Department to remove employees for offenses other than those identified by the Secretary as an MRO.

What are the other offenses?

The NSPS is a total autocratic/dictatorship with no effective due process. This is not the American way!!!!