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THE NATIONAL SECURITY PERSONNEL SYSTEM—IS IT REALLY WORKING?

HEARING

BEFORE THE

READINESS SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

CHRONOLOGICAL LIST OF HEARINGS

2007

	Page
HEARING:	
Tuesday, March 6, 2007, The National Security Personnel System—Is It Really Working?	1
APPENDIX:	
Tuesday, March 6, 2007	33

TUESDAY, MARCH 6, 2007

THE NATIONAL SECURITY PERSONNEL SYSTEM—IS IT REALLY WORKING?

STATEMENTS PRESENTED BY MEMBERS OF CONGRESS

McKeon, Hon. Howard P. "Buck", a Representative from California, Readiness Subcommittee	2
Ortiz, Hon. Solomon P., a Representative from Texas, Chairman, Readiness Subcommittee	1

WITNESSES

Dominguez, Hon. Michael, Principal Deputy Under Secretary of Defense for Personnel and Readiness	3
Gage, John, National President, American Federation of Government Employees (AFGE), AFL–CIO	5
Lacey, Mary, NSPS Program Executive Officer	12
Masters, Dr. Marick F., Professor of Business, Katz Graduate School of Business, University of Pittsburgh	9
Stier, Max, President and CEO, Partnership for Public Service	7

APPENDIX

PREPARED STATEMENTS:	
Dominguez, Hon. Michael	37
Gage, John	47
Masters, Dr. Marick F.	66
Stier, Max	57
DOCUMENTS SUBMITTED FOR THE RECORD:	
United DoD Workers Coalition statement by Ron Ault	75
QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD:	
Mr. McHugh	85
Mr. Reyes	86

THE NATIONAL SECURITY PERSONNEL SYSTEM—IS IT REALLY WORKING?

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,
Washington, DC, Tuesday, March 6, 2007.

The subcommittee met, pursuant to call, at 2:05 p.m. in room 2118, Rayburn House Office Building, Hon. Solomon P. Ortiz (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. ORTIZ. This hearing will come to order, and if you can take your respective positions so that we can begin this hearing.

We want to welcome you all to today's subcommittee hearing under the Department of Defense National Security Personnel System. I want to thank our witnesses for making the time to appear before us today. We know that our Department of Defense (DOD) witnesses had to change schedules, and they had to alter their plans, but, again, we appreciate you being with us today.

Congress created the National Personnel System, or NSPS, in 2003. Changing the way DOD manages its employees is a monumental undertaking, yet this committee has not held any hearings on this system, and we have not had any hearings since back in 2003, and we have not had any oversight hearings since that time back in 2003. So today's hearing is important to illustrate what is working and what challenges we have out there.

Congress understands the Defense Department is facing tough challenges in managing its large civilian population of over 700,000 workers. We recognize that addressing the critical concerns of hiring, promoting and keeping talented individuals is essential to NSPS. The new system was intended to help DOD respond to 21st century human resources needs, but was it the right fix?

Regulations to putting the changes into place were published only two years ago in November of 2005. Some believe that not enough time has passed for us to see how NSPS is working. I disagree. Timely oversight is critical. Today's hearings will understand the problems that DOD may have found in the early stages, according to the elements of NSPS in place.

What is DOD hearing from its employees? How is DOD taking care of concerns that have been raised by its employees? What is needed to move the system forward? What, if any, legislation might be needed to correct any problems that might be found? What role

are the employees' unions playing in making the changes? These are only a few areas that we need to review.

Today we will hear from the employees' representatives themselves, who found many problems, leading them to file a lawsuit. The union is an important partner in managing the workforce, so we must understand their views of the system and listen to their voices.

Our other two witnesses are well known for their research on personnel systems. I look forward to your testimony.

But before starting, I would like to include a statement from the—for the record from the Metal Trades Department, American Federation of Labor-Congress of Industrial Organizations (AFL–CIO), on the behalf of the United DOD Workers Coalition.

And I would like to talk to my good friend from California Mr. McKeon for any remarks he might have.

[The information referred to can be found in the Appendix on page 75.]

STATEMENT OF HON. HOWARD P. "BUCK" McKEON, A REPRESENTATIVE FROM CALIFORNIA, READINESS SUBCOMMITTEE

Mr. MCKEON. Thank you, Mr. Chairman. It is good to be with you, and I thank you for holding this hearing to discuss the Defense Department's initial implementation of the National Security Personnel System.

Given both the size and scope of NSPS, which potentially affects nearly 700,000 civilian employees of the Pentagon, or about one-third of the federal government's nonpostal civilian workforce, NSPS is among the most important matters that will come before the subcommittee this session. This hearing will give the subcommittee members an opportunity to learn more about NSPS and to question the Defense Department and other stakeholders not only about NSPS implementation, but also about how NSPS has begun to affect the workforce.

Congress enacted NSPS because it believed that a new way was required for the Department of Defense to find a way to recruit, reward and retain our most talented employees, and to get the most out of the federal workforce.

Furthermore, the enacted legislation recognized that DOD, given its unique mission and the necessity for civilian employees to work hand in hand with the brave men and women who wear the uniform of our armed services, certainly had need for a personnel system that differed from the rest of the federal government.

As you know, NSPS implementation has begun for only a portion of the Department's workforce and is being enjoined for the bargaining unit employees until decisions are rendered by the U.S. Court of Appeals for the District of Columbia Circuit. We should deal with that court decision when rendered and when the implications of it are thoroughly analyzed and not before.

My focus is to understand more fully how well the Department is recognizing its challenges in starting a new civilian personnel system and whether it has begun to provide a system that truly does benefit both the Department and the magnificent civilian workforce it employs.

Mr. Chairman, Mr. McHugh is in an intelligence meeting and cannot be here today, but I would like to have questions that he will submit answered in the record if that is possible.

Mr. ORTIZ. Today we have a panel of witnesses who will discuss the Department of Defense National Security Personnel System. Our witnesses today are Michael Dominguez, Principal Deputy Under Secretary of Defense for Personnel and Readiness, and he is accompanied by Mrs. Mary Lacey, NSPS Program Director. And then we have other witnesses: Mr. John Gage, National President, American Federation of Government Employees; Mr. Max Stier, President and CEO of Partnership for Public Service; Dr. Marick Masters, Professor of Business, Katz Graduate School of Business, Pittsburgh.

Without objection, all of the written testimony will be submitted for the record, and we are going to try to see if we can stay within the five-minute rule so that we can be sure that everybody gets a chance to ask their questions.

So, Secretary Dominguez, thank you. You can open up with your statement.

STATEMENT OF HON. MICHAEL DOMINGUEZ, PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS

Secretary DOMINGUEZ. Thank you very much, Mr. Chairman and distinguished members of this subcommittee. Thank you for the opportunity to talk with you about implementation of the National Security Personnel System at the Department of Defense. And I agree with you, sir, and Congressman McKeon that an oversight hearing is welcome for us, and we welcome your interest in this.

NSPS is well under way. In fact, as of today we have close to 80,000 DOD employees operating under NSPS. Mrs. Mary Lacey, the program executive officer responsible for design, development, and implementation for NSPS, joins me here today, and together we will be happy to take your questions.

You called this hearing today to ask us if NSPS is working. Recognizing that we are still early in the implementation process, my answer is yes, NSPS is working. With Deputy Secretary of Defense Gordon England leading the NSPS transformation, the Department stays focused on successfully implementing NSPS. The design of NSPS has been well thought out, well managed, and extensively overseen.

We have moved very carefully and deliberately to design and implement a system that achieves the Department's goal for a flexible human resource system that is results-focused and performance-oriented. It is early in the journey as it will take years before the Department realizes all of the results NSPS was designed to produce, but we are already showing a powerful return on investment.

We are seeing an unprecedented training effort focused on performance management for employees and supervisors who are seeing greater communication between supervisors and employees. People are talking about performance, results, and mission alignments. We are seeing increased flexibility and rewarding exceptional performance. Finally, we are seeing positive movement in be-

haviors and in organizational culture. These early returns are cause for optimism as we continue to deploy the system.

Today, NSPS remains as vital to the success of the Department's mission as it was in November of 2003. This modern, flexible human resources management system improves the way DOD hires, compensates and rewards its civilian employees, while preserving employee protections and benefits, veterans preference, as well as the enduring core values of the Civil Service. It provides a performance management system that aligns individual performance objectives with DOD's mission and strategic goals. Successful implementation of NSPS will improve our ability to accomplish the DOD's mission.

The training component of NSPS deployment is one of the most extensive civilian-focused training initiatives ever undertaken in DOD. As of February 2007, about half a million training events have taken place. In addition to training on NSPS mechanics, supervisors were trained in soft skills, how to coach, monitor, and build a team. Employees also were offered soft-skill training, how to communicate, improve writing skills, and interact with their supervisor. Importantly, training was not and is not now a one-time event. Employees raise follow-up questions and concerns, and we respond.

By the end of next month, the total number of employees who will have transitioned to NSPS will exceed 114,000 more employees than most Cabinet-level agencies. That is substantial progress, and important attention that we have received from our senior leaders has enabled us to sustain motivation in this.

One of the key ingredients is program evaluation, and that applies to NSPS. The Department has an ongoing evaluation effort, a mechanism to monitor the effectiveness of NSPS and its effect on the workforce to ensure the system is delivering the results we expect. Evaluation process includes in-depth analysis of personnel data and statistics, employee surveys, structured interviews, and other methodologies.

We have gained considerable experience in evaluation from our personnel demonstration projects, and we are working closely with Office of Personnel Management (OPM) to ensure we have a rigorous, objective analysis and the data upon which to base our assessments.

This is an important feature of our Spiral implementation approach in which we expect to make incremental adjustments to the system going forward. In fact, based on feedback we already received from our employees and supervisors, we expanded our training program to include additional training on writing job objectives and performing self-assessments. We are working to improve the automated system that supports performance management, we developed a pay-setting guide, and we are developing a compensation guide that will soon be available to supervisors.

So to answer your question, NSPS is really working. We believe it is. We also know that fundamental organizational cultural change takes time, and it can't be achieved overnight, and we are taking the time to do it right.

And thank you for providing the opportunity, and I look forward to your questions.

Mr. ORTIZ. Thank you so much.

[The prepared statement of Secretary Dominguez can be found in the Appendix on page 37.]

Mr. ORTIZ. Mr. Gage.

STATEMENT OF JOHN GAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE)

Mr. GAGE. Mr. Chairman, members of the committee, my name is John Gage, and on behalf of the more than 200,000 civilian employees of DOD represented by AFGE, I thank you for the opportunity to testify today.

Since 9/11, the Bush Administration has taken every opportunity available to advocate for a profound erosion of Civil Service protections and collective bargaining rights for federal employees. First in 2001, the Bush Administration reluctantly agreed that the terrorist attacks necessitated federalizing airport security functions, But they also insisted that the legislation not allow security screeners the rights and protections normally provided to federal employees.

In 2002, the Bush Administration reluctantly agreed with Senator Lieberman that the creation of the Department of Homeland Security (DHS) was necessary; however, the Bush Administration insisted on a quid pro quo for that acquiescence, specifically that federal employees who were transferred into the Department would not be guaranteed the collective bargaining rights they had enjoyed since President Kennedy was in office. In addition, the Bush Administration insisted that the legislation, which was eventually signed into law, exempted the DHS from compliance with major chapters of Title V, including pay classification, performance management, disciplinary actions, and appeal rights, as well as collective bargaining rights.

In 2003, then-Defense Secretary Rumsfeld insisted that the national defense authorization bill include similar provisions which attacked the Civil Service protections and collective bargaining rights of 700,000 DOD civilian employees. Despite months of debate over serious objections raised by AFGE and Representatives and Senators from both parties, the national defense authorization bill granted DOD the ability to write regulations creating the new NSPS, a personnel system that removed many collective bargaining rights and Civil Service protections from DOD civilian employees.

During this onslaught, AFGE's support of collective bargaining rights and Civil Service protections for Federal employees has never wavered. Without these rights and protections, it will be impossible for the government to attract and retain high-quality employees, and our democracy as well as our national security will suffer.

Mr. Chairman, I am here today to urge the Congress to repeal the statutory authority for NSPS as provided under the 2004 Defense Authorization Act.

The Defense Authorization Act called for a new labor relations system ostensibly for DOD to engage in national-level bargaining with unions rather than negotiate the same issues at each local installation. In addition, the law addressed the need to retain an

independent third party to resolve labor-management issues. AFG strongly supported both of these principles.

However, DOD showed its disregard of the latitude given by Congress and, contrary to the statute, drafted NSPS regulations allowing DOD to waive chapter 71 of Title V in its entirety. Specifically, the relations go beyond the concept of national-level bargaining and instead virtually eliminate collective bargaining over matters that go to the very heart of employee issues, including overtime, shift rotations, flex time, compressed work schedules, safety and health programs, and deployment away from the work site.

In addition, the regulations eliminate the statutory right to collective bargaining by providing the Secretary unlimited power to remove any subject from bargaining by unilateral issuance.

DOD also showed its disregard of Congress and drafted NSPS regulations that replaced the current independent statutorily created Federal Labor Relations Authority and the Federal Service Impasses Panel with an internal board whose members are directed solely by the Secretary. This internal board is not independent as required by statute. The board's composition ensures that it will lack impartiality and thus undermine the credibility of the collective bargaining system among employees.

AFGE, working with the other 36 unions of the United Defense Workers Coalition, spent months participating in the congressionally mandated meet and confer process, offering DOD options and alternatives that would have changed and enhanced current procedures without sacrificing the fundamental employee rights that Congress intended to be safeguarded by the law.

We have produced and distributed a document entitled Contrasting Plans for the Department of Defense: Laborers Proposals for Positive Change; however, despite months of meetings, DOD failed to take the process seriously, and for all practical purposes ignored the coalition's proposals. DOD made clear they simply wanted unlimited authority with no effective outside review.

On the other side, the coalition took the process very seriously. We listened carefully to DOD concerns, made concrete proposals to address them in a constructive framework. We offered to engage in national-level, multiunit, multiunion bargaining. We also offered to speed up the time frames for bargaining to work with the new concept of postimplementation bargaining when necessary to protect national security and defense, and to engage in mediation, arbitration processes by mutually selecting independent arbiters in order to quickly resolve any bargaining disputes. We believe these changes alone would allow DOD to succeed in implementing new processes that would enhance the mission of the agency. But without having the requirements of chapter 71 and other normal bargaining procedures, DOD simply ignored the union proposals. Any deviation from any proposal was met with a simple notation that it was needed for national security.

At no time did DOD make any concrete showing how the failure to have any of these due regulations impacted national security. If DOD was acting in good faith, they could have made a national security explanation for each proposal. They had plenty of time to do it and did not. They have had, since 2003, to bring forward post–9/11 examples of the need for NSPS. The need simply does not

exist. It never did. And I might add since 2003, our locals are operating without incident under the current law.

Mr. Chairman, in my written testimony I have detailed the regulations' effect on individual appeal rights and pay. These regulations are as damaging to the rights of employees to appeal adverse actions and to have their pay system be free of political influence as they are to the collective bargaining system.

In conclusion, the NSPS envisioned by the DOD regulations is contrary to the 2004 Defense Authorization Act. The regulations are unfair to employees, and, if implemented, they will undermine the contribution to mission that DOD civilian employees have demonstrated so ably over the years.

On behalf of AFG and the coalition, Mr. Chairman, I strongly urge the subcommittee to repeal the statutory authority for NSPS.

Thank you.

Mr. ORTIZ. Thank you.

[The prepared statement of Mr. Gage can be found in the Appendix on page 47.]

Mr. ORTIZ. Mr. Stier.

STATEMENT OF MAX STIER, PRESIDENT AND CEO, PARTNERSHIP FOR PUBLIC SERVICE

Mr. STIER. Thank you. I appreciate the opportunity to be here.

My name is Max Stier. I am the President of Partnership for Public Service. We are a nonprofit organization dedicated to inspiring a new generation into government service and transforming the way government works. And the first observation I would make here is that it is kudos to you for holding this hearing. It is absolutely vital for committees such as yours to look at these workforce issues.

If you look across the government today, we face a number of challenges that ultimately come down to something that we would all agree is very basic, which is good government requires good people, and we need to ensure that we have the right people and they are given the rights, the resources, in order to meet the challenges of the future.

The 9/11 Commission said it best when they said the quality of the people is more important than the quality of the wiring diagram. Typically in Washington, we have an awful lot of time spent on wiring diagrams because they are easy, things you can do, you can feel, you can touch. You know they are finished once you have done it. The people issues are much more challenging, and they require sustained attention over a great deal of time and focus. And as I said, it is a testament to this committee that you are holding this hearing today.

I believe that there is a lot of common ground here. I believe that most folks would agree that the government has to do things in a different way than it was done in the past to meet the new challenges in the future. And people issues are core to the possible—to the success of government in achieving its ultimate mission.

The system we have in place today, with respect to personnel management, is largely a system that was created in a very different era. The personnel, the pay system was created in 1949, a time in which the kinds of demands we had on the workforce and

the kinds of demands we had on our government were very different than we have today.

You said it exactly right, and that is that the issue is we need to change. The questions are are these the right changes, and I think this committee has an incredibly important role in ensuring that those right changes are taking place.

So I would offer three recommendations to this committee from the perspective of a nonprofit, nonpartisan organization thinking about these issues across government.

First, with respect to the NSPS, we believe that you ought to move forward or allow the Defense Department to move forward with certain elements of the activity that is taking place, those elements that address hiring reforms, that address workforce reshaping, particularly the creation of a market-sensitive pay system that is more sensitive to employee performance issues.

The reason why I say this is that we are not operating within a vacuum. We have had extensive experimentation that extends back 25 years with these same issues. In 1978, the last time that Congress enacted a major reform of the Civil Service System, they provided a mechanism to test out different things, and that demonstration authority has been tested out at the Defense Department quite extensively beginning with China Lake in 1979. And one of the important facts to be focused on here is we have a record that ought to be looked at in terms of how we can bring additional changes to the rest of government.

In China Lake in 1979, 21 percent of the employees supported the demonstration project. In 1978, that number was 71 percent. We know some changes can work if they are done right. The key is good implementation.

Number two, we think we ought to be separating out the changes that are taking place in NSPS at least in two buckets. There are some changes that are primarily focused on performance management systems. There are others that are focused on labor relations and due process issues. Unlike with the first bucket, you do not have the same record with experience with respect to these changes in the demo projects on labor relations and due process issues. You do not have the same record to be able to rely on that these kinds of changes are necessary or actually promote more effective workforces. And we would advise this committee to treat those changes very differently.

Third, we think that the reality is that these changes do take a lot of time to understand and to be effectively put into place, and that the key for this committee is going to be ongoing oversight. And the key to successful ongoing oversight is going to require two elements. Number one, like with the demo project statute, we would advise this committee to require that there be an annual outside evaluation of what is taking place at DOD. That is part of the demo project. It is not part of NSPS. We think it ought to be.

We think there is a smaller set of indicators that this committee can be looking at on a regular basis that will enable you to have a better sense in real time about what is going on, and we provide in our written testimony an outline of what those categories ought to be, things like looking at recruitment, retention, skill gaps, performance distinctions. All data that is available to you has to be

done in collaboration with DOD. They collect a lot of information. You need quality of indicators, not quantity. But at the end of the day, you need real data that you can be looking at on a periodic basis to understand what is unfolding on the ground.

I look forward to any questions you might have and appreciate the opportunity to be before you today.

Mr. ORTIZ. Thank you.

[The prepared statement of Mr. Stier can be found in the Appendix on page 57.]

Mr. ORTIZ. Dr. Masters.

STATEMENT OF DR. MARICK F. MASTERS, PROFESSOR OF BUSINESS, KATZ GRADUATE SCHOOL OF BUSINESS, UNIVERSITY OF PITTSBURGH

Dr. MASTERS. Thank you. It is a pleasure to be here this afternoon. My name is Marick Masters, and I am a professor of business and public and international affairs at the University of Pittsburgh, where I direct a Center on Conflict Resolution and Negotiations. I teach in the areas of human resource management, negotiations, labor management relations. I have studied Federal-sector personnel issues for about 25 years. I have done—I did my dissertation in the early 1980's on the topic. I have also been a university administrator, and I have dealt with some of these performance appraisal systems in practice, actually evaluating professionals and professional staff.

I am also a coequity partner in a consulting firm. My two partners are retired Coast Guard vets; retired at the old age of 43, I might say. And I do a lot of consulting with management, mainly in the private sector, to some extent in the public sector.

I should also note in the interest of full disclosure that I am a former candidate for Congress. I ran in the 18th District in 1992 for the Democratic nomination, and I took some money from Federal employee unions and postal employee unions. I have tried to be objective. It hasn't tainted my viewpoint at all, I can tell you. I don't taint my viewpoint for anybody.

I am here to focus on the National Security Personnel System of the Department of Defense. I want to comment of four aspects of it: the plan overall, pay for performance, employee appeals and labor management relations. If you would like for me to comment in more detail, I would be happy to do so in writing.

I must admit I want to compliment the Administration for taking on a very difficult task. It is easier to criticize than it is to compliment, and I want to highlight those things that I think they have done right.

I believe very strongly in a strong civilian component. I have a son, Sergeant Masters, who is in the 3rd Infantry at Fort Stewart, Georgia. He has done two tours of duty. He is undergoing surgery for his knee next month. I hope he has got a good Army doctor or nurse. So I believe very strongly in promoting a civilian sector.

The NSPS plan, its final regulations, let me comment briefly on a few of those things.

It is very consistent, apart from the labor-management relations part, with trends in the private-sector research that has been done. There is nothing really new about what it is doing. There is grow-

ing use, numerous studies, I could cite you chapter and verse, about the use for pay for performance. If you are in the private sector and don't use pay for performance, they will look at you like you are crazy. There is an increased emphasis on performance management. That is true in government and the private sector.

There has been an increased use in nonunion discipline procedures, grievance procedures, those kinds of things, and a traditional role for that in the unionized sector. And there has been an increasing emphasis in both the union and nonunion sectors on negotiating flexibilities.

I prefer the term "organizational" to "managerial" flexibility because I think it implies a lot more to what management can do to move an organization forward. I applaud DOD for its efforts in this regard, and I think it is moving in the right direction, and I have worked with companies that have actually negotiated much more difficult things with unions to achieve some of the things that DOD has done.

Pay for performance. It is certainly complementary. What it is trying to do here—there are some concerns that I have, and I haven't had first-hand knowledge of this, so let me raise some concerns that I have.

I am concerned that there may not be enough money in the pay pool to receive the salary increases or bonuses that are meaningful. That is number one. You have got to give more than four, five, six, seven, eight percent. My doctoral student told me seven percent is the magic number, and he knows better than I because he just took his preliminaries in this area. You have got to have a meaningful amount of money.

The process is heavily based on supervisory ratings. There is no way of saying that you can do it systematically wrong. That is my concern about this. You can do things systematically, but you can still end up with the wrong result, and I have dealt with these kinds of things, evaluating professionals, and they are very subjective.

Now, I compliment DOD for the training that it has pursued in this. I have looked at some of the training materials, and they are very good. And for such a system to work requires employees and managers have confidence in the system.

Now I am going to skip ahead. I am not certain that that precondition is here. I would like to be able to talk to managers away from their supervisors and find out what they really think about this system and—but let me go to the—the adverse action part of it raises questions about procedural justice. I will skip over that and go to what I think is the fundamental weakness of this plan and what is the hurdle for making it realize the other objectives, and that is its labor-management system.

If I had given an assignment to somebody to say, I want you to design a flexible management system with labor-management systems consistent with national security, I may or may not have come up with this plan. If I had given an assignment to somebody and said, I want you to come up with a plan that eviscerates collective bargaining as much without explicitly outlawing it, I would have come up with this plan. And I have sat on the opposite side

of the table advising companies that this is what you should do if you want to do it.

So basically they have expanded management rights, they have shrunk the scope of bargaining, and they have created what is—you know, it is comical to call the Security Labor Relations Board independent. It violates all pretense of independence.

I shall not comment on the extent to which the unions have been involved so far in the design process, but I will say the meet and confer is a very low standard, as is consultation. I had an assignment as a doctoral student to rank public-sector laws as to what they extended to unions. Meet and confer is about the lowest thing that you can extend. All you have to do is hold a meeting, and you have met your obligation.

I might say a mind is like a parachute. It works best when it is open. I get the impression—I don't have any factual basis to say this, but I get the impression that the process could have been more open, and I think the courts agree with that.

I applaud DOD for taking on a difficult task. I applaud the Administration generally for paying attention to the management part of Office of Management and Budget (OMB), and I hope that these reservations are helpful in having them move forward on certain dimensions. But my principal concerns lie in the confrontational approach taken to labor. If you want them to go along for the ride, you might want a more collaborative approach than what has been done so far.

Thank you.

[The prepared statement of Dr. Masters can be found in the Appendix on page 66.]

Mr. ORTIZ. I am going to start off with one question, and then I am going to allow other Members to ask questions.

But the Government Accountability Office (GAO), when it reviewed the Department's implementation efforts, emphasized the importance of the employee buy-in to the new system. And what are the specific mechanisms that are in place for continuous employee involvement; and in particular how is DOD evaluating manager and employee feedback or how the new system compares with the old one, the performance appraisal process, improvement in measuring performance, the time it takes for managers to review employee performance, and the overall operation and strength of the system?

And I have a lot more questions, but maybe we can open up with this question, and hopefully maybe you can, you know, touch on it and enlighten us as to how this is going to happen.

Secretary DOMINGUEZ. Thank you, Mr. Chairman.

Let me go back to—I guess it was early 2004, spring of 2004, before Mary came into the picture, when Deputy Secretary England, at that time Secretary of the Navy England, became very involved in NSPS and helped us restructure it in a way that did exactly what you are talking about. We stopped the implementation of it and then went out and did a very extensive employee feedback and comment-gathering process. And that extensive involvement with employees through town halls, through focus groups, through Web things, through the Web, through surveys, through e-mail, through leadership, right? We went out and got leadership together, got

them understanding what needed to be done and then pushed them out to talk to people and receive feedback.

So we have made a major effort from the beginning to communicate with employees, to seek feedback from employees, and we have changed what we are doing as a result of that feedback.

Ms. Lacey can give you a lot more specifics, but, you know, I know that that feedback is ongoing. I have done the town halls. I have been out there and talked to people. I have grabbed commanders and pulled them into sessions where we talked to them about NSPS, talked to them about what their responsibilities are in NSPS and getting out and communicating to people, and leading that change face to face, nose to nose with people out there.

I mentioned in my oral statements a quite extensive performance evaluation, program evaluation activities that we do have underway.

So, Mary, do you want to add anything?

STATEMENT OF MARY LACEY, NSPS PROGRAM EXECUTIVE OFFICER

Ms. LACEY. Thank you, Mr. Chairman. Let me add a few things about systemic collection of information from employees.

We have a status of forces survey that we put out yearly or biyearly within the Department, and we are already—we have already added questions to that survey so we can get specific feedback on the National Security Personnel System from employees and supervisors, and, in fact, we have oversampled the population that is in NSPS to ensure that we do get robust data.

I have a Web site that I get hundreds of questions in, that we respond to questions from employees, but that tees up areas where they are concerned. And I use that to shape additional communication and training material that we need to put in the hands of employees and managers.

We are working already in capturing some of the information that we know from our laboratory demonstration experience and work with GAO and OPM that if we don't capture it now, we won't get it; but that is some of the feedback, the—actually what happened with the Spiral 1.1 employees, the first group in, so that we can capture that for evaluation purposes in the future. And in addition to that, we are continuing to have discussions with the unions that represent some of the employees in the Department of Defense.

So there is a multitude of methods that we are employing to continue to get the employee feedback.

Mr. ORTIZ. See, before I pass it on to my good friend from California, one of the things is that the five members that would be selected or have been selected to make the evaluation, you know, because when we look at all of the different workers, the workforce, there is different skills, different occupations, and if I was to be evaluating somebody, I want to be sure that I understand the skills that they perform. Otherwise I don't think I would be able to make a good evaluation.

I hope I am getting across—you know what I am talking about? If I am a mechanic, and I am supposed to be evaluating a me-

chanic, and I don't have that expertise, it would be very hard for me to evaluate that individual. But we can come back to that.

Let me yield to my friend from California.

Mr. MCKEON. Thank you.

As I stated earlier, this is important to address. I appreciate your testimony.

Based on your experience so far with NSPS, I would like each of you to tell me weaknesses that you have seen in the implementation of what you would do to change that, to overcome those weaknesses.

We will start with you, Mr. Secretary.

Secretary DOMINGUEZ. Thank you, Congressman. I will cover a little bit. Again, Mary has a lot more detail about it as the program executive.

From the lessons learned from the implementation of Spiral 1.1, we learned that we needed to move away from a fixed conversion date. We brought everybody in Spiral 1.1 in on one day. That was tough on a lot of organizations and tough on a lot of people, and one of the things we learned was why we need to do that, let us spread it out, give people a window, and then let commanders bring their organizations in when the mission allows and when they feel like their unit is ready to go. So that was a no-brainer, great fix.

The second is we got a lot of feedback from people about we need more training on writing performance objectives and doing feedback and doing self-assessments. So we bumped up the training in that area.

We need more IT tools to help people and supervisors do the performance evaluations and record it and—you know, and just streamline that process. We need more IT tools.

And then we need to be able to help managers figure out how to set pay. When you bring someone in, and you have got a pay band, instead of GS–7, where do I start them in their salary? How do I think about that? And in the performance evaluation and award, how do I think about the split between bonus and salary, and what should I be doing and considering about that?

So we are developing guidelines and tools and information for managers on those things, and that is the stuff that we heard.

And do you need to add anything?

Thank you, sir.

Mr. MCKEON. Mr. Gage.

Mr. GAGE. There has been little evidence of NSPS on our work sites, but I must say that when you insist on abrogating employee rights and protections in order to put in a new personnel system, this is no way to start, this isn't anything for the middle, and it certainly can't be the end.

The rights issue is extremely important to any acceptance of a new personnel system. When you come to some of the—our people who are veterans, they are tearing apart tanks on overtime down in Anniston, and you tell them that you are going to lose rights to put in a new personnel system, just not going to accept it, sir, and I think this abrogation of rights has to stop.

Mr. STIER. I would reiterate my earlier comment that, A, it is really too early to know what the consequences are in terms of both

pro and con, I think, in implementation. They have one performance cycle only with the first Spiral that is completed in January of 2007. And to me, I think the vital question right now is in addition to, as I alluded to earlier, separating out the different kinds of things that are taking place in the system, because I think there are some that have a background of support from the demo projects and some there don't, but I think the critical piece right now that I would advise this committee to pursue is to ensure that you are getting right data to understand on an ongoing basis what is happening. DOD is absolutely collecting very important information. You don't need to see all of that information, but you do need to agree to some small subset that is an appropriate representative from your perspective about what is going on on the ground.

I would also suggest that there is obviously a governmentwide requirement for a survey of employees. I think it is very important DOD's oversampling NSPS's population. But in addition to an annual selection of material, you can engage in pulse surveys of that NSPS population so that you can be looking at a more frequent basis at some of the impact that is taking place on the ground.

I think that they are going to be interested in much greater detail than you ever will be and should be, but that there is a small subset of indicators that you—I think would help your ability to ensure that that is—what is happening is what you want to see happen.

Dr. MASTERS. I haven't seen enough data to really comment about the progress so far with pay for performance, but I am very glad they are collecting a lot of it, and I would like to know what benchmarks they are looking for and how they measure the change they expect in evaluations. I commend them for doing all they have done so far.

But if I were to recommend a change, I would scrap the labor-management relations part of the regulations. I really think that that is the monkey wrench that is going to keep you from moving this organization forward.

Mr. ORTIZ. Mr. Loebsack.

Mr. LOEBSACK. As a new member of this committee, I am kind of on a steep learning curve as far as these issues are concerned, new Member of Congress, I should say as well. But I want to thank all of you today for your testimony, and in particular I guess I want to thank Dr. Masters for his comment about collective bargaining because I think they are right on.

I do have some questions also, Mr. Gage. I have some questions of Mr. Stier, for example.

You said at the outset there are differences from now and 1949. Maybe you could elaborate some of those differences other than the fact that it is 2007, and that was 1949, and maybe the national security issue that was part of that. But I think it is important for us to recall that in 1949, the Soviet Union exploded a nuclear weapon. In 1949, we were at the beginning of the Cold War, and the next year we had the Korean War. We have had a lot of national security threats, and I think this is important for the Honorable Dominguez also to keep in mind for people in DOD who adopted this system and are trying to implement this system.

I think there are differences—other differences. For example, I am sure Mr. Gage might very well agree with me that the labor movement is a lot weaker than it was at that time and an easier target than it was at that time.

Those are some of the things that immediately come to mind for me when I hear you say there are differences between now and 1949. But maybe you can either refute those differences that I mentioned or add to them.

Mr. STIER. If I might say, I am a Hawkeye from Iowa City.

Mr. LOEBSACK. That doesn't get you off the hook. I went to Iowa State.

Mr. STIER. Everyone has their weaknesses.

But in any event, I think in direct answer to your question, I have no dispute with the similarities that you are describing. I think fundamentally the nature of the government work force, the nature of the challenges that we expected to address has changed dramatically. So looking at the absolute demographics in 1949, and excuse me for round figures, but you are looking at a professional workforce of 70 percent clerical and 30 percent professional, whereas today it is the opposite. Now you have got 70 percent professional and 30 percent clerical. You are talking about a workforce that is much more dominated, rather than by repetitive tasks, than by knowledge workers, a much more fragmented knowledge workforce that in many ways requires individualized attention and treatment, so that it is a different world in terms of trying to attract talent into a regimented, compartmentalized system that did work in 1949 that doesn't work today.

There are some wonderful photos of the workforce in 1949 and earlier with these, you know, giant, you know, full-floor cube farms where people are filing papers. That is not what Federal workers are doing today.

We need to be looking at systems that are both going to attract and retain and get the most out of that knowledge workforce, which is, as I suggested, very different.

Mr. LOEBSACK. Do you believe in collective bargaining?

Mr. STIER. Absolutely. As I suggested earlier in my testimony, both written and oral, my view is that you are really dealing with apples and oranges here. There are some sets of changes that engage in looking at the hiring flexibility and workforce reshaping, in market-sensitive pay, in performance management systems. All of those things I think are really important for us to be looking at DOD and across government to ensure that we are able to motivate and attract and retain the right workforce.

I don't believe that you have that same record of support for the labor relation changes, nor, very importantly, something we haven't talked about here, the due process issues, the adverse actions and appeal issues, where I think fundamentally, at the end of the day, we need a workforce that buys into any system, any new system that we are adopting. And that is—you know, you can have the best system in the world. It ain't going to work if the workers don't believe in it, and that is something we need to see here.

Mr. LOEBSACK. Just to sort of bring me up to speed.

Maybe, Mr. Dominguez, you can answer. What were the problems that were identified in the first place? I know we are getting

at the end of my time here, but why did this system come about in the first place? What were the problems that Secretary Rumsfeld or others saw that they believe had to be remedied?

Secretary DOMINGUEZ. Congressman, first let me say congratulations on your election. Welcome to the Congress.

I find myself facing a steep learning curve perpetually. The problems were many, as Mr. Stier mentioned about, just the fundamental change in the workforce and the nature of work in our environment, but, more importantly, specifically about the national defense as contrasted with 1949. I love the good old days with the Soviet Union because they were an understandable threat. They were a predictable threat. They were a stable threat. We could build against them. It was strength against strength, and ours was better.

We are dealing today in a global environment against asymmetric threats. Nobody is going to come against us strength to strength because they will lose. They understand that. So they are coming at us in ways we cannot anticipate and ways we are trying to imagine before they hit us.

There is a rapid change through technology in the nature of our business, both at the warfighting end and in the business operations end, where we need to be able to implement that change rapidly to both fragility in terms of delivering our product on the battlefield, but also in terms of stewardship of the taxpayers' resources so we get the most into the teeth of the DOD.

And so those things are fundamentally different as is the imperative to transform around performance and to move to a performance and results culture as opposed to a culture of activity and seniority.

Mr. LOEBSACK. Thanks.

Ms. BORDALLO [presiding]. I wish to thank the gentleman from Iowa, and the Chair recognizes Ms. Shea-Porter.

Ms. SHEA-PORTER. Thank you, Madam Chair.

Don Rumsfeld was never accused of being warm and fuzzy, and neither has the Department of Defense ever been accused of being warm and fuzzy, and I don't think that is a responsibility, by the way. But I am very concerned about what I have been hearing.

Let me quote a little bit of the language here where you have been talking, Mr. Dominguez, about this program and the great work that you are doing now.

Ms. SHEA-PORTER. Unprecedented training, for example, and in-depth analysis and other skills. And it makes me wonder if what is different, why you weren't doing that to begin with for a workforce to try to improve a workforce that was already in place. Because it seems to me that when you had so many complaints about this switch, and they weren't in your town hall meetings, they were not positive responses to this, and it was actually stated that you were trying to weaken the unions. I don't understand. And then not allowing a union to be present and a union to engage in collective bargaining. I get suspicious at what you are really trying to do was bust the labor unions. And so I ask you to please address that.

Secretary DOMINGUEZ. Thank you very much. Let me speak first to the training effort.

I have, been for most of my life, a public servant, in the Army from 1971 to 1980, as a civil servant beginning in 1983 with the few, you know, years out to dabble in dot com business and Beltway bandits. But most of my career has been in the civil service or in public service in DOD.

And as a civil servant, a career civil servant, I have never witnessed this amount of training going into focused on improving the skills in the civil workforce.

Ms. SHEA-PORTER. Let me ask you, could you have done that and still allowed the unions to have collective bargaining?

Secretary DOMINGUEZ. NSPS was the catalyst for that transformational change. Now, we did design a labor relation system that was to be the partner for the NSPS, so that revised and modified the labor relation system. That has not been implemented. It is enjoined by the courts right now. And we are not doing anything with it until after the court rules. And I believe that we did design a system that did allow for collective bargaining. But it also followed the law which said that—not meet and confer—but continuing collaboration was the sole and exclusive process for the labor to be involved in the development of the NSPS.

Ms. SHEA-PORTER. Let me take another tack then. You mentioned that you were in the military. And the military, again, goes by rank. And so has civil service. A certain amount of time and you have to assume—and perhaps you have to tighten the process—and I wouldn't argue about that, to make sure that people perform at the level that they are hired at and they continue to perform in order to have their promotions. But it has worked very well in the military, for the most part, to have a certain amount of time at rank before you reach another rank, and the same thing for the civil service system. My concern, and you stated it yourself when you said, when you get a new employee, you have to ask yourself, how do I think about that pay band?

Well, the reason that they had the civil service was so that there would be more objective criteria, that it wouldn't be left up to did you like this person? Was this person a friend of so-and-so? Was this person politically connected? It was to level the playing field and have you concentrate more on what the particular skills were.

So if they are hiring the wrong people to begin with, you certainly should be looking at personnel. But once you hire somebody, it seems to me you should be doing the ongoing unprecedented training that you talked about, and that you should be a certain amount of time in grade. Because what it does is it gives the employees a sense of confidence that they are being promoted or being left behind—which is the option in civil service not to promote. But they are being promoted or left behind based on certain criteria.

When you switch over to this kind of system and you leave a union out and you leave collective bargaining out, it leaves a lot of reasons for employees to be suspicious about who got promoted and why.

And by the way, I know it already exists inside to a certain extent in civil service, but at least you can look at certain steps and say, there is a certain amount of time and a certain level of performance.

So what would make your system so much better and make it so crucial to replace this civil service that was put in there to give the employees the confidence that it was a fair system and that they were safe from any kind of retribution or any kind of pressure, political or otherwise?

Secretary DOMINGUEZ. Ma'am, I don't believe that we left the unions out. And I believe there is a role for organized labor in the system that we did design——

Ms. SHEA-PORTER. May I just add that even if there is a so-called role there, by not even allowing an independent third party to come into the process states by having an internal review within the DOD that does not make sense. If you really wanted to look as if you are hearing the employees, the unions and they have an opportunity, why not allow somebody from the outside to come in instead of an internal review by the DOD?

Well, when you are not allowing a third party to do arbitration and when it is closed inside the DOD, I am not really sure, but it looks to me, again, as if you are trying to take away the voice of the unions.

Secretary DOMINGUEZ. That was not our intent. I am hopeful that the system that we designed doesn't do that. We did strive to create boards for adverse action appeals and labor relations that could work—could do their work objectively, and independently, but that would be mindful of our mission which is a national security mission.

And the consequences of us not getting our mission right were too profound to, you know, continue down the track we were going.

Ms. SHEA-PORTER. But——

Secretary DOMINGUEZ. Congress agreed with us.

Ms. SHEA-PORTER. But most of your jobs couldn't possibly come just under security. And you are not allowing independent third party review to process firing appeals. And I realize you have some security issues. But it can't possibly apply to all of the employees that you have.

Are all jobs that security conscious that you can't allow an independent third party to review firing?

Secretary DOMINGUEZ. There are, in NSPS design, still avenues people can take to the merit systems protection board. So those paths remain open.

And as I said, we try to design in—what we wanted to design in was boards that understood the national security mission and put that mission foremost in their thinking and then thought about, you know, how to adjudicate issues and conflicts between management and the workforce in that context so that the national security mission always was a feature in the decision making. That is not case in the current systems and that is what we tried to build in.

Ms. SHEA-PORTER. But it is not an independent third party review.

Secretary DOMINGUEZ. I disagree, Congresswoman.

Mr. ORTIZ [presiding]. We can come back to that question. And let me yield back to my good friend, Mr. Jones from North Carolina.

Mr. JONES. Mr. Chairman, thank you very much, and Mr. Secretary and Ms. Lacey, I couldn't help but think you know the shadow of Donald Rumsfeld is still around here. This system was his creation. I just—I feel like it is another failed policy, quite frankly. I say that because ever since this was instituted—and let me ask you, at this point, how much money has been spent to implement this program as of today? How many billions of dollars?

Secretary DOMINGUEZ. Sir, let me—certainly not billions. But let me try and put this in context for you.

Mr. JONES. Sir, I want to be respectful. My staff just came. We have votes in the Banking Committee next door, but just give me a ballpark figure as of today how much money has been spent to try to move this program forward?

Secretary DOMINGUEZ. $65 million.

Mr. JONES. $65 million?

Secretary DOMINGUEZ. That is correct.

Mr. JONES. What would be the projection—did anybody at the table disagree with that figure? What have you—and I am not trying to get tit for tat, I am not, but I want to know, does anyone else agree that that is the amount of money that has been spent so far on everything to implement this program?

Mr. GAGE. I disagree.

Mr. JONES. Would you give me a figure?

Mr. GAGE. I don't know the figure but overall figure it is certainly in the hundreds of millions. They spent 65 million on lawyer's fees.

Mr. JONES. Well the reason I asked that I will tell you at Camp Lejeune, Cherry Point, and Seymour Johnson in the third district, I have had base commanders to tell me quite frankly that they truthfully—and this goes back before we went into Iraq by the way—that they think that this is just a waste of the taxpayer's money. And when I see what we are spending in Iraq—which is billions and billions and billions of dollars, and here at Walter Reed, we can't even take care of the wounded. And here we have a program that is already—part of the program is in the Federal Court system because it is being challenged. And I have employees down in my district—and quite frankly, and I agree with them—that this program—I just think it is not going to accomplish what you think because as the lady said before me that we have, if the workers and Mr. Stier, I believe, and Dr. Masters both said, if you don't get the employees to buy into the program, it is not going to work.

And I had a great relationship with Secretary England. I think he is a very fine man. But I told him up front that the problem is if you cannot bring the players together, you can't have a victory.

And there has been a—I am not talking about you two nice people. I am not saying this about you. But what was coming down from the mountain when this thing first started was an arrogancy that didn't care what the people at the bottom of the mountain felt. And that was the federal employee.

And I wish him well. But my point is—I know I am doing most of the speaking—but I am telling you that this program has serious problems to it. And until you understand that the federal employee, who has spent many years of their life, we have battled this thing with the depot, Mr. Ortiz and myself for years. We have battled

this thing so we are somewhat familiar with it. But I will tell you today that if you think this program can go forward, then I am going to tell you, you have to learn to work together and to realize you can't have it just one way or the other way. It is not going to work.

Secretary DOMINGUEZ. Thank you, Congressman. First thing I want to tell you, we stopped the initial implementation of NSPS because the way it was being moving forward, it was not mindful of the employee feedback. And we went out—and that is the strategic pause—back in early of 2004. And we went out and collected that feedback. And we had extensive engagement. And we continue that engagement today with employee feedback, including the meet and confer and the collaboration with organized labor.

So we—I agree with you. We need employee buy-in. We designed the system who is—one of the key performance parameters is credible and trusted. It has to be credible and trusted by the employees. And we are working very hard at that.

We are not implementing the labor system that we designed. It is enjoined by the courts. When they point the way through, we will either move forward the way they dictate or come back to the Congress for additional authorities, you know, or many other whatever options there are. But we—the courts have a role on the labor system.

On the performance management piece, the human resource system, people in that system are excited. The people in spiral 1.1 are excited. The leaders in spiral 1.1 are excited. They are out connecting with 1.2 and 1.3, spreading that excitement, sharing their knowledge and pumping them up about getting in because they love where they are. And we are basing that also on the 25 years of knowledge around these kind of systems in the laboratory and acquisition experiments we have done in the DOD.

Mr. JONES. Well, I thank you for that. And my time is up. I just hope, Mr. Chairman, that as you move forward and the committee moves forward, that we can get a better understanding of the cost of this program of where it is today, where it started from, where it is today and where it is going to be down the road.

Because I don't question your numbers at all. I don't have the knowledge to question. And I really do not. But I am just of the firm belief that with this country going, we are going financially broke as a country. And with this failed policy in Iraq—and it is a failed policy—I don't know how we can put much more stress, financial stress on our military. And sometimes you need to say, well, maybe right now we need to put this on the back burner until we get more in a better financial situation to move forward.

And if this is going to cost billions of dollars, I hope this committee will look at it very carefully before we give the green light to move forward. Thank you, Mr. Chairman.

Mr. ORTIZ. Thank you so much. The gentlelady from Guam is heard now.

Ms. BORDALLO. Thank you very much, Mr. Chairman.

Mr. Secretary, thank you for your testimony today. I represent Guam. Our island is home to service members and their families stationed at Anderson Air Force base and Naval Base Guam. And it is planned that Guam will become home to a significant number

of U.S. Marines and their families who will be relocated from Okinawa, Japan in the coming years.

Additionally, an increase in the number of Air Force and naval personnel stationed on Guam is planned. So we are looking at several thousand personnel.

The increase in overall uniform personnel on Guam will likely require an increase be made in the number of civilian personal assigned to Guam's bases. Guam's bases have a strong reputation for providing service members and their families a high quality of life. This is, in part, the product of the efforts of our Federal civilian workforce on Guam's bases which includes many skilled employees hired from within the local community.

Now, I am concerned that the high quality of life traditionally enjoyed by service members and their families stationed on Guam may suffer due to the fast pace at which activity in Guam's bases will grow in the coming years. And that is, I want to make sure that the Department of Defense continues to provide for a committed federal civilian workforce to support operations in mission requirements on Guam's bases.

Can you please describe for the subcommittee how this personnel system, the NSPS, will achieve this goal, as number of facilities, range of activities, and the overall operational tempo on Guam increases at a fast pace? And also, how does the NSPS account for the interests of the civilian workers of the department assigned to Guam's bases and their commitment to and record of providing for a high quality of life for them?

Secretary DOMINGUEZ. Thank you, ma'am. I think the way I would answer the question is, to describe just two aspects of NSPS that I think are relevant here.

The first is that NSPS is a results-oriented, performance-based system. It requires command to be clear about what the mission is and to articulate clear and compelling goals and objectives that command wants to achieve, and that, as required in the NSPS statute, individual civil servant performance plans can hook right to those goals. So the system that we have designed and deployed here, because it is results-focused and performance-based, you get this powerful alignment around what the mission is and what we have got to accomplish.

In order to make that system work, leaders have to lead. That is part of why we did such a massive investment in training is to teach people the skills because we did hear from the workforce, I don't believe my supervisor knows how to do this.

And for the most part, our employees were right there. And so we invested in that. And in this system, leaders have to lead. They have to do the hard work of coaching, mentoring, performance feedback and importantly, setting goals and objectives that are clear, understandable, compelling to people. And so that is, NSPS will work there.

The second thing it does is because of the pay bands, because of the structure of NSPS, there is huge agility in being able to move people to different tasks as that mission unfolds, as the objective changes, and you need to swing the workforce to deal with a problem and eradicate it, you have the flexibility of doing that more easily in NSPS to move people into different positions again with,

you know, all the right merit protections and those kind of things, and you know, with consultation, recognizing the value of the employees.

But the system is more agile that way, and so as problems emerge, you can line the workforce up around compelling objectives that are tied to their performance plans and they can solve it for you.

Ms. BORDALLO. I guess, Mr. Secretary, what I wanted from you was would the system be able to handle a massive increase like we are getting on Guam, 8 to 10,000 Marines and their families. Are we prepared? Are we on your horizon?

Secretary DOMINGUEZ. Mary is prepared to jump in on that one.

Ms. LACEY. Ma'am, in fact, it is exactly that kind of thing that NSPS is going to shine at. We have provided for additional flexibility—structured flexibilities—to ensure that we can hire faster, bring people on board quickly and match then, the right person to each particular job, taking the greatest advantage of their skills.

We have also provided for market-based pay. We realize when something like that happens, a rapid growth on a base, in fact, people can become hard to find. And people are being hired left and right for not just as civil servants, but for some of the other support infrastructures that start to build around a base. And so we have provided for some flexibilities to make coming to work for the Department of Defense even more attractive with some pay flexibilities that we could not have achieved under the old system.

Ms. BORDALLO. I am glad to hear that positive response. Good. And I will bring the message home. Thank you.

Mr. ORTIZ. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman. This would be for either the Secretary or Ms. Lacey, either, in following up on your interaction with the gentleman from North Carolina as well as the gentlelady from Guam. You talked about the interaction you had with the workforce during this transition, spiral 1, and how you had people buying into it and positive feedback, and then you talked with the gentlelady from Guam about hearing from some employees that their supervisor didn't know how to do their job. They were right, and you came back and worked them in that.

I would like for you to tell me what would you say the three primary concerns that the DOD heard from its workforce during this transition spiral 1, and what you have done to address these those three primary concerns for the workforce? That is either one of you.

Secretary DOMINGUEZ. Thank you. I will take a shot at that.

The first thing we heard was, I am not sure this will be fair. I am not sure my supervisor will do this fairly. Okay, second thing we heard was, I am not sure that they have the skills to do it. Again, this requires leadership. We didn't have to do that. It is not how we grew up. How are they going to magically do this overnight, our supervisors? The third is which we heard, the money won't be there.

Okay. Fair. Here is what we did on fair. Extensive training—extensive training to everybody on this. The second is that we built this goal and objective, this framework of setting goals and specifying objectives and aligning your performance plans to those objectives. All right. So that is a structured disciplined process.

And we put lots of training into what the right kind of—how do you write those clear compelling objectives.

The second or the next thing we did was the evaluation structure itself. It is not just a supervisor doing the grade and turning it in and that is it. Done deal.

There are review groups of peer managers to look at these things across an organization.

Mr. ROGERS. How that is review triggered?

Secretary DOMINGUEZ. It is required. It is a normal part of the process.

Mr. ROGERS. So once a evaluation is done it is automatically sent for peer review?

Secretary DOMINGUEZ. Yes, sir and they, these peer managers in this panel make sure that there is nothing out of line, that the grading was fair and balanced across the enterprise. And that grading is against competency, statements of performance, what a fully successful performance looks like that was validated across our enterprise with the people in the enterprise.

So that has been specified. Here is what it looks like, you know, to be at, to perform at this level.

There is an appeal rights. So if still someone thinks this isn't right, there is an appeal to a higher authority.

Mr. ROGERS. What is that higher authority? How does that work?

Secretary DOMINGUEZ. It is the pay pool manager, so it will vary from place to place but it is, you know, typically a commander two or three levels above where this thing is happening.

Second issue is knowledge. They don't know how to do this. Well, you are right. We didn't do this. We didn't used to do this in civil service. We had no experience with it except in our demos. So we built a training program to teach people how to coach, how to mentor, how to set performance objectives, how to do the strategic planning, how to do the feedback. We are giving skills to our leadership to allow them to lead. And that is a major effort.

And we did practice. You know, when you went in, you go in the spiral 1.1, halfway through that year, you did the payout in practice, you went through every step. You made all the evaluations. You did all the rankings. You calculated scores. You did the payout, right, and you learned from that practice about how to do this and how to make the system work so that when you did it for real and your effecting somebody's pay, you had already been through it.

Then the money. We went—Mary and I went to the Under Secretary of Defense Comptroller and said, we have to do something different. NSPS requires a different approach to things. And with, in cooperation with her, went to the Deputy Secretary. And he set aside the performance pool up front. That is unheard of. You don't fence money—particularly O&M dollars—in the Department of Defense, except we did for this program because we had to tell employees that money is going to be there.

And he set that money aside.

Now, the other thing we did, was we moved the evaluation period for everybody to the end of the fiscal year, so that the end of the fiscal year then you begin doing the evaluations and then you do the payout in the end of January and that is early enough in the

fiscal year that the money is still there. So you know, if you have the payout in September, you know, stuff can happen and you may be short of cash. In January, we are not short of cash. So these things told the workforce the money will be there. We will put it in. You can see it. And we will guarantee it.

Mr. ROGERS. I thank you.

Thank you, Mr. Chairman.

Mr. ORTIZ. Thank you. Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman.

I apologize. I was at other meetings and didn't hear a lot of the testimony and questions, and my question may be covering ground that has already been traveled, so I apologize for that. But one thing I have to say, just reviewing the documents both from staff and the witnesses that, you know, this obviously has not been a smooth implementation of the system to say the least. I mean, to have a Federal court strike down provisions of significant portions of the plan obviously is not insignificant. And it has already been a year or will be a year, I guess, when the anticipated appellate court decision is expected, which is, in some people, might view is a lost year.

I am just curious whether or not there was any attempt by the government to sit down and negotiate with the other side rather than continue to litigate away at this issue.

Secretary DOMINGUEZ. Sir, this statute was pretty clear, that continuing collaboration was the sole and exclusive process for the engagement with organized labor in the development of NSPS.

We believe the statutes also clear once we are into NSPS, then, other things like Mr. Gage has made reference to, national level bargaining as opposed to bargaining at the 1,600 different localities which we do today. But the statute, from our point of view, was very clear that continuing collaboration was the sole and exclusive process and we followed that process.

Mr. COURTNEY. How about you, Mr. Gage, do you have any comments on whether there has been any attempts to try and find some common ground?

Mr. GAGE. We would welcome it. We still think we have the best ideas from our members and from supervisors and from the generals and the captains on the ground on how collective bargaining, on how appeals, and on how pay could be handled. I think our ideas are better.

And we would certainly welcome sitting down with DOD and having a real discussion that was two-way.

Mr. COURTNEY. I guess my question would be, then, would you agree that the only way to sort of find that common ground would be to have Congress modify the statute, or is there a way to do it without congressional action, which seem to be you know, the Secretary's position.

Mr. GAGE. I don't think there is a way, given the history of this thing for the last several years, that there is a way to get it back to a positive personnel system for employees. I think the horse is way out of the barn with employees. They saw DOD come after their rights right out of the box and that has that has made a very telling impression on employees. So, I am very much in favor—plus we still haven't had DOD trying to reach out at all to resume any

discussions even after the court cases, so I think we need congressional action.

Mr. COURTNEY. Again, that seems to me that you know, if both sides sort of feel there is a gap here, and there may be a need for congressional action by that is one area you guys can agree on. I mean, it seems helping us sort of find where that balance is would be a lot more helpful than just going in, and as I said, litigating and rehashing because as we all know, appellate courts aren't the last stop in the system either. And it sounds like both sides, you know, regardless of the outcome, are probably going to continue sort of this grinding it out.

And in the meantime, you know, the system is really not going to have any real clear direction until the courts act and then Congress may act. So why don't we just sort of cut to the chase?

Secretary DOMINGUEZ. Sir, I believe that we have appealed. We believe the law was clear. We believe we followed the law. That is now being adjudicated by the courts.

At this stage, I don't—I urge the Congress not to act. I urge the Congress to refrain from acting until after we get a ruling by the appellate court.

Mr. ORTIZ. Thank you.

Mr. Gage, clearly the court was critical of certain aspects of the NSPS, but not so critical that they halted the entire implementation. And I know that maybe when you talk to some lawyers they have different opinions, you know, just like reading the Bible, you know, different interpretations. But how do your employees, the American Federation of Government Employees interpret what the court said about NSPS in terms of the future of NSPS. Maybe you can——

Mr. GAGE. Well, our members were very happy that a court stood up and stopped this theft of the rights that had been in place for so long. And I hate to see that we are at this point, Mr. Chairman. I really do. Our men work very hard every day, our men and women in DOD. And they feel like what did they do wrong that suddenly their rights are being taken away? It is almost like their patriotism is challenged.

And I don't know, maybe it has gone too far. But I know one thing. Our people, and from what I am told from our workers, we are never giving up our rights. We are never giving up these rights, especially for the reasons that have been put forward by DOD. So there is a bitterness out there, Mr. Chairman, and I don't know how that bitterness can be solved. I think we ought to start over. I think NSPS should be repealed.

Mr. ORTIZ. Mr. Masters and anybody else who would like to respond to this question, what is the way ahead for NSPS, and do you think Congress should consider major changes to the underlying legislation?

Mr. STIER. Sir, I am happy to jump in here. I would say that obviously, Congress has a very important role here. This is a vital component of our defense. We talk a lot about military transformation. The civilian workforce is a hugely important component of our defense establishment and needs a lot of attention, I think from Congress more generally.

The way forward I would suggest is first, you do have a Federal appeals court that is likely to rule very shortly here. And the reality is that that will undoubtedly inform both DOD and the employee groups positioning here as well your own.

And so would I presume that it makes some sense to wait at a minimum before you review this until the court has—or not until you act or until the court has ruled, since we expect a ruling fairly soon.

Number two irrespective of the way the court rules, I think you can separate out different elements of the NSPS, those that are, again, that are engaged around the labor relations, the due process issues aren't ones that from the partner's perspective we can see evidence or that supports the notion that it is vital to make those changes in order to be able to create a more performance sensitive and effective organization. However, we don't believe that the GS system, the one created in 1949, and a number of the preexisting hiring authorities, that it was the status quo is the way forward. And we would propose that this committee, instead of trying to change those, rather put into place a set of indicators that permit you to have a better understanding about what is happening on the ground and whether those changes are, in fact, making the kinds of affirmative productive opportunities available to us that the Defense Department would like to create. And I believe that those indicators are things that would inform your decision making as well as other policy makers.

And finally, I think you might—if you were going to add anything—propose that there is some kind of independent evaluation and more detailed evaluation that is akin to what takes place underneath the demonstration project authority that was created in 1978.

Mr. ORTIZ. Mr. Masters.

Dr. MASTERS. I agree with much of what was said just now. I don't think Congress should wait for the courts to act. I think Congress should determine what the labor management rights of employees are and the appellate rights in adverse actions of employees are. I don't think you need the courts to tell you what to do in that.

The fact of the matter is this Administration, if you look at its history from February of 2001, has by executive fiat, tried to abrogate labor management rights. And I say that as an objective observer. There is no way of naysaying that. They have done things that are just mind-boggling in the degree of temerity that they have in singularly striking these rights.

And I would hope to hear a better advocacy from administrative representatives of the program that is on the rule books now. And if they don't want to defend it, why are they litigating it now? They could be like DHS and drop their litigation and move on. But DOD has chosen not to do that.

I think it is time for Congress to intervene and settle this battle. I don't think anybody else is going to do it for you.

Mr. GAGE. If I may, Mr. Chairman, I completely agree. I have done a lot of contracts. And the ones that are good are made where both the parties reach agreement. When you have a third party like the courts that is going to write the labor relations system, you

know, both sides are going to hate it, and it is not going to work and it won't be the end of it. That is why I think Congress really has to step in. And I really think it is the obligation and responsibility of Congress to get this straight.

Mr. ORTIZ. Mrs. Shea-Porter, do you have a question?

Ms. SHEA-PORTER. Yes, I do. When I was studying for my masters degree in Administration, I heard in class—and this was way back when—a lot of the words that you were using, Mr. Dominguez, talking about coaching, training, doing feedback, objective management, review. None of this is new. This has been around for a long time.

I have friends who work in the federal government who have given their heart and soul to this country because they are patriots. And they did that. They did objective management. They did feedback. It almost sounds like an aspersion when you say my manager didn't know how to lead. I am certain there were some managers who did not know how to lead. It has always been thus. But it is also true that that was a hard working force. And so, if you want to make the change for other reasons then we can talk about that.

But to act as if the workforce was not producing, and that is why you were forced to do this for national security reasons, I am just having trouble with it, and obviously I am.

I would like to talk about that pay for performance part. This is a government. This is not business. If I were running a business, then I would look at certain criteria differently. But the government's business goes on day after day. And we don't—although we need to save money and I have certainly talked loudly about being fiscally conservative and responsible, and that is an issue I have about the cost of this. But also we have to recognize that there is, it is a different set of standards.

You can work within the system that exists now—or let me rephrase that and ask you, can you work within the system that is there right now? If you have been remiss about the training, can you correct the training within the system that we have now?

Within the civil service, are you able to deliver what you are trying to deliver with the change there? Is it possible to do that without wrecking the whole system?

I believe that you had 58,000 comments when this was offered. And the majority of them were negative. Two thirds of the DOD employees I believe were union. You can't help but think that this really didn't have as much to do with cleaning up as it was taking away union rights.

So can you do the work that I think is laudable—some of it I am sure you need to do. Can you do that and shouldn't you do that within the system now and allowing the unions to be there and be part of the whole process and recognizing—and I would like us all to recognize—the commitment of this workforce through the years?

Secretary DOMINGUEZ. Congresswoman, let me first correct what I fear is a misunderstanding.

I implied no aspersions on the quality of the civil workforce of which I have been a part.

Ms. SHEA-PORTER. I am sure you did not mean to.

Secretary DOMINGUEZ. The important thing is that those were—that was the feedback we received from employees when we were

talking to them during the strategic pause about going into pay banded, performance driven system where your pay was determined by your supervisor's evaluation of your performance, right, as opposed to moving away from the civil service.

So when we went to our employees with, here is the concept around NSPS that we derived out of the lab demos and acquisition demos, the feedback we got from our supervisors or from our employees were, I am not sure my boss can be fair, and I am not sure my boss knows how to do this. So that is the feedback we got, which then led to the training program.

Now, and so within the context of moving forward with NSPS.

Can we do this? The answer is no. NSPS is just—is a catalyst for a greater global comprehensive transformational change in the culture and ethos within the Department. It is moving the Department to a results-based, performance-driven organization, away from a focus on inputs and activity toward are we achieving the mission? Are we accomplishing what we set out to do? How do we know it? How did everybody contribute to doing that?

So that is the big change. That change needs to happen. That revolutionary change was embraced by Secretary Rumsfeld, embraced by President Bush as part of his managing for results in his Presidential management agenda, but more importantly, was actually first tabled in the public sector by the Congress of the United States and the Government Performance and Results Act.

This is about turning us into a performance driven, results delivering organization. And NSPS is a critical piece of that and a catalyst for that transformation.

Ms. SHEA-PORTER. Maybe I am missing something here, but I have pretty close knowledge about some other federal agencies that have done exactly that. And as a matter of fact, I went back and looked at the language and it was very similar to what you are talking about now—results driven and you know this is for promotion, and they had standards and they had people, not just one employer but others looking to review promotions and review whether there were work coming in and their work flow.

I don't hear anything different. But I am not as familiar with the Department of Defense. I would like to think that you have had some skilled managers through the year, that you are not suddenly finding out that you have not done it right at all.

But other agencies have been doing this. I have the sheets of paper from personnel showing this and from management showing exactly the same buzz words you are using now. So are you telling me that just within the DOD, they weren't following good management techniques and that this is a new change?

Secretary DOMINGUEZ. I am telling you that the culture of results, the obsession with performance, the association of reward—particularly in terms of your compensation—with results, with your contribution to accomplishment of the mission, is part of a change and the propagation of that ethos across the Department of Defense. NSPS is a key part of that. The training that we are doing is a key part of that.

And in addition to the focus on results, NSPS provides us agility in managing the workforce to deal with an agile threat. And it provides us market sensitive pay so the ability to respond more rap-

idly to the marketplace to bring in and retain the high quality talent we need in our workforce to deal with the national security threat that we face.

So NSPS is about all of those things. And it is a package deal. And that package, I feel very strongly is very good for the country and very good for the national defense.

Ms. SHEA-PORTER. But other agencies have done exactly what you are talking about and I don't understand the difference. Thank you.

Mr. ORTIZ. You know, I have been here for 25 years and I have worked with government employees for a long time. Morale is very, very important. For us to be able to produce, you know, the products that we have, to fixing airplanes, tanks and so forth and so on. They tell me that there had been a cloud out there for a long time beginning with the A 76, base closure commissions, and now new regulations.

I think that we are going through some very critical times now. We are fighting two wars. We have seen an exodus of very knowledgeable employees just walk out the door.

All you have to do is take a look at Walter Reed Hospital. You know, there is a lot of things going on. And I think that this is a time when I hope that we can find middle ground.

And I think that the courts were right in coming in and looking at it. We need to come, and like Lyndon Johnson used to say, it is time for us to sit down and reason together for the good.

My friends, we are going through critical times. Huge deficits. Supplementals. What we don't want to do is break the morale of the workers. But we are willing to look at both sides. Thank God that we have great federal workers who do a great job. But they have been demoralized for a long period of time.

I can remember when we had the A 76 and they would come to us and talk about it. Then we had at base closure. They didn't know what bases were going to be shut down. And now they say now we have a new regulation.

One of the things that I would like to know, and maybe you can help me. DOD is going to appoint five members, it is a five-member board. Is that correct when I say that? The evaluators who evaluate, maybe you can fill me in. Who appoints them? DOD?

Ms. LACEY. Sir, I think we have a couple of different kinds of evaluators. We have used that word loosely here today. If you are talking about the evaluator for an individual person, their performance, that is one set of evaluators. But in terms of the evaluation of the program itself, we actually have about five evaluations already ongoing.

Mr. ORTIZ. Let's start, one particular base.

Ms. LACEY. Sure.

Mr. ORTIZ. Who select those employees to evaluate—let's say we have 3,500 employees at that base. Who selects who is going to evaluate the other 300 some odd employees.

Ms. LACEY. Okay, the evaluation of the individual performance are folks—first, the first level is between the supervisor and the employee. That is where the fundamental performance contract is to begin with, that written contract about what is expected. And so that supervisor will evaluate the individual's performance against

some standards that have been written and validated DOD wide for what that performance looks like.

That particular evaluation will then be reviewed by a group of peer managers at that base, at that site, who are knowledgeable of the kind of work that is done. So you will have supervisory mechanics reviewing the work of mechanics. They will have subject matter expertise and knowledge. And then the work of that panel will be reviewed by a high level authority.

Now depending on how large a base is, how many people are in the command, the ultimate person on that base could be a—could be the two-star general, or it could be a smaller at a lower level, depending on the size of the work unit. So for example, sir, you have 20 civilians down in Corpus Christi that will be reviewed by the head civilian there subject to the commanding officer. So it is going to depend on organization by organization.

Mr. ORTIZ. But I go back to my question, who appoints these people that do the evaluation?

Ms. LACEY. The commander of that organization, ultimately, the head civilian or military commander of that organization will designate who the officials are on that base. They will be line managers. It is ultimately the job of supervisors to evaluate employees' performance.

Mr. ORTIZ. But if I had it in for Mr. Courtney here because I just didn't like him, you know, and I want him out. What safeguards are there to be sure that he gets a fair hearing?

Ms. LACEY. Actually, sir, there are quite a few safeguards, and perhaps in many cases, more than there are today, because today we have situations where it is only the first level supervisor that reviews an individual's performance. Under NSPS, there are multiple looks at that. And in addition, we put in place a DOD wide standard for that performance. So you have those benchmarks.

Employees also have the ability to request a reconsideration of that.

Now what that is going to look like with our representative employees remains to be determined, because we have negotiated processes already for those sorts of things. But the way it is now, and the way we ran it for spiral 1.1, employees that felt they were not given fair treatment, were not objectively evaluated, had the opportunity to appeal to the second or third level above. And they did.

We had employees that asked for reconsideration. They had the opportunity to make their case to clear up any misunderstandings. And, in fact, ratings were changed as a result of employees providing additional information.

So, we have provided for that. And we will continue to provide for that. In fact, I think personally that is an incredibly important part of the process. If employees don't feel like they have been given fair treatment, I want to hear about it. I want to know so we can go back in and correct it, provide the training that supervisors need or employees need, and clear the air so that we can focus on outcomes.

Mr. ORTIZ. Mr. Gage.

Mr. GAGE. Yes. Mr. Chairman, taken what Mary just said, I am a supervisor, and I think this employee has done an excellent job

under the standards that he has been given, performance standards at the beginning of that appraisal period. But I don't give the employee at that part my evaluation. I go to this peer group, which Ms. Lacey is saying that this is a safeguard from employees.

What the supervisors do in there is they get a quota of forced distribution of the number of outstandings they can give, because they only have a certain pot of money. It is called a forced distribution. It is against merit principles. And I think we will end up in court if they are not going to be able to rate the employees on exactly what they should be instead of going to a peer group of supervisors who then jockey around and see how many outstandings they are going to give rather than really giving the employee what he deserves because of his work against those supposedly objective performance standards.

And for Ms. Lacey to say they go up in the levels, we don't need a company union. We don't need management to look upon the judgment of another manager and look upon the judgment of another manager to determine fairness.

We have situations in place. It is called binding arbitration. And that is what we have. And that is what we insist on keeping.

Secretary DOMINGUEZ. Sir, let me—there is no force distribution. The managers can give as many "outstandings" as they want. They can score it as high or as low as the situation warrants based on an objective evaluation of the performance. The review groups, the peer review of an individual supervisor's decision is important in this system because you need to be able to reach across the enterprise and ensure there are common standards, common objectives set, common evaluations across an enterprise under the command of this one individual.

So there was fair and equitable treatment of all people across the enterprises. That is what those review groups do is there is a dialogue with managers. It is not about forcing a distribution. It is about ensuring consistency in the evaluations across the enterprise.

Mr. ORTIZ. I can remember one time when we had a group of employees from a workplace come and complain to me about they were being written up because they couldn't perform. They came to me and said we can't perform because we don't get the parts. You know, and this human nature, you know, it plays a part in all of this. So I am glad we are beginning to air this out and see. Like I said before, maybe we can find a middle ground because this is too important to completely neglect, and find a way to work together. And I will tell you what, and we have got some wonderful employees and I know what you are telling us, Mr. Secretary, and you are telling us in good faith that you think this program is going to work, but I am just going back to what my experience has been in my 25 years here.

Mr. Courtney.

Mr. COURTNEY. Listening to the Secretary defend the Secretary's position to litigate where you obviously feel the President and the Congress passed this perfectly formed, crafted proposal, I mean, I practiced law for the last 25 years, and I was—an old timer used to say to me if you want perfect justice, you are going to have to wait until you go to heaven. And we would always sort of remind clients and people who have to make decisions about people who

have to contest and litigate that at some point there is no perfect justice and you have got to sit down and find that common ground.

At some point it seems like you are giving us no other choice but to act as a coequal branch of government if this problem doesn't get resolved. And it just seems to me that when you look at least at the materials that were prepared by staff here, that when the regulations were issued by the Department and the comment from the GAO and the federal district court came in so negatively, you have got a problem. And you have got to deal with it, and I mean, what I am hearing is that you don't want to deal with it. You want to have us do nothing and the courts will hopefully rule in your favor. And to me, that just seems like a very unfortunate posture for the government to be in, as the chairman said, dealing with such a critical area of our government.

And you don't have to comment, but I thought I would share my old friend's view of decisions like that about whether you just have to pursue at all costs an outcome.

Mr. ORTIZ. Thank you so much.

I think that this has been a good hearing today. We certainly welcome all of your testimony, and there might be some members who couldn't be with us today because they were attending another hearing, but we will—if they have some questions, we will submit them to you, and you can respond for the record.

Hearing no questions, thank you so much, and this hearing is adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 6, 2007

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 6, 2007

NOT FOR PUBLICATION UNTIL
RELEASED BY THE COMMITTEE

Prepared Statement of
The Honorable Michael Dominguez
Principal Deputy Under Secretary of Defense
for Personnel and Readiness

Before the
House Armed Services Readiness Subcommittee

2:00 PM
March 6, 2007

Michael L. Dominguez was nominated by the President as the Principal Deputy Under Secretary of Defense for Personnel and Readiness on November 21, 2005 and confirmed by the Senate on July 11, 2006. As a presidential appointee confirmed by the Senate, he is the primary assistant to the Under Secretary of Defense for Personnel and Readiness providing staff advice to the Secretary of Defense and Deputy Secretary of Defense for total force management as it relates to manpower; force structure; readiness; Reserve component affairs; health affairs; training; and personnel policy and management, including equal opportunity, morale, welfare, recreation, and quality of life matters.

Prior to this appointment, Mr. Dominguez served, from August 2001 until July 2006, as the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. His responsibilities included developing and overseeing Air Force manpower and personnel policies, readiness, and Reserve component affairs.

Mr. Dominguez also served as Acting-Secretary of the Air Force from March 28, 2005 thru July 29, 2005. In this role, he was responsible for the affairs of the Department of the Air Force, including the organizing, training, equipping and providing for the welfare of its more than 360,000 men and women on active duty, 180,000 members of the Air National Guard and the Air Force Reserve, 160,000 civilians, and their families.

As an Air Force dependent, Mr. Dominguez grew up on bases around the world. After graduating in 1975 from the U.S. Military Academy at West Point, N.Y., he was commissioned a second lieutenant in the U.S. Army, reported to Vicenza, Italy, then worked varied assignments with the 1st Battalion, 509th Infantry (Airborne) and the Southern European Task Force. After leaving the military in 1980, Mr. Dominguez went into private business and attended Stanford University's Graduate School of Business. In 1983 he joined the Office of the Secretary of Defense as an analyst for Program Analysis and Evaluation (PA&E).

Mr. Dominguez entered the Senior Executive Service in 1991 as PA&E's Director for Planning and Analytical Support. In this position he oversaw production of DOD's long-range planning forecast and its $12 billion in annual information technology investments. He also directed the PA&E modernization of computing, communications and modeling infrastructure. He joined the Chief of Naval Operations staff in 1994 and assisted in the Navy's development of multi-year programs and annual budgets. Mr. Dominguez left federal government in 1997 to join a technology service organization. In 1999 he began work at the Center for Naval Analyses where he organized and directed studies of complex public policy and program issues. In 2001 he rejoined the staff of the Chief of Naval Operations where he worked until his appointment as Assistant Secretary of the Air Force.

EDUCATION
1975 Bachelor of Science degree, U.S. Military Academy, West Point, N.Y.
1983 Master's degree in business administration, Stanford University, Stanford, Calif.
1989 Program for Senior Officials in National Security, Harvard University

CAREER CHRONOLOGY

1. June 1983 - September 1988, program analyst, Office of the Secretary of Defense for Program Analysis and Evaluation, Washington, D.C.
2. October 1988 - September 1991, executive assistant to the Assistant Secretary of Defense for Program Analysis and Evaluation, Washington, D.C.
3. October 1991 - September 1994, Director for Planning and Analytical Support, Office of the Assistant Secretary of Defense for Program Analysis and Evaluation, Washington D.C.
4. October 1994 - April 1997, Associate Director for Programming, Office of the Chief of Naval Operations, Washington, D.C.
5. April 1997 - September 1999, General Manager, Tech 2000 Inc., Herndon, Va.
6. September 1999 - January 2001, Research Project Director, Center for Naval Analyses, Alexandria, Va.
7. January 2001 - August 2001, Assistant Director for Space, Information Warfare, and Command and Control, Office of the Chief of Naval Operations, Washington, D.C.
8. August 2001 - March 2005, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.
9. March 2005 – July 2005, acting Secretary of the Air Force and Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.
10. July 2005 – July 2006, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.
11. July 2006 – Present, Principal Deputy Under Secretary of Defense for Personnel and Readiness, Washington, D.C.

AWARDS AND HONORS

1980 Army Commendation Medal
1988 and 1994 Defense Meritorious Civilian Service Medal
1993 Defense Civilian Service Medal
1997 Superior Civilian Service Medal, Department of the Navy
1998 Meritorious Executive Presidential Rank Award
January 2005, July 2005 and July 2006, Air Force Exceptional Civilian Service Medal

Mr. Chairman and members of this distinguished Subcommittee: Thank you for the opportunity to talk with you about the implementation of the National Security Personnel System (NSPS) at the Department of Defense. NSPS is well underway, as of today we have close to 80,000 DoD employees operating under NSPS. I'd like to give you an update on our progress. Mrs. Mary Lacey, the Program Executive Officer responsible for design, development and implementation of NSPS, joins me here today and together we will be happy to take your questions.

You called this hearing today to ask us if NSPS is working. Recognizing that we are still early in the implementation process, my answer is "yes," NSPS is working. With Deputy Secretary of Defense Gordon England leading the NSPS transformation, the Department is committed to successfully implementing NSPS. The design of NSPS has been well thought out, well managed, and extensively overseen. We have moved very carefully and deliberately to design and implement a system that achieves the Department's goal for a flexible human resources system that is results-focused and performance-oriented.

It is early in the journey and it will take years before the Department realizes all the results NSPS was designed to produce, but we are already seeing a powerful return on investment: an unprecedented training effort focused on performance management, for employees *and* supervisors; greater communication between supervisors and employees – people are talking about performance, results, and mission alignment; and increased flexibility in rewarding exceptional performance. For those organizations under NSPS, we are seeing positive movement in behaviors and in organizational culture. These early returns are cause for optimism as we continue to deploy the system.

In November, 2003 Congress gave the Department the authority to develop a more flexible civilian personnel management system that would enhance our ability to execute our national security mission. Today, NSPS remains as vital to the success of the Department's mission as it was in November 2003. This modern, flexible human resources management system improves the way DoD hires, compensates, and rewards its civilian employees, while preserving employee protections and benefits, veterans' preference, as well as the enduring core values of the civil service. NSPS provides a performance management system that better aligns individual performance objectives with DoD's mission and strategic goals. Successful implementation of NSPS is integral to the Department's Human Capital Strategy of developing the right mix of people and skills across the Total Force – a Force that is capable of responding quickly and decisively to existing and emerging threats.

In November 2005, the Department and the U.S. Office of Personnel Management (OPM) published joint final regulations and in April 2006, the Department began implementing the human resources provisions of NSPS. Approximately 11,000 employees from numerous DoD organizations converted as the first part of our phased approach to implementation. Referred to as Spiral 1.1, this first phase has gone smoothly, with extensive and comprehensive training to managers, supervisors, and employees, and a near flawless conversion of employees from the General Schedule grades to the new NSPS pay bands. All Spiral 1.1 employees were paid accurately and on time, with approximately 80% of the employees receiving an initial pay increase based on time spent toward their next within-grade increase. More importantly, these organizations and individuals transitioned to a personnel system that focuses on performance and results,

with increased communication between employees and their leadership.

One important key to our success was the extensive consultations the Department and OPM carried out before hand with all relevant stakeholders, from supervisors, managers, and employees, to unions, to Congress, to a number of public interest groups. During the NSPS design phase, the Department held hundreds of town hall meetings, focus groups, and other outreach efforts to hear from multiple stakeholders, both inside and outside the Department. We reviewed thousands of written comments during the rulemaking process. It was not possible to accept every single suggestion, but each one was read, or listened to, and the Department did change and adapt in response. The practice of consultation and collaboration continues throughout the implementation of NSPS.

The Department's robust training program is another reason for the success of NSPS to date. It is one of the most extensive civilian focused training initiatives ever undertaken in DoD. From the computer to the classroom, from conversion through the appraisal cycle, we have offered our employees multiple training opportunities on the elements of NSPS, with a focus on the performance management system. Training was offered in a variety of formats – on the web, in large presentations, and in small groups. As of February 2007, about a half million training events have taken place. In addition to training on NSPS mechanics, supervisors were trained in "soft skills" – how to coach, mentor, and build a team. Employees also were offered soft skill training - how to communicate, improve writing skills, interact with their supervisor. Importantly, training was never a one-time only event – employees were given opportunities to raise follow-up questions and concerns. The goal was to make sure all participants understood the new

system and their roles in making it successful.

Spiral 1.1 employees recently completed the first appraisal cycle under the performance management system and we have good news. It is evident that our supervisors and employees benefited from the training. They worked together to develop meaningful job objectives and the ratings reflect a high performing workforce contributing to achieving organizational goals.

As a result of feedback we received from our workforce throughout the first cycle, we already made some adjustments. For instance, both supervisors and employees expressed the need for additional training on writing job objectives and self assessments. As a result, we expanded our training and recently launched a new tool on our website to assist employees with these critical steps in the performance management system. Supervisors expressed a need for additional guidance on pay setting and compensation management – we responded and will soon issue comprehensive guidance in this area as well.

These represent just a couple of key adjustments already made as a result of early feedback from our workforce. To complement the immediate feedback we received, we are developing a comprehensive plan for assessment and longer term evaluation of the system.

As part of this process, the Program Executive Officer, Mrs. Mary Lacey, has hosted several Lessons Learned Workshops with Spiral 1.1 senior leaders to review progress and chart the way forward. The feedback from the senior leaders on the "front line" of implementation has been very useful in identifying areas needing attention including improvements to automation to support the performance management process,

and assistance in writing job objectives.

The next major phase in our transition to NSPS was the Spiral 1.2 conversion, between October 2006 and February 2007. We converted an additional 66,000 employees, some of them based overseas. Spiral 1.3 will result in 37,000 employees converting to the new personnel system between March and April 2007. We have provided our organizations flexibility in scheduling the conversion to ensure they have sufficient time to do the training, do it right and implement when they are ready.

By the end of next month, the total number of employees who will have transitioned to NSPS will exceed 114,000 – more employees than most Cabinet-level agencies. That is substantial progress, and the support and attention we have received from our senior leaders have enabled us to sustain all-important momentum in this transformation.

One of the key ingredients to effective program management is program evaluation, and that applies to NSPS. The Department has an on-going evaluation effort – a mechanism to monitor the effectiveness of NSPS and its effect on the workforce – to ensure the system is delivering the results we expect. The evaluation process includes in-depth analysis of personnel data and statistics, employee surveys, structured interviews, and other methodologies to assess the program's effectiveness. We've gained considerable experience in evaluation from our personnel demonstration projects, and we're working closely with OPM to ensure we have rigorous, objective analysis and data upon which to assess the system. This is an important feature of our spiral implementation approach, in which we expect to make incremental adjustments to the system going forward.

NSPS is a results-focused, performance-oriented human resource management system uniquely suited to the needs of a modern, agile defense establishment engaged in a global war. The essential companion to our new human resource management system is a modern labor relations system. Our proposed redesign of the labor system, as well as the adverse actions and appeals provisions of the human resource system, are the subject of a legal challenge, and have been enjoined by the District Court. The Department and OPM have appealed that decision. In the meantime, we moved forward with implementing those elements of the human resources management system (classification, compensation, performance management, staffing, and workforce shaping provisions) that were not enjoined. The Department elected to implement these provisions to non-bargaining unit employees until the litigation concerning the other parts of NSPS is resolved. We expect a decision on the appeal this spring.

The Department remains hopeful that the courts will rule in our favor, and if not, that Congress will provide constructive clarification to allow full implementation of NSPS. Meanwhile, the Department will press ahead wherever we can. NSPS is designed to be a DoD-wide system, bringing the greatest benefits to the Department – and to the American taxpayer – when the system is allowed to operate as a cohesive whole.

And so to answer your question: "NSPS: Is it really working?" We believe it is. We also know that fundamental organizational and cultural change takes time – it can't be achieved overnight. We are taking the time to do it right – Secretary England has repeatedly stated that NSPS is event-driven and we will continue to approach our design and implementation with that in mind. But it will also take time to assess how it is

working – the first surveys, the first statistics, all serve as initial data points – it will take more than one performance cycle for us to truly evaluate how well it is working and where adjustments will be needed for long-term sustenance . In the meantime, we will gather information and be prepared to make the comprehensive evaluation needed to ensure the system is credible, fair and effective.

A key to our success is building consensus – through communication and transparency. The Department is committed to an open, ongoing process of communication and consultation about NSPS with Congress, our employees, and all key stakeholders, including our unions. NSPS is simply the right thing to do for our Department and our country.

Thank you for providing us this opportunity and working with us to make NSPS a great success.

STATEMENT BY

JOHN GAGE
NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

BEFORE

THE SUBCOMMITTEE ON READINESS
HOUSE COMMITTEE ON ARMED SERVICES

REGARDING

THE NATIONAL SECURITY PERSONNEL SYSTEM
OF THE DEPARTMENT OF DEFENSE

MARCH 6, 2007

Mr. Chairman and Members of the Committee,

My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 200,000 civilian employees of the Department of Defense (DoD) represented by AFGE, I thank you for the opportunity to testify today.

Mr. Chairman, the National Security Personnel System has been a ruse designed to:

- strip DoD employees of their collective bargaining rights,
- make Dod employees virtual at will employees by creating a "kangaroo court" style appeals system designed to eliminate the right to fair treatment in adverse action cases, and
- lower the standard of living with a pay system that will suppress future wage adjustments and subject employees to a non transparent pay system where pay is more budget driven than performance driven.

The administration's credibility is now shattered after three court decisions in DHS and DoD. Congress gave this authority to DoD in good faith. DoD has misled the Congress about its true intentions. From the start it intended to strip Americans of their rights and reduce their standard of living. It is time now for this Congress to hold them accountable for their untrustworthy behavior. It is time now for this Congress to act immediately and fully repeal the NSPS authority.

Since September 11, 2001, the Bush Administration has taken every opportunity available to advocate for a profound erosion of civil service protections and collective bargaining rights for federal employees. First, the Bush Administration reluctantly agreed that the terrorist attacks necessitated federalizing airport security functions, but they also insisted that the legislation not allow federal TSOs the rights and protections normally provided to federal employees and the collective bargaining rights afforded to private contractor TSOs.

In 2002, the Bush Administration reluctantly agreed with Senator Joseph Lieberman that the creation of a Department of Homeland Security (DHS) was necessary. However, the Bush Administration insisted on a *quid pro quo* for that acquiescence; specifically, that federal employees who were transferred into the new department would not be guaranteed the collective bargaining rights they had enjoyed since President Kennedy was in office. In addition, the Bush Administration insisted that the legislation which was eventually signed into law exempt the DHS from compliance with major chapters of Title 5 of the U.S. Code, including pay, classification, performance management, disciplinary actions and appeal rights, as well as collective bargaining rights. AFGE filed a lawsuit challenging the Department's final regulations. On August 12, 2005, Federal

District Court Judge Rosemary Collyer ruled that major portions of the DHS regulations were illegal, and enjoined the labor relations system. AFGE had stated that MAXHR would gut collective bargaining and undermine fair treatment in the adverse action appeals process. In the meantime, the Administration continued to tell Congress the information being provided by the unions was wrong and that collective bargaining and a fair appeals process was being preserved. On June 27, 2006, the Court of Appeals upheld her decision.

On due process, Judge Collyer found:

"First the Court seriously doubts that by insisting on fairness, the Congress meant that DSH could discipline or discharge employees without effective recourse. Second, rather than afford a right of appeal that is impartial or disinterested, the Regulations put the thumbs of the Agencies down hard on the scales of justice in their favor."

On Collective Bargaining, Judge Collyer found:

"Thus, while the Agencies might be entitled to deference in filling in the details of a collective bargaining system, they were not permitted to create a system that is not collective bargaining' at all."

On June 27, 2006, the Court of Appeals was even harsher in their criticism of DHS. The Court found that:

"The right to negotiate collective bargaining agreements that are equally binding on both parties is of little moment if the parties have virtually noting to negotiate over. That is the result of the Final Rule adopted by DHS. The scope of bargaining under the HR system is virtually nil, especially when measured against the meaning of collective bargaining under Chapter 71. And this is saying a lot, because the scope of bargaining under Chapter 71 is extraordinarily narrow."

In 2003, then Secretary of Defense Donald Rumsfeld insisted that the Defense Authorization bill include similar provisions which attacked the civil service protections and collective bargaining rights of 700,000 Department of Defense civilian employees. Despite months of debate over serious objections raised by AFGE and Representatives and Senators from both parties, the Department was granted the ability to write regulations creating a new personnel system. The regulations eliminated many civil service protections and some collective bargaining rights from DoD civilians. In November 2005, AFGE and its union coalition partners filed a lawsuit to enjoin implementation of the labor relations and appeals sections of DoD's final National Security Personnel System regulations.

On February 27, 2006, Federal District Court Judge Emmett G. Sullivan ruled illegal several key labor-management components of the new system, including collective bargaining and independent third-party review of labor-management disputes. The Administration, Secretary Rumsfeld and other DoD officials misled the Congress when they assured Congress that collective bargaining and fair treatment is adverse actions would be protected. Judge Sullivan found that NSPS did in fact "eviscerate" collective bargaining rights for DoD employees. Contrary to DoD's assurances of fair treatment, Judge Sullivan found "each of the regulations is the antithesis of fair treatment."

Department of Defense: National Security Personnel System (NSPS)

Background

On February 14, 2005, the Department of Defense (DoD) published draft regulations to create the National Security Personnel System (NSPS). These sweeping regulations would replace current provisions of Title 5, U.S. Code, affecting pay, classification, personnel management, employee appeal rights, and collective bargaining for 700,000 civilian employees in the Department. DoD's authority to create an alternative personnel system -- within certain parameters -- was granted under the FY 2004 National Defense Authorization Act (Public Law 108-136).

The law required the NSPS to be established jointly with unions through a "meet and confer" process. It also required union participation in the planning and development of the system. In order to ensure that the meet and confer process did not bog down, the 36 unions representing employees in DoD formed a joint United Department of Defense Workers Coalition (UDWC). The UDWC has testified several times about numerous serious objections to the draft regulations that DoD published on February 14, 2005. The Coalition submitted comments detailing its critique of the Department's proposals with regard to collective bargaining, employee appeals of adverse actions, and the establishment of a pay system to replace existing statutory pay systems. In addition, the Coalition spent months in "meet and confer" offering DoD options and alternatives which would have changed and enhanced current procedures without sacrificing important employee rights that Congress intended to be safeguarded by the law. We produced and distributed a document entitled: *Contrasting Plans for the Department of Defense: Labor's Proposals for Positive Change Versus Management's Unlawful Return to the 19th Century* to demonstrate clearly how our suggestions could achieve these objectives.

Unfortunately, despite months of meetings, DoD failed to take the process seriously and, for all practical purposes, ignored UDWC proposals. DoD made clear they simply want unlimited authority with no effective outside review. It should be

noted that almost every member of the union side of these meetings came away with a clear feeling that these meetings were held simply to meet the technical requirements that they happen and DoD lacked any genuine desire to reach any agreement that was mutually beneficial. To the surprise of no one, at the end of the process, DoD's NSPS regulations, published in final form on November 1, 2005, are unilateral, arbitrary and go well beyond the original intent of the law. On November 7, 2005, ten federal employee unions jointly filed suit against the regulations, and on February 27, 2006, Judge Emmett G. Sullivan issued his decision, ruling illegal several key labor-management components of the new personnel system and enjoining the agency from implementation. Although this case is on appeal, DHS chose to cease its appeals to create a similar system after a similar negative ruling was upheld by the U.S. Court of Appeals for the District of Columbia.

Collective Bargaining Rights

Public Law 108-136 called for a new labor relations system ostensibly for DoD to engage in national level bargaining with unions, rather than negotiate the same issues at each local installation. It is interesting to note that DoD claimed national level bargaining was needed, yet since the passage of this law in 2003, at no time has DoD ever approached AFGE formally or informally to negotiate on any issue at the national level. In addition, the law addressed the need to retain an independent third party to resolve labor-management issues. AFGE strongly supported these principles.

DoD's NSPS legislative proposal, passed by the House, waived Chapter 71, the federal labor-management relations section of Title 5, U.S. Code. However, as explained by Senator Susan Collins (R-ME) on November 11, 2003, the final conference report stripped DoD's authority to waive Chapter 71 from the NSPS legislation. Instead, DoD was only authorized to make two specific modifications to Chapter 71: to provide for national level bargaining and *independent* third party review of labor relations decisions.

DoD showed its disregard of the latitude given by Congress and, contrary to the statute, drafted NSPS regulations allowing DoD to waive Chapter 71 in its entirety. Specifically, the regulations go beyond the concept of national level bargaining, and instead virtually eliminate collective bargaining over matters that go to the very heart of employee issues, including overtime, shift rotation, flexitime and compressed work schedules, safety and health programs, and deployment away from the regular worksite. These and many other issues have been negotiated successfully for years by employee representatives with Department management officials. The result of that bargaining has been the creation of smooth systems which both ensure that the work gets done and that employees are able to enjoy safe workplaces and properly balance their work lives with their responsibilities to their families. In addition, the regulations eliminate the statutory

right to collective bargaining by providing the Secretary unlimited power to remove ANY subject from bargaining by unilateral "issuance."

Further, the regulations replace the current independent, statutorily-created Federal Labor Relations Authority and the Federal Service Impasses Panel with an internal board whose members are selected solely by the Secretary. The board's composition ensures that it will lack impartiality and thus undermine the credibility of the new collective bargaining system among employees. This internal board is not independent, as required by the statute.

AFGE as a part of the UDWC, did not simply oppose the DoD regulations. We have listened carefully to the concerns of DoD and made concrete proposals to address them in a constructive framework. We offered to engage in national-level, multi-unit, and multi-union bargaining. We also offered to speed up the timeframes for bargaining and to engage in mediation-arbitration processes by mutually selected independent arbitrators in order to quickly resolve any bargaining disputes. We believe these changes alone would allow DoD to succeed in implementing new processes that would enhance the mission of the agency.

Unfortunately, DoD has simply ignored the union proposals. At no time has DoD made any concrete showing how the failure to have any of the new regulations impacted national security. If DoD is acting in good faith on these proposals, they could made a national security explanation for each proposal. They have had plenty of time to do so and have not. They have now had since 2003 to bring forward post 9/11 examples of the need for NSPS. The need simply does not exist. It never did.

Employee Appeal Rights

Under Title 5, federal employees have the right to appeal an agency's adverse actions to the independent MSPB. The NSPS statute mandated that DoD protect due process rights and ensure that any new adverse action procedures be "fair" to employees. The statute authorized DoD to create a "streamlined" procedure for employee appeals.

The NSPS regulations do not streamline the process, but actually add steps to the process. Under Title 5, arbitrator decisions in discipline cases are subject to immediate judicial review. However, the NSPS regulations subject arbitrator decisions, as well as MSPB Administrative Judge (AJ) decisions (in cases where employees do not elect arbitration), to two layers of administrative review. The first review is by DoD itself and allows the Department the unilateral right to overturn the decision of the independent AJ or arbitrator before the case can even be appealed to the full MSPB. Instead, decisions will become essentially advisory subject to DoD review and then may be reviewed by the MSPB, thus reducing the rule and power of arbitrators and Administrative Judges. This is

entirely insupportable and contrary to Congressional intent. Since DoD wins close to 90% of its current MSPB cases, there is simply no justification for eliminating a fair adjudicative process for employee appeals. This change will dramatically increase the MSPB workload, delay results, and cause inefficiency in the system.

Further, the NSPS regulations prohibit an AJ or arbitrator from mitigating DoD's penalty unless it is "totally unwarranted." This new standard, never before used, is clearly designed to prevent DoD from ever having a disciplinary action mitigated, no matter the circumstances. This is hardly a system that could be considered "fair to employees." DoD's failure to insure a level of fundamental fairness is a core reason why the court's have taken a dim view of the NSPS regulations.

Here again, the UDWC, and the union side of the process, took seriously this opportunity. We have discussed several proposals including constructive changes such as developing a single standard of proof, a speedier and more efficient process, having immediate judicial review of arbitration decisions, and giving full authority to Administrative Judges, arbitrators, and the Merit System Protection Board to determine the adequacy of proof and to mitigate penalties.

Pay and Classification

While not every detail about the pay system has emerged, we know enough about the system to appreciate its design is not transparent, not fair, will enhance favoritism and will suppress wages over time.

DoD describes their system as two fold – (1) market based and (2) pay for performance. George Nesterczuk, hired by OPM as a special policy advisor on NSPS, wrote a paper entitled "Taking Charge of Federal Personnel" in January 2001 calling for personnel reform. It is important to note that he viewed that federal employees were overpaid in contradiction to the Federal Salary Council and the pay comparison studies by the Department of Labor. Rest assured his pay system is designed to implement his view by decoupling DoD pay from the GS pay surveys. Instead, DoD would hire a private contractor to provide the "right" answer in the form pay data that will be used to show that DoD employees are overpaid. DoD annual raises would then be suppressed over a period of years. The pay would be DoD budget driven rather than based on the comparability studies associated with the rest of the government. When the Department argues that money needs to be spent for troops and troop support, the funding for pay raises will be extremely tight. Employees will lose out and fall behind federal employees in other agencies.

The pay band system holds less promise for most employees than previously advertised. The argument for collapsing grades into bands was to create greater opportunity for people to move beyond their current maximum salary. However

DoD has indicated that there are in fact invisible fences inside the bands (that look a lot like the old grades) that will make this advertised promise more false then true.

At the same time, NSPS undermines the word "merit" in merit promotion systems. No longer will positions within a collapsed band need to be posted for merit promotion purposes. Rather supervisors will bypass the need for merit promotion and merely assign whomever they want additional duties along with additional compensation. In effect, they are empowered to promote whomever they desire. In some cases merit might be key, in others it might be based on who you know. Abuse and favoritism are inevitable

Although, under NSPS, employees performance is supposed to guide the size of their pay raise, they will not receive the rating from their supervisor. This fails the simple but important transparency test.

Rather a supervisor will rate employees. Then supervisor will attend a meeting with other supervisors to compare and re-rate their employees in order to divide the pay pool within the budget. In effect other supervisors who do not supervise an employee's work will determine the rating and the subsequent payout. DoD argues that this is designed to correct hard raters vs. soft raters. But in reality it will have a lot to do with budget, bell curve distribution and whether the personality of one's supervisor is strong or weak; i.e. whether the supervisor is a good or bad advocate in the meeting. Once all the supervisors have agreed on an employee's rating, then the worker will receive that rating. It fails the fairness test, the transparency test and even the pay for performance test.

There are other real problems with the NSPS pay system. In summary, it will lead to serious morale problems and consequently undermine the mission and performance of DoD's mission.

Conclusion

The National Security Personnel System, envisioned by DoD regulations, is contrary to the statute. The regulations are unfair to employees, and if implemented, they will undermine the contribution to mission that DoD civilians have demonstrated so ably over the years. Congress should repeal the statutory authority for NSPS.

AFGE's and the UDWC's support of collective bargaining rights and civil service protections for federal employees has never waivered. These are fundamental American rights and they should never have been taken away. Without these rights and protections, it will be impossible for the government to attract and retain quality employees, and our democracy as well as our national security will suffer. We urge the committee to repeal the provisions of the National Security Personnel System of the FY 2004 Defense Authorization Act.

That concludes my statement. I will be happy to respond to any questions.

John Gage

National President
American Federation of Government Employees, AFL-CIO

As National President of the American Federation of Government Employees (AFGE), AFL-CIO, John Gage stands watch over the rights of some 600,000 federal and D.C. government employees. Gage, who leads the nation's largest union for government workers in some 1,100 locals in the United States and overseas, was elected national president at AFGE's 2003 National Convention in Las Vegas, NV.

John Gage has long been involved in AFGE and the labor movement. He has committed over twenty years of service as president of AFGE Local 1923 and as National Vice President of AFGE's 4th District. Under his leadership, Local 1923 experienced robust growth, making it the largest Local within the Federation. Gage brought that same energy for organizing to his role as NVP and initiated a new organizing program now familiarly called "Lunch and Learns." In fact, the new program helped the 4th District sign up 6,000 members in two years. In 1985, Gage stepped down as NVP to lead the successful defense of SSA against a well-financed membership drive by another union.

Gage began working for the federal government as a disability examiner for the Social Security Administration in 1974. He quickly became involved with AFGE and served as 2nd Vice President and editor of Local 1923's newsletter. He went on to serve as Executive Vice President before being elected President in 1982. Gage has served as chief negotiator for a number of national contracts and describes his work as a negotiator as a labor of love. He strongly believes that good contracts and the ability to enforce them are important keys to increasing membership.

Gage is proud of the true diversity established within Local 1923 under his leadership-including its members, staff, officers and stewards-and will bring the same appreciation for these values as the new leader of the Federation.

As National President, John Gage seeks to give emphasis to organizing, legal representation on behalf of Locals, and coordinated media activities. Gage believes that capitalizing on representational opportunities at the worksite, in the community and on the national scene draws attention to AFGE issues. This provides a new way of performing the most fundamental mission of AFGE-representation-and enables the union to strengthen each Local's ability to provide service, politically mobilize, organize and communicate.

Gage serves as a trustee of the National Labor College, an accredited four year college for union members and their families.

Gage was born in 1946 and graduated from Central Catholic High School, in Pittsburgh, PA in 1964. He went on to study at Wheeling Jesuit University, graduating in 1968. His career includes a brief stint as a professional baseball player with the Baltimore Orioles (1968-1969).

Gage is married to Patti McGowan, a labor lawyer for AFGE Council 220 who does pro-bono work for the Maryland Disability Law Center.

Written Testimony of Max Stier
President and CEO, Partnership for Public Service

Prepared for

The House Committee on Armed Services
Subcommittee on Readiness

Hearing Entitled
"The National Security Personnel System:
Is It Really Working?"

March 6, 2007

Chairman Ortiz, Representative Davis, Members of the Subcommittee, thank you very much for the opportunity to appear before you today. I am Max Stier, President and CEO of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to revitalizing the federal civil service by inspiring a new generation to serve and transforming the way the federal government works. We appreciate your invitation to discuss the status of the National Security Personnel System (NSPS) in the Department of Defense (DOD).

A skilled, dedicated and engaged civilian workforce is absolutely essential for all departments and agencies, including DOD, to succeed in carrying out their vital missions on behalf of the American people. We have long believed that if the federal government devoted the time, attention and resources to the civilian workforce that it does to the uniformed military, our nation would be better for it. So it is that the Partnership has followed with great interest the legislation that authorized the NSPS and the efforts by DOD to design and implement a system consistent with that legislation. We are honored to share with you our perspective on the current status of the NSPS and our recommendations regarding the way forward.

An Urgent Need for Action

Americans need effective government, and the key to good government is good people. The report of the 9/11 Commission said it best: "[T]he quality of the people is more important than the quality of the wiring diagrams." Every day, we rely on our federal government to deliver vital services, from protecting the homeland to promoting a competitive economy to preserving our natural resources.

Today, our nation faces challenges of unprecedented complexity. This has been especially apparent for the Department of Defense and the vital role it plays in protecting the United States in the global war on terrorism. As with the rest of the federal government, however, the civilian workforce in DOD is aging and a record number of experienced workers will soon retire, resign or otherwise leave the Department. At the same time, the demands upon DOD continue to grow. The civilian workforce must effectively work with and support over 2.5 million members of the military and also help oversee and manage an annual budget in excess of $600 billion dollars. DOD civilian employees represent over one-third (34 percent) of all civilian employees in the federal government (not including employees of the U.S. Postal Service). To meet the Department's many demands and challenges, it is essential to strengthen DOD's civilian workforce, expertly match highly-skilled employees to the right jobs, and build a workplace environment that supports and engages its civilian workers.

National Security Personnel System: Background and Current Status

Congress gave special recognition to the importance of the civilian DOD workforce when it authorized the development of a National Security Personnel System in 2003. The NSPS legislation waived certain provisions of Title 5 of the U.S. Code so that DOD, in partnership with the Office of Personnel Management (OPM), could establish alternative

human resource (HR) management systems that are more flexible and contemporary than the existing systems. Those new systems have the potential to significantly change the way DOD hires, compensates, rewards and disciplines more than 600,000 civilian employees.

It is widely accepted that while the current General Schedule (GS) pay and classification system established in 1949 may have served the government well for many years, it is no longer sufficient to attract and retain the best and brightest. We say this for two reasons:

- First, the GS pay system, which still governs pay for the large majority of white-collar civilian employees in DOD not yet covered by the NSPS changes, is not market-sensitive at a time when being competitive in the talent market-place is becoming increasingly important.

- Second, we know that the GS pay system and the traditional performance management system are in need of reform by listening to federal employees themselves. In OPM's 2006 Federal Human Capital Survey, to which over 50,000 DOD civilian employees responded, less than one-third (31 percent) percent agreed that "In my work unit, differences in performance are recognized in a meaningful way." Talented people at all levels – from new college graduates to seasoned professionals – look to work in environments that reward and recognize effort and results. Our 2005 *Best Places to Work in the Federal Government* project, based on OPM survey data, shows that compared to workers in the private sector, federal employees are more likely to say their work relates to the organization's mission, their supervisors are supportive in balancing work and life issues, and the people they work with cooperate to get things done. Yet, our 2005 comparison also revealed that DOD lagged 22 points behind top performing companies in the private sector in the percentage of employees who believe that they are rewarded for delivering high quality products and services.

DOD's proposal for the NSPS was a response to a long history of identified and perceived shortcomings in specific federal human capital laws, regulations and policies under Title 5 of the U.S. Code, particularly but not exclusively in the area of pay and performance management. In authorizing the NSPS, Congress made it clear that while any new HR systems established under the NSPS authority should be flexible and contemporary, there were also certain provisions of existing law that could <u>not</u> be waived, such as adherence to the statutory merit system principles and the right of employees to organize, bargain collectively, and participate in labor organizations. Congress was also clear that employees should be involved in the design of the new system.

The Department designed a comprehensive set of proposed regulations to implement the NSPS that drew heavily from its experience with alternative HR systems under a 1978 demonstration project authority (title 5 U.S.C. § 4703). DOD proposed a pay-banded approach to compensation that would be more market-sensitive as well as more performance-sensitive than the GS system. Other changes proposed by DOD and

authorized in the NSPS involve additional flexibilities in the areas of hiring and internal placement of staff and some new "workforce shaping" provisions to address current or anticipated skills gaps.

DOD also designed some alternatives to its labor-management relations policies and to the process by which employees could appeal a proposed adverse personnel action. Those proposed changes had not been previously tested through demonstration projects or in other federal organizations. When these latter changes were challenged in court by employee unions, the D.C. District Court enjoined those parts of the regulations as inconsistent with the legal requirements of the NSPS. A decision on a DOD appeal of the lower court ruling is expected from the D.C. Circuit Court of Appeals in the next several weeks. In the meantime, DOD has started implementation of their proposed changes for selected non-bargaining unit employees only. This latter implementation is being done in "Spirals" with the first of three initial roll-outs (Spiral 1.1) implemented in 2006. The first performance management cycle and payouts under Spiral 1.1 were completed in January 2007.

Is NSPS Working?

While a full evaluation of the impact of the NSPS is premature, we note that many of the principles -- other than those proposed in the areas of employee due process and labor-management relations -- have been thoroughly tested in DOD and a number of other federal agencies over the past 25 years. For example, there are over 30 federal agencies or major agency subcomponents that have implemented more performance-sensitive alternatives to the General Schedule system through the aforementioned demonstration project authority or agency-specific legislation or exemptions such as that for the Government Accountability Office (GAO), National Credit Union Administration, Patent and Trademark Office and Internal Revenue Service. Interestingly, most of the demonstration projects were undertaken by DOD and, as required by law, independently evaluated as to their "impact on improving public management." While many of the earlier alternative systems have continued to be refined over time, the clear indications are that eventually almost every alternative system in place for a number of years has been found by independent evaluation to be superior to the system it replaced.

Change of the magnitude represented by the NSPS will take time and effort. It will also take a period of time before the effects and potential benefits of the NSPS can be fully assessed. However, we believe that the NSPS – if implemented with employee involvement and strong congressional oversight – has the potential to make a positive difference and to gain acceptance by the DOD civilian workforce. We are supported in this belief by evidence such as that provided in a January 2004 GAO report (GAO-04-83) based on an examination of "pay for performance" approaches at six established demonstration projects. Among GAO's findings was that the pay-banded, pay-for-performance demonstration project started in 1980 at the Department of the Navy's China Lake Naval Weapons Center was initially favored by only 29 percent of employees; by 1998, that number had grown to 71 percent. GAO concluded in its report that it "strongly supports the need to expand pay for performance in the federal government. How it is

done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful."

Attempts at reform of the federal civil service and federal HR policies and practices are not new. Prior to the NSPS, perhaps the largest civil service reform effort in recent memory was the Civil Service Reform Act of 1978. The 1978 Act made some significant changes to the civil service, such as the creation of OPM and the Senior Executive Service and statutory recognition of labor-management relations. Congress also recognized in 1978 that the specific government-wide reforms being authorized were unlikely to be sufficient and they established a research and demonstration project authority to help guide future reform efforts. Over time, individual federal agencies have successfully made the case for HR reforms tailored to their needs (including federal financial agencies such as the FDIC and the SEC, as well as FAA, IRS, NASA, GAO and DHS). DOD is simply the latest and the largest.

The Partnership believes it is too soon to know what the ultimate effects or benefits of the NSPS will be. Many of the regulations proposed by DOD for implementation of the NSPS in the areas of pay and pay administration, performance management, staffing and employment, and workforce shaping have merit and, as importantly, a foundation in demonstration project experience. We also understand that the regulations have the potential for substantial impact to the workplace and that employees question the ability of some managers and supervisors to exercise their new authorities in a fair and unbiased manner. A specific focus on improving the skills of supervisors and managers in this regard could have a substantial benefit. For example, in our analysis of DOD's civilian employee survey data for our 2005 *Best Places to Work* rankings, it was clear that "effective leadership" was the area most highly connected to overall employee satisfaction. GAO's 2004 caveat about pay for performance in the federal government could easily apply to the overall implementation of the NSPS, i.e., "How it is done, when it is done, and the basis on which it is done can make all the difference in whether such efforts are successful."

Traditionally, employee interests and rights with respect to major workplace changes have been protected, in part, by the ability of employees to appeal adverse personnel actions to independent third parties for adjudication. The proposed regulations by DOD regarding changes to the employee appeals process have not been tested in a demonstration project setting, and may have the unintended consequence of making even highly-performing employees feel particularly exposed to unfair or biased treatment by supervisors or managers.

Another traditional safeguard for many federal employees in a time of workplace change is the ability to negotiate the impact and implementation of those changes via employee representatives if part of a union bargaining unit. We recognize that the changes proposed in the NSPS provide a special challenge in this regard. This is clearly an area in which additional congressional oversight would be beneficial.

Recommendations

In response to the current situation, the Partnership has the following five recommendations:

1. Congress should allow DOD to proceed with aspects of the NSPS that have already been tested through demonstration projects before reaching a final conclusion about the effects or benefits of the NSPS. Rigorous and ongoing oversight by the Congress, coupled with meaningful employee collaboration and involvement, will help to ensure that the implementation of the NSPS benefits both the mission of DOD and its employees.

2. The Subcommittee should review the process by which employees may appeal adverse personnel actions and consider a larger role for an adjudicatory body outside of, and independent from, DOD. One obvious approach would be to enlarge the role that the current regulations assign to the U.S. Merit Systems Protection Board. Of course, the forthcoming decision by the D.C. Circuit Court of Appeals will heavily influence DOD's posture in this regard.

3. The Subcommittee should review the proposed changes to labor-management relations in the Department to examine the concerns of bargaining unit employees regarding the ability of their union representatives to adequately safeguard their interest in (1) being treated in a fair and equitable manner, and (2) having a workplace in which they can be involved in decisions that affect them or their work. Once again, the forthcoming decision by the D.C. Circuit Court of Appeals will heavily influence DOD's posture in this regard.

4. The Subcommittee should arrange for an ongoing assessment of the NSPS by an outside evaluator as required by the demonstration project authority. This ongoing assessment should be based on established criteria and indicators that will provide the Congress with much-needed, objective insight into the impact of the NSPS on DOD's mission and employees.

5. To assist Congress in the exercise of its oversight responsibility and to respond to any concerns that the NSPS might actually detract from the ability of the Department to accomplish its mission, the Partnership recommends the development and use of a set of metrics for the specific purpose of evaluating the effectiveness of the NSPS over time. Such metrics will only be of value if the Congress, DOD and other key stakeholders agree on a common set of measures to inform future decision-making. The following principles should apply in this regard:
    a. The key to effective oversight will be looking at the *right* measures, not the *most* measures.
    b. Metrics should include qualitative as well as quantitative measures.
    c. Metrics should not impose an undue collection and analysis burden on DOD.
    d. Metrics should be used to inform decision-making and not simply to monitor compliance/non-compliance.

The Partnership has recently completed a thorough review of human capital metrics in federal, state and local governments, as well as the leading practices of top companies in the Partnership's *Private Sector Council (PSC)*, that serve as a useful guide to the Subcommittee in its oversight capacity.

Based on this research and mindful of the principles mentioned above, we recommend that the Subcommittee work with DOD to collect and analyze **metrics in seven areas**: *recruitment, retention, skills gaps, performance distinctions, performance culture, leadership* and *NSPS implementation.*

Recruiting
To assess whether they are winning the war for talent, leading organizations are collecting information about **new hire rates** – e.g., the ratio of new employees hired to the number of planned hires for critical skills – and **new hire quality** – e.g., monitoring Federal Human Capital Survey results about the skills of new hires.

Retention
To measure whether DOD is retaining high-performing employees with critical skills, we recommend that the Subcommittee look at the **attrition rates of high performers** compared to overall attrition and the **attrition rates of critical skill employees** compared to overall attrition.

Skills Gaps
If NSPS is achieving its goals, DOD should be closing the gap between the **actual numbers of employees with a critical skill compared to the number needed.** Ideally, the Subcommittee will monitor the results over time to assess whether the gap is decreasing.

Performance & Rewards
A modern compensation system should make meaningful distinctions between employees based on their performance. Members can evaluate whether managers are effectively using the NSPS by monitoring **employee evaluations** – e.g., the numbers of employees reaching the various levels of performance – and **employee bonuses and rewards** – e.g., the number of employees receiving various levels of pay and bonuses.

Performance Culture
We advocated for, and the final NSPS legislation included, a provision requiring an annual survey of employees across the federal government. The survey should prove to be an invaluable window into employees' views of their agencies' management practices.

The survey questions specified in recent regulations issued by OPM include several questions about supervision and pay that constitute a **Performance Culture Index** with items such as:

- Promotions in my work unit are based on merit.
- In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.
- In my work unit, differences in performance are recognized in a meaningful way.

The Subcommittee can compare the results of components participating in the NSPS spirals with the results of components operating under the non-NSPS system. DOD and the Subcommittee will want to monitor the results over time to track whether the "performance culture" is increasing.

Leadership
In any organization, and especially in the implementation of the NSPS, it is vital that supervisors and senior leaders treat employees fairly, resolve disputes in a reasonable manner, and have the respect of their employees. Members can evaluate leadership effectiveness by using another set of questions from the Federal Human Capital Survey. The Partnership has created an **Index for Effective Leadership**, which we use in our *Best Places to Work* rankings. This index includes items such as:

- I have a high level of respect for my organization's senior leaders.
- Complaints, disputes or grievances are resolved fairly in my work unit.
- In my organization, leaders generate high levels of motivation and commitment in the workforce.

The Subcommittee can compare DOD's scores on these questions to scores across government and the private sector.

NSPS Implementation – Pulse Surveys
Finally, it is important to examine real-time data on the success of the NSPS implementation. **Pulse surveys** are short surveys going to a small, representative sample of employees used to provide leaders with real-time information on critical issues. DOD could administer pulse surveys semi-annually to examine employee opinions on NSPS training/briefings, understanding of the new system, satisfaction with the NSPS, et cetera. This data will allow DOD to improve the rollout of the system based on employee feedback.

Conclusion

Mr. Chairman, Representative Davis, Members of the Subcommittee, we thank you again for the opportunity to share our views on the DOD's National Security Personnel System and to offer our recommendations for the best way forward. We look forward to being of assistance to this Subcommittee and to the Congress as you consider the future of NSPS.

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Max Stier is the President and CEO of the Partnership for Public Service. He has worked previously in all three branches of the federal government. In 1982, he served on the personal staff of Congressman Jim Leach. Mr. Stier clerked for Chief Judge James Oakes of the United States Court of Appeals for the Second Circuit in 1992 and clerked for Justice David Souter of the United States Supreme Court in 1994. Between these two positions, Mr. Stier served as Special Litigation Counsel to Assistant Attorney General Anne Bingaman at the Department of Justice. In 1995, Mr. Stier joined the law firm of Williams & Connolly where he practiced primarily in the area of white collar defense. Mr. Stier comes most recently from the Department of Housing and Urban Development, having served as the Deputy General Counsel for Litigation. Mr. Stier is also an adjunct professor of law at Georgetown University and is a graduate of Yale College and Stanford Law School.

STATEMENT BY
MARICK F. MASTERS

BEFORE

THE SUBCOMMITTEE ON READINESS
HOUSE COMMITTEE ON ARMED SERVICES

REGARDING

THE NATIONAL SECURITY PERSONNEL SYSTEM
OF THE DEPARTMENT OF DEFENSE

MARCH 6, 2007

Mr. Chairman and Members of the Committee:

My name is Marick Masters, and I am a professor of business and of public and international affairs at the University of Pittsburgh, where I have been employed since 1986. I teach in the areas of human resource management, negotiations, conflict resolution, and labor-management relations. I have studied federal-sector labor-management relations episodically since the early 1980s. I also am a co-equity partner in a consulting firm (AIM Consultants) with offices in New London, CT and Pittsburgh, PA.

In the interest of time, I have kept my testimony brief. If there are questions to which you would like me to respond in more detail, or additional information I can provide in writing, I would be happy to do so. In the interest of full disclosure, I should note that I am a former candidate for the U.S. Congress (for the Democratic nomination in the 18 congressional district, PA, in 1992) and I received contributions from some federal-employee and postal-employee union PACs. I have tried to be objective in this testimony. I consult with management and labor, more often with the former, on a variety of issues, including advising on bargaining strategy.

I am here to focus on the National Security Personnel System (NSPS) of the Department of Defense (DoD). I am sure that you are familiar with the background of the reform initiative and its various details as it has evolved, so I will dispense with detailed descriptions of the various proposals undergoing implementation. My remarks focus on the (1) plan overall; (2) pay-for-performance aspects of the plan; (3) employee appeals process; and (4) labor-management relations system. I realize that the courts have enjoined the last two elements of NSPS and that legal developments have restricted the implementation of NSPS to non-bargaining-unit employees.

I fully admit it is much easier to criticize inherently complicated initiatives than it is to build them, and that transforming institutions is a very difficult task. I strive to be constructive today, highlighting the positive aspects of the initiatives and raising concerns in the spirit of making transformation fairer and more probable. I believe strongly in a competent and motivated civilian sector in the DoD as essential to providing for the national security and the well-being of our men and women in uniform, one of whom is my son, Sergeant Christopher Masters, who has done two tours of duty in Iraq, beginning in early 2003. I have had the privilege of working with DoD civilian personnel in earlier research projects and found them to be very professional and patriotic individuals.

The NSPS Plan

The NSPS plan, as presented in the final regulations issued on November 1, 2005, addresses several aspects of personnel reform: pay and classification, performance management, staffing, adverse action and appeals, and labor-management relations. The general thrust of the plan is consistent with broader trends in the field of human resource management (HRM) in both the private and public sectors, in the U.S. and globally. A growing body of academic, consultancy, and think-tank literature reveals the spread of various innovations, explores their

determinants, and examines their impacts on individual and organizational performance (I cite of few of the recent studies, particularly those that review the literature, in a bibliography at the end of this written testimony).

In a nutshell, the research documents the (1) growing use of variable pay or pay-for-performance programs, (2) increased emphasis on performance-management, (3) implementation and streamlining of disciplinary procedures with appeal rights; and (4) promotion of organizational flexibilities at various levels, including the classification of work, the employment relationship, compensation, and work schedules. Introducing flexibilities is common in the unionized and non-union sectors (negotiating flexibilities in the unionized sector is a globally recognized trend).

I applaud the DoD for the efforts that it has made to make difficult and important changes. Overall, it is moving in the "right" direction, with certain exceptions. Its guiding principles (e.g., put mission first, respect the individual, value talent, be flexible, ensure accountability, and be competitive and cost effective) are indisputably commendable. However, the "devil is the details," and a lot often gets lost, despite the best intentions, between principle and practice.

Pay-for-Performance

The DoD's effort to replace a longevity-based pay-increment process with a more flexible performance-based system is consistent with HRM trends. The academic literature has produced differing theoretical views about pay as a motivator. Recent studies, however, suggest that pay can be a motivating factor, and that financial incentives may work more strongly in the public sector.

Nonetheless, pay-for-performance does not always work and may produce unintended negative consequences. Oftentimes, the problem lies in the specific design and implementation practice.

There are several concerns I raise about the system as designed and partially implemented by DoD in its Spiral 1.1 roll-out. These concerns are based on my review of the plans as designed and some preliminary reports about "mock" implementation, not intimate, first-hand knowledge, so they should be considered in this light.

First, I am concerned that there may not be enough money in the pay pool to make the received salary increases and/or bonuses meaningful enough to be motivating. It is unclear to me that a commitment exists to fund this pool sufficiently.

Second, the process is based heavily on supervisory ratings, and is highly subjective, though it may be very systematic. It is possible, in this regard, to do things precisely wrong. (I know this having worked in a university for a long time.) A lot of judgment goes into delineating objectives, assigning scores, determining share values, assigning share points, and making decisions regarding base-pay increments versus bonuses.

Third, for such a system to work requires that employees and managers have confidence in the system, understand the system (it has to be understandable as well as transparent), and have confidence in the fairness of the evaluators. This confidence is built through employee involvement and training, and exists (or does not exist) in a broader organizational and industrial relations climate affected by a lot of other factors. I am not sure these preconditions exist.

In this regard, I should note that (1) representatives of the Federal Managers Association have testified to some of these same concerns; (2) the Senior Executive Association released a survey in fall 2006, admittedly unscientific, revealing that most senior executive respondents reported that the then-two-year-old pay-for-performance plan had no impact on their performance; (3) a trial run of the rating system at Tinker Air Force Base showed that less than one percent of the test group got an unacceptable rating and 94 percent received ratings at the "valued performer" level and above; and (4) a recent Human Capital Survey shows that 18.4 percent of all DoD respondents are dissatisfied and 8.1 percent are very dissatisfied with their senior leader's policies and practices. Significantly less than a majority were satisfied.

DoD is right in that there is a problem with pay in the federal sector in general and DoD in particular, with many believing that performance is not adequately rewarded. It is unclear on the surface, however, that what it proposes as a substitute will correct the problem. As designed, the new system is not simple. It will require a lot of training, practice, and trust to work. I am impressed with some of the training materials I have seen. I can tell you from firsthand experience and extensive organizational observation, however, that I would not be surprised if the results are initially disappointing.

Adverse Actions and Appeals

The regulations propose streamlining and expediting the disciplinary and appeals processes. These are commendable goals. The proposed system introduces another layer of review, in which the DoD can review the decisions of the Merit Systems Protection Board's (MSPB) administrative judge or an arbitrator, before a review goes to the full MSPB. The MSPB may "order corrective action only if the Board determines that the decision [of DoD] was—(A) Arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law…"

Adding another layer hardly seems the path to take if you want to expedite the process. Further, the new layer, coupled with the higher standards for rejecting a management decision, raise questions of procedural justice. Finally, the proposed regulations beg the question of the problem that is being addressed. If the concern is frivolous claims, then this is not the solution. I believe this regulation, if implemented, would encourage behavior to evade the MSPB path and look for available alternatives, with obvious implications.

Labor-Management Relations System

Reforming personnel occurs in a systems context. Reform programs are only as strong as their weakest link. The labor-management relations system proposed by DoD in NSPS is its weakest link.

The reality is that the bulk of the DoD civilian workforce is represented by unions. Approximately two-thirds of the roughly 700,000 employees are represented by 43 unions in about 1,500 bargaining units. Implementing personnel change is dependent on winning the cooperation of these unions. The proposed labor-management relations system does little more than frontally antagonize organized labor. If I had an assignment to design a system to promote national-security requirements, I may or may not have come up with the proposed system. If I had an assignment to design a system that minimized collective bargaining without explicitly banning it, I could not have come up with a better plan. This is why the courts have ruled that the plan essentially "eviscerates" collective bargaining. The proposed system shrinks the scope of bargaining, expands the sphere of management rights, and provides for a less than independent National Security Labor Relations Board. It removes from the scope of bargaining agency regulations, issuances, and implementing issuances. It also removes from negotiability appropriate arrangements involving "proposals on matters such as the routine assignment to specific duties, shifts, or work on a regular or overtime basis." Management also "has no obligation to bargain or consult over a change to a condition of employment unless the change is otherwise negotiable pursuant to these regulations and is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the unit affected by the change."

I shall not comment on the extent to which unions have been involved so far in the design process, as I was not a party to any of these deliberations. I will observe, however, that they felt excluded. Also, meet-and-confer is a very low standard to meet. It is impossible to refute if a meeting has taken place. I might say that a mind is like a parachute; it works best when it is open. I get the impression that the process could have been more open.

Conclusion

I applaud DoD for taking on a difficult task. I applaud the administration generally for paying attention to the management part of the OMB. I, however, have some reservations about the pay-for-performance plan, as designed. But these can be addressed and may have already been to some extent. My principal concern lies in the confrontational approach taken to labor. It does not bode well for implementing NSPS in the union-represented workforce. I will be happy to respond to any questions or comments.

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MARICK F. MASTERS

BIOGRAPHICAL STATEMENT

Marick F. Masters is a Professor of Business Administration and of Public and International Affairs at the University of Pittsburgh where he is the Executive Director of the newly formed Center on Conflict Resolution and Negotiation. He joined the University of Pittsburgh in 1986. He received his Ph.D. from the Institute of Labor and Industrial Relations at the University of Illinois in 1983. He was on the faculty of the Department of Management at Texas A&M University in College Station, Texas between 1982 and 1986.

Dr. Masters' research and teaching focuses on conflict management and negotiations, human resource management, and the role of interest groups in politics. He is the author of more than 90 articles in a variety of journals. He serves on the editorial board of the ***Journal of Labor Research***, and has served on the editorial boards of the ***Journal of Management*** and ***Journal of Managerial Issues***. Dr. Masters is the author of ***Unions at the Crossroads*** (Quorum 1997) and ***The Complete Guide to Conflict Resolution in the Workplace*** (AMACOM 2002).

Dr. Masters is active in a variety of organizations, including the Association for Conflict Resolution, Labor and Employment Relations Association (LERA), Society for Human Resource Management, Academy of Management, American Society for Public Administration, and Pittsburgh Human Resource Management Association. He has served on the boards of the Builders Guild Advisory Council, Business Dispute Resolution Alliance, and Southwestern PA LERA. He is the co-chair of the Public/Federal Industry Council of LERA. He is the editor of the Workplace Section Newsletter of the Association for Conflict Resolution, and sits on the section's leadership council. Dr. Masters has spoken to numerous private and public sector organizations and print and electronic media. He has conducted a major study on federal sector labor-management partnerships on behalf of former President Clinton's National Partnership Council. He is a frequent keynote speaker.

At the University of Pittsburgh, Dr. Masters has served in a variety of administrative capacities. He was coordinator of human resources faculty, Director of MBA Programs, and Associate Dean (interim). He has participated extensively in designing and implementing business curriculum in undergraduate, graduate, and executive education. He has advised executives and consulted extensively with corporations and nonprofit organizations on a variety of management issues, developed customized executive education programs, and generated external research and teaching funding. He is a senior partner in a management consulting firm AIM (Albright, Irr and Masters), with offices in New London, CT and Pittsburgh, PA. He has conducted numerous executive and managerial sessions, in the private and public sectors, on management issues, negotiations, and conflict resolution.

DOCUMENTS SUBMITTED FOR THE RECORD

MARCH 6, 2007

United DoD Workers Coalition

Nat'l Assn. of Aeronautical Examiners
Nat'l Air Traffic Controllers Assn.
Professional Airways Systems Specialists
Antilles Consolidated Education Assn.
Int'l Brotherhood of Boilermakers
Assn. of Civilian Technicians
Communications Workers of America
Federal Education Assn./NEA
Int'l Brotherhood of Electrical Workers
Nat'l Federation of Federal Employees
Fairchild Federal Employees Union
American Federation of Gov. Employees
Nat'l Assn. of Gov. Employees
Int'l Guard Union of America
Int'l Assn. of Fire Fighters
Hawaii Council of Defense Commissary Unions
Laborers' Int'l Union of North America
Int'l Assn. of Machinists and Aerospace Workers
Nat'l Marine Engineers Beneficial Assn.
Int'l Organization of Masters, Mates & Pilots
Metal Trades Dept., AFL-CIO
American Nurses Assn.
United American Nurses
Int'l Union of Operating Engineers
Int'l Union of Painters and Allied Trades
United Assn. of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada
United Power Trades Org.
Int'l Federation of Professional and Technical Engineers
Retail, Wholesale, and Department Store Union
Seafarers Int'l Union
Service Employees Int'l Union
Sport Air Traffic Controllers
American Federation of State, County and Municipal Employees
American Federation of Teachers
Int'l Brotherhood of Teamsters
Int'l Assn. of Tool Craftsman
(List in-formation)

TESTIMONY OF RON AULT

PRESIDENT
OF
METAL TRADES DEPARTMENT, AFL-CIO

ON BEHALF OF
THE UNITED DOD WORKERS COALITION
(UDWC)

BEFORE
HOUSE ARMED SERVICES READINESS
SUBCOMMITTEE

AT HEARING TITLED
"THE NATIONAL SECURITY PERSONNEL
SYSTEM – IS IT REALLY WORKING?"

ON
MARCH 6, 2007

Greetings from the civilian workers of the Department of Defense: We thank you for finally allowing hearings to examine the most sweeping and wholesale personnel reforms ever enacted on civilian workers any where in the free world. Such radical reforms deserved a full and careful examination in 2003, but in the wake of the September 11th terrorists' attacks, DOD Secretary Donald Rumsfeld rushed this legislation through under the implied threat that anyone voting against it was soft on terrorism and was unpatriotic. In 2003, we were never given any opportunity to testify nor provide any input on behalf of the DOD workers before NSPS became law. Excluding the workers' representatives in every aspect of the NSPS process guaranteed a fight and ultimately a series of federal lawsuits where the workers ended up suing their employer. This was not a fight of our choosing; this fight for workers' rights was forced on us.

Let's call this personnel system what it is: the "Donald Rumsfeld Personnel System", as it was DOD Secretary Rumsfeld who placed such a high priority on these reforms that he maintained without them, the security of the United States would be adversely affected. Indeed, not only did Secretary Rumsfeld label this reform the "National Security Personnel System", but NSPS is a key part of his Iraq war strategy; the "One Force"

concept. The Rumsfeld "One Force" concept transfers traditionally uniformed military non-combative support functions to the civilian workers of the DOD- supplemented with private contractors. In other words, under NSPS, DOD civilian employees/private contractors become a "paramilitary force" that would be deployable into combat zones without the protections of the Geneva Convention or the Uniformed Code of Military Justice applying. What "One Force" does is utilize the uniformed military personnel exclusively as "trigger pullers/war fighters" without DOD having to raise the military ceiling or having to resort to reinstating an unpopular military draft. This "backdoor draft" of placing our members in a theatre of war under possible hostile fire conditions could not have been accomplished under Chapter 71 without Secretary Rumsfeld sitting down with the labor organizations that represent DOD workers, negotiating appropriate arrangements and the implementation of his concept. That, I believe, was the catalyst for DOD's NSPS.

FACT: The National Security Personnel System has absolutely nothing to do with national security; this system is all about stripping American workers of their constitutional rights of free association and the right to join and form a union to bargain with their employer. In all of the

meetings I have attended over the past three years with DOD and OPM over NSPS, we have repeatedly asked the DOD Representatives for one example of how National Security is impaired or hampered by the present Chapter 71 rights. The answer we have is this: DOD representative Ginger Groeber told us in an NSPS meeting in early 2004 that she did not have to justify any national security issues whatsoever as they (DOD) had won, Congress passed NSPS and we (Unions) had lost…and they (DOD) intended to push forward on NSPS without delay, declare collective bargaining agreements null and void, and issue regulations enabling managers to manage without interference. This dictatorial, "I'm boss, shut up and do as I say" tone of arrogance and disrespect has carried over to every meeting DOD has held with us on NSPS. To date, we (UDWC) have attended hundreds of hours of meetings with DOD/OPM officials that had no purpose other than documenting DOD/OPM had held meetings with their labor organizations as required by law.

FACT: Since NSPS was passed into law, DOD has not been able to implement what Donald Rumsfeld told Congress was an essential to national security personnel system…Why? Because key portions of the regulations have been declared unlawful by federal judges. Instead of halting the

program and making an attempt to resolve those key portions with the DOD workers' representatives, DOD chose to act as if nothing had happen and as Deputy Secretary Gordon England recently told Congress… "those lawsuits are just a bump in the road"…

FACT: DOD has squandered millions of dollars in an unlawful program whose flaws are public record. Ask one question of DOD. What national security problem (s) has there been because NSPS has not been implemented? I think we all know the answer to that question…there have been none. There never were any National Security issues with DOD's civilian employees having collective bargaining rights to begin with and there never will be.

I find that I am in agreement with Senator John McCain on at least two things: I agree with his assessment that Donald Rumsfeld will be judged by history as the worst DOD Secretary ever to hold this position and I agree with Senator McCain that Secretary Rumsfeld mismanaged the Department of Defense.

What I find hard to understand is this: Donald Rumsfeld is gone; George Nesterchucz is gone, Ron Saunders is gone; Kay Cole James is gone…Right? Has Donald Rumsfeld really been replaced as Secretary of

Defense? If so, why are members of Congress still supporting the failed policies and mismanagement of Donald Rumsfeld?

There is nothing about NSPS that has not been tainted and contaminated by DOD Secretary Rumsfeld. Any examination of the public records proves his NSPS was based on bad science…a pre-determined solution in search of a problem. The Rumsfeld Personnel System will never, ever work. Hundreds of millions of tax dollars have been squandered on his NSPS. If Congress does not repeal NSPS, DOD will squander an additional 4 to 7 Billion tax dollars on an illegal personnel system that has zero credibility with DOD workers. Any personnel system has to have credibility with those who will be in that system if that system is to work. Rumsfeld's NSPS is a mousetrap that will not catch mice…we are beating a dead horse. This system also has zero credibility with the United DOD Workers Coalition and we will never, ever accept it. If it is not repealed in this Congress, we will use every resource available to us to continue our fight against this anti worker law until it is repealed. We will not go quietly without a fight…many of us in the UDWC invested a lot last year to bring this worker rights issue to the public awareness and make it part of the political debate. Our DOD workers are determined to fight as long as it takes to regain their rights and

dignity at the workplace that was stripped from them in 2003 by the passage of the Rumsfeld Personnel System.

We only ask that Congress do the right thing; scrap Rumsfeld's NSPS and restore the 700,000 hard-working, loyal, and patriotic DOD workers' rights.

Thank you.

QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

MARCH 6, 2007

QUESTIONS SUBMITTED BY MR. MCHUGH

Mr. MCHUGH. I have heard a number of concerns from civilian employees at Fort Drum, New York, in my 23rd Congressional District regarding the implementation of NSPS. The new system appears to leave a great deal of discretion in the hands of managers to determine pay raises and to impose adverse actions without adequate employee recourse. How are you training people to be good managers and how do you measure whether the management system under NSPS is working?

Secretary DOMINGUEZ and Ms. LACEY. The NSPS has flexibilities, but their use is not unconstrained. First, under NSPS, employees continue to have the same protections as other federal employees—merit systems principles, due process, whistleblower protections, and protection against illegal discrimination and prohibited personnel practices. Additionally you identify two areas of concern where we have built in additional procedural limits to ensure fairness and consistency.

While the adverse actions and appeals portions of NSPS have not been implemented due to on-going litigation, there is no greater level of discretion for managers to impose adverse actions under these regulations, nor any less employee recourse available, than exists under Governmentwide provisions of title 5, United States Code. The regulations recognize the critical nature of the Department's national security mission and provide for greater individual accountability, which is accomplished without compromising guaranteed protections of due process.

As for pay raises, managers do have greater discretion in making pay decisions than before NSPS, however we included multiple internal review processes to ensure our system is fair to our people. For instance, our design built in checks and balances so our employees receive full and fair consideration during the appraisal process. Senior officials review performance plans to ensure consistency and fairness across the organization. There are multiple review levels to make sure performance ratings are based on documented accomplishments, make sense and are consistent within the pay pool. Also, all employees have the right to request reconsideration of their ratings through a formal process.

Managers and supervisors, including military supervisors and managers, are key to the success of NSPS. Extensive training is given to ensure their understanding of the system and the key role they play. Courses focus heavily on the performance management aspect of NSPS, such as setting clear goals and expectations, communicating with employees, and linking individual expectations to the goals and objectives of the organization.

The Department is also focusing attention on the behavioral aspects of moving into NSPS to better prepare the workforce for the changes NSPS brings. Course offerings such as interpersonal communication, team building and conflict management help facilitate interaction between employee and supervisor. More than a half million training instances have already taken place—and this number will steadily rise as more workers transition to NSPS.

Oversight and assessment of human capital management, regardless of the personnel system, are part of the Department's Human Capital Accountability system. To assess management under NSPS at a system-wide level, we are following the practices of the Government Accountability Office and the Office of Personnel Management used for assessing human capital systems. This includes monitoring patterns of how authorities are being used, general trends in complaints, and workforce attitudes. Specific examples of criteria to measure are trends in opinions of employees, supervisors, and managers about matters relative to mission alignment, quality of new applicants and those being hired, action on problem employees, usefulness of performance feedback, and trust in supervisors and managers.

Mr. MCHUGH. As more information comes to light about the widely publicized problems at Walter Reed Army Medical Center, it appears that private-public job competition, referred to by many as the "A–76 process," sapped the facility of needed workers. While NSPS and A–76 are two different programs, they are advertised as ways to achieve efficiencies and improve performance. To put a finer point on the issue, how will you ensure that NSPS works to actually improve the functioning of the federal workforce? What criteria will you use to measure that improvement? Furthermore, it seems to me, based on the February 2006 D.C. District Court ruling

and union concerns that while the Department awaits the outcome of the appeal to the district court decision, and perhaps continues further legal action if the appeal is not favorably considered, the Department will be setting up the same kind of workforce sapping environment created by the A–76 process at Walter Reed. Why doesn't the Department act now, without further litigation, to address directly with the workforce the significant shortcomings identified by the courts with regard to labor-management relations and grievance appeals?

Secretary DOMINGUEZ and Ms. LACEY. Working from the premise that good human resource management practices are necessary for employees to be effective, we plan to look at areas where we expect NSPS to contribute rather than try to measure granular improvements in employee operational effectiveness. There will be a measured implementation to ensure that managers and supervisors build upon their experiences and training. Examples of criteria to measure NSPS contributions include higher retention rates for high performers than low ones, pay consequences for those who perform below a fully successful level, supervisor satisfaction with applicants under NSPS and with the ability to make organizational changes in an acceptable amount of time; positive feedback from the workforce and managers on any improvements in communication, organizational awareness, or work integration related to the performance system; positive trends in opinions of NSPS employees, supervisors and managers about matters like mission alignment, quality of those being hired, action on problem employees, frequency and usefulness of performance feedback, and trust in supervisors and management.

The NSPS statute authorized the Secretary and the Director of the Office of Personnel Management to design a labor relations system and adverse actions and appeals processes that recognize the Department's national security mission while preserving collective bargaining and employee rights. On May 18, 2007, the United States Court of Appeals for the District of Columbia ruled that the Department's regulations complied with the law and overturned the D.C. District Court ruling. In order for DoD to implement labor relations, adverse actions, and appeals portions of NSPS, the court must issue a mandate to implement the decision. In the interim, while DoD awaits the court decision to implement the mandate, unions have requested to stay the mandate's issuance.

QUESTIONS SUBMITTED BY MR. REYES

Mr. REYES. A large segment of the civilian Department of Defense work force is made up of personnel who perform unique tasks that do not exist in the private sector, in particular those working in the intelligence community. One of the proposed merits of NSPS is the idea of pay for performance. The current GS schedule is based on performance and tenure and is transparent to ensure fair treatment and pay for federal employees. However, the NSPS would do away with these safeguards. I am concerned that without the transparency provided by the current GS schedule intelligence easily could become subject to abuse and politicization. For example, a high performing individual could be stymied in promotion or performance pay opportunities for providing assessments and intelligence that that may be at odds with the views of US policy makers. As a result, individuals may feel more compelled to alter their judgments to ensure promotions or higher pay. Has DOD considered the potential negative impact of the National Security Personnel System on the production of fair and impartial intelligence assessments? What action is DOD taking to ensure that intelligence personnel will not feel pressured to alter or shape their analysis in order to achieve promotions or pay bonuses?

Secretary DOMINGUEZ. DoD Intelligence professionals are under the auspices of the Defense Civilian Intelligence Personnel System (DCIPS). The DCIPS legislation, Title 10, United States Code, Sections 1601–1614, was enacted in October 1996 and provides the Secretary of Defense the authority to establish a separate personnel system to meet the unique needs of the intelligence community. The legislation provides the authority to hire, develop, and retain a diverse, versatile, and highly qualified workforce to perform both Defense and National Intelligence missions. DCIPS is the Defense Intelligence pay-for-performance personnel system. DCIPS is being implemented within the Department in coordination with both the Director of National Intelligence (DNI) and the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).

Under DCIPS, similar to NSPS, employees and management are subjected to greater accountability, performance documentation, and transparency. The layers of checks and balances within the systems provide the civilian employees with greater protection from abuse and politicization. High performing employees will receive significantly greater compensation in pay and rewards under NSPS and DCIPS than

they would have under the GS system. Under NSPS, and DCIPS in the case of the DoD Intelligence Components, there are multiple safeguards during both the performance rating and the performance pay decision processes. For intelligence employees, those safeguards will include review of the supervisor's rating of performance by both the next level in the chain of command, and an additional review at yet a higher level to ensure that there is consistency and fairness across the organization. If an employee believes that he or she has been treated unfairly in the process, there remain avenues of redress through the grievance and equal employment opportunity protection processes. Similar processes are included to protect employees during the pay decision processes. To ensure the process works properly, all supervisors and managers will be evaluated on their effectiveness in the management of their employees and the performance-pay decision processes.

Under the GS system, pay increases are for the most part automatic—either as a result of the annual government-wide pay raises or periodic within-grade increases. Because there is little direct relationship between compensation and performance management, it is difficult to reward high-performing employees under this system.

Under DCIPS and NSPS, employees will be provided specific, measurable performance objectives at the beginning of each annual performance period that detail what is expected, and how outcomes will be measured. The performance management system's processes and procedures are transparent to the employees. As an example, under DCIPS, an intelligence analyst's performance objectives will detail the types of analyses that are expected, and the quality of those analyses will be evaluated based on the extent to which they represent a collaborative approach to the development of the analytic judgment; the quality of the technical analytic product based on competencies developed under the aegis of the Director of National Intelligence for all intelligence community analysts; the critical thinking that went into the product development; and the personal leadership demonstrated in the development of the product—including demonstration of the courage to stand up for one's judgments in the face of opposition. Those accomplishments will be documented, and reviewed by others both within and, if necessary, outside the chain of command to assess the value of the work products against established standards for the occupation.

If there should be pressure from policy makers or superiors to modify judgments to conform to a desired answer, it is far more likely that the employee will have a documented, evidentiary basis for challenging inappropriate treatment than would be likely under the GS system.

The design of both the NSPS and DCIPS is intended to develop accountability from the top down. At the Senior Executive level, the Department will establish objectives of accountability for results, transparency of processes, personal integrity, and fairness in the management of personnel. Under the performance-based compensation systems represented by the NSPS and DCIPS, those values and expectations will cascade throughout the Department with results evaluated and used to improve our performance as a Department in both the national security and intelligence worlds; and documented for oversight. DCIPS will contribute to fostering the environment and culture under which production of fair and impartial intelligence assessments occurs, as NSPS will contribute to meeting mission requirements in other areas of the Department.

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