

STATEMENT BY

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BEFORE THE

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

**SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS**

ON

**THE NATIONAL SECURITY PERSONNEL SYSTEM AND
PERFORMANCE MANAGEMENT IN THE FEDERAL GOVERNMENT**

JUNE 9, 2010

Mr. Chairman and Subcommittee Members:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents 600,000 federal workers, including 260,000 in the Department of Defense, I appreciate the opportunity to testify today on the National Security Personnel System and performance management in the federal government.

NSPS TRANSITION

As you know, during the National Security Personnel System's (NSPS) lifetime, DoD did not convert bargaining unit employees to the system. At first this was because the NSPS Labor Relations regulations were being challenged in court. Later, after Congress removed DoD's authority to create its own labor relations system, but required it to operate within 5 U.S.C. Chapter 71 with some modifications, the Department chose to avoid negotiations over NSPS by continuing not to convert bargaining unit employees. As a result, AFGE has very few employees we represent who were under NSPS and therefore, we have little direct experience with the system. The only reason we do have some bargaining unit employees in NSPS is because its lack of fairness and transparency made the employees understand they needed a union and they organized after being converted to the system.

As a result of Section 1113 of the National Defense Authorization Act for Fiscal Year 2010, NSPS was repealed and DoD was given until January 1, 2012 to convert NSPS employees back to their prior systems, with the vast majority to be put back into the General Schedule (GS) system. We understand that there are some complaints being raised by employees who converted back to the GS system and are in a pay retention status that will temporarily limit future pay increases.

It is neither our intention nor our desire to see any employees disadvantaged by their conversion out of NSPS. But, these situations need to be put into perspective. Employees who made so much money under NSPS that they have to be on pay retention when they are put back into the appropriate GS grade, already got what could be considered an early raise and have benefited from being at these higher pay levels for some length of time. They will continue to benefit because their pay will not be lowered; it just may not rise as quickly as it did under NSPS. And, even under NSPS, it might not have kept rising because employees could have hit "control points," the invisible barriers preventing them from rising to the top of their bands, or their pay pool panels might have changed their priorities to favor other occupations and activities. In addition, the Secretary of Defense had authorized 50% of the General Pay Increase for NSPS employees in 2008 and zero per cent for 2009 – it would all have gone into the pay pools. The NDAA 2008 required at least 60% of the GPI to be given and to be given as pay increases. So, under NSPS these employees would not have received the full GPI and could not count on continuing to receive the same performance pay increases.

Employees who got bigger raises under NSPS than they would have under the GS system may believe that this was because they were superior employees who deserved those increases. And, some of them probably did. But DoD's own internal evaluation of NSPS

covering payouts for 2008, showed the disparate impact of NSPS raises based on factors having nothing to do with performance. The report, done by SRA International and released

June 22, 2009, showed inequities based on race, salary, position, and where in the DoD hierarchy one worked.

The SRA report showed a trend in how NSPS performance payout money was distributed. Perhaps the most damning statistic was that the percentage salary increases, and the percentage value of bonuses were more correlated with income level than with performance level. Higher-level, higher-paid employees got higher performance ratings and payouts than lower-level, lower-paid employees. The disparity was especially great between employees earning \$100,000 or more and employees earning \$60,000 or less. The latter group actually lost money compared to GS employees.

The SRA report states the facts plainly, "...in general, the higher the pay, the higher the rating, the higher the proportion getting the higher number of shares for ratings of 3 or 4, the higher the percent who received an increased rating due to the contributing factors, the higher the payout percentage." The report further found that, in general, being a racial minority had a negative effect on one's rating and payout, and being Black had a more negative effect than membership in other racial groups. I would note, Mr. Chairman, that similar concerns have been raised regarding the Defense Civilian Intelligence Personnel System. In fact, the House NDAA for 2011 puts that system on hold for another year.

AFGE has also heard from some DoD managers, who were under NSPS and who say that it was considered difficult, if not impossible, for any employees who worked outside the Pentagon or the headquarters of a major command to be doing work that could possibly be important enough to the mission to deserve the highest rating, no matter how good their performance might have been. There appeared to be a profound bias in favor of employees who worked higher up the chain of command or closer to the Pentagon as opposed to those who did not. We have been told that there were hierarchies of this bias. While it was best to work in the Pentagon or its vicinity, next best was a regional command, and so forth. Assessments of employee performance under NSPS could have more to do with geography, race, and status than how well one did one's job.

So, while employees who made so much under NSPS that they are put on pay retention when they returned to the GS system may believe their performance was so superior to their colleagues that they deserved every penny of it, the truth may be that some of them got those raises because they were in high places, working for powerful people, or were otherwise not negatively affected by the discriminatory practices revealed in NSPS.

We also know that there were a significant number of good employees who lost money under NSPS. Some employees who got Level 3 performance ratings, which DoD titled "Valued Performer," were so valued that they received less of an increase than their GS counterparts. Is anyone talking about converting them to the GS system at the point where they would have been had they never been converted to NSPS? They are the real losers in this. In fact, because DoD did not increase compensation budgets to invest in

performance, these employees actually had money taken away from them to pay for the higher raises other luckier employees got.

CLASSIFICATION ISSUES

As I indicated before, we have had little direct experience with NSPS because for the most part we did not represent employees under the system. Therefore, we do not have a lot of information about classification problems in the transition. Our understanding is that the vast majority of positions did not change when they went into NSPS. Therefore re-establishing these positions in the GS classification system should be relatively simple.

One anecdote we have heard involves an employee who was a GS-09 when she was converted to NSPS. She continued to do the same duties she had done before her conversion, got the same modest increases the majority of her co-workers got, and found herself falling behind what she would have been making if she had remained under the GS system. She put in for a promotion to a non-NSPS GS-11 position and was selected. At first she was told she would get the usual 2-step increase upon promotion, but then was told that under NSPS she was considered a “virtual” GS-11 and therefore would get the GS-11 position, but not the raise. Strictly speaking this is not a conversion issue. But it is a confusing manipulation of the system, where employees have no idea what “virtual” grade they are in under NSPS and why they are put in a particular grade and step under GS. This matter should be addressed.

INVOLVEMENT WITH DOD ON NDAA 2010 AUTHORITIES

On March 15, 2010, we and other unions in DoD were invited to a meeting with the NSPS Transition Officer, John James, who was selected to head the newly created NSPS Transition Office on January 20, 2010. We learned that Mr. James and his office were tasked with both NSPS transition and carrying out the authorities granted DoD in the NDAA 2010, that is, creating a new performance management system, developing workforce incentives, and utilizing hiring flexibilities. Just as an aside, given the passionate antipathy DoD employees and unions feel for NSPS, it seems counter-productive to put “NSPS” into the title of the management official charged with working constructively with the unions to create new more positive systems and avoid the horrendous mistakes made in implementing NSPS.

AFGE and the unions from the United Defense Workers Coalition (UDWC) met with Mr. James on March 31, 2010 to discuss the two issues that the NSPS Transition Office covers – the transition of NSPS employees back to their prior pay system and the authorities granted in the NDAA 2010. The meeting was frank and candid. At the meeting, the unions spoke about our NSPS experience and how wary we are about repeating it. We agreed to continue discussions and met again with Mr. James on April 30, 2010. We talked about the difficulties in trying to achieve a good balance between the need to take the time to do things carefully and get it right and the external and internal pressures to move quickly on the NDAA 2010 authorities. We also discussed the uncertainties inherent in moving ahead with a Department-wide system while we know there may also be a new government-wide system proposed in the future.

At the April meeting, the unions and DoD agreed to move ahead with a conference to develop ideas for the new systems authorized by the NDAA 2010. In discussions with Mr. James we agreed that we would jointly develop and design the conference and that it would be a brain-storming, idea-generating conference – not a decision-making one. We see this as an important first step in having the kind of discussions and pre-decisional involvement that should have been part of the development of NSPS, but were woefully missing. The unions are developing our ideas for a joint design for the conference to share with DoD. We are cautiously optimistic that we are on a path that has the potential to lead us into a better process and better product than was ever a possibility under NSPS.

AFGE'S IDEAS FOR PERFORMANCE MANAGEMENT, WORKFORCE INCENTIVES, AND HIRING

AFGE does not believe that performance management has to be as complicated as many systems are. NSPS, for example, had a complicated process for coming up with employees' ratings. Each employee was given job objectives. Supervisors would assign one or more contributing factors to each job objective. "Contributing factors" included such things as "cooperation and teamwork," "leadership," and "customer focus." The supervisor was supposed to assign a rating from 1 to 5 for each job objective. Then he or she would rate the employee on the contributing factors associated with that job objective. If the employee met the "expected" benchmark descriptor on the contributing factor, it would have no effect on the rating for that job objective. If the employee failed to meet the "expected" benchmark descriptor, the job objective rating was lowered by one point. If the employee met or exceeded the "enhanced" benchmark descriptor, the job objective rating was raised by one point.

If an employee had a rating of 1 on a job objective, however, the contributing factors would not be applied. It was not possible to use contributing factors to adjust upward a Level 1, or "unacceptable," rating on an objective nor could it be lowered, because it already was the lowest possible rating. If a job objective was scored at level 2, the contributing factors could not be used to lower the job objective rating to level 1, but they could be used to raise it to level 3. If the job objective rating was level 5, it was not possible to change the rating upward because level 5 is the highest rating possible, but it was possible to lower the rating to level 4. Supervisors were then to apply a formula, which would result in a number that would determine the employee's summary rating. All of this would take place before the rating went to the pay pool panel, which could change one or more of the job objective ratings or the summary rating. This was hardly a transparent, credible, or streamlined system.

So what are the basic things a performance management system needs to do to be a good measure and motivator of performance? What do employees want in a performance management system? We believe that first and foremost, employees need to know what is expected of them and what they need to do to meet those expectations. In other words, what does the employee need to do to be "in good standing" and avoid being not "in good standing"? And of course, this should not be just a one way lecture, but a real discussion about the job, the mission, the tools, the assignments, and the employee's strengths and weaknesses and how he or she can expand the former and improve the latter.

There also need to be Recognition and Awards systems that celebrate and reward exceptional performance as well as smaller, but also valuable contributions. Linking these awards too directly to the performance management system, other than by requiring “in good standing” performance, limits flexibility and risks all of the pitfalls of so-called “pay-for-performance.” There can be other criteria, negotiated with the union, and tied to the changing needs of the organization, that can allow the parties to meet the needs of the agency and the workers and create workforce incentives that are meaningful, evolving and up to the minute.

The NDAA 2010 requires that the performance management and other authorized systems be developed within the GS system. The GS system was created as a performance-based system. It has within it numerous mechanisms to reward good or great performance, address poor performance, attract and retain talent, etc. Unfortunately, it has not been well used by supervisors and managers. Among the reasons given for the failure to adequately use the GS provisions to award, retain, recruit, and develop employees, two reasons stand out.

First, supervisors have not been adequately trained to develop and motivate employees nor are they supported when they do take the time to discuss performance with employees, document performance, fight for the rewards or remedial actions they believe their employees need or deserve, etc. The second reason is that there isn’t enough money to either award employees or develop them adequately. Training money is one of the first victims of budget cuts, and award money is close behind.

There is no magic system that does the managerial work or guarantees results. Supervisors and managers have to be well-trained. Their ability to manage and develop their employees has to be valued far more highly than it is now – and certainly more highly than their ability to push paper, write reports, and bark orders. Developing employees through career ladder programs, programs for training, recognition and enhancement of their talents, and career mobility must be emphasized. There must be additional funds put into developing and rewarding the workforce – if this is to be a zero sum game where some employees are rewarded only because other good employees are losing, we will never succeed in improving performance management and improving the delivery of government services.

We believe the best opportunity to move DoD and the rest of the Federal Government forward is for agencies and departments to work with their employees and their unions. Through collective bargaining and the provisions of Executive Order 13522: Creating Labor-Management Forums to Improve the Delivery of Government Services, we can come up with better processes for evaluating performance, rewarding it, and developing employees for the future needs of the organization. We are prepared to continue working with DoD and OPM in representing our bargaining units and bringing their ideas and interests into achieving our agencies’ missions and serving the American public.

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