



INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL ENGINEERS,
(IFPTE), AFL-CIO & CLC

NSPS Comments from:

**International Federation of Professional &
Technical Engineers
(IFPTE), AFL-CIO & CLC**

Prepared For:

Defense Business Board NSPS Task Force

Thursday, June 18, 2009

To: Members of the Defense Business Board NSPS Task Force:

Pursuant to the June 9, 2009 *Federal Register* posting, below is information provided by the International Federation of Professional and Technical Engineers (IFPTE) regarding your review of the National Security Personnel System (NSPS). Since NSPS has changed little since it was finalized in September, 2008, the below information, in part, closely resembles that which was provided by IFPTE as a part of the public comment period. Also included here is a short account of the experiences of those workers represented by IFPTE that are currently under NSPS.

We thank you for your consideration.

IFPTE Members Under NSPS

The following account with respect to IFPTE represented workers under NSPS was provided by IFPTE President Gregory Junemann before the House Federal Workforce Subcommittee during an April 22nd hearing:

“While IFPTE, in conjunction with the efforts of the United DoD Workers Coalition (UDWC), has been successful in protecting most of our membership from NSPS, the union does represent a handful of workers who are under this personnel system. So, along with several congressionally-mandated reports critical of NSPS, IFPTE has first-hand information from our members about the problems with NSPS. These IFPTE represented workers are employed by the Army Corps of Engineers Environmental and Munitions Center in Omaha, along with a few others employed by the Navy at the Pearl Harbor Naval Shipyard in Hawaii.

“According to our members in Omaha, the Implementation of NSPS has been fraught with challenges from the beginning. After two years under NSPS, morale among these workers is at an all-time low. Inconsistent implementation of NSPS regulations, both within and between organizational units, constantly changing rules, and the fact that, under NSPS, employees are receiving the worst ratings of their careers has led to widespread disillusionment with the system. The ratings system lacks transparency

and is shrouded in secrecy, and reconsideration requests are processed by the same people responsible for assigning the original rating.

“It’s not just bad for the rank and file. NSPS is just as bad, or worse, for management. It requires a significant investment of time for both the employee and supervisor. Supervisors must spend between 20-40 hours per employee to properly execute the performance plan. Supervisors with a large number of employees have little time to do anything else, which eventually leads to supervisors taking short cuts around the system in order to meet the other requirements of their own performance plan. The performance plan/evaluation system is simply not sustainable. In fact, earlier this month, Darryl Perkinson, the head of the Federal Managers Association testified before the House Armed Services Readiness Committee and recommended that the DoD scrap NSPS altogether and convert back to the GS system. IFPTE agrees with Mr. Perkinson and believes that the Congress should act this year to finally close the books on NSPS.

“The GS pay system, on the other hand, was designed to be a pay for performance system with appropriate safeguards to discourage cronyism. In the GS system, top performers can receive Quality Step Increases and can be accreted to the next GS grade as well as receive an annual award or bonus based on performance. The GS system also allows for all workers to receive the congressionally mandated COLA, so federal workers salaries can at least keep up with the rise in living costs. That’s compared to workers under NSPS, who only receive 60% of the COLA.”

IFPTE continues to stand by the above guidance provided by Gregory Junemann to the House Federal Workforce Committee, including our recommendation that Congress completely repeal NSPS. We make this same recommendation to your Task Force.

Overview

Due to the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), DoD employees were given back some of their basic rights compared to the original version of the National Security Personnel System (NSPS). However, what resulted, even after passage of that bill, still sorely lacked in many areas and has never complied with the intent of Congress. For example, Congress

intended for the DOD to involve their employees and bargaining units in the development of the NSPS Pay-for-Performance System. Yet, Congress also gave the DOD the right to treat NSPS regulations as “Government-wide” rules, after they had been vetted through the Federal Register process. As a result, the DOD made the choice to ignore Congressional intent by refusing to garner employee buy-in of this system. By publishing their proposed NSPS rules in the Federal Register in May, 2008 and then ignoring the thousands of comments they received, the DoD avoided negotiating the content of the NSPS by finalizing their rules several months later, in September, 2008.

Some of the major changes to NSPS as a result of the FY08 Defense Authorization bill were:

- Restoration of basic collective bargaining rights
- Requirement that the DOD had to include employee involvement in the design and implementation of NSPS
- Any rules and implementing issuances that were adopted prior to the date of the enactment of this Act were supposed to be considered invalid
- Excluded Wage Grade Personnel from NSPS (not IFPTE members for the most part)
- Required the DOD to negotiate the implementation of NSPS upon bargaining unit personnel
- Restored basic appeal rights for adverse actions
- Gave the established NSPS rules “Government-wide Status”
- Provided a minimum 60% of the GS raise to people who perform above unacceptable

NSPS was essentially pared down to the Performance Management, Classification Process and Pay-for-Performance. Although, IFPTE was pleased that the collective bargaining rights and the appeals process were partly restored, the remaining aspects of NSPS still leave a lot to be desired. The DoD responded by continuing to only implement NSPS on workers not represented by a union – a transparent attempt to avoid collective bargaining obligations (800-plus workers under NSPS have since become unionized).

The following is a partial list of concerns that IFPTE has with the DOD’s unilaterally created NSPS:

General Comments

Employees were given back some of their basic rights in June 2008, however the DOD’s NSPS is still a system built without employee buy-in and input, and one that has been a failure on most accounts.

The final publication of NSPS largely ignored the thousands of public comments submitted. Overall, DoD failed to negotiate, as required, with recognized unions on most of the NSPS, which, in part, helps to explain the personnel systems many problems.

Performance payouts: Under the rules, § 9901.405(b)(5), employees are rated from Level 1 to 5 with 5 being the highest. Then, according to § 9901.342(f) and (g) they will be given a certain number of shares that will be assigned a value and turned into their performance pay. If an employee is rated Level 1 (unacceptable) or Level 2 (fair), no shares are awarded. If a Level 3 (Valued Performer) rating is received, the award is 1 to 2 shares. A Level 4 (Exceeds Expectations) rating earns a 3 to 4 shares award and finally 5 to 6 shares are awarded for a Level 5 (Role Model) rating.

A problem stemming from this award system is that two individuals may receive the same rating but not receive the same number of shares, thereby unfairly affecting the performance pay distribution. Working behind closed doors, supervisors and managers will decide who gets more performance pay. They will use several factors, including those that have nothing to do with the employee's performance, such as labor market and retention problems. Professor Charles Tiefer, an expert on federal personnel at the University of Baltimore, School of Law, summed it up best when he told Congress in 2008 that DoD is basically "translating identical ratings into different raises by nontransparent and somewhat arbitrary methods."

The shares award may be in the form of a raise, a cash bonus, or a combination of two. (See § 9901.342(g)(3) and (4)). This is problematic in that shares awarded as a bonus do not figure into retirement annuity calculations. The factors used in determining whether an individual receives a raise or a bonus are even more complicated and may nothing to do with performance. Employees have no control over many of these factors, which include attrition rates, shortages of skills, and labor market. Obviously, this really isn't a true pay-for-performance system.

Furthermore, employees may not know what their supervisors recommended for them, but will only be told their evaluations and shares after the ratings are either approved or changed by the Pay Pool Manager. (See § 9901.412). According to § 9901.413, even though the employee can appeal his or her rating through an arbitrator, who is authorized to change the rating, the number of shares and whether the payout will be given as a raise or a bonus will be decided by the Pay Pool Panel, which has every incentive to give the employee the least amount of money if the arbitrator found that the panel's original rating is wrong.

The way the system is set up is very vulnerable to favoritism, communications issues, attitudes, and personal biases. In 2007, in an agency-wide grievance arbitration, the arbitrator found systematic age and race discrimination among thousands of Securities and Exchange Commission employees covered under pay-for-performance. DoD failed to negotiate, as required, with recognized unions prior to publishing proposed rule.

Control points: Under NSPS, employees are assigned to one of the four career groups and then a pay schedule and pay band for their positions. Control points are maximum pay caps for specific positions within a pay band. Under the proposed rules, § 9901.321(c), DoD can create and adjust these pay caps to “manage” compensation. In other words, the rules allow DoD to create a glass ceiling that prevents one employee from advancing to the top of the pay band no matter how good his or her performance is while another employee in the same pay band moves to the top. It also creates a misconception that if the employee is in one pay band, he or she can actually move to the top when in reality that’s not the case. DoD failed to negotiate, as required, with recognized unions prior to publishing proposed rule in 2008.

Promotion/reassignment: Under the 2008 proposed rules, § 9901.353, a supervisor may reassign an employee to higher level duties within a pay band and authorize a salary increase of up to 5% without competition. Other employees may not even realize there’s a new position, let alone be able to compete for it. DoD failed to negotiate, as required, with recognized unions prior to publishing proposed rule.

Retirement benefits: If an employee is at the top of a pay band at the time of the performance payout, any shares awarded to the employee will be paid out as a one-time bonus and not a pay raise. (See §9901.342(g)(3)). This means the retirement annuity will be a lot smaller as bonuses are not counted toward retirement annuity calculations. Although employees at step 10 of their grade in the GS system are also at the top, they would receive the full General Pay Increase that Congress and the President authorize each year. An employee at the top of the band under NSPS would only receive 60% of the annual GS raise, and that only because the 2008 law requires it. DoD failed to negotiate, as required, with recognized unions prior to publishing proposed rule.

Scope of bargaining: The 2008 law restored collective bargaining rights to DoD employees. The proposed rules, however, appear to be designed to limit the scope of bargaining. In § 9901.305, for example, DoD broadens the definition of “rate of pay” to narrow the scope of bargaining. Rate of pay is

nonnegotiable in the 2008 law, but Congress made sure to keep the procedures used to determine rates of pay and appropriate arrangements for employees adversely affected by that determination fully negotiable. In its proposed rules, DoD defines “rate of pay” as an employee’s base salary rate, local market supplement rate, and overtime and other premium pay rates such as compensatory time off. But DoD then added the phrase “and the conditions defining applicability of each rate” to the definition of “rate of pay” in attempt to narrow the scope of bargaining because these “conditions” could be interpreted to mean the very things Congress intended to be negotiated. DoD failed to negotiate, as required, with recognized unions prior to publishing proposed rule.

Specific Comments to NSPS

PL 110-181, Section 1106 restored the Unions collective bargaining rights with respect to NSPS and also requires the DOD to have employee involvement in the design and implementation of NSPS. The DOD has not to date included the Unions in any meaningful discussions or negotiations with respect to NSPS. The mere fact that the DOD published and finalized proposed changes to NSPS without employee involvement and collective bargaining violates the congressional mandates.

The DOD has been told numerous times that their number one priority is “Employee Buy-in” of NSPS. During several Congressional hearings on NSPS various Senators and Representatives have chastised the DOD for the lack of involvement of their employees during the development of NSPS. The United Defense Worker’s Coalition (UDWC), which is comprised of 36 Federal Employee Unions, including IFPTE, has repeatedly told the DOD informally, formally and through a Court challenge that the DOD has ignored its employees. The Government Accountability Office, in at least three reports and during Congressional hearings, has criticized the DOD for the lack of involvement of employees during the development stages of NSPS. Unfortunately it is not surprising at all that the DOD ignored its employees with respect to NSPS. It should be noted that PL 110-181 gives the DOD the authority to treat these rules as government-wide regulations after they have been properly published in the Federal Register. The DOD used that loophole to their advantage in circumventing Congressional intent because many government-wide regulations would typically be non- negotiable. The DOD made no effort to hide their attempts to avoid any negotiations with the unions, in contradiction to Congressional intent, about NSPS.

Awarding Top Performers

The DOD claims that one of the reasons that NSPS is needed is to reward top performers. However, top performers can already be rewarded and recognized through the GS system.

According to the DOD, the problem with the current GS system is that it caps employees and doesn't give managers the ability to "reward" the top performers. By establishing control points within a pay band however, the DoD has effectively capped top performers at the imposed control point within the band. Setting control points will have the exact same effect as being capped at step in the current GS system. Previous implementing issuances created control points equal to the step 10 level of the current GS scale in which the employees are already working. The net effect under NSPS is that an employee will still be capped at the step level as they have always been and it will take our top performers and eternity to achieve the top level of pay in the respective band. Ironically, Mary Lacey, previous Director of NSPS, testified to Congress that the use of these control points would be minimal, if used at all. Now the DOD is clarifying these control points and openly admitting their intent to use control points to arbitrarily cap employee's pay.

An employee's salary, with respect to control points or pay band maximums, etc. has nothing to do with the employee's performance for that rating period and subsequent awarding of performance shares. The employee most likely to be near or at the maximum will be the top performers. Only work related factors should be taken into consideration, when determining an employee's performance shares for a performance payout. The NSPS rules already harm the employee who is at or near a maximum level by giving the employee a bonus vice a pay raise. A potential negative effect of this rule is that it almost forces management into a quota system when rewarding employees who are at or near the maximum of a pay band or control point.

IFPTE is also concerned with the impact of the pay system on retirement. The union has previously issued reports that discuss the effect bonuses vice pay raises on our employee's benefits (a reduced wage, means reduced government matching TPS dollars) and on an employee's retirement pay (again reduced wages leads to lower retirement pay). The DOD is fully aware that they have the ability to minimize their long term payout to employees and they are taking full advantage of it. Don't be fooled, this system will affect everyone, including the best of the best performers. Employees will receive the minimum 60% of the GS pay raise and the rest will be given out as a one-time bonus. The top performers may get a bigger bonus, however the long term effects will be just as significant to them as everyone else.

There are numerous instances in the NSPS rules that require Pay Pool Managers to take into account how much someone is making prior to rewarding that person. If the DOD was honest and sincere about their efforts to reward employees based on their performance, then why do they continue to add rules that actually do the opposite?

Growth of Pay Bands: NSPS can allow for engineer/technician progression from GS-5, 7, 9, 11 and possibly 12. However, it is woefully inadequate. NSPS will only allow accelerated growth in the lowest pay bands. Therefore on an equivalent GS scale, the proposed accelerated compensation under NSPS would limit an engineer's accelerated progression to a GS-9 and on the technician pay band to an equivalent of GS-5. Once an employee reaches the end of the "accelerated growth" they would be limited to the maximum 5% pay raise for future increases within that pay band and a maximum of 12% pay raise when promoted to the next pay band. Currently, under the GS system a progression from GS-9 to GS-11 provides about a 21% pay raise. The DOD is claiming that under the current GS system, they are having trouble hiring and retaining employees. However, this will do extreme damage to hiring and retention.

This is also the one aspect of NSPS that has a major effect on current and future IFPTE members employed by the DOD. This harms new engineers and it devastates technicians. Generally, technicians in IFPTE are hired in at a higher level than GS-5. There would not be an accelerated growth potential for our technicians under NSPS. Also, a lot of IFPTE members are in qualification programs, again under NSPS the maximum raise that an employee can receive within a pay band is 5% and 12% if the promotion involves moving to the next pay band, this is hardly equal to the current progressive grade level changes combined with expected step increases.

Conclusion:

Unfortunately the creating of NSPS had little to do with national security. It was created unilaterally and without any meaningful involvement of workers. IFPTE believes that in order to build morale, preserve safety, attract and retain the best and brightest, all while providing superior services to the taxpayer, unilaterally and ideologically fueled pay & personnel systems like NSPS should be immediately discarded.