STATEMENT BY

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BEFORE

THE DEFENSE ACQUISITION REFORM PANEL

HOUSE ARMED SERVICES COMMITTEE

REGARDING

EXPERT PERSPECTIVES ON MANAGING THE DEFENSE ACQUISITION SYSTEM AND THE DEFENSE ACQUISITION WORKFORCE

FEBRUARY 25, 2010

Mr. Chairman and Panel Members,

Introduction

My name is Joseph Flynn. I am the National Vice President for the Fourth District of the American Federation of Government Employees, based in Baltimore. I am pleased to appear before you today to discuss issues related to performance management for Department of Defense employees now that the National Security Personnel System (NSPS) has been repealed.

AFGE and 35 other unions representing DoD civilians vigorously opposed NSPS from its conception until its repeal. The original NSPS included provisions to virtually eliminate collective bargaining rights for DoD civilians, as well as eliminate employees' rights to independent adjudication of severe disciplinary actions, including termination. Those were repealed in the 2008 National Defense Authorization Act, but it wasn't until last year that the so-called pay-for-performance scheme for NSPS employees was repealed. Several factors led to that repeal.

DoD's own internal evaluation done by SRA International, Inc. and released May 21, 2009 showed that 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. This is something that the Defense Business Board warned about in a report it released in 2005. It said that there was a natural tendency in pay-for-performance systems for money to move from lower-paid employees to higher-paid employees.

NSPS data also revealed discriminatory practices negatively impacting ethnic and racial minorities. White employees got higher ratings and performance payouts than ethnic or racial minorities. It does not matter whether this was intentional or not – the results are absolutely unacceptable. The data also showed that employees working in or near the Pentagon or at the highest levels of various commands got higher ratings and payouts than those working in other locations. This was backed up by stories we have been told by managers that unless people worked at these higher levels, their work was not considered important enough to deserve the highest ratings and payouts. These kinds of outcomes are not unique to NSPS but show up time and time again in so-called pay-for-performance systems.

Specific Problems With NSPS

Two key principles to keep in mind as new management systems are considered are organizational performance and opportunity cost. The resources required for NSPS since 2004 have been considerable in terms of:

- management and supervisor time,

- training resources,
- employee time,
- consultant expenses,
- the creation of special offices to design, implement, and monitor the reams of regulations and issuances,
- the time associated with Congressional hearings and legislative oversight,
- the considerable disruption throughout the workforce, and finally
- potential for billions of dollars in liability for discriminatorymote actions.

NSPS was allegedly created to improve organizational performance. But no analysis was ever conducted to document and measure organizational performance improvements; indeed no baseline existed prior to implementation of NSPS. The enormous investment in NSPS – from the beginning a highly controversial personnel system – never paid off.

Pay bands are similar to grades in that they have beginning and end salary points. Under NSPS, jobs are placed in a band. But unlike under the General Schedule, where the value of the position is clearly identified, in NSPS it is not transparent. Where in the band a job is valued is not always clear, so equal pay for equal work is impossible to achieve. Although it may appear at first blush that salary potential may be greater for some positions in a band, employees soon learn that a control point has been established which limits the salary below the top of the grade.

Pay bands also undermine the merit system because merit promotions are virtually eliminated. Under the GS, jobs are posted for all to see, and people are hired for those positions following a competition based on merit. This is not only transparent and honest, but a promotion is very public recognition for the individual's performance.

By contrast, under NSPS, merit promotion was rarely used. Instead, employees had their duties increased with additional pay. Even if there was no favoritism and motives were pure, there was no merit competition and no "public recognition". MSPB studies have found that recognition of employee performance (as opposed to keeping most of their pay if they perform) is a key motivational driver for employees.

Interestingly, in its June 2005 report to the Secretary of Defense about the implementation of NSPS, the Defense Business Board warned against going to pay bands and pay-for-performance for the entire workforce. Because the funding of performance pay pools is one of the most consequential decisions DoD could have made resulting in disparate impact among NSPS employees, the DBB recommended that DoD establish "fire walls" between the various pay bands of an organization's pay pool and not to permit merit and bonus money to move between pay bands, except under exceptional circumstances. The DBB said that without these "firewalls," the likely result would be a "natural" movement of pay pool money from the lower levels to the upper levels, unfairly depriving lower-level employees of an equal opportunity to compete for merit pay increases and bonus dollars.

And that is exactly what happened. NSPS proponents solved their budget problem of not having enough money for positions by stealing money from lower rated positions and transferring it up.

NSPS' process for rating employees was quite complicated. Each employee was given job objectives which had one or more contributing factors, such as "cooperation and teamwork," "leadership," and "customer focus." The supervisor assigned a rating from 1 to 5 on each job objective, then rated the employee on the contributing factors associated with that job objective.

Supervisors were ordered NOT to reveal to their subordinates the ratings and payouts they were recommending to the pay pool panels. An Army instruction guide for supervisors provided them with a script when an employee asked for his rating. The supervisor's proper answer in such a circumstance was:

"My recommendation is just that – a recommendation – that I will not share with you. The higher level reviewer, and the pay pool panel, will be looking at my recommendations in terms of the larger organization."

This hardly encouraged meaningful performance communication between employees and their supervisors. Imagine the conversation between you as the supervisor and your employee. You thought she did a great job and told her so even though you could not reveal your rating of 5. Three months later, you had to tell the employee that a "pool" of higher level supervisors who did not know her or her work product, had declared that she didn't do so great—and that her rating was a 3. The employee's trust in the boss was gone and the supervisor's ability to lead anyone was gone.

Further, the money put into shares varied enormously. In some places, a share was worth 1% of salary, in others 1.5% and in yet others 2%. These amounts varied among and within components and all the way down to individual workplaces and individual employees. In some workplaces, an employee who got a performance rating of 3 could get more than someone elsewhere who was rated a 4 or even a 5. Some pay pools made distinctions among 3s, 4s, and 5s giving individuals who got the same ratings different numbers of shares. In other words, there was no consistency whatsoever.

To make matters even more complex, the pay pool managers decided how much of a share should be put into an employee's salary increase versus cash bonus. Employees in the same pool with the same job could receive the same rating and same share amount but one raise might have been virtually all salary while the other was virtually all cash bonus. **There was so much flexibility and no transparency, any convenient rationale could be constructed.**

DoD contracted out its own internal evaluation of NSPS results for 2008 to SRA International. In broad strokes, the study corroborated much of AFGE's criticism of NSPS. They judged themselves according to five parameters having to do with encouraging high performance, agility, credibility and trustworthiness; and fiscal

controls. They said failure on any one of them required serious reconsideration of NSPS – and NSPS failed on all of them.

With respect to the High Performance parameter, a majority of NSPS participants told SRA that the system had *not* improved the link between pay and performance and had *not* improved communications between supervisors and employees regarding performance expectations or feedback. The reassignment caps and control points undermined the performance pay system, negatively affecting retention. Furthermore, focus groups expressed doubt over whether performance ratings matched actual performance.

On the Agility parameter, NSPS fared even worse, with employees generally seeing "NSPS as worse than the GS system for hiring, placement, and promotion."

On the Credible and Trusted System parameter, the report said that a majority of employees did *not* believe that "pay pool panels help ensure fair ratings and payouts." The study also found that employees were worried about the effect on their future retirement of cash bonuses rather than pay increases.

And with regard to the Fiscal Soundness parameter, the study showed problems with the disparate funding of NSPS in different parts of the Department. Some employees were in DoD organizations that had added more money to their pay pools, but they doubted that those levels would last. Employee concerns about more money going into cash bonuses than pay increases were dead on. In 2008, DoD underspent the funding for salary increases in the pay pools by 3.1 percent and overspent the funding for bonuses by 5.5%. The total payouts from pay pools were lower by 0.2 percent of the funding amount.

Chapter Two of the SRA study confirmed what we had been told; that employees with the same performance ratings received different numbers of "shares," but also that the share values varied throughout DoD. 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. In addition, when pay pool managers exercised their discretion over how many shares to award to an employee with a given performance rating, SRA showed the answer depended upon the salary range of the employee.

The report stated 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." With regard to other factors, in general, being a racial minority had a negative effect, and being black had a more negative effect than membership in other racial groups. This combination of racial and class bias in ratings, and in the distribution of shares to workers with the same performance ratings is unconscionable.

Though the report strained to put a positive spin on its overall findings, it was forced to admit that from employees' perspectives, it might require a generational turnover, when no current employee remembers the GS system, before NSPS could be perceived as either fair or superior to the former system.

AFGE also examined the data from the 2008 payouts to see whether there is any pattern of discrimination against women, racial minorities, or a particular age group. Our findings indicated that there had been discrimination. The most pronounced discrimination came from the step in the process most open to managers' discretion: the awarding of shares from the pay pool. Even if performance ratings were objective – and there is no indication that they were – the decision of how many shares to award to individuals with a given rating was discretionary. And the data clearly show that at this crucial step, NSPS discriminated against racial minorities.

NSPS was a tainted, fatally flawed system, created in a poisonous atmosphere by ideologues seeking to destroy collective bargaining, federal unions and employee rights and protections. The pay, performance management, classification, and staffing systems created under NSPS were unwieldy, discriminatory, complicated, costly, opaque, and mistrusted by DoD civilian employees at all levels. I urge the members of the panel to ensure that this colossal mistake is not repeated in any subsequent legislation.

Flexibilities of the General Schedule

Mr. Chairman, despite much rhetoric to the contrary, the General Schedule pay system is simple, transparent, flexible, and particularly adept at rewarding high performance among employees when proper funding is available. Within-grade step increases, quality step increases, and individual performance bonuses are all designed to promote individual excellence. Two additional constructs of the GS are the best at motivating employees:

1. Career ladders, which allow an employee to progress from one grade to the next as part of the position for which he is hired. For example, an employee may begin working for an agency in a position which has a career ladder of GS-5 to GS-7 to GS-9 culminating in a top grade of GS-11. The career ladder is similar to pay banding, except that under the career ladder the criteria for advancement are known and understood by the employee and his supervisor. If the GS-5 employee applies himself and achieves the performance standards required, then he progresses to the GS-7. If he achieves the performance standards for the GS-7, he then progresses to the GS-9, then so on to GS-11. The career ladder gives tremendous incentive to the employee to work hard and dedicate himself to the agency's mission. It assures him that he will not find himself at a dead end.

2. Merit promotion, which occurs when an employee is eligible for and promoted to a different job at a higher grade. Under merit promotion, jobs are posted for all to see, and people are hired for those positions following a competition based on

merit. This is not only transparent and honest, but a promotion is very public recognition for the individual's performance.

In addition, the GS system allows special pay rates for occupations in areas where it is difficult to recruit for particular jobs, recruitment, relocation and retention bonuses, and student loan repayment programs.

It may be helpful to the panel to compare the "market" elements of the General Schedule (GS) vs. NSPS. GS national and locality pay raises are based on pay studies and job matches done by the Department of Labor's Bureau of Labor Statistics, the best statisticians in the world. The data and the results under FEPCA are discussed in a joint committee consisting of OMB, OPM, DOL, AFGE and several other unions. All employees receive the same national raise and a locality raise which is based on the regional labor market.

AFGE has successfully negotiated numerous contracts with group performance bonuses, or gainsharing, which is loosely defined as a teamwork-oriented program that encourages employees to be involved in management restructuring of processes, and then makes all participants eligible to receive group rewards as the organization becomes more efficient. Gainsharing focuses employees on factors that they can control. During the mid-1990s, AFGE and the Department of Defense engaged in a successful five-year demonstration project called Pacer Share which involved changes in organizational structure, a new classification system, gainsharing, and a different performance appraisal system. I would like to emphasize, Mr. Chairman, that all of these changes were conducted through the collective bargaining agreement. The Pacer Share system gains were shared 50-50 between the employees and the agency. Ninety percent of the employees' half was distributed as bonuses and the remaining ten percent was used for quality of work life improvements, including child care.

Dealing with Poor Performers

AFGE is working with the Office of Personnel Management as it explores options to enhance and improve the current General Schedule pay and performance management system. We are discussing the need for changes to simplify the appraisal process, so that there would generally be three categories of employees; i.e. those who are "in good standing," those who are superstars, and those who are not performing at an acceptable level. AFGE has negotiated contracts with just those sorts of systems, and the results have been extremely favorable. There is agreement between the employees and managers that the system is fair, that it involves less tedious and often pointless paperwork, which in turn allows the employees and their supervisors to focus on the work of the agency.

Mr. Chairman, I realize how pervasive the perception is that the federal workforce is full of incompetents who are showing up late if they show up at all, doing virtually nothing all day, and yet collecting a paycheck. Are there people like this in the federal government? Yes, a few. And nobody believes more strongly than AFGE that they

need to be dealt with in a serious manner. It is important that hardworking, rank-and-file employees not be forced to take up the slack for those who are intentionally unproductive.

Management must take responsibility for aggressively handling these employees. So often managers complain that it's impossible to fire a federal employee. That is a ridiculous, self-serving excuse for incompetent management. Conflict is painful for some people, and those who cannot tolerate it should not be promoted into supervisory positions. However, sometimes managers do want to take action, but are discouraged from doing so by their legal and personnel offices. The resulting paralysis is bad for everybody.

There are also employees who are hardworking and dedicated, but nevertheless unsuccessful in their work. The agency's leadership should ensure that these employees are given appropriate training and the tools to do their jobs. If such training and coaching do not solve the problem, then the employee may be in the wrong job. Humane steps should be taken to place the employee in another job inside the agency for which he or she would be better suited.

AFGE routinely negotiates contracts which simplify and expedite appeals for adverse personnel actions. The grievance-arbitration process included in our contracts is transparent, impartial, and swift.

Outlook for the Future

In addition to our ongoing dialogue with the Office of Personnel Management, AFGE is eager to work with the Department of Defense to improve the performance management and hiring systems so that the needs of the employees, the taxpayers, and the warfighters can all be addressed. We are working toward labor-management harmony, and hope to get the Department moving in concert with its civilian workforce.

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