



# **Labor and Employee Relations Implications of NSPS**

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**Labor and Employee Relations**



# **National Security Personnel System (NSPS)**

- **Labor-Management Relations**
- **Employee Appeal Rights**
- **Pay-for-Performance**



# Labor-Management Relations

<b>Administration</b>	<b>HR 1588</b>	<b>S. 1166</b>
<b>5 USC Chapter 71 waivable</b>	<b>5 USC Chapter 71 waivable</b>	<b>5 USC Chapter 71 not waivable</b>
<b>Authorizes national level bargaining</b>	<b>Authorizes national level bargaining</b>	<b>Authorizes national level bargaining</b>



# House Proposal

- **Requires written description of proposed system be provided to unions for at least 30 calendar days to review and make recommendations**
- **Requires Congressional notification of union recommendations not accepted**
- **Requires meetings with unions for not less than 30 calendar day for collaboration and mediation**
- **Permits implementation if Secretary determines that mediation will not produce agreement 30 calendar days after 2<sup>nd</sup> Congressional notification**



# House Proposal [2]

- **Provide ability to waive the portions of 5 USC Chapter 71 we wish to change**
  - **Scope of bargaining?**
  - **Grievances?**
  - **Unfair Labor Practices?**
- **Provide ability to build labor relations program that balances employee rights and agency mission**



# Senate Proposal

- **Requires written description of proposed system be provided to unions for at least 30 calendar days to review and make recommendations**
- **Requires Congressional notification of union recommendations not accepted**
- **Requires meetings with unions for not less than 30 calendar day for collaboration and mediation**
- **Permits implementation if Secretary determines that mediation will not produce agreement 30 calendar days after 2<sup>nd</sup> Congressional notification**



## **Senate Proposal [2]**

- **Prohibits waiver of any portion of 5 USC Chapter 71 we wish to change**
- **Amends 5 USC Chapter 71 by setting time limits for issues going to:**
  - **Federal Labor Relations Authority**
  - **Federal Service Impasses Panel**
- **Continues third party processes that invite labor disputes**



# **National Level Bargaining - House Proposal**

- **Authorizes national level bargaining on agency wide policy changes**
- **Ensures agency wide policy changes are not implemented in inconsistent or fragmented manner**
  - **8 national unions, versus**
  - **1,344 appropriated fund local bargaining units**



# **National Level Bargaining - House Proposal [2]**

- **Any national level bargaining shall:**
  - **Be binding on all subordinate bargaining units**
  - **Supersede all collective bargaining agreements**
  - **Not be subject to further negotiations, except as provided by Secretary**
  - **Not be subject to third party dispute resolution procedures outside DoD**



# **National Level Bargaining - Senate Proposal**

- **Authorizes national level bargaining on issues impacting more than one bargaining unit**
- **Eliminates prohibition on third-party dispute resolution**
- **Allows unions to challenge Secretary's decisions on national level bargaining due to chapter 71 being unwaivable**



# Employee Appeal Rights

<b>Administration</b>	<b>HR 1588</b>	<b>S. 1166</b>
<b>5 USC Chapter 77 waivable</b>	<b>5 USC Chapter 77 waivable</b>	<b>5 USC Chapter 77 waivable</b>
<b>Authorizes internal appeals process in lieu of Merit Systems Protection Board</b>	<b>Authorizes internal appeals process in lieu of Merit Systems Protection Board</b>	<b>Authorizes internal appeals process, but Merit Systems Protection Board review required</b>



# **Employee Appeal Rights - House Proposal**

- **Provides ability to waive the portions of 5 USC Chapter 77 we wish to change**
- **Provides ability to replace Merit Systems Protection Board (MSPB) appeals process with streamlined internal appeals process**
- **Provides that regulations ensure due process and be issued after consultation with MSPB**



# **Employee Appeal Rights - House Proposal [2]**

- **Requires independent review panel:**
  - **Appointed by the President**
  - **Does not include Secretary or Deputy Secretary of Defense or subordinates**
- **Requires MSPB, EEOC, and appropriate committees of Congress be notified prior to issuance of regulations**



# **Employee Appeal Rights - Senate Proposal**

- Provides ability to waive the portions of 5 USC Chapter 77 we wish to change**
- Provides ability to establish internal appeals process, but permits employees to appeal these decisions to MSPB**
- Permits Secretary to establish and apply different legal standards for adverse actions.**



# **Employee Appeal Rights - Senate Proposal [2]**

- **Permits MSPB to dismiss any petition that does not raise substantial question(s) of law**
- **Provides that no personnel action shall be stayed and no interim relief granted during MSPB review, unless specifically ordered by the Board**
- **Provides judicial review of any MSPB decision**



# Pay-for-Performance

<b>Administration</b>	<b>HR 1588</b>	<b>S. 1166</b>
<b>5 USC Chapter 43 waivable</b>	<b>5 USC Chapter 43 waivable</b>	<b>5 USC Chapter 43 waivable</b>
<b>Enables establishment of pay-for-performance system</b>	<b>Same, but requires certain elements for performance management system</b>	<b>Same as HR 1588, but also requires certain pay-for-performance features</b>



# **Pay-for-Performance – House Proposal**

**Requires certain elements be included in  
any performance management system**

- **Adherence to merit principles**
- **Fair, credible, transparent system**
- **Link between performance management plan and strategic plan**
- **Means for ensuring employee involvement in design and implementation of system**



# **Pay-for-Performance – House Proposal [2]**

## **Requires certain elements (cont'd)**

- **Adequate training and retraining for all**
- **Process for ensuring on-going feedback and dialogue, and timetables for review**
- **Effective safeguards to ensure system is fair and equitable**
- **Means for ensuring adequate agency resources are allocated**



# **Pay-for-Performance – Senate Proposal**

- **Requires certain elements be included in pay-for-performance system such as the grouping of employees into pay band by level of responsibility**
- **Requires overall amount allocated for fiscal years 2004-2008 be not less than amount of pay that would have been allocated under General Schedule System**



# **Pay-for-Performance – Senate Proposal [2]**

- **Requires development of formula for calculating overall amount allocated for fiscal years after fiscal year 2008**
- **Requires employees not be disadvantaged in terms of overall amount of pay available due to NSPS conversion**
- **Requires funds allocated for compensation be fenced unless Secretary determines national interest need**



# Questions?