

STATEMENT BY
RICHARD N. BROWN
NATIONAL PRESIDENT
OF
NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

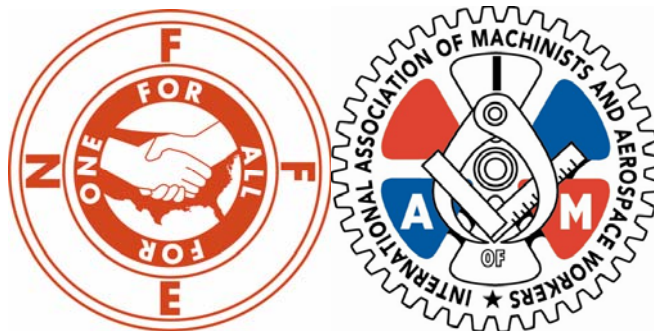
**THE SENATE SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, THE FEDERAL
WORKFORCE AND THE DISTRICT OF COLUMBIA**

REGARDING

**THE IMPACT OF NEW DHS REGULATIONS ON
DEPARTMENT OF HOMELAND SECURITY EMPLOYEES**

ON

FEBRUARY 10, 2005



Chairman Voinovich, Ranking Member Akaka, distinguished members of the Subcommittee; I would like to thank you for the opportunity to testify on the recently released regulations for a new personnel system at the Department of Homeland Security (DHS).

I am the National President of the National Federation of Federal Employees (NFFE). We are an affiliate of the International Association of Machinists and Aerospace Workers. As national president of the oldest union representing non-postal federal employees, I have the honor of speaking for 90,000 federal employees, 240 of whom are directly impacted by the changes to the personnel system at DHS.

From late June to early August our union collaborated with other employee representatives and staff from the Office of Personnel Management (OPM) and DHS for the official meet and confer period. During this period our union was designated to speak on behalf of two other unions not included in that process; the National Association of Government Employees and the Metal Trades Department of the AFL-CIO, who collectively represent over 1000 DHS employees. In reviewing the proposed regulations released just a few days ago, it is clear to me that the meet and confer process was merely a formality, being that many of the concerns raised by the employee representatives have gone unaddressed. Further, agreements made with the unions by DHS and OPM during the meet and confer process were substantively altered in the final

regulations, particularly in the area of the DHS Labor Relations Board. It is the opinion of this union that the administration has severely overstepped its authority to form a new personnel system at DHS as directed by Congress in the Homeland Security Act (2002). I would further contend that the proposed regulations, if implemented, would seriously diminish the Department's ability to carry out its core mission.

Here are just a few examples of the major problems with the final regulations:

1. The final regulations do not ensure that employees may, “organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them,” a statutory requirement of the Homeland Security Act. Under the new regulations, the union would no longer be able to bargain on behalf of employees when management alters key conditions of employment. The one-sided system proposed simply can not fairly be described as one that ensures the rights of employees to collectively bargain by any reasonable definition.
2. The regulations do not provide independent review of collective bargaining disputes. The final regulations call for the adjudicating of collective bargaining agreements, currently handled by the Federal Labor Relations Authority (FLRA), to be carried out by an internal DHS Labor Relations

Board, whose members are hand-picked by the DHS Secretary with no Senate approval. These individuals will be on the DHS payroll, sitting in judgment of DHS decisions, based on standards that DHS creates. It is inconceivable that this board could ever truly be impartial due to the fact that board members would ultimately answer to the Secretary.

3. The final regulations do not provide employees with a reasonable system to challenge excessive penalties imposed on them. The regulations hold that the Merit System Protection Board's (MSPB) authority to alter agency-imposed penalties will be limited to situations where the penalty is "wholly unjustified," a virtually impossible new standard to meet. Management's decision to discipline an employee will be sustained no matter how egregious. Fairness and consistency of penalties, currently ensured by the Douglas factors, will be a thing of the past.

4. The final regulations give the Secretary the discretion to create a list of "mandatory removal offenses" that can only be appealed to a Mandatory Removal Panel appointed by the Secretary. It stands to reason that the greater the penalty, the more important it is to have a truly independent party reviewing the merits of the case. Department employees would certainly view the system as unfair since this concept does not provide what most would characterize as due process.

5. The final regulations call for a shift to a pay for performance system that is widely unpopular among department employees and has little chance of being administered fairly. Although the details of the pay for performance system are not clear in the final regulations, we can be sure that it will be extremely costly to develop and difficult to administer. Numerous scholarly experts have demonstrated that pay for performance pay systems do not work well in the public and federal sectors due to fixed budgets and the absence of clear links between employee performance and increased revenues, as often exists in the private sector. The likely scenario in DHS is that discretionary pay increases will be limited within each department, and the system will likely cause resentment among employees that will outweigh any hypothetical motivational benefits. If DHS' goal is to tailor occupationally grouped positions to labor market conditions, any funding for this concept must also be market based. We understand however, in the world of congressionally appropriated funding, in which DHS exists, funding is driven by budgetary concerns, not the market. For these reasons, we believe the underlying premise of this concept is deeply flawed.

Now that I have described some of the major problems with the final regulations as recently issued, I would like to take this opportunity to demonstrate how the previous personnel system was markedly better than the one going into effect.

One of NFFE's principal DHS bargaining units is a U.S. Coast Guard, Civil Engineering Unit of roughly 50 employees out of Providence, Rhode Island (CEU Providence). Employees at this facility serve the First Coast Guard District (D1), the Northeast, including all of New England and parts of New York and New Jersey.

The employees at CEU Providence, mostly architects, engineers, environmental specialists, planners, real property specialists, and contracting officers, provide facilities management and engineering services for the shore plan in the First District, which includes over 1,500 structures located in 7 states. The shore plan consists of a variety of structures that enable Coast Guard operations, such as piers, electrical shore ties, boat maintenance facilities, fueling facilities, aviation facilities, firing ranges, barracks, communications towers, and aids to navigation such as lighthouses. In short, it is the employees of CEU Providence that make sure our Coast Guard has the facilities necessary to protect this country.

CEU Providence is a high-performing facility, with approximately 85% of its work being performed in-house, using their own design professionals. CEU Providence has received awards for their efficiency, honoring their ability to save millions on consulting fees and freeing those resources for actual construction projects.

In April of 2003, employee representatives of the CEU Providence bargaining unit from NFFE Local 1164 went into contract negotiations with management. Keep in mind this took place after the establishment of the Department of Homeland Security.

Contrary to what DHS might want you to think is the case, department officials in this contract negotiation had absolutely no proposals whatsoever regarding national security. Now I would think that if labor unions and the work rules spelled out in collective bargaining agreements were truly hampering national security, the agency certainly would have raised some concerns. The reason they did not raise any concerns is that unions and collective bargaining agreements do not impede national security in any way. Under prior law, the agency had the ability to take “whatever action may be necessary to carry out the agency mission during emergencies,” including the ability remove an employee on his first offense or make unilateral changes to working conditions if needed by acting first and negotiating later. It is not just the CEU Providence installation that has been unable to come up with a rationale for how unions might hamper

national security. During the meet and confer period with DHS and OPM staff, management was unable cite a single case where the union had in any way compromised national security nation wide.

But let me tell you where this overhaul of the personnel system really becomes problematic. I was telling you about the contract negotiation for the CEU Providence bargaining unit. By July 16th of 2003 the contract was agreed upon and signed. It was shortly there-after approved by the agency head, who again had no suggestions for changes related to national security. For over a year now, management and bargaining unit employees have lived happily under the contract.

The CEU Providence installation is a good example of effective and productive labor/management relations at DHS. It is evidence that the rules under Chapter 71 are working well for the department. Under the newly issued regulations, I believe labor/management relations at DHS will experience a significant breakdown, and success stories such as those at CEU Providence will be hard to come by. I predict moving to a new system will be a disaster for employees at the department for two main reasons:

1. Under the new regulations, extensive questions will emerge as to whether many of the articles and provisions in our contract will be deemed negotiable under DHS rules. The parties will be compelled to go before the DHS Labor Relations Board, a board which does not currently exist, to answer our questions under procedures which are

currently unwritten. Both sides will spend considerable time preparing testimony, evidence, and arguments that support its position. Rather than prompt, efficient completion, and execution of a collective bargaining agreement, we will be seeking third-party assistance to apply rules which have not yet been created. I ask you, how these added frustrations, this delay, and this expenditure enhances homeland security.

2. DHS employees on the whole are uneasy about the new personnel system. The uncurbed authority to impose severe disciplinary penalties for illegitimate reasons, the ability to significantly reduce the pay of employees without having to provide any justification, and the power to arbitrarily reassign employees anywhere in the country on a temporary or permanent basis will be demoralizing to federal workers and will reduce the ability to recruit and retain quality employees. This will substantially hurt the department's ability to carry out its mission.

NFFE greatly appreciates the Subcommittee's decision to hold this hearing and listen to the views of DHS employee representatives. It is our opinion that the authorities granted to DHS under the new regulations are overly-broad and excessive. More importantly, they are not in compliance with the Homeland Security Act on a number of accounts. The sum total of the new system as proposed is one that will be demoralizing to department employees.

Implementing this personnel system will certainly have a harmful influence on the ability of the department to carry out its mission.

This concludes my statement. Once again I thank the Subcommittee for the opportunity to give my testimony. I will be happy to answer any questions the members of the Subcommittee may have.