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Case Study

Enactment and Implementation of the National Security Personnel System: Policy Made and Policy Unmade

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This case study reviews the enactment and implementation of the National Security Personnel System (NSPS) in the U.S. Department of Defense. Proponents of reform seized the opportunity to enact reform in the aftermath of 9/11, basing their arguments on national security concerns. However, the policy-making process did not produce a consensus for reform among key stakeholders in the personnel management policy community. Instead, the NSPS angered and alienated the Office of Personnel Management, the public employee unions, and a number of congressional Democrats. Implementation of the NSPS became problematic as Defense Department officials attempted to move quickly and independently to get the new system online, eventually forcing the department to put the system on hold. In the end, Congress imposed limits on its implementation, advocates for the system disappeared, and a new president supported the repeal of NSPS. This case provides useful insights into the formulation of future strategies for personnel management reform.

Between 2002 and 2004, the George W. Bush administration and Congress created two new personnel management systems: one for the Department of Homeland Security as part of the Homeland Security Act of 2002, and another for the Department of Defense (DoD), the National Security Personnel System (NSPS), under the National Defense Authorization bill for fiscal year 2005. “National security” was a crucial rhetorical lever in both cases, and 9/11 provided the impetus for changes in personnel management (Brook and King 2007; Brook et al. 2006). Here, we present a case study of the enactment and implementation of the National Security Personnel System for the Department of Defense.

To assemble this report, we reviewed more than 500 documents, either in the public record or provided by participants. Included are transcripts of interviews with other participants

conducted by the office of the Defense Department historian. Additionally, we drew from transcripts of our own interviews with key participants in the case.

Policy Formulation: Designing the NSPS

Shortly after 9/11, Secretary of Defense Donald Rumsfeld publicly called for a transformation in the Department of Defense and asked his staff for transformational statutory, regulatory, and policy changes (Chu 2007). Ginger Groeber, then deputy under secretary of defense for civilian personnel policy, said that her office provided a few ideas that they thought “would fly politically, which was pay banding . . . [and] . . . a different compensation system that would move away from the general schedule system.” After reviewing this proposal, Rumsfeld reportedly responded, “Is that all there is? Are you kidding me? Is this all you guys want to change?” (Groeber 2007).

David Chu, under secretary of defense for personnel and readiness, recalled that Rumsfeld told him to “go for everything you can.” Rumsfeld’s challenge coincided with the completion of the department’s “Best Practices Initiative,” and Chu saw it as an opportunity to “consider extending these [Best Practices] authorities to the entire Department” (Chu 2007). In addition, personnel demonstration projects and alternative personnel systems conducted by the DoD under the Civil Service Reform Act of 1978 had tested a variety of personnel management policies and procedures that would influence the design of the NSPS. Features of these experiments included pay bands, a performance-based pay system for white-collar employees, increased flexibility for starting salaries, modified reduction-in-force procedures, extended probationary periods, distinguished scholastic achievement appointments, modified term appointments, a voluntary emeritus corps, enhanced training and development, sabbaticals, and flexible probationary periods (OPM 2009, 3–5).

[W]e present a case study of the enactment and implementation of the National Security Personnel System for the Department of Defense.

The Original NSPS Proposal

Galvanized by Rumsfeld's encouragement, Groeber and Charlie Abell, then principal deputy under secretary of defense for personnel and readiness, worked with Helen Sullivan, the DoD's senior associate deputy general counsel for labor relations, to draft the original NSPS proposal. Abell wanted it to be very broad in scope but concise in length. He suggested to Chu,

Let's propose an authority that says, in two lines, "the Secretary of Defense shall develop a civilian personnel policy for the national security arena," period, amen. Let's not go over [there] with a bureaucratic, laid-out skeleton with flesh on it. Let's go as broad as we can because, in the process, everybody around us will add things to this, and so we ought to give them the barest bones to which they could add things, and we'll end up with a more structured system than we would hope for. (Abell 2007)

The DoD also sought independence from and power over the Office of Personnel Management (OPM), the agency that typically served as the steward of personnel changes in the federal government. Chu and Abell planned to exempt the DoD from Title 5 of the U.S. Code—in which civil service policy normally is codified—and instead to place the NSPS under Title 10, which codifies laws pertaining to the armed forces. The original NSPS legislative proposal was worded as follows: "Notwithstanding all other titles, the Secretary of Defense may create his own human resources management system" (Sullivan 2007). They wrote this first draft as a proposed amendment to Title 10, and they did so without input from the OPM, Office of Management and Budget (OMB), or external stakeholders such as the public employee unions.

After completing the original draft, the DoD submitted it directly to the OMB without consulting the OPM. The OPM strongly objected. The DoD wanted its personnel system to be exempt from Title 5, but the OPM believed that it had enough flexibility under Title 5 to accommodate the DoD's objectives. OPM officials also argued that if the DoD was exempt from Title 5, it would have an unfair advantage in recruiting and retaining civil service employees.

Revising the NSPS Proposal

The OPM prevailed in its argument to keep the DoD's personnel system under Title 5. The OMB told the DoD to redraft the proposal to be consistent with the title's provisions, but also to base the NSPS on the model of the recently enacted Homeland Security Act of 2002. Based on this OMB guidance, the DoD made the recommended changes. However, some of the original DoD authorities were retained, including wording to provide the secretary of defense with a national security waiver to override the requirement that he jointly prescribe all NSPS regulations in coordination with the director of the OPM.

Throughout the revision process, the OPM argued for the importance of achieving government-wide civil service reform, whereas the DoD maintained that it needed to specifically reform the department to meet national security needs. Chu argued that "our national security responsibilities do not allow us to wait for

others to act" (U.S. House Armed Services Committee 2003, 1350).

OMB Mediates between the DoD and OPM

With the DoD and OPM unable to reach agreement on major issues, the OMB stepped in to resolve the differences. One critical meeting was chaired by then-White House chief of staff Andrew Card. Card allowed the DoD's provision for a national security waiver to remain in the bill; he also decided that the DoD could not waive veterans' preference or create its own Senior Executive Service. Both the OPM and DoD felt that they had lost portions of the debate, but the resulting NSPS legislative proposal now became the administration's position. Despite each side's adherence to the official administration position, the disagreements between the DoD and OPM would continue behind the scenes.

The Administration and the Unions

Officials of the American Federation of Government Employees (AFGE) also were frustrated with the NSPS proposal, arguing that the DoD had failed to provide specific details about the new system and why it was needed. Further, the unions argued that DoD had no real interest in collaborating with unions, and that DoD decision makers had a right-wing, anti-union agenda. According to AFGE chief of staff Brian DeWyngaert, trying to get detailed information from the DoD was always a problem because "they would never give [us] anything specific" (DeWyngaert 2007). He said that he consistently asked what specific problems the DoD was trying to address, but all he got was what he termed "rhetoric" and vague arguments, such as the need for "flexibility to win all future wars" (DeWyngaert 2007).

At its initial meeting with the DoD in January 2002, the AFGE proposed that it work together with the administration on labor-management relations, employee recognition and compensation, adverse actions, and the appeals process (DeWyngaert 2007). However, DeWyngaert concluded that the DoD leaders were not really interested in working with the AFGE on reform issues: "Their disdain for working with the unions as legitimate partners overrode any interest in getting true reform" (DeWyngaert 2007). Another factor that may have affected the relationship between the unions and the administration was the leadership transition within the AFGE, with Bobby Harnage succeeding John Gage as national president in August 2003. Gage had been critical of Harnage for being too cooperative with the administration. Gage was even more critical of personnel reforms than Harnage had been, and he also was highly critical of the Bush administration (Chu 2008).

Nevertheless, on April 10, 2003, DoD general counsel William J. Haynes III sent a memorandum of proposed legislation to the Speaker of the House and the president of the Senate, the Defense Transformation for the 21st Century Act (DoD, Office of Deputy Under Secretary of Defence 2003, cover memoranda). This proposal included a National Security Personnel System along with a streamlined acquisition system, realistic appropriations and authorization laws, and the coordination of the activities of the DoD with other departments and agencies concerned with national security (1). Section 101 of the proposed act contained the provisions for NSPS (3–25). This proposal would mark the beginning of a complicated and unusual congressional process involving multiple committees and multiple versions of the bill.

Nontraditional Congressional Consideration: Enactment without Consensus

Four congressional committees could claim jurisdiction over personnel matters in the DoD. Normally, civil service matters would fall under the jurisdiction of the Senate Governmental Affairs Committee and the House Government Reform Committee. However, a strategy emerged to deal with the NSPS as part of the annual defense authorization bill, which meant that the Senate and House Armed Services committees (HASC and SASC) could assert jurisdiction.

Legislation Introduced

In the House, H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, was introduced on April 4 and referred to the HASC for hearings and debate (Foss 2004, 31). The proposed bill did not contain any NSPS provisions.

In the Senate, S. 927, the Defense Transformation for the 21st Century Act, was introduced on April 28, 2003 (U.S. Senate Armed Services Committee 2003, 1). No further action was taken on it by the SASC (Foss 2004, 33). However, Senator Carl Levin (D-MI), ranking minority member of the SASC, later joined Senator Susan Collins (R-ME), chair of the Senate Governmental Affairs Committee and a member of the SASC, in introducing S. 1166, the National Security Personnel Act, which also contained provisions that called for the establishment of the NSPS (U.S. Senate Armed Services Committee 2003, 4).

Back in the House, Government Reform Committee chairman Tom Davis (R-VA) introduced H.R. 1836, the Civil Service and National Security Personnel Improvement Act, on April 29, 2003. The bill was referred to Davis's committee.

Committee Hearings

On May 1, 2003, the HASC held hearings on H.R. 1588, the National Defense Authorization Act. In his opening remarks to the committee, Chairman Duncan Hunter (R-CA) noted that "one of the most important and possibly controversial elements of this package is the creation of the National Security Personnel System" (U.S. House Armed Services Committee 2003, 1232). Hunter expressed hope that the committee could "arrive at a balanced package of management tools to help the Department better execute its paramount mission: to keep our nation secure in a very uncertain and turbulent time" (1232).

AFGE president Bobby Harnage strongly opposed the NSPS legislation, arguing that Congress was handing over its authority to the DoD and the secretary of defense:

This bill is asking—no, it is insisting—that you hand your authority on each of these matters to the Department and each successive Secretary of Defense. They will make those decisions, not you . . . DoD's proposal allows every new Secretary of Defense, without congressional input, to impose a new flavor-of-the-week pay-and-personnel system of its own design. And employees and their representatives will have nothing whatsoever to say about it, and neither will you. (U.S. House Armed Services Committee 2003, 1315)

After two days of committee debate, the HASC marked up and sent the bill to the full House for consideration. On May 22, 2003, the House passed H.R. 1588 by a vote of 361–68.

Meanwhile, on May 6, the House Government Reform Committee held hearings on H.R. 1836, the Civil Service and National Security Personnel Improvement Act (U.S. House Government Reform Committee 2003, 1). In his opening remarks, Chairman Davis stated that "one of the most significant elements of this legislation is the National Security Personnel System proposal for the Department of Defense" (2).

As in the HASC, the time allotted was limited to just a few days of hearings. The committee completed its markup of H.R. 1836 on May 7. Then, on May 13, 2003, SASC chairman John Warner (R-VA) introduced S. 1050, the Senate version of the National Defense Authorization Act. Warner's bill did not contain any NSPS provisions. Instead, Warner elected to defer to the Senate Governmental Affairs Committee on NSPS matters.

On June 2, Senator Collins, chair of the Senate Governmental Affairs Committee, introduced S. 1166, the National Security Personnel Act. The bill supported "the administration's request concerning a new pay system and on-the-spot hiring authority" but denied the "authority to omit the Merit Systems Protection Board . . . from the appeals process" (U.S. Senate Governmental Affairs Committee 2003, 3) and also prevented the secretary of defense from waiving the collective bargaining rights of employees, both key objections raised by the unions. The committee marked up S. 1166 on June 17 and ordered the bill to be reported to the full Senate (Schwemle 2005, 3). S. 1166 never passed the Senate, but "it became the basis for the Senate's negotiating position [on NSPS] in conference" (Levine 2008).

Markup of the Surviving Bills

HASC chairman Hunter supported the NSPS but looked to Government Reform Committee chairman Davis to craft the package that would go into the Defense Authorization Bill (Alinger 2008). The Government Reform Committee's markup of H.R. 1836, the Civil Service and National Security Personnel Improvement Act, was a difficult negotiation: it took nine hours and was very contentious between supporters of the administration and supporters of the union positions (Alinger 2008).

After the markup, the HASC took that language and put it into the National Defense Authorization Act (Alinger 2008). In the end, the cooperation between the HASC and the Government Reform Committee was critical to finalizing the personnel portions of the bill: "This gave them [the HASC] the leverage to say, 'The Government Reform Committee has spoken on this. They're the experts on personnel policy'" (Alinger 2008). The bill, with the NSPS included, passed the HASC and was sent to the full House for consideration. On May 22, 2003, the House passed H.R. 1588 by a vote of 361–68.

On June 17, the Senate Governmental Affairs Committee approved S. 1166, its version of the DoD personnel management reform. Chairman Collins had successfully positioned S. 1166 as an alternative to the House-passed NSPS (Schwemle 2005, 3).

Final Agreement between Congress and the White House

On July 16, the House and Senate agreed to a conference to resolve differences between the two versions of the defense authorization bills, H.R. 1588 and S. 1050. Deliberations over the final version of the National Defense Authorization Act and whether the bill should include the NSPS took place over months and encompassed a number of contentious meetings. It was unusual to be discussing personnel matters in an armed services conference, where members generally would be more focused on defense matters. But there were still disagreements over labor relations. A turning point occurred during a meeting hosted by the OMB to negotiate final issues between the administration and congressional staff members, during which Abell proposed a sunset provision (Abell 2007), which some participants believed was what ultimately broke the logjam (Hemingway 2008). After nearly four months of deliberation, the conference report passed the House on November 11. The following day, the Senate passed the conference report.

Thus, based on national security concerns, NSPS supporters successfully framed the personnel reforms as part of the National Defense Authorization Act. Even though traditional civil service committees considered the legislation, it was the armed services committees that made the final decisions on the legislation; in a shift of roles, the more experienced civil service committees had less influence, while the less experienced armed services committees had more decision-making authority. These circumstances created a policy environment that empowered the DoD and presented a good opportunity to enact the NSPS.

On November 24, 2003, President Bush signed the National Defense Authorization Act, including authority to implement the NSPS, into law. This victory did not come without costs, however. The policy-making process did not produce a consensus for reform among key stakeholders in the personnel management policy community. Instead, the NSPS angered and alienated the OPM, the AFGE, and a number of congressional Democrats. The fight over personnel management reform in the DoD would spill over into the implementation phase.

NSPS Implementation

The legislation gave the secretary of defense and the director of the OPM wide joint discretion for the design and implementation of the NSPS and mandated that the NSPS be a “fair, credible and transparent employee performance appraisal system” (Ginsberg 2008, 4). For the implementation of the NSPS, it required a “means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.” It also mandated that “a means for ensuring employee involvement” and that “adequate training and retraining for supervisors, managers, and employees” be provided (16).

Following enactment, four phases can be identified during which the DoD used different strategies to put the NSPS into operation. The first phase covers the initial DoD implementation strategy led

by the Office of the Under Secretary of Defense for Personnel and Readiness, which ultimately resulted in a false start. The second phase, in spring 2004, was a “strategic pause” taken in the face of implementation issues and criticism from the unions and the OPM. During this phase, the DoD tried to regroup and develop a new approach to implementation. The strategic pause was followed by the third phase of implementation, the formation of the Program Executive Office for NSPS. The fourth phase involved a new president and Congress acting to end the NSPS.

Phase 1: A False Start (November 24, 2003–March 11, 2004)

The initial implementation strategy was led by the office of David Chu, the under secretary of defense for personnel and readiness. The initial design for the NSPS was based on the recommendations of Chu’s “Best Practices Initiative” in the areas of (1) pay banding, (2) classification, (3) hiring and appointment, (4) pay for performance, (5) sabbatical authority, (6) volunteer service, and (7) reduction-in-force procedures (DoD 2003). Employees would be classified into three broad pay bands called “career groups” (CG) based on their job descriptions: professional and administrative management (CG1); engineering, scientific, and medical support (CG2); and business and administrative support (CG3) (DoD 2004, 3). Within each of the career groups, there were to be four pay bands.

Chu’s strategy was to get the NSPS implemented as quickly as possible. The plan was released in November 2003 and included an estimated timetable and broad strategy for implementation (DoD, Office of Deputy Under Secretary of Defense 2003). The DoD estimated that the NSPS implementation would cost \$158 million up to 2008. The department did not seek any additional funding for NSPS implementation; instead, it intended to shift money within the existing budget to cover all transition costs (Barr 2004a).

Under this strategy, the NSPS would be activated once performance management systems and training were in place. After the final NSPS regulations were published, the DoD would implement the NSPS by converting its employees in phases beginning April 2004 (Bunn 2007; Chu 2007; Curry 2007). The initial phase would convert 300,000 civilian General Schedule (GS) employees to the NSPS by October 1, 2004. The original estimate was that it would take less than two years to convert the bulk of DoD civilians to the NSPS (Ginsberg 2008).

The legislation did not specify which unions the department needed to consult during the design phase. At the time, 7 of the 45 unions had national consultation rights, meaning they had the right “to be consulted on agency-wide regulations before they were promulgated” (OPM 2009). For the first meeting on January 22, 2004, the department decided to invite only the unions with national consultation rights, plus one union representing the others. But after complaints from the excluded unions, the DoD invited all of the unions.

The unions publicly voiced their opposition immediately after the DoD issued a document titled “National Security Personnel System

The legislation gave the secretary of defense and the director of the [Office of Personnel Management (OPM)] wide joint discretion for the design and implementation of NSPS and mandated that the design of the system be a “fair, credible and transparent employee performance appraisal system.”

Pre-Collaboration Labor Relations System Options” on February 6, 2004 (DoD 2004). The proposal was viewed by union leaders as a direct attack on employees’ rights to organize and to bargain collectively, and they perceived a number of “union busting” clauses (Lee 2004). The AFGE held a protest rally on February 11, 2004, at the U.S. Capitol, urging Congress to take action to protect employees’ rights. To facilitate dealing with the unions, on February 12, 2004, Secretary Rumsfeld appointed Gordon England, then secretary of the navy, as the official department liaison with unions concerning the development and implementation of the NSPS (Barr 2004b). Over the course of two days, February 26 and 27, 2004, the DoD and OPM joined with union leaders in a meeting of more than 100 people to discuss the pre-decision labor relations proposal. The sessions were moderated by the Federal Mediation and Conciliation Service.

Although the outlined strategy and the National Defense Authorization Act stated that the DoD and OPM would design and implement the NSPS collaboratively, there was virtually no OPM input in the earliest NSPS design and implementation phase, nor at the first formal discussion with DoD employee representatives. In a March 9, 2004, letter to Secretary Rumsfeld (with 41 pages of attachments), OPM director Kay Coles James said that her staff had “no higher priority” than NSPS, but she criticized the DoD for ignoring statutory provisions of the NSPS and warned that “failure to execute [the NSPS] correctly could undermine everything we are trying to achieve with NSPS” (James 2004). She stated that the proposal went against the intent expressed by Congress and the administration by abolishing veterans’ preferences and by ignoring union contributions (James 2004). According to James, the labor–management proposal was developed “without any prior OPM involvement or union input,” which, she said, was in direct contradiction to the enacting legislation (James 2004). James concluded her letter by encouraging the DoD to reconsider its current strategy for implementing the NSPS; specifically, she called for them to include the OPM as an equal partner in any future implementation strategy and to establish a mechanism to receive and incorporate employee input.

On March 11, 2004, the OPM and DoD met to discuss the concerns raised in James’s letter. The following day, Secretary Rumsfeld directed the establishment of a strategic and comprehensive review of NSPS development.

Phase 2: Strategic Pause (March 12–April 27, 2004)

Rumsfeld directed the cessation of the initial implementation strategy (Bunn 2007). The concerns with the system centered on perceived issues such as lack of employee involvement, lack of OPM collaboration, an overly aggressive and rigid timetable, inadequate consultation with the service components, and internal and external communications. Congress also had begun to urge the department to reconsider its implementation strategy: letters to Rumsfeld suggested that he review the implementation strategy and charged him with not following Congress’s intent (Akaka 2004).

The DoD included consultation with the OPM during the strategic pause. Perhaps the largest issue addressed between the two agencies was how to release the new human resources and labor relations regulations. The department believed that reforming its personnel system was an internal process and preferred to release any

regulations as internal departmental policies. The OPM, however, urged publication of the new regulations in the *Federal Register*. The OPM position prevailed, and the decision to publish the regulations effectively ended the unilateral approach that the DoD previously had taken (Bunn 2007).

During the pause, a review of the NSPS design and implementation was conducted by five work groups representing the OPM and DoD. The work groups concluded that the department should abandon Best Practices as its model, start the NSPS design from scratch, and design and implement the program under a new organization. On April 13, 2004, the recommendations were presented to the DoD’s Senior Leader Review Group and approved by Secretary Rumsfeld. The new strategy established the Program Executive Office to “establish a central, DoD-wide office to design, develop, and implement NSPS” (Bradshaw 2007) and outlined a new DoD–OPM governance structure for NSPS implementation.

The unions also used the strategic pause to regroup and rethink their NSPS strategy. A majority of the unions joined forces and formed the United Defense Workers Coalition.

Phase 3: The NSPS Program Executive Office (April 28, 2004–January 16, 2009)

During the third phase, the NSPS human resources regulations were finalized and the revised design of NSPS was completed. Its two core elements—pay for performance and pay banding—though slightly modified, remained the cornerstones of the NSPS.

The new implementation strategy was to roll out the NSPS in three phases, or “spirals.” Each spiral would include a specified number of employees to be converted from the GS to the NSPS. In between each spiral, the NSPS could be modified to address issues that arose during the previous spiral. The Program Executive Office hosted a number of meetings with unions in the summer and fall of 2004, during the “meet and confer” stage of the NSPS design. The proposed NSPS human resources regulations were published for public comment on February 14, 2005. The union coalition orchestrated a campaign to submit comments through letters, e-mail, and the NSPS website. The final regulations were printed in the *Federal Register* on November 1, 2005. The implementing issuances subsequently were published shortly before Thanksgiving of 2005.

On November 7, 2005, after the publication of the final NSPS regulations but before the release of the implementing issuances, the AFGE and other coalition unions filed suit (*AFGE v. Rumsfeld*). The suit challenged the NSPS in five areas: (1) collaboration with and participation of employee representation; (2) compliance with independent third-party review; (3) employee rights to organize and bargain collectively; (4) independence of the proposed National Security Labor Relations Board; and (5) fair treatment and due process in the appeals process. U.S. District Court Judge Emmet Sullivan recommended that the DoD not implement the NSPS labor relations regulations until the court had time to consider and rule on congressional intent. The department agreed to the court’s request.

The case was heard in the U.S. District Court for the District of Columbia on January 24, 2006, and the ruling was handed down on February 27. The court ruled in favor of the unions on three key

issues: collective bargaining, the National Security Labor Relations Board, and adverse action appeals, and it ordered that the NSPS labor relations regulation and the employee appeals procedures implementation be frozen. Nonetheless, the court's ruling would not stop the department from rolling out Spiral 1.1 for nonbargaining employees, a move that converted 11,000 GS employees to the NSPS.

The department appealed the decision to the U.S. Court of Appeals for the District of Columbia, and on May 18, 2007, the appeals court overturned the district court's ruling. The appeals court recognized the law as a "statutory puzzle" but concluded that because there was a sunset provision imposed on the NSPS, it was clear that Congress intended to grant temporary authority to DoD to curtail collective bargaining rights. However, the ruling reaffirmed that after November 2009, either those rights must be reinstated or the sunset must be extended (Barr 2007). Following this ruling, the unions filed a petition for the case to be heard by the entire appeals court, but the motion was denied. Then, in January 2008, the AFGE filed a writ of certiorari to have its case heard by the U.S. Supreme Court, but the Court refused to hear the case (Losey 2008). On September 17, 2007, the appeals court lifted the injunctions against the NSPS labor relations regulations, and, on the same day, the DoD announced that it was moving ahead with the implementation of the NSPS human resources regulation; for the time being, however, the implementation would apply only to nonbargaining unit employees.

Meanwhile, the 2006 midterm elections transferred power in Congress as Democrats gained control in both the House and Senate. After the Democratic victories, the unions turned their efforts toward Congress. In testimony before the House Armed Services Readiness Subcommittee, John Gage, AFGE national president, urged Congress to "repeal the statutory authority for NSPS" (U.S. House Armed Services Committee 2007).

On May 17, 2007, the House passed its National Defense Authorization Act for fiscal year 2008, which included language removing many NSPS flexibilities and revoking the adverse actions, appeals, and labor relations portions of the NSPS (OMB 2007). The final version of the act, signed into law on January 28, 2008, reduced the scope of the NSPS, voiding provisions for adverse actions appeals and labor-management relations and requiring that the NSPS follow existing government-wide rules and regulations regarding reduction-in-force and workforce shaping. The act modified NSPS pay-for-performance provisions by mandating that all employees with a performance rating above "unacceptable" would receive at least 60 percent of the annual GS government-wide pay increase as a base salary increase, and by requiring that all employees who are rated above "unacceptable" receive locality-based comparability payments, like all other employees eligible for locality pay under the General Schedule. The act also put a limit of 100,000 employees who could be converted to the NSPS in any calendar year, and it required the comptroller general to conduct an annual review of employee satisfaction with the NSPS. Pay for performance and pay banding largely remained. On May 22, 2008, the DoD and

OPM issued proposed joint regulations in the *Federal Register* modifying the NSPS to conform to the new legislation (DoD 2008).

Phase 4: Rising Political Opposition and Vanishing Political Support

As the 2008 presidential election approached, Senator Carl Levin (D-MI) and Representative Ike Skelton (D-MO), chairmen of the Senate and House Armed Services committees, respectively, sent a letter to Deputy Secretary England requesting that the DoD "refrain from taking any action to finalize the proposed rule issued May 22, 2008 regarding the National Security Personnel System (NSPS) until a new Administration has an opportunity to review and make decisions with regard to the proposed rule" (Levin and Skelton 2008). In his response, England offered some assurances that the DoD was addressing the Congress's concerns, but he essentially declined the request to freeze NSPS implementation (England 2008).

During the campaign, candidate Barack Obama responded to a letter about the NSPS from Gregory Junemann, national president of the International Federation of Professional and Technical Engineers.¹ Obama said that it was "inappropriate and unwise for DoD to implement such a highly contentious, ill-conceived program so late in this administration, particularly following the vast revisions to the program included in the FY 08 National Defense Authorization Act" (Obama 2008). Obama promised that if elected president, he would "substantially revise these NSPS regulations, and strongly consider a complete repeal" (Obama 2008).

Obama was elected president on November 4, and the final portion of the NSPS regulations of the Bush administration was published in the January 16, 2009, *Federal Register*. On inauguration day, the Obama White House froze the advancement of any pending programs from the previous administration. Final NSPS regulations had been published four days prior, but the regulations had not yet gone into effect; consequently, the DoD was effectively barred from expanding or implementing the finalized regulations. Moreover, a February 11, 2009, letter from Representatives Skelton and Solomon Ortiz (D-TX), chair of the HASC Readiness Subcommittee, to Defense Secretary Gates stressed that "because it will take some time for a review and a determination of the best course of action to occur, we urge you to immediately halt the conversion of any additional employees to NSPS at any level or any location until the Administration and Congress can properly address the future of the Department's personnel system" (Skelton and Ortiz 2009).

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On March 16, 2009, Deputy Defense Secretary William J. Lynn announced that the DoD and OPM would conduct a complete review of the NSPS (Mosquera 2009). Lynn and OPM director John Berry announced on May 14, 2009, that the Defense Business Board would form a task group to review the NSPS. The task group did not recommend abandoning the NSPS, but instead urged a "reconstruction" to address issues of implementation, union relations, and employee trust, among others (Defense Business Board 2009).

While the task group's review was under way, congressional leaders were moving to end the NSPS under the National Defense Authorization Act for fiscal year 2010. Representative Carol Shea-Porter (D-NH) introduced an amendment in June that would mandate that all NSPS employees receive 100 percent of the GS annual raise, "require the Defense Secretary to prepare to end the controversial system, or submit a report to Congress demonstrating why it should remain," and abolish the NSPS within a year unless Congress decided to act on it (Parker 2009). In September 2009, the DoD announced that in light of the ongoing review and concerns with the NSPS, employees covered by the NSPS would receive the same salary adjustment as their GS counterparts (Rosenberg 2009b).

The House-Senate conference committee on the National Defense Authorization Act released its report on October 7, 2009, calling for repeal of the NSPS and mandating all NSPS employees to be reconverted to the GS by January 1, 2012. The conference agreement required the secretary of defense to begin returning the 200,000 NSPS employees to the GS system within six months of the law's enactment. The conference report also required that "no employee shall suffer any loss of or decrease in pay" when reverting to the GS system (Rosenberg 2009a). President Obama signed the National Defense Authorization Act into law on October 28, 2009.

Is Reform Dead? Implications for the Future

This case is about how an administration and a cabinet agency recognized an opportunity and seized the initiative to enact and attempt to implement important and controversial personnel management reforms. The NSPS currently is being unraveled. It is possible that the policy window has closed, that support for reforms of the type proposed in the NSPS may be gone, and that further reform is not possible any time soon.

Yet calls for policies, processes, and structures to incentivize, improve, and reward performance in the public sector continue. At the time of the demise of the NSPS, OPM director Berry announced that the Obama administration would attempt to craft a government-wide package of civil service reforms that would include pay for performance (Rosenberg 2009a). In addition, the House version of the National Defense Authorization Act for fiscal year 2012 "encourage[s] DoD to use employee performance rather than job tenure to determine incentive pay under its new performance management system" (Long 2011). Strategies for both enacting and implementing any such proposal in the future can be informed by the history of the NSPS and the Department of Homeland Security.

In this case, we saw that a new personnel system can be successfully enacted but fail in implementation. The legislative victories were won without *achieving consensus* on the policies among key stakeholders. In fact, the persuasive arguments for enactment of the NSPS were based more on national security concerns than on the merits of the reforms themselves. The statute's *general language and*

broad grants of authority helped avoid contentious congressional debate over the specifics of reform, but when the details were revealed, disagreement arose again and congressional intent became an issue in the subsequent challenges in court. These events suggest that proponents of future reforms might consider taking the approach used with the Civil Service Reform Act in 1976—that is, develop a proposal collaboratively and present Congress with a detailed reform plan that can be debated and amended with the participation of all stakeholders. There are both advantages and disadvantages to such an approach. Can any administration make a compelling argument for reforms such as pay for performance? Is there any performance management and reward system that unions will accept? It may not be possible to reach agreement on these issues, but policy makers will need to consider the benefits of potentially winning the battle at the risk of losing the war.

Opponents could not stop the enactment of the NSPS, but the failure to achieve consensus led to a continuation of the fight in the courts during the implementation phase. But there were other internal issues in implementation as well. Alexander, Barlow, and Haskins argue that the NSPS implementation had an *aggressive schedule*: "many stakeholders felt the schedule for NSPS was too rushed. . . . the PEO [Program Executive Office] took risks in cost and performance in order to meet the proposed schedule" (2010, 108). An analysis of survey and study data against the Program Executive Office's Key Performance Parameters indicates that although the supporting infrastructure worked in favor of the NSPS, the parameters of *high-performance workplace*, *appropriate schedule*, and *fiscal soundness* needed work. Ultimately, the system failed on the parameters of *agility*, *supportiveness*, *credibility*, and *trust*. (Alexander, Barlow, and Haskin 2010, 105). These data suggest that there are issues with both the implementation management and the perceptions of the workforce that impact the success of reform. These issues appear similar to those seen in previous unsuccessful attempts to implement performance management and link pay to performance under the Civil Service Reform Act: the original legislation's merit pay plan was replaced by the Performance Management and Recognition System in 1984, which, in turn, was abandoned in 1993 (see Brook 2000; Ingraham and Moynihan 2000). So, history suggests that personnel management reform in the federal government that involves pay for performance is neither easy to design nor easy to implement. Instead, it requires that a great deal of attention be paid to matters of trust, transparency, and communication with the workforce and its representatives.

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Finally, there are considerations of *persistence* and *sustainability*. Support for the NSPS waned when both Rumsfeld and Chu left the DoD, along with other political and career leaders who were passionate about reform but left their jobs or moved on. As a result, when indifference and opposition grew, no one was left to argue strongly for the NSPS except career officials charged with managing the implementation. Implementation difficulties emerged, political opposition grew, and, ultimately, the Bush administration could neither sustain reform in the DoD nor pursue

its goal of expanding personnel management reform to the rest of the federal government.

This case provides questions and considerations for future reforms. First, can a set of reforms be formulated that (1) achieves a reasonable consensus among policy makers and stakeholders, (2) can be implemented in a way that is transparent and trusted by the workforce, and (3) can be sustained politically and managerially over time? Second, should the demonstration projects be reexamined to see whether there are clues to success in these areas that can be applied more widely? Finally, in considering these questions, can reformers make the case that management flexibility and pay for performance are appropriate and that the benefits of any such reforms outweigh the costs? Understanding the history of personnel management reform can help in creating sustainable reform in the future.

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Note

1. Obama also responded on September 9, 2008, to a letter from AFGE president John Gage using the same form letter that he sent to Junemann.

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