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## INSIGHT

BY MIKE CAUSEY

### Surprising Numbers

Do your hometown media—your local radio, TV stations or newspapers—beat up on bureaucrats? Unfairly, that is?



Do you find it hard—when the subject of a report or article on how government works, or on how civil servants don't work—to distinguish between a just-the-facts news story and an opinion-laced editorial?

Have you, or your program or agency ever been burned unfairly? Did whoever was doing the reporting seem to be missing some key facts, or ignoring some? If you dealt with them directly, did they seem to have preconceived ideas? Or an agenda?

Have you, or one of your bosses, ever been misquoted or, more often, quoted correctly, but totally out of context?

If so, welcome to the club of burned feds and burned federal officials who have learned that while they aren't perfect, neither are the media. At least, when it comes to them.

If you've noticed or experienced any of the above situations, there could be a reason for it. Not a good reason (certainly from your point of view, and to those who really need to know what's happening), but a

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## Lawmakers Introduce Bill to Aid Union Organizing

Senate and House lawmakers on March 10 introduced the Employee Free Choice Act (EFCA), which, if passed into law, would permit employees to form a union as soon as a simple majority of employees had signed cards expressing support for forming it.

The bill, H.R. 1409/S. 560, would give employees the right to opt for this "card-check" option in lieu of having to hold a secret-ballot election. Currently, employers are the ones who decide whether workers may hold an election or organize via the card-check system.

The bill has the broad support of labor, including federal labor unions, who say the bill will "raise all boats" among unionized workers.

"Employees currently have the right to form unions, but we know that in fact in the campaigns to create unions [by election], the balance of power is unfairly weighted toward corporations or employers," Michael Victorian, spokesman for the American Federation of Government Employees (AFGE), told *FEND*.

But, Victorian continued, all too often "corporations and employers intimidate employees—really, the employer shouldn't have a choice in whether or not the employees form a union."

Victorian says AFGE believes that by making it easier for employees to form unions, the bill would succeed at one of its key aims—curbing such potential

employer intimidation.

Some of the bill's detractors argue that the United States, at the moment, cannot afford what they allege would be an increased economic cost of more unionized workers.

"But I actually disagree with that premise," Victorian responded. "I think that the Employee Free Choice Act, and the ability of workers to form unions, is part and parcel of recovery. Union workers have the opportunity to earn more with collective bargaining. And that's how we built a broad middle class in the first place in this country—formed in the 1940s through the 1960s. So I don't buy the other side's argument."

Victorian acknowledges there are special difficulties in forming a union in workplaces outside the government. David Holway, president of the National Association of Government Employees (NAGE), agrees.

"Federal employees typically are under less threat of reprisal from their employers when they're trying to form a union," Holway told *FEND*. "Harassment, threats of being fired, and threats to 'shut down the plant and move to Mexico,' don't happen a lot in the federal sector.

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## INSIGHT by Mike Causey

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reason nevertheless.

Can you say “pension envy”?

Are the reporters who cover you jealous of your pay and perks?

Many feds will find it impossible to believe that media types—especially with major outlets—don’t make all that much money. Many work for companies where they don’t have 401(k) plans, don’t have pension plans and don’t get health coverage once they retire. Or their company goes out of business.

Can you believe that the typical, experienced reporter at *The New York Times* makes less than a mid-career GS 13 working in the Dayton-Springfield-Greenville, Ohio, area? Both the GS 13 and the Timesman (or woman) make about \$92,000 a year. But benefits in government—from retirement to vacation and holidays—are far superior.

The Newspaper Guild (TNG)—an affiliate of the Communications Workers of America (CWA)—represents all unionized print media people. AFTRA (the American Federation of Television and Radio Artists) represents TV and radio folk. Both groups must belong to the union as a condition of employment. Dues are based on salary, but they can run to \$500 or more per year.

People at nonunion media outlets generally earn less than their unionized counterparts. But there are exceptions.

Last year (January, 2008) the TNG-CWA listed the reporter “top minimums” at 250 guild-covered newspapers and news organizations. The amounts shown are the top minimum, meaning this is the smallest amount the reporters can be paid after a set period (two to five years, depending on the contract) of service time. Some do get more. Many don’t.

So how does your federal salary stack up against the pay for reporters on your hometown newspaper? You might find the numbers interesting. Here are the official salaries (2008) for reporters at newspapers and some other print outlets. Some of the newspapers have since gone out of business, or cut staff or salaries:

- *The New York Times*, top minimum of \$1,804.10 per week after four years service.
- *Boston Globe*, \$1,387.18 after five years.
- *Minneapolis Star-Tribune*, \$1,344 (seven years).

- *Philadelphia Inquirer-Daily News*, \$1,307.37 (four years).
- *San Jose Mercury News*, \$1,273.14 (six).
- *Denver Post and Rocky Mountain News*, \$1,267 after six and five years, respectively.
- *The Wall Street Journal*, \$1,258 (six).
- *St. Paul Pioneer Press*, \$1,240.15 (six).
- *St. Louis Post-Dispatch*, \$1,219 (eight).
- *Milwaukee Journal Sentinel*, \$1,217 (four).
- *Providence Journal*, \$1,208.84 (five).
- *Honolulu Advertiser*, \$1,202.24 (five).
- *San Francisco Chronicle*, \$1,202.24
- *Associated Press*, \$1,170 (six).
- *Buffalo News*, \$1,169.70 (five).
- *Cleveland Plain-Dealer*, \$1,167.21 (five).
- *Baltimore Sun*, \$1,147.00 (six)
- *Boston Herald*, \$1,120.35 (five).
- *New York Times Digital*, \$1,140.08 (three).
- *Akron Beacon-Journal*, \$1,111.60 (five).
- *Pittsburgh Post-Gazette*, \$1,100.83 (five).
- *Honolulu Star-Bulletin*, \$1,077 (nine).
- *The Washington Post*, \$1,043.80 (five).
- *Detroit Free Press*, \$910.34 (five).
- *Indianapolis Star*, \$896.19 (six).
- *Time*, \$881.85 (one).
- *Detroit News*, \$840.62 (five).
- *Pueblo Chieftain*, \$840.62 (five).
- *York Daily Record*, \$794 (four).
- *Knoxville News-Sentinel*, \$768.90 (four).
- *Newsweek*, \$741 (two).
- *Youngstown Vindicator*, \$738.55 (five).
- *Hazleton Standard-Speaker*, \$664.71 (six).
- *United Press International*, \$576.92 (four).

Lots of surprises in those numbers. Prestigious papers, which you would think would be the top payers, aren’t. At least not for rank-and-file journalists. Not for those at the “top minimum.”

In some cases, the salaries are based on local living costs and hometown wages. Many Canadian papers whose employees belong to the TNG-CWA earn more than their American counterparts. But living costs are generally higher and often the Canadian dollar is worth less than its U.S. counterpart. Sometimes a lot less.

The pay differentials between *Newsweek* and *Time* are interesting. So are those between the *The New York Times* and *The Washington Post*. Or the *Baltimore Sun*, right next door to the *Post*.

As a fed, it is interesting to consider that if, for instance, you work in Bakersfield, Calif., your salary is

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Published by 1105 Government Information Group, Anne Armstrong, President.

1105 Government Information Group is part of 1105 Media, Inc. Neal Vitale, CEO.

Corporate Headquarters: 1105 Media, Inc.  
9121 Oakdale Ave., Ste 101, Chatsworth, CA 91311  
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Phone: Editorial: (703) 707-1888  
Subscriptions: (800) 989-3363

Fax: (703) 707-8474

Internet: www.FederalDaily.com

Subscription Rates: Newsstand: \$5.00  
1 year—\$97 2 years—\$184 3 years—\$262

For Electronic Delivery: Phone: (703) 707-1815

E-mail: sitelicense@FederalDaily.com

For single article reprints (in minimum quantities of 250-500), e-prints, plaques and posters contact:

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The Comptroller General has ruled that federal agencies and departments may buy Federal Employees News Digest publications with government funds. This decision is No. B-185591. Federal Tax ID 20-4583700.

**FEDERAL EMPLOYEES NEWS DIGEST** (ISSN 1065-0970) is published weekly except first week in January and last week in December by 1105 Media, Inc., 9121 Oakdale Avenue, Suite 101, Chatsworth, CA 91311. Periodicals postage paid at Chatsworth, CA and additional mailing offices. Annual subscription rates are: One year \$97, 2 years \$184, and 3 years \$262 (U.S. funds). **Subscription inquiries, back issue requests, and address changes:** Mail to: Federal Employees News Digest, P.O. Box 3167, Carol Stream, IL 60132-3167, customer service@federaldaily.com or call (800) 989-3363, fax (703) 707-8474. **POSTMASTER:** Send address changes to Federal Employees News Digest, P.O. Box 3167, Carol Stream, IL 60132-3167. Canada Publications Mail Agreement No: 40612608. Return Undeliverable Canadian Addresses to Circulation Dept. or Bleuchip International, P.O. Box 25542, London, ON N6C 6B2.

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“Also, in many federal agencies, such as the VA, a majority of the employees are already covered by a collective bargaining agreement,” Holway said.

“That being said, federal employees and federal-employee unions are still extremely supportive of EFCA and believe that it will lift all workers,” he added.

“As private sector American workers see their right to form a union restored, we can expect to see their wages increase through collective bargaining,” National Federation of Federal Employees President Richard Brown commented to *FEND*. “This impacts the federal workforce in many different ways. Federal pay adjustments are set annually by Congress, but their decision

Correction: "FEND Hosts Top Benefits Experts" in our March 16 issue contained an incorrect URL for FOSE. The correct Web address is [www.fose.com](http://www.fose.com)

## INSIGHT by Mike Causey

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likely to be a lot more than the typical reporter for the *Bakersfield Californian*, your hometown newspaper. There, the top minimum in 2008 was \$640 per week after three years experience.

If you live and work in Pottstown, Pa., be advised that the local reporter—who can find out your salary and benefits easily—makes \$595.60 (or did in January 2008) after four years experience.

Many federal workers are convinced that they are vastly underpaid compared to people doing the same jobs in the private sector. And that may be true in some, and maybe a lot, of cases.

But try telling that to a breadwinner with the *Terre Haute Tribune-Star* or the *Lexington Herald-Leader* (\$640 per week). Or try to explain the federal pay gap to a newspaper reporter at the *Norristown Times-Herald* (\$537.83 per week).

Fascinating numbers, right?



Don't miss our discussion of weekly news topics at [www.FederalSoup.com](http://www.FederalSoup.com). Click on "Inside the News Forum." Look for the soup bowl on featured stories.

is usually strongly influenced by the change in private sector labor costs. If private sector workers see their wages increase, so will federal sector workers.”

The bill's introduction immediately produced a wide range of support and dissent on Capitol Hill, and elsewhere.


Supporters include Sens. Tom Harkin, D-Iowa, and Edward Kennedy, D-Mass. “Just as the National Labor Relations Act, the 40-hour week and the minimum wage helped to pull us out of the Great Depression and into a period of unprecedented prosperity, so too will the Employee Free Choice Act help reinvigorate our economy,” said Harkin.

Employer groups are critical, saying the bill will result in a loss of 600,000 jobs and will expose workers to union intimidation. Some lawmakers echo those concerns.

“In order to meet the demands of their special-interest allies that helped put Democrats in power, they are willing to compound workers' problems even further by taking away their right to privacy in the workplace,” said House Minority Leader John Boehner, R-Ohio.

The minority leader's comments notwithstanding, labor leaders look forward to some big victories, such as passage of this bill and other measures designed to improve wages and the working environment.

“The tone of the folks in Congress and in this White House are so markedly different from before,” Victorian said.

To see more, go to: <http://edlabor.house.gov/newsroom/2009/03/us-senate-and-house-introduce.shtml#more>, [http://kennedy.senate.gov/newsroom/press\\_release.cfm?id=c7f9ce4e-03d0-4919-8500-7b22ed7b52a4](http://kennedy.senate.gov/newsroom/press_release.cfm?id=c7f9ce4e-03d0-4919-8500-7b22ed7b52a4), [www.afge.org/index.cfm?fuse=content&contentID=1772](http://www.afge.org/index.cfm?fuse=content&contentID=1772) or <http://republicanleader.house.gov/News/Document>. 

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## Report: Women Still Underrepresented in Federal Workforce

Despite gains in senior federal positions, women are still underrepresented in the federal workforce, lagging behind the proportion of women employed in the civilian labor force, said a new Federal Equal Opportunity Recruitment Program (FEORP) report released March 11.

The Fiscal Year (FY) 2008 FEORP report, issued by the Office of Personnel Management, showed that women represent 44.2 percent of the federal workforce (776,307), compared to 45.6 percent in the civilian labor force. Women did show proportional gains since 2007, the report noted, when women made up 43.9 percent of the federal workforce, compared to 45.7 percent of the civilian workforce.

The 2008 report recorded advances among certain groups of federally employed women. Black, Asian/Pacific Islander, and Native American women exceeded their representation in the civilian labor force in 2008, the report said.

Also, the number of women at senior pay levels increased by 417—from 5,513 in 2007, to 5,930 in 2008. Women represented 29.1 percent of all employees at the Senior Pay levels. The number of women in white-collar occupations increased by 30,872, to 757,458 in 2008, from 726,586 in 2007. Women represented 48.2 percent of all federal employees in this occupational category in 2008, compared to 48.0 percent in 2007.

Women equaled or exceeded their equivalent civilian labor force counterparts—or “relevant civilian labor force representation”—in just four of 18 executive departments. They are: DoD (50.4 percent for the federal workforce compared to 47.3 percent

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of the civilian workforce), Department of Health and Human Services (64.6 percent, 51.6 percent), Treasury (62.9 percent, 49.7 percent) and the Department of Veterans Affairs (59.4 percent, 51.7 percent).

Minorities overall (including both men and women) are represented in the federal workforce in numbers that exceed their civilian counterparts, 33.4 percent compared to 29.3, respectively, the report said. On the downside, Hispanics as a group are still underrepresented in the federal government, despite a trend of increasing Hispanic employment and retention. Hispanics represent 7.9 percent of the federal workforce, compared to 13.2 percent of the civilian labor force.

Other major findings in the 2008 FEORP Report:

- The total permanent federal workforce covered by the FEORP report increased by 60,724 (3.6 percent) to 1,756,733 in FY 2008, from 1,696,009 in FY 2007.
- Despite a decrease in total employment in General Schedule and Related grades 13 through 15 (from 333,268 in FY 2007, to 325,306 in 2008), the proportion of women and minorities in these grade levels increased by 0.4 percent and 2.0 percent, respectively.
- Whites represented 66.6 percent (1,170,461) of the federal workforce in 2008, compared to 67.2 percent in 2007 (1,139,453). The representation of whites in the civilian workforce was 70.7 percent in 2008, compared to 71.8 percent in 2007.

In addition, the FEORP report highlighted human capital practices federal agencies are using to recruit, develop

## Thrift Savings Plan Share Prices (As of FEND's deadline)

FUNDS	MARCH 17	MONTH AGO	YEAR AGO
G Fund	12.8077	12.7801	12.3700
F Fund	12.4141	12.5864	12.2000
C Fund	9.0542	9.1531	14.4700
S Fund	10.4822	10.8675	17.0500
I Fund	11.6710	11.8416	21.5200
<b>Lifecycle Funds</b>			
L Income	12.4601	12.4738	13.2100
L 2010	13.2895	13.3221	14.8300
L 2020	11.7414	11.8378	15.3800
L 2030	11.2987	11.4256	15.8100
L 2040	10.9811	11.1333	16.3200

For rates of return and other TSP info, go to: [www.FederalDaily.com/financial/TSP.htm](http://www.FederalDaily.com/financial/TSP.htm)

and retain employees.

To see more, go to: [www.opm.gov/About\\_opm/reports/feorp/2008/feorp2008.pdf](http://www.opm.gov/About_opm/reports/feorp/2008/feorp2008.pdf). 

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## DoD Halts Further NSPS Conversions Pending Review

The DoD announced on March 16 it was halting further employee conversions to the National Security Personnel System (NSPS) until it had a chance to review the pay-for-performance system with the Office of Personnel Management and key stakeholders.

The move affects roughly 2,000 employees in organizations scheduled

to convert to NSPS this spring. Those organizations are adjusting their plans accordingly, DoD said. During the review, organizations already covered by NSPS will continue to operate under current NSPS policies, regulations and procedures. Labor unions have complained the system is unfair and arbitrary.

"This administration is committed to operating fair, transparent, and effective personnel systems, and we are undertaking this review to assess whether NSPS meets these objectives," said Deputy Secretary of Defense William Lynn. "We recognize that varying viewpoints exist regarding NSPS, and given the scope and complexity of the system, it is important for leadership to conduct its own review of the program."

The review is expected to take several months, Lynn said.

American Federation of Government Employees (AFGE) President John Gage said the entire system should be scrapped. "This policy was a product of the ideologues of the previous administration aimed at suppressing civilian pay and eliminating collective bargaining rights," said Gage. "It is about time we ended it."

AFGE has been a vocal critic of NSPS. The labor union claims that the system is inherently unfair, impairs employee morale and suppresses wages. "It is a system that is

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Women in the Federal Workforce, by Occupation (September 2008)

Occupational Category	Employment of Women	Percent of Federal Workforce
Professional	186,476	44.0
Administrative	286,314	44.9
Technical	187,504	59.6
Clerical	88,945	68.4
Other	8,219	12.5
White Collar (WC)	757,458	48.2
Blue Collar (BC)	18,849	10.2
<b>Total (WC + BC)</b>	<b>776,307</b>	<b>44.2</b>

Source: OPM

# Limitations on the Home Mortgage Interest Deduction

**M**any homeowners may not be aware of the limitations on the home mortgage interest income tax deduction. Interest paid on a mortgage loan, a line of credit, or a home equity loan for which a homeowner is liable to pay, may be tax-deductible.

For the mortgage interest to be deductible, the homeowner cannot deduct interest paid on behalf of another person. For example, a parent could not pay the monthly mortgage on behalf of a child whose name is on the mortgage. Also, a bona fide debtor-creditor relationship must exist.

Interest paid to obtain a home mortgage—including loan origination fees, loan discounts or discount points—are deductible in the year paid if: (1) the interest to be paid is computed as a percentage of the mortgage principal; (2) paying points is an established practice in the local area where the mortgage is issued; (3) the mortgage obtained is to purchase or to build one's principal residence; and (4) points were clearly identified on the settlement sheet.

A dwelling qualifies as a principal residence if it has bathroom, bedroom and kitchen facilities. This includes a house, condominium, mobile home, house trailer or boat.

A homeowner has a choice to deduct in full the points paid in the year of settlement or to amortize the points over the life of the mortgage loan. Points paid when purchasing a second or vacation home are not fully deductible in the year paid, but must be amortized over the life of the mortgage loan period.

There are limitations on the amount of mortgage interest that a homeowner may deduct. To understand these limitations, it is important to understand the definition of "home acquisition debt."

Home acquisition debt is a mortgage that an individual took out after Oct. 13, 1987, to buy, build or substantially improve a "qualified" home. A qualified home includes a principal residence, a second home or a vacation home. The mortgage must be secured by that home.

If the amount of a mortgage is more than the cost of the home plus the cost of any substantial improvements, only the debt that is equal to or less than the cost of the home plus improvements qualifies as home acquisition debt. Any additional debt may qualify as home equity debt.

The total amount borrowed via a mortgage that a homeowner may treat as home acquisition debt on a principal residence and a second or vacation home cannot exceed \$1 million, or \$500,000 if married filing separately.

Any secured debt that is used to refinance a home acquisition



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debt is treated as home acquisition debt. Any additional debt that is taken out as a result of refinancing and is used to buy, build or substantially improve a qualified home is also considered a home acquisition debt.

*Example: George and Martha bought their home in 2002 for \$400,000 and took out a \$350,000 mortgage. In 2005, when the value of their home increased to \$500,000, George and Martha refinanced their mortgage and took out a new \$400,000 mortgage. The additional \$50,000 was used to pay for a home addition. The \$400,000 new mortgage qualifies as home acquisition debt because the additional \$50,000 was used to improve the home.*

Individuals who took out a loan other than to buy, build or substantially improve their home may have a loan that qualifies as home equity debt. Home equity debt is a mortgage that an individual took out after Oct. 13, 1987, that did not qualify as a home acquisition debt or as a "grandfathered debt" and is secured by an individual's home.

There is a limit on the amount of debt that can be treated as a home equity debt. The total home equity debt on an individual's main home and second or vacation home is limited to the smaller of \$100,000—\$50,000 if married filing separately—or the fair market value of the home less the total home acquisition indebtedness. Any interest paid on the remaining balances of the primary mortgage and home equity loan is considered personal interest and is not deductible.

*Example: Ted bought his house in 2003 for \$200,000 and took out a \$150,000 mortgage. In 2005, when his house was worth \$400,000, Ted took out a \$100,000 equity loan. In 2007, Ted refinanced his first mortgage (when the balance was \$140,000) and home equity loan (when the balance was \$100,000) and took out a new \$300,000 mortgage. Ted may deduct interest on up to \$240,000 of the \$300,000 new first mortgage—the \$140,000 current balance on his first mortgage plus the maximum \$100,000 home equity loan.*

Other types of payments that qualify for the mortgage interest deduction include primary mortgage insurance (PMI) on mortgage contracts issued after Jan. 1, 2007, and late payment fees—unless these fees are collection fees.

Additional information about the mortgage interest deduction may be found in IRS Publication 936, available for download at [www.irs.gov](http://www.irs.gov). Individuals should consult with their tax advisors regarding any specific questions or circumstances.

# Air Force Flight Engineer Wins USERRA Appeal

**O**mar E. Rivera, a Flight Engineer for the Air Force based in Florida, won a recent administrative appeal he filed under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Rivera filed a complaint with the Merit Systems Protection Board (MSPB). He claimed, according to official documents in the case, that the agency “improperly charged him military leave on non-workdays,” and by doing so obligated the appellant to expend “annual leave or leave without pay to cover his absence from his federal civilian position to perform military duty.” The appellant cited the key federal circuit precedent case *Butterbaugh v. Department of Justice* (2003) in pressing his claim.

But the Air Force made the counter-argument that an existing collective bargaining agreement (CBA) had established a specific proper procedure for the resolution of employee grievances—and that the appellant had deviated from that procedure when he complained about his leave without pay problem to MSPB.

An administrative judge (AJ) with MSPB found otherwise. The AJ wrote that the “CBA does not appear to exclude the filing of a grievance concerning the issues raised by the appellant.”

But, the AJ further found that in this case, the board “*may well lack jurisdiction* over [the] appellant’s USERRA appeal.” The AJ stated further that MSPB did not believe it had jurisdiction in the case.

Under the circumstances, the AJ issued a request that both parties show cause as to why the case should not be dismissed “for lack of jurisdiction.” But Rivera, according to official documents in the case, failed to respond.

The AJ, in turn, dismissed the case, citing as a basis for the move not only Rivera’s non-reply but also *Russell v. Equal Employment Opportunity Commission*, a 2007 MSPB decision in which the board supported the concept that the board “lacks jurisdiction over USERRA cases in instances where an appellant has a right to pursue the matter under a negotiated procedure.”

In the current case, the AJ noted, Rivera is covered by a CBA which specifies a negotiated grievance procedure that he could, and—to the AJ’s mind—must, pursue first.

“It therefore appears that the grievance procedure is the exclusive means of remedy for [the] appellant’s claim,” the AJ wrote.

Rivera replied in a filing that his MSPB claim is, to the contrary, “covered under ... the appeals process” handled by the board. He also argued that his claim would have been untimely if pursued under the CBA procedure.

The AJ denied Rivera’s appeal—and subsequently Rivera took his claim to the full board.

The board heard the case. MSPB noted that as regards

*Russell*, both the board (in its first consideration of the case) and the federal circuit (in the very last consideration of it) had ruled that MSPB “had USERRA jurisdiction over the appeal *notwithstanding the CBA.*”

The federal circuit, in the end, remanded *Russell* to the AJ for further adjudication—writing that “a CBA *cannot require* an employee to grieve a USERRA claim”—that is, an employee has the right to take a USERRA claim either to MSPB or to grieve it through a CBA’s prescribed procedure.

“[This] is good law and an employee may bring a USERRA appeal even if he is otherwise covered by a CBA,” the board concluded. “We therefore find that the Board has jurisdiction over the appellant’s USERRA appeal and remand is required to address the appellant’s USERRA claims.”

The board remanded the *Rivera* case to the AJ for readjudication.

(*Rivera v. Department of the Air Force, MSPB, Docket No. AT-3443-08-0301-R-1, 3/10/09*)

## Postal Employee Loses Demotion Appeal

Lynn M. Vaughn, an EAS-20 Manager at a Postal Service facility in Georgia, recently lost her appeal of her 2009 demotion.

In April 2007, her facility’s Customer Services Operations Manager proposed demoting Vaughn to an EAS-17 Supervisor position, after the appellant’s supervisor had charged her with “failure to perform her duties in an effective manner.”

Specifically, Vaughn allegedly failed to provide needed information to a union steward and also failed to file “Schedule A” meetings, a normally required function of her job, under the current Collective Bargaining Agreement.

As a result of the missing information and lost meeting time, according to official documents in the case, certain employee grievances were taken to a higher level, costing the Postal Service approximately \$28,000. After these events, Vaughn had been warned that consequences could follow.

In December 2007, the postmaster with jurisdiction over Vaughn’s place of work approved her demotion. She appealed to the Merit Systems Protection Board (MSPB).

Vaughn, at first, won her case before an MSPB administrative judge (AJ), partly due to Vaughn’s charge that understaffing and overwork forced her to make the error. But the agency appealed to the full board—which reversed the AJ’s decision, thereby upholding Vaughn’s demotion. She appealed again, to the U.S. Court of Appeals for the Federal Circuit.

The appeals court examined the case, and supported the full board’s finding. “[W]e find no abuse of discretion in the Board’s decision,” the court wrote in backing the administrative panel’s decision. Vaughn’s demotion stands.

(*Vaughn v. Postal Service, U.S. Court of Appeals for the Federal Circuit, Docket No. 2009-3008, 3/13/09*)

# Was IRS Agent Unjustly Fired Over Family Fight?

**T**he point I have made throughout the appeal process is that I always did my job thoroughly—always did it right,” said Jerome Watson,\* a longtime employee of the IRS. “Yet, my bosses somehow concluded that, despite this, they could fire me over an argument I had with my wife.

“I admit the fight with her got ugly—but only because I was forced to physically defend myself from her when she came at me one night with a weapon,” he continued. “I had a solid witness who backed my story—who said I was attacked—and yet the IRS fired me. I’ll fight this ridiculous punishment for as long as it takes.”

“Mr. Watson has admitted to the charges, more or less,” Karen Streitfeld, an attorney for the IRS rebutted. “Even if—as Mr. Watson and his witness claim—his wife escalated matters, his conduct in the event was beyond the pale, and as we answer his appeals, that will become very clear.”

**FACTS:** Jerome Watson worked for many years with the IRS as a Supervisory Tax Examining Technician.

Late one winter night in 2007, police were summoned to deal with a domestic disturbance involving Watson and his wife—also an IRS employee, and a close colleague of Watson’s.

During the wee hours of Feb. 1, according to official documents in the case, the responding police officers found that both Watson and his wife had “significant physical injuries” incurred in what appeared to have been a violent encounter between them.

Specifically, the police wrote that “based on their observations,” and from “the evidence visible at the scene, and the statements of [Mr. and Mrs. Watson], the officers determined that [Mr. Watson] was the primary aggressor in an altercation between the two.”

Accordingly, Jerome Watson was arrested and charged with aggravated assault, battery and cruelty to children—the last charged drawing from “the presence of [Mrs. Watson’s] young child during the event,” according to the documents.

Mrs. Watson later dropped the criminal charges against her husband. But upon learning of the events, the IRS decided to suspend him from his job. Later, after considering the matter, the agency determined it would charge and remove the appellant.

IRS officials found that Watson had indeed been in a “violent altercation” with his wife—and, according to the documents, his “involvement in this altercation caused the IRS to lose faith in his ability to reliably, ethically, and/or effectively serve as a manager in the tax examining department.”

Watson appealed to the Merit Systems Protection Board (MSPB). He argued that he had been unfairly removed, because he had not instigated the altercation, and because

his testimony explained that his wife had been responsible for the violent aspects of the encounter.

An administrative judge (AJ) with MSPB ruled that the evidence supported the IRS view on the Watson case, and that “termination of his employment was reasonable.”

After losing the first round of his appeal before the AJ, according to official documents in the case, “the appellant acquired an affidavit from a previously unknown eyewitness to the events and submitted the affidavit with an appeal filed with the MSPB.” He asked that the full board reconsider his appeal.

In the affidavit, the witness in part supported the appellant’s version of events—but not enough to compel the board to alter the AJ’s ruling. The board “found that the affidavit did not constitute new evidence” and denied Watson’s appeal while “adopting the MSPB’s decision as final.”

Watson appealed again, to the U.S. Court of Appeals for the Federal Circuit.

## Was Watson unfairly fired over a domestic scrap?

**DECISION:** The appeals court took up the matter. First, the court rejected a motion by the IRS requesting that the court refuse to overturn any part of MSPB’s decision because, the agency argued, the appellant allegedly failed to file key details with the court, such as a transcript of the board’s work. The court found to the contrary—that Watson had filed all needed documents.

But on substance, the court agreed with the IRS and the board that nothing in the late-arriving witness testimony sufficiently disturbed the agency’s version of events. “The fact that evidence was not previously available does not make it new and material,” the court wrote—noting that information in the affidavit was “nearly identical” to that presented by the appellant himself at an earlier date.

“We are presented with several competing versions of the events that took place on Feb. 1, 2007, none of which are completely supported or completely precluded by the evidence in the record,” the court wrote. Yet, “common to all credible versions of the events,” as the court put it, was that the couple had a violent argument that ended up in serious injury to both—and, the court ruled, the appellant was sufficiently at fault to merit the charges and removal.

*(U.S. Court of Appeals for the Federal Circuit, Docket No. 2009-3030, 3/10/09)*

\* Names and dialogue are fictitious, but details are based on a real case.

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completely untenable and should never have been pursued," said Gage, who met with Lynn last week to discuss NSPS, among other workplace issues.

Last month, Rep. Ike Skelton, D-Mo., chairman of the House Armed Services Committee, and Rep. Solomon Ortiz, D-Texas, chairman of the Readiness Subcommittee, wrote a letter to Defense Secretary Robert Gates expressing concern over recent reports from the Government Accountability Office and the Congressional Budget Office that have raised questions over the cost of NSPS, its transparency and potential negative effects on DoD employees.

The two lawmakers last week issued a statement applauding the DoD review. "We are pleased that DoD heard our recommendations and has halted the conversion of additional employees into the National Security Personnel System pending a comprehensive system review," the two

wrote. "We encourage DoD to conduct this review as expeditiously as possible in order to minimize the period of uncertainty for all DoD civilian employees."

In a report released in September, GAO looked at how well DoD was managing the NSPS conversion and reported that employees were not very happy. Employees who had the most experience under NSPS showed a negative movement in their perceptions. For example, the percentage of NSPS employees who believe that NSPS will have a positive effect on DoD's personnel practices declined from 40 percent in 2006 to 23 percent in 2007. The report can be found at: [www.gao.gov/new.items/d08773.pdf](http://www.gao.gov/new.items/d08773.pdf).

NSPS, which began implementation in 2006, currently covers approximately 205,000 DoD employees.

To see more, go to: [www.defenselink.mil/releases/release.aspx?releaseid=12556](http://www.defenselink.mil/releases/release.aspx?releaseid=12556) or [http://armedservices.house.gov/apps/list/press/armedsvc\\_dem/skeltonortizpr031709.shtml](http://armedservices.house.gov/apps/list/press/armedsvc_dem/skeltonortizpr031709.shtml).

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MARCH 23, 2009

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