

In this issue ▶▶

• Insight By Mike Causey	1
• Postal Service Asks Hill For Help	1
• Bill to Give Feds Paid Parental Leave	3
• Obama Tightens Ethics Rules	4
• Informed Investor	5
• Rulings Roundup	6
• You Be The Judge	7

INSIGHT

BY MIKE CAUSEY

Count Thy Blessings

When I first started on the federal beat (I was a mere child), many of the people recruited to work for Uncle Sam came directly out of high school. The government liked kids from small towns and depressed areas for a couple of reasons:



1) They had the work ethic, as in—they appreciated having a job.

2) It was easy to do background checks, because many recruits had attended only one or two schools and had never lived or worked outside of their home counties.

In the Washington area—which has about 14 percent of the total federal workforce—lots of kids were recruited from poor sections of Maryland and Virginia. Also from West Virginia and Pennsylvania, where the entire states (except maybe for Bucks County) were long-time, depressed areas.

It was also believed that getting kids from those areas—a three-to five-hour drive away in those days—was wise because so many went home every weekend. There was a joke which said we could save money if the first person we put on the Moon was from West Virginia. Why? Because if we got him there, he would find a way to get home, on

continued on page 2

Postal Service Asks Hill For Help

The Postal Service warned Congress and agency employees last week that worsening economic conditions have led to a steeper-than-anticipated drop in mail volume—and a worsening balance sheet requiring immediate action.

Postmaster General John Potter told a Senate Homeland Security and Government Affairs subcommittee that—in the face of the economic downturn—Congress must permit the Postal Service to reduce its payment requirements for funding its retiree health benefits in order to stop a “severe financial crisis” in the agency.

Potter said that the recession has caused mail volumes and revenue to decline dramatically. By the end of September 2008, mail volume had fallen by more than 9 billion pieces compared to 2007.

The Postal Service instituted a hiring freeze on Oct. 1, 2008, resulting in a loss by attrition of some 14,800 employees, and has taken myriad other cost-saving steps. Still, with mail volumes tumbling, these have not been enough.

“I am sorry to tell you that even our revised forecast may be too optimistic,” he told the panel. “If current trends continue, we could experience a net loss of \$6 billion or more this fiscal year—despite the most aggressive effort in our history to take costs out of our system.”

Potter told the panel that the agency could absorb no more than \$5 billion in losses and still meet its other obligations, including contributions to retiree health benefits. Therefore, at present, the agency is facing a \$1 billion short-

fall—and needs to either raise funds or be relieved of some of the benefits payment requirement.

A 2006 law requires accelerated prepayment of future retiree health care costs. A modified schedule of payments would allow the Postal Service to focus on current financial needs during this crisis.

According to Potter, this change would neither increase the health benefit premiums paid by current or future Postal Service retirees, nor would it affect their benefits.

“The Postal Service’s scheduled payments to the trust fund over the next eight years would always be greater than the premiums flowing out of the trust fund,” Potter said. “That means that the trust fund balance—currently \$32 billion dollars—will continue to grow over this period of time.”

In a second, equally dramatic proposal, Potter told lawmakers that he has concluded it is fast becoming necessary to cut mail delivery from six days per week to five. If the recession worsens, the Postal Service will have to cut a day off its delivery schedule, he said—a step Congress must authorize.

Neither proposal would involve tax subsidies, he said.

“I have to tell you, I don’t make this request lightly,” he said. “But I am forced

continued on page 3

INSIGHT by Mike Causey

continued from page 1

his own, on the weekends.

The FBI recruited lots of kids out of high school. Many of them lived in pre-screened boarding houses (in the Dupont Circle area of D.C., and in sections of the Maryland suburbs) where landlords reported to the bureau if any of the GS 2s or 3s acted up. As they often did.

Jobs that people got back then ranged from fingerprint clerk, to data transcriber, to stenographer and PBX operator (I never knew what a PBX was, but I had no urge to operate one). I would guess that the average age of new hires—back in that day—was in the early 20s.

Today it is very different. The average age at first hire is around 32. That means the people coming in either have spent more time in school, time working in nonfederal jobs, or time “finding” themselves. Also, Uncle Sam no longer hires PBX operators. Or stenos.

In fact, the government workforce has shifted from an army of clerks to a workforce where scientists outnumber secretaries, and doctors, lawyers, nuclear engineers and computer specialists outnumber PBX operators. Whatever they were.

The shift from a largely clerical/administrative workforce to a professional/administrative/scientific workforce is huge. It means that the average pay of government workers has gone up—adjusted for inflation—because the average grade and skills level of feds has gone up. By the same token, the number of blue-collar workers (skilled crafts people and unskilled laborers) has gone down—in part because so many of those jobs are contracted out, a practice that accelerated during the Clinton administration.

The civil service, like the all-volunteer military, has become much more professional. Low-level jobs, and things like food service—once handled by kids just out of high school and buck privates—are now done by contractors in

many situations.

The Army, Navy, Air Force and Marine Corps are too busy to assign men and women to peeling potatoes, cleaning out grease traps or picking up cigarette butts (if they exist anymore on military bases).

As the government has gotten more professional and more highly paid, many people in the private sector look to federal service with envy. Last week, in one day, the nation lost 72,000 jobs as big and small corporations handed

out pink slips. That’s a lot of people. And that is on top of the millions who already had lost their jobs, as well as their health insurance, and in some cases, their pensions.

It is little wonder that people in the private sector think feds have it made.

Nor is it any wonder that many feds resent that preconceived notion, because many of

them have private-sector service. And they know that the places they now work at (with a few exceptions) are there to provide service, not to produce profits.

Also, Uncle Sam doesn’t do fast-food. Nor much retail. There is no equivalent in government to people who serve as greeters at Wal-Mart, or who flip burgers at McDonald’s. The large number of Americans who hold those lower-paying service jobs, compared to the small number who do similar things in government, makes the “average” federal salary appear much higher than the “average” private wage. Because it is, in total.

The “who’s got it made” argument between feds and private-sector types will probably never be settled.

But today, right now, given the tribulations affecting the nation’s workforce—from layoffs to pay cuts to falling 401 (k) account values, lost pensions and furloughs—the government is the one bright beacon on the hill.

And there’s nothing wrong with that!

The shift from a largely clerical/administrative workforce to a professional/administrative/scientific workforce is huge.



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continued from page 1

to consider every option, due to the severity of the challenge at hand.”

But critics argue that despite the red ink, any cut in delivery schedule would be counterproductive, leading only to greater erosion of market share to private delivery services and the Internet.

“I am very disappointed to hear you come before us today and advocate as a potential solution to this economic crisis the elimination of six-day-a-week delivery,” Sen. Susan Collins, R-Maine, told Potter. “If businesses, newspapers and others who have time-sensitive mail can no longer rely on six-day-a-week delivery, they are going to find other means of delivering their information.”

Potter countered that, for the time being, the service reduction is financially necessary—and would be only temporary—perhaps only through the fall, when full six-day service might be restored for the holiday season. Reduction in payments for retiree benefits would be temporary as well, Potter said.

As a Postal Service spokesperson told *FEND*, Potter’s plan has the advantage of not requiring any additional federal money at present.

“The request is not in the nature of a bailout,” agency spokesman Greg Frey told *FEND*. “We don’t even like that word over here. We’re not looking for money or more subsidy, we are looking for some changes.”

Asked by the panel for a sense of what is possible as regards working with unions in “finding additional cost savings,” Potter sounded a hopeful note.

“We have reached out to all the unions in that regard,” Potter said. “And the one that’s most prominent in terms of a success story is the agreement with the NALC [National Association of Letter Carriers] to expedite the adjustment to our city delivery routes, and cut down the time that it would take if we were to follow the normal handbook procedures.”

“We are always seeking ways to make changes in a cooperative manner,” he continued. “At the same time, we have to recognize the unions’ positions—they do have contracts that were negotiated a couple years ago.

“There’s an opportunity today to work on work rules. But I think the



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greater opportunity for change will come when the collective bargaining agreements expire.”

Those agreements expire in 2010 and 2011, he said. In the meantime, he pledged to work with the unions to solve “today’s problems.”

Earlier in the week, American Postal Workers Union (APWU) President William Burrus had warned that the Postal Service would soon make sweeping changes to postal operations that will include considerable work-hour reductions.

“In the near future, the Postal Service will implement modifications to postal operations that are unprecedented in the 230-year history of this great institution,” Burrus wrote in an open letter to APWU members posted Jan. 23 on the union Web site. “Change will take place, and the changes will affect employees.”

Burrus insisted that any workforce reductions should be across-the-board, and should not solely target craft employees, whose work hours already have been dramatically reduced over the past four years.

“If there are fewer craft employees, there must be fewer supervisors, fewer postmasters, and fewer contract employees,” Burrus said. “And ‘workshare discounts,’ which subsidize the major mailers at the expense of the Postal Service and employees, must end.”

To see more, go to: www.apwu.org/news/burrus/2009/update02-2009-090123.htm.

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Lawmakers Offer Bill to Give Feds Paid Parental Leave

A contingent of lawmakers last month introduced a bill that—if passed into law—would provide all federal employees with four weeks of paid parental leave. Federal employees currently must deplete their annual

and sick leave balance to take parental leave.

“Amazingly, federal employees currently receive no paid family leave at all,” said Rep Carolyn B. Maloney, D-N.Y., one of the co-sponsors of H.R. 626, the Federal Employees Paid Parental Leave Act (FEPPLA). “Families should not have to choose between a paycheck and getting their newborn home and settled in, especially in these economic times.”

In addition to giving federal employees four weeks of paid leave, FEPPLA would allow them to use any accumulated annual or sick leave to offset the 12 weeks of unpaid leave guaranteed by the Family and Medical Leave Act. A general lack of infant care requires that working parents take leave to care for their newborn. Government-sponsored day care facilities, for example, typically do not care for infants younger than 10 to 12 weeks old, Maloney said.

By failing to provide paid parental leave, the federal government lags behind the private sector—53 percent of private-sector employers provide some form of paid parental leave, Maloney said. The median length of such leave is six to eight weeks. And, most congressional offices offer paid family leave: 80 percent of House offices offer 7.6 weeks of paid family leave and 96 percent of Senate offices offer 6.1 weeks of paid leave, Maloney said.

The law also would improve the federal government’s chances of recruiting and retaining younger workers. The federal workforce is aging, indicating difficulty hiring younger workers, Maloney said. The average age of federal workers increased from 43.6 years to 46.7 years from 1994-2004. “Family-friendly benefits could help attract younger workers,” Maloney said.

A similar measure passed the House in the last Congress by a vote of 278-146. A companion bill was introduced by Sen. Jim Webb, D-Va., but failed to move forward in the

continued on page 4

continued from page 3

Senate. Webb is expected to again introduce a companion bill to the House measure. Others who support the measure include Reps. Frank Wolf, R-Va., Danny K. Davis, D-Ill., Edolphus Towns, D-N.Y., and Majority Leader Steny H. Hoyer, D-Md.

If passed into law, the bill would keep the federal government competitive, said Wolf, whose district includes a large swath of Northern Virginia. "The aim of this legislation is to keep the federal workforce in step with the private sector, which has been providing this benefit for many years," said Wolf.

National Treasury Employees Union (NTEU) President Colleen Kelley, who has long supported such a measure, applauded reintroduction of the bill. Paid parental leave for federal employees was one of the recommendations that NTEU made to the Obama transition team shortly following the Nov. 4 election, Kelley pointed out.

"A benefit such as paid parental leave breathes life into the notion of a family-friendly workplace, and serves as an important and highly-visible tool to aid the recruitment and retention efforts of federal agencies," Kelley said. "It would also save the government money by reducing employee turnover and replacement costs."

To see more, go to: <http://maloney.house.gov/index.php?option=content&task=view&id=1773&Itemid=61>.

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Obama Tightens Ethics Rules

President Obama last month issued a series of executive orders that will tighten federal ethics rules for White House officials, freeze pay for senior West Wing executives and curb some lobbying activities.

Under one order, political appointees are required to certify that they received their job based on their qualifications rather than political connections. Gifts from lobbyists are barred. And employees who leave the government will be forever prohibited from lobbying the Obama administration.

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

FUNDS	JAN. 28	MONTH AGO	YEAR AGO
G Fund	12.7620	12.7358	12.3100
F Fund	12.5401	12.5713	12.1700
C Fund	10.1145	10.0704	15.2800
S Fund	11.8749	11.6768	18.2300
I Fund	13.1258	13.7453	22.3100
Lifecycle Funds			
L Income	12.6990	12.6849	13.2900
L 2010	13.6832	13.6715	15.0500
L 2020	12.5359	12.5691	15.8300
L 2030	12.2410	12.2836	16.3900
L 2040	12.0487	12.1078	17.0100

The revamped ethics rules apply to all non-career presidential or vice-presidential appointees, non-career appointees in the Senior Executive Service (or other SES-type systems), and those appointed to positions that have been excepted from the competitive service by reason of being confidential or policymaking, the order said. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

The order also requires all presidential appointees to sign a binding agreement that they will comply with it, and sets up an oversight and enforcement process under the auspices of the Office of Government Ethics and the Justice Department. Both are charged with ensuring that appointees comply.

The lobbying rules were embraced by government watchdog groups.

"The new executive order contains the toughest and most far-reaching revolving door provisions ever adopted," Fred Wertheimer, president of the advocacy group Democracy 21, said in a statement. "The new executive order, for the first time, prohibits presidential appointees who leave the government from coming back to lobby high-level executive branch officials throughout the entire government, not just in their own department or agency."

Under another order, salaries of White House employees making more than \$100,000 per year will be frozen.

As part of his campaign pledge to

run a more transparent government, Obama ordered federal agencies to be more compliant in producing documents requested under the Freedom of Information Act (FoIA). He also ordered that the Attorney General issue new guidelines governing FoIA to the heads of executive departments and agencies, and that the Office of Management and Budget update its FoIA guidance.

"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The government should not keep information confidential merely because public officials might be embarrassed by disclosure," the order said. "Nondisclosure should never be based on an effort to protect the personal interests of government officials."

He also signed an order which prohibits anyone other than the president from asserting executive privilege to prevent the release of records after an administration ends. This is meant to prevent what happened during the Bush administration, when political guru Karl Rove, chief of staff Josh Bolten and White House counsel Harriet Miers claimed executive privilege to exclude themselves from providing Congress with information about the firing of nine U.S. attorneys.

Looking ahead, more remains to be done to restore government integrity, Wertheimer said. The most important government integrity issue is fixing the

continued on page 8

Feds and IRAs, Part I: IRAs and IRA Contributions Rules

While all federal employees are eligible to contribute to some type of Individual Retirement Account or IRA, few employees do. This series of columns will explain IRAs and why employees should contribute to them. This week's column discusses what an IRA is and the rules concerning IRA contributions.

An IRA is a personal savings plan that allows an individual to accumulate money—either tax-deferred or tax-free—until retirement. Contributions to an IRA may or may not be tax-deductible, depending on the IRA owner's circumstances and the IRA type.

Individuals may contribute to two types of IRAs—a traditional IRA, also known as an ordinary or regular IRA, and a Roth IRA. Traditional IRA contributions may or may not be deductible, but earnings grow tax-deferred until they are withdrawn. Contributions to a Roth IRA already have been taxed, and are never deductible—but earnings grow tax-free. This means that everything withdrawn from a Roth IRA—contributions *and earnings*—will be tax-free.

There are contribution rules for IRAs. For 2008, the deadline for individuals to contribute to their IRAs is April 15, 2009. The April 15 deadline is applicable even if an individual filed for an extension for their 2008 income taxes. For 2008 and 2009, IRA contributions cannot exceed the lesser of \$5,000 or compensation received for personal services. For individuals age 50 or older as of Dec. 31, 2008, an additional catch-up contribution of \$1,000 is allowed.

To contribute to an IRA, an individual must have some type of compensation which includes: (1) wages, salaries, bonuses, etc; (2) commissions; (3) lump-sum payment for unused annual leave paid to departing or retiring federal employees; (4) certain taxable alimony or separate maintenance payments; or (5) nontaxable combat pay.

Compensation does not include: (1) income from investments such as interest, dividends and capital gains; (2) pension or annuity income; (3) Social Security benefits; (4) earnings from real estate, such as rental income; and (5) any amount excluded from income, such as the foreign earned income exclusion.

Spouses of federal employees with little or no earned income can still make a contribution to an IRA for 2008 because their spouse has compensation as a result of federal employment. The combined limit for a married couple is lesser of \$10,000—\$5,000 for each spouse—or their combined compensation for the year. The limit is increased by \$1,000 for each spouse who is age 50 or older by Dec. 31, 2008.



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Contributions to an IRA must be made by cash or check. The IRA trustee can invest the cash in investment property such as stocks, bonds or certain coins and bullion, provided the trustee is a qualified IRA trustee or custodian who holds the property.

Those individuals expecting an income tax refund when they file their 2008 federal income taxes can have the IRS deposit all or part of that refund into their IRA by filing Form 8888—Direct Deposit of Refund to More than One Account. Unless an individual notifies the IRA trustee to treat it as a 2008 IRA contribution, the deposit will be considered a 2009 IRA contribution.

A contribution other than an eligible rollover contribution that is more than the lesser of compensation or \$5,000 (\$6,000 if age 50 or older) is an excess contribution. A contribution made to a traditional IRA for the year of an individual who is 70.5 or older—even if that individual has compensation—is also considered an excess contribution. There is a 6 percent excise tax each year on excess amounts remaining in the IRA.

An excess contribution may be corrected as follows:

- The excess contribution plus the income earned on the excess amount is withdrawn by the due date—including extensions—of the tax return. While the excess contribution is not included in taxable income, the income earned must be included in gross income in the year the excess contribution was made.
- If total IRA contributions for 2008 are \$5,000 or less (\$6,000 or less if age 50 or older), then the excess amount can be withdrawn at any time and not be included in gross income—provided it was not deducted. If a deduction was taken by the excess contribution, then an amended federal (and state) income tax return will have to be filed to correct the deduction amount. The 6 percent excise tax applies each year the excess contribution remains in the IRA.

If an IRA owner or beneficiary engages in a prohibited transaction involving an IRA, the IRA will be disqualified as of the first day of the tax year in which the transaction occurs. Prohibited IRA transactions include: (1) borrowing from it; (2) selling property to it; (3) receiving unreasonable compensation for managing it; (4) using it as security for a loan; and (5) buying property for personal use with IRA funds. Assets in the account would be considered distributed to the owner or beneficiary and must be included in gross income.

Postal Worker Gains Leave in Noncompliance Claim

James Galatis, an EAS-17 Supervisor with the Postal Service, was demoted from that position to a lesser one on March 17, 2007. He appealed this demotion to the Merit Systems Protection Board (MSPB). On Aug. 29, 2007, Galatis won and was awarded restitution by the board.

Galatis subsequently reopened his pursuit of this appeal, claiming the Postal Service failed to follow through on the order. But, on Aug. 21, 2008, Galatis prevailed in this appeal, concerning, according to official documents in the case, “an issue about the computation of the appellant’s back pay.”

At that time, the board recalculated the back pay owed by the agency—and also “MSPB ordered the agency to provide evidence of its payment with documentation showing the calculations on which it was based.”

The Postal Service then opened a third round in the case by submitting evidence to MSPB which it claimed was sufficient to prove it had paid Galatis the full amount. Galatis replied, disputing the agency’s claim and the evidence.

In the evidence presented, the agency indeed showed it had paid the appellant “the difference between the basic pay that he would have earned during the back pay period as an EAS-17 supervisor at the top step and the basic pay that he actually earned in the PS-05 position to which he was demoted.”

While Galatis acknowledged this payment, and that the explanation might appear to cover the erroneous pay gap he had originally appealed, he argued that it did so only in part. That’s because, Galatis stated, in addition he should have received “night differential pay” for nights he worked, as well as pay-for-performance pay he would have earned as a well-performing supervisor in his old job.

Further, Galatis argued he should have received performance pay that was wrongly denied him in the years leading up to his demotion, and that he should have received an upward adjustment in leave time earned. Finally, he said the agency should not have issued upwardly revised tax forms—he claimed that they included Sunday premium pay that he should not have received nor been taxed for.

The full board considered both parties’ claims. As regards Galatis’s counterclaim that the agency failed to properly credit him with night and performance pay, the panel found for the Postal Service. The board noted that Galatis earned more as a craft worker on overtime, though he may have been wrongly demoted to that status, than he would have at his old job as a supervisor receiving night and performance pay. Under these circumstances, it was to his advantage, financially speaking, to lose this portion of his appeal—and the board ruled accordingly.

Additionally, with respect to the merits of his claim for a

bonus and performance pay, the board found Galatis “has not clearly established that he would have received such an award and that therefore the agreement does not entitle him to pay for performance as a part of his back pay.”

Finally, regarding the appellant’s claim of deserving additional leave time along with the back pay, the board held that his claim is just, according to precedent (*Rivera v. Postal Service*, 2007, for example).

The board therefore found that for the most part the agency was “in compliance,” except for the issue of leave owed but not awarded to the appellant, and on Jan. 27, 2009, ordered that his leave balance be adjusted accordingly. (*Galatis v. Postal Service*, MSPB, Docket No. PH-0752-07-0298-X-1, 1/27/09)

DoD Employee Loses Removal Appeal

Bruce A. Gowings, a DoD employee, recently lost his appeal of his removal.

Gowings had been a DoD employee for a limited period of time when the agency elected to remove him. He had been hired as a probationary employee on Sept. 19, 2007. His probationary status would convert to non-probationary status after one year of employment.

Very early in the appellant’s work history, DoD supervisors noted poor attendance. On Dec. 1, 2007, the agency elected to remove Gowings due to “undependability as evidenced by [his] pattern of using unscheduled leave.”

Gowings argued that he was removed due to “a pre-appointment reason,” contrary to the DoD’s explanation and claim in the termination letter that he had been “terminated because of post-appointment conduct,” according to official documents.

Gowings appealed his removal to the Merit Systems Protection Board (MSPB). But an administrative judge (AJ) with the panel ruled that the body had no jurisdiction, as he was a probationary employee and there were no special circumstances that would confer MSPB jurisdiction.

The board has jurisdiction over probationary employees only if a personnel action was taken against that employee for partisan political reasons or marital status. (5 C.F.R. § 315.806(b)), or in cases where a “pre-appointment” reason led to the action. None of these applied, the panel found.

The appellant took his case next to the full MSPB, but the panel also turned him down. Next he went to the U.S. Court of Appeals for the Federal Circuit. The appeals court concurred with the board, however, and denied the appellant’s appeal.

(*Gowings v. MSPB*, U.S. Court of Appeals for the Federal Circuit, Docket No. 2008-3318, 1/12/09)

Did OPM Breach Settlement Agreement?

“I am not, at this point, a big fan of the federal government,” said Ralph Angstrom,* who for a brief period served as an employee of the Office of Personnel Management (OPM). “My expertise is in criminal investigations, and when I hired on at OPM, I expected a long career working for them.

“Instead, my managers discriminated against me on the job—forcing me to leave the agency,” he continued. “Next, the same managers violated the settlement agreement the agency signed just before I left. It guaranteed that my disputatious departure would be kept confidential, but OPM fully informed my new employer, which soon fired me.

“I am appealing not only due to breach of agreement—but I am demanding half a million dollars in punitive damages,” he said. “They cost me my career.”

“Angstrom’s complaints are groundless,” said Sarah Sugarman, a lawyer for the agency. “His performance at OPM led to his firing—he never proved any *discrimination*, as noted in the settlement agreement. More important, sharing certain information with his new employer was allowed under the agreement.”

FACTS: Ralph Angstrom, a GS-11 Criminal Investigator with OPM’s Office of Inspector General, was terminated from that job in 2005 while still in probationary employment with OPM.

Soon afterward, Angstrom appealed to the Merit Systems Protection Board (MSPB). He claimed he had been mistreated on the job—and that his removal came about because he was a victim of discrimination, based partly on marital status.

An administrative judge (AJ) with the panel found Angstrom’s claims were supported by enough evidence to proceed to a hearing.

Facing a hearing, OPM soon agreed to enter into a settlement agreement with Angstrom.

On Oct. 28, 2005, the agreement took effect. Among its terms, it promised that the SF-50 form which explained why he was separated from his post would be adjusted to state that he was not fired, but, rather, had resigned.

Angstrom later gained a new job as an investigator—this time for a private contractor that is often is retained by OPM.

According to documents in the case, because Angstrom might do contract work for OPM, his new employer made him “subject to a background investigation and suitability/security determination by the agency.” During that investigation, several statements by OPM employees—including two of Angstrom’s former supervisors—were furnished to background investigators with his new employer.

His former supervisors told investigators about Angstrom’s contentious time at OPM. Therefore, according to Angstrom in his complaint, neither supervisor acted in accordance with the

confidentiality called for in the settlement agreement.

Nonetheless, the new employer, having received damaging information about Angstrom, removed him.

Angstrom appealed to MSPB again, this time demanding “past and future economic damages”, reinstatement at OPM or “any other government agency” with a job level similar to the one he had forfeited, and—finally—\$500,000 in punitive damages.

OPM countered that the two supervisors only spoke as “private citizens” in the background check, and that in this regard the agency could not be held to the settlement agreement. Further, the information the two supplied was “required by law”—and was for a “background” investigation not in connection with employment references—thus the supervisors’ actions trumped the settlement agreement’s terms, OPM maintained.

Finally, the agency denied that MSPB had authority to award damages.

But an AJ with MSPB studied each of OPM’s defenses and found them all wanting. The AJ ordered the original appeal reinstated. OPM appealed to the full MSPB.

Did OPM breach its agreement with Angstrom?

DECISION: The board took the case again, noting that the panel has long had the power to enforce such settlement agreements (*Richardson v. EPA*, 1981, among other precedents cited).

First, the board considered OPM’s claim that the possible breach of the settlement agreement by OPM employees “served the public’s interest in a thorough suitability investigation that *supersedes* the [a]ppellant’s interest in enforcing the settlement agreement”—in other words, the investigation was so important that the OPM supervisors were compelled to breach the agreement.

Second, OPM argued that Angstrom had signed a document waiving confidentiality in the event of a background investigation.

Regarding the first OPM claim, MSPB found in favor of Angstrom, because by a precedent case (*Gizzarelli v. Department of the Army*, 2001), the loophole allowing an agency to breach confidentiality promised in a settlement agreement does not apply in a case of mere “performance or non-criminal conduct issues,” as in Angstrom’s situation.

On the second OPM argument, the board noted that OPM had not raised the issue in its original argument before the AJ—and MSPB reminded all parties that it will not consider new evidence on appeal unless it was unavailable in the original case.

Accordingly, MSPB ruled in Angstrom’s favor, and ordered his complaint heard by the AJ.

(MSPB, Docket No. NY-315H-05-0133-X-1, 1/23/09)

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

continued from page 4

nation's campaign finance laws, Wertheimer said. Such a reform "is needed as part of achieving President Obama's oft-stated goal during the campaign to fix Washington," Wertheimer said. "Successful campaign finance reform can fundamentally alter Washington's influence-money culture."

To see more, go to: www.whitehouse.gov/the_press_office/ExecutiveOrder-EthicsCommitments or www.democracy21.org.

GAO: VA Must Broaden Work Program Incentives

The Department of Veterans Affairs (VA) needs to broaden financial incentives paid to disabled veterans participating in the agency's Vocational Rehabilitation and Employment (VR&E) program, said a Government Accountability Office (GAO) report released Jan. 26. GAO looked at how well VA was implementing a new VR&E Five-Track Employment service delivery approach which gives veterans five different program

options to achieve employment based on their individual needs. Although VR&E was able to emphasize employment programs, financial incentives remain primarily focused on education and training, the report said. Vets who participate in education and training programs receive a monthly allowance, while those who use VR&E for assistance with immediate employment do not, the report said. The program helps vets who have service-connected disabilities obtain employment or live independently if employment is not practical. VR&E's services are particularly critical now that more than 33,000 military servicemembers have been wounded in Afghanistan and Iraq since 2001, the report noted. GAO auditors pointed out that although VR&E has improved its capacity to provide services by increasing its collaboration with other organizations—and by hiring more staff—many of its regional offices still reported staff and skill shortages. To see more, go to: www.gao.gov/highlights/d0934high.pdf.

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