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INSIGHT

BY MIKE CAUSEY

Different Place, Different Time

When President John F. Kennedy delivered the famous “ask what you can do for your country” line, he was talking about, and to, a very different country.



For one thing, there are about 111 million more Americans today than there were in 1963.

We still had the draft. And many male (and a lot of female) federal workers were military veterans. Many came home after two, three or four years in the military, and sought out federal jobs. The Post Office Department—now the U.S. Postal Service—blossomed. It was staffed with tens of thousands of people, mostly men. Many were minorities who got the best job they could at the time—with Uncle Sam. They went off to war and came back happy to be clerks or letter carriers with seniority.

Most members of Congress had served in World War II or Korea, or both. They understood the good and bad sides of the services. They had seen the utter nonsense and stupidity as well as the unbelievable sacrifices and heroism. And, having been there and done that, they understood why things that didn’t make sense to detached, protected civilians happened the way they happened.

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Shinseki Promises to Cut VA Backlog, Hire Staff

Department of Veterans Affairs (VA) Secretary Eric Shinseki told Congress last week that he is moving to reduce the current six-month delay in processing veterans’ disability claims—and affirmed that he would hire an additional 1,100 staffers to reduce the backlog.

Testifying Feb. 4 before the House Veterans Affairs Committee, Shinseki said VA may phase out paper processing and move to an all-electronic claims system, possibly by 2012, among other changes.

“Veterans are the centerpiece of our organization and of everything we do as we design, implement and sustain programs that serve them,” said Shinseki, a former Army chief of staff. “I am focusing my energy on the development of a credible and adequate 2010 budget request as a priority.”

Shinseki said he also was in the process of launching a comprehensive review of the entire agency, which has been criticized for years by many veterans groups as being slow to change and insensitive to the needs of vets.

Veterans groups welcomed Shinseki as the new VA secretary—and expressed hope that he can help solve many specific, long-term problems at the agency.

“Our criteria [for VA Secretary] has always been: somebody who is a strong leader and a strong advocate for veterans,” Dave Autry, spokesman for the Disabled American Veterans (DAV), told *FEND*. “From everything we’ve heard from Secretary Shinseki, we are certainly looking forward to him being

all those things.

“We’re [also] pleased that [he] has said that delays in processing claims are unacceptable,” Autry said. “We are willing to work with him to make sure that his reform proposals actually benefit veterans—and we are pleased that he is willing to tackle this beast. It is not an easy task he set for himself, or the VA.”

Foremost among these reforms pushed by DAV—and endorsed in previous statements by Shinseki—is a system of budgeting and committing funds over a year in advance—which, as Autry notes, will mean that the first Obama-era VA budget will have to cover two years so VA can make the leap to the new system, known as “advanced appropriations.”

“Both he and President Obama have supported advanced appropriations,” Autry said.

“There are a couple of components—No. 1, from now on the budget will be set one year in advance,” Autry said. “Come Oct. 1, the start of the new fiscal year, the VA health care portion [of the budget] will be set at the appropriate level so that doctors and hospital administrators can plan to staff their facilities properly. They will have a good snapshot of what patient needs will be.

“In the process for coming up with the appropriate funding, the VA has a

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Vietnam was just heating up. Our military “advisors” were about to be replaced with lots of combat troops. With much, much more to come under LBJ.

This was a time when people didn’t e-mail, google, twitter or let a fascinated world know their every move, thought and action via Facebook.

You couldn’t get movies on demand. You saw them when they showed them, not when it was convenient for you.

Overweight children, especially in grade school and high school, were a rarity.

A 1963 edition of *Junior Scholastic* magazine—which went to most public schools—asked teachers what their No.1 problem was. Their answer: “Children Who Talk in Class!!!” (Been in a public school lately? Once you get past the guard/security, you see and hear some interesting stuff.)

Some time back, a *Washington Post* columnist answered young people who expressed serious concern that they wouldn’t have it “as good” as their parents had. He responded something like this: Sure you can have it the way your parents did! Not to worry! First, get rid of all your cars, save one. If you have multiple-bathrooms, lose them. They did it with one—even with a batch of kids—you can, too!

Back then, an evening out meant McDonald’s. A vacation might be spent serving time with the grandparents, or staying someplace else with free bed and board.

The nonsmoking section of a restaurant was often small, and often empty.

This is not a plug for the good old days. In some ways, they weren’t all that good. Lots of problems. Some we’ve solved, some we don’t even recognize or consider as problems anymore.

People who were young then miss their youth and all that goes with it. But many forget, over time, that some things weren’t all that hot.

When I recall the 1950s in my head (I was but a child), I literally see them like a black-and-white movie. Or film, as we say today. My memories were colored from the mid-1960s on. But before that, it was—like some of the best movies

(Ted Turner notwithstanding)—black and white.

But back to “What you can do for your country.” The question: Will the Obama administration ask federal workers to sacrifice not only as citizens, but also as civil servants? And if so, what will he do, or at least propose?

What’s certainly not going to happen is anything like a Great Depression pay cut. Back then, feds took a 15 percent hit, and were just happy to have a job. A friend of mine says his parents were both government workers (one a fed, the other with New York State) during the Depression. Because they had steady jobs and a steady income, they were the richest people in the neighborhood. At deflation prices, they had money and never lived better before, or since, he said.

Also during the Depression, they imposed a rule that a husband and wife couldn’t both work for the government. Not the same agency—the same government. So imagine married feds: One (usually the woman) lost a job, the other took a 15 percent pay hit.

Nothing like that is likely to happen unless things get much, much, much worse.

So what could happen? Remember that President Bill Clinton came into office—with the solid backing of federal and postal unions—at what turned out to be the tail-end of a recession. He took one look at federal pay rates and imposed a freeze for 1994. He said times were tough, and that the system used to give feds raises—comparing federal jobs with like jobs in the private sector city-by-city—was “flawed” because it didn’t take into account the big value of federal fringe benefits like vacation, health insurance and lifetime annuities.

President Clinton also proposed cutting survivor benefits from 55 percent to 50 percent. Who knew?

Congress overrode the president and feds got the first all-locality adjustment in 1994. But each year thereafter, he recommended smaller raises than Congress finally approved. President Bush did the same thing. And that was before we knew (officially) that the

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model that projects a number of years in advance, and that model is fairly accurate in the short term—less so as you get further out.”

“The model includes expected patient load, expected cost increases in medical equipment and all that the VA will need—so they’ll know how much things will cost and can count on getting the needed amount of money for the next fiscal year,” he continued. “They then can go out and recruit staff, for example, make contracts for delivering equipment, and get the good bids for everything they need to do.”

DAV joined with nine other veterans groups and “dozens” of other military organizations who also have pressed the government to take up the idea, Autry said.

“We don’t quite know what the VA’s ‘full-time equivalent’ employee level in the president’s budget is,” Autry said. “We’ve laid out in our independent budget exactly what those staffing levels should be—and we’ve delivered this to the White House and Congress.”

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economy was in recession.

The Obama administration’s budget—his first—will be out in March, maybe as late as April. Nobody who I know knows what it will do to government operations, or if it will address federal pay.

But the White House already has frozen pay for anyone making \$100,000 or more per year. And Congress and the administration want CEOs who take stimulus money to limit their annual pay to \$500,000.

So something is afoot. We just don’t know exactly what.

For the record, I am willing to take the first step. If this economic stimulus package is approved, I will limit my salary to \$500,000.

And if it isn’t approved, I’ll stick with \$500,000—partly to cheer you up, and partly to answer the question of what I can do for my country!!!



Don’t miss our discussion of weekly news topics at www.FederalSoup.com. Click on “Inside the News Forum.” Look for the soup bowl on featured stories.

Richard Weidman, director of policy and government affairs for Vietnam Veterans of America, told *FEND* that Shinseki “has a very firm grasp already of the core problems that the organization has, and we believe that he will make significant progress there in the next few years.”


“He understands that lot of the problems that VA has don’t necessarily need statutory change, just good leadership and holding people accountable all the way down the chain, particularly the managers,” he continued. “It’s not to be draconian—it’s just a reasonable expectation that people are going to do their job properly.”

“I think he will listen to the average VA employee, because that’s his background. He is known as a soldier’s general—for good reason.”

Weidman also hopes Shinseki will insist on adding bar codes to all VA patient files, to reduce a perennial problem of lost medical records.

A spokesman for the American Legion, one of the country’s largest veterans organizations, also sounded an upbeat note over Shinseki’s appointment.

“We have known—or at least individuals within our organization have known—the general for some time, and we are very pleased with the selection,” the group’s media relations manager, Craig Roberts, told *FEND*.

To see more, go to: <http://veterans.house.gov/hearings/hearing.aspx?NewsID=327>. 

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House Bills Address FERS Redeposit, Sick Leave Issues

Labor organizations this month enthusiastically greeted House bills that would address two widely criticized shortcomings in the Federal Employees Retirement System (FERS).

The first bill—if passed into law—would allow former FERS-covered federal workers who return to civil

service from the private sector to reinvest their full federal retirement annuity and retain credit for previous years of service. The bipartisan bill, H.R. 828, the FERS Redeposit Act, was introduced Feb. 3 by Virginia legislators Jim Moran (D), Frank Wolf (R) and Gerry Connolly (D).

“This is a commonsense bill that ensures that experienced professionals are not penalized for re-entering government service after working in the private, non-profit, or academic sector,” said Wolf.

Under the current system, individuals covered by FERS who leave the federal government and either cash out their annuity or roll it into a private savings account cannot redeposit those funds when they return to government service. This means that for the purposes of determining their annuity benefit, they have lost their credit for previous years of service and are considered to be at “year one” when returning to the government after time in the private sector.

The bill would allow former civil servants who decide to re-enter the government workforce after a stint in the private sector to redeposit the full amount, plus interest, of the annuity they cashed out or rolled over, and to retain their years of service in the calculation of future annuity payments. A similar “redeposit” benefit is already available to employees covered under the Civil Service Retirement System (CSRS), which covers those who began working for the government prior to 1984.

The National Federation of Federal Employees (NFFE) voiced its support. “This bill is about the federal government doing all it can to bring the best talent back into the civil service,” said NFFE President Richard Brown. “The previous administration moved a lot of government work to the private sector,” said Brown. “The workers should not be penalized when they return by starting back at square one.”

Immediately after its introduction,

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John Gage, American Federation of Government Employees president, also applauded the measure. "AFGE supports the FERS Redeposit Act because it takes us a step closer to eliminating the remaining inequities between the two main federal retirement systems," Gage said. "We look forward to the next step toward retirement equity, the introduction of legislation that will equalize the treatment of unused sick leave between CSRS and FERS."

Within a week, Moran and Wolf had done just that. On Feb. 10, the two co-sponsored the "FERS Sick Leave Equity Act," which would allow FERS employees to credit their unused sick leave toward retirement. The so-called sick leave benefit adds any unused sick leave to the time an employee has worked for the purposes of determining their retirement annuity.

"The FERS 'use-it or lose-it' system for sick leave hampers productivity and increases training costs," said Moran. "We need to be incentivizing the accrual of sick leave, not encouraging employees to call in sick in the weeks leading up to retirement."

A Congressional Research Service report from August 2007 found that sick leave balances are lower for FERS employees than CSRS employees. And, in a recent survey of FERS and CSRS employees, 85 percent of CSRS employees said they conserved as much sick leave as possible.

Federal Managers Association National President Darryl Perkinson applauded the measure. "The cost of sick leave used by federal employees continues to rise, and the loss of productivity becomes more apparent as there is no incentive for FERS employees to conserve sick leave," Perkinson said.

National Active and Retired Federal Employees Association (NARFE) President Margaret L. Baptiste voiced NARFE's support of the bill as well.

Baptiste said that when Congress created FERS in 1986, allowing workers to apply their unused sick leave toward retirement was traded off for other FERS benefits not available under CSRS.

"However, with the benefit of 23 years of hindsight, we recognize that

Thrift Savings Plan Share Prices

(As of FEND's deadline)

FUNDS	FEB. 10	MONTH AGO	YEAR AGO
G Fund	12.7733	12.7425	12.3200
F Fund	12.5269	12.5164	12.1600
C Fund	9.5856	10.7682	15.7600
S Fund	11.3547	12.4952	18.9700
I Fund	12.5489	14.5482	22.9700
Lifecycle Funds			
L Income	12.5851	12.8532	13.3800
L 2010	13.5009	13.9401	15.2200
L 2020	12.1810	13.0629	16.1500
L 2030	11.8242	12.8618	16.7700
L 2040	11.5796	12.7573	17.4700

For rates of return and other TSP info, go to: www.FederalDaily.com/financial/TSP.htm

the inequity in the treatment of accrued sick leave between FERS and CSRS has hurt productivity and increased agency costs," Baptiste said.

To see more, go to: www.nffe.org/ht/display/ReleaseDetails/i/8256, http://moran.house.gov/apps/list/press/va08_moran/FERS08.shtml and http://moran.house.gov/apps/list/press/va08_moran/SickLeave09.shtml. ☺

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Burrus Blasts USPS Response to Financial Downturn

American Postal Workers Union (APWU) President William Burrus last week criticized a U.S. Postal Service (USPS) proposal to reduce workforce hours and consolidate USPS mail processing and transportation networks.

USPS detailed the proposed changes this month in a USPS news bulletin in which it reported a first-quarter net loss of \$384 million, and a decline in mail volume of 5.2 billion pieces compared to the same period last year. Steps outlined in the bulletin included halting all construction of new postal facilities, asking Congress to let it adjust some of the payment requirements for retiree health benefits, working on ways reduce work hours, and consolidating mail processing and transporta-

tion networks.

Burrus blasted the USPS focus on cutting workforce hours while using private contractors who compete against the Postal Service.

"It is extremely disappointing that not a single step is aimed at reducing the loss of revenue from 'worksharing' discounts or from subcontracting," Burrus said in a statement posted Feb. 10 on the APWU Web site. "I fail to understand USPS strategy, which continues to subsidize private mail 'pre-sorters.'"

Burrus was principally disturbed by USPS plans to consolidate so-called "excess" capacity in its mail processing and transportation networks while official USPS policy encourages the growth of competing private entities.

The APWU chief pointed specifically to a USPS study that is looking at consolidating mail processing operations in the Long Beach, Calif.-area—at the same time that Pitney Bowes plans to open a new 84,000-square-foot mail-processing facility nearby. That new plant, Burrus said, will be partly financed through worksharing discounts offered by USPS.

Burrus for some time has warned members that ongoing USPS operating losses—and decreasing mail volumes—could put jobs at risk. Most of the decrease in mail volume is attributable to the worsening reces-

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Feds & IRAs, Part III: Roth IRA Conversion

Effective Jan. 1, 2008, assets in qualified retirement plans and the Thrift Savings Plan (TSP) can be transferred directly to a Roth IRA. The retirement fund assets are either transferred to the retirement plan owner, and subsequently rolled over within 60 days of receipt into a Roth IRA, or transferred directly via a trustee-to-trustee transfer to a Roth IRA.

Prior to 2008, only traditional IRA assets could be transferred to a Roth IRA. While income tax is due on the amount transferred that has not been previously taxed, all subsequent distributions from the Roth IRA will be tax-free if certain conditions are met, as discussed below.

There are three requirements to perform a Roth IRA conversion: (1) the Roth IRA owner must have a modified adjusted gross income (MAGI) of less than \$100,000 in the year of conversion; (2) the IRA owner cannot file his or her income tax return as married filing separately; and (3) the amount converted must satisfy the definition for a qualified transfer. Note that a TSP account belonging to a departed or retired federal employee qualifies for transfer to a Roth IRA.

MAGI for the \$100,000 limitation is defined as the same MAGI that is used to determine whether contributions to a traditional IRA are deductible (as discussed in the "Informed Investor" column of Feb. 2, 2009). The MAGI table is reproduced below. Note that MAGI does not include the conversion amount that is included in gross income.

Modified AGI (MAGI)

AGI computed before considering any deductible IRA contribution
+ Excluded foreign earned income and foreign housing costs
+ Excluded Series EE bond interest income used for higher education expenses
+ Student loan interest deduction
+ Tuition and fees deduction
= Modified AGI (MAGI)

One of the following methods can be used to convert to a Roth IRA: (1) roll over a distribution from an eligible retirement plan such as the TSP to a Roth IRA within 60 days of the retirement plan receipt; (2) make a trustee-to-trustee transfer from the trustee of a traditional IRA or eligible retirement plan to the Roth IRA trustee; and (3) transfer funds from a traditional IRA to a Roth IRA maintained by the same trustee.

To avoid a 10 percent penalty on distributions of converted traditional IRA or retirement plan contributions following a Roth IRA conversion, individuals who do not meet one of the penalty exceptions must satisfy a five-year holding period, beginning with the taxable year in which



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the conversion was made. Penalty exceptions include distributions to pay for qualified higher education expenses of the individual, spouse, child or grandchild, distributions made after age 59.5, or distributions of up to \$10,000 for first-time home purchases.

With respect to the earnings (interest or dividends) that have been transferred to a Roth IRA, the earnings must remain in the converted Roth IRA for the later of age 59.5 or five years from the time the IRA was converted. The exceptions to the age 59.5 or five-year waiting period for the earnings portion include the death of the IRA owner, disability of the IRA owner, withdrawal to pay for higher education

expenses of qualified relatives, or withdrawal of up to \$10,000 to buy one's first home. The five-year holding period begins with the first Roth IRA contribution made by the individual. The following three examples help illustrate the Roth IRA conversion rules.

Example 1. Paula, age 45, converts \$50,000 from a traditional deductible IRA into a Roth IRA. Paula owes income tax on the converted amount—\$50,000—but no 10 percent early withdrawal penalty. If Paula withdraws \$15,000 five years later when she is age 50, the withdrawal is exempt from the 10 percent withdrawal penalty. This is because Paula waited five years to withdraw funds from the converted IRA, even though she is younger than age 59.5.

Example 2. Allan, age 60, converts \$30,000 of a traditional IRA into a Roth IRA. If Allan withdraws \$20,000 from the converted Roth IRA at age 62, the withdrawal is penalty-free because Allan is over age 59.5.

Example 3. Patrick, age 42, converts \$100,000 from a rollover traditional IRA into a Roth IRA. Two months after the conversion, Patrick withdraws \$10,000 to buy his first home. The \$10,000 withdrawal is penalty-free because up to \$10,000 may be withdrawn within the five-year post-conversion period to buy a first home.

The conversion of a nondeductible traditional IRA is not taxable to the extent that the converted amounts include previous nondeductible contributions. Any subsequent withdrawal of such converted amounts is not subject to income taxes or the 10 percent withdrawal penalty, regardless of how long the converted amount was left in the converted IRA.

A conversion from a traditional IRA, a qualified retirement plan, or the TSP is reported on IRS Form 8606 for the year in which the conversion occurred. The taxable amount is then carried over to IRS Form 1040. Any tax liability resulting from a Roth IRA conversion must be paid in full with one's income tax return.

IRS Agent Loses Removal Appeal

Jerome L. Riser, a Contract Representative for the IRS Wage and Investment Division in Dallas, Texas, lost a recent appeal in his effort to be restored to his post.

In 2007, IRS managers proposed removing Riser on five administrative charges. These were: (1) failure to timely pay personal federal income taxes; (2) lacking candor; (3) failure to follow proper leave procedures; (4) failure to follow IRS information technology policy; and (5) failure to follow a management directive.

Riser first rebutted each of the charges in an “oral reply” hearing. Prior to that hearing, he had requested a union member be present—but, according to official documents in the case, only to “sit and direct” him in his responses, not as his formal representative. But according to documents, the union member was unable to attend because he was obligated to act as a union representative at another hearing which took place at the same time.

So Riser attended the hearing on his own, and offered oral replies to the charges.

The IRS subsequently determined that the agency would move forward with Riser’s removal.

Riser continued his appeal, taking it before the Merit Systems Protection Board (MSPB). The board’s chief administrative law judge, however, upheld all five charges brought against Riser—finding that, although some specifications were inadequately supported, for the most part, “each charge was backed by a “preponderance of evidence.”

On Aug. 15, 2008, the deadline for appealing to the full MSPB expired without any further action from Riser. At that point, the board considered the appellant’s removal final.

But Riser appealed again, this time to the U.S. Court of Appeals for the Federal Circuit. He argued, first, that he had lacked proper union representation during his oral reply—hence there was no fair review of his case.

The court noted that under the law (U.S.C. § 7513(b)(3), “an employee against whom an action is proposed is entitled to ... be represented by an attorney or other representative.” However, the court ruled, Riser “did not ask for representation,” and because of this, he in effect had waived his right to representation at that hearing.

Besides, the appeals court noted, official documents quoted Riser as saying, at the time of the hearing: “[i]t would have been better’ had a union representative been present, [b]ut irrespective of that, I think it was a fair presentation.”

In other words, in the court’s opinion, at the time of the hearing, Riser indicated he felt the hearing was fair.

Riser also argued that his removal was defective because MSPB “failed to allow or consider certain subpoenas, interrogatories, witnesses, police reports, and administrative issues.”

But the appeals court rejected this argument, stating that Riser had failed to specify exactly *which* subpoenas and other materials were neglected by the board.

Third, and finally, Riser argued that MSPB “failed to consider all the evidence.” The appeals court also found this argument unsubstantiated. Accordingly, the appeals court upheld the IRS decision to remove Riser.

(Riser v. Department of the Treasury, U.S. Court of Appeals for the Federal Circuit, Docket No. 2008-3339, 2/6/09)

Postal Worker’s Discrimination Appeal Fails

Charles R. McCoy, a Maintenance Custodian with the Postal Service, recently lost an appeal of his removal from his job on administrative charges.

According to official documents quoting the postal officials who had charged him, McCoy was involved in an “altercation in which he allegedly threatened the life of his supervisor.” Subsequently, the agency proposed removal.

McCoy appealed by filing a grievance under the collective bargaining agreement negotiated by his union. His grievance request then went to arbitration. The arbitrator in the case found that the proposed removal had been “issued for just cause.”

The appellant filed another appeal, with the Merit Systems Protection Board (MSPB). In this appeal, McCoy added a new countercharge—that the agency’s decision to remove him came about due to racial discrimination. He argued that he had been “disciplined disparately from similarly situated white employees under the agency’s ‘zero tolerance’ policy toward violence in the workplace,” according to official documents in the case.

The MSPB administrative judge in the case found against McCoy—ruling that the appellant had not proven racial discrimination.

McCoy appealed again to the full board, but the panel refused to hear his case. He next took his case to the U.S. Court of Appeals for the Federal Circuit.

The court examined the case, but noted that in “mixed cases” involving both adverse personnel actions and counterclaims of racial discrimination, the court can only claim jurisdiction if the appellant waives his discrimination complaint.

In the end, the court held that although McCoy elected to waive the discrimination aspect of his case, the panel could not claim jurisdiction over it, because “the sole issue raised in his petition is the Board’s decision with respect to his claim of racial discrimination.”

Left with no jurisdiction over the racial discrimination element of the case, and—in the court’s opinion—no other substantive issues to adjudicate, the panel chose to dismiss the case. *(McCoy v. Postal Service, U.S. Court of Appeals for the Federal Circuit, Docket No. 2009-3010, 2/9/09)*

Was Navy Firefighter Unfairly Denied A Promotion?

“Being part of a firefighting team—helping people in danger—is a job I really love,” said Adam Singleton,* a Fire Protection Inspector with the Navy. “But when I moved to Guantanamo to get a higher-ranking job, instead of giving me a raise, the Navy dropped my pay by chucking me into a ‘pay-for-performance’ system—the National Security Personnel System [NSPS]. I got real ticked off, to say the least.”

“The Navy says it reduced my pay because, by law, I had to be transferred into the new pay system,” he continued. “It’s ridiculous—if I had known this was next, I would never have changed posts. I will fight this to the end.”

“Mr. Singleton’s frustration with a drop in pay is understandable,” said Jacquelyn Barnes, a lawyer for the Navy. “But the Navy did nothing wrong here—it is required to reduce an employee’s pay if their new NSPS classification puts them at the bottom end of a new ‘pay band.’”

FACTS: Adam Singleton had worked as a Firefighter (HAZMAT Technician) GS-0081-07, Step 08, Naval Construction Battalion Center in Gulfport, Miss. Singleton later responded to a posting for a higher-ranking job, that of Fire Protection Inspector, GS-0081-08, at Guantanamo Bay, Cuba, a job that had been posted in March 2007.

Some time later, the Navy hired Singleton for the job. The appellant was pleased, because under the GS system, he would be subject to a two-step pay increase at his new job at the base. Accordingly, upon arrival at his new job, he expected that, as a GS-08, Step 7, his basic pay would move up from \$39,146 to \$42,183. And in fact, the Navy did send Singleton a Standard Form 50 (SF-50) documenting the improvement.

But shortly before Singleton had relocated, the Navy on Nov. 11, 2007, officially changed the personnel system covering his new post at Guantanamo Bay from the GS system to NSPS. Belatedly, on Feb. 19, 2007, “the agency discovered that some of its commands that had been converted to NSPS still had encumbered GS positions,” according to official documents in the case. Navy officials followed up by transferring Singleton’s job into NSPS. The agency found, in the process of the change, that the appellant “had not been entitled to a promotion when he was converted to the NSPS pay system.” The Navy also determined that his pay would be reduced by \$1,079 per year.

On June 12, 2008, the Navy prepared a new SF-50 formally canceling Singleton’s earlier GS system promotion—and placing him under NSPS.

Singleton filed an appeal with the Merit Systems Protection Board (MSPB), charging—according to official documents—that “the agency improperly canceled his promotion and reduced his pay,” calling the move a “harmful error” and petitioning for it to be corrected.

The Navy replied that it had transferred Singleton into

NSPS and accompanying lower salary as “a correction of an administrative error in setting the appellant’s pay at a rate that was contrary to law and regulation.” Further, the agency wrote, his move into NSPS should properly be classified as a “voluntary reassignment” and not a “promotion.”

The administrative judge (AJ) handling the case determined that Singleton was right in that he had been promoted and lost the promotion—but he had failed to prove that the promotion was not an error. The AJ further noted that the appellant only challenged the canceled promotion, not his reclassification under NSPS. Therefore, the AJ rejected Singleton’s appeal.

Singleton appealed again—to the full MSPB.

Did the Navy unfairly cancel Singleton’s promotion?

DECISION: Singleton argued, among other things, that in November 2007 the agency promoted him from GS-07 to GS-08, and he served in his promoted position for 7 months. Hence, his conversion to NSPS, the cancellation of the promotion, and the reduced pay were *all* improper and constituted harmful error.

The agency rebutted Singleton’s new appeal by arguing that he had, in effect, added to his complaint in an effort to shift the burden of proof to the agency “contrary to law, rule or regulation.” The agency also argued that the appellant had not proven he had suffered a loss of promotion.

The full MSPB noted that both the GS-07 and GS-08 jobs are reclassified as being in the same pay band under NSPS. Therefore, the board ruled, the agency is correct that Singleton did not suffer what qualifies as a “loss of pay” under that system. However, the board conceded, he did suffer a dollars-and-cents loss of pay.

Next, the board cited precedent (*Lomax v. Department of Defense*) and noted that once Singleton made a prima facie case of jurisdiction “by showing that he was appointed to a position by an authorized official, that he took some action to denote acceptance of the promotion, and that he actually performed in the position,” at that point under the law, the agency must prove that the promotion or appointment was an error contrary to law or regulation.

Instead, in the present case, the board found that the AJ wrongly placed the burden of proof on the appellant. The full board ruled, therefore, that the agency must be given a hearing to allow it a chance to prove such an error—and Singleton must, in turn, “be afforded the opportunity to rebut any showing that the agency may make.”

(MSPB, Docket No. Docket No. DC-0752-08-0598-I-1, 1/30/09)

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

continued from page 4

sion, which has adversely affected all classes of domestic mail, USPS said. First Class Mail volume decreased by 1.8 billion pieces and Standard Mail volume was down 3 billion pieces in the first quarter, USPS said. If current revenue and volume trends continue, the Postal Service predicted it could experience a year-end net loss significantly higher than last year's \$2.8 billion loss.

As outlined in its proposed steps, the Postal Service plans to:

- Eliminate \$5.9 billion in costs through Fiscal Year 2010, which includes the reduction of 100 million work hours this year.
- Freeze the salaries of all Postal Service officers and executives at 2008 pay levels.
- Reduce travel budgets and halt all construction of new

postal facilities.

- Work with the National Association of Letter Carriers to implement a new process to evaluate and adjust delivery routes to help achieve work hour reduction targets.
- Shrink the workforce via attrition and voluntary early retirement. USPS reported a reduction of 24,240 career positions at the end of the first quarter compared to the same time a year ago. There are no plans for layoffs, USPS said.

"We are taking bold steps to cut costs immediately," Postmaster General Jack Potter said in a statement posted on the USPS Web site. "At the same time, we are examining, realigning and streamlining our business to address longer term financial pressures."

To see more, go to: www.apwu.org/news/webart/2009/09-010-potterletter-090210.htm.

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