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**Remarks of Benjamin T. Toyama**  
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**&**  
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**Pearl Harbor Naval Shipyard**

*Prepared For:*

**The Subcommittee on**  
**Oversight of Government Management,**  
**the Federal Workforce,**  
**and the District of Columbia**

*Hearing:*

***Preparing for Transition: Implementation of the***  
***National Security Personnel System***

**Wednesday, April 12, 2006 - 1:30 p.m.**

**Asian-Pacific Center for Security Studies**  
**Fort DeRussy, Honolulu, HI**

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**Testimony of Benjamin T. Toyama  
Western Federal Area Vice President  
International Federation of Professional and Technical Engineers, AFL-CIO, CLC**

I would like to thank the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia for holding today's hearing. I would also like to extend a special note of appreciation to Chairman Voinovich for his foresight in holding today's hearing in Hawaii. I know I speak for all the workers here at the Pearl Harbor Naval Shipyard when I extend to you a warm Hawaiian welcome!

I want to also extend a very heartfelt note of appreciation and welcome to my Senator, the Ranking Democrat on the Subcommittee, Daniel Akaka. Senator Akaka's outstanding efforts in Congress over many years, including his most recent efforts to bring fairness and equity to the NSPS, is not only important to the workers here at the shipyard, but to all DoD workers worldwide. Senator Akaka, I thank you for giving me the opportunity to testify here today.

Before I begin with my personal remarks, I would like to join my good friend and colleague Don Bongo, in reiterating that my statements here are not only on behalf of my union, the International Federation of Professional and Technical Engineers (IFPTE), but also on behalf of the United DoD Workers Coalition (UDWC), of which IFPTE is a member. The UDWC, as the committee is well aware, is a coalition of 36 DoD unions working hand in hand together on this NSPS issue.

The history of this so-called National Security Personnel System (NSPS) has been one marked by controversy. Unfortunately, and despite the best efforts of the UDWC to avoid such controversy, the NSPS as we know it today is nothing more than an unworkable and illegal personnel system that was created unilaterally by the Pentagon and OPM.

Don't be misled by the implications of the title of this proposed system. This is not about National Security, but is instead all about destroying the collective bargaining, workers rights and pay of the DoD's workers. I want to be very clear that despite the best efforts of those in Congress and the workers to avoid such a scenario, the NSPS before us today was created to serve an ideological purpose, not to help enhance the security of the United States. This explains, in large part, the shambles that it is in now.

You are likely wondering, 'how does he actually know this?' The answer is because as one of two IFPTE representatives to the UDWC, I attended nearly every Meet-and-Confer meeting back in Washington as well as other meetings with management thereafter. I have also been involved in most of the internal UDWC strategic meetings on NSPS and am here to tell the Subcommittee first hand that the union side has bent over backwards in an effort to work with management in creating a personnel system that was, first and foremost, good for national security, but was also fair and equitable to DoD's dedicated and skilled workforce. This is what Congress intended and this is exactly what we on the labor side have been attempting to achieve over the better part of the last three years.

However, after the dog and pony show that was Meet-and-Confer, and after the Federal Register process in which the UDWC formally put forth a full range of proposals,

the decision makers at the Pentagon and the OPM decided to ignore all of the UDWC's proposals, and instead move forward with their unilaterally created NSPS. Incidentally, all of the UDWC proposals fell within the scope of the authorizing law.

Now, the subject for today's hearing is "Preparing for Transition: Implementation of the National Security Personnel System," which leads me to the following question: How does the DoD and OPM plan on implementing a system that has largely been ruled as illegal by a federal court and has absolutely no buy-in from the very workforce it will impact?

I commend your Subcommittee and the other Committees of jurisdiction for holding past hearings in Washington. They were very enlightening and helped to bring some transparency to the fallacy of this system. However, today's hearing is different because the overwhelming majority of those in attendance are actual workers, the very people who will be impacted by this system. The irony is that those of us in this room, who have given a lifetime of service to protecting this nation, including many veterans such as myself, stand to be impacted by a personnel system that has been created by the likes of former Heritage Foundation employees who have little to no experience working for or within the DoD. These are political appointees who have been recruited and hired by the government, most notably OPM, for the sole purpose of bringing their wrecking ball from conservative think tanks in Washington to the civil service. How can this be good for national security or fair to the workers?

This is clearly not what Congress had in mind when it gave the Pentagon the authority to revamp DoD's human resources practices. And, this is not simply Ben Toyama, or the labor unions, or the UDWC saying this; this is an independent court that

also said this. U.S. Federal District Court Judge Emmet Sullivan ruled that much of the NSPS is contrary to the law. In his February 27<sup>th</sup> ruling, Judge Sullivan said that the new rules fail, “to ensure even minimal collective bargaining rights.” Judge Sullivan also found that NSPS inappropriately allowed DoD to “take whatever actions are necessary to carry out the mission” by creating issuances to override labor agreements. This, Judge Sullivan ruled, “fails to ensure collective bargaining under the statute.” The court also found that the National Security Labor Relations Board did “not satisfy Congress’ requirement for an ‘independent third party’ to review labor management disputes.”

I want to make very clear that despite any differences we on the labor side may have with the concept of pay banding, we also recognize that the authorizing law does give the Department authority to move in that direction. However, what we have here with NSPS is far greater than that and even the pay banding schemes we have seen so far are largely inadequate.

For example, the pay for performance schemes laid out so far are intended to go hand in hand with the concept of implementing issuances. In other words, the Pentagon wanted to force their brand of pay for performance on the workers unilaterally by simply issuing an implementing issuance directive absent any input or discussion with the workers. However, Judge Sullivan has correctly ruled that implementing issuances are illegal, leaving the workers to speculate as to what’s next? Will we ultimately go to pay banding or will we continue with the GS system? And, is the government willing to put forward a pay banding policy that is dually accepted by both management and the workforce?

The pay for performance scheme as intended by the DoD is a problem for federal employees in Hawaii, Alaska and other parts of the world where federal employees receive a Cost of Living Allowance or COLA. A law that is not associated with NSPS regulates the COLA. As such, the COLA is not included in any of the performance calculations. The federal areas that receive COLAs will eventually see their pay and benefits fall behind the rest of the federal employees. This will ensure that the alleged intended reasons for the NSPS, “to make the federal workforce more mobile and flexible,” will not be met and the laws of the unintended consequences will prevail. The federal employees will become less mobile and they will resist movement to Hawaii, Alaska and other foreign COLA areas in the DoD.

The ratings and pay schemes also go hand in hand with parts of the NSPS ruled illegal, namely the kangaroo court called the National Security Labor Relations Board (NSLRB). If an employee didn't like his rating or pay designation, they could appeal it to the NSLRB, a management alleged independent third party to determine if the rating was fair or not. The NSLRB would then issue a decision in favor of the worker and overturn the employee rating given by management or not. However, if the rating were to be overturned, the very same manager who gave the wrong rating to begin with would then be able to determine if the pay designation can be raised as well. That system in and of itself is a fallacy.

However, based on the fact that Congress authorized an independent third party, the Pentagon is attempting to create an NSLRB comprised of three members to be chosen only by the Secretary of Defense; Judge Sullivan correctly ruled that part of NSPS illegal

as well. As the UDWC had claimed for months, and as Judge Sullivan ultimately ruled, this is far from independent.

All of this brings me back to the subject of today's hearing, "Preparing for Transition...". For three years now Congress and the workers have given the Pentagon and OPM more than ample opportunities to live up to the letter of the law. Yet the government has turned a deaf ear to our pleas, forcing IFPTE and several other UDWC member unions to successfully sue the government.

As I have said from day one, the NSPS won't work until it gains employee buy in, and given the stubborn way by which the government has gone about unilaterally creating this system, coupled with the court's decision, this is a system that is far from gaining a buy-in from the workers. And, at this point, I believe that the grave missteps by this government make it nearly impossible to ever achieve the acceptance of the rank and file. In short, the NSPS we have today, after all of the resources we have wasted on it, won't work. The government has failed miserably in gaining the trust of the workers and public for this to succeed.

The government has failed and continues to fail to adequately train the employees and the managers in the implementation of pay for performance. We are very concerned because the same managers that the government has said are unable to properly recognize or deal with performance issues will be making decisions on important issues of pay and benefits. The totality of the training that we have seen or even know about is an online, optional half-hour training. The government has failed to properly train the managers in the most important aspects of the implementation of NSPS and that is to gain the credibility, trust, and respect of all of the stakeholders of NSPS. Without the trust and

respect or credibility of the managers implementing the NSPS, the productivity of the federal employee will suffer. The NSPS will lower employee morale because the pay for performance system will destroy teamwork and sharing. The DoD's pay scheme will pit worker against worker and will allow for individual gains and selfishness.

Thank you again for the invitation to testify today. I look forward to answering your questions.