

NSPS-006 GEORGE NESTERCZUK

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Q: This is an oral history interview with Mr. George Nesterzczuk, formerly the United States Office of Personal Management senior advisor to the OPM Director and the Department of Defense. The interviewer is Diane T. Putney. It's August 26th, 2008, and the interview is taking place at the OSD Historical Office, Arlington, Virginia. The purpose of this interview is to record your experience, Mr. Nesterzczuk, with the evolution of the National Security Personnel System, NSPS, at the Department of Defense. A transcript of the interview will be preserved as a permanent NSPS record and may be used as source material for a DoD history of NSPS.

On to the first question. Please briefly describe your background in terms of your professional experience with personnel matters and the positions you have held relating to personnel management up to the time when you first became involved with the NSPS.

A: My experience with federal personnel goes back to around 1980, at the beginning of the Reagan administration, when I was on the transition team for the Office of Personnel Management. I subsequently worked at OPM for over four years as associate director. I held various positions

there. Key responsibilities among these included performance management and performance-based pay systems. In 1983 we introduced the Performance Management and Recognition System (PMRS), which required enacting legislation. Subsequently, I spent some time in DoD, working personnel issues, specifically an initiative to try to capture senior scientific and engineering positions in a classification system. I then moved on to the Department of Transportation. I left the government at the end of 1986 and was later recruited, in 1995, to head up the staff, as Staff Director, of the Civil Service Subcommittee in the House of Representatives. I spent five years doing that. The subcommittee operated within the Government Reform and Oversight Committee. I left that position in January 2000. Basically we covered the full gamut of personnel matters during those five years. OPM Director Kay James called me in December of 2003 once the NSPS had been enacted and asked me to come back to help lead the OPM contributions to NSPS. In between my departure from the Hill and that call I had stayed involved in personnel matters working on the Department of Homeland Security creation, specifically, addressing the personnel aspects within that legislation.

Q: You mentioned you got a call from Director Kay Coles James. That leads into the next question: When and how did you

first become involved with the Department of Defense National Security Personnel System (NSPS)?

A: I had tracked some of the early, regulatory initiatives that preceded the NSPS when the Department of Defense was trying to find some regulatory means to address pay and performance issues using extensions of the demonstration authorities that they had. That was for, I guess, several months in 2003. Then in December, she called me. I was out of the country at the time. I came in and met with her in January to discuss what she had in mind. It was at that point, late January 2004, when she asked if I would consider coming in to take on that effort for OPM; OPM as a joint partner with DoD. I agreed to do it and I came back to OPM at the end of February.

Q: What guidance did you receive from Kay Coles James? What were your responsibilities and what kind of staff support at OPM did you have?

A: The guidance I had was basically to coordinate all of the NSPS related resources within OPM and to head up that team. That involved the Policy Directorate at OPM, the Office of the Director, some of the senior advisors of the Director, the Office of Legislative Affairs, and the Office of Public Affairs. I was to make sure that all components of OPM that had a vested interest in the regulations would be

involved and would provide the support for the Department of Defense in executing its portion of the joint effort. That's the guidance I had. She also wanted to make sure that it was a cooperative effort. There had been some tension preceding my arrival, and the OPM/DoD relationship appeared to be dysfunctional at the time. Since I had previous experience on Capitol Hill and in my prior venues at OPM in dealing with the Department of Defense, Director James thought that I might be a credible representative of OPM in the effort.

Q: I have a few questions about the NSPS legislation and the need for it at this point. Secretary Rumsfeld, Secretary Gordon England, Secretary David Chu all complained in public that under the General Schedule system it took too long to hire someone. The average time was three months. From your perspective, why were Rumsfeld, England, and Chu so frustrated with the hiring process? Why did it take so long and how did it come about that DoD operated with a personnel system under which it took three months to hire someone?

A: It probably took a lot longer than three months. For many key positions it probably took much longer than three months. I think that the basis of frustration may have been when key vacancies arose. The announcement process,

the search process, the outreach wouldn't always lead to the best selection as well. It's a competitive labor market, the needs of the department, particularly after 9/11, were changing dramatically in terms of the need to respond to changing mission requirements, and to refocus and redirect existing resources. The personnel system doesn't lend itself to much flexibility. DoD needed more flexibility and a better competitive posture to reach the right people. The competitive environment underscores the need for a more flexible pay system as well. The pay system in Civil Service is extremely rigid (the General Schedule) and tied to the classification system. It does not provide sufficient recognition of peoples' performance in setting initial pay as well as once someone is on board. All of those things were problematic. In addition, the DoD, much more so than other civil and federal agencies in the government, has a tremendous overhead of union contracts. There were close to 1,500 bargaining units at the Department of Defense. The overwhelming majority of unionized labor in the federal government is in the Department of Defense. Further, each of the DoD installations scattered all over the country is potentially an independent bargaining unit, and some of the larger facilities have a number of bargaining units, each

overlaying its own constraints on missions and operations. I believe that was as problematic for the Department as the selection or recruitment process itself. The ongoing operations of the department were being hampered by these overlays of contractual labor requirements. That probably was as problematic as anything else. NSPS provided the department with the opportunity to redefine its entire labor relationship.

Q: Why did you think that in the NSPS statute Congress authorized the Department of Defense to conduct national-level collective bargaining with DoD union representatives, yet Congress also mandated that NSPS itself would be designed and implemented with collaboration and meet and confer sessions and not with national-level collective bargaining? Why could there be no collective bargaining for NSPS itself?

A: Past experience with collective bargaining over relatively minor issues tied the department up in knots. At times it has taken three to four years to resolve even relatively straightforward management initiatives. The collective bargaining process is cumbersome at best. The department recognizes, I think, 43 labor unions, or at least it did at the time, around 43. You couldn't possibly bargain with that many independent unions. The department did recognize

that eight or nine of those 43 had national-level bargaining status. And those eight or nine, at a minimum, would have been required to participate in collective bargaining. That just made no sense. The federal government is also different from the private sector in that it has no bottom line to gauge the success or weakness of a particular collective bargaining agreement. They just go on and on without any ultimate bottom line to gauge the value of the agreement. The private sector has the benefit of profit and loss statements to tell you whether or not the workforce is productive, whether the pay structure is appropriate, whether the labor costs are appropriate to the marketplace. We don't have that measure in the public sector. The best way to set up a labor relationship is for the government to lay out its mission needs and requirements and then subsequently to sit down with labor to see whether some portions of that can be opened up to bargaining. That's how we operated for a number of years, until the 1960s when labor relations became more formalized within the federal sector. Establishing a new management-labor regime is what NSPS was intended to do. It foresaw a role for labor, but not necessarily what had been the traditional role. DoD needed to be far more responsive to its new mission requirements after 9/11, and so Congress

saw the need to redefine that labor environment and try to make it more flexible. They did want labor to participate in changing the system so they established a consultation process. The consultations are what we went through as we developed the regulations; we met with union representatives on a regular basis, consistent with the language of the statute: "meet and confer," not "bargain." There was a distinction. The primary distinction being that in a bargaining role, the unions could disagree with certain provisions and hold up the conclusion of the development effort. Congress didn't want this to go on indefinitely so the unions were limited to a consultation role in the development of NSPS. Congress also put a limit on the time some provisions of the NSPS would remain in effect. Some of the provisions, specifically labor provisions, expired after five years after which the labor system would revert to the old one. Thus, NSPS labor provisions did have a check-and-balance, if you will, in that if the new labor regime that DoD wanted to create wasn't successful, then without having to go back to Congress it would just expire and revert back to the old labor system. The hope was that the unions would be cooperative at least for that short time period. If it didn't work out, the fallback was the status quo.

Q: Right. With the Sun--

A: Sunset provision.

Q: In the DoD's proposed NSPS legislation in early 2003, DoD incorporated a national security override provision, allowing the Secretary of Defense to issue NSPS regulations without jointly issuing them with the OPM Director if national security required it. Comptroller General David M. Walker testified that the proposed NSPS would provide the Secretary of Defense the significant, independent authority to develop a separate and largely autonomous human capital system for the department. I believe OPM opposed such a course of action. Why didn't OPM just let Secretary Rumsfeld and DoD go their own way and design and implement NSPS independent of OPM?

A: The Department of Homeland Security was already under way with a new, independent, more flexible personnel system. OPM had invested a great deal of political capital to get that legislation enacted; OPM was very active in that process. A number of those initiatives were under constant scrutiny from Capitol Hill. The continuing political oversight over the development of the DHS system put a lot of pressure on OPM to accommodate the various constituencies in Congress. Having DoD, which represented close to half, no I guess it was less than half, about 40

percent of the federal workforce at the time, going independently, potentially creating new tensions and problems in the political atmosphere of Congress would have made life very difficult for OPM and the administration, quite frankly. Both the Homeland Security personnel system and the NSPS were being advanced by one administration. To potentially set off in two separate directions would weaken the administration's arguments in going to Congress for continuing reforms. The administration also had the intention of broadening civil service reform beyond DoD and DHS once those two were implemented. If there was no cohesion, if there was no coordination, if there was too much fragmentation, OPM felt they would not be able to advance additional reforms.

Q: On March 9th, 2004, OPM Director Kay Coles James sent a remarkable letter (I think it was remarkable) to Secretary Rumsfeld critiquing DoD's NSPS design proposals. The letter had an attachment of over 30 pages. Who was responsible for drafting that letter? Did a sizable OPM team of people work on it?

A: Who was responsible? It was an organizational effort, so there was no one individual who was responsible. The primary lead for the assessment contained in the letter was the Office of Policy Development at OPM. Clearly, it was

reviewed by a number of other offices in the clearance process; that was standard procedure. The substance of the arguments came out of the Office of Policy Development, and then the senior advisors in the Office of the Director made whatever additional changes they felt necessary. I frankly don't remember what particular inputs came from different sources. The substantive content originated in the Office of Policy Development. They were the ones involved with preparing the similar regulatory proposal for the Department of Homeland Security. They were the people who had that bird's eye view of what would work and what might not work in the DoD initiative. Plus they had 25 years worth of experience, or close to 25 years at the time, with various demonstration projects throughout the government, including DoD. They had a very good analytical perspective of what would work best and what might not work as well. They were concerned, I think, about some potential overreach in some of the changes being proposed by DoD, particularly in the labor area. Some of this could have undermined the balance and the support that had emerged in Congress for both Homeland Security and NSPS.

Q: In that March 9th letter, Director James told Secretary Rumsfeld that the NSPS proposal significantly diminished veterans' preference. Would you explain OPM's position on

veterans' preference? Did you discuss veterans' preference with the NSPS implementers? Why did they want to diminish veterans' preference?

A: Veterans' preference.

Q: You smiled.

A: Yes we discussed veterans' preference with NSPS staff and offices regularly. It was an issue that was not going to go away. OPM, from the outset, took the position that veterans' preference ought to be sacrosanct in the new NSPS. The veterans' preference was viewed by some in the then NSPS organization in DoD as being a hindrance to effective, efficient, rapid recruitment and staffing. It also was burdensome in staff retention during a reduction in force. There were a lot of BRACs going on. Some thought that NSPS provided statutory authority to modify veterans' preference. OPM took the position, and we believe this was reinforced by the administration, that this was not an issue that should be tackled in the context of developing NSPS regulations. The veterans' community is well represented on Capitol Hill and has a lot of sympathizers, as does labor. Those are two different and powerful constituencies, and each was relevant to our effort.

Q: Yes.

A: One could be brought along as an ally in the reform

initiative. The other, labor, was deadset against any reforms. To have two of them, and potentially others, gang up and fight the changes made no sense whatsoever from OPM's perspective. OPM took the position that there were aspects of veterans' preference that could be modified both on the recruitment side and on the retention side in the reduction in force without diminishing the preference. Even in the context of performance, veterans' preference could be worked in and protected without undermining the need for the veteran community to feel that their interests were preserved. We were proposing some modifications. In fact, I think DoD was on the initial testbed of -- oh no, it wasn't the DoD, it was the Department of Agriculture -- alternative means of ranking applicants for positions. Creating a "best qualified" category of applicants and then overlaying veterans' preference within that as opposed to giving veterans' preference primary consideration and then looking at best qualified. Kind of turning the problem around. The veterans' community was supportive of the new approach. They had no problems with it. Once the selection pool had been narrowed to the best qualified (no selection yet made), at that point applying veterans' preference was satisfactory. That was a technique that seemed to be working well. The number of veterans being

hired under that approach was higher proportionally than it had been under the old scheme. This was an approach that satisfied both veterans' preference and agency hiring needs. We were proposing to DoD to keep their options open, not to undermine veterans' preference, but to address the problem in a different way. There was tension on veterans' preference between OPM and DoD to the very last.

Q: To the very last.

A: To the very last.

Q: OK.

A: That I think was probably the last issue that was resolved before the regulations finally came out. That's how long it took. It was hanging out there pretty much the whole time.

Q: OK. Again, Director James stated in her March 9th letter to Secretary Rumsfeld that DoD did not take full advantage of the flexibilities that NSPS afforded, such as moving DoD to greater occupational and local labor market precision in matching federal pay to the private sector. Would you briefly contrast the General Schedule concept and use of locality pay in 2004 with the locality pay concept under the NSPS?

A: Under the NSPS now as passed or under the NSPS as it was

being considered in 2003?

Q: As Congress intended with the 2003 legislation.

A: OK. Because you're addressing the letter that was sent to --

Q: Yes. That time period.

A: What we wanted the DoD to do was basically enable DoD to run its own surveys, pay surveys tied to occupations, rather than rely on the national surveys that were being developed for the General Schedule. The surveys could be occupationally driven if NSPS set up key occupations, and OPM wanted DoD to have a pay system tied to job series. DoD needed to have that flexibility. OPM felt that the proposals that were being developed by DoD were limited by the 1980s authorities granted to demonstration labs, most of which were DoD personnel pilot programs. With over 20 years of pilot program experience, OPM found that the pay and classification systems could be more flexible. We felt that DoD wasn't taking full advantage of the reform opportunities that were being promoted under the legislation. From our perspective, the DoD approach was unnecessarily constrained by pre-NSPS statutory language that severely limited the breadth of personnel reforms the Department needed. NSPS obviated the need to stay within demo language.

Q: Yes.

A: DoD could basically break out of that mold and look at entirely different ways of promoting pay for performance in the department.

Q: I thought it was ironic that NSPS exempted the demonstration projects, and Best Practices had been created from the demonstration projects, and they were the basis of the original NSPS proposal. It's ironic how it worked that way.

A: Yes. But that's politics at work, with certain members of Congress responding to their local constituencies in demo labs, Wright-Patterson AFB for example. The existing labs did not want to be moved into a new system when they were comfortable with the demonstration project authorities that they had. They went around OSD to Congress, with a little bit of lobbying to get themselves excluded from NSPS for that reason. They liked what they had; they didn't want to be part of a new experiment, which is how they viewed NSPS. There's some logic to that you can accept. The labs were excluded from NSPS for a period of time. The rationale was "Test your ideas in NSPS, and if they look good, you can come back and move the labs into NSPS later." There wasn't as much resistance within DoD to this exclusion by the time I came on board.

Q: Yes.

A: Subsequently, within about a year's time, once we began work on NSPS regulations and the labs got wind of the greater flexibilities that were being proposed, they wanted to opt in. Now the legislation stood in their way, that's the irony of it.

Q: Double irony. (Laughter.)

A: Yes, double irony.

Q: What's the role of the Federal Salary Council in determining locality pay?

A: The Federal Salary Council is the body that annually reviews the pay surveys and establishes a number for locality pay adjustments throughout the 32, I think it may be 34 now, locality pay areas in the United States. The Department of Labor Bureau of Labor Statistics, collects the pay data from around the country and provides those numbers for adjustment purposes to the Federal Salary Council. The Federal Salary Council then assesses the survey results and comes up with adjustment recommendations by locality area to the President's Pay Agent. The President's Pay Agent then submits final locality adjustments to the President for signature. The President's Pay Agent consists of three officials: Secretary of Labor, Director of OPM, and Director of OMB.

Q: Director James told Secretary Rumsfeld in her letter that the proposed NSPS labor management relations proposal may be contrary to law in so far as that it attempted to replace collective bargaining with consultation and eliminate collective bargaining agreements altogether. Do you recall any specifics about these OPM criticisms regarding consultation and elimination of collective bargaining altogether?

A: As I recall, DoD was raising the notion that they would replace the federal labor relations chapter in Title 5 with a consultation regime with no collective bargaining. OPM felt that that was going beyond the intent of the NSPS legislation - that collective bargaining was not to be obviated, but it needed to be recast inside a different framework. It looked as though DoD was proposing to just do away with collective bargaining and establish a consultation regime instead. Certainly the DoD proposal as it was presented allowed the unions to publicly argue that that was the case. The acrimony in and of itself was problematic as it was eroding the support that members of Congress had voiced for the NSPS. OPM was very concerned with this erosion of support and with the potential spillover not only into the DHS regulations, which were still under development, but in longer range reforms that

the administration wanted to undertake.

Q: Lastly, in that March 9th letter, Director James advised Secretary Rumsfeld to publish broad, NSPS enabling regulations in the *Federal Register* with a public comment period, and then follow up by issuing detailed, internal implementing directives without public comment and OPM approval. Was this procedure for publishing enabling regulations and internal implementing issues a standard operating procedure for OPM? Had this procedure been in effect for decades? Was it a new procedure for NSPS implementation or perhaps Department of Homeland Security implementation?

A: That strategy had definitely been implemented for Homeland Security but the notion of enabling regulations had been around for quite some time. It had been used to varying degrees in the past. Let me explain the distinction. In the absence of enabling regulations, OPM issues regulations on a personnel matter, and once they are final compliance is mandatory and subject to OPM interpretation. All agencies have to adhere to that regulatory language. Under the notion of enabling regulations OPM sets out general concepts in regulations, but the details of implementation are left to the agencies to pursue. That's a more flexible regime that allows agencies to tailor the implementing

procedures to their individual needs. You might have a broad government-wide concept, but the detailed specifics within that could vary from agency to agency under the enabling concept. In the view of OPM the NSPS regulations would be DoD-wide, with all of the conceptual details open to public comment. If any of those details proved to be problematic or found faulty, a whole new regulatory initiative involving consultations with the unions, publication in the Federal Register, public comment, etc., would not be necessary to correct the errors. Given the scope and magnitude of the NSPS with its impact on pay, on performance, on recruitment, on training, on labor relations, the full gamut of personnel matters, we felt it was unrealistic for the department to undertake that massive a regulatory agenda in the timeframes envisioned - particularly, with a five-year sunset provision just on the labor aspect alone. We suggested that DoD in partnership with OPM, rely on enabling regulations, and then once the regulations were finalized DoD could undertake developing and issuing whatever elements of NSPS it needed immediately and roll out additional elements of NSPS within that enabling umbrella. The enabling umbrella would cover performance management and general pay concepts without specifying pay for any occupation. General pay concepts

would include pay for performance and performance management requirements.

A significant aspect that I hadn't mentioned earlier was the matter of dealing with problem employees and the entire employee appeals framework. This was heavily linked to labor issues, and the labor relations system. DoD at the time was undertaking this huge detailed pay reform proposal, and as OPM had pointed out in its letter to Secretary Rumsfeld there were problems with the lack of pay flexibilities in the DoD approach. But there were also problems in the disciplinary provisions. The whole idea of dismissing the complexities of labor relations and substituting a consultation process as opposed to bargaining was highly problematic. The letter was the Director's attempt to alert the Secretary's that what may have looked to DoD like straightforward implementation of legislation was morphing into a potentially damaging political problem that would spill over beyond DoD into other aspects of Civil Service.

Q: The OPM news release announcing that you were the Director's senior advisor on the DoD stated that you would work with the Office of Management and Budget relating to NSPS. When and with which OMB officials did you first meet? What were OMB's concerns with the NSPS

implementation?

A: Let's see. The first OMB official was Clay Johnson, I think. I'm pretty sure it was Clay Johnson, but there were people on his staff, Robert Shea for example, that I had worked with on the Hill who participated in that meeting. There were also two or three OMB staffers who regularly dealt with OPM and Civil Service issues.

Q: OK.

A: We also met frequently with the staff at OMB who handled the DoD portfolio.

Q: OK.

A: In addition we subsequently dealt with the Office of Information and Regulatory Affairs I think it's called. They had oversight over all regulations published in the Federal Register. The NSPS regulations would have gone through their hands for review and subsequent coordination throughout the Administration. They stayed involved throughout the process monitoring the development of the regulations so that when it came time to issue the regulations, they wouldn't be held up with additional internal OMB reviews.

Q: Around the time you became the senior advisor to Kay Coles James was there something outstanding you recall about their concerns --

A: OMB's?

Q: -- OMB's with what DoD was doing?

A: Veterans' preference was one. The potential overreach in reforming labor relations thus creating a negative reaction in Congress was another. The spillover effect on the Department of Homeland Security regulations was a third. And the cost aspects. Any pay reforms that could result in cost increases was of great concern. So that was four. In the pay area, both in performance pay and in setting of pay, OPM was proposing greater flexibility for DoD to set its own pay, particularly for entry level recruitment. OMB was very concerned that this not balloon into a more significant cost factor for the NSPS.

Q: OK. As the OPM Director senior advisor with whom did you first meet at the Department of Defense? What was discussed about NSPS? What kind of reception did you receive? You're smiling again. (Laughter.)

A: The head of NSPS development, that was CPMS at the time. I forget her name now.

Q: Ginger? Ginger Groeber.

A: Ginger. Yes.

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Q: OK?

A: OK. Ginger Groeber was the first person that I spoke with, and I think we talked on the phone first. Oh, no. The first person I spoke with was her boss, Charlie Abell.

Q: Charlie Abell.

A: Charlie Abell. Actually, he initiated the contact; he gave me a call. He was renewing our acquaintance from when we were both on the Hill. When I was on the Civil Service Subcommittee, he was on Senate Armed Services. On a couple of occasions, we had a veterans' preference bill initiated in the House that went over to Senate Armed Services as one of the committees of jurisdiction. I had occasion to work with him then. He called me to congratulate me on my appointment; he was very friendly. Charlie was very good to work with. It was a nice outreach on his part.

Subsequently, I spoke and met with Ginger. In the first week I was on the job, DoD had scheduled a conference with the unions; it was a public meeting. She invited me to participate in that. I represented OPM with a couple of staffers just as observers, because it was a DoD meeting. It was a boisterous meeting, very boisterous.

Q: That was my next question.

A: Ginger didn't fare well on that occasion and the subsequent fallout was brutal. Basically that's when the unions put out the charge that DoD was proposing to replace labor

bargaining with just consultations -- meeting and conferring rather than bargaining. I think within a week after that we had a meeting on the Hill with Senator Susan Collins. In that meeting, I first linked up with David Chu, Secretary Chu. Those were the three DoD people I dealt with initially in the first two weeks of my being on the job.

Q: In four days, it seems, after you became the OPM senior advisor, you attended the famous or infamous meeting with union representatives held at the Hyatt Hotel in Rosslyn, February 26-27, 2004. Would you please describe that Hyatt Hotel meeting in terms of purpose, attendees, tone, issues, and outcome?

A: The unions, according to the legislation, needed to be consulted on proposed changes to the labor management system. DoD had put together what they called a "framework for consideration." I don't recall now whether there were options being advanced in that framework or whether it was just a proposed concept paper. I think it was a concept rather than an options paper. Issues were not presented as a choice between A, B, or C, rather they were set out for general discussion. The unions attacked it as a framework cast in concrete rather than concepts for discussion. One of the concepts for discussion was the notion that the

statute permitted bargaining to be replaced with consultations. The unions argued that the "meet and confer" language of the statute applied only to the development of the regulations. Further, the concept paper raised the notion of replacing bargaining with union consultations. The unions took that to be a signal that DoD was moving away from bargaining towards consultation. Whether this concept paper merely intended to stimulate discussion or outline a new labor relations regime became problematic. The Hill reacted very strongly to some of the concepts raised. That's what OPM had been warning DoD. The lines of communication up to that point between OPM and DoD were not very good. The CPMS office at DoD was sharing information with OPM, but it was after the fact - "This is what we're going to do tomorrow" or "This is what we're going to do next week." It wasn't "Let's talk about what we might do next week." Some communications were passed off as solicitations for input from OPM. "Here's what we'd like to do, give us some feedback, what do you think is right or wrong?" It was not a collaborative relationship. It was consultative at best. That was why Director James had called me. She was concerned that the effort wasn't sufficiently collaborative. From her perspective this was dangerous because of the hostile political environment at

that point in time. Getting NSPS legislation passed in Congress was no easy task. OPM did play a role in securing passage. OPM didn't play as much of a lead role as it had getting the DHS passed, but it was a very active supporting role. The Director was personally involved in some of the dealings in Congress, and she was well aware of the limits of support for NSPS that she encountered. She was concerned that the support not be eroded because her intention was once DHS and NSPS were in place, she could then move on to other agencies that were clamoring for change as well. NSPS development needed to be controlled without undermining congressional support for further Civil Service reforms. Director James was concerned that as DoD pursued what some might perceive as secondary or tertiary goals a lot of political support would be eroded or lost. That's why OPM was getting more and more insistent in its dealings with DoD.

Q: So you had to go back to Kay Coles James and report about this union meeting. What was the room like? How many people? Were all of the unions represented? The 43 or just those national ones?

A: No. All of the national unions had multiple representatives although it wasn't a wide-open meeting. As I remember part of the contention was that DoD had severely

controlled union attendance. Ginger controlled the access to the room. I would guess there were about 80-100 people there. Probably 30 unions, maybe 35, with an average of three or so people. Two for the smaller ones and probably four or five for the larger ones. Very hostile audience. They were very hostile. They were given a copy of the proposal I think as much as a week before the meeting.

Q: Sent by DoD?

A: Sent by DoD. The document had made its way up to the Hill, so whatever caveats Ginger intended to put on the proposal, by the time of the meeting she had lost control. Everyone put their own spin on it, their own interpretation of DoD's intent, even picking on individual words that to some were inflammatory. It was a very unhappy meeting. And it was tough for me. (Laughter.) It was, I think you said my fourth day on the job, and I was in the middle of this very contentious meeting. Although I had done some preparation for it I was still just getting up to speed on the statutory language of the NSPS.

Q: Yes.

A: The DoD NSPS proposal was huge. It ranged from pay issues, to the disciplinary system, to standing labor relations on its head. These were massive changes, some of them advanced in minute detail. In some areas there were vast

gaps of logic and important concepts were still missing or being developed. Very uneven and in some cases much too much detail, for example in the pay areas. The concept paper was based on DoD's Best Practices proposal, which had a lot of detail. In the labor relations area, which is what the unions were focused on, the concept paper was just kind of scary. Very uneven, and that lent itself to much too much subjective interpretation by people who were inclined to oppose the changes. Fortunately, there was nothing about veterans' preference in the concept paper. Otherwise we would have lost the veterans very early on, and then to convince them that there was nothing threatening in NSPS would have been close to impossible. They are a key constituency for the department.

Q: On March 12th, 2004 Secretary Rumsfeld directed that there would be a strategic and comprehensive review of NSPS development - the strategic pause leading to the strategic engagement. What was going on at the time that probably led Secretary Rumsfeld to call for the strategic review? You've already given some of this. Were you involved with any discussions with DoD personnel that helped to bring about this strategic review?

A: No. We weren't at all involved with those discussions. That was something that Secretary England took on

internally. He had been asked by Secretary Rumsfeld to take over the NSPS initiative at DoD. He was just returning to DoD from the Department of Homeland Security. He was very credible taking on NSPS, having been involved with the reform initiatives at DHS. I don't know what discussions were ongoing within the department involving Secretary Chu, because he was, up until then, the senior official leading the NSPS effort within the department. I spoke to Charlie Abell about that time, he was quite open in dealing with me and OPM. He let me know that with all of the blowback that the department was getting on NSPS from Congress after that labor meeting, they decided to take some time to review the strategy on further development of NSPS. We accepted that and waited. OPM stood on the sidelines during those initial reviews within the department. We had sent Secretary Rumsfeld the letter to let DoD know that their best intentions on NSPS were falling short, that there were potential problems in dealing with Congress as well as departmental constituencies. I suppose the department understood that we were legislative partners on this effort, and that one of the partners was sidelined. I think some folks at DoD recognized that they needed to involve OPM in the process to a greater extent than it had been. I guess that was

part of the strategic pause. But OPM didn't engender it. We were in no position to as we had no leverage within the department to do that.

Q: Right.

A: Director James had a good working relationship with Secretary England by way of the DHS reforms. They may have talked about NSPS but I'm not privy to any details of conversations.

Q: What was your role and OPM's role during the strategic review, strategic engagement?

A: We were asked to participate in a modest way with the internal reviews that DoD undertook. There were several review teams; I believe that six teams had been established. We were asked to send representatives to each of those review teams. The number of staff we could send to meetings in the Pentagon and other places was limited, two or three people. I selected individuals from various OPM offices to engage in this effort. The Legislative Affairs Office worked on review of the legislative strategy. There was a legal review of some of the concepts, restrictive vs permissive language in the legislation, so our General Council's Office was involved. We had Public Affairs involved with some of the outreach to constituencies. The Office of Policy Development was

involved, as well as some of the OPM senior staff. I think we might have had a total of 12-15 people involved, to the department's 200-300 or so.

Q: Yes.

A: We tried to sit in on every session, so we'd have at least one person present. I participated in a number of the sessions myself. They were pretty intense: two to three hours in the morning, two to three hours in the afternoon, break out sessions. It wasn't possible to attend all of them. I think I selected two or three key areas, and I tried to attend all of the meetings in those. Some sessions, depending on who was chairing them, were more open to our input than others. There was initially some hostility in some of the meetings. Some people felt that OPM had derailed DoD's original initiative. Others were glad that we had raised some of the issues in the letter to Rumsfeld, so they were more open. The reception was mixed, but it was definitely a transition period. Some of the senior staff involved were frank with me in letting me know that there had been a lot of ill feelings towards OPM, particularly in the three months leading up to the strategic engagement. Does that address your question?

Q: Yes. (Laughter.) During that strategic engagement, DoD leaders adopted the defense acquisition management model

for organizing the NSPS design and implementation effort with its Program Executive Officer, the Overarching Integrated Product Team, and the spiral implementation. What do you think of that management arrangement? Were there any inherent strengths or weaknesses in the model adopted?

A: It was an excellent model. The particular strength was that it was a process familiar to and accepted by the department. The rules of engagement in that approach were well known to all of the players within the department. They could accommodate themselves to that process easily. The hierarchical decisionmaking within that construct involved the highest levels of the department, and that was critical to getting departmental buy-in, getting buy-in from departmental components, and presenting a unified position to external interests. It was an excellent model. We from OPM integrated ourselves into that. It was the department's construct, the department's chain of command, but I think OPM's needs were addressed within that construct very well. We were treated as equals in the decisionmaking process and grateful for that. Because the Director had the sense that we were providing our input, she was better able to deal with congressional oversight of the process. We had our own staff meetings with decisional

reviews within OPM to parallel what was going on within the department. This set up the intention of expediting our own decisionmaking. This was one of the requirements that the director had placed on OPM, that we not be seen by the department as slowing down any of the decision-making. So we didn't. There may have been occasions where DoD questioned timeliness on our part, but OPM were never given very much time to get the director to sign off on a policy decision. I tried to keep all of the players involved as much as possible on a weekly basis and in some instances daily. I ran staff meetings of all of the relevant offices of OPM on a weekly basis to keep them apprised of our progress as various issues evolved. We had morning staff meetings with the director every day. All of the senior staff of OPM attended these meetings and the DHS project leader and I would lead off with a status update. She was apprised on a daily basis of what was going on. When we had 48 or 72 hours to clear a major initiative, everyone knew it was coming, and we tried to meet all of those deadlines. We may have slipped two or three but --

Q: Was it Steven Cohen who was your counterpart over at DHS?

A: Steve Cohen. Yes.

Q: He's at these meetings too?

A: Yes. And Ron Sanders, who was the head of Policy

Development. All of the staff that was working on DHS and NSPS reported to him. He had to split his time between DHS and DoD. As NSPS was ramping up Steve and Ron were in the final stages of issuing DHS regulations. This stage was very labor intensive as words were put on paper, constantly reviewed and requiring meetings with DHS to negotiate final language. I may not have mentioned Ron very much in my dealings with you here today, but as far as shaping the OPM policy perspective on NSPS, he was the dominant force

Q: OK. Now is this correct? You were appointed the co-chairman of the Overarching Integrated Product Team, the OIPT? And DoD's Principal Deputy Under Secretary Charles Abell was the co-chair?

A: Correct.

Q: What was the purpose of the OIPT? How was it organized? Who were its members? How did it function? How did you share the workload with Mr. Abell?

A: He chaired most of the sessions. I was co-chairman, but in terms of the chain of command, I was the only OPM person in the room most of the time. Occasionally, if we had some technical personnel issues, Ron Sanders would make a presentation. He was a fairly regular attendee at those meetings. I was the one that was the OPM representative, and many times the lone OPM representative, at the OIPT.

The support for the OIPT was provided by the PEO. All of the staffing was done through the PEO. In terms of OIPT's workload, it consisted of reviewing materials and making policy decisions. As I said, Charlie chaired most of the OIPT sessions. When he couldn't attend, I would take over as chair. My role on the OIPT was to underscore the point that OPM was an equal partner in the development of the NSPS regulations. My role on the OIPT effectively ended with the development of the regulations because OPM was not an equal partner in the implementation phase. We stayed involved with DoD during implementation but the statutory authority, and the concept of enabling regulations, effectively rules OPM out when it comes to implementation. I think by the time DoD got to implementing the regulations, the role of OPM was sufficiently established and welcomed that DoD voluntarily kept OPM involved because we provided value to the process. We normalized the relationship, but the lead and the legal authorities were vested with DoD once the regulations were issued. As far as the OIPT, there were some legal points that we did not pursue to finality. OPM and DoD had a working relationship; as long as it worked, we kept on working. Neither side sought full legal clarity, although the General Council's Office in DoD raised some issues about

OPM participation and precise role in the OIPT, not wanting to give up the ultimate authority for the Secretary to do as he saw fit. Keeping that in mind, yes, we were partners in chairing the OIPT, but we did not choose to nail down exactly what that meant.

Q: OK. Although it had a charter, there's still this ambiguity that everybody was comfortable with.

A: There definitely was ambiguity. I remember it took quite a while for the OIPT charter to be finalized. We were working for several months without a charter. (Laughter.)

Q: So the OIPT is looking at design proposals because the regulations were being written. You're also designing as you're writing regs.

A: Right.

Q: The design proposals come before the OIPT, there're discussions and things. Do you remember any outstanding design issue that was the subject of a lot of discussion?

A: There were two design tracks. One was labor/management relations, and there were separate working groups for this, separate design schedules. Then there were pay, performance, classification, personnel issues, hiring authorities - all of these on a separate track. Disciplinary actions dealing with problem employees, setting up an appeals process, etc., fell in between.

Disciplinary actions and appeals were really part of the personnel system itself, but labor played a key role here with their negotiated grievance procedures. So labor and appeals needed to be brought together at some point, since they were being developed separately. The labor grievance process versus the administrative appeals process were therefore joined together later. Various design concepts were brought before the OIPT as options -- we could do this or that, it would mean such and such. The OIPT basically pared down the choices, recognizing that once a certain design option was chosen, further details would be different than had we gone on another track. That's why you needed the OIPT to buy into higher level concepts to allow the next level of detail to be developed with additional options. All of that had to be sorted out before regulations could be written. We did start with a regulatory framework similar to what had been developed for DHS. We weren't starting from scratch. DoD had agreed that the DHS regulatory framework was a reasonable starting point. DoD accepted the structure of the preamble to the DHS regulations, ordering of the sections and some of the general framework.

The most difficult issue the OIPT dealt with outside of the pay for performance system was veterans' preference. It

affected the intake stream of personnel hiring, the selection process, as well as reductions in force. OPM took the position that veterans' preference was sacrosanct in terms of its primacy. But procedurally, at what point you applied the preference, that could be considered. Ultimately, the issue of how to deal with veterans' preference went beyond the OIPT. The OPM position prevailed on that; the administration did not want to diminish the effect of veterans' preference and neither did the Secretary of Defense. Basically that debate allowed us to find some common ground that would allow the department more hiring flexibility without undermining veterans' preference. We also modified the application of veterans' preference in a reduction in force (RIF) so the department would have greater flexibility in designating the components targeted for reduction. Past practice always generated a broad spillover effect. The unions always pushed for maximizing the area of impact of a RIF in order to maximize the competition for retained jobs. Management always preferred to minimize the scope of a RIF to reduce its impact on employees. With a contained RIF providing preference to veterans becomes much less cumbersome. We also found a means of reconciling veterans preference and performance criteria for retention determinations in a

RIF.

Q: As the co-chair of the OIPT, did you notice differences, some people might call them cultural differences, among the military services -- Army, Navy, and Air Force -- and their views and procedures regarding personnel matters?

A: Yes, there were differences. But particularly on performance. Navy and Air Force, I found, were much more flexible and willing to increase reliance on performance measures and performance criteria, willing to push performance harder, and they were also more willing to move their organizations into NSPS faster. Army took more of a wait-and-see approach. There may be organizational constraints among the services that dictated that. I found that as we were moving towards implementation, that Navy and Air Force were more willing to jump out front and take on NSPS. Beyond that, as far as the actual constructs of NSPS, there were nuances but nothing that jumps to mind immediately.

Q: OK.

A: It was the Army contingent that took on the lead in labor/management reforms and provided a number of personnel there, and they were very helpful, very good. Air Force on labor relations tended to be more accommodating to union concerns. Air Force argued that they had made strides in

labor relations and were more willing to be accommodating in dealing with the unions. There was nothing that I found in the OIPT meetings or the next level below OIPT that would indicate that there were strong, differing points of view on that. They may have had differences lower down in the organizations, but not that I could see.

Q: I believe on June 7th, 2004, the DoD and OPM team led by you and Charles Abell met with union representatives. Please describe the meeting in terms of attendees, purpose, tone, and results.

A: Which?

Q: This would have been the first one that you would have attended, probably, after the February meeting. What was your frame of mind now that you were going to be . . .

A: It's difficult for me to recall that one because we had so many meetings with the unions subsequently, during the meet and confer process, that I'd have to go back to my notes to recollect that.

There seemed to be at the first meeting with Charlie, after Ginger, an acceptance of Charlie. Charlie was pretty laid back, open to suggestions and input from the unions, and I think the unions could sense that, and there was a good rapport. That lasted for several meetings until there was one point where we basically had to explain to them that we

were not bargaining, that we were in a meet and confer process. (Laughter.) The unions sort of hardened their positions after that. Initially, we would send them concept papers on labor relations, pay for performance, and the adjudication process. We would list issues A, B, or C, in one discussion area and then A, B, or C in another. The intention was to show the unions that at this stage of the development process, we were looking at a range of options, and they were welcome to let us know which appealed to them more - if they liked any of them or none of them. We solicited written input from them so we could develop some dialogue. We always sent them the concept papers a week ahead of time, so that they'd be prepared for discussions. I think 30-35 unions were always notified. Well, all of them were notified, and 30-35 typically would respond. From those, 18-20 would show up. The larger unions would send six to eight people. We were very generous in opening the meetings to wider union participation. There was an understanding that we would keep discussions confidential and not for the press. But the unions always went out to the media. We learned to live with that. We were trying to let the unions know that this was truly a developmental process and that their input was being solicited. Statutorily, this was not the required "meet and confer,"

so we were going beyond statutory requirement in meeting with the unions. We were providing information before we assembled a reform proposal. Formal "meet and confer" was to occur once we had assembled a preliminary set of regulations. At that point we would be required to sit down and go through the initial proposal in great detail. So these early meetings went beyond statutory requirement. I think we held three meetings with the unions. They were, I thought, fairly constructive. We certainly went out of our way to let the unions know what was on the table. We got precious little input back from them. It became apparent that they had made up their minds that they were going to be dragged into NSPS reforms kicking and screaming. They did not even attempt to convey the appearance of being on board with anything. That was our reading of it. That's a tactical decision the unions had made or were making. I'm not criticizing them one way or the other, just concluding what we thought they were doing. But they had very little to say at these early meetings. We even gave them the option of putting agenda items on the table for a meeting, in other words we gave them the choice as to what we would discuss. I don't remember that we got much out of that attempt either.

Q: OK. The public comment period for the proposed regulations

in the *Federal Register* closed on March 16, 2005. There followed the meet and confer process with the union representatives. Please describe the meet and confer process, and, if you want, contrast it with the period before. What was meet and confer like, and it's statutory?

A: Yes. Once the regulations were out, they were proposed regulations. You can change them by issuing final regulations. You can make changes, significant changes, to the proposed regulations based on public input. The first thing we did was to collect their inputs and everybody else's, and it was mostly unions that responded. We analyzed their comments and divided them into sections for purposes of meeting with them to discuss their input. This was a statutory process. It went beyond the normal regulatory process, when you issue a regulation and solicit public comment, then address those comments in the issuance and either change or not change your regulation.

END OF TAPE 1

Q: We were discussing the meet and confer process.

A: Yes. For NSPS, because of the statutory requirement, once the regulations were issued and comments solicited, we needed to sit down with the unions and actually discuss the regulations and solicit whatever specific changes they felt

were necessary. A lot of their proposed changes went to some of the core directions and initiatives that were to reform the personnel system. In other words, they weren't accepting the proposed regs conceptually. They argued that such and such a section went beyond statutory authority, and we had no right to change this and no right to change that. Their comments were more directed towards negating the proposed regulations rather than fine tuning them, correcting errors or improving them. I can't remember any specific recommendations where they felt that a particular change in wording or concept would be an improvement. It was basically, "Strike the whole thing." As a result, the meet and confer sessions were not particularly productive. They were harangues; they were attacks on the DoD and OPM representatives in the room about having overreached, about not having authority, constitutional rights, et cetera, et cetera, et cetera. It was a long, arduous process. We reviewed absolutely every section of the proposed regulations, piecemeal, gave them an opportunity to propose changes. In some cases they did. These tended to be status quo plus proposals that were intended to advance the union agenda, such as bargaining over pay, more bargaining over such and such, rather than less bargaining. I can't say that those meet and confer sessions were particularly

productive. They certainly met the statutory requirement. The unions did get from our briefings and our presentations and responses good insight into why we were proposing change, how it would work. We gave them detailed briefings on the pay areas as to what we envisioned beyond what the enabling regulations were stipulating.

Q: Right.

A: The unions were having difficulty with the regulations, they argued, because the enabling regulations were so broad, they had no idea what OPM was enabling the department to do. In response the department briefed them on where some of the concepts were leading so there would be no surprises. They got a lot of advance information, a lot of detailed information, out of those sessions. I felt the unions had made up their minds that they were going to pursue their challenge in court. Hence, collaborating with the department and OPM on regulatory changes would not be in their interest. Several unions stopped coming after two or three sessions, arguing that the regulations were illegal, and would be challenged in court. Quite honestly, whatever Congress's good intentions were on the meet and confer process, if you don't have two parties that are cooperating, it's a useless initiative, it's a useless effort. The process delayed the issuance of regulations by

months, and it significantly cut into the implementation time on labor-management relations. It reduced that five-year window to about three or three and a half years, and then subsequently the courts pretty much derailed that. The unions were not willing partners in this. They had opposed the legislative initiative, and that's something that Congress has to factor in, in the future when they do this kind of thing. The unions opposed the legislation to the last second, the last vote. Once the legislation was passed, they had no incentive to try to cooperate unless the department was willing to implement something that was contrary to the statutory intent of reforming labor-management relations. It was counterproductive, it wound up being very counterproductive.

That's unfortunate. From a change management standpoint, they were very much impacted constituents, and needed to be included in the process. Whether they were cooperative or not is irrelevant. We included them in the process as I said; they had to be included, and they were. Whether or not they gave us any useful input is irrelevant.

Q: One of the final, concluding questions is how do you assess the impact of the NSPS provisions in the National Defense Authorization Act of 2008 on DoD's effort to reform its personnel system?

A: I think it's had a huge impact. Even though the labor-management aspect was aborted, the ability to bargain at the national level is preserved. Even in that area, I think the department came out ahead. On the personnel side, the staffing provisions give the department more flexibility to recruit and hire more efficiently, more effectively, with better targeting for the needs, professionally, geographically. I think the NSPS was a huge leap forward. Procedurally, getting the department unified on the reforms -- where it was not prior to the strategic engagement, strategic pause -- was also a benefit to the department. It allowed the department to pull its disparate pieces together in something that was a benefit to all. Concessions were made by various constituencies within the department to get a unified position. I think having to deal with OPM as a constructive partner helped the unification process along. The end product is a big boon to all. The department has flexibility now to modify those NSPS regulations in some very meaningful ways without having to go through the full-blown regulatory process. Meeting and consulting with unions on that is still necessary, but that's OK, as I said, they're an impacted constituency. They do represent some segment of the workforce and need to be involved before changes are made.

I think that's OK. It may be somewhat cumbersome at times, but it's an inconvenience that you can live with, and I think leads to a better outcome, a greater receptivity in the workforce subsequently. I think that's OK.

Q: Is there anything that you'd like to add to what we've discussed in this interview before we conclude? Any topic or anything?

A: No, I think we've covered a lot.

Q: OK.

A: I guess I might just say that there were two or three areas where we had significant differences -- policywise, directionwise -- between OPM and DoD. One was on veterans' preference, and I think the end result benefits the department. They avoided an unnecessary tussle, and the department had an opportunity to recommit to the concept of veterans' preference. I think that's turned out to be a big positive for the department. Once we agreed jointly on how to address veterans' preference in the context of hiring and reductions in force, I think we had a very constructive resolution. Veterans groups accepted the proposed changes; they were very helpful, subsequently, with NSPS implementation, and the department's needs were met. I think that was a good experience, it worked out very well for all. On the labor side, we did have some

differences there, too. We, OPM, were actually pushing for greater reform and greater flexibility in labor relations than some of the components in the department, who felt that we would be antagonizing the unions by tackling that. The fact is the legislation foresaw significant changes in labor relations for the department. To get passage of the legislation the department had made a very strong case that the existing labor management system was dysfunctional. Despite what some of the DoD components may have argued, it was dysfunctional, and so they needed the change. Congress agreed despite a very difficult political battle. In our joint briefings to Congress members on a number of occasions reminded us how difficult it had been to get NSPS through, particularly in the face of labor opposition. Once Congress had made the decision to do that, they expected the department to live up to their share of that bargain. There was reluctance to proceed with labor-management changes, and that's not anything that was of public knowledge. We did go through a lot of internal debate on how far to push changes to the labor relations system. I think that was also a very useful exercise. It's unfortunate that ultimately the union succeeded in blocking this in the courts, so that neither they nor the department had the opportunity to implement much needed

reforms in labor relations. You're left with status quo, pretty much. That's unfortunate, but maybe some point in the future there'll be an opportunity to revisit that.

Q: Thank you.

END OF TRANSCRIPT