

National Treasury Employees Union



**TESTIMONY OF
NATIONAL TREASURY EMPLOYEES UNION
NATIONAL PRESIDENT
COLLEEN M. KELLEY**

ON

**“TIME TO BITE THE BULLET: FIXING FEDERAL LAW
ENFORCEMENT PAY AND BENEFITS”**

BEFORE

**HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON CIVIL
SERVICE AND AGENCY ORGANIZATION**

**TUESDAY JULY 20, 2004 10 A.M.
2203 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.**

Chairwoman Davis, Ranking Members Davis, distinguished members of the Committee, I would like to thank the Subcommittee for the opportunity to follow up on NTEU's July 23, 2003 testimony concerning personnel issues affecting law enforcement employees of the federal government as it relates to the recent release of the Office of Personnel Management's (OPM) report to Congress on law enforcement officer retirement benefits, classification, and pay.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 150,000 federal employees, including over 8,000 Customs Inspectors, and over 900 Customs Canine Enforcement Officers (CEO's) who perform law enforcement functions. As the OPM report identified, the dramatic challenges that face the Federal law enforcement community in the wake of the 9-11 attacks and the war on terrorism have moved the issue of federal law enforcement officer status to the forefront of federal employee pay and benefit issues.

The OPM report responds to section 2(b) of the Federal Law Enforcement Pay and Benefits Parity Act of 2003, Public Law 108-196, which called for OPM to submit a report to Congress providing a comparison of classification, pay, and benefits among Federal law enforcement personnel throughout the Government and to make recommendations to correct any unwarranted differences by April 30, 2004. This report focuses on the three major components of law enforcement pay and benefits: 1.) retirement benefits; 2.) classification and basic pay; and 3.) premium pay. The report recommends to Congress that OPM be given the authority to establish and administer a new government wide framework for law enforcement officer (LEO) retirement, classification and basic pay, and premium pay systems.

While NTEU would agree with the report's assessment that presently, "considerable and sometimes confusing differences exist among law enforcement personnel, and these differences, often the result of incremental legislation and litigation, are counterproductive to the 21st Century Federal law enforcement mission," NTEU also has strong concerns regarding the report's recommendation to provide OPM with the broad authority to create and maintain a government-wide Law Enforcement Officer (LEO) pay and retirement system.

As the committee is aware, NTEU and representatives from the three largest Department of Homeland Security (DHS) employee unions are currently meeting with management representatives of DHS and OPM concerning the new DHS Human Resources Management System as part of the statutory "meet and confer" process mandated by the Homeland Security Act (HSA) of 2002. During this ongoing process that is scheduled to end on July 23, 2004, NTEU and the other employee unions have provided OPM and DHS with revised versions of the proposed, pay, performance, and classification system set forth in the proposed DHS regulations with little feedback from OPM and DHS.

It is unfortunate that the current proposed pay, performance, and classification regulations being discussed at the "meet and confer" process, are basically a set of generalized concepts which lack the detail necessary for employee unions such as NTEU, to gauge the potential impact on bargaining unit employees in DHS. In addition, DHS/OPM has decided to draft separate and more specific implementing regulations in workgroups that as of today, have not included union participation but, will include the services of an outside contractor- Northrop Grumman who recently was awarded a contract worth up to \$175 million. NTEU strongly

believes that if the new DHS personnel regulations are to be accepted by DHS employees, having full employee representative involvement in the process is essential.

It is in this light that NTEU has strong concerns with the proposal to grant OPM additional flexibility over the retirement and premium pay system of all federal LEO personnel as recommended in the OPM report. While NTEU would have preferred to have more time to thoroughly review the 146 page report before this hearing, we will attempt to summarize our concerns surrounding LEO retirement, classification and basic pay, and premium pay systems addressed in the OPM report.

LEO RETIREMENT:

In the area of LEO retirement, the OPM report recommends granting OPM broad regulatory authority to establish the structure of law enforcement retirement by regulation in consultation with agencies and the concurrence of the Attorney General, as a, “workforce management tool to make LEO retirement more flexible and adaptable to the rapidly evolving needs of the law enforcement community.”

NTEU would agree with the report that over the years, the definition of LEO as it relates to retirement laws has been “muddied” by legislation and litigation leading to a number of inconsistencies that make standardizing LEO retirement benefits quite difficult. NTEU would also agree with the report that the demands of the federal law enforcement officer have evolved and warrant a review to possibly include additional federal personnel such as Customs and Border Protection Officers (CBP) who not only protect our border from illegal drugs and

facilitate lawful trade, but must now defend against weapons of mass destruction and terrorism and the risks that come with these added job responsibilities. NTEU strongly believes that Customs and Border Protection Officers should receive LEO retirement benefits.

The report states that the Federal law enforcement system must be modernized to reflect and address the challenges of the post 9-11 world. NTEU fully agrees. However, NTEU strongly believes that if the federal LEO retirement program is to be modified, it needs to be done by statute. I am aware of no example in the federal government where retirement benefits are set by regulation as opposed to statute. Neither, DHS or DOD have the “flexibility” over retirement systems in their proposed regulations. Federal LEO’s need to be able to rely on retirement rules. Few things are more important for recruitment and retention. The ability to alter LEO retirement by regulation could lead to a patchwork of ever changing regulations if each Administration could simply alter the federal law enforcement officer retirement system by regulatory fiat.

The report notes the possibility of establishing a second tier of law enforcement officer retirement benefits. While NTEU could have an interest in exploring this concept, leaving such a determination to OPM and DOJ is unacceptable. The report also intimates that the 20 year retirement rule would be less generous under this proposal and that is also unacceptable.

LEO CLASSIFICATION AND BASIC PAY:

The OPM report recommends providing OPM the authority to play a central coordinating role in working with agencies to devise a pay system for Federal law enforcement officers. NTEU would disagree with the report’s findings that the GS classification and pay schedule does

not provide sufficient flexibility to address law enforcement specific classification and pay problems and has to be replaced with a “pay banding” system covering Federal law enforcement employees throughout the government including, the legislative and judicial branches.

NTEU has been involved with DHS and OPM in identifying possible changes to the current basic pay and classification systems for DHS employees for over two years. In that time, NTEU has found that any changes to the basic pay and classification systems must be justified by mission needs, and designed to minimize burdens on managers, supervisors and employees to implement and administer the systems, so that all can remain focused on the mission to protect homeland security. NTEU does not believe that a pay banding system as proposed in the DHS personnel regulations, as well as the OPM report, meets these tests nor should it be expanded to other federal law enforcement agencies by providing considerable agency flexibility in setting and adjusting individual rates of pay within a “pay banding” structure.

During the research and design process of the DHS personnel regulations, DHS conducted a number of town hall and focus group meetings to obtain input from employees on their views of any problems with the current HR management systems and changes they would like to see made. Most employees at the town hall meetings and focus groups reported that they were generally satisfied with the current GS system; most problems cited related to the application and administration of the system, rather than to the design of the GS system itself. The problems most frequently cited included inadequate funding for awards and Quality Step Increases to recognize superior performance, and inadequate resources (including both a lack of time and a lack of adequate training) for supervisors to effectively manage and evaluate

employee performance. Employees cited a few problems with the classification of some jobs under the General Schedule grading system, but most of these could be addressed through increased agency control over these grade level determinations, and/or a better appeal process for challenging classification determinations.

Like the DHS employees we represent, NTEU does not believe that radical changes are needed in the pay and classification systems to accommodate the needs of federal law enforcement personnel. The basic structure of these systems is sound, and they include numerous features to ensure both fairness to employees and opportunities to recognize and reward superior performance. The proposed DHS regulations highlighted in the OPM report support abandoning the General Schedule basic pay system for federal employees with a radically different and unproven "pay banding" system based entirely on managerial discretion. The pay banding plan appears to eliminate across the board annual raises, allowing employees in some locations of the country to be paid significantly less than others, which will not fix the above average quit rates for certain entry level law enforcement occupations such as legacy Customs inspectors that had an average quit rate of 12 percent at the GS-5 level from FY2001 through FY 2003. No information has ever been produced to show that the new "pay band" system will enhance the efficiency of the department's operations especially as it relates to law enforcement personnel and NTEU would strongly oppose granting OPM the authority to expand the "pay banding" system government-wide.

LEO PREMIUM PAY:

The report recommends that Congress give OPM regulatory authority to establish a framework of premium pay rules that would apply to all Federal law enforcement employees in consultation with the employing agencies. NTEU cautions this committee that the issue of law enforcement officer premium pay must be handled carefully especially in light of its complex interaction with federal employees' base pay and retirement benefits

While some federal agencies have been given the authority to establish their own premium pay rules such as FAA and TSA, others such as CBP officers are covered by special law enforcement premium pay provisions such as the Customs Officer Pay Reform Act (COPRA).

In 1993, Congress created the Customs Officer Pay Reform Act (COPRA) to ensure that overtime hours paid to Inspectors bore a more direct relationship to hours worked. COPRA recognized that legacy Customs officers deserved pay incentives and enhanced compensation for their arduous shift work and irregular hours. Since 1994, COPRA has been the exclusive pay system for legacy Customs officers performing inspection duties and in fact will now be used as the exclusive overtime and premium pay system for all CBP officers and CBP Agriculture Specialists starting July 25, 2004. So the issue of disparate premium pay systems is not an issue within CBP, the largest division of DHS, with COPRA covering approximately 20,000 employees.

Most federal employees who perform law enforcement duties are paid under pay systems tailored to specifically compensate them for their work. This is the case for inspection personnel

and criminal investigators of the DEA, FBI, Border Patrol, and National Park Service. The FBI, DEA and other federal law enforcement agencies pay employees premium pay on an annual basis to compensate them for working irregular, unscheduled overtime duty. Sometimes this can amount to an additional 25% increase in their rate of pay although the officer may not work even one hour of overtime or at night during any given week. Other federal criminal investigators and legacy Customs pilots receive a 25% pay differential annually. This pay incentive is known as availability pay and compensates these employees for being available to work outside their regular shifts. Like CBP, these pay systems are necessary to attract and retain a high quality and professional workforce.

NTEU believes that premium pay rules should be codified in law and not established under administrative authority. In addition, NTEU also believes that premium pay should continue to be creditable as basic pay for retirement as is established under COPRA for CBP officers and federal law enforcement officers government-wide.

CONCLUSION:

NTEU remains convinced that CBP Officers should receive the same early retirement benefits as those enjoyed by other federal law enforcement personnel. We look forward to working closely with Congress to ensure that any changes to LEO pay and benefits are fair to federal law enforcement personnel. Thank you for the opportunity to be here today on behalf of NTEU and its over 150,000 members to discuss these extremely important federal employee issues.