

AMENDMENT OFFERED BY MR. INSLEE

Mr. INSLEE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Inslee:

At the end of the bill, add the following new title:

TITLE X—ADDITIONAL GENERAL PROVISIONS

SEC. 10001. None of the funds appropriated by this Act may be used to waive or modify regulations promulgated under chapter 43, 71, 75, or 77 of title 5, United States Code.

[Page H4294]

Mr. INSLEE. Mr. Chairman, this amendment brought by myself and my colleagues, Mr. Van Hollen and Mr. Jones, seeks to protect very basic job securities for Department of Defense employees by blocking funds for those parts of the National Security Personnel System that have been declared illegal. The workplace environment that would result if this amendment does not pass, that results in destroying basic worker rights; jeopardizes our ability to recruit and maintain qualified, skilled workers to protect our national security. These are hardworking men and women. They deserve our gratitude, they deserve our respect, they deserve a personnel system that respects their work and complies with principles that we hold forth.

I have got to tell you, I just want to note who we are talking about here. These are the men and women who make sure that our equipment works. When I went out and saw the Carl Vinson, one of our great carriers coming back from the Afghanistan campaign, the sailors asked me to thank the people who worked on that carrier to see to it that it could launch 10,000 sorties without losing an airplane.

These people are part of the defense team. They deserve respect. But, unfortunately, the current situation does not give them either respect or fairness in the personnel system.

It is worth noting that the Office of Personnel Management questioned the legitimacy of this new program in March 2004 in a letter to Secretary Rumsfeld and said, “The current system may be contrary to law insofar as it attempts to replace collective bargaining with consultation and eliminate collective bargaining agreements all together. In addition, other elements of the proposal lack a clear and defensible national security nexus and jeopardize those parts that do.”

Now, this is not just us speaking; it is the Federal courts. At the beginning of this year, U.S. Federal District Court Judge Emmitt Sullivan ruled that the NSPS system failed to “ensure even minimal collective bargaining rights.” The court further enjoined the National Security Labor Relations Board on the grounds that it did not satisfy

congressional requirement for independent third-party review. It has been declared illegal.

Now, one might assume after such a ruling had come down that the Pentagon would attempt to fix the problem and that the administration would do so, but in fact that has gone on after 3 years. They are essentially snubbing their noses at collective bargaining rights, at civil service rights, at the right to know whether you are discharged or what your discharge would be, basic fundamental rights that we ought to give to the people who are critical members of the defense team.

□ 1900

That is why we bring this amendment, to preserve the right to be free from discrimination based on political opinion, something that our Civil Service rules need to protect; and the right to collective bargaining, to engage in collective bargaining in good faith; the right to due process for advance notice of suspension and some meaningful appeal rights for people who work on the defense team.

So we are offering a commonsense amendment that will recognize that we should not be forcing this broken system that has been ruled illegal for people who are doing such great work for us, keeping our uniformed personnel on the post in Iraq and Afghanistan. We commend this amendment to our colleagues' attention.

Mr. JONES of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of this amendment, a simple and commonsense statement from this Congress that says we stand with our Nation's Federal civilian employees.

We are here today to take a stand and rein in a personnel system that is opposed by nearly each and every one of the 700,000 members of the DOD Federal civilian workforce.

The National Security Personnel System, or NSPS, is a system that restricts our Nation's Federal civilian employees of their collective bargaining rights, as well as the right to have an independent labor relations board settle disputes, as was recently affirmed in a court of law.

This amendment would withhold the funding to go forward on implementing only those portions of the NSPS declared illegal. It would not arbitrarily kill the system as a whole, but allow Congress to carry out its oversight responsibility.

Congress has continuously affirmed its strong support of the men and women in our Nation's military. Today, with this amendment, we are asking the same thing, reaffirm your support for our Nation's Federal civilian workforce.

Mr. Chairman, by passing this amendment we will help send a message to these highly valuable men and women that we stand with them today; that we stand with those Federal civilians who maintain and repair our Navy and Marine Corps' battle-worn helicopters; that we stand with those Federal civilians who capitalize and upgrade our Army's Bradley fighting vehicles and Abrams tanks; that we stand with those Federal civilians who skillfully manage our Air Force's logistics and distribution operations; and that we stand with those Federal civilians who maintain, overhaul and upgrade our Navy's fleet of ships, submarines and aircrafts.

I hope that my colleagues in this House of Representatives will join us and vote "yes" on this amendment.

Mr. VAN HOLLEN. Mr. Chairman, I move to strike the requisite number of words.

I am pleased to join with my colleagues Mr. Inslee and Mr. Jones in offering this amendment, and the issue here is really straightforward: Are we going to require the Department of Defense to comply with guidelines established by this House and this Congress, or are we going to allow them, one more time, to ignore the will of Congress and roll over us here in the House of Representatives?

Here is the situation. Back in 2004, this House passed the defense authorization provision that allowed the Defense Department to go out and set up a new personnel system, but we did it with certain guidelines. We wanted to provide the Department of Defense with greater flexibility, but we also wanted to ensure fairness to the employees.

Here is what happened. The DOD took the flexibility part, and they ignored the portions requiring fairness to employees. They ignored the provision that required, for example, an independent entity to arbitrate certain disputes between management and labor. They ignored the provisions that said you have to have a merit system protection board that has an independent judgment, instead of allowing the Defense Department to essentially overrule the decisions, at least on a preliminary basis, of an independent merit system protection board. So they made a number of changes to the congressional intent.

As my colleague Mr. Inslee said, you do not have to take our word for it. Just listen to what a Federal judge said, and that is Judge Emmet Sullivan. He is the first person in the District of Columbia to have been appointed by three United States Presidents to three judicial positions, and he ruled in favor of the employees who brought a case and challenged the administration's decision on this. He said it was "the antithesis of fairness" the way DOD had set up its system and determined that it was outside the scope of what the Congress had mandated.

Now, they have ruled. That ruling came down in February. We have had a Federal judge, therefore, stick up for the Congress. The question is, are we going to stick up for ourselves? Did we mean what we said back there? A Federal judge has looked at the law and said, clearly, the DOD provisions are outside the scope of what we intended. Anyone

who takes a fair look at what this Congress said to the administration and to the guidelines that we had in setting up the system would reach the same conclusion.

Let us not once more roll over. A Federal judge has done the right thing. They said the administration should not roll over the will of Congress. Let us not allow them to do it. Let us make sure that we do not spend taxpayer money on a system that a Federal judge has said is outside the scope of what Congress intended.

So I urge my colleagues to support this amendment.

Mr. BRADLEY of New Hampshire. Mr. Chairman, I move to strike the requisite number of words.

[Page H4295]

Mr. Chairman, I want to begin by thanking Chairman Young and Mr. Murtha for their hard work and support of our troops and support of our Nation's defense, but I also join with my colleagues who have previously spoken.

In November of 2003, I supported the National Defense Authorization Act, which authorized the NSPS system. At that time, I believed that NSPS would produce greater efficiencies in government. Further, I believed NSPS would reward government employees that displayed personal initiative, hard work, and productivity, all at the same time while preserving collective bargaining and Civil Service protections.

Unfortunately, as others have outlined, the implementation of NSPS has been staggered and revised on several different situations, indicating both the complexity and the problems when applying some of the good aspects of NSPS with the reality of its implementation.

Last November the Department of Defense and the Office of Personnel Management published the final regulations for NSPS. These did not live up to the spirit of cooperation and collaboration between the government and labor that was promised when Congress passed the authorization bill several years ago.

In fact, as has already been alluded to, a Federal judge agreed with representatives of labor that NSPS failed to meet fundamental standards. On February 27, 2006, a Federal court enjoined the NSPS regulations because they failed to ensure collective bargaining rights, did not provide for independent third-party review of labor relations decisions, and failed to provide a fair process for appealing adverse actions.

For the thousands of Federal workers at Portsmouth Naval Shipyard, which is in my district, the NSPS regulations as proposed would have had a damaging impact. The shipyard's unique labor and management relationship has created tremendous efficiencies and progress and has become a model for good government. This progress and the

relationship at the Portsmouth Naval Shipyard could well be lost under the NSPS program.

Under the broad and rigid centralized NSPS regime, the flexibility that has led to some of our government's best practices and most successful entities would be impossible. In fact, representatives of labor have indicated to me that many of the efficiencies that were the result of labor-management agreements would not have been possible under NSPS.

NSPS, as proposed, systematically restricts opportunities for labor representatives to communicate, negotiate and collaborate with Pentagon management. Given the exemplary record of the Portsmouth Naval Shipyard, which is in my district, which has returned submarines to the water and to fleet commanders sooner than any other yard in the country, all while saving significant millions of dollars on submarine maintenance for taxpayers, it is difficult to imagine that none of this could have been possible under the proposed NSPS format.

So, Mr. Chairman, I appreciate my colleagues who have spoken previously on this issue, and I rise in support of this amendment and ask the entire House to support it tonight.

Mr. MURTHA. Mr. Chairman, I rise in support of the amendment.

I think at times we have an arrogance in the Defense Department when they ignore not the regulations, but what we are trying to do in this legislation. We expected them to talk to the people working in the Defense Department.

I have never seen a better workforce than we have in the United States when it comes to the civilians who support our troops out in the field and civilians who work for the Defense Department, and we have tried several years now to get them to do more negotiations. They have continually ignored our advice, and I am very nervous about the way they have handled things.

I have never seen so many union representatives come to me and say, we have asked them for this, and then the court, the court itself, says they are not being treated fairly.

So I would hope we could accept this amendment or at least vote this amendment. It is a little broader than I would like, but we can always adjust that if we have to at some other point.

I would advise, recommend the Members they support the amendment.

Mr. DICKS. Mr. Chairman, I rise in strong support of this amendment.

Based on the actions of the Department of Homeland Security and the Department of Defense, it is clear to me that it is time for Congress to send a message to the Administration about the importance of preserving bedrock principles of labor relations.

In making my case for this amendment, I want to recount a few key points leading up to where we are today.

In 2002, Congress enacted legislation to create the Department of Homeland Security. This legislation provided the Secretary of Homeland Security and the Director of the Office of Personnel Management with the authority to develop a separate human resources management system for the employees of the Department of Homeland Security. Subsequently, in the FY2004 Defense Authorization Act, the Department of Defense was authorized to develop and implement the National Security Personnel System.

In August 2005, U.S. District Court Judge Rosemary Colyer ruled that the proposed Department of Homeland Security personnel rules “would not ensure collective bargaining, would fundamentally alter [Federal Labor Relations Authority] jurisdiction . . . and would create an appeal process at MSPB [Merit Systems Protection Board] that is not fair.” This federal court ruling should have been a wakeup call to the Department of Defense to take care in pursuing changes to labor relations regulations. However, DOD chose to ignore it, proceeding with plans to implement regulations that would make substantial changes concerning collective bargaining and review of appeals of adverse actions.

In February 2006, U.S. District Court Judge Emmet Sullivan ruled that specific sections of DOD’s NSPS regulations were unlawful. He ruled that NSPS “fails to ensure that employees can bargain collectively,” that the proposed National Security Labor Relations Board “does not meet Congress’s intent for independent third party review,” and that “the process for appealing adverse actions fails to provide employees with fair treatment.”

To their credit, the labor organizations that represent many federal government workers have been vigilant in protecting the rights of their members by appealing to the courts. I believe that it is time for Congress to reinforce the ruling of the federal court to ensure that the Administration gets the message: Congress does not intend that core principles of labor relations are to be eroded by DOD, and we are prepared to make that crystal clear by prohibiting the expenditure of funds on steps that violate the intent of the law.

I urge my colleagues to support this amendment.

Mr. HOYER. Mr. Chairman, I rise in support of the amendment offered by my colleagues, Representatives Inslee, Jones and Van Hollen, which would prohibit the use of funds in this bill to be expended on specific elements of the National Security Personnel System.

In February, U.S. District Court Judge Emmet G. Sullivan ruled that the Department of Defense, in establishing a rule to execute the National Security Personnel System, had

failed to ensure the rights of the approximately 700,000 civilian employees of the Department of Defense.

Specifically, the judge determined that the rule:

Fails to ensure that employees can bargain collectively.

Does not meet Congress's requirement for "Independent Third Party Review" of labor relations decisions.

And that the process for appealing adverse actions fails to provide employees with the "Fair Treatment" required by the Congress.

Yet, despite the decision, the department has proceeded with the implementation of the rule.

Mr. Chairman, this amendment simply ensures that the Department of Defense will not continue to pursue a policy that is clearly against the law and against the best interests of our national security.

I commend the gentlemen for their continued efforts on behalf of our Federal employees and urge my colleagues to support this important amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Washington (Mr. Inslee).

The amendment was agreed to.