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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
 LABOR, AND PENSIONS  
 WASHINGTON, DC 20510-6300

November 19, 2004

The Honorable Donald Rumsfeld  
 Secretary of Defense  
 The Pentagon  
 Washington, D.C. 20301

The Honorable Kay Coles James  
 Director of Office of Personnel  
 1900 E Street, N.W.  
 #5H09  
 Washington, D.C. 20415

Dear Secretary Rumsfeld and Director James:

I'm writing to express my concern that the Department may be about to publish the proposed National Security Personnel System in the Federal Register later this month, before discussing the proposal with the elected representatives of the Department's civilian workforce, the United DoD Workers Coalition. Such action would be contrary to the requirement that Congress included in Section 9902 of the National Defense Authorization Act for FY 2004, stating that management "shall provide to the [representatives of affected employees] a written description of the proposed system." Failure to provide the union with a copy of the proposed system would also violate management's duty under the Federal Service Labor-Management Relations Statute to provide the union with the information needed for the proper performance of its representational duties.

Although Department management has met several times with the UDWC, I understand that it has not yet provided union leaders with the specific details of the proposed personnel system. The Department's actions in developing the system have already led to wide concern by the Department's employees and unions and by Members of Congress that the result of the process will be unfair limits on civil service protections and collective bargaining rights for Department employees.

I understand that you have responded to the union's request to review the proposal in advance of publication by stating that unions, Congress and any other interested parties may provide public comments for consideration before implementation of the proposal. I also understand that you believe, however, that providing a copy of the proposal before publication would give the union an unfair advantage over others.

The opportunity, available to all, to submit public comments in the agency rulemaking process is not a substitute for the union's right to obtain and review information in its role as the employees' certified bargaining representative. Nothing in the Administrative Procedure Act, or any other federal statute, prohibits the Department from providing the union with a copy of the proposal in advance. It is essential that you proceed with the development of such an important human resources system in the most transparent way possible.

I urge you, therefore, before publishing the proposal in the Federal Register, to provide a copy to the union. I also request that you provide a copy to the Senate Armed Services Committee. I would appreciate your replying to this letter, including a copy of the proposal, *no later than Wednesday, November 24*, or before the Department publishes the Notice of Proposed Rulemaking in the Federal Register, whichever is earlier. I look forward to receiving your response.

With respect and appreciation,

Sincerely,

  
Edward M. Kennedy

cc: The Honorable Gordon R. England  
The Honorable Charles Abell