

Minahan and Shapiro, P.C.
Attorneys at Law
Daniel Minahan
Barrie M. Shapiro

MINAHAN AND SHAPIRO, P.C.
Attorneys at Law



Phone: 303.986.0054
FAX: 303.986.1137
165 S. Union Blvd. Suite 366
Lakewood, CO 80228

LAW FIRM NEWS

August 15, 2005

Special Edition: DHS Final Regulations On New Personnel System Declared to be Unlawful in Federal Court

On a good Friday, August 12, 2005, Judge Rosemary Collyer of the U.S. District Court for the District of Columbia, issued an opinion and order enjoining the Department of Homeland Security (DHS) from implementing certain parts of its final regulations for a new personnel system in DHS. *NTEU, et al. v. Chertoff*. She concluded that the final regulations do not preserve collective bargaining and that they restrict the power of MSPB or an arbitrator to overturn disciplinary and adverse actions to the point where it barely exists. Judge Collyer decided these parts of the DHS final regulations violate the basic requirements for a new personnel system which Congress spelled out in the Homeland Security Act of 2002 (the statute covering the DHS personnel system is at 5 USC 9701). For those of

you who do not already have a copy of Judge Collyer's decision, it is available online at:

<http://www.dcd.uscourts.gov/opinions/2005/Collyer/2005-CV-201~18:39:59~8-12-2005-a.pdf>

Four score and seven months ago, DHS brought forth this abomination, conceived out of this Administration's desire to hijack the public's rightful demand for improved homeland security and a more effective and efficient civil service in the wake of September 11, 2001, and to convert it to the goals of destroying unions, depriving federal employees of the right to fair treatment, and arrogating to the Executive Branch the power to make and revise civil service policy at will.

At long last a Republican judge appointed by a Republican president has seen this plan for what it is. But this is only the end of the beginning, not the beginning of the end.

Remember Bush vs. Gore? The same people who ran that show are running the country now. They do not see reason. They do not compromise. They find any outcome other than total defeat and humiliation for those who disagree with them to be unacceptable. There will be appeals. There will be desperate motions for stays or expedited decisions in the higher courts. They will press forward with their plans to model the personnel system in the Department of Defense (DOD) on the DHS final regulations. They will press forward with their plans to persuade

Congress to enact legislation to extend the DHS and DOD models to the rest of the federal workforce.

Now is not the time to rest, nor is it (ever) the time to gloat. The civil service system does need reform and it does need modernization, in the name of those who gave their lives on that awful day and in the name of the American public who deserve the best public servants on the planet.

The Administration's civil service "modernization" efforts have been nothing but an effort to re-arrange the body parts on the old Frankenstein's Monster of the 1978 Civil Service Reform Act—still just as complicated and confusing but with even less room for federal managers, supervisors, employees and unions to identify and resolve their common problems in the simplest, fastest and fairest way possible.

As we brace for the coming battles in the higher courts, we should re-double our efforts to bring federal civil service policies and practices into the 21st Century. The ingenuity and creativity that poured forth from all of you in comments to DHS and DOD's proposed regulations during the so-called "collaboration" process is a treasure trove of ideas for a new and better civil service system, ordained by the peoples' representatives in Congress and not by one President or one Presidential appointee.

Let's get to work.