

**The New Public Management, Homeland Security, and
the Politics of Civil Service Reform**

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Homeland security is viewed as a test to see how the principles of performance-based management work when put into practice on a large scale... If the new department does indeed move away from the General Schedule and some of the statutory Civil Service provisions of Title 5, its success or failure in doing so will be a lesson for other departments and agencies.

Congresswoman Jo Ann Davis, October 29, 2003

(U.S. House Committee on Government Reform 2004: 1-2)

The quest to reinvent government emerged as a dominant reform initiative in the United States during the 1990s. Reinvention made its way onto the agenda of many governments through the work of such authors as David Osborne and Ted Gaebler (1992) and especially through such initiatives as the Clinton administration's National Performance Review (NPR). The ideas that comprised reinvention were not, per se, new. But in packaging and popularizing them, reinvention proponents did much to shape thinking about how to structure "good" public administration. While the use of the term "reinvention" faded with the onset of the new century, the basic maxims of this initiative continue to dominate discussions of administrative reform and underpin what we now call the "New Public Management" (NPM). The continued emphasis on certain reinvention principles can be found in the administration of George W. Bush, in numerous states, and in many of the 87,000 units of local government that dot the American political landscape.

The internal deregulation of civil service systems has been a major theme of reinvention and the NPM (see, for example, Ingraham 2006; Kettl 2005; Thompson 2001b; U.S. National Performance Review 1993). Indeed, the core tenets of reinvention have included: (1) the internal deregulation of government agencies, or reducing the red tape that hamstrings public managers; (2) setting performance-based or mission-driven results, where administrators are held accountable for achieving “measurable” results and rewarded for doing so, and (3) creating market dynamics via such methods as competitive sourcing to improve the delivery of public services. At the federal level, these principles have been at the heart of the Bush administration’s reform efforts in the human resource arena.

While considerable research has examined the implications of federal personnel reform for accountability, merit and effective public management (see Ingraham, 2006; Thompson 2006; Kettl 2005), few studies have examined the processes or politics that facilitate or impede attempts to deregulate civil service systems.¹ In this regard, both the politics of policy adoption and implementation deserve attention. This article uses one important case, the Bush administration’s effort to recast personnel management in the Department of Homeland Security (DHS), to suggest some propositions concerning these processes.

The article begins with a brief overview of the civil service reform initiatives of the Bush administration. It then briefly examines the politics leading to the passage of the Homeland Security Act, which created the DHS. Under the guise of heightened national security interests, the Bush administration took steps to create greater management flexibility and link pay to performance within the DHS. The article then turns to its primary focus, the troubled attempt to implement the law. The managerial strategy that DHS and OPM

executives used to carry out the law in the massive new department receives attention, with a special focus on the approach they used in dealing with federal courts. The article then suggests five general lessons concerning civil service deregulation at the federal level. The case reaffirms the notion that successful administrative reform requires a keen appreciation for the politics that shape it (Rosenbloom 1993).²

The Bush Administration and Civil Service Reform

Developments during the Clinton administration set the stage for the deregulation initiatives of George W. Bush. Launched with great fanfare in 1993, the National Performance Review denounced the red tape that presumably thwarted effective human resource management in federal agencies. In addition to throwing out the 10,000-page Federal Personnel Manual, the Clinton administration pursued several initiatives. These included freeing agencies from the requirements of Title 5 of the U.S. Code which, through a central Office of Personnel Management, had governed personnel management across the federal government.

The Clinton Administration relied on three main strategies in its efforts to exempt federal employees from Title 5: (1) the increased use of demonstration projects, (2) the performance based organization (PBO) initiative, and (3) special legislation (Thompson 2001a). All aimed to create greater management flexibility and control over personnel. Demonstration projects, a product of the Civil Service Reform Act of 1978, permit federal agencies to suspend Title 5 to explore new and improved approaches to personnel management. The PBOs, which Vice President Gore announced in 1996, purported to hold a single “chief operating officer” at the PBO accountable for achieving explicit and measurable goals (Thompson 2001a). In exchange, this executive was to gain more discretion over

human resource management and other functions. As of 2001, about 40,000 employees were involved in 13 existing or prospective PBOs (Thompson 2001a). Finally, the Clinton Administration relied upon special legislation to bolster managerial discretion over personnel administration. In this regard, widespread concerns about enhancing the performance of the Federal Aviation Administration and the Internal Revenue Service led Congress to pass laws exempting the two departments from Title 5 (Ingraham and Getha-Taylor 2006; Thompson and Rainey 2003; Thompson 2001a).

While these and other measures of the Clinton administration pursued the goal of letting managers manage in the human resource arena, its dealings with federal employee unions moved in a different direction. In October 1993, President Clinton issued Executive Order 12871, which created a National Partnership Council and mandated that federal agency heads work with the unions to forge formal partnerships. In seeking to elicit the cooperation of the unions in the National Performance Review, the executive order in one of its more controversial provisions expanded the scope of issues subject to collective bargaining beyond that specified in federal law. Specifically, federal executives faced new pressure to negotiate such items as the numbers, types, and grades of employees in an organizational subunit, the technology or methods of performing work, and tours of duty (Bennett and Masters 2004: 6). Whatever the benefits of the executive order in fostering more amicable labor relations, the provisions expanding the scope of bargaining sparked conflict. Executives in several agencies resisted this effort to trim their human resource prerogatives. The unions persistently pressured the White House to compel federal agencies to enforce the order. At one point they went to court in an unsuccessful effort to establish the principle that the language in the executive order superseded existing law (Moffit 2001:24). Despite resistance

in many quarters of the federal bureaucracy, 67 percent of the workforce represented by unions had a partnership agreement or council in place by 1998 (Masters 2004).

When President Bush took office in 2000, he moved promptly to reverse this exception to the principle of human resource deregulation. With conservative think tanks strongly critical of the partnership councils as a threat to political accountability and sound management (e.g., Moffit 2001), and with knowledge that the federal unions had been persistent campaign allies of the Democrats,³ President Bush issued Executive Order 13203 terminating the National Partnership Council his first month in office. He then promptly moved to establish a reform agenda that substantially reflected the tenets of NPM. “The President’s Management Agenda” aimed at creating greater management flexibility and control throughout the federal government. It called for rethinking government, a reduction of middle management, and a “results-oriented,” “market-based” administration. The agenda identified five government-wide initiatives: competitive sourcing (which afforded private firms more opportunity to bid against public agencies for work), improved financial performance, expanded electronic government, budget and performance integration, and the strategic management of human capital.⁴ To facilitate implementation of his agenda, President Bush proposed two pieces of legislation in November 2001: (1) The Freedom to Manage Act, which would allow agencies to identify and propose elimination of any legal provisions that impeded effective management; and (2) The Management Flexibility Act which would provide federal managers with more discretion to deal with personnel, property management, and budgeting. With respect to human resources, the bill proposed to make it easier for agencies to launch demonstrations, pursue various hiring strategies, adjust

incentive systems for recruitment and retention, and spawn other innovations not routinely permitted under Title 5.

Neither bill made it through the Senate Committee on Governmental Affairs, in part because of union resistance and in part because of congressional reluctance to impose major changes in civil service regulations on all departments (Moynihan 2005; Riccucci and Naff 2007).⁵ While government-wide deregulation of civil service systems appeared to be dead, the tragedy of September 11 opened the door to another kind of initiative -- department-specific deregulation tied to concerns about terrorist threats. In this regard, the Bush administration obtained legislation that promised to deregulate human resource management in the new Department of Homeland Security in 2002 and the Department of Defense in 2003.

The Birth of Homeland Security: Let Managers Manage

Several studies have perceptively analyzed the politics leading to the approval of human resource deregulation in the Department of Homeland Security (see especially Brook et al. 2006, 2007; see also Moynihan 2005; Bettleheim and Barshay 2002). We will therefore briefly summarize the events leading to passage with a particular eye on how it set the stage for our primary focus – the implementation phase.

On October 8, 2001, President Bush signed an Executive Order creating an Office of Homeland Security in the Executive Office of the President. He appointed former Governor of Pennsylvania Tom Ridge to direct the office with the title of Assistant to the President for Homeland Security. Initially resistant to the creation of a cabinet level department, which would require shared authority between the President and Congress, President Bush eventually appointed a small group of five White House staff members to develop a proposal

for a Department of Homeland Security. The staff group, which came to be known as the “G-5,” met secretly and without consulting congressional leaders, agency heads, and the unions. Such secrecy limited initial opposition from these actors. The G-5 answered to an oversight group of five, high-level administration officials⁶ (Brook et al. 2006).

The legislation drafted by the G-5 and submitted to Congress in June 2002 called for some of the most dramatic changes to personnel law since the Civil Service Reform Act of 1978.⁷ The law would exempt DHS employees from Title 5. It would confer vast authority on the Director of the Office of Personnel Management (OPM) and the Secretary of DHS to bolster managerial flexibility with respect to labor relations, compensation, and many other facets of human resource administration. Public employee unions immediately voiced opposition, as did their Democratic allies in Congress. While the House of Representatives passed the bill, 295-132, it did not make its way out of the Senate Governmental Affairs Committee (Brook et al. 2006; Gressle 2003).⁸ The failure of Congress to act on the bill prompted sharp criticism from Republican leaders. Senate Republican leader, Trent Lott, observed that: “The homeland security department is being blocked by Senate Democrats who are determined to protect the interests of their union bosses in the bureaucracy” (Bettelheim 2002: 2741). For his part, President Bush asserted that Democratic senators unwilling to reduce employee rights in the new department were beholden to special interests and “not interested in the security of the American people” (Firestone 2002: A25).

Much to the resentment of union and Democratic Party leaders, Republicans successfully exploited this theme in the 2002 mid-term election. Democratic Senators Jean Carnahan (Missouri) and Max Cleland (Georgia), who had supported the unions, faced campaign ads that portrayed them as anti-national security and pro-special interest (Lowry

2004). This line of attack on Cleland, a triple amputee Vietnam War veteran, particularly rankled Democratic leaders. Both Carnahan and Cleland lost their bids for reelection as the Republicans gained control of the Senate. Immediately following the elections, President Bush put creation of the new department at the top of his agenda. Concerned about being labeled as weak in the war on terror, Senate Democrats capitulated. In late November 2002, the House approved the bill 299 to 121 and the Senate 90 to 9 (Gressle 2003; Koffler 2002). On November 25, 2002, President Bush signed the Homeland Security Act (HSA) (PL 107-296),⁹ which combined 22 existing agencies and 170,000 federal employees into a new Department of Homeland Security.

The human resource provisions of the law conferred broad implementation authority on the executive branch (Brook et al. 2006). In this regard Section 841 part (a)¹⁰ of the Act affirmed:

Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

Part (b) of the same section affirmed that the department could establish a new personnel system “notwithstanding” Title 5 that would be “flexible” and “contemporary.” While granting substantial discretion to the executive branch, Congress imposed certain constraints. The law clarified that DHS could “not waive, modify, or otherwise affect” existing law with respect to “the public employment principles of merit and fitness,” equal pay for equal work, the protection of whistle blowers, and equal employment opportunity. It also stipulated that

DHS would have to “ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion...established by law.” The HSA required OPM and DHS to confer with the unions in designing the new personnel system. On balance, however, the HSA ostensibly offered DHS, the Office of Personnel Management, and the White House a major opportunity to boost managerial prerogatives with respect to hiring, performance appraisal, job classification, pay systems, adverse actions and labor-management relations (Friel 2002).

In sum, the election results of 2002 suggest that the Bush administration had effectively reframed the debate over the human resource system in DHS from one focused on management flexibility versus employee rights to national security versus self-interested union power (Brook et al. 2006). At one level, Republican success in framing the issue in this way constituted “brilliant politics” that helped them achieve their human resource management goals and gain control of Congress (Dionne, Jr. 2002: A-41). At the same time, however, these victories threatened to compound their problems of implementing the law. Union leaders and other supporters of employee rights deeply resented having their patriotism questioned. This meant that efforts by administrative leaders to involve union leaders in planning and implementing the new human resource system would at least initially occur in an atmosphere of animosity and deep mistrust. Rather than viewing the issues to be negotiated in relatively instrumental terms where one might expect give and take, union leaders were primed to see them as part of a broader partisan political campaign by the Bush administration to erode their power on multiple fronts.

The Perils of Implementation

The efforts of the Bush administration to implement the new law evolved through three main phases. The first, which lasted from November 2002 into February 2004, featured efforts by political executives and others to involve union leaders, employees, and others in designing a model human resource system called MaxHR. The second phase commenced with the February 2004 promulgation of the proposed design in the *Federal Register*, concerted attempts by the unions to persuade OPM and DHS to modify the specifics of this proposal, and promulgation of the final plan. The third phase, from February 2005 through July 2007 featured the successful efforts by the unions and others to block its implementation.

The Design Period (December 2002 – February 2004)

The HSA required DHS and OPM executives to involve the unions in designing the new personnel system and they quickly proceeded to do. Some 16 unions represented less than one-third of the department's civilian employees. But two, the American Federation of Government Employees and the National Treasury Employees Union, claimed over 90 percent of those represented by unions in DHS (U.S. General Accounting Office 2003: 12). Leaders of these two unions were the most involved in negotiations over the new system.

DHS and OPM leaders started by creating a core design team, which commenced work in the spring of 2003 with technical and logistical assistance from a contractor, Booz Allen. The team consisted of 48 members, 24 from DHS, 16 from OPM, and eight evenly divided between the two largest unions (U.S. General Accounting Office 2003: 34). Team members worked in one of two subgroups – pay for performance and labor relations. Much of the core team's work focused on information gathering, which partly involved reviewing

existing research and data. More prominently, it entailed eliciting the views of employees through e-mail, town hall meetings, focus groups, and the like. The team arranged for town hall meetings in ten cities across the country from May through July 2003, which over 2000 front-line employees and managers attended. In each city, the core team also arranged for six focus groups on civil service reform. The core design group also gave birth to another entity called the field team, which consisted of 32 frontline managers and employees. The core team relied on this field group to provide a “reality check” on how various reform options would mesh with workplace practices.

The core design team submitted a summary of its findings to a senior review advisory committee in mid-summer 2003. This committee consisted of about ten top executives from OPM and DHS as well as the presidents of the three largest unions in DHS.¹¹ A gaggle of human resource experts advised the group. The senior review advisory committee met for three days in mid-September 2003 and ultimately crystallized 52 options for the consideration of Tom Ridge, Secretary of DHS, and Kay Cole James, Director of OPM.

The outreach to employees and the participation of union officials on both the core design team and senior review advisory committee fueled hope that stakeholders could find at least some common ground in forging the new human resources system. As one top OPM official testified before Congress in September 1993, “The design process has demonstrated that an atmosphere of mutual respect and trust can be created within which labor and management can work effectively together, even though that atmosphere was originally one of distrust and animosity...” (U.S. House Committee on Government Reform 2004: 19). But even this early stage hinted at the fissures that would subsequently emerge. While generally praising the collaborative process initiated by OPM and DHS, the General Accounting Office

(2003:25) expressed uncertainty as to whether the input gained in town hall meetings and focus groups would appreciably affect the final regulations. Union leaders also expressed disappointment that the front-line field team which the core group had created to provide a “reality check” on reform options had been shunted to the sidelines. In fact, OPM went out of its way to indicate that the field teams “were never intended to be fully participating members of the design effort” (U.S. General Accounting Office 2003: 36).

Decision Time: Proposed and Final Design (February 2004 – February 2005)

The period of relative harmony and collaboration ceased with the official promulgation of a design for the new personnel system in the *Federal Register* on February 20, 2004 (see, U.S. DHS and OPM, 2004). The proposed rule indicated that top executives had decided to use the vast discretion granted to them by the HSA to enhance managerial discretion in three primary areas – pay for performance, collective bargaining, and adverse actions against employees. Over the next year, union leaders expressed their disappointment with the proposal in several venues, primarily congressional hearings, the submission of formal written comments to DHS and OPM, and negotiations with the two departments through a legislatively mandated meet and confer process.

Congress proved quite willing to provide unions and other stakeholders with an opportunity to voice their concerns about the proposed system. On February 25, 2004, five days after it appeared in the *Federal Register*, the House and Senate convened a joint hearing to gather testimony (U.S. House Committee on Government Reform et al. 2005). Kay Cole James, OPM Director, testified on behalf of the proposal as did James M. Loy, Deputy Secretary of DHS. In turn three union leaders provided detailed critiques of the new personnel system. Republican members of the committees generally expressed hope for

continued collaboration between management and labor. Democratic members uniformly criticized the new regulations for undermining employee rights.

The Homeland Security Act required DHS to provide a 30 day period after publication of the proposed design for the public, employees, and their union representatives to submit formal comments on the new system. Over 3,800 stakeholders accepted this invitation. The Director of OPM and Secretary of DHS subsequently claimed that “the formal comments of labor organizations were given particular attention and consideration” (U.S. DHS and OPM 2005: 5274-5275).

The HSA also mandated that OPM and DHS meet and confer with employees after the initial period of soliciting formal comments. The phase officially ensued on June 14, 2004 when the two departments notified Congress that they had not accepted the recommendations of the unions to abandon the proposed regulations. The Secretary of DHS and Director of OPM subsequently fashioned a meet and confer process that involved one representative from each of the four largest unions in the department, four senior officials from DHS, and two from OPM. (The leadership of an association representing federal managers was also invited to participate, but declined.) The Secretary of DHS requested the services of the Federal Mediation and Conciliation Service to facilitate negotiations. The stakeholders met for 36 days, six more than mandated by law. In addition the Secretary of DHS and Director of OPM met with the presidents of the American Federation of Government Employees and National Treasury Employees Union on September 10, 2004 in an effort to resolve points of disagreement (U.S. DHS and OPM 2005: 5275). The formal comments on the proposed regulations and the meet and confer process persuaded OPM and

DHS to make several concessions. These changes became evident when DHS and OPM published the revised design for the personnel system on February 1, 2005.

DHS and OPM sought to create a payment system for employees that would reward performance and be more market sensitive. In general, the system called for a determination each year as to how much of the overall pay pool should be used for each purpose. If officials believed they were not paying adequate salaries to attract and retain employees in certain occupational categories, they could devote a portion of the pay pool to remedy this deficit. On the performance side, only employees who received annual evaluations of acceptable or higher would receive pay hikes. The higher the performance rating, the more money an employee would receive. For instance, an employee rated as outstanding would receive a greater increase than one rated as acceptable or as exceeding expectations. Hence, managers and supervisors would gain new discretion to reward or penalize employees through the performance appraisal process.

From the outset, employees and union leaders had criticized pay for performance whether at the town hall meetings held in 2003 or subsequently. Most of those commenting on the proposed system opposed the change on grounds that it “would lower employee morale, increase competition among employees, and undermine team work.” Critics doubted that DHS managers and supervisors could apply standards in a way that would yield objective, reliable, and valid performance evaluations (U.S. DHS and OPM 2005: 5277). Despite intense objections to pay for performance, DHS and OPM refused to modify significantly the system it had proposed. Instead, they promised to spend substantial sums of money training supervisors and managers in how to do fair and objective performance appraisals. They also attempted to mute opposition by giving organized labor four seats on a

14-member Homeland Security Compensation Committee. This committee would annually advise the Secretary of DHS on pay questions (e.g., how much to allocate to performance relative to market-based adjustments) and review summary data on performance allocations to employees.

Collective bargaining issues also fueled contention. In its original 2004 proposal, DHS and OPM sought the right to abrogate collective bargaining agreements if they clashed with homeland security goals. They also sought to narrow the scope of issues subject to negotiation with the unions. For instance, they strove to prohibit bargaining over the “numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty.” They further affirmed management’s right to determine “the technology, methods, and means of performing work” (U.S. DHS and OPM 2005: 5279). DHS and OPM also sought to shift jurisdiction over labor matters from the Federal Labor Relations Authority, an institution created in 1978 to resolve disputes between labor and management in the federal government, to a Homeland Security Labor Relations Board appointed by the Secretary of DHS. The unions strongly objected to these and related measures. While they stood ready to grant DHS executives the temporary authority to suspend procedural protections in collective bargaining agreements “under exceptional circumstances” involving a threat to homeland security, they wanted to revisit these episodes through post-implementation review and bargaining once the extraordinary conditions had passed. Employees who had suffered from the temporary suspension of collective bargaining agreements would in this way have the opportunity to be “made whole.” DHS and OPM rejected this view arguing that “in today’s operational environment, the exceptional has become the rule.” They affirmed that the department’s “managers and supervisors must be

able to make split-second decisions to deal with operational realities free of arbitrarily imposed standards” (U.S. DHS and OPM 2005: 5279).

Nonetheless, DHS and OPM made a series of incremental concessions to the unions. For instance, unions obtained new rights to negotiate after the fact when the extraordinary event leading to suspension of contract procedures had a “significant and substantial impact” on employees in a given bargaining unit. DHS and OPM also established a formal process for the Secretary of DHS to solicit union nominations to the Homeland Security Labor Relations Authority. They agreed with the unions that the opinions of this authority should be subject to review by the courts (U.S. DHS and OPM 2005: 5279-5280, 5307). Top executives did not, however, back down from provisions allowing them to abrogate collective bargaining agreements or narrow the scope of issues subject to bargaining. Not surprisingly union leaders saw the concessions as marginal at best.

Other jousting between unions and management involved procedures governing adverse actions against employees – whether firing or other penalties. In justifying the proposed system, DHS and OPM officials asserted: “By its very nature, the Department’s mission requires an exceptionally high level of workplace order and discipline” (U.S. DHS and OPM 2005: 5280). In their view this necessitated streamlining procedures so that managers would face fewer transaction costs in moving against errant employees. They proposed three steps to accomplish this (U.S. DHS and OPM 2005: 5280-5281). First, they affirmed that managers could move on an adverse action by giving the employee notice 15 days in advance rather than 30, which had been the norm. Employees would also need to respond to charges in five days rather than the seven authorized in previous law. Second, they sought to place a lower burden of proof on managers in taking adverse actions by

requiring that they have “substantial evidence” of poor performance rather than a “preponderance of evidence.”

Third, they called for an accelerated and limited review by the Merit System Protection Board (MSPB) if the employee appealed management’s decision. DHS and OPM noted that the Homeland Security Act gave them the authority to create their own review mechanism and completely bypass this board. Having decided to preserve access to the MSPB, however, they narrowed its authority. MSPB would continue to have discretion to overturn management’s decision to remove or discipline an employee on grounds of insufficient evidence. But the appeal board was not to mitigate, or lower, the penalty imposed by DHS managers when evidence of unsatisfactory performance existed. DHS and OPM also sought to prevent employees in units represented by unions from using an arbitration process negotiated in a collective bargaining agreement to file a grievance. To guard against delay, they required the MSPB to assign priority to appeals coming from DHS relative to other federal departments. MSPB failure to meet a mandatory time limit would be equated to a denial of the employee’s request for an appeal.

Union leaders conceded that many employees at the town hall meetings had voiced support for streamlining the appeals processes. But they still claimed that the DHS and OPM proposal went too far in stripping employee rights to due process. To a greater degree than in pay for performance and collective bargaining, DHS subsequently made concessions to this perspective (U.S. DHS and OPM 2005: 5280-5282). For instance, they doubled the number of days employees had to respond to an official notice of adverse action from five to ten. They reverted to accepting a “preponderance of evidence” as the standard for bringing action against an employee. They agreed to let employees file a grievance with arbitrators rather

than the MSPB if they worked in units where collective bargaining agreements established this right. Finally, they afforded these arbitrators and the MSPB a bit more discretion to mitigate penalties imposed by line managers. The authority to mitigate still trailed that available to employees in other federal departments, however. An arbitrator or the MSPB could modify a penalty only when it was so “disproportionate to the basis for the action as to be wholly without justification” (U.S. DHS and OPM 2005: 5281).

Personnel Reform Stalled (February 2005 – August 2007)

The concessions that DHS and OPM made to the unions when it promulgated the new design in February 2005 did not end the political struggle over the shape of civil service reform. While the unions promptly used congressional hearings to express their concerns, their primary effort to block the new personnel system targeted the courts. In January 2005, prior to the publication of the final design, four unions—the National Treasury Employee Union, the American Federation of Government Employees, the National Association of Agriculture Employees, and the National Federation of Federal Employees – filed a lawsuit in federal district court in the District of Columbia. Judge Rosemary Collyer, whom President Bush had appointed in 2002, heard the case. In going to court, the unions did not challenge the pay-for-performance dimension of DHS’ proposed personnel reform, but rather the provisions related to collective bargaining and employee appeals. In the case of the former, the unions strongly objected to the stipulation that DHS executives could abrogate a collective bargaining agreement and limit the scope of bargaining beyond that generally stipulated in federal law. They also challenged the Homeland Security Labor Relations Board on grounds that it did not provide for a review by a neutral arbiter (such as the Federal

Labor Relations Authority); they further argued against the DHS rules limiting the role of the MSBP in hearing employee appeals.

In August 2005, Judge Collyer handed the unions a substantial, though not complete, victory in *NTEU v. Chertoff* (2005a). Her ruling overturned the authority of DHS executives to abrogate collective bargaining agreements on grounds that it violated the HSA's statutory provision guaranteeing unions the right to collective bargaining. The court opined that were this regulation to stand "collective bargaining would be on quicksand, as the Department would retain the right to change the underlying bases for the bargaining relationship and absolve itself of contract obligations while the Unions would be bound" (*Chertoff* 2005a: 37). Judge Collyer went on to say that "while DHS may be required to *bargain* in good faith, there is no effective way to hold it to that bargain. Under such circumstances, a deal is not a deal, a contract is not a contract, and the process of collective bargaining is a nullity" (*Chertoff* 2005a: 40-41, emphasis in original). The district court judge also ruled that the proposed DHS rule improperly interfered with the roles of two existing authorities, the Federal Labor Relations Authority and the Merit Systems Protection Board (*Chertoff* 2005a: 33, 80; Rutzick 2005b).

While overturning several provisions, however, Judge Collyer did not restrain DHS from limiting the scope of issues subject to bargaining. This left open the possibility that DHS executives might undercut union strength and shore up managerial prerogatives in this way. In halting the implementation of the labor relations rules, the judge invited DHS officials to delete the illegal portions from the remaining rules so that the implementation of the other components of the new system could proceed. DHS officials balked at her

suggestion and asked Judge Collyer to reconsider her decision (Rutzick 2005a). In October 2005, she declined.

This judgment left DHS with two main options -- to accept the decision and issue new regulations, or appeal to a higher court. Acceptance of the ruling would still have allowed DHS to achieve considerable managerial flexibility. Executives could implement the pay-for-performance provisions and attempt to limit union intervention by narrowing the scope of bargaining issues. They could propose regulations that more completely decentralized decisions to DHS by eliminating references in the plan to the Federal Labor Relations Authority and the Merit System Protection Board. Instead, however, executives decided to fight for their original plan by taking the case to the Court of Appeals for the District of Columbia Circuit.

A three-judge panel, two of whom had been appointed by Republican Presidents, heard the case. In June 2006, this court reached a unanimous decision that not only upheld the lower court but dealt DHS another blow (*NTEU v Chertoff* 2006). The appellate court affirmed Judge Collyer's decision that DHS could not unilaterally abrogate labor agreements. But the panel of judges then went on to say that she had erred in her ruling that DHS could restrict the scope of issues subject to collective bargaining.¹² According to the court, "If DHS enjoys unlimited discretion to define the 'metes and bounds' of collective bargaining under the HSA, it can whittle the scope of bargaining so drastically as to render collective bargaining meaningless" (*NTEU v. Chertoff* 2006: 861). Instead, DHS would have to respect general federal law that specified the issues that could be negotiated. Ultimately, the appellate court concluded that the proposed labor relations system of the DHS was "utterly unreasonable and thus impermissible... [and] it makes no sense on its own terms" (*NTEU v.*

Chertoff 2006: 864). Having seen the fortunes of the DHS human resource system worsen at each stage of the judicial process, the Bush administration decided not to appeal to the Supreme Court (Rutzick 2006a).

The setbacks in court and delays in implementing the new system contributed to another DHS problem – the erosion of support in Congress. Top DHS and OPM executives had consistently emphasized to Congress that success in implementing the pay-for-performance system would depend on training vast congeries of managers and supervisors who would do the employee evaluations. Without valid performance appraisals that achieved a high level of inter-rater reliability the system would founder. In June 2005, a leading congressional supporter of such training, Republican Senator George V. Voinovich (Ohio), bemoaned a move in the House of Representatives to cut funding for MaxHR at DHS and urged administrators to fight hard for its restoration (U.S. Senate Committee on Homeland Security and Governmental Affairs, 2006:8). But his plea failed. The Republican-controlled Congress ultimately cut the President’s fiscal 2007 budget request for the new human resource system by about 60 percent, from \$71.5 million to \$25 million. This represented a 15 percent budget cut from the amount that DHS had received in fiscal 2006 (Brook and King 2007: 406).

When the Democrats regained control of Congress in the November 2006 elections, support for MaxHR plummeted. Seeking to reward their union allies and with many still bitter over the role the system had played in the 2002 election, Congress attempted to derail its implementation. In March 2007, the House Committee on Homeland Security approved legislation to repeal many of DHS’ proposed changes to personnel administration (Ballenstedt 2007a; 2007b); in May 2007, the full House passed DHS legislation, 296 to 126,

that would accomplish that end (Strohm 2007). It remains unclear whether the Senate will support this legislation and the White House has threatened to veto the measure. Regardless of the eventual legislative outcome, Congress had sent strong signals to DHS to desist from any effort to resuscitate MaxHR.

Faced with court rejections, a diminished commitment to funding in the Republican Congress, and outright antipathy in the new Democratic Congress, DHS retreated from its human resource initiative. To be sure, DHS has applied the pay-for-performance management system to some 4,000 employees who are not members of bargaining units (Rutzick 2006c). But in February 2007, the DHS Chief Human Capital Officer, Marta Perez, announced the cancellation of MaxHR and its replacement with a more modest Human Capital Operational Plan. Guided by the plan, DHS pledged to proceed more slowly in its efforts to implant a pay-for-performance personnel system. Among other things, DHS proposed to create a pilot project in 2008 for employees working in intelligence that would hone job goals and rating criteria for these officials. The improved appraisal system would then become the provenance for pay for performance.

Homeland Security and the NPM: Some Implications

In his perceptive assessment of public administration under President George W. Bush, Pfiffner (2007:7) has observed that the “continuing reduction in Title V coverage for U.S. civilian personnel may bring the broadest human resource management changes since the Pendleton Act.” The fact that it took decades for the Pendleton Act to extend merit protection to most federal civil servants is a useful reminder that one should not rush to judgment on the implications of freeing DHS from Title 5. The legislation creating DHS also implanted chief human capital officers across all federal agencies – a step that may have

implications for the performance of human resource systems. Moreover, DHS may well remain exempt from Title 5 leaving open the possibility that subsequent presidential administrations will foster innovative personnel practices in the department. At least over the short term, however, the case of DHS vividly illustrates how bold legislative initiatives to apply the principles of NPM to personnel administration can run aground during implementation. DHS obviously represents only one case among several in the quest to decentralize and deregulate human resource management in the national government. But it suggests five propositions that may have broader relevance for understanding this phenomenon.

Proposition 1: Initiatives to deregulate human resource management will be more difficult to sustain if their legislative approval provoked intense partisan polarization.

Not since the late 19th century had an issue of public personnel administration so directly connected with electoral politics at the federal level. The lopsided majorities supporting the creation of DHS with its deregulated personnel system should not mask the degree to which the initiative fueled partisan polarization. The bitterness of the Democratic Party toward the tactics used by Republicans in 2002 persisted. “Remember Max Cleland” became the rallying cry for many Democrats as they worked to regain control of Congress. The connection of the new personnel system to an embittering partisan episode increased its fragility. Not only did Democrats have reason to dislike the system because it offended one of their political allies, federal employee unions. They also resented it because the Bush administration had so adroitly and in their view unfairly used the issue in the 2002 election to brand them as weak on national security.

This context heightened the challenge of implementing the new system. Above all, it made any delays in implementation all the more a threat to its viability. The longer the delay, the greater the risk that Democrats would succeed in recapturing one or both houses of Congress, or the presidency. While this might not lead to repeal of the Title 5 exemption, it would certainly bode poorly for the ability of the proposed system to sustain needed funding and other support. Had DHS officials been able to move more quickly to implement the system, it would at least have developed a certain momentum and inertia once those less sympathetic to it became more powerful. Delay also hurt in a second sense. The Bush administration had premised the need for managerial flexibility in the new department on grounds that it was critical in the fight against terrorism. But as the years dragged on without its implementation and without a major terrorist attack, it became more difficult to sustain belief in this linkage. As the matter became less urgent and DHS failed to make much progress, the Republican controlled Congress began to lose interest in the system.

Proposition 2: The founding statute matters greatly in determining the fortunes of human resource deregulation. The DHS statute was not as minimalist as some thought. Greater attention to detail in the original law would have allowed officials to counter union opposition more effectively.

On the surface, the brief legislative provisions establishing the new DHS personnel system accorded vast discretion to the executive branch to define the new structure subject to an ambiguous proviso that it be “flexible” and “contemporary.” But in certain ways the statute was more directive and detailed than this observation implies. To be sure, executives possessed ample discretion to shape the new system. Title 5 exemptions are seldom total, however. They vary in degree. In the case of the HSA, Congress went out of its way to

specify that certain elements of existing law related to such subjects as merit, whistle blowing, and equal employment opportunity still applied.

Of critical importance, the law also included a sentence requiring DHS to engage in collective bargaining. Since this provision did not explicitly mention Title 5, officials at OPM and DHS proceeded on the assumption that they could define what “collective bargaining” meant. They interpreted it in a way that greatly restricted the rights of unions. But the courts resisted the DHS effort to create a definition of collective bargaining from scratch. Ultimately, the appellate court admonished DHS that it defied “common sense” and was “simply bizarre” to treat the concept of “collective bargaining” as an “empty linguistic vessel.” Instead “collective bargaining” needed to be treated as a “term of art with a well-established statutory meaning” that Congress had consistently applied (*NTEU v. Chertoff* 2006: 857; 860). The court ruling meant that the single line in the HSA authorizing collective bargaining carried vast statutory baggage – specifically Chapter 71 of Title 5, which generally governs labor relations in the federal government.

The experience of DHS does not, of course, mean that NPM proponents cannot succeed in drafting a law that allows a department to curb bargaining rights. In fact, the Bush administration scored some success in doing so with its second major initiative to decentralize and deregulate human resource management -- the National Defense Authorization Act in late 2003. The new law contained wording that allowed the department to restrict collective bargaining rights for six years. Top executives promptly moved to draft implementing regulations that would give them the authority to set aside provisions of collective bargaining agreements and restrict the scope of issues subject to negotiation. As in the case of DHS, the unions objected and convinced a federal district court that the

department had gone too far in restricting their rights. But the Department of Defense persuaded an appellate court to reverse this decision. In supporting the department, a three-judge panel from the Court of Appeals in the District of Columbia noted that the “statutory language governing DoD’s labor relations system is quite different from the statutory language governing DHS’s labor relations system” (*AFGE v. Gates* 2007: 1326). Those who drafted the National Defense Authorization Act inserted more detailed language into the law concerning executive authority to limit collective bargaining than the authors of the Homeland Security Act had.

Proposition 3: The case of DHS suggests the importance of legal competence during the implementation process. The degree to which federal agencies tap the expertise of lawyers and other officials who have an astute sense of likely court responses to administrative action enhances prospects for success in fostering human resource deregulation. The utilization of legal resources ought to receive more attention in assessments of whether and how management matters.

Students of public administration have long noted the important role played by the courts (e.g., Rosenbloom, 1983); some have focused on its deleterious effects for program implementation (e.g., Kagan 2001). The importance of *legal capacity and its management* within public agencies has, however, received less attention. Agencies in all likelihood vary appreciably in the degree to which they have the legal capacity (e.g., sufficient numbers of well qualified lawyers) to navigate the court system effectively and the extent to which their top executives skillfully draw on and manage their legal staffs. Agencies ranking high in legal competence will readily anticipate court responses to agency action. Assessment of

whether and how management matters needs to more fully factor in this legal element given the litigious environment that many public agencies face.

On the surface, the case of the new human resource system at DHS reads as a story of implementation woe brought on by one legal miscue after another. In the rush to produce a brief statute that would grant officials broad discretion, the bill drafters left in a sentence about collective bargaining that became the basis for subsequent court rulings against DHS. OPM and the department then drafted regulations that a federal district court partially overturned when unions filed an appeal. DHS then made matters worse by appealing this decision to a higher court that issued a more sweeping ruling vindicating the union position and further handcuffing the department.

While the experience of DHS raises issues of legal competence, our research does not permit a definitive conclusion about its presence or absence. In the case of the founding legislation, it may well be that even after the dramatic Republican victories in November 2002, bill drafters believed that they needed to insert a provision on collective bargaining to get the legislation through Congress. It may also be that during the implementation phase OPM and DHS suffered no deficit in legal competence but decided to take a well-calculated risk that they could prevail in court. At times, executives may value an outcome so highly that they are willing to pursue it even when they fully fathom that their prospects for success in court are 50-50 or less. In this regard, it would not be unreasonable for OPM and DHS to postulate that judges appointed by Republican Presidents might bend over backwards to defer to administrative discretion wielded by an agency on the front lines of the war against terror. The division of opinion among the judges who heard the case also lends credence to the view that DHS took a well calculated risk in promulgating its regulations. The federal district

court agreed with DHS that it could greatly restrict the scope of collective bargaining. The appellate court sided with DHS on its capacity to restrict the role of MSBP (at least initially) in the employee appeal process.

This and related evidence suggests that OPM and DHS may have managed legal expertise well, but other factors raise doubts in this regard. While some issues evoked divided opinions from the judges, the courts were united in the view that collective bargaining was not an “empty linguistic vessel” that DHS could define in any way it wanted; the courts concurred that DHS could not abrogate collective bargaining agreements and shared the view that DHS could not through regulation recast the mission of the Federal Labor Relations Authority. A case can be made that OPM and DHS ought to have been able to anticipate these outcomes had they been at the top of their legal game. Had they done so, they might have succeeded in narrowing the scope of issues subject to negotiation and proceeded more quickly to implement aspects of MaxHR. In considering factors that might have impaired legal competence at DHS, two deserve particular note. First, the episode occurred against the backdrop of forging 22 agencies into a massive new Department of Homeland Security and creating a new office of the Secretary to coordinate them. In such a fluid and demanding context, it may well have been more difficult to marshal and manage legal experts effectively. Second, the management orientation of the Bush administration may have led them to pay inadequate attention to legal potholes. As Pfiffner has noted (2007: 6-7, 17), the management style of the Bush administration has featured expansive claims of executive branch prerogatives and a preference for “secrecy, speed, and top-down control.” This orientation may have created blinders among top executives to the trouble that dogged unions and the courts could create.

Proposition 4: The nature of labor relations in the federal sector will make the application of NPM to human resource management especially difficult. The degree to which more conciliatory approaches toward the unions can facilitate managerial flexibility remains an open empirical question.

Public employee unions have tended to oppose efforts to enhance managerial flexibility over human resources not only in the national government but in the states.¹³ To some extent this springs from the inherent tension between “letting managers manage” and the desire of employees to control their benefits, working conditions, and job security. But the nature of labor relations in the federal government makes the pursuit of NPM particularly challenging. Unlike many of their counterparts at the state and local levels, federal unions have no right to bargain over salaries and benefits. Hence they tend to spend disproportionate time focusing on due process rights and on limiting managerial discretion to reward, sanction, and deploy employees. This has prompted some experts to characterize labor-management relations at the federal level as often “legalistic, petty, and obstructionist” (e.g., Masters 2004: 59).

Success in fostering human resource deregulation in the federal government necessitates an effective strategy for dealing with the unions. The Bush administration stressed frontal assault on employee rights via special legislation. This approach worked poorly in the case of DHS but may be effective in other contexts. In contrast, the Clinton administration established labor-management partnership councils in an effort to persuade the unions to support some human resource deregulation and accomplish its other reinvention objectives. Some evidence suggest that labor relations in fact became less contentious during the Clinton years with fewer claims of unfair labor practices, impasse disputes, and the like

(Masters 2004: 69). But the degree to which the Clinton administration's concessions to the unions through Executive Order 12871 facilitated or impeded managerial flexibility over human resources has not been systematically assessed. The extent to which a more conciliatory approach to labor relations might facilitate such flexibility should be a target for research.

Proposition 5: NPM initiatives that stress pay for performance for individual employees will be more difficult to implement effectively than initiatives that emphasize other forms of managerial flexibility. The quest for such systems generally reflects the triumph of hope over evidence and experience.

Nothing in the federal court decisions explicitly targeted the pay-for-performance component of the DHS initiative. This component became collateral damage when the courts ruled against the labor relations provisions of the federal regulations. The proposed system sought to attach monetary consequences to performance appraisals and to provide additional flexibility to DHS to adjust pay to compete in the market. The commitment of the Bush administration to pay for performance represented a departure from the reinvention approach under the Clinton administration. To be sure, the National Performance Review had, like Bush, promoted greater discretion to adjust employee salaries through special authorities, broad banding, and other measures. But the Clinton administration concluded that pushing pay for performance would roil employees and their unions and do little to enhance government effectiveness.

The DHS commitment to performance contingent pay flourished in the absence of much evidence that such an approach would yield positive outcomes. A primary source of support for the idea comes from the quest to introduce business practices into government.

Those in the private sector routinely proclaim that they have pay-for-performance systems. But the actual practices of companies are very poorly documented and the proportion of pay that is performance-based may well be under 10 percent (Bohnet and Eaton 2003: 239-240). Moreover, studies of the efficacy of these systems in the private sector yield mixed conclusions, prompting one review of the evidence to conclude that the “conditions for success” for pay-for-performance systems “are generally not met in the private sector, and even less so in the public sector” (Bohnet and Eaton 2003: 241).

The track record of previous merit pay initiatives in the federal government also provided little evidence of successful implementation. These initiatives had generally foundered on the inability of officials to come up with valid, widely trusted performance appraisal systems and inadequate funding by Congress (Rainey 2006: 44; see also Perry 1991).¹⁴ Top officials at OPM and DHS probably underestimated the difficulties of developing objective, valid, and widely accepted indicators of individual performance. But they did understand that the success of the performance pay system would rest on adequate training for supervisors in how to do performance appraisals. When questioned by a member of Congress in 2004 over the \$130 million that would be needed to implement the new system, Deputy Secretary of Homeland Security James Loy responded: “There will be, without doubt, a significant upfront investment for us to do the training ... to make sure our managers and supervisors are adequate to the task of performance appraisals that are the cornerstone of doing what we need to do with pay and personnel decisions down the road” (U.S. House Committee on Government Reform and Senate Committee on Governmental Affairs 2005: 42). The regulations issued by OPM and DHS in 2005 further reinforced this theme calling for training that “will focus on how to establish and communicate performance

expectations and how to assess employee performance” (U.S. DHS and OPM, 2005: 5302). But, as in the past, political support for training budgets and other measures needed to get MaxHR off the ground proved impossible to sustain even before the Democrats gained control of Congress in 2007.

Conclusion

The experience of federal agencies after they gain significant freedom from Title 5 deserves a prominent place on the research agenda of public administration. DHS under the Bush administration points to the potential for NPM initiatives to derail during the implementation process. But this case needs to be systematically compared to the experience of other departments that have won new freedom to shape their human resource practices (e.g., the Internal Revenue Service, the Federal Aviation Administration, the Department of Defense)¹⁵ Comparative analysis of this kind can yield insight into the degree of human resource deregulation achieved by different agencies; it can help identify explanatory factors that account for greater success in fostering managerial flexibility. Even more fundamentally, such analysis can probe the consequences of these reform initiatives for the performance, accountability and political responsiveness of these agencies.

Empirical work of this kind can provide a firmer foundation for assessing whether NPM provides an appropriate normative framework for personnel reform in the federal sector. The quest to promote human resource deregulation has attracted many critics. Some see it as a threat to neutral competence and professionalism in favor of a politicized model of administration that above all favors loyalty to the chief executive and his appointees (e.g., Kearney and Hays 1998:39).¹⁶ Some contend that, by emphasizing market mechanisms and pay for performance, it slights or undermines the more altruistic motives (e.g., a commitment

to public service) that prompt many to serve government effectively (e.g., Condrey and Battaglio 2007; Ingraham 2006; Thompson 2006). Critics note that variants of NPM nurture a glorified, unrealistic view of the virtues of business administration and the degree to which its principles can be applied to the public sector (e.g., Rainey 2006). They contend that NPM nostrums may lead to a hollowing out of government by encouraging downsizing and distracting attention from the more pressing resource needs of public agencies (Thompson 2004).

We share all these concerns. The degree to which the human resource initiatives at DHS would in some sense have improved the performance of that department, *if implemented*, is questionable at best. By the same token, however, the quest for greater departmental and managerial flexibility over human resources may in some instances yield beneficial outcomes. The comparative analysis of federal departments attempting to achieve human resource deregulation can yield important insights in this regard.

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Notes

¹Significant exceptions include Kellough and Nigro 2006, and Brook and King 2002, 2007.

² The information for this article derives primarily from an extensive review of the literature (including news media) and archival sources (congressional hearings and other government documents). We anticipate that a second phase of this research will involve interviews with those close to the reform process.

³From 1990 through 2002, over 90 percent of the PAC contributions of the two largest unions in the Department of Homeland Security went to Democrats (Masters 2004: 72-73).

⁴ President Bush also instituted an Executive Branch Management Scorecard to track how well departments and major agencies are executing the government-wide management initiatives of the PMA, including the two related to civil service, strategic management of human capital and competitive sourcing. The “stoplight” scoring system grades green for success, yellow for mixed results, and red for unsatisfactory. Departments and agencies measure themselves against their own improvement plans negotiated with the OMB.

⁵ In a more recent development, the Bush Administration has drafted the Working for America Act, previously known as the Civil Service Modernization Act of 2005, which would seek to foster the PMA initiative of strategically managing human capital. One provision of the proposed law would replace the General Schedule government-wide with a pay system that would be based on performance and the market; the focus would be on results, not processes, as the designation of Title II of the bill makes clear: “Results-Driven, Market-Based Compensation.” Given that Congress is now in the hands of the Democrats, and that unions have voiced opposition, it is unlikely that this bill, if introduced, will make it out of Senate or House committees (see, McGlinchey, 2005).

⁶ The oversight group consisted of Chief of Staff Andrew Card; Josh Bolten, then Deputy Chief of Staff for Policy; Mitch Daniels, Director of OMB; White House counsel Alberto Gonzales; and Nick Calio, head of White House Legislative Liaison (Brook, King, Anderson, and Bahr, 2006).

⁷ Earlier reforms of a much less sweeping nature led to little overall change to the federal civil service system. For example, the CSRA of 1978 permitted federal agencies to suspend civil service law under certain circumstances to pursue demonstration projects, which were intended to explore new and improved approaches to federal personnel management. This eroded some Title 5 coverage of federal workers. Also, the Workforce Restructuring Act of 1994 was aimed at reducing the number of federal employees. These reductions were often accomplished through reductions in hiring or placing a freeze on hiring; ironically, they are now blamed for contributing to the looming retirement crisis (Ingraham and Getha-Taylor, 2006; Brook, King, Anderson, and Bahr, 2006; Thompson, 2001).

⁸ Senator Joseph Lieberman spearheaded the opposition to the civil service language in the White House’s proposal for the DHS.

⁹ Homeland Security Act, PL 107-296; 116 STAT. 2135, November 25, 2002, <http://www.asm.org/ASM/files/LEFTMARGINHEADERLIST/DOWNLOADFILENAME/0000000587/107296.pdf>, date accessed December 15, 2006.

¹⁰ Homeland Security Act, PL 107-296; 116 STAT. 2135, November 25, 2002, at p. 2230, <http://www.asm.org/ASM/files/LEFTMARGINHEADERLIST/DOWNLOADFILENAME/0000000587/107296.pdf>, date accessed December 15, 2006.

¹¹ Though much smaller than the American Federation of Government Employees and the National Treasury Employees Union, officials also included the National Association of Agricultural Employees.

¹² Of less significance, the appellate court overturned Judge Collyer's ruling that DHS lacked the authority to change the standard the Merit System Protection Board could apply in the case of employee appeals. It ruled that the issue was not "ripe" for review leaving open the possibility that a court could subsequently find the provision to be illegal.

¹³ Kellough and Selden (2003) found union strength to be negatively associated with the diffusion of personnel reform in the states.

¹⁴ Most recently, a pay-for-performance system similar to that slated for the DHS was implemented government-wide by OPM for the Senior Executive Service. An initial assessment found little evidence that it has had a positive impact on performance (Senior Executive Association 2006; Friedman 2006).

¹⁵ A comparison to the Bush administration's human resource initiative in the Department of Defense is particularly pertinent. The unions have not succeeded in blocking the implementation of this system in court. However, its provisions restricting the collective bargaining rights of the unions will expire in late 2009 unless Congress chooses to extend them. With the Democrats in control of Congress, this seems unlikely through 2008.

¹⁶ Conservative think tanks have explicitly endorsed a model of "political administration" as superior to one based on traditional "public administration." In this view, merit plays second fiddle to loyalty. As Robert Moffit (2001: 9) of the Heritage Foundation puts it: "The office of Presidential Personnel... must make appointment decisions based on loyalty first and expertise second, and ... the whole governmental apparatus must be managed from this perspective."