February 23, 2004

TO: Tim Curry, United States Department of Defense

FROM: American Federation of Government Employees
Association of Civilian Technicians
International Association of FireFighters
International Federation of Professional and Technical Engineers
International Association of Machinists and Aerospace Workers
National Federation of Federal Employees (Federal District 1 of IAMAW)
International Brotherhood of Electrical Workers
Laborers International Union of North America
American Federation of Teachers
International Association of Asbestos Workers
International Union of Operating Engineers
International Brotherhood of Boilermakers
Brotherhood of Ironworkers
Federal Education Association / NEA
National Association of Government Employees (SEIU)
Service Employees International Union
Seafarers International Union, National Maritime Union
Fraternal Order of Police
Marine Engineers Beneficial Association
International Organization of Masters, Mates and Pilots
Metal Trades Department
Service Employees International Union (National Association of Government Employees)
National Association of Aeronautical Examiners
National Association of Independent Labor
Seafarers International Union
National Maritime Union
Sheet Metal Workers' International Union
International Union of Painters and Allied Trades
International Brotherhood of Teamsters
United Power Trades Organization
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada

SUBJECT: Union response to the Department of Defense 'Pre-Collaboration Labor Relations System Options' of February 6, 2004.

Thank you for the opportunity to share with you the concepts which we feel must govern the joint development of

a new National Security Personnel System. First and most importantly, let there be no doubt that the Department of Defense employees we represent, and we as their elected collective bargaining representatives, fully support the agency's national security mission and effective national defense. We believe genuine collective bargaining remains consistent with achievement of these goals, and must be the keystone of any labor-management relations system.

As Senator Joe Lieberman explained on the Senate floor on November 12, 2003, the FY 2004 DOD Appropriations Act preserves collective bargaining as it always been understood:

> [T]he conferees . . . agreed to a new provision authorizing the Secretary of Defense, together with the Director of the Office of Personnel Management, to establish a "labor relations system" for the Department of Defense to address the "unique role" of the Department's civilian workforce. As the conference report makes chapter 71 non-waivable, this new provision overrides chapter 71 only where the new provision and chapter 71 are directly inconsistent with each other. The new provision authorizing establishment of a labor relations system does not conflict with the statutory rights duties, and protections of employees, agencies, and labor organizations set forth in Chapter 71--including, for example, the selection by employees of labor organizations to be their exclusive representatives, the determination of appropriate bargaining units, the rights and duties of unions in representing employees, the duty to bargain in good faith, the prevention of unfair labor practices, and others--and such rights, duties, and protections will remain fully applicable at the department. The conference agreement provides that, in establishing a labor relations system, the Secretary will be authorized to "provide for independent third party review of decisions, including defining what decisions are reviewable by the third party, what third party would conduct the review, and the standard or standards for that review." The Secretary may use this provision to expedite the review of decisions, but not to alter the statutory rights, duties, and protections established in chapter 71 or to compromise the right of parties to obtain fair and impartial review of decision. The mutual

> trust required for productive labor-management relations requires a level playing field.

In the following and many other ways, the DOD concepts and the process by which they have been put forth do not meet the criteria established by law to govern any labor relations program under the National Security Personnel System. They do not seek to change the labor relations system to allow it to better address the unique role that the DOD civilian workforce plays in supporting the Department's national security mission, instead they constitute a wholesale repudiation of collective bargaining. The DOD concepts do not provide for independent third party review of decisions, nor do they ensure that employees may bargain collectively and participate through unions of their own choosing in decisions which affect them.

It should be remembered that prior to 1962 there were only informal agreements between unions, agencies and the Department of labor, in a consultation role. In 1962, President Kennedy issued Executive Order 10988 that recognized that it was in the public interest to give Federal employees the right to bargain collectively. This was the first time that Federal employees were given a formal structure that applied government-wide. In 1971, President Nixon issued Executive Order 11491 which provided a structure for certified bargaining units, created third party resolution of unfair labor practices, delineated grievable and arbitrable matters, and set out the procedure for determining appropriate units. In 1978, the Civil Service Reform Act, was passed by Congress. That law added Chapter 71 to Title 5 of the United States Code, and established procedures which are designed to meet the special requirements and needs of the Federal Government and set forth the rights and obligations of agencies and Labor Organizations.

Chapter 71 of Title V states that "Congress finds that:

> "a. Experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them –
>
> (1) safeguards the public interest,

(2) contributes to the effective conduct of public business, and
(3) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

"b. the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government."

Nothing in the National Defense Authorization Act rejects this congressional finding or suggests that these core principles are somehow inconsistent with DOD's mission or with national security. Nevertheless, the DOD concepts would return labor-management relations to a pre-1962 status, where there was no real collective bargaining, no grievance process, no binding third party arbitration and no independent, impartial resolution of impasses. Under the DOD proposal, in fact, there are not even collective bargaining term agreements.

In summary, the content of the DOD concept paper is inconsistent with the congressional intent in the National Defense Authorization Act. The proposed changes will not enhance national security, but will instead restrict the freedom of workers to correct injustices in the workplace. There is absolutely no correlation between denying DOD employees their collective bargaining rights and constitutional due process and enhancing national security.

By contrast, the concept that governs our thinking is that the new law mandates genuine collective bargaining, which includes at least the following elements:

(a) obligation to seek agreement and to act in a way consistent with that obligation;
(b) balancing the need for stability and flexibility in DOD and its governing procedures;
(c) resolution of impasses either by economic action or by neutral fact-finding and imposition of contract language;
(d) independence of system from control by either the employer or the unions;

(e) subjects of collective bargaining broadly identified in a way that results in employees participating in determining their working conditions;
(f) resolution of employee complaints and institutional complaints between the parties in a neutral third party system that is efficient and streamlined, respecting both the Department's national security mission and employee and union rights; and
(g) no bypass of the employees' democratically selected union by management dealing directly with the employees on matters affecting working conditions.

Any changes to or modifications of the existing and well-tested system of labor-management relations under chapter 71 must be consistent with these and other core principles, and must be narrowly tailored to address specific national security needs or problems (which have yet to be articulated by the agency).

We look forward to discussing DOD's concepts as well as the concept of genuine collective bargaining with you on February 26 and 27. It will be particularly important that the management representatives demonstrate how each part of chapter 71 has actually impeded accomplishment of the DOD mission.

Finally, please note that in submitting this statement and participating in the February 26 and 27 meeting we are in no way waiving potential legal arguments over the breadth of changes allowed under the new law, the process to be used in considering and deciding on changes, or any other point.

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