



Department of Defense



***National Security
Personnel System***

Labor and Employee Relations
Implications: When Employee
Engagement is Not Sustained

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- **When employees have choices, they tend to act in a way that furthers an organization's interests**
 - **An engaged employee is fully involved in, and enthusiastic, about his or her work.**

- **Examples of what happens when an employee or a group of employees become disengaged**



- **Labor Relations Issues – Union Organizing**
- **Managing Performance**
- **Performance Reconsideration Process**
- **Equal Employment Opportunity Issues**
- **Alternative Dispute Resolution**

- **Union organizing efforts targeting eligible employees not represented by unions**
 - Organizing efforts have spiked, particularly in organizations covered by NSPS
 - Organizing efforts across all Components

- **Union organizing efforts have impacted NSPS implementation for some organizations**
 - NSPS limited to non-bargaining unit employees
 - Organizing efforts raising questions on employee status – bargaining unit or non-bargaining unit?



■ Management Conduct During Union Organizing Activities

Remain neutral:

- Don't coerce or attempt to influence an employee's choice
- Don't take actions based on union organizing activity (reprisal)
- Don't discuss if unions are beneficial or not
- Don't promise a benefit to employees based on a desired behavior regarding election outcomes
- Don't interfere with an election



Some Helpful Tips

■ What can you do?

- Inform employees of an election
- Encourage employees to vote
- Rebut false or misleading statements
- Enforce all workplace rules
- Prohibit organizing activity in work areas during work hours
- Refer employee union-related questions to Human Resources Offices, FLRA, and Union
- Consult with your Labor Relations advisor in your servicing Human Resources Office



- **All organized AFTER conversion to NSPS**
 - 1 Navy bargaining unit (41 employees)
 - 6 Army bargaining units (174 employees)
 - 1 Air Force bargaining unit (42 employees)
 - 1 Defense Logistics Agency bargaining unit (24 employees)
- **Currently, 281 NSPS employees covered by above units**
- **1 Army unit and DLA unit are existing units - added NSPS employees**
 - Both have collective bargaining agreements in place
 - Army unit covers 177 employees
 - DLA unit covers 15,140 employees



- **Organizing activity has resulted in other new bargaining units**
 - **At least 37 new bargaining units have been formed since July 2006**
 - ✓ **New bargaining units cover approximately 2367 employees**
 - **12 existing bargaining units expanded to include 856 additional employees**

- **At least 35 elections or petitions for elections currently pending before the Federal Labor Relations Authority**



- **Communicate performance expectations**
- **Observe and document performance**
- **Provide on-going feedback**
- **Evaluate performance**
- **Address performance that does not meet expectations**



Origins of Poor Performers

- **Employee came as a poor performer**
- **Employee developed a poor attitude or work habits**
- **Employee and job are not compatible**
- **Employee has health problems**
- **Employee's position or job assignment has changed**



- Give supervisory feedback
- Provide remedial training
- Change work assignment
- Assign mentor or advisor
- Provide improvement period
- Take appropriate action

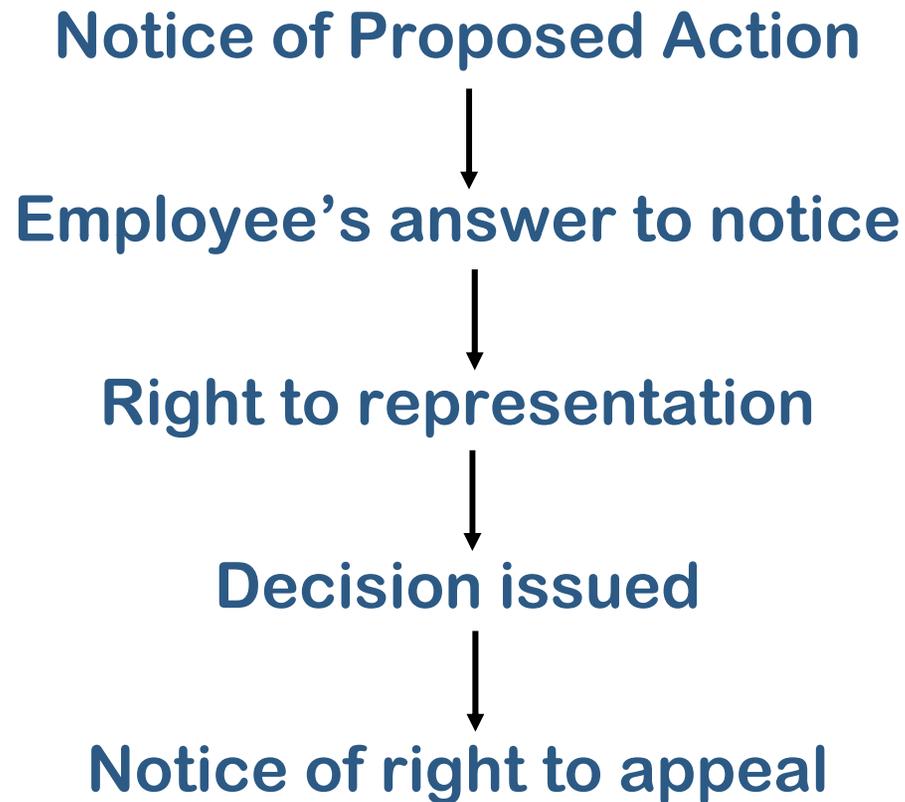
Types of Actions and Penalty Selection

- **Not Capable of Performing**
(e.g. failure to perform accurate engineering analysis)
 - Remedial Actions: coaching, letter of counseling, training, mentoring, improvement period, reassignment
 - Adverse Actions: change to lower pay band, removal (logically involves movement out of the position)

- **Willful or Negligent Non-performance or Failure to Perform**
(e.g. failure to work harmoniously with customers)
 - Remedial Actions: verbal warning, letter of counseling, oral admonishment.
 - Adverse Actions: Written reprimand, suspension to removal (full range of penalties open and may be effective)



Chapter 75 Requirements





What is the Reconsideration Process?

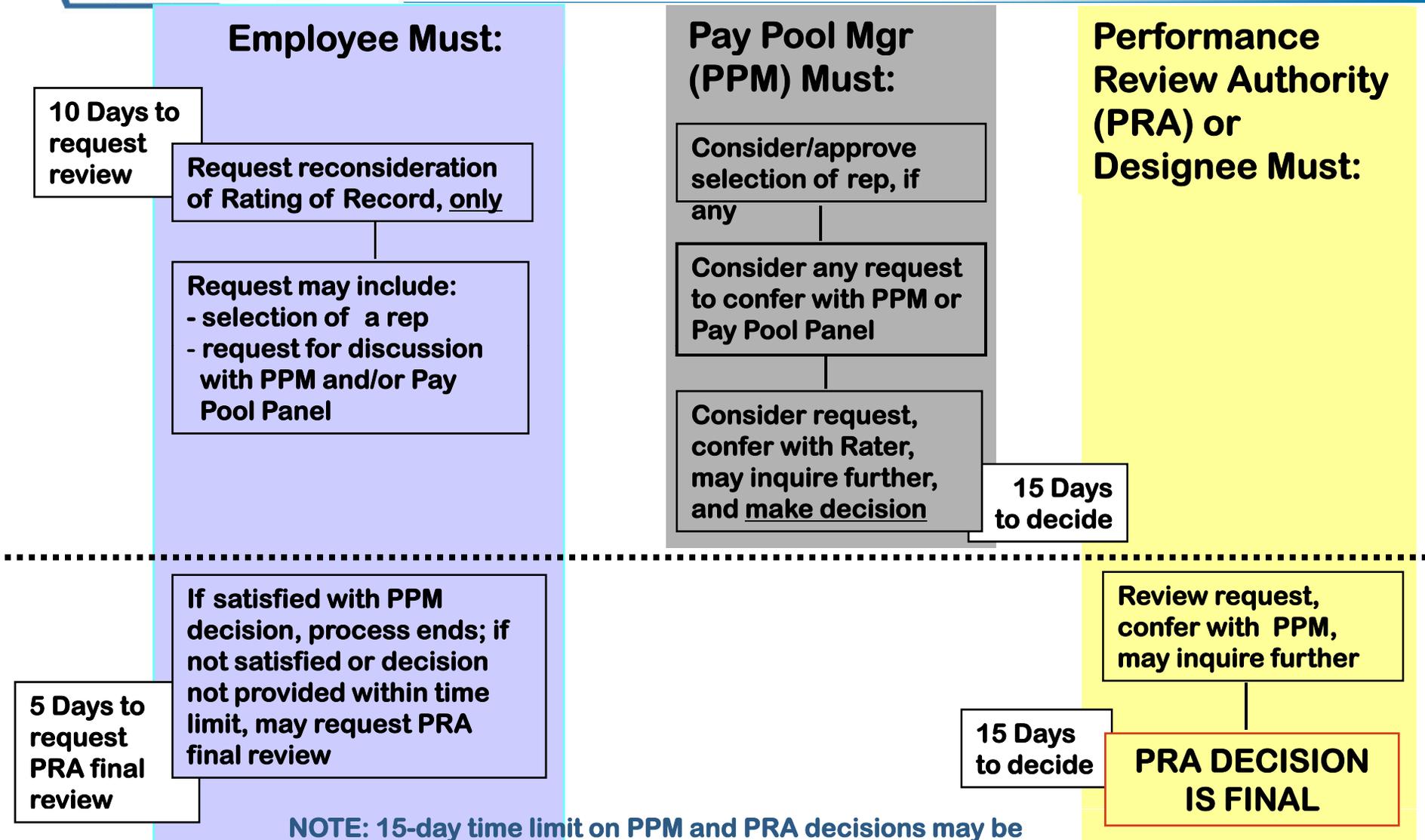
- The exclusive means for non-bargaining unit employees to challenge their rating of record
 - Individual job objective ratings – currently cannot be challenged
 - Individual job objective ratings can be challenged *per revised NSPS regulations expected to be finalized by end of calendar year*

What it is not—exclusions

- Share determination (number and value)
- Payout (base pay/bonus distribution)
- Interim review
- Recommended rating
- Individual objective rating or adjusted rating not resulting in a change to rating of record *until regulations are revised*
- Closeout assessment
- EEO matters



Reconsideration Process



NOTE: 15-day time limit on PPM and PRA decisions may be extended by 15 days with notification to employee.

- **NSPS did not change EEO requirements or procedures**
- **Under NSPS there is increased discretion in decisions formerly limited by law or regulation**
- **Decision makers need to have business based reasons for taking action – in EEO speak, legitimate nondiscriminatory basis for taking the action**



EEO Considerations

- **What are the likely issues?**
 - Performance rating
 - Share determination
 - Split between continuing pay and bonus
 - Selection for reassignment
 - Pay increase with reassignment
- **Some (but not all) strategies to address issues**
 - Performance rating
 - ✓ Ensure rating is consistent with Performance Indicators
 - Share determination and Split between salary and bonus
 - ✓ Have consistent, business-based approach to determining number of shares and allocation
 - ✓ Communicate the decision to employees as part of publication of pay pool business rules
 - Selection for Reassignment
 - ✓ Have legitimate nondiscriminatory reasons for selection
 - ✓ May use competition, even though not required
 - Determination of Pay Increase upon Reassignment
 - ✓ Use Pay setting guidelines as appropriate
 - ✓ Be consistent with similarly situated employees

Alternative Dispute Resolution`

“Any procedure that the parties agree to use, instead of formal adjudication, to resolve issues in controversy, including, but not limited to settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration or any combination thereof.”

**DoD Directive 5145.5
April 22, 1996**

ADR Spectrum*



* From Costantino, C. and Merchant, C., Designing Conflict Management Systems, Jossey-Bass Inc., Publishers (October, 1995).
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Questions?

- **Labor Relations Issues – Union Organizing**
- **Managing Performance**
- **Performance Reconsideration Process**
- **Equal Employment Opportunity Issues**
- **Alternative Dispute Resolution**



Backup Slides

Definitions:

- **Pay Pool Manager (PPM):** The individual designated to manage the pay pool, resolve discrepancies, and ensure consistency.
- **Pay Pool Panel:** Usually senior management officials, including the PPM, of the organizations or functions represented in the pay pool that assist the PPM in the exercise of his/her responsibilities.
- **Performance Review Authority (PRA):** Senior management official or an organization unit or group that manages and oversees the payout process, payout funds and pay pool decisions.

■ Challenging the Rating of Record

- **Written request for reconsideration must be submitted to Pay Pool Manager within 10 calendar days of receipt of rating**
 - ✓ Employee may identify representative
 - ✓ Request must include a copy of the rating, state what change is being requested and the basis for the change
 - ✓ Employee may request opportunity to personally address the Pay Pool Manager and/or Pay Pool Panel

- **Pay Pool Manager must render written decision within 15 calendar days**
 - ✓ Determine if request for communication will be accomplished
 - ✓ May confer w/rating official and/or conduct further inquiry
 - ✓ Decision must include brief explanation of the basis of the decision
 - ✓ Decision is final, unless employee seeks further reconsideration from the Performance Review Authority

- **Employee's Dissatisfaction with Decision**
 - **Employee must submit written request for final review by the PRA or PRA designee within 5 calendar days**

 - **PRA or PRA designee must render written decision within 15 calendar days**
 - ✓ May confer w/Pay Pool Manager and/or conduct further inquiry
 - ✓ Decision of PRA or PRA designee is final