

ISSUES OF MERIT

Winter 2017

Director's Perspective

Transition Time at the Merit Systems Protection Board

A look at the last 7 years under Chairman Grundmann. For the last few months the Nation has been anticipating the inauguration of a new President. The Merit Systems Protection Board (MSPB) is also going through its own transition. Now is a good time to look back at the tenure of MSPB's former leader and peek at what may lie ahead for the agency.

Following nomination by President Obama and confirmation by the Senate, Susan Tsui Grundmann became a Member and the ninth Chairman of MSPB on November 5, 2009. She served through January 7, 2017.

One of Chairman Grundmann's first initiatives was to create a new form of decision at the Board level. Traditionally, a decision from the full Board has consisted of either a short, standardized, non-substantive denial of a petition for review or a full explanation of the Board's action on the petition that contains findings of fact and conclusions of law and that represents citable precedent. Chairman Grundmann persuaded her colleagues that there should be a third type of decision, one that would inform the parties and any reviewing body of the Board's reasoning but that would not constitute citable precedent. This third kind of decision, which has come to be known as a Non-Precedential Final Order, promotes transparency and clarity for parties.

In addition to bringing more of the Board's reasoning into the public light, Chairman Grundmann created opportunities for greater stakeholder input into Board decision making. For example, Chairman Grundmann selected three complex cases of Governmentwide significance for oral argument before the three Board members that was open to the public. These were the first oral arguments at MSPB in decades. Further, in developing research agendas for MSPB's studies program, Chairman Grundmann solicited input from all interested parties and convened public meetings at which selected stakeholders presented ideas to the Board members.

In 2013, MSPB was hit with over 33,000 appeals from furlough actions related to the budgetary sequester. The furlough appeals amounted to over five times the number of cases that MSPB receives in a typical year. Providing fair adjudication of this massive group of cases along with the rest of the agency's docket was a top-to-bottom effort, with all hands at all levels of MSPB contributing.

Congress enacted significant legislation affecting MSPB during Chairman Grundmann's term. The Whistleblower Protection Enhancement Act of 2012 expanded the substantive scope of protections for Federal employees who disclose waste, fraud, and abuse, and also augmented the remedies for individuals who claim retaliation before MSPB. The Veterans Access, Choice, and Accountability Act (VACA) of 2014 modified the procedural rights of senior executives removed from the Department of Veterans Affairs for cause. Joined by her fellow Board members, Chairman Grundmann led MSPB in adjusting to these new laws and expressing concerns about the constitutionality of a portion of VACA.

Under Chairman Grundmann's leadership, MSPB issued informative reports on topics such as employee engagement, fair and equitable treatment, veterans' rights, discrimination based on sexual orientation, women in the Federal Government, and workplace violence. Moreover, both personally and through MSPB publications, Chairman Grundmann has emphasized to policy makers and other stakeholders that providing constitutional protections to tenured Federal employees is a price worth paying for an objective, non-partisan Federal civil service.

All of us at MSPB will miss Chairman Grundmann for her intelligence, wit, energy, and above all, her advocacy for the preservation of the Government's merit-based personnel system. We wish her well in her next endeavor.

Unfortunately for MSPB, Chairman Grundmann's departure has left the agency without the quorum needed to issue decisions at the Board level and release reports to Congress and the President. Member Mark A. Robbins will perform the other functions vested in the Board while we await the arrival of new members and the establishment of a quorum. □

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