

ISSUES OF MERIT

July 2006

a publication of
the U.S. Merit Systems
Protection Board,
Office of Policy
and Evaluation

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Government's Technical Experts: Will They Stay or Will They Go?

Contracting Officer Representatives share their views on what may influence their career planning.

The Office of Personnel Management is estimating that 40 percent of the Federal workforce will retire over the next 10 years. While this large number of potential retirements is enough to make anyone stop and think, it is even more important to look at what specific work and job-types may be affected not only by this retirement wave but also by other career planning decisions.

Take, for example, Contracting Officer Representatives (CORs). In addition to their functional duties, CORs oversee the technical aspects of Government contracts. Over the years, agencies have procured increasingly complex and costly contracts and accordingly, have increased the amount of money spent on contracts. In fact, the annual amount spent on contracts grew by 87 percent between 1997 and 2004. Considering the importance of the work CORs perform and the billions of dollars they oversee, the Government needs to ensure that it retains sufficient CORs to provide the technical expertise needed to manage this vast array of contracts.

The Merit Systems Protection Board's (MSPB) recent report, *Contracting Officer Representatives: Managing the Government's Technical Experts to Achieve Positive Contract Outcomes*, evaluates

how the Government manages the COR workforce to achieve higher quality, timelier, and more cost effective contract deliverables. As part of the study, MSPB conducted a survey of CORs who provided interesting information about how contracting work affects their job satisfaction and career planning.

CORs spend a large amount of their work time on contracting duties and consider these duties to be important to their job success and satisfaction.

- Most CORs reported spending more than 25% of their work time on contracting duties, while 42% spent over half of their time;
- Almost 90% of CORs rated their contracting work as important to their overall job success;
- 64% rated contracting work as increasing their job satisfaction.

In addition, CORs' desire to remain in their current job may be affected by the amount of contracting work they perform in relation to their salary.

- Only one-third of CORs agreed that they would want to stay in their current job if their contracting work increased but their grade and pay remained the same—about 4 in 10 disagreed;

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The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

Issues of Merit

We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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DIRECTOR'S PERSPECTIVE

The Practice of Merit: A Message from the Future

Traditional personnel rules don't hold all the answers to achieving merit.

On April 20, 2006, MSPB held a symposium entitled *The Practice of Merit*. The symposium brought together top Federal officials involved in human resources management, as well as Congressional staff, academicians, and union officials. The event provided an opportunity for us to examine how agencies that are exempt from some or all provisions of Title 5—the law that governs most of the Federal Government—remain true to the fundamental values of public service such as fairness, openness, and equity.

We were honored to sponsor presentations from agency representatives whose systems have been in place for many years and can speak authoritatively on preserving merit in a world of alternative personnel systems. These speakers provided many important insights for agencies that are considering changes to their personnel systems, for the managers who will work with those systems, and for the employees who will be affected by those systems. While our office will release a report on the symposium proceedings later this year, I wanted to share a few of the key lessons we learned from this experience.

First, “flexible” does not mean “arbitrary.” Alternative personnel systems are not created simply to give managers more flexibility. Flexibility is a means to an end: selecting, managing, and paying employees in a way that supports the organization’s mission and values. That end is only achieved when personnel decisions are based on appropriate factors and

sound data. Consequently, alternative personnel systems include expectations and guidelines for how managers will use personnel flexibilities.

For example, the process used to appoint most medical professionals in the Department of Veterans Affairs (VA), under Title 38, does not use certificates. Nor does the process constrain hiring managers through mechanisms such as a “rule of three.” Nevertheless, VA expects its managers to base their hiring decisions on qualifications for the job.

VA also has considerable flexibility in setting starting salaries. VA’s Deputy Assistant Secretary for Human Resources Management, Tom Hogan, noted however that flexibility is to be used in a manner consistent with fairness to employees and quality care for veterans:

“When a person is hired, we look at the totality of his or her experience... You can set a grade, you can set a step within a grade, and you can recognize the exact achievements of that specific individual. One of the reasons we do that is because in health care there are measurable, demonstrable outcomes of the quality of the people that you have working for you. For example, if you have nursing wards staffed by nurses with a BS degree in nursing, as opposed to an AA degree or an older diploma, [research demonstrates that] you will have measurably lower mortality and morbidity rates. The quality of your care is better. We will pay people for specific education that we can correlate to better outcomes. That’s a very strong part of how we do business.”

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The Practice of Merit

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A second lesson learned is that safeguards are essential. Agencies recognize that managers are not perfect. They also recognize that it is important that employees believe they are being treated fairly. Accordingly, effective alternative personnel systems provide for systemic monitoring and individual protections. The Government Accountability Office's Chief Human Capital Officer, Jesse Hoskins, provided an excellent illustration of such safeguards:

"Whether it's an annual awards ceremony or whether it's performance cycles ending, performance-based compensation decisions, [or] promotion decisions, we independently review all the demographics and the data. We review it across teams; we review it within teams... We also have the Personnel Appeals Board. I've got to tell you how important that is for us. It's a total independent agency. We are not under Title 5, but I tell you, we've got every aspect of it as it relates to employee rights and entitlements. And it really is very important for us to have that independent body so that employees can go out and actually get access to an adjudication process or system that will afford them some protection."

In addition, we must keep in mind that while rules and safeguards are important, people and culture matter most. All of the agencies represented at our symposium recognized the importance of systems and safeguards. However, these agencies also delivered a "reality check" about the limitations of formal rules and processes. Ultimately,

the success of an alternative personnel system depends on people. It depends on agency leaders who make the necessary investments to design and administer a personnel system and who hold managers accountable for using personnel authorities properly. It depends on managers who understand and consistently apply appropriate criteria for personnel decisions. It depends on employees who understand what is expected of them and who believe that managers will do the right things for the right reasons. In short, success depends on a culture of managerial accountability and employee trust.

Finally, the time to prepare for future human resources flexibilities is now. Alternative personnel systems are less revolutionary than many might believe or fear. These systems are merit-based and preserve the values and protections that are the hallmark of the Federal civil service. Yet it's also clear that much work lies ahead for Federal agencies. The transition from traditional, rule-based personnel systems to more flexible personnel systems will require much more than rewriting civil service laws and regulations. The transition will require agencies to develop managers, engage employees, and build trust. That will take considerable time and sustained effort. The message from our symposium is that agencies can begin the transition today, without waiting for "civil service reform"—but they should not expect to complete the transition overnight. ❖

Steve Nelson

Director, Policy and Evaluation

Contracting Officer Representatives

(continued from page 1)

- 71% of CORs would remain in their jobs if their contracting activities and their grade and pay increased. *Like the rest of Government, the COR workforce is aging. In fact, we could be facing a larger number of retirements in the COR workforce than the overall Federal workforce in the years to come.*
- Adjusting for the time frame of the survey, nearly half of the CORs are currently eligible, or will be eligible, to retire in the next 1-3 years;
- Almost 2 out of 3 CORs will be eligible to retire in the next 7 years. *While contracting work is an important part of their overall job, it does not appear to motivate CORs to extend*

their hypothetical retirement plans.

- Only 21% of CORs agreed that their contract-related activities make them want to remain in the civil service after they are eligible to retire; 42% disagreed. These survey results present a valuable insight into how CORs feel about their contracting work and the influence it may have on their career decisions. Considering the continuing growth and importance of Government contracts, the Government needs to develop strategic solutions to ensure that it has enough experienced technical and professional employees to provide the expertise required to effectively develop and manage contracts. ❖

The Keys to Practicing Merit

Comptroller General David Walker and OPM Deputy Director Dan Blair share their thoughts on maintaining merit in this time of increasing personnel flexibilities.

How can agencies maintain merit in an environment outside of typical human resources rules and regulations? That was the topic of MSPB's April symposium, *The Practice of Merit*. Our keynote speakers, Comptroller General David Walker and Office of Personnel Management Deputy Director Dan Blair, shared their perspectives on how to preserve merit in these systems.

Keys to a Successful Workforce Transformation

Mr. Walker spoke about the workforce transformation he initiated at the Government Accountability



David M. Walker,
Comptroller General of the United States

Office (GAO) and the role merit played in aligning individual with organizational performance. He acknowledged that, "Our way is not *the* way; it is *a* way" and offered valuable advice to agencies initiating human capital transformation efforts.

First, he recommended

taking a phased-in approach, starting at the top and with new employees, then moving to the middle. Transformation efforts require committed, sustained, visionary, capable, and credible leadership at the top. But this is not enough by itself. People are the key to successful transformation efforts, and a number of key players and stakeholders must also be involved.

Next, he advocated having a strategic human capital plan to help ensure the agency knows where it is trying to go. More importantly, he stressed the need for a modern, effective, and credible performance management system that is tied to the strategic human capital plan and validated by employees. Such a system must fairly assess performance based on valid and transparent standards.

In addition, he said a credible internal reconsideration process and an external appeals process are critical components of any transformation effort. At GAO, the internal reconsideration process ends with the Comptroller General. For its external appeals, GAO employees go to an independent appeals board called the Personnel Appeals Board, much like the MSPB for agencies in the competitive civil service.

Finally, Mr. Walker recommended incorporating safeguards and accountability mechanisms. Employee involvement and multi-level reviews are necessary when developing and implementing new systems.

Merit: A Framework for Change

Merit is "an amazing tenet that has withstood the test of time," according to Dan Blair, Deputy Director of the Office of Personnel Management (OPM). Mr. Blair addressed the role merit plays in a decentralized personnel system in his keynote address. He noted that merit has been a key element of the successful use of personnel flexibilities in the past and has a role for the future. "When you give these flexibilities to agencies, it needs to be done within a current, coherent framework," he said—and merit is a part of that framework.

Describing the evolution of the civil service from the late 19th century to the present, Mr. Blair indicated that merit has remained a constant, guiding principle. He noted that the Federal Government was one of the first employers to provide merit-based workplace protections—and these protections continue today.

As Government moves toward decentralized personnel systems and new flexibilities, Mr. Blair noted that OPM is taking several steps to help agencies preserve merit. First, he indicated that OPM works with agencies to develop rules and regulations that are consistent with the merit principles, as it did with the new personnel systems in the Departments of Defense and Homeland Security. Second, OPM monitors agency progress on human capital initiatives through the President's Management Agenda. Finally, OPM is



Dan G. Blair, Deputy Director,
U.S. Office of Personnel Management

working with agencies to establish self-assessments of their merit systems. According to Blair, "We talk about having a new system of accountability. We talk about having new personnel systems. We talk about Government reform taking place. But it's all done according to a core central tenet—and that is merit system principles." ❖

Reference Checking: Don't Neglect the Personal Touch

Short-cutting the reference checking process may hurt your ability to hire the best person for the job.

Your office is hiring a new employee. It is a lot of work to review applications, conduct structured interviews, and administer work sample tests. But as a hiring official, you know it is worth it. Ever since your most senior employee retired several months ago, everyone has been pushing harder to accomplish the same work. All of you are looking forward to a reasonable workload again once the office is fully staffed. You are in the home stretch with three promising candidates—you could imagine any of them working with you.

It's time to check their references—the last stage of information gathering before a job offer is made. You have read MSPB's 2005 report, *Reference Checking in Federal Hiring: Making the Call*, and know it is important to verify candidates' claims about training and experience before making an offer. You and your staff are firmly committed to checking references.

But isn't there some way to make this go a little faster—and require less time from your over-taxed staff? Perhaps you could streamline the process by asking candidates to submit letters of recommendation. You might even conduct the reference checks by email or ask reference providers to rate candidates and type descriptions of their performance into Web-based forms.

You should, however, resist the impulse to cut corners. Letters of recommendation rarely contain a critical review of a candidate's qualifications and are often written by the candidates themselves. And using letters, email, or Web-based forms removes the personal touch from reference checking. Conducting reference checks on the phone or in person brings the following three personal factors into play that are crucial to the quality of reference checks.

Establishing Rapport. Reference providers have no trouble including routine information in a letter, email, or Web form. But information about sensitive topics, such as a candidate's poor job performance or out-of-bounds office behavior, is likely to be omitted from a written document. When reference checks are conducted by phone, the reference checker can establish a connection with the reference provider based on common experiences evaluating employees and the common goal of making good hiring decisions. This connection fosters more candid discussion of sensitive issues and produces more

useful information.

Listening. Written responses conceal much of the process used to produce them. As you read this paragraph, you see only the final result of writing, reviewing, and editing. You cannot know where the writer was hesitant or unsure, where someone else's words have been inserted, or where something written in candor was regretted and removed. The interaction of telephone reference checking allows the reference checker to respond to the pace and other verbal cues as a candidate is described.

Probing. Reference checkers can use the rapport they build and the verbal cues they detect to ask probing questions. Reference providers may be initially reluctant to discuss sensitive, but job-relevant topics. But they will rarely lie when asked direct follow-up questions about issues that emerge in reference checking. These direct probes can only be part of an interactive discussion conducted with skill and sensitivity by another person—not an interactive Web form.

Keeping these three factors in the reference checking process will increase the quality of the information you obtain. You will be able to make a more informed decision about your three candidates, especially if one or more of them has exaggerated or misrepresented their work experience. Don't neglect the human touch in reference checking! ❖

MSPB Wants Your Ideas!

If you were asked to identify the top Federal human capital issue you currently face, what would it be?



MSPB's Office of Policy and Evaluation wants your views! We are in the process of developing our research agenda—the topics we will study over the next 1-3 years—and we want you to share your ideas on what needs to be studied. You may submit your suggestions by visiting MSPB's Web site at www.mspb.gov/studies/mspbstudiespage.html or by emailing them to research.agenda@mspb.gov.

The Business Case for Workforce Diversity

Workforce diversity has become an increasingly important aspect of Federal hiring. Originally, workforce diversity was viewed as a social responsibility—righting the wrongs of past discriminatory workforce practices. However, it is apparent that workforce diversity is no longer just about responsibility. It is equally important as a business imperative, and there are important steps agencies can take to improve their diversity practices.

In today's work environment, an employer's greatest asset becomes the knowledge its employees possess, regardless of race, gender, national origin, age, physical ability. In fact, as the labor force becomes increasingly diverse, employers can impede their ability to attract quality hires if they do not expand recruitment and retention strategies to include diverse groups. This is particularly important since employees with different backgrounds and experiences can enhance the collective knowledge of the workforce and provide a better understanding of customers' issues, given that the customer base is also becoming increasingly diverse.

Many researchers predict that there will be a "human capital crisis" in which a large portion of the Federal workforce will soon retire. As Government addresses its human capital challenges and reshapes its workforce, we will likely be presented with a valuable opportunity to

increase the diversity of the Federal workforce. Some of the best practices agencies can employ include:

Leadership Support. Agency leadership needs to make workforce diversity a priority and obtain the resources necessary to support it.

Communication. To ensure that workforce diversity is valued throughout the organization, the agency's leadership needs to communicate its commitment to diversity to the rest of the agency.

Training. Provide training to management and staff. This will help ensure that the organization shares the same vision with regard to workforce diversity.

Analysis. It is important that an agency continually analyze the representativeness of its workforce. Agencies may find that while they are well represented overall, there may be deficiencies in certain occupations or grades that they might need to address.

Measurement. Develop specific, measurable goals and objectives based on workforce analyses.

Rewards. To reinforce the organization's support and vision of workforce diversity, reward employee and managerial behaviors that are valued in the organization.

As the Government addresses its human capital challenges, it is provided an opportunity to recognize and capitalize on diversity as a business imperative. ❖

What Agencies Should Know in a Post-Van Wersch & McCormick World

MSPB's report, *The Probationary Period: A Critical Assessment Opportunity*, noted that the probationary period is a key part of the assessment process. Probationers have had limited procedural and appeal rights, making it easier for agencies to act quickly and with greater finality to terminate a new employee who exhibits deficient performance or conduct. Two court decisions, however, have changed how we define who is and who is not a probationary employee.

For the probationary period to continue as an effective assessment tool in the hiring process, Federal agencies should: 1) understand how the law currently defines individuals who have full procedural and appeal rights; 2) use that understanding to calculate when new employees will become entitled to these rights; and 3) terminate individuals with performance or conduct deficiencies before they become entitled to such rights.

In the past, Government interpreted the law so

that there were two groups of individuals who had procedural and appeal rights: 1) those who had completed a probationary or trial period, AND 2) those who were not required to serve a probationary or trial period but had completed 1 year (competitive service) or 2 years (excepted service) of continuous service. So, if the individual was *currently* serving a probationary period, he did not have appeal rights—even if he had the 1 or 2 years of service.

In *Van Wersch v. Department of Health & Human Services*, the U.S. Court of Appeals for the Federal Circuit changed that interpretation for the excepted service. The decision held that an excepted service non-preference eligible is entitled to full procedural and appeal rights if she is not serving a trial period, OR if she has completed 2 years of the requisite continuous service. In *McCormick*



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Reforming Federal Hiring: Aim for Quality

What is wrong with the Federal hiring system? Many applicants, hiring managers, and Federal human resources professionals would ask “what isn’t wrong with it?” The challenge of reforming the hiring process is, in fact, the topic of MSPB’s upcoming perspectives report, *Reforming Federal Hiring: Beyond Faster and Cheaper*.

The Federal hiring process has changed extensively since it was officially established by the Pendleton Act over 120 years ago. Recent changes include the decentralization of staffing authorities, the granting of new flexibilities and agency-specific legislation, and the use of automated hiring processes.

However, these changes have largely resulted in short-term remedies that focus on making the hiring process faster and cheaper. While these are worthy goals, faster and cheaper are not everything. Ultimately, the Government needs a hiring system that accomplishes many goals. It needs to be responsive to managers’ and applicants’ needs, produce high-quality applicants, support timely decisions, and result in competitive job offers. This requires longer-term, strategic reform with an emphasis on quality in addition to efficiency.

A key example of how the Government has put efficiency before quality is its use of applicant assessment tools. Agencies potentially have a large array of assessment tools available to them to help distinguish

among those applicants who cannot do the job, who can probably do the job, and who can definitely do the job. MSPB has evaluated several of these tools and provided agencies with suggestions on how they can be incorporated into the assessment process. For instance, a multiple hurdle approach that includes such tools as written examinations, structured interviews, reference checks, and the probationary period could provide useful predictions of candidates’ job performance.



Unfortunately, MSPB has found that agencies tend to use assessment tools that are not good predictors of performance, such as poorly designed ratings of training and experience. These tools may be fairly inexpensive to develop, but they are less likely to result in quality selections than tools that are better predictors, such as work sample tests, written examinations, and structured interviewing. This is especially true when these more predictive tools are used successively to differentiate among candidates and place them into quality categories.

What MSPB has found through our research is that many valuable hiring reforms, such as the use of multiple hurdles, do not require changes to law or regulation. But they do require that agencies look at hiring differently—with a greater emphasis on quality. ❖

Probationary Period

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v. Department of the Air Force, the court held that an individual in the competitive service is entitled to full procedural and appeal rights if the individual is not serving a probationary period under an initial appointment, *OR* has completed 1 year of the required continuous service.

So, in the post-*Van Wersch & McCormick* world, agencies should understand that even though an individual is still serving a probationary or trial period, he may be entitled to full procedural and appeal rights if he has the requisite type and amount of Federal service. To ensure that there is a probationary or trial period that can be used to further assess the qualifications of the employee, agencies must identify—soon after an individual is hired—the type and amount of prior Federal service the individual has. This prior service dictates when the individual obtains full procedural and appeal rights.

To make this determination, agencies should begin

with any prior Federal employment history included in an appointee’s resume. The accuracy of such information should have been verified through a reference check. Each appointee should also complete a Standard Form 144, Statement of Prior Federal Service. If the person is being appointed without a break in service from another Federal agency and the Official Personnel File has not been received, agencies should obtain information by using a Standard Form 75, Request for Preliminary Employment Data. The information for completing this form may be received through a telephone call or the form may be mailed to the prior employing office.

Using these techniques, agencies can accurately compute the time they have to assess a candidate via a probationary period and, when necessary, apply the appropriate procedures to terminate the candidate based on performance or conduct deficiencies. ❖



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July 2006

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The Practice of Merit Symposium. *MSPB sponsored a symposium to discuss how agencies practice merit in alternative personnel systems.*

- *Our Director shares some of the key lessons learned. (Page 2)*
- *The Comptroller General of the United States and the Deputy Director of the Office of Personnel Management discuss the keys to merit in their keynote addresses. (Page 4)*

Keeping the Personal Touch in Reference Checking. *As Federal employees are becoming overtaxed and technology is making it easier to carry out many tasks, it becomes appealing to shortcut reference checks. Learn why shortcuts may lead to dead ends. (Page 5)*



Reforming Federal Hiring. *A new MSPB perspectives report focuses on how the Government can improve its hiring process—focus on quality in addition to efficiency. (Page 7)*



The Business Case for Workforce Diversity. *Workforce diversity has become a business imperative. Find out why and what agencies can do to improve their diversity practices. (Page 6)*

The Probationary Period. *Two court decisions have changed how we interpret who is and who is not a probationer. Find out what you need to know about these decisions and how they affect your new employees' procedural and appeal rights. (Page 6)*