DoD Brings Changes to RIF Procedures

Many NFFE DOD Locals have received the attached [letter](http://www.nffe.org/ht/a/GetDocumentAction/i/134599) *Policy and Procedures for Reduction in Force in the Civilian Workforce.* The policy is dated January 19, though you probably received it later.It was issued as a result of a change in law contained in the National Defense Authorization Act of 2016 (“NDAA”). Against the wishes of NFFE and other DoD unions, the NDAA directed the Secretary of Defense to establish procedures so that the order of retention in a RIF is based primarily on individual employee performance.

Although this change is occurring at the same time as the roll out of New Beginnings Performance Management initiative, it is a separate policy. NFFE and other unions were very involved in the development of New Beginnings. However, we were not involved in this RIF change and object to it. Does this change mean that an employee with thirty years of service, or a ten-point veteran, could be placed behind a new employee with an outstanding rating? Perhaps it does. If so, it raises the possibility of discrimination occurring against employees based on age, race, veteran’s status, or any other protected class.

So, how should NFFE locals respond to this notice? Since the implementing policy is in the nature of an agency rule, NFFE’s position would be that any RIF procedure in our contracts which conflicts with the rule cannot go into effect until the contract expires. Our contracts “TRUMP” this rule to the extent there is a conflict. Tell management that in writing.

If your contract does not address RIFs, management still must negotiate the impact and implementation of this procedure with the Local before the policy is implemented.

**Step 1**

As a first step, **look in your contract and see if you have a deadline for submitting I and I proposals**. Before that deadline occurs, ask for a “clarification meeting” with HR so that management can explain to you how they see this policy impacting your workplace. **Request an extension of time** so that you can submit proposals after the briefing.

**Step 2**

**Submit an information request** in order to ascertain whether or not this change will have a discriminatory impact on your bargaining unit employees.

Request the following data under 5 USC § 7114 (and separately under FOIA if you can) for each individual in your bargaining unit in an excel spreadsheet:

• Race

• National Origin

• Gender

• Disability

• DOB (ask for year of birth in one column and month in another)

• SCD (ask for year in one column and month in another)

• 5-point vet status (Y/N)

• 10-point vet status (Y/N)

• Competitive or excepted service

• Salary grade

• Salary scale (GS, WG, Other)

• Overall appraisal score for each of the last three years (you need a standardized way of expressing these, e.g., 1-2-3-4-5 or U, MS, FS, ES, O, etc.)

• Whether they received a QSI in any of the last three years

• Whether they received a Sustained Superior Performance award in any of the last three years.

In order to establish “**particularized need**" under 5 USC § 7114, make sure you explain that the information is needed to evaluate possible disparate impact.

Ask that you be given the information **before** your proposals become due. This will enable you to evaluate the information before you submit proposals.

If management is pressing you for proposals, propose that they run a mock RIF and provide you the results so that you can assess disparate impact.

Attached is a [list](http://www.nffe.org/ht/a/GetDocumentAction/i/134601) of additional negotiable topics for procedural RIF proposals. If you have questions about how to proceed, contact your business representative, or Jeff Friday (jfriday@ NFFE.org) or Renee Mantone Catalano (rmantone@NFFE.org) of NFFE’s Office of General Counsel.