

July 26, 2017

Hon. Ron Johnson, Chairman
Committee on Homeland Security
& Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Hon. Claire McCaskill, Ranking Senator
Committee on Homeland Security
& Governmental Affairs
United States Senate
442 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Senator McCaskill,

The undersigned unions representing hundreds of thousands of U.S. federal workers worldwide are sending you this letter regarding President Trump's nomination of George Nesterzuk to be Director of the U.S. Office of Personnel Management (OPM). Our organizations have serious reservations regarding Mr. Nesterzuk's qualifications and acumen for this job and urges your committee to reject his nomination.

As you are both aware, OPM is the government agency that is tasked with overseeing the human resources policies of government agencies, ranging from hiring to job classifications to administering the health and retirement benefits of federal government workers. As such, OPM has a fiduciary and legal commitment to our nation's civilian workers, as well as an obligation to foster a federal government workplace that is attractive to the best and brightest, and free of discrimination, nepotism and political influence. Unfortunately, Mr. Nesterzuk's track record in these areas as a past political appointee of the federal government has been a failure, while his overall stated views toward the federal workforce are diametrically opposite to the mission and task of the OPM. In fact, if Mr. Nesterzuk applied for a rank and file civilian position in the federal government today he could very likely be denied due to past possible violations of the Hatch Act when he previously held a political position there.

George Nesterzuk's failed National Security Personnel System

In our view, the committee needs to look no further than Mr. Nesterzuk's leading role in the creation and implementation of the failed National Security Personnel System (NSPS) - a personnel system created in 2003 for most of the 700,000 Department of Defense (DoD) civilian workers - as reason enough to reject his nomination. After all, Mr. Nesterzuk was one of the principal architects of NSPS, which turned out to be a discriminatory personnel system created out of extreme ideological disdain for the due process worker protections and merit system principals that define our modern day civil service. Not surprisingly, NSPS was ultimately found to be illegal by a federal court, and Congress took the corrective actions necessary by repealing it as a part of the Fiscal Year 2010 National Defense Authorization Act, but not before hundreds of millions, if not billions of taxpayer dollars were wasted on Mr. Nesterzuk's botched NSPS experiment.

While there are many factors related to NSPS that led to its collapse, it is important to flag a couple here that should cause us all concern as to how Mr. Nesterzuk would perform and oversee the expenditure of taxpayer resources as OPM Director:

- First, it is important that lawmakers take a close look at the fiscal mismanagement and lack of transparency of Mr. Nesterzuk's NSPS program. This was brought to light in July, 2007 when the Government Accountability Office (GAO) issued a report (GAO-07-851) related to the costs of NSPS. While GAO attempted to uncover the true amount of DoD appropriated resources being dedicated toward NSPS, it was unfortunately unable to determine the true costs. Specifically, the GAO reported that the price of NSPS could not be determined because, "DoD has not established an oversight mechanism to ensure that these costs are fully captured." The report went on to de-bunk the DoD's grossly understated \$158 million price-tag, stating the DoD estimate did not, "include any of the typical indirect costs associated with the design and implementation of NSPS such as general administrative services, general research and technical support, rent, and operating and maintenance costs for buildings, equipment and utilities." Based on GAO's findings, it is easy to assume that much more than \$158 million dollars of taxpayer dollars was wasted on Mr. Nesterzuk's NSPS policy, and, at best, Mr. Nesterzuk was negligent in the expenditure of taxpayer dollars.

- Based on DoD’s own internal report in 2008, the NSPS performance based pay allocations and ratings were discriminatory based on race and the hierarchy of a worker’s position. For example, the report, which DoD commissioned from SRA International, found that those working in higher paying jobs generally received higher ratings and greater performance based compensation than those in lower level positions. Specifically, the SRA found that, “...the higher the pay, the higher the rating, the higher the proportion getting the higher number of shares for ratings of 3 or 4, the higher the percent who received an increased rating.” The report also found that being a racial minority, particularly an African-American DoD employee, had a negative impact on the employee’s job ratings and performance based raises. In cases where workers received the same ratings, minority workers were found to receive reduced performance raises and bonuses. This discriminatory ratings system that Mr. Nesterczuk has yet to condemn is a pre-cursor as to Mr. Nesterczuk’s laissez-faire views when it comes to equal treatment for all workers, regardless of race, sex or sexual orientation.

It is important to also note that NSPS eviscerated Veterans Preference in relation to hiring and retention, decimated the EEO and other due process protections of DoD workers, and left open the door for rampant discrimination and political patronage. If not for the courts and for Congress’ corrective actions in repealing NSPS, the NSPS ‘spoils system’, created in no small part by Mr. Nesterczuk, would have been alive and well again at the DoD.

George Nesterczuk’s employment with the Ukrainian Government

On May 23rd, 2017, FedSmith reported that Mr. Nesterczuk, “advised Ukrainian government officials on reforms of Ukraine’s public administration sector.” We believe that, considering the problematic connections that Paul Manafort, the former Trump Campaign Chairman, had with the Ukraine, and other issues connected to the Russian government, Mr. Nesterczuk should be asked the following:

- How long he worked for the Ukraine, who he worked for, what he did, and whether he was ever employed by and received compensation from the then pro-Russian government in the Ukraine? What is clear is that the Ukraine’s Russian backed Prime Minister, Victor Yanukovich was Prime Minister from November 21, 2002 to December 31, 2004, and again from August 4, 2006 to December 18, 2007. Mr. Yanukovich ultimately fled the Ukraine for Russia in February, 2014. For his part, Mr. Nesterczuk’s association with the Ukrainian government appears to have begun in late 2006. Mr. Nesterczuk should be required to provide a clear record of ALL of his work for or on behalf of the Ukrainian government- not just the above snippet of information.
- Mr. Nesterczuk should also be asked about his relationship with Paul Manafort, who was involved in presidential personnel appointments early in the Reagan Administration when Mr. Nesterczuk was hired to a political position at OPM, and many years later worked for the Ukrainian government around or at the same time as Mr. Manafort. Specifically, Mr. Nesterczuk should be asked if Mr. Manafort had a role in his hiring, and if he had any connections to his work on behalf of the Ukrainian government.
- Considering the revelations that Mr. Manafort, General Michael Flynn and possibly others may not have properly registered as “foreign agents,” Mr. Nesterczuk should be asked to disclose whether he ever registered as a “foreign agent” in his work with or on behalf of the Ukrainian Government. The information on whether he has ever received compensation from the pro-Russian Ukrainian government, and whether he was a registered foreign agent is important for many reasons, including in relations to the hack of OPM several years ago, which compromised the personally identifiable information (PII) of a large number of federal employees.

Mr. Nesterczuk has also had a long, checkered career both outside and inside the federal government. Here are a few examples:

- Possible violation of The Hatch Act – As reported by UPI on June 12, 1985¹, Mr. Nesterczuk was forced to resign his position as OPM Associate Director, stating that, “Nesterczuk, associate director for OPM administration, resigned from his post in 1982 to manage a Republican senatorial campaign and returned to this job a few days after his candidate lost...Federal law prohibits holding open any job vacated by an

¹ 6/12/1985, UPI, *Loretta Cornelius, acting director of the Office of Personnel...*

individual who is working on a political campaign.” Mr. Nesterczuk’s forced resignation implies that this was a likely Hatch Act violation.² Mr. Nesterczuk should be requested to provide more information to your committee. While the Hatch Act is administered by the Office of Special Counsel- not OPM- the question should be asked whether it is appropriate for someone who was reportedly forced to resign for breaking a federal law that generally applies to federal employees should be confirmed to be the Director of OPM, a position which exercises significant control over federal employees?

- Apparent attempt to provide a windfall pension benefit for former California Governor, George Deukmejian
- During his employment with California’s Citizens Compensation Commission in 1990, he made controversial compensation recommendations that would have led to a pension windfall benefit for outgoing California Governor George Deukmejian.³

It is our view that Ms. Nesterczuk’s long employment track record both in and out of government as well as for the Ukraine, leave us countless concerns. His apparent Hatch Act violation, dealings with the Ukrainian government and seeming attempt to pad the pockets of an outgoing Governor, are questions we hope that your committee will look at very closely.

What we are sure of is that he will again attempt to do a great deal of damage to members of the federal workforce and their due process rights. You need to look no further in judging what Mr. Nesterczuk intends to do if he were to win confirmation as OPM Director than a quote he gave in a September 1, 2006 Government Executive article entitled, *Tilting at Windmills*, when he answers the question of if he is happy with NSPS: "NSPS-am I happy with it? No, I'm not happy with where it's at now. I wish we could have prevailed in court. But I accept the fact that it's a continuing battle."

Along these lines, we believe that if confirmed the Senate would open the door for Mr. Nesterczuk to ‘continue’ his battle to put in place NSPS-like personnel systems throughout the federal government that would lead to even more lawsuits, waste billions more in taxpayer dollars, and result in rampant discrimination in federal workplaces across the nation. For this and the other factors listed above we therefore urge you to reject Mr. Nesterczuk’s nomination for OPM Director.

Sincerely,

AFL-CIO
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
Department for Professional Employees (DPE), AFL-CIO
Federal Education Association/NEA
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAMAW)
International Federation of Professional and Technical Engineers (IFPTE)
Marine Engineers’ Beneficial Association (MEBA)
Metal Trades Department (MTD), AFL-CIO
National Association of Government Employees (NAGE)
National Federation of Federal Employees (NFFE)
Professional Aviation Safety Specialists (PASS)
Seafarers International Union of North America (SIU)
United Power Trades Organization (UPTO)
Union Veterans Council (UVC), AFL-CIO

² 6/13/1985, UPI, *Acting OPM director asks for resignations*

³ 6/24/2017, AllGov.com, *Director of Office of Personnel Management: Who is George Nesterczuk?*