
THE DEPARTMENT OF HOMELAND SECURITY CHALLENGES THE FEDERAL CIVIL SERVICE SYSTEM: PERSONNEL LESSONS FROM A DEPARTMENT'S EMERGENCE

Richard W. Ryan
Public Administration
San Diego State University-Imperial Valley Campus

Abstract

The establishment of a Department of Homeland Security has become an opportunity for the reshaping of personnel rules governing federal employees, both those entering the new department and throughout the federal service. Policy debates over the department's creation and management are giving voice to different perspectives on the shape of human resources preferences in the new millennium. This paper examines the recommendations and goals of competing political perspectives on reforming public service personnel management and looks to the near future for potential impacts.

Overview

This paper focuses on the establishment of new personnel rules for the recently created Department of Homeland Security (DHS). The administration of President George W. Bush has argued successfully for creating maximum management flexibility over departmental personnel systems for the sake of realizing the department's anti-terrorism goals. Unions and Democratic supporters in the senate have countered that in-coming departmental employees, many with marginally sensitive jobs, may lose collective bargaining rights as well as merit service protection guaranteed by the 1978 Civil Service Reform Act (CSRA). This partisan and ideological clash, however, signals creative conflict over how best to modernize the federal civil service system. Critics of the system from the Heritage Foundation to the Brookings Institution maintain that the creation of a new department allows a rare opportunity to reform outdated rules and procedures.

This study examines changes introduced by the new legislation enabling DHS and the potential for personnel reform in the federal service over the next several years. Initially the paper explores the federal personnel reforms suggested

by civil service observers, the administration's plan for civil service rules at DHS, and anticipated conflicts growing out of the administration's DHS personnel strategies. Indeed, the department has barely entered into existence so it is necessary to be speculative at points but within the scope and analysis of the legislation.

The paper is developed in the following context. 1. There exists a legislative chronology to the creation of a new federal department and this one begins largely in the summer of 2002 when the policy agenda was being influenced to shape the bills creating DHS. 2. The checks and balances between the congressional and executive branches are examined, as they are apparent in fashioning any legislation. Also, in the case of DHS, partisan lines were drawn largely over rights and privileges of federal employees who would be absorbed into DHS. 3. It is important to note that the creation of a new department and reforming personnel systems are evolutionary processes and not accomplished in one fell swoop. As the Brookings paper notes, it will require years of adjustments by congress to complete the restructuring work just begun. (*Daalder, et al., July 2002*). 4. The interest in DHS human resources management has provided a focal point for civil service reformists, left and right, to advocate for system-wide changes. Thus, the DHS "human capital" management debate may continue to be a catalyst for an overdue recasting of federal personnel management for the next decade.

The Scope of Change

Opportunities to reorganize the federal government on such a grand scale are rare, and nothing as large as this has taken place since the Truman administration in 1947. (*Kemper, 2002*). On November 25, 2002, *President George W. Bush authorizing the creation of a Department of Homeland Security signed HR 5005, the Homeland Security Act of 2002, into law*. The new department will attempt to integrate 170,000 federal employees from twenty-two agencies with combined budgets of approximately 40 billion dollars for the purpose of counteracting terrorist acts against the United States. Instructive of the complexity of the task, the number of employees to be integrated into the new department is not precisely known. The Bush administration lists 170,000; Representative John L. Mica (R-FL) states 190,000; and Paul Light of Brookings calculates it as many as 225,000 employees. (*Barr, July 18, 2002, p. B2*). The administration's goal has been to design an agency as unencumbered as possible by traditional civil service

regulations arguing for best practices and a decidedly business school approach for “the strategic management of human capital.” The administration has been assisted by a Republican dominated congress, and from the right by the Heritage Foundation, the Public Service Research Foundation, and the *National Review*, among others. Employee groups critical of the changes include the American Federation of Government Employees that argues presidential flexibility already exists in law, specifically the 1978 CSRA. (*Lunney, August 28, 2002*).

The consolidation of twenty-two agencies into one federal department falls into Guy Peters’ category of reform being driven by environmental changes. The present case reflects both government initiative to respond to environmental demands and a transition that is fueled by the need to utilize technologies, technical and managerial, to counteract a threatening environment. An additional category, the institutional approach to reform, is useful in pointing out potential resistance to changes. According to Skelley’s (2002) analysis of Peters, “Reformers must contend with institutional inertia that confronts them when they seek to change familiar patterns of interaction, norms, written rules of work, symbols of organizational identity, and access for client and constituency groups.” (p.179).

H.R. 5005, creating the DHS, was a clear victory for the president giving him and his supporters the management flexibility they sought. Yet, as the Brookings assessment notes, “Indeed, there is not a single reorganization over the past seventy years, that has *not* been changed in some material way later on.” (*Daalder, et al., July 2002, p.36*) More so, since the creation of a new federal agency, one that will be the third largest, is a Promethean undertaking, not all the necessary organization is expected to be in place at the outset. Additionally, numerous public affairs institutes, opinion leaders, and members of congress argue that the birth of DHS is that rare opportunity to seize the momentum for personnel reform and extend it throughout the federal service. Surprisingly, groups from across the political spectrum concur that the federal service’s hiring and rewards system is antiquated. Some would agree with the Volcker Commission’s charge that, “It’s time to blow up the civil service system.” The National Commission on the Public Service recommended discarding the, “General Schedule, the pay and job classification system for the government’s nearly 1.8 million white-collar employees.” (*Barr, January 8, 2003, p.B2*). It is unlikely that reformers will be able to succeed in achieving such major personnel changes in the next several years. However, the shaping of DHS’s human resources systems will keep reform in the public eye and on congressional agendas.

CIVIL SERVICE PRINCIPLES AND CHANGE

Basic tenets of American public personnel administration include merit over spoils, equitable and fair treatment of employees, and a public service representative of the population it serves. Avoiding misuse of public employees or misappropriation of government resources is also noted in the 1978 CSRA. These principles guide personnel functions from hiring to job evaluations, to classification and pay, and severance. The norm in federal and most state public personnel systems is that merit comes first, and this gives merit-hires job tenure and protections unknown in the private sector. Since the 1960s, federal employees have also been permitted to form bargaining units. It is the potential interference of union rules and protections that the Bush administration contends might impede the anti-terrorism mission of DHS. The need for relocation, and the necessity to give an employee ample notification, is one example of this. The administration is pressing for a civil service that is more flexible for management's ends while still protecting public employees' rights. Part of DHS's success in human resources management, and in its overall mission, will hinge on how well these sometimes conflicting goals can be reconciled. Most of the contemporary rights and benefits realized by federal workers are consolidated in the CSRA of 1978 and Title 5 of the U.S. Code. Equity, nondiscrimination in pay, whistle blower protection, and the right to organize are major principles formalized in the CSRA. (*Sylvia and Meyer, 2002*).

The administration and its supporters cite state experiments with personnel systems that have eliminated civil service protection and job tenure in favor of procedures allowing hire and fire at will. Florida, Georgia and Texas have discarded traditional civil service protections and, according to observers (*IBM Endowment, 2002*) have not succumbed to spoils or other abuses. These three states have adopted various versions of civil service systems favoring management and discarding centralized personnel operations in favor of department-centered functions. Indeed, Harvard recently cited the State of Georgia for innovation in government personnel systems and *Governing* magazine's 2000 state "report cards" awarded Georgia's HR system a "B-." (*Governing, February 2001, p.50*). It is these systems, as well as the private sector, that the Bush administration seeks to emulate at the federal level.

Consensus for Reform

The president and his appointees tirelessly remind the public and congress that the United States is a nation at war. As a response to the events of

September 11, 2001, decisive government action is expected, and the administration has been skillful in delivering the message of integrating mission requirements, public security, and management power. Thus, the administration has sought to create a department with maximum management flexibility unencumbered by outdated civil service regulations. Kay Cole James, the Director of the Office of Personnel Management (OPM), is accurate when she speaks of an emerging consensus on what is broken and what needs to be fixed in the federal civil service:

First, that the current system is indeed broken—it does not and cannot serve our modern workforce well. Second, that now is the time to fix it—there is urgency, evidenced by the threat to our national security, and there is opportunity. And finally, that we can and we must create a better, fairer system based on the merit principles, a system that will attract and motivate the best and the brightest of the rising generation to heed the call to public service. (*James, July 15, 2002, p.4*).

During the summer prior to the congressional vote on DHS, OPM Director James was delivering speeches that made the administration's points on the need for a flexible personnel system at DHS. The organizational challenge consists of integrating anti-terrorism responsibilities spread over one hundred administrative units, with seven different salary systems, including employees represented by seventeen different bargaining units. "The President's legislation allows the Secretary of Homeland Security, working in conjunction with the Director of OPM, to develop a new personnel system. The ...development of this system will be fair, balanced and objective, with participation by all stakeholders—including unions, interest organizations, and employees." (*James, July 15*). James went on to argue the case for reforms in pay for performance and in replacing the "antiquated" General Schedule. In her speeches, James advocated market rate pay for talented employees and touted recruitment changes for the Senior Executive Service (SES). The implementation of market and merit pay plans in light of numerous presidents' and congress' failure to request and appropriate funds is, however, suspect.

While James made it clear that the administration's perspective is one of "corporate HR," the OPM director enumerated rights and protections that DHS employees can expect. Among these are whistle blower protection, veteran's preferences, and coverage by the Civil Rights Act, the Fair Labor Standards Act, and the Hatch Act, as well as participation in employee bargaining units. (*James, July 15, 2002, p.2*) In a speech to the House Select Committee, also in July,

James declared that the administration's attempts to modernize personnel management and to create a "Culture of Urgency" were not attempts at "union busting." (*James, July 16, 2002, p.2*).

The administration's spokespersons have done well in capitalizing on the interest among groups, left and right, for government reform while walking a fine line between corporate HR, on the one hand, and traditional protections, on the other hand. The creation of a new and large department affords an opportunity that occurs rarely in Washington, D.C., to reorder personnel systems, and this occasion has attracted widespread support. Volcker's National Commission on the Public Service recommends a more sweeping personnel agenda, yet, one that parallels James' call for sharp reforms of the existing service and for increasing executive powers but with significant qualifications. The Volcker Commission supports James' recommendation for "...compensation related to current market comparisons," reorganizing SES, and reforms to streamline employee recruitment. Called for are "new personnel management principles" aimed at increasing employee performance and flexible personnel systems shaped by agencies to attain goals. However, the commission also calls for reducing the number of presidential appointees and a strong role for congress in fashioning federal service personnel reforms. (*National Commission on the Public Service, January 15, 2003*). Professor Paul Light, a co-author of the Brookings report, "Assessing the Department of Homeland Security," supports the necessity to reform outmoded personnel practices. Light is not optimistic that the new department can integrate disparate services or agency cultures, but he does see an opportunity to create more flexibility in management and in personnel practices including expediting presidential appointments. (*Daalder, et al., July 2002; Light, June 12, 2002*).

THE ADMINISTRATION'S HUMAN RESOURCES PLAN

According to a June 2002 White House document, "The President proposes to create a new Department of Homeland Security, the most significant transformation of the U.S. government in over a half-century by largely transforming and realigning the current confusing patchwork of government activities into a single department whose primary mission is to protect our homeland." (*Bush, June, 2002, p.2*).

However much agreement exists on the need to reform the federal service, the devil is, indeed, in the details. The clash that took place throughout the summer and early fall 2002 was largely between the administration's proposal for extraordinary personnel authority and the Democratic controlled senate's

opposition in approving such measures in the bills circulating in congress. The disagreements were, at times, constitutional. Senators Robert C. Byrd (D-W.VA) and Representative F.James Sensenbrenner, Jr.(R-WI) opposed the legislation as granting too much executive power. Professor Stephen Wayne points out that Vice President Dick Cheney and others who have served in pre-Watergate Republican administrations and who come from the private sector seek to restore power to the weakened executive branch. (*Dalrymple, November 16, 2002, p.3005*).

Then senate majority leader, Tom Daschle, spoke against the administration's attempt to deny DHS employees union representation, and senate minority leader, Trent Lott (R-Miss.), countered, "The homeland security department is being blocked by senate Democrats who are determined to protect the interests of their union bosses in the bureaucracy." (*Bettelheim, October 19, 2002, p.2741*). Senate Democrats accept that Zell Miller (D-GA) lost his seat as a result of such political rhetoric. With the Republicans gaining a senate majority in the November 2002 elections, President Bush pushed for a vote, and *H.R.5005* was approved.

The administration's management authority and plan for DHS is as follows.

1. Primacy of management rights

The ascendancy of management rights is considered of paramount importance due to national security concerns. Management retains maximum flexibility pertaining to hiring, pay, discipline, reassignment of personnel and rewriting job descriptions. (*Barr, January 21, 2003, p.B02*). Indeed, the secretary can reorganize the agencies coming into the department and notify congress within sixty days. Congressional committees will not have the oversight written into an original version of the bill by one of its early authors, Senator Joseph Lieberman (D-CT). Thus, the secretary will have power to be flexible with human resources. The secretary will consult with union leaders and bargaining unit representatives to discuss changes in work rules. The legislation provides for notification of and review by employee representatives of any civil service rule changes. Unions can appeal to congress if they object to the secretary's changes, but in the end, the secretary can impose new rules even if congress objects. (*Friel, November 22, 2002; Dalrymple, p.3002*).

2. Preservation of Employee Rights

In a December 2002 speech by Department Secretary, Tom Ridge, to incoming DHS workers, he sought to allay fears. “All of the civil service protections...the Fair Labor Standards Act and the Hatch Act and the whistleblower protection and a variety of other protections—they move right along in the department.” (*Barr, December 18, 2002, p.A33*). The official DHS web site, “Working with DHS,” also seeks to reassure employees that despite the transition, their work worlds will remain stable, at least for a year. Veterans benefits and spoils protection will remain intact as will collective bargaining units. (*U.S. Department of Homeland Security, 2003*).

3. Application of “best practices”

There will be an application of “best practices” and the importation of private industry models in HR management. (*Kamarck, June 2002*). It has already been noted that George W. Bush is the nation’s first MBA president. His executive experience derives from private industry, and he enthusiastically promotes private sector models. (*Friel, 2002; Firestone and Bumiller, 2002*). It requires noting that the Democratic administration of Bill Clinton acted similarly inviting William Ouchi as a management advisor, and adopting Osborne and Gaebler’s *Reinventing Government* as the blueprint for the much touted National Performance Review. The difference is that the Bush administration is presented with the unique opportunity of implementing H-R reforms in a new department and using this as a model of its vision for the entire federal service. (*Gore, 1993*).

COLLECTIVE BARGAINING RIGHTS

The high profile conflict in framing the legislation has been over union representation of DHS employees. Seventeen different unions represent incoming employees of the twenty-two agencies, and union leaders have feared that the administration was using the DHS’s national security mission to disarm unions as well as terrorists. (*Bettelheim, 2002, p.2030*). Union leaders point out that the president already has the power to disband unions if their representation of employees in sensitive areas is compromising national security. Under labor-management guidelines within the Civil Service Reform Act of 1978, “...the president can issue an executive order blocking employees from organizing under a labor union...but it would have to determine that collective bargaining would get in the way of national security.” (*Lunney, August, 2002*). In fact, bargaining

units for the National Imagery and Mapping Agencies were abolished under the agency's 1996 enabling legislation when the agency's mission changed to include more sensitive defense and anti-terrorism goals. The law vested this power in the agency's director, and he exercised it in January 2003. Recent rulings by the Federal Labor Relations Authority have upheld such actions reflecting adjudicatory changes and caution since September 11, 2001. (*Barr, February 10, 2003, p.B02*) Some senators, such as Arlen Specter of Pennsylvania, think this power should be the president's alone. (1)

While union representation of DHS employees will continue, union power has been lessened in the November 2002 legislation. Undoubtedly, sweeping reorganization legislation such as this will be revisited (*Light 2002*), and the influence of unions will wax and wane depending on the philosophies dominant in congress. In December 2002, a moderate group in the House of Representatives, the Republican Main Street Partnership, issued a plan advocating "training and simulation programs" for DHS employees. But the thrust of the report was to signal support for government employees who have been anxious over possible loss of protections. (*Barr, December 11, 2002*). Similarly, during Tom Ridge's confirmation hearing, Senator Dan Akaka (D-HI) warned Ridge not to tamper with employees' rights or to use DHS to test "untried management initiatives." Other senators issued similar cautions to Ridge, himself a former union member. (*Barr, January 21, 2003, p. B02*). The point here is that both congressional Democrats and Republicans are keeping a watchful eye on enhanced executive powers. The power conflict is also between branches of government although it is too often portrayed simply as a partisan fight.

SYSTEM-WIDE CIVIL SERVICE REFORM, THE LONG-TERM VIEW

Although the *National Review* doubts that even presidential power is sufficient to challenge the "divine rights of federal workers," civil service reform does appear to be spreading in Washington, D.C. (*O'Beirne, July 15, 2002*). The Volcker Commission is recommending DHS as the model for extensive federal system revamping and consolidating government into a lesser number of "mission-related executive departments." The Department of Defense, for one, is considering reorganizing its civilian work force. (*Barr, January 21, 2003, p.B02*).

Senators George Voinovich (R-OH) and Daniel Akaka (D-HI) included legislation in the Homeland Security bill creating eight H-R reforms throughout the

federal system. Prominent among these are changes in the hiring process whereby managers can utilize “categorical ranking,” clusters of qualified applicants, instead of the rule of three. And for severe personnel shortages and “critical hiring needs,” OPM can grant the agency direct hiring power. Agencies will also be able to offer \$25,000 buy outs for employees whose positions have become redundant as part of “workforce restructuring.” Senior Executive pay caps would increase to \$154,700, however, agencies must be able to demonstrate to OPM that they utilize performance evaluation systems in awarding pay increases. Finally, agencies’ ability to pay for employees’ higher education costs will be facilitated. (*Friel, November 19, 2002; Barr, May 11, 2003, p.C02*). Senator Voinovich will introduce additional legislation in 2003 allowing more agencies to experiment with pay for performance systems through demonstration projects. While such demonstration projects are not new to the federal service, their utilization is limited to ten at any one time. (*Barr, December 9, 2002, p.B02*).

President Bush’s fiscal year 2004 budget emphasizes the need for pay for performance across the federal service as well as outsourcing of “commercial” jobs in government. Needless to say, these proposals are widely criticized by union groups. The budget document reports that, according to the administration, little progress is being made in either area, noting that only six of twenty-six agencies have made progress in personnel areas such as pay for performance. (*Barr, February 2, 2003, p.C02*). Part of the problem is that the federal service has a poor record of training managers to implement pay for performance reforms. Another is that congress and the executive are both guilty of rhetorically supporting pay reforms but failing to budget and appropriate the necessary pay supplements.

CONCLUSION

While both the opportunity and consensus for civil service reforms exist, larger, cross-cutting questions persist concerning the transferability of private management practices to government. Although the status of corporate America’s management ability, recent scandals aside (*Schley, 2002*), is emulated worldwide, the applicability of private sector management to government operations and personnel is still dogged by substantive differences. Most public sector employees would prefer to be equipped with industry’s computer technology and telecommunications equipment. The FBI and INS (now the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, both in DHS) lack efficiency, in part, because of their dependence on

outmoded systems. There is little dispute on the transferability of modern equipment, though cost and privacy concerns are more significant issues in the public sector.

However, on more fundamental and intrinsic points of management, those very “functions of the executive,” (*Barnard, 1968*) that work so well in the private sector may lack traction in the public. Thus, key aspects of cultivating career civil servants may not be aided by business models, the end purpose of which are to increase profitability. How employees are motivated and rewarded, the acculturation of employees to large agencies, and gaining their commitment to the career service-- each of these are important HR issues. The public and private sectors often present different worldviews and models from accountability to the public to reasons for entry into a career and staying. Graham Allison’s essay (*1984*), “Public and Private Management: Are They Fundamentally Alike in All Unimportant Respects?” reminds us that management’s decision making process, chain of command, and the ability to select its goals are vastly different in public and private organizations. Means and ends do vary in each sector and the differences cannot be glossed over simply because the current administration favors private business models. (2)

As the Brookings assessment of DHS points out, creating a new department out of twenty-two existing agencies is a challenging organizational task, one that will take years to complete. For the federal service in general, it is fortunate that OPM and critics such as the National Commission on the Public Service and numerous others agree on so many reforms: abolishing the existing GS pay system, modernizing hiring, granting managers more flexibility to change job assignments as the agency’s mission changes, and increasing pay and benefits for federal workers. There are disagreements too, most expected, as the executive branch seeks to maximize its power. In dispute are the following: the number of presidential appointees in DHS and throughout the federal service, the oversight power of congress in approving HR changes, and the point at which unions become impediments to an agency’s national security mission. These issues will not be resolved during this administration’s tenure. The promising element is that due to the heightened mission of the federal service since September 11, 2001, there may be sufficient momentum for continuing changes in many of the areas enumerated.

Notes

1. The argument over an administrator's discretion has existed since this country's founding. For a discussion of the Carl Friedrich-Herman Finer debate, see Michael M. Harmon and Richard T. Mayer, *Organization Theory for Public Administration*, Boston: Little Brown & Co., 1986, pp. 334-335.
2. Robert B. Denhardt (2000) succinctly contrasts opposing administrative approaches, the new public administration vs. the new public management, the former rooted in democratic tradition and humanism. *Theories of Public Organization*, 3rd edition, New York: Harcourt Brace, pp.190-191.

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BIOGRAPHICAL SKETCH

Richard Ryan coordinates the MPA and undergraduate Public Administration programs at San Diego State University-Imperial Valley Campus. He teaches Public Personnel Administration to undergraduates and Administrative Theory in the MPA program. He received his doctorate in Public Administration from the University of Southern California.

Please send comments to rryan@mail.sdsu.edu