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H. R. 2946

To amend title 5, United States Code, to authorize the Merit Systems Protection Board to conduct an alternative dispute resolution pilot program to assist Federal Government agencies in resolving serious workplace disputes, and to establish an administrative judge pay schedule for administrative judges employed by the Merit Systems Protection Board.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on Government Reform

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A BILL

To amend title 5, United States Code, to authorize the Merit Systems Protection Board to conduct an alternative dispute resolution pilot program to assist Federal Government agencies in resolving serious workplace disputes, and to establish an administrative judge pay schedule for administrative judges employed by the Merit Systems Protection Board.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. POLICY, FINDINGS, AND PURPOSES.

(a) POLICY.—Chapter 12 of title 5, United States Code, is amended to authorize the United States Merit

Systems Protection Board to test and evaluate a variety of alternative dispute resolution techniques in workplace disputes involving Federal administrative agencies and proceedings governed by chapters 5 and 7 of title 5, United States Code. The statement of purpose and policy is a reaffirmation of the encouragement to Federal agencies to use alternative dispute resolution, enunciated in the Administrative Dispute Resolution Act of 1996. (Public Law 104–320).

(b) FINDINGS.—The Congress finds that—

(1) Workplace disputes waste resources of the Federal Government, take up too much time, and deflect managers and employees from their primary job functions.

(2) In the past, the Federal Government has relied heavily upon traditional, adversarial processes.

(3) Alternative dispute resolution has been useful in resolving a variety of matters in controversy without litigation, providing quick resolution, open communications, improved working relationships and avoidance of costly and lengthy litigation, and use of alternative dispute resolution should be promoted.

(4) It is important to determine whether mandatory alternative dispute resolution is desirable, appropriate, or effective for certain workplace disputes.

(5) The Merit Systems Protection Board is well suited to conduct a 3-year alternative dispute resolution program focusing on workplace disputes in the Federal sector because it is an independent adjudicative agency that decides approximately 10,000 cases involving Federal workplace disputes each year, has a long history of using alternative dispute resolution to settle cases filed with the Board, and has as one of its missions the responsibility to study and report on issues of importance to the civil service system. The Board's workload is diverse and includes a sufficient variety of both highly complex cases and high-volume less complex cases to adequately test and evaluate broader use of alternative dispute resolution techniques. It has an experienced corps of administrative judges who are already familiar with traditional settlement techniques.

(c) PURPOSES.—The Board shall evaluate the alternative dispute resolution pilot program and, after the completion of the 3-year program, shall file a comprehensive report with the President and Congress.

SEC. 2. MERIT SYSTEMS PROTECTION BOARD ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM.

(a) AMENDMENT TO CHAPTER 12 OF TITLE 5.—Chapter 12 of title 5, United States Code, is amended by adding immediately after section 1206 the following:

"§ 1207. Establishment of alternative dispute resolution program

"(a) IN GENERAL.—

"(1) The Merit Systems Protection Board is authorized to establish a 3-year program to provide employees and agencies with alternative dispute resolution processes to apply to workplace disputes and disagreements involving removals, suspensions for more than 14 days, and other adverse actions under section 7512.

"(2) The Board shall test and evaluate a variety of alternative dispute resolution techniques, which may include—

"(A) settlement judges or attorneys;

"(B) mediation through use of shared neutrals;

"(C) mediation by Merit Systems Protection Board staff or others as appointed by the Chairman;

"(D) administrative arbitration; and

"(E) certified alternative dispute resolution counselors (agency personnel specifically trained in Board law and alternative dispute resolution techniques).

"(b) EARLY INTERVENTION ALTERNATIVE DISPUTE RESOLUTION.—

"(1) INVOKING RESOLUTION PROCESS.—The Board's early intervention alternative dispute resolution process may be invoked after an agency has issued a notice letter of a proposed action to an employee but before a final decision has been made under section 7513.

"(2) EARLY INTERVENTION.—Any agency or employee may seek early intervention alternative dispute resolution from the Board by filing a request with the Board. If the Board determines that alternative dispute resolution is appropriate, the parties shall participate.

"(3) MANDATORY RESOLUTION.—The Chairman of the Merit Systems Protection Board is authorized to designate up to 3 agencies with a substantial volume of Board appeals for participation in a mandatory early intervention alternative dispute resolution program. Under this alternative dispute resolution process, all matters appealable under sec-

tion 7512 shall be subject to early intervention alternative dispute resolution unless the Board determines that the matter is not appropriate for the program or a statute or collective bargaining agreement precludes inclusion of the matter in the alternative dispute resolution program.

"(c) ALTERNATIVE DISPUTE RESOLUTION AFTER AN APPEAL OR PETITION FOR REVIEW IS FILED.—

"(1) APPEAL OR PETITION FOR REVIEW.—Once an appeal or petition for review is filed with the Board, any employee or agency may request that a case be selected for alternative dispute resolution. The request shall be filed with the administrative judge assigned to the appeal or with the Clerk of the Board if the matter is before the Board on petition for review at the same time that the appeal or petition for review is filed.

"(2) SELECTION OF CASES.—The Board shall have sole authority to select cases for alternative dispute resolution after an appeal or petition for review is filed. The Board may also select cases for alternative dispute resolution as it determines appropriate.

"(d) IMPLEMENTATION.—

"(1) PROGRAM DUTIES.—In carrying out the program under this section, the Board shall—

"(A) develop and prescribe standards for selecting and handling cases in which alternative dispute resolution is to be used;

"(B) take such actions as may be necessary, including waiver of all statutory, regulatory, or Board imposed adjudicatory time frames; and

"(C) establish a time target within which it intends to complete the alternative dispute resolution process.

"(2) EXTENSION.—A party may request an extension of the alternative dispute resolution period, or the Board may extend the time period as it finds appropriate.

"(3) RECRUITMENT.—The Chairman of the Merit Systems Protection Board may recruit and hire temporary staff or contractors to carry out this section.

"(4) REGULATIONS.—The Board is authorized to prescribe such regulations as may be necessary to implement the alternative dispute resolution program.

"(e) EVALUATION.—

"(1) CRITERIA.—The Board's Office of Policy and Evaluation shall establish criteria for evaluating the alternative dispute resolution program and prepare a report containing findings and recommendations as to whether mandatory alternative dispute resolution is desirable, effective, and appropriate for cases decided by Federal administrative agencies under proceedings governed by chapters 5 and 7.

"(2) REPORT CONTENT.—The report shall include—

"(A) the number of cases subject to the alternative dispute resolution program, the agencies involved, the results, and the resources expended;

"(B) a comprehensive analysis of the effectiveness of the program, including whether it is cost-effective;

"(C) a survey of the satisfaction of participants; and

"(D) a recommendation regarding the desirability of extending the alternative dispute resolution program beyond the prescribed expiration date and any recommended changes.

"(3) REPORT DATE.—The report shall be submitted to the President and the Congress 180 days

following the close of the alternative dispute resolution program.''.

(b) APPROPRIATIONS.—

(1) IN GENERAL.—For the purpose of carrying out the alternative dispute resolution program established by the amendment made by subsection (a), there are authorized to be appropriated the following sums: $1,000,000 for fiscal year 2000; $1,000,000 adjusted by the most recent percentage change in the employment cost index (ECI) for fiscal year 2001; and $1,000,000 adjusted by the most recent percentage change in the ECI for fiscal year 2002.

(2) NO REDUCTIONS.—The authorization of appropriations by paragraph (1) shall not have the effect of reducing any funds appropriated for the Board for the purpose of carrying out its statutory mission under section 1204.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect no later than the close of the 60th day after the date of enactment of appropriations authorized by subsection (b)(1) for fiscal year 2000 and shall remain in effect for 3 years from the effective date.

(d) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 12 of title 5, United States Code, is amended by adding after the item relating

to section 1206 the following new item:

"1207. Establishment of alternative dispute resolution program.".

SEC. 3. POLICY AND FINDINGS.

(a) POLICY.—Chapter 53 of title 5, United States Code, is amended to establish an MSPB Administrative Judge Pay Schedule and to provide MSPB administrative judges with pay that is comparable to that of immigration judges (IJs) and administrative law judges (ALJs).

(b) FINDINGS.—The Congress finds that—

(1) MSPB administrative judges perform work at the same level of importance and complexity as immigration judges and administrative law judges. Federal employees deserve to have their cases heard by judges with the same pay and status as the judges who hear private sector benefits and employment law cases. Veterans in the Federal workforce deserve to have their cases heard by judges with the same pay and status as the judges who hear cases involving illegal aliens.

(2) MSPB administrative judges are leaving the Board for positions with other adjudicatory agencies. During the past 4 years, the Board has lost 20 percent of its most experienced judges to other adjudicatory agencies. MSPB administrative judges should not have to leave the agency to achieve the pay and status they deserve when they are adjudi-

cating cases with the same importance and complexity as cases heard by IJs and ALJs.

SEC. 4. MERIT SYSTEMS PROTECTION BOARD ADMINISTRATIVE JUDGES AND COMPENSATION.

(a) AMENDMENT TO CHAPTER 53 OF TITLE 5.—Chapter 53 of title 5, United States Code, is amended by adding immediately after section 5372a the following:

"§ 5372b. Merit Systems Protection Board administrative judges

"(a) DEFINITIONS.—For the purposes of this section—

"(1) the term 'administrative judge (AJ)' means an employee of the Merit Systems Protection Board appointed to an administrative judge position and paid under the MSPB Administrative Judge Schedule established by subsection (b); and

"(2) the term 'administrative judge (GS)' means an employee of the Merit Systems Protection Board appointed to an administrative judge position and paid under the General Schedule described in section 5332 of this title.

"(b) IN GENERAL.—There is established the MSPB Administrative Judge Pay Schedule which shall have 4 levels of pay, designated as AJ–1, –2, –3, and –4. Each ad-

ministrative judge (AJ) shall be paid at one of those levels in accordance with subsection (c).

"(c) RATES OF PAY.—

"(1) BASIC PAY.—The rates of basic pay for the levels of the MSPB Administrative Judge Pay Schedule established by the subsection (b) shall be as follows:

"(A) AJ–1: 70 percent of the next to highest rate of basic pay for the Senior Executive Service.

"(B) AJ–2: 80 percent of the next to highest rate of basic pay for the Senior Executive Service.

"(C) AJ–3: 90 percent of the next to highest rate of basic pay for the Senior Executive Service.

"(D) AJ–4: 92 percent of the next to highest rate of basic pay for the Senior Executive Service.

"(2) LOCALITY PAY.—Locality pay as provided by section 5304 shall be applied to the basic pay for administrative judges (AJ) paid under the MSPB Administrative Judge Pay Schedule.

"(d) APPOINTMENT AND ADVANCEMENT.—

"(1) INITIAL APPOINTMENT.—Except as provided in paragraph (3), initial appointment of an administrative judge (AJ) shall be at the AJ–1 pay level. Subject to subsection (d)(2), an administrative judge (AJ) shall be advanced to AJ–2 upon completion of 104 weeks of service, to AJ–3 upon completion of 104 weeks of service at the next lower level, and to AJ–4 upon completion of 52 weeks of service at the next lower level.

"(2) ADVANCEMENT.—Advancement to the AJ–2, –3, and –4 levels as provided by paragraph (1) shall not be effected if the Chairman of the Merit Systems Protection Board determines that the work of an administrative judge (AJ) at the next lower level is not of an acceptable level of competence. An administrative judge (AJ) may appeal an adverse acceptable level of competence determination to the Merit Systems Protection Board under the same conditions by which an administrative judge (GS) may appeal the denial of a periodic step increase in pay under section 5335(c).

"(3) EXCEPTION.—Notwithstanding paragraph (1), the Chairman of the Merit Systems Protection Board may provide for initial appointment of an administrative judge (AJ) at a level higher than AJ–

1 under such circumstances as the Chairman may
2 determine appropriate.

3 "(4) CONVERSION.—An administrative judge
4 (GS), who occupies a level below grade 15 of the
5 General Schedule, may, when entitled by tenure and
6 performance to be advanced to grade 15 of the Gen-
7 eral Schedule, be converted to the MSPB Adminis-
8 trative Judge Pay Schedule and appointed at the
9 AJ–1 level.".

10 (b) TRANSITION PROVISIONS.—

11 (1) CONVERSION TO MSPB ADMINISTRATIVE
12 JUDGE PAY SCHEDULE.—Subject to paragraphs (2)
13 and (3), an administrative judge (GS) who is serving
14 as of the effective date of this section and who occu-
15 pies the grade 15 level of the General Schedule shall
16 be converted to the MSPB Administrative Judge
17 Pay Schedule and appointed as an administrative
18 judge (AJ). Each administrative judge (AJ) so con-
19 verted shall be placed in the appropriate pay level
20 prescribed under section 5372(c) of title 5, United
21 States Code, as added by subsection (a), based on
22 the amount of time the administrative judge (AJ)
23 has served as an administrative judge (GS).

24 (2) LIMITATION ON CONVERSION.—Conversion
25 of an administrative judge (GS) to administrative

judge (AJ) under paragraph (1) shall not be effected if the Chairman of the Merit Systems Protection Board determines that the work of an administrative judge (GS) at the grade 15 level of the General Schedule is not of an acceptable level of competence. An administrative judge (AJ) may appeal an adverse acceptable level of competence determination to the Merit Systems Protection Board under the same conditions by which an administrative judge (GS) may appeal the denial of a periodic step increase in pay under section 5335(c).

(3) LIMITATION ON PAY INCREASES.—Notwithstanding the rates of basic pay prescribed under section 5372(c) of title 5, United States Code, as added by subsection (a), the Chairman of the Merit Systems Protection Board may, on the effective date of this section and each year for a period of 7 years thereafter, limit the pay increase for each administrative judge (AJ) to an adjustment equal to—

(A) the percentage pay adjustment received by members of the Senior Executive Service under section 5382(c) of this title, if any;

(B) locality pay under section 5304; and

(C) an additional $3,000.

The Senior Executive Service percentage pay adjustment, if any, shall be included in basic pay. Annual adjustments in pay after the effective date of this section will be made on the first day of the first pay period of each calendar year. The limitation on pay increases under this subsection may continue during the time period prescribed by this subsection until such time as the pay of each administrative judge (AJ) reaches the appropriate rate of basic pay under section 5372b(c) of title 5, United States Code, as added by subsection (a). The Chairman may waive any limitation on pay under this subsection in the case of an administrative judge (AJ) serving as a chief administrative judge.

(4) PAY IN RELATION TO GRADE 15 OF THE GENERAL SCHEDULE.—In no case shall an administrative judge (AJ) who is converted in accordance with paragraph (1), or whose pay increase in any year is limited under paragraph (3), be paid after the effective date of this section at a rate that is less than the adminstrative judge's (AJ) rate of pay would have been had the administrative judge (AJ) remained as an administrative judge (GS) occupying the grade 15 level of the General Schedule.

(5) DEFINITIONS.—For purposes of this subsection—

(A) the term ''administrative judge (AJ)'' means an employee of the Merit Systems Protection Board appointed to an administrative judge position and paid under the MSPB Administrative Judge schedule established by the amendment made by subsection (a); and

(B) the term ''administrative judge (GS)'' means an employee of the Merit Systems Protection Board appointed to an administrative judge position and paid under the General Schedule described in section 5332 of this title.

(c) APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary for the purpose of carrying out this section.

(2) NO REDUCTION.—The authorization of appropriations by paragraph (1) shall not have the effect of reducing any funds appropriated for the Board for the purpose of carrying out its statutory mission under section 1204 of title 5, United States Code.

(d) EFFECTIVE DATE.—This section shall take effect on the first day of the first pay period of the calendar

year immediately following the date of enactment of appropriations authorized by subsection (c)(1).

(e) CONFORMING AMENDMENT.—The table of sections for subchapter VII of chapter 53 of title 5, United States Code, is amended by adding after the item relating to section 5372a the following new item:

"5372b. Merit Systems Protection Board administrative judges.".

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