

# Alert!

Chapter 52  
National Treasury  
Employees Union

February, 2004

## Pay Measure Passes, but Delays Continue

*FedWeek, February 4, 2004*

Congress has cleared and the President has signed the long-delayed bill to fund many agencies for the remainder of the current fiscal year that contains a 4.1 percent average federal pay raise for 2004, which would supersede the average 2 percent raise that took effect earlier this month by default. Last year the Federal Salary Council recommended that a 4.1 percent increase be paid as 2.7 percent across the board and the other 1.4 percentage points divided up as locality pay; if the White House follows that recommendation, the result would be total raises above 2003 rates ranging from 3.89 to 5.34 percent. Although the higher raise will be retroactive the first pay period of 2004 when the default raise kicked in--in most cases, January 11--it could be several months before employees get the increase. Implementing policies would have to be issued, and then agencies would have to reprogram their payroll systems to make the change--a process that in a similar situation last year took until well into the spring at some agencies. The measure also changes the way blue-collar pay is linked to general schedule pay, substituting localized rates for the GS national average. Meanwhile, a group of House members of both parties active in civil service issues has written to President Bush urging him to continue parity between military and federal employee pay in his fiscal 2005 budget proposal, which is scheduled for release next week.

(Editor's Note: The administration has yet to issue the executive order necessary for implementation of the full 4.1 percent pay increase by Congress on January 22, 2004. The full raise cannot be implemented until the administration issues an executive order defining how much of that money, if any, is allocated to locality pay.)

## White House Recommends 1.5 Percent Raise

*FedWeek, February 4, 2004*

The Bush administration has recommended that federal employees get a 1.5 percent raise in January 2005--compared with 3.5 percent for uniformed military personnel--and that Congress set aside an additional \$500 million to reward top performers and to pay higher salaries for certain positions. Administration officials, continuing a break from federal pay law that started last year, touted the 1.5 percent increase as keeping federal employees roughly apace with inflation--

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### Time Line:

- Saturday, March 20, Spring Begins
- Sunday, April 4, Daylight Savings Time Begins
- Sunday, April 11, Easter
- Thursday, April 15, Tax Day
- Sunday, May 9, Mother's Day
- Monday, May 31, Memorial Day

not with private sector wage growth, which is the indicator called for by federal pay law. On top of that, the White House is seeking \$300 million for the "human capital performance fund" that Congress authorized last year but for which it provided just \$100 million for the current fiscal year. The performance fund is to be parceled out to agencies by the Office of Personnel Management once it certifies that they have performance measures that meet certain standards.

The remaining \$200 million would be available for agencies to use at their discretion for granting merit pay raises and bonuses and for targeted recruitment and retention spending. However, there is resistance in Congress--as well as among federal employee organizations--to basing a significant part of a federal employee's salary on currently used performance measures that are not widely accepted as fair and accurate.

As in past years, some members of Congress active in civil service issues again are pushing to bring federal pay up to the military figure in the name of maintaining parity between the two groups. Civil service and military personnel have received the same raise in almost all of the past 20 years. The pay parity backers include, notably, the Republican heads of the two committees with main jurisdiction over civil service issues: Rep. Tom Davis of Virginia in the House Government Reform Committee and Sen. Susan Collins of Maine in the Senate Governmental Affairs Committee. Resolutions to bring the January 2005 raise up to the military figure are upcoming in both the House and Senate; in recent years, Congress typically has attached those measures to a budget outline that is produced in the spring.

## **Camera Phones Deemed Security Risk**

*FedWeek February 18, 2004*

The National Security Agency has warned that cellular telephones with built-in cameras pose a security risk in federal facilities where classified information is kept, according to an Air Force news release. The announcement said such phones are not authorized for use or possession within any Air Force facility processing classified information with written authorization from a designated approval authority. Unapproved camera phones are subject to confiscation for a review of possibly unlawful images, and their owners could face federal charges, it said. While the announcement speaks only to Air Force facilities, security considerations could lead to similar policies being enforced at other agencies as well. (*Alert!* Editor's Note: this article is being included since the Chapter just found out that the IRS is considering prohibiting cameras from the work place. A security issue such as this is not negotiable by the Union.)

## **NTEU Members Stand Up For Their Rights in 2003**

*NTEU Bulletin, January 2004*

Even as the administration attacked federal employees relentlessly during 2003, NTEU and our members fought back at every turn, unafraid to stand up for their rights and willing to demand the dignity and respect they earn every day. You name the issue--a fair pay raise, tax debt privatization, collective bargaining rights, massive revisions to contracting out

rules, and so much more-NTEU was there, fighting at both the local and national levels for NTEU members and all federal workers.

"I am as proud of our union and our members as I ever have been," said NTEU President Colleen M. Kelley. "In 2003, we fought this administration to a virtual standstill on a number of critical issues-and we will continue the fight in 2004."

### **2004 Federal Pay Raise**

While there's much to keep fighting over, NTEU members can take great pride in the work of the union in securing bipartisan support for a 4.1 percent pay raise-more than double the amount President Bush proposed.

NTEU pressed in both the House and Senate the need for a fair pay raise, both as a means of reflecting the value and contributions of federal workers and as an effective and much-needed recruitment and retention tool.

Congress agreed and included the 4.1 percent pay raise in the fiscal 2004 omnibus funding measure that was approved in late January. President Bush bowed to the will of Congress on this matter and signed the bill into law the day after it was passed.

NTEU fought for, and won, language in the bill that makes the 4.1 percent increase retroactive to the first pay period in January.

This action now supercedes the 2.0 percent raise the president initiated for 2004, in line with his initial budget proposal.

"I advised the administration that the mechanics of raising pay by 2.0 percent, and then recalculating a 4.1 percent retroactive pay increase later the same month, would involve a useless waste of taxpayer money," she said. "However, this reality had no effect" on the actions of the president, she added.

NTEU now turns its attention to the federal pay raise for 2005 and is again supporting efforts by a bipartisan group of lawmakers who are seeking pay parity between civilian and federal employees for 2005.

### **Contracting Out**

As a result of NTEU's efforts to win critical bipartisan legislative support, the Transportation-Treasury bill also contained language that would have given federal employees the same appeal rights that private firms have regarding agency contracting decisions. In addition, that language mandated that work could be moved to the private sector only if agencies could show a savings of \$10 million or 10 percent of the cost.

President Kelley called winning those provisions in the face of the administration's drive to contract out one of every two federal jobs "a significant achievement." However, last-minute arm-twisting by the White House resulted in the language being eliminated from the omnibus funding bill.

Nonetheless, the fight against contracting out-and NTEU's leadership role in that fight-not only continued during 2003, it accelerated.

In early summer, NTEU filed a federal court suit challenging the legality of a broad rewrite of federal contracting rules by the Office of Management and Budget (OMB). The thrust of these changes to Circular A-76 is to tilt the playing field substantially in favor of private contractors.

While the suit is still pending, it had an almost immediate impact. About two months after it was filed, OMB issued what it called a "technical correction" to its revisions addressing one of the key points raised by NTEU.

That issue dealt with an illegal limitation by OMB to the circumstances under which interested parties can challenge agency designations of work as "commercial" in nature, and thus subject to being contracted out under the Federal Activities Inventory Reform (FAIR) Act. The correction reflected the position NTEU had taken on that issue immediately after OMB's announcement of its changes in the rules.

NTEU's suit seeks to have declared illegal OMB's revisions to Circular A-76 affecting the definition of inherently governmental functions. The suit alleges, among other violations, that OMB's substantial narrowing of the definition of "inherently governmental" functions takes away from Congress the right to determine if a government function is so intimately related to the public interest that it requires performance by federal employees.

Meanwhile, despite the tilt in favor of contractors, NTEU members in agency after agency are competing effectively for their jobs, winning a substantial number of public-private competitions by bringing their intimate knowledge of the day-to-day operations of their jobs to bear in the fight for the work. This occurred during 2003, for example, in the Food and Drug Administration (FDA), the Internal Revenue Service (IRS), the Food and Nutrition Service (FNS) and elsewhere.

"The key to fighting contracting out is NTEU member involvement," President Kelley said. "It is the most valuable and potent tool we have."

### **Private Sector Debt Collection**

Another potent tool in this fight is publicity. This was evident during 2003 in the battle against the proposal to hire private companies to collect tax debts. The administration proposed hiring debt collection companies to do this work, and to earn a bounty of up to 25 percent of the money they collect.

NTEU undertook a massive educational effort, including a full-page ad in Roll Call, an influential Capitol Hill newspaper, and a nationwide survey that showed widespread concern among taxpayers about their personal and sensitive tax information getting into the hands of debt collectors.

In messages to NTEU chapters, as well as in press releases, media interviews with President Kelley, congressional testimony and other vehicles, the union repeatedly drove home the point that debt collectors make up the most complained-about industry in America-generating some 25,000 complaints to the Federal Trade Commission in 2002 alone.

NTEU also used effectively data from an IRS report on a 1996 pilot program of private tax collection showing that collection calls were made to taxpayers as early as 4:19 a.m.

The fight against this ill-advised proposal included a key element of President Kelley's legislative approach to advancing and protecting federal employee rights-it was broadly bipartisan, resulting in a letter in opposition to it from 14 Republican members of the House of Representatives to House Speaker Dennis Hastert.

The Republican lawmakers said they had "grave concerns" about releasing sensitive personal information to those outside the federal government-and added that "tax collection is one function that is, and should remain, inherently governmental."

The tax debt measure died in Congress, but President Kelley warned that it likely will be revived, so the battle over who will collect taxes will have to be fought again, as will the fights over so many other issues critical to federal workers.

### **Solid Achievements**

While there were a lot of tough battles fought during 2003, and under extremely difficult political circumstances, NTEU was true to its longstanding tradition of accomplishing a great deal during the year. Here is a just a sampling.

By mid-December, the first payments-totalling \$81 million-had gone to recipients under terms of the special salary rates legal case. Additional payments are expected in one to two years. NTEU had the tenacity to pursue that case through the federal courts for 15 years.

Another four years of difficult talks with the government resulted in a settlement that now totals some \$178 million for a class of current and former special rate federal employees numbering about 212,000.

Since the settlement, President Kelley often has cited the work done on the special salary rates case as reflecting NTEU's understanding of what needs to be done, and its determination to stick with the fight as long as it takes.

NTEU was busy on other fronts, too, wrapping up a number of complex issues surrounding appropriate overtime pay for employees of the Federal Deposit Insurance Corporation (FDIC), resulting in a total of some \$16 million in back pay for them. Another \$1.8 million in back pay for overtime was won for employees of the Customs Service.

And in an important decision with long-term implications, NTEU won a case in the Court of Appeals for the Federal Circuit establishing the right to judicial review of claims under various pay-mandating statutes, despite their coverage under grievance and arbitration procedures.

Among other victories, NTEU secured reauthorization of an important Customs fund-set to expire-that pays all Customs inspectional overtime as well as funding the positions of some 1,000 agency employees.

### **Flexible Spending Accounts**

The union convinced the Office of Personnel Management (OPM) both to make available to federal employees a health care benefit that will put extra money in their pockets and to have federal agencies pick up the administrative costs for the Flexible Spending Account (FSA) program.

FSAs became effective in July. They allow federal employees to set aside pretax earnings to help pay for health care and dependent care expenses. Depending on income and the amounts set aside, savings for employees could range from hundreds of dollars to thousands.

President Kelley was particularly pleased about securing FSAs for federal workers, and she has cited NTEU's cooperative efforts with OPM on this program as an example of how NTEU and the administration can sometimes work to find common ground despite the many issues which separate them.

### **New Overtime Regulations**

One issue where common ground was not found was on the matter of eligibility for overtime pay. The administration sought, and won-over the vigorous opposition of NTEU and a broad coalition of unions and public interest groups-the right to implement rules that could deny overtime pay to millions of workers.

Legislative language blocking the Department of Labor (DOL) from implementing these rules was dropped from the omnibus funding bill at the insistence of the White House but NTEU is still working to prevent those rules from being finalized and implemented.

## **NTEU 2003 Highlights**

*NTEU Bulletin, January 2004*

### **Contracting Out**

A lawsuit filed by NTEU challenges Office of Management and Budget (OMB) revisions to contracting rules. The union was also active on many other fronts in the fight against wholesale contracting out, including intensive efforts to defeat an administration bid to privatize tax collection.

### **Special Salary Rates**

NTEU neared conclusion of its 20-year effort on behalf of 212,000 special rate employees who were denied pay raises in the 1980s. Initial payments, totaling \$81 million, were distributed to current and former special rate employees. The remainder of the amounts owed to employees is expected to be paid out of the \$178 million settlement within the next two years.

### **Federal Pay**

Once again, NTEU won bipartisan support in both the House and Senate for a federal employee pay raise larger than that sought by the administration. The 4.1 percent pay raise was signed into law following approval of the 2004 omnibus appropriation bill.

### **Back Pay**

Total back pay for employees in a successful overtime case at the FDIC rose to \$16 million, with NTEU winning another \$1.8 million for Customs employee overtime; and an EPA career ladder grievance payout hit \$900,000.

### **Department of Homeland Security**

NTEU presented a set of personnel options to protect the current rights and benefits of all DHS employees.

### **New Contracts**

NTEU secured a term agreement at FDIC, a first-ever EPA national agreement, midterm agreements at FDA and BPD, and hiring and benefits agreements at the SEC.

### **National Headquarters**

For the first time in union's 65-year history, NTEU owns its headquarters building—a new, 10-story structure in downtown Washington, D.C.

### **[www.nteu.org](http://www.nteu.org)**

In keeping up with NTEU's needs, a new web site was unveiled that includes all the hot news of the day, an amazing legislative grassroots section, and the ability for NTEU members to change their addresses and other contact information on line.

### **Key Legal Victory**

In an important legal victory, NTEU won the right to judicial review of claims under various pay-mandating statutes, despite their coverage under grievance and arbitration procedures.

### **Flexible Spending Accounts**

NTEU's strong support of Flexible Spending Accounts (FSAs) spurred OPM into action. The program, which allows for the use of pretax earnings for health and dependent care costs, became available to federal employees in July.

### **Protection of Rights**

NTEU's public and private outrage forced the Justice Department to back away from a proposal to strip union rights from ATF employees.



## THE FUNDS – TSP Rates of Return

Rates of Return were updated on **February 2, 2004**.

	<b>G Fund</b>	<b>F Fund</b>	<b>C Fund</b>	<b>S Fund</b>	<b>I Fund</b>
January 2004	0.29%	0.80%	1.80%	3.53%	1.32%
Last 12 Months* (2/1/2003 - 1/31/2004)	4.06%	4.84%	34.44%	51.53%	45.94%

\* The G, F, C, S, and I Fund returns for the last 12 months assume unchanging balances (time-weighting) from month to month, and assume that earnings are compounded on a monthly basis

## New Funds Still Under Consideration

*FedWeek, January 28, 2004*

Meanwhile, the TSP continues to explore adding one or two new funds that would combine existing investment options on an automatically adjusted basis. One type of such fund is called the "lifestyle" fund, in which investors choose how aggressive they want to be and the investments are adjusted as returns fluctuate in order to keep that investment posture. Another, called the "life cycle" fund, employs the same principle but also makes the investment mix more conservative over time as the individual approaches retirement. The TSP is considering how one or both of such funds would be structured and would have to issue a contract to a provider; any new fund or funds likely would not be available at least until next year.

## Around the Office

*By Alert! editor Mick Eskew*

- The Phase 2, 3 and 4 move to the new San Antonio Post of Duty is still on hold with no specific date, maybe sometime in May. The delay is due a problem with ordering and obtaining the systems furniture.
- For those who have a "Handicap Parking" license plate or a tag hanging from your mirror, be sure you are following the letter of the law when you park in a designated handicap parking space. In order to qualify for that space the person who is disabled or handicapped must be in the car with you, if you are not the designated person yourself. Violators will be fined and may face disciplinary actions in the work place.
- Currently the chapter is helping members fight for their jobs, keep their appraisals from being lowered without apparent cause, and helping members receive the appropriate the pay and case load due them. Tom has filed an Institutional Grievance when a manager unilaterally implemented a change in working conditions without first negotiating the impact and implantation.

# TOM'S HUMOR PAGE

## Monkey Business

Anonymous e-mail anecdote



"Start with a cage containing five monkeys. Inside the cage, hang a banana on a string and place a set of stairs under it. Before long, a monkey will go to the stairs and start to climb towards the banana. As soon as he touches the stairs, spray all of the other monkeys with cold water.

"After a while, another monkey makes an attempt with same results, all the other monkeys are sprayed with cold water. Pretty soon, when another monkey tries to climb the stairs, the other monkeys will try to prevent it.

"Now, put away the cold water. Remove one monkey from the cage and replace it with a new one. The new monkey sees the banana and wants to climb the stairs. To his surprise and horror, all of the other monkeys attack him. After another attempt and attack, he knows that if he tries to climb the stairs, he will be assaulted.

"Next, remove another of the original five monkeys and replace it with a new one. The newcomer goes to the stairs and is attacked. The previous newcomer takes part in the punishment with enthusiasm! Likewise, replace a third original with a new one, then a fourth, then the fifth. Every time the newest monkey takes to the stairs, he is attacked.

"Most of the monkeys that are beating him have no idea why they were not permitted to climb the stairs or why they are participating in the beating of the newest monkey.

"After replacing all the original monkeys, none of the remaining monkeys have ever been sprayed with cold water. Nevertheless, no monkey ever again approaches the stairs to try for the banana. Why not? Because as far as they know that's the way it's always been done around here.

"And that, my friends, is how company policy begins."

Chapter 52 *Alert!*, all the news that is fit to be copied!

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