



STATEMENT OF

WILLIAM R. DOUGAN

**NATIONAL PRESIDENT
OF
THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES**

BEFORE

**THE HOUSE SUBCOMMITTEE ON THE FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA**

REGARDING

**TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES
TEMPORARY LAST?**

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Introduction

On behalf of the National Federation of Federal Employees (NFFE) and the 110,000 federal employees our union represents throughout the United States and abroad, at more than 30 federal agencies and departments throughout the federal government, I thank the Subcommittee for holding this hearing and for giving me the opportunity to submit testimony on temporary employee practices in the federal government.

Background

How long does temporary last in the federal government? For some of the federal workers we represent in the U.S. Forest Service, temporary *has lasted* more than thirty years. Many of us like to think that the federal government is a model employer, as well it should be. But, for many thousands of employees hired under the temporary appointment authority at 5 CFR, Part 316, Subpart D, their conditions of employment are as bad as those provided by *any* employer. They receive no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs.

The problem is particularly pervasive in federal land management agencies because of the seasonal nature of the work. Even though land management work is regular and recurring work that occurs every year, a loophole in temporary employment regulations allows agencies to use an unlimited number of successive temporary appointments as long as the work season is limited to six months or less. This is how Joe Katz, of Dover, Idaho, came to be a “temporary” federal employee who has served for 30 seasons, but has no service credit to show for it.

Joe is a Marine who served his country honorably in Vietnam, yet he has never been given the dignity of a permanent position with the Forest Service even after three decades of dedicated service. He began working for the Forest Service Youth Conservation Corps program in 1975, and has worked for the agency ever since, except for 2007 and five years in the mid-1980s. He has planted trees, performed targeted forest thinning, been a heavy equipment inspecting officer, been in fire (where he led crews, did initial attack, fought large fires throughout the Northwest, did broadcast burns, etc.). In addition to his position of record, he has performed a variety of other duties, such as working on timber crews, building fish ladders, working at tree nurseries, etc. His current position is in trails and recreation, a position he has held for 21 of the past 22 seasons – under a string of temporary appointments.

Joe is here with us today, as is Lisa McKinney, who began working for the Forest Service as a firefighter in 1978. For three years, she worked for the agency through a private contract; for the other 30 seasons, under a series of temporary appointments. She has been performing the same regular and recurring work on a timber crew since 1995, for the last 14 years as a certified timber cruiser.

Joe and Lisa exemplify the “boots on the ground” that actually get the agency’s work done. However, throughout their careers with the Forest Service, they have received no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs. Adding insult to injury, temporary employees like Lisa and Joe often take on duties above their official grade and function as work leaders because of their skills and experience, but because of their temporary status are not officially placed into the positions. This negatively affects not only the pay to which they should be entitled, but also the work history they can claim in applying for career

jobs. Joe and Lisa will be available to answer any questions you may have about their experiences after the hearing.

Joe and Lisa's stories may be extreme, but they are not atypical. Many dedicated seasonal employees work for years, or even decades, and *never* get a career seasonal appointment. Of the 914 temporary employees who responded to our 2009 survey on temporary employment practices, over half had worked under temporary appointments for five or more seasons. We refer to these employees as "long-term temps." On average, the long-term temps who responded to our survey had worked for 12 seasons as temporaries. While we acknowledge that our survey may not be representative of the workforce as a whole, even agency length of service data indicates that that the number of long-term temps numbers in the thousands.

Use of the temporary employment authority is clearly unjust when examined through the prism of its effects on long-term temps, who keep coming back because of ties to family, the community, love of the work, and other personal reasons. However, the work performed by a majority of short-term temps is regular and recurring as well.

The Forest Service hires approximately 15,000 temporary employees each season. During the field season, this represents 35-40% of the total workforce. The National Park System employs a similar percentage of seasonal temps. Although the long-term temps performing this work number in the thousands, most of it is performed by short-term temps, who leave the agency after just a few seasons. The false categorization of this regular and recurring seasonal work as temporary masks a huge and expensive retention problem, caused in large part by the lack of benefits afforded those who perform it. In the Forest Service,

approximately 70% of the competitively appointed “temporary” workforce leaves the agency after three or fewer years.

Effects on Workforce Morale, Safety, and Capacity

The poor morale of the land management workforce has been documented by employee satisfaction surveys conducted by OPM. In the most recent “Best Places in Government to Work” rankings, the Forest Service and National Park Service scored 206th and 160th, respectively, out of 216 federal agencies surveyed. While there are potentially several reasons for these poor rankings, the fact that so many of the agencies’ employees serve under temporary appointments is certainly among the most significant. Temporary employees work side by side with permanent employees, often performing the same duties, and in some cases even effectively supervising them. Yet, they are denied a wide range of rights and benefits because of their temporary status.

Poor morale and a lack of access to critical benefits, like health care, are a drag on the efficiency and productivity of agencies. Fire suppression and other field-going jobs are physically challenging, and often dangerous. Without health care, many injuries sustained by temporary employees go unreported and untreated. Over time, they can develop into chronic conditions. This is a great burden on the temporary seasonal workforce. Not only does this adversely impact employees’ long-term health, which is a great injustice to them, but it also limits their productivity.

Other inefficiencies are associated with the extremely high turnover rate of temporary seasonal employees. Because temporary workers have little security and stability, they very often move on to other employment, and they take their experience and training with them, all

of which is costly for agencies to replace. Workforce planning is very difficult when an agency has no idea how many employees with the know-how to do the job are going to return from year to year. Project continuity suffers.

Even within a season, the temporary authority creates huge inefficiencies for seasonal work, which by its very nature is variable and unpredictable. If agencies are to maintain a given temporary position on the books for next year's season, the employee in that position must be terminated prior to working 1040 hours (6 months) in any given year. Often, it is this regulatory limit that drives the termination, not the need for the work. This results in the termination of employees when their work is still needed, which in turn requires costly and inefficient contingency plans to be put into effect. For example, last season Lisa McKinney, who is here with us today, was terminated (along with the other seasonal temps on her crew) before the timber marking was completed on a sale they had worked on since its inception. While they sat at home and collected unemployment insurance, an out-of-state marking crew unfamiliar with the sale was brought in to finish the job. Similar stories were common in our survey.

The effects of a large temporary workforce on safety are profound. For example, current efforts by the Forest Service to improve safety are undercut by the difficulty of inculcating a culture of safety into a field workforce that consists of a large percentage of transient employees. A culture of safety is not promulgated by policy documents; it is promulgated by the passage of wisdom from old-timers to newcomers, out in the field. In preparing for this testimony, I spoke with a long-term temporary employee who serves on a fire crew. She told me that eight of the members on her 11-person crew were rookies. This is a recipe for disaster, and it is happening far too often because of high turnover.

History of the Issue

I am not here today to point fingers or denigrate agency leadership on this issue. I served proudly under some of the same Forest Service leaders who are still in positions of leadership today, and I have the utmost respect for them and the difficult problem they face here. The temporary employment problem has existed for many decades, much longer than the tenure of any current agency leader. I hope to work collaboratively with the Forest Service and other land management agencies in addressing this problem. However, the sad fact is that the agencies lack the necessary statutory/regulatory tools to transition their long-term temps into appropriate career positions. This is because statutory reforms supported by the Office of Personnel Management (OPM) and the Merit System Protection Board (MSPB) in 1994 fell by the wayside. We will need the help of Congress to move forward without doing untold damage, both to our long-term temps who have already suffered enough, and to the agencies that depend on their expertise on the ground. Here is a brief summary of earlier reform efforts:

- In 1992, an OPM report [OPM, “Temporary Employment within Land Management Agencies of the Federal Government,” (July, 1992)] concluded that “in practice [temporary employment] has expanded to become quasi-permanent employment for many. In contravention of OPM rules, temporary employees are being utilized to perform ongoing work.” OPM concluded that land management agencies were using temporary employees to perform permanent work in order to avoid the cost of providing benefits.
- A series of Congressional hearings culminated in a June 23, 1993 hearing before the House Civil Service Subcommittee, at which Chair Frank McCloskey observed, “The

blatant abuse of temporary employees in Federal agencies is one of the most disturbing occurrences I have encountered during my time in Government... OPM regulations leave endless possibilities for the manipulation of temporary workers. Agencies can easily circumvent OPM's regulations... The fact that a temporary worker has been employed for 20 years without any rights is heinous and must not be allowed to continue... There is a dire need for reform.”

- In September, 1994, a MSPB report [MSPB, “Temporary Federal Employment: In Search of Flexibility and Fairness,” (Sept. 1994)] concluded that “temporary employment policy should be based on the assumption that the employment will normally be on a one-time, short-duration basis. To proceed on any other basis would serve to create a permanent underclass in the federal workforce...” Noting that “legal and procedural barriers... often preclude the consideration of many temporary employees for permanent positions regardless of how well they have performed,” MSPB endorsed the concept of converting temporary employees to permanent status.
- On November 14, 1994, OPM promulgated new regulations on temporary employment. The duration of a temporary appointment was reduced from four to two years. However, seasonal work of less than six months’ duration was exempted from these requirements, meaning that for seasonal work there is “no limit on the number of extensions or noncompetitive reappointments, as long as the employees [are] paid for less than 1,040 hours each year,” *i.e.*, 130 eight-hour work days. Previously, seasonal work had been limited to 180 work days per season, so this represented a significant reduction. The intent of the reduction was to force agencies that had been using the temporary hiring authority for seasonal work of 8-10 months’ duration to convert

these jobs to career seasonal jobs. It did not achieve this effect, and in fact, left temporary seasonal employees worse off than before. In promulgating these regulations, OPM noted they were “an interim measure... pending more comprehensive reform” and expressed support for legislation under which long-term temporaries who have demonstrated their abilities on the job would not have to compete with the public for permanent vacancies, *i.e.*, competitive status for long-term temps.

- In March, 2002, the General Accounting Office (GAO) reported (GAO-02-296) substantial inappropriate use of the temporary employment authority had persisted, especially the seasonal/intermittent authorities, and recommended regulatory reform. No reform occurred. The report noted that federal employers are prohibited from using temporary employees to avoid the costs of employee benefits or ceilings on permanent employment levels and from using temporary employment as a trial period prior to permanent employment.

Unfortunately, the legislation anticipated by MSPB and OPM to enact the needed comprehensive reform never materialized. Reform is long-overdue and much-needed.

Laying the Groundwork for Reform

Over-use of the temporary employment authority in federal agencies is not only unjust to long-term temporary employees, it is wasteful in many ways. Appropriate use of the career seasonal employment authority at 5 CFR, Part 340, Subpart D would not only be more fair and just to the employees involved, it would also in the long run result in a more capable and

efficient workforce. On a seasonal basis, tours can be extended to meet unpredictable work demands. More significantly, as noted in the CFR, “Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce.”

We believe much of the work currently performed under the Part 316 temporary employment authority would be more appropriately performed under the Part 340 career seasonal employment authority. However, agencies face significant statutory and regulatory barriers to transitioning their workforce to this appointment authority.

Accordingly, reform must be undertaken with care. Addressing these barriers by putting a “pathway to permanence” in place for long-term temporary employees must be our first order of business. Without a pathway to permanence, conversion of temporary jobs to permanent seasonal jobs would lead to a purge of many long-term temporary employees. This is because there is no way under current regulations to convert their temporary job into a career status job. In fact, current regulations even deny them competitive status and creditable service time for their years of work. As noted in the 1994 MSPB report cited above, “legal and procedural barriers... often preclude the consideration of many temporary employees for permanent positions regardless of how well they have performed.” Thus, to abruptly convert the temporary positions in which long-term temps have worked for years to permanent seasonal positions would be to discard them – and their knowledge and experience – after their many years of service. This would be unjust and unwise. A less obvious but no less real barrier is the pervasive culture that assigns temporary employees to a second-class

status, unworthy of a career appointment in many managers' minds. Reform must begin with a pathway to permanence for these long-term temps.

The situation in which federal land management agencies – and their employees' unions – currently find themselves is like driving down the interstate at 70 mph and realizing the roadway is covered with ice. Slamming on the brakes is the wrong move. Similarly, an abrupt abolishment of temporary positions would land many employees, and the agencies that depend on their expertise, into the ditch as well.

In 1994, a well-meaning reform effort was begun without first putting the right tool in place. Many were harmed instead of helped. This is not acceptable. We cannot abandon employees who have given so many years of service to this agency. One thing I hope this hearing will achieve is to make clear to this Subcommittee and the federal land management agencies that we need to establish a “pathway to permanence” before we begin to scale back or abolish the use of temporary positions. With this necessary tool in place, our organization will commit to working with the agencies, OPM, MSPB, and Congress on the appropriate use of available employment authorities.

To close, consistent with recommendations put forth by MSPB and OPM in 1994, we propose enactment of legislation to:

- grant competitive standing to long-term temporary employees (those with a more than eighteen months of aggregated service, *i.e.*, those entering their fourth season of temporary employment) so they can compete for career jobs like any other federal employee
- afford priority consideration to long-term temporary employees for their job if it is converted to permanent status (this follows MSPB's recommendation on limiting

conversions of temporary employees to career positions closely related in their duties and organizational location to those held by the employees under temporary appointment)

- give long-term temporary employees creditable service time for their "temporary" service (note that creditable service is calculated independently from any annuity obligations; our proposal is to decouple the two and address the former)

Our proposal has no price tag. It has no mandate. It would simply provide management with a necessary tool to allow reform to begin. With this tool in place, we look forward to working with all parties for reform with justice.