Issues of Merit

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Director's Perspective

Merit Selection and Diversity: Not an Either/Or Proposition

Once again, a long-standing debate within the federal civil service is heating up. At the core of the debate is a question of whether some approaches to merit-based hiring make it more difficult to achieve workforce diversity and need to be abandoned for that reason alone. Most recently, for example, the March 22nd issue of *Legal Times* ran a front page article that reports that the Civil Rights Division of the Department of Justice is questioning the employment tests used by the Immigration and Naturalization Service to screen applicants for Border Patrol and other positions. These tests are alleged to have a disparate impact on the hiring of some minority groups. The article correctly notes that, even if a disparate impact exists, for such a test to be found in violation of title VII of the Civil Rights Act of 1964, it must also be shown that the test is not a valid "predictor of how well the test-takers would do on the job" or that the disparate impact results from measuring skills, abilities, or other attributes that are not related to the requirements of the job.

Regardless of what this internal Justice Department review ultimately concludes, however, there are individuals outside the Department who believe as a matter of policy that an employment test should be discontinued anytime it is found to have a substantial disparate impact on any minority group. In essence, such a position considers irrelevant the question of whether the test accurately measures the relative ability of the applicants to do the job. Such a view, however, is inconsistent with the government's legal obligation to assure *both* diversity and merit-based selections. That obligation is contained in the statutory merit system principles.

(continued on page 2)

OPE Focus on the Facts

***Belief*:**

Because of extensive government downsizing and buyouts, particularly in administrative occupations, only a small percentage of the remaining HR workforce is eligible to retire.

Fact:

While it is true that only 10% of the HR workforce currently are eligible for immediate retirement, this percentage will jump to 33% in the next five years, possible leading to a second exodus.

Source: "Federal Human Resources Trends: An Occupation in Transition," U.S. Office of Personnel Management, 1999

Some Surprises in New Hires Survey

MSPB is currently looking at the job search experiences of newly hired federal employees. In order to understand what happens to candidates who apply for jobs through the government's competitive process, we have reviewed data from the OPM's Central Personnel Data File and from a survey of 2,000 new employees hired through the government's competitive hiring processes. (This group makes up about half of all new hires.) Preliminary results show that:

- Use of the Internet to search for jobs is less common than might have been expected, given current requirements to electronically post all federal vacancies: only 17 percent of these new hires first learned about their jobs through the Internet. There are a number of reasons for this: more than half the new hires (53 percent) were not aware that federal jobs are posted on the Internet; less than half (44 percent) have access to the Internet; and of those who

(continued on page 2)

Inside this Issue

HRM Panel Concerns: Consolidation, Competence. Page 2

A 19th Century Relic: the Rule of Three. Page 3

Despite Downsizing, Hiring Continues. Page 4

Wanted: Better Ways to Collect HR Data. Page 5

Positive Customer Survey Results. Page 5

Director's Perspective *(continued from page 1)*

Those principles—articulated in the Civil Service Reform Act of 1978—require not only active efforts to achieve a workforce representative of all segments of society, but also the hiring and promotion of employees based solely on their relative ability, knowledge, and skills. These two goals, which are joined in the first merit system principle (title 5 USC § 2301(b)(1)), make it clear that it's not a question of choosing between merit and diversity. As noted in MSPB's 1996 report, "Fair and Equitable Treatment: A Progress Report on Minority Employment in the Federal Government," the dual obligation for federal managers is to strive for a representative workforce while continuing to make hiring decisions based on merit.

In that regard, MSPB has long advocated the following common-sense approach to meeting the public policy objectives inherent in the law:

1. Use selection tools that are feasible and that best predict job success. This makes good business sense and is a clearly-implied expectation of the merit system principles.

2. However, if a selection tool that is a good predictor also yields results that include a disparate impact based on race, nationality or gender, then the selection tool needs to be examined to see if the tool can be improved. In some cases, by dropping selected items from the selection tool it may be possible to reduce the amount of disparate impact without significantly affecting the tool's ability to predict job performance.

3. If it's determined that the selection device yielding disparate results is valid and is the best predictor of job success that is reasonably available to the agency, then the agency's attention should turn to the recruitment process. Under such circumstances, the agency has an obligation to do all that it reasonably can to attract well-qualified members of under-represented groups for the positions being filled.

This common-sense approach prevents the goals of merit selection and diversity from becoming an either/or proposition. And it allows agencies to exercise sound human resources management and satisfy merit system principles which both call for the use of selection practices that serve these dual goals.

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Director, Policy and Evaluation

New Hires *(continued from page 1)*

do have Internet access, only 53 percent used it to search for jobs.

- Relatives and friends are the most common source of information about job vacancies, with a third of the government's new hires placed through competitive processes having first learned about the job they accepted in this way.

- A majority of these new hires (58%) agreed that decisions to hire them were made within a reasonable period of time. But in written comments, survey participants volunteered that the period leading up to the hiring decision and the period following the hiring decision were unreasonably long.

- Many respondents described difficulties they encountered during their job search. One common difficulty was not receiving feedback from the office doing the hiring. Many respondents said that the application process was too paper-intensive, and others had difficulties in responding to the ranking factors, or KSAs (the knowledge, skills, and abilities) required for the job. A number of respondents also expressed the belief that the KSAs were too specific for the jobs they were applying for.

- Notwithstanding the steady overall reduction in the government's clerical workforce, in fiscal year 1997, more clerical employees were hired through competitive processes than any other occupational category—employees appointed into clerical positions made up 39 percent of all new employees hired this way. During the same period, 11 percent of these new employees were appointed into administrative positions, and 19 percent were hired into professional jobs. The remaining 31 percent of these new hires were appointed to technical and various other types of positions.

We will be sharing more of our findings in a report on new hires scheduled for publication later this year.

HRM Panel Concerns: Consolidation, Competence

In our last *Issues of Merit* we reported on the perspectives and experiences of our voluntary standing panel of managers and supervisors. In this issue we'll share perspectives provided by our standing panel of human resources

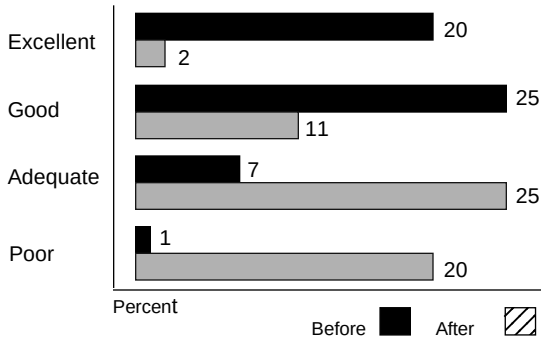
specialists with respect to two broad topics that directly affect them: consolidation of human resources offices and the competencies needed to do HR work in the current environment.

Consolidation of HR offices and functions

Slightly over half of the more than 1,200 HR specialists who responded to a survey we conducted in October 1998 indicated that their agencies had reduced the number of HR offices in the previous three years, while just over one-third said their agencies had not made such reductions.

At least 80 percent of the survey respondents who had experienced consolidation reported the following effects: (1) the total number of HR staff decreased; (2) the workload per HR staff member increased; and (3) burnout of HR staff members increased. Around 60 percent of the respondents experiencing consolidation also said the consolidation is being achieved at least in part through the increased use of automated processes, and that consolidation is leading to higher turnover of HR staff. It's significant—and troubling—that fewer than one in ten of these respondents reported that consolidation has led to better use of staff time or staff skills.

700 personnelists' perceptions of the quality of HR services before and after consolidation



The accompanying figure provides a view of how the roughly 700 respondents whose agencies had undergone consolidation assessed the effects of that consolidation on the quality of the service they provide to managers, supervisors, and employees. We asked our panel members who participated in the survey to rate the overall quality of the service they provided their customers before and after the HR services were consolidated. The responses—which come from the individuals actually providing the service—do not reflect well on the current status of HR service in organizations that have consolidated HR functions.

Is the staff ready?

Perhaps the deterioration of service quality that our respondents perceived is due in part to a concern about their own level of competence. Consolidation has resulted in many of our HR panel members becoming generalists—officially titled personnel management specialists—performing duties in at least two HR functional areas (staffing, classification, labor and employee relations, training).

There are advantages to the generalist approach. Personnel generalists can provide the convenience of "one-stop" service to their customers. But convenience doesn't necessarily equate to better quality. As HR specialists take on multiple functions and a heavier workload, they may feel overwhelmed. Our survey suggests that generalists perceive that they may not be adequately prepared to deliver the level of service expected of them in all the functions they are assigned.

Although our panel members are full-performance specialists at or above GS-11, more than one-fourth did not think they possess all the knowledge and skills necessary to do their job (nearly three-fifths thought that they did). When asked whether they needed more training to perform well, nearly half agreed that they did, while about one-third didn't think so.

A number of panel members volunteered written comments about their competence in meeting their changing roles. The most common concern they wrote about was the lack of specific competencies to do a good job, particularly in the labor relations and retirement and benefits areas. Survey participants noted that these are highly technical HR areas subject to constant change, making it hard to develop and maintain the level of expertise necessary to provide good service.

In addition, three-fifths of our survey participants said their offices had lost staff members with critical expertise. These employees have not been replaced. Instead, in most cases the remaining staff members have had to assume additional duties and workload.

Although findings from our standing panel surveys are not statistically representative of the Federal workforce as a whole, they provide us with some insights into areas that policymakers should closely monitor. Agency officials need to ensure that in the process of consolidating HR operations they find ways to retain needed HR expertise, or to develop the competencies of HR employees who are charged with delivering high quality service but have serious misgivings about their ability to do so.

A 19th Century Relic: the Rule of Three

While most people in the federal personnel business know about the law called the "Rule of Three," few are aware of the Rule's origins and why it no longer serves the purpose for which it was created.

(continued on page 4)

The Rule of Three requires selecting officials, when hiring employees into competitive service jobs, to choose from among "the highest three eligibles available on the certificate . . . ." (5 U.S.C. §3318). Most people assume—incorrectly—that the rule came into being in conjunction with the granting of veterans preference selection rights, and that the Rule is somehow related to the first merit system principle, which calls for selections to be determined "on the basis of relative ability, knowledge and skills, after fair and open competition."

In reality, the Rule was adopted more than sixty years before the Veterans Preference Act of 1944, and it was adopted for a reason unrelated to ensuring that people are hired based on their merits.

The Rule was originally put into place to preclude the Civil Service Commission from dictating who should be hired. Prior to the Civil Service Act of 1883, there had been several unsuccessful attempts to legislatively end the spoils system. In analyzing one of those efforts, an Attorney General's Opinion in 1871 declared that it would be unconstitutional for an independent commission to require the President or a department head to hire a particular applicant. The Attorney General's Opinion said that appointing officials had to be given some choice in order to avoid any improper infringement on their constitutionally-provided appointment powers. Because of that opinion the original Civil Service Commission adopted a Rule of Four requiring selection from among the top four available candidates; the requirement was subsequently modified to a Rule of Three.

The Rule still exists today despite the fact that it has outlived its original purpose. In 1999 there is no longer a question about whether appointing officials have the authority to make selections or whether they instead are compelled to hire the candidate who heads a referral list compiled by an independent commission—which was a central issue in the 1871 Attorney General Opinion. Appointing officials exercise judgment and decide for themselves who, among the top candidates referred, will be appointed. And it is now agencies, exercising authorities delegated by OPM, rather than an independent bipartisan commission, that assess and refer candidates for employment in the civil service. (OPM still conducts assessments and rank-orders candidates, but it does so only when agencies exercising their personnel authorities request this service.)

The assessments and referrals that take place today are handled in large part by agencies' delegated examining units (DEUs). How these DEUs operate in the government's current downsized and decentralized environment is the subject of a soon-to-be-released MSPB report. In the report, the Board repeats its calls for elimination of the Rule of Three, which earlier was addressed in our reports "The Rule of Three in Federal Hiring: Boon or Bane?" (December 1995) and "Entering Professional Positions in the Federal Government" (March 1994). The new report also recommends that Congress consider replacing the Rule with one that allows agencies themselves to decide how many of the best qualified applicants a selecting official should be able to consider for appointment.

The Rule of Three may well be preventing--rather than assuring--consideration of the best available candidates.

The Board's earlier studies found that the preference in employment that the law gives to veterans can be provided without the limitations of a Rule of Three. The Board's current study of DEUs has found that agency personnel and management officials believe the Rule of Three has a negative impact on the ability of agencies to hire competent candidates from outside Government. Moreover, it is generally accepted that neither of the assessment techniques most commonly used by DEUs—training and experience ratings and written tests—are actually capable of making fine enough distinctions among a large group of well-qualified applicants to justify limiting selecting officials to the top three available candidates. Thus, in addition to having outlived its usefulness, the Rule of Three may well be preventing—rather than assuring—consideration of the best available candidates.

The report, "The Role of Delegated Examining Units: A Report on Hiring New Employees in a Decentralized Civil Service," should be available this summer.

Despite Downsizing, Hiring Continues

We all know that the federal government has undergone a major downsizing over the past few years, but we often forget that at the same time, many new people are being hired. Full-time permanent employment declined from an average of 1.80 million workers during fiscal year 1992 to 1.49 million in fiscal year 1998, a reduction of well over 300,000 employees. The difficulties for federal managers in coping with downsizing and its aftermath are myriad. And for those whose jobs were eliminated, moving to other jobs or permanently leaving government employment can be very traumatic. MSPB is currently completing a study of how the career

(continued on page 5)

transition programs designed to ease that trauma have worked and how they might be improved.

One fact that stood out in conducting this study is that even during a period when 300,000 positions were eliminated, the number of full-time permanent new hires ranged from 48,000 to 61,000 per year. For the government and the people affected by reductions, this presents an opportunity to match displaced employees with jobs where their skills are needed. It makes sense to try to retain those skills, which often were developed on the federal payroll.

However, hiring over 60,000 employees even as downsizing occurs, points to a need for all agencies of the federal government to improve their systems for identifying and selecting the best people for the many jobs that cannot be filled by displaced employees. Attracting high quality candidates, having highly effective methods for identifying those with the potential to be the best employees, and ensuring fair consideration for all candidates are the overarching goals of all federal placement programs.

We plan to release our report and recommendations on the government's career transition programs this summer. But the critical issue of how to attract high quality candidates, and then how to determine which ones should be hired—based on their ability, knowledge, and skills—will need continuing attention. OPE has a number of studies addressing various parts of this issue, either in process or in the concept and design stage. We will be reporting on these as they develop.

Wanted: Better Ways to Collect HR Data

It's getting harder and harder to know what's really going on in the federal human resources community. In the past, researchers and evaluators responsible for overseeing the effectiveness of HR programs had a fairly easy time obtaining reliable information about those programs. They did so through questionnaires soliciting the experiences and opinions of federal managers and HR staff; face-to-face interviews with personnel specialists and managers; on-site reviews of personnel records; and surveys of the workforce (which often were distributed by staff in agency personnel offices).

Now, however, government researchers are no longer assured of the help they need in gathering information. Despite technological advances such as the ability to share information and ideas quickly over the internet, HR staffs are finding it difficult to assist evaluators in the collection of data critical to making solid assessments. A number of events contribute to this difficulty, including shrinking HR staffs, increased workload demands on HR employees, and the outsourcing of HR functions. Under such circumstances, requests by evaluators for information or assistance in gathering data are unlikely to be welcomed by overtaxed HR staffs. Unfortunately, if current trends continue, this lack of information could result in HR policymakers operating in the dark, conceivably setting policy without the aid of reliable and valid information. Such a situation could have a significant negative impact on all of us whose primary professional concern is federal HRM, and ultimately, on all federal employees.

In the interest of ensuring that Congress and the administration have the information they need to make sound decisions about the future of HR, MSPB's Office of Policy and Evaluation wants to pursue more efficient and effective ways of gathering data about HR programs and operations. Therefore, we invite our readers to offer any ideas they might have about how those of us in the evaluation business can collect information about what's going on in the HR community without creating undue burdens on federal HR specialists and managers. Please submit your ideas or suggestions to our staff at the following address: pe.contact @mspb.gov. We'll report back to you later on what readers suggest.

Positive Customer Survey Results

In the spirit of continual improvement of services, the Office of Policy and Evaluation surveyed customers in 1998 to see if we are measuring up to our customer service standards. The survey permitted us to obtain customers' views on what matters most to them. Our findings are based on responses from approximately 600 customers, and we contrasted the 1998 findings with those from our 1994 Customer Satisfaction Survey. The comparison of the results shows that customers continue to think highly of OPE's reports and other publications.

Findings also revealed that changes made since the 1994 survey have had positive results: OPE customers (1) share publications with larger numbers of people than in 1994; (2) find the publications more useful; and (3) feel the issues addressed in OPE publications are very important.

OPE takes customer satisfaction very seriously and is aware of the importance of providing high quality and timely reports to our customers. Therefore, we plan to continue our program of customer surveys to obtain ideas for improvement and to find ways to take positive actions to meet or exceed customer service standards.

For a copy of the report including the questionnaire,visit the OPE website at http://www.mspb.gov/merit006.html.

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*** Most of these reports are available for downloading from the MSPB website: http://www.mspb.gov**

"Issues of Merit" provides findings and recommendations drawn from MSPB research on topics and issues relevant to the effective operation of the federal merit systems and the significant actions of the Office of Personnel Management.