



November 30, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
S-221, The Capitol Room
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate Room
S-230, The Capitol
Washington, DC 20510

RE: Urgent Need to Restore Quorum to the Merit Systems Protection Board (MSPB)

Dear Leaders Schumer and McConnell:

The Federal-Postal Coalition is an alliance of more than 30 national member organizations that collectively represent more than five million federal and postal workers, retirees, and their survivors across the federal government.

We, the undersigned organizations, call on the Senate to take urgent action to restore a quorum to the Merit Systems Protection Board (MSPB) by confirming the three qualified nominees who have cleared the Homeland Security and Governmental Affairs Committee: Cathy Harris, Raymond Limon, and Tristan Leavitt.

Currently, the agency is faced with existential constitutional challenges related to the appointment of the MSPB administrative judges (AJ). *See McIntosh v. Defense Department*. As the Supreme Court continues to question the legitimacy of agencies making final decisions without Senate-confirmed leadership, the MSPB is at severe risk of being ruled inoperable and having AJ decisions deemed unconstitutional. *See Lucia v. Securities and Exchange Commission; Collins v. Yellen*. This challenge can be immediately addressed by the Senate restoring a quorum to the Board.

The MSPB has been hamstrung from doing its important work for more than four years due to the lack of Senate-confirmed leadership. This small, independent federal agency is the primary adjudicative body for resolving disputes regarding personnel actions between millions of federal employees and their agencies. The functioning of this agency is critical to maintaining accountability and fairness within the federal bureaucracy.

Yet since January 2017, the MSPB has lacked the necessary quorum of Senate-confirmed board members to adjudicate cases. Since February 2019, the MSPB has not had a single board member, crippling the agency's ability to enforce justice under the law for employees and provide clarity on personnel actions for agencies.

As a result of the lack of board members, the MSPB now has a historic backlog of more than 3,000 cases, including whistleblower complaints and retaliation concerns. There are also many disputed personnel actions, leaving both employees and agencies in limbo as they await adjudication for years on end.

Especially at a time when federal agencies are beginning to enforce the COVID-19 vaccine mandate on the federal workforce, a functioning MSPB is necessary to ensuring the rights of employees are not violated by the government.

Historically, the MSPB sustains roughly 85 percent of personnel actions. In these cases, the finality of an MSPB decision provides clarity to agencies regarding their handling of personnel matters. In the 15 percent of cases where the MSPB rules in favor of the employee, the employee often returns to work with back pay. Each day the MSPB operates without a quorum, the back pay agencies will need to provide to reinstated employees grows. Some reports estimate agencies will owe at least \$60 million in back pay once final decisions resume.

Without a functioning MSPB, thousands of federal employees, including critical federal whistleblowers, are denied justice at a costly expense to taxpayers. Therefore, we urge the Senate to act immediately to restore a quorum at the MSPB and confirm nominees Harris, Limon, and Leavitt.

Should you require any further information, please contact the Federal-Postal Coalition Chair, John Hatton, jhatton@narfe.org.

Sincerely,

American Foreign Service Association (AFSA)
FAA Managers Association (FAAMA)
Federal Managers Association (FMA)
International Association of Fire Fighters (IAFF)
Laborers' International Union of North America (LiUNA)
National Active & Retired Federal Employees Association (NARFE)
National Association of Assistant United States Attorneys (NAAUSA)
National Association of Federal Veterinarians (NAFV)
National Association of Government Employees (NAGE)
National Association of Postal Supervisors (NAPS)
National Council of Social Security Management Associations (NCSSMA)
National Federation of Federal Employees (NFFE)
National Postal Mail Handlers Union (NPMHU)
National Treasury Employees Union (NTEU)
National Weather Service Employees Organization (NWSEO)
Organization of Professional Employees of the U.S. Dept of Agriculture (OPEDA)
Patent Office Professional Association (POPA)
Professional Aviation Safety Specialists (PASS)
Professional Managers Association (PMA)
Senior Executives Association (SEA)