

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, 202-307-3106, ext. 44254.

Morris L. Thigpen,
Director.

[FR Doc. 02-5015 Filed 3-1-02; 8:45 am]

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MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in *Charles F. Thomson v. Department of Transportation*, MSPB Docket No. AT-0752-01-0566-I-1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board has appellate jurisdiction to review a final agency decision on an adverse action where the actual effective date of the action (here, the date when the employee would no longer be employed by the agency) has been stayed to allow exhaustion of administrative appeals (such as an appeal to the Board) pursuant to a collective bargaining agreement.

SUMMARY:

Background

The appellant in *Thomson v. Department of Transportation*, MSPB Docket No. AT-0752-01-0566-I-1, received a letter on April 18, 2001, from the manager of the facility where he was employed removing him from his Air Traffic Control Specialist position for misconduct effective April 27, 2001. In the notice of removal, the agency informed the appellant that he could grieve the removal through the negotiated grievance procedure or appeal the matter to the Board. Citing the collective bargaining agreement between the agency and the National Air Traffic Controllers Association, an Association representative requested that the appellant be allowed to exhaust his appeal rights before the removal became effective. The relevant collective bargaining agreement provision states that the agency may allow an employee "subject to removal or a suspension of more than fourteen (14) days the opportunity to exhaust all appeal rights available under this Agreement before the suspension or removal becomes effective." Statutory appeal rights to the Board are available under the agreement. In a May 7, 2001 letter, the deciding official in the appellant's

removal approved the Association's request and stayed the appellant's removal. It is undisputed that the appellant remains in a pay and duty status.

Through his representative, the appellant filed an appeal of his removal. After allowing for argument from the parties, the administrative judge dismissed the appeal for lack of jurisdiction, reasoning that the appellant's removal had not been effected. The appellant has filed a petition for review arguing that the Board has jurisdiction over his appeal. The agency has responded in opposition to the petition.

Question To Be Resolved

This appeal raises the question of whether the Board has appellate jurisdiction to review an otherwise appealable action which has been subject to a final agency decision which, however, has been stayed pursuant to the terms of a collective bargaining agreement that allows the employee to exhaust administrative appeals, such as an appeal to the Board, before the adverse action becomes effective.

Issues To Be Considered In Resolving The Question Posed

Title 5 of the United States Code, section 1204(h), states that "[t]he Board shall not issue advisory opinions," and title 5 of the United States Code, section 7513(d) provides that "an employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title." (Emphasis supplied.) These statutes raise the question of whether an adverse action "is taken" when a final decision is made or when the action actually is effectuated (for example, the date when the employee no longer is employed by the agency), and whether a Board decision on a final, but not yet effectuated, adverse action constitutes a prohibited advisory opinion.

Also relevant to the question raised in this appeal is the decision of the United States Court of Appeals for the District of Columbia Circuit in *National Treasury Employees Union v. Federal Labor Relations Authority*, 712 F.2d 669 (D.C. Cir. 1983). While the Board is not bound by decisions of the District of Columbia Circuit Court, the Board can look to such decisions for guidance. In *National Treasury Employees Union*, the court found that the Federal Labor Relations Authority erroneously reasoned in a negotiability decision that the Board lacked jurisdiction over an adverse action where the execution of the adverse action had been delayed

under the terms of a collective bargaining agreement. The court concluded that the Customs Bureau was required to negotiate over a collective bargaining agreement provision similar to the one at issue here because the Board had jurisdiction over final, but not yet effected, actions.

Finally, the Board advises interested parties about the practice of the U.S. Postal Service where, pursuant to a collective bargaining agreement, the agency places employees in a non-pay, non-duty status after a removal action, even though the individual remains on the agency's rolls. The Board has considered this practice of placing employees in a non-pay, non-duty status, while still on the agency's rolls, and has held that it may exercise jurisdiction over such adverse actions by the Postal Service. See *Benjamin v. U.S. Postal Service*, 29 M.S.P.R. 555, 556-57 (1986); see also *Anderson v. U.S. Postal Service*, 67 M.S.P.R. 455, 457 (1995). Whether there is a distinction between allowing an employee to exhaust administrative appeals before the adverse action actually is effectuated and the practice of the U.S. Postal Service is one of the issues the Board will consider in addressing the question posed above.

DATE: All briefs in response to this notice shall be filed with the Clerk of the Board on or before March 22, 2002.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Thomson v. Department of Transportation*, MSPB Docket No. AT-0752-01-0566-I-1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M St., N.W., Washington, DC 20419. Because of possible mail delays caused by the closure of the Brentwood Mail facility, respondents are encouraged to file by facsimile transmittal at (202) 653-7130.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, at (202) 653-7200.

Dated: February 26, 2002.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 02-4974 Filed 3-1-02; 8:45 am]

BILLING CODE 7400-01-P

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy (NIFL).

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Institute for Literacy Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 14, 2002 from 9:30 a.m. to 4:30 p.m. and March 15, 2002 from 9:30 a.m. to 1 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Telephone number (202) 233-2027, e-mail: [scoes@nifl.gov](mailto:scoles@nifl.gov).

SUPPLEMENTARY INFORMATION: The Advisory Board is established under the Workforce Investment Act of 1998, Title II of Pub. L. 105-220, Sec. 242, the National Institute for Literacy. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Advisory Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Advisory Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Advisory Board on the award of fellowships. The National Institute for Literacy Advisory Board meeting on March 14-15, 2002, will focus on future and current NIFL program activities, and other relevant literacy activities and issues. Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: February 26, 2002.

Sandra L. Baxter,

Interim Executive Director.

[FR Doc. 02-4961 Filed 3-1-02; 8:45 am]

BILLING CODE 6055-01-P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Website: www.nsf.gov/home/pubinfo/advisory.htm. This information may also be requested by telephoning 703/292-8182.

Susanne Bolton,

Committee Management Officer.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 70-143]

Nuclear Fuel Services; Notice of Intent To Prepare an Environmental Assessment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent to Prepare an Environmental Assessment for Amendment of Special Nuclear Material License SNM-124 for Nuclear Fuel Services, Inc., Erwin, Tennessee.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM-124 to authorize new activities at the Nuclear Fuel Services, Inc. (NFS), facility located in Erwin, TN, and will prepare an Environmental Assessment to determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact.

Identification of the Proposed Action

NFS plans to request three amendments to their NRC license to authorize activities associated with the preparation of blended low-enriched uranium (BLEU) from surplus highly-enriched uranium from the U.S. Department of Energy. These activities would be performed under a contract with Tennessee Valley Authority (TVA) to provide low-enriched uranium fuel to be used in TVA's Brown's Ferry Nuclear Plant in Alabama. The Department of Energy prepared an Environmental Impact Statement to address the disposition of surplus highly enriched uranium (Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, DOE/EIS-0240, June 1996). NRC determined that this EIS did not specifically address the local environmental impacts of the construction of new storage and processing facilities in Erwin, Tennessee, and operation of these facilities, and that additional environmental review is necessary to support NRC's licensing actions.

In an amendment application to be submitted in February 2002, NFS will request authorization to store low-enriched uranyl nitrate solution in a new tank storage facility on the NFS plant site. In an amendment application to be submitted in July 2002, NFS will request authorization to perform dissolution of highly-enriched uranium/aluminum alloy and uranium metal and downblending of the resulting solution into low-enriched uranyl nitrate solution. In an amendment application