

Arnold J. Gerber
Human Resources Consultant/Expert Witness

39 years of in-depth human resources operating, policy and consulting experience:

- Expert witness in Federal and private sector Equal Pay Act cases
- Development, interpretation and application of position classification and qualification standards
- Direction of Federal civilian salary and wage programs
- Direction of VA Departmental classification appeals program
- Direction of VA Departmental personnel management evaluation program
- Development and application of Fair Labor Standards Act policies and guidelines
- Policy and operating experience in staffing, training and employee relations
- Private Sector human resources management (HR) consulting
- Expert testimony in FLRA arbitrations, EEOC and MSPB hearings and formal depositions
- Contract consultant to private sector attorneys and their clients and Federal agencies, specializing in researching, analyzing and recommending options for resolving Classification and Pay appeals, Federal Grievances, EEO Complaints, OSC Actions and MSPB Appeals.
- Served as advisor and consultant to attorneys and clients on pay, hazard pay, classification, compensation, FLSA, EEO complaints grievances, and appeals, and employee relations issues.
- Consultant and advisor on salary and wage issues, organizational design, merit pay, employee relations, recruitment and placement to large group medical and dental practices. Implemented and administered salary and wage systems and merit based performance plans.

Recent Expert Witness and Consulting Cases

October, 2006 - I was engaged as an expert witness and consultant by plaintiff's attorney in a private sector Equal Pay Act lawsuit against client's former employer, a large consulting firm. Following research, comparison and analysis of considerable employment data, I gave a sworn deposition to defendant's attorneys regarding my findings. The case was scheduled for trial on March 26, 2007. I was informed in late January 2007 that the case had been settled in favor of my client.

June, 2006 – I have recently been hired as an expert witness and consultant in an EEO case against Dept. of Homeland Security involving non-selection of the most highly qualified candidate on the BQ list. This case is complicated by allegations of age discrimination and misassignment to higher-graded duties.

In a similar case, I am representing an HHS employee in a union grievance alleging misassignment to higher-graded duties without compensation for an extended period of time.

May, 2006 – Currently, I am serving as consultant and expert witness in an EEO case involving improper rating and ranking of applicants, allegations of preselection and failure to refer a highly qualified candidate for consideration.

January 10, 2006 – I am engaged as the HR consultant and expert witness for the plaintiff in a case involving an agency's failure to provide timely performance ratings, awards and bonuses to the employee who has also been subject to long term misassignment to a set of undescribed and unclassified duties.

December 20, 2005 – I prepared and submitted an expert witness declaration in a case involving an agency's failure to implement the favorable results (i.e., upgrade) of a classification desk audit, followed by reassignment of the affected employee to a position with no promotion potential. Reassigning the employee was in fact a constructive demotion. The attorney I was working with filed suit in federal court and the presiding judge asked the parties to go to ADR. The case was then settled in principle, and the

parties were in the process of executing a settlement agreement. My detailed expert classification report helped provide grounds for the settlement.

October 3, 2005 – Interviewed grievants, researched and provided expert advice to AFGE attorney in grievance case involving salary demotion upon conversion of two employees back to GS classifications following their removal from Army pay banding demonstration project. Recommended that union and management petition OPM for a “variation” to correct an unintended adverse pay consequence resulting from a loophole in OPM demo pay policy regulations.

July 11, 2005 – Testified as expert witness at a union arbitration on behalf of the plaintiff. The case involved unlawful termination of a Dept. of Veterans Affairs employee, a disabled veteran who was coerced by agency officials into submitting a resignation on the spot and later summarily denied an opportunity to rescind his resignation prior to the effective date. Evidence I developed from interviews and records indicated that agency officials had also falsified and backdated key documents. The outcome was that the arbitrator ruled in favor of the employee on all counts; the employee was reinstated retroactively and awarded back pay with reimbursement of all attorney and consulting fees. In her decision the arbitrator cited my testimony as persuasive to the favorable outcome for my client.

March 7, 2005 – Researched agency classification action re client’s position description of record, conducted independent classification audit and determined appropriate classification grade level. Reviewed agency selection process used in advertising and filling higher level position vacancies for which client had applied but not been selected.

February 25, 2005 – Served as consultant, HR advisor to attorney and expert witness for plaintiff in MSPB appeal of small agency RIF action and involuntary retirement combined with age discrimination issues. Prepared expert witness testimony; agency settled prior to trial and awarded substantial monetary damages and attorney fees to plaintiff.

January 6, 2005 – Engaged by attorney on behalf of client in an expert capacity to review the case file, documents and depositions relating to the classification evaluation of client’s position by USDA. Developed expert classification analysis and evaluation in support of client’s EEO complaint and prepared to provide expert witness testimony if case goes to trial.

December 19, 2004 – Researched issues on behalf of attorney and client in VEOA appeal involving agency’s failure to give veterans preference points to disabled veteran in filling position through merit promotion and/or case examination procedures. Provided expert consulting advice, opinion and report of recommendations re possible actionable HR issues.

October 25, 2004 – Reviewed proposed new food service position descriptions on behalf of AFGE 2419 and provided detailed report of classification findings and recommendations for consideration and use in bargaining unit negotiations with NIH management. Recommendations included changes needed to correct occupational series and grade level classifications.

July 2, 2004 – Engaged by attorney to research plaintiff’s complaint of nonselection for promotion to, and cancellation of vacancy announcements covering positions for which plaintiff applied and for which plaintiff was determined to be qualified. Case settled by agency prior to trial.

June 25, 2004 – Provided expert classification determination to plaintiff’s attorney and to agency in Equal Pay Act case involving back pay issues after I was named in the settlement agreement as the deciding classification official.

June 22, 2004 – I provided sworn expert witness testimony in a deposition on behalf of the plaintiff in an Equal Pay Act case. My deposition was taken by a private sector attorney representing the National Credit

Union Administration (defendant). I also served as consultant and advisor to plaintiff's attorney while taking the deposition of defendant's expert witness.

June 9, 2004 – I was named in absentia to perform a desk audit to resolve a classification dispute raised by AFGE 2419 with NIH/HHS, in which the Agency agrees to abide by my classification determination. The Arbitrator, before whom I had made a prior appearance in a different case, qualified me as an expert.

May 17, 2004 – Provided classification decision and report of findings and recommendations to Department of State in EEO complaint involving back pay issues. Both the agency and the plaintiff agreed in advance to accept my findings as conclusive.

May 11, 2004 - I served as an expert witness for the plaintiff in an arbitration hearing in a back pay classification and qualification case filed against the Social Security Administration. Prior to my testimony, the Arbitrator qualified me as an expert witness.

April, 2004 - I was named in a settlement agreement between the plaintiff and the VA to serve as the classification expert assigned to determine the proper grade level of the position in question; completed grade determination and filed report with classification recommendations.

January 6, 2004, - I provided sworn testimony as an expert witness in a case against Ft. Bragg, NC involving involuntary FLSA overtime and changes to alternate work schedules. I learned in June, 2004, that my testimony had contributed to an arbitration decision in favor of the plaintiffs whom I represented.

October 22, 2003 - Gave deposition to US Attorney while serving as expert witness in classification and back pay EEO case against the Health Care Financing Administration. Also prepared and provided sworn affidavits in the form of an initial classification determination and an expert witness rebuttal to the US Attorney's request for summary judgment.

June 26, 2003 - Prepared to testify as expert witness for plaintiffs in arbitration hearing held at Ft. Detrick in back pay case; the case was settled for the plaintiffs moments before I was scheduled to testify.

May, 2003 - Prepared expert witness testimony in case brought against USPS concerning pay setting upon promotion; case was settled for plaintiff before I was to testify.

March 8, 2003 - Provided expert witness deposition on behalf of plaintiff in EEO case involving nonselection due to age discrimination filed against Nuclear Regulatory Commission. My testimony was later excluded by the presiding judge at the request of the agency as it was severely damaging to their case.

FEDERAL MANAGERIAL and TECHNICAL EXPERIENCE

06/02 – 05/03: Acting Director, HR Program Oversight & Effectiveness, Dept. of Veterans Affairs

- Responsible for Department's HR review, compliance and reporting program
- Planned and designed classification and position management review of all VA SES positions
- Developed career ladder structure and PDs for the VA Career Intern Program

06/00 – 05/02: Director for Research and Policy, National Association of Hispanic Federal Executives

- Senior policy advisor to NAHFE's President and CEO
- Planning, budgeted for, organized and conducted national conferences, meetings, seminars, training courses, special events, partnership initiatives, diversity projects and Hispanic employment initiatives
- Developed issue papers, reports, briefings, written handouts and educational materials

- Planned, organized, lead and facilitated SES workshops for NAHFE Summits and training conferences
- Provided consulting advice, developed and presented briefings to Federal department and agency heads and Congresspersons on programs and issues affecting Hispanic representation
- Networked with government and private sector groups to improve diversity, and initiated, implemented and monitored NAHFE Partnership Agreements with Federal departments and agencies
- Established pilot diversity hiring projects for OPM Federal Executive Boards and State Department Foreign Service Officer recruitment
- Designed NAHFE recruiting brochure, event announcements, logo, labels, podium seal, flag and banner

09/97 – 05/00: Senior Human Resources Management Consultant, Department of Veterans Affairs

- Senior HR Policy advisor and Consultant to VA headquarters and field facilities
- SES Position Management Officer for VA responsible for coordinating, reviewing and evaluating requests to establish or redescribe SES positions
- Consultant to the Director and HRM staff of the VA Maryland Health Care System (VAMHCS)
- Advised on and assisted in the consolidation and integration of Human Resources Services programs and staff at three hospitals and several outpatient clinics
- Developed and implemented VAMHCS HR strategic action plan, timeline and transition plan
- Created and trained Deming Process Action Teams to implement VAMHCS HR goals and objectives to ensure continuous improvement of work processes and systems

02/91 – 08/97: Director, VA Position Management and Classification Service

- Managed nationwide position classification, GS and FWS appeals and personnel management evaluation (PME) programs covering 200,000 employees in over 160 white collar and 50 blue collar occupations at 172 medical centers and 50 veterans benefits regional offices
- Directed classification of SES and centralized positions through grade GS-15
- Established department-wide policy, adjudicating position classification appeals, administering the Fair Labor Standards Act, and conducting personnel management evaluations throughout all field offices, medical centers and regional benefits offices
- Managed Classification Business Plan, developed and marketed classification products (e.g., guides, model PDs and classification advisories), policies (e.g., delegations of authority), and services (e.g., problem-oriented reimbursable site evaluations) strategically aligned with business needs
- Supervised staff of twelve HR specialists in grades GS-12/14 and GS-5/6 support functions

07/77 - 01/91: Chief, Classification Policy and Projects Office, US Office of Personnel Management

- Directed teams of occupational specialists in the development of OPM classification and qualification standards
- Edited draft classification standards and classification guidance to include the Introduction to the Classification Standards and The Classifier's Handbook
- Researched and wrote draft and final position classification standards and qualification standards for government wide application (see attached list of publications)
- Served as Federal expert on classification of GS supervisory and leader positions

07/76 - 06/77: Classification Analyst, Bureau of Disability Insurance, Social Security Administration

- Analyzed, planned and developed the agency's policy on classifying GS supervisory positions, nationwide
- Provided classification advice and service to Bureau managers and officials

07/74 - 06/76: Director, Position & Pay Management, Walter Reed Medical Center

- Directed all phases of classification and compensation, including determinations of FLSA coverage and amounts payable under FWS and GS hazard pay, overtime and special rates covering 5000 GS and FWS employees in several locality wage areas.
- Advised Personnel Director, Chief of Staff and Commanding General on all aspects of classification, pay and position management structure
- Advised JAG and US Attorney on classification and pay issues in courtroom setting.

EDUCATION and TRAINING

- Master of Science in Administration, the George Washington University, Washington, DC
- Basic, intermediate and advanced facilitating, consulting, team leadership, organizational design, span of control and quality management techniques
- OPM courses in budget formulation and budget execution
- VA Carey (Baldrige) Award Examiner

PUBLICATIONS

Author/co-author, and/or editor of OPM government-wide position classification standards:

- ✓ Contributing author to Research Grade Evaluation Guide issued in September 2006
- ✓ GS Team Leader Grade Evaluation Guide
- ✓ General Schedule Supervisory Guide
- ✓ Administrative Analysis Grade Evaluation Guide
- ✓ Budget Analysis Series, GS-560
- ✓ Mine Safety and Health Series, GS-1822
- ✓ Classifier's Handbook
- ✓ Introduction to the Classification Standards
- ✓ VA Guide on Classification of Security Officers, GS-080
- ✓ VA Guide on GS Team Leader classification
- ✓ Research papers on history of Federal classification, span of control, streamlining and delayering
- ✓ Final reports on Hispanic Federal Executives Summits II, III and IV