

**STATEMENT BY  
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**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**BEFORE**

**SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS**

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE  
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

**ON**

**THE RIGHTS OF TRANSPORTATION SECURITY ADMINISTRATION  
PERSONNEL**

**MARCH 5, 2007**

Mr. Chairman, Senator Voinovich, and Members of the Subcommittee:

Thank you for the opportunity to testify about our Transportation Security Officers' (TSOs) labor rights. My name is John Gage, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE) which represents more than 600,000 federal and District of Columbia employees across the nation and around the world. I am very pleased today to be able to introduce two TSOs from Cleveland Hopkins Airport in Ohio. Joseph Gattarello lives in Lakewood, Ohio, and has been employed with TSA at the Cleveland airport since 2002. Karen Budnik lives in Grafton, Ohio, works as a TSO at the Cleveland airport, and has been an AFGE member since 2005.

As you are aware, TSOs do not have the same civil service protections and union rights enjoyed by most federal employees, including those at the Department of Homeland Security. AFGE has been aggressively fighting for the civil service and collective bargaining rights of TSOs. Right after the tragic events of September 11, AFGE called for the airport screener function to be federalized. Shortly afterward, Congress created a federal screening workforce, but left the issue of collective bargaining of the screeners to the newly created Transportation Security Administration (TSA) to decide. At the request of TSOs, we then filed our first representation petition at the Baltimore Washington International Airport in November 2002.

A few months later, then TSA chief James Loy announced that the agency would not permit collective bargaining, prompting AFGE to file a lawsuit in the U.S. District Court challenging his right to deny basic union rights to TSOs. Citing the Aviation and Transportation Security Act that created TSA, the judge dismissed the case. But AFGE believed then and continues to believe that it is the US Constitution which permits workers to form and join unions. And it was upon this belief that AFGE set up our first TSA local in March 2003 and started representing the screeners through the very limited venues provided, such as the TSA Disciplinary Review Board, the Office of Workers Compensation and the EEOC. Despite the law that works against the employees, AFGE has been fighting on their behalf.

In August 2005, we issued and circulated on Capitol Hill a White Paper showing why changes are needed at TSA. We also worked to ensure fair language when TSA issued regulations allowing additional airports to opt out of federal screening. In October 2006, the United Nations' International Labor Organization upheld our complaint against President Bush over denial of collective bargaining rights for TSA workers. Early this year, at AFGE's urging, the House of Representatives passed the 9-11 Commission Recommendations Bill with a provision that would grant TSOs their fundamental and long-overdue labor rights.

The most insupportable inequity is the denial of the right to engage in collective bargaining. Opponents of granting TSOs these rights are quick to point out that TSOs are free to join unions. But a meaningful right to organize and belong to a union includes the right to union representation before management. If management has no legal obligation to recognize the union, it will not do so and the union will not be able to provide the most effective representation possible for its members. In the context of TSA, without a legal obligation on the part of management to engage in collective bargaining, the TSOs' right to union representation is profoundly compromised. It is only through collective bargaining that management comes under a legal obligation to listen to employee concerns and work through issues collaboratively.

It is important to understand that the range of issues over which TSOs seek to bargain is modest. The issues include the following: the scheduling of overtime, shift rotation, the availability of flextime arrangements or compressed work schedules; the agency's provision of appropriate health and safety equipment, options concerning the inevitable deployments away from regular work stations, parking, child care, and public transportation subsidies. Anyone who works for a living, and anyone who has struggled to balance work and family responsibilities will recognize that list's contents as the fairly mundane and everyday items that can nevertheless make all the difference in a worker's ability to reach that balance.

TSOs are just like any other workers: They need workplace stability and they want to be treated fairly. And the fact that they clamor for union representation and collective bargaining demonstrates quite clearly that they are not receiving either in TSA's current human resources system. They do not wish to continue to have to face agency management on these issues on an individual-by-individual basis. That practice has been unsuccessful both for them and for the agency, which receives poor reviews in employee surveys. Their experience of inconsistency and arbitrariness has brought them by the thousands to the conclusion that they need the structure and protection of a legal collective bargaining system. They want a contract so that supervisors no longer "make it up as they go along," engage in favoritism, arbitrary decision-making, and a stubborn unilateralism that wreaks havoc with their lives.

It cannot be emphasized strongly enough that TSA management, acting both unilaterally and arbitrarily, does not address these issues in ways that the TSO workforce considers fair or efficient. Indeed, the fact is that the TSO workforce recognizes that no individual employee is able to achieve solutions to common workplace issues that are as beneficial or advantageous to the agency as would be the solutions hammered out in the context of a collective bargaining agreement. TSOs recognize that what is true for unionized workers in shipyards and construction sites and motorcycle factories and grocery stores and hotels and prisons and Social Security offices is true for them: collective bargaining is the best means to bring dignity, consistency, and fairness to a workplace. They

are not asking for rights that go beyond those currently granted to federal employees; that is, they are not asking either for the right to strike.

Because they work for a federal government agency, TSOs also consider strong and enforceable whistleblower rights a prerequisite to effective public service. The newspaper headlines repeatedly demonstrate that neither the Department of Homeland Security in general nor TSA in particular is immune to the scourge of mismanagement and politicization (starting with the decision to contract with NCS Pearson to hire the first screeners, a fiasco whose price escalated from \$104 million to \$741 million, \$303 million of which auditors were never able to substantiate). Mistakes have been made. But who will bring future mistakes to the attention of Congress and the press if the price of doing so is reprisals and sanctions from the very management engaged in wrongdoing? Whistleblower protection is not solely a worker protection, it is also for the protection of the integrity of government and interests of taxpayers. Denying whistleblower protections to a segment of the federal workforce does nothing more than protect that segment of the federal government from public scrutiny. I can think of no rationale for the agency's continued failure to provide the TSO workforce whistleblower rights and protections. It is a license to mismanage, pure and simple.

### ***Capitol Hill Police Officers***

Opponents of collective bargaining rights for TSOs invoke September 11<sup>th</sup> as if the lesson of that terrible day were to deprive Americans of their rights at work. In fact, thousands of federal employees engaged in critical law enforcement and public safety work bargained good contracts with their agency managements both before and after September 11, 2001. The collective bargaining agreement between the U.S. Capitol Police and the Fraternal Order of Police/U.S. Capitol Police Labor Committee, made effective on January 9, 2003 is a case in point. These are the very men and women who keep our lawmakers, staff, and visitors safe from terrorism in the District of Columbia.

### **Emergency Provisions**

That contract includes the following language which essentially reiterates current law and regulation regarding the right of federal managers to act in the context of emergencies and national security-related situations:

#### *Section 08.04 Suspension of Provision(s) of the Agreement*

- 1. The Union recognizes and fully supports the Department's mission to provide protective operations and law enforcement services for the Legislative Branch of the United States Government. The Union further recognizes that in order to carry out the Department's mission during emergency situations it may be necessary to suspend temporarily the*

*implementation of provisions of the Agreement that would prevent or impede accomplishment of the mission. Emergency situations include, but are not limited to, riots, demonstrations, fires, floods and other disasters.*

2. *The determination of the existence of an emergency, that will result in the suspension of any provision(s) of this Agreement, will be made by the Chief of Police, or the individual designated by the Chief of Police.*
3. *The Department recognizes the Union's need to be notified promptly of the existence of an emergency, which would result in the temporary suspension of any provisions of the Agreement. The Department will notify the Union as soon as possible, in writing, whenever the Chief, or his designee, determines the need for temporary suspension of any provision of this Agreement.*
4. *Any suspension of any provision of the Agreement under this Article will continue until the Chief of Police, or his designee, determines that the emergency situation has ended or sufficiently changed to permit a return to normal operations. The Union will be notified promptly when a determination has been made.*

*Nothing in this Agreement will affect the statutory authority of the Department under 5 USC 7106(a)(2)(D) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.*

I want to emphasize to the Members of the Subcommittee that there is no part of this contract language that would be made illegal by the provision of collective bargaining rights to TSOs, and there is nothing in this language to which AFGE would object. This language eliminates entirely the arguments advanced by opponents of collective bargaining rights who claim that such rights would undermine management's ability to act in a crisis, or to act to prevent a crisis.

### **Other Issues**

We have reviewed the collective bargaining agreement (effective January 9, 2003) between the U.S. Capitol Police and the FOP that is quoted extensively above. Due to the effective date, we can only assume that the negotiations for this agreement occurred in 2002, the year following 9/11, and possibly during the Senate debate on the Homeland Security Act. Despite the heightened concerns about security and union representation, the contract negotiated by the Capitol Police with the union is quite similar to the standard agreements AFGE has with numerous Executive Branch agencies, including DHS (including the Border Patrol contract), Defense agencies, Bureau of Prisons, HUD, SSA, and other agencies.

While the employees of the Capitol Police are not covered by the Federal Service Labor Management Relations Statute (FSLMRS), their contract not only tracks the common lingua of the FSLMRS but often specifically incorporates direct references to the federal statute governing executive agency labor relations. For instance, the contract defines grievance rights consistent with 5 USC 7121, information requests consistent with 5 USC 7114, and management rights consistent with 5 USC 7106. In that regard, the Capitol Police contract preserves management rights to assign, transfer, and detail work, and to determine the numbers, types and grades of employees or positions, just like any AFGE contract with an Executive Branch agency.

In addition, the subjects bargained are remarkably similar. The Capitol Police contract addresses day care issues, a health and safety committee, overtime rosters, hours of work, union access to facilities and communication with the bargaining unit, and other articles standard to the typical AFGE contract.

### ***Right to Strike***

Despite the allegations of some Senators, it is illegal for any federal worker to strike, regardless of whether they belong to a union or are covered by a collective bargaining agreement. The act of striking by federal workers is both an unfair labor practice under 5 U.S.C. §7116 (b)(7)(A) and 5 U.S.C. §7311(3), and a criminal violation under 18 U.S.C. §1918. Striking is also specifically prohibited by Public Law 107-71 § 111 (i) and is codified at 49 USC §44935 (i).

### ***History of TSA's Labor Relations System***

On February 15<sup>th</sup>, the Senate Homeland Security and Governmental Affairs Committee voted in favor of an amendment to S. 4, the 9-11 Commission Recommendations bill, by Chairman Joseph Lieberman which would grant collective bargaining and other labor rights to 45,000 Transportation Security Officers (TSOs). This language was identical to that included in the House-passed version of the 9-11 bill.

When Congress passed and President Bush signed the Aviation and Transportation Security Act (ATSA) that created the TSA and federalized the duties of screening passengers and baggage at airports into the position of TSO in 2002, there was a prime opportunity to establish a highly-trained, well-paid and fully-empowered professional public workforce. TSA management instead created its own personnel system without the widely accepted protections afforded to most federal workers. The results have been predictable. Without enforcement of the fundamental labor protection laws that ensure fair treatment, safe workplaces, and protection for whistleblowers against retaliation from supervisors, TSA produced a workforce characterized by low morale, high

attrition, and impairment from injury. As consequence, our national security has been jeopardized. Some examples of this follow:

- TSA has refused to follow the Rehabilitation Act and therefore does not have to make reasonable accommodations for workers with disabilities, including diabetes and epilepsy.
- TSA has refused to apply veteran's preference in promotion and reduction-in-force decisions. Although other federal agencies apply veteran's preference to both those who retired from the military and those who leave active duty, TSA provides whatever limited veteran's preference it gives to only retired military personnel.
- TSA has paid TSOs thousands of dollars less than promised at the time of hire, because screeners do not have an employment "contract" with the government, and therefore, no contract protections.
- TSA provides no meaningful enforcement of whistleblower protections.

The lack of the most basic worker rights and persistent inadequate staffing have taken their toll on the TSO workforce. TSOs are subject to extensive unscheduled mandatory overtime, penalties for using accrued leave and constant scheduling changes because of the failure of the TSA to hire adequate numbers of TSOs. As a result TSA has among the highest injury, illness, and lost time rates in the federal government. In fiscal year 2006, TSA employees' injury and illness rates were close to 30%, far higher than the 5% average injury and illness rate for all federal employees. The overall TSA attrition rate is more than 10 times higher than the 2.2% attrition rate for federal civilian employees and upwards of 40% at some major airports. This continuing mistreatment of the TSO workforce hampers the ability of TSOs to do their jobs and public safety is inevitably jeopardized.

The public will never receive the highly-trained, career screener workforce it demanded after the tragic events of September 11th if TSOs are not granted these fundamental labor rights.

### ***Attrition Rates***

The quit-rate for Transportation Security Officers (TSOs) is much higher than for other federal occupations. The Government Accountability Office (GAO) has found that the FY 2006 attrition rate was 16% for full-time and 46% for part-time TSOs. The annual TSO attrition masks the fact that many individual airports have attrition rates as high as 50% for their overall TSO workforce. The quit-rate for full-time TSOs alone is 6 times higher than that of the overall federal General Service quit-rate of 2%. The annual quit-rate of federal Law Enforcement Officers

(LEOs) ranged from 2.2 to 2.5 Percent, according to the OPM's 2004 LEO Report.

<b>Selected LEO Occupations</b>	<b>Range of Annual Quit Rates (Percent) FY 2001 - 2003</b>
Correctional Officers	2.7 – 3.9
Park Rangers	0.9 – 1.6
Park Police	1.5 – 2.3
Secret Service Uniformed Officers	3.2 – 5.2
Criminal Investigators	0.7 – 0.8
Border Patrol Agents	5.2 – 5.8
Immigration Inspectors	1.3 – 1.9
<b>Transportation Security Officers FY 2006</b>	<b>16 – 49 (FY 2006)</b>

***Collective Bargaining Rights and Other Law Enforcement Officers (LEOs)–***

The following is a small sample of LEOs who are governed by title 5, Chapter 71, providing collective bargaining rights:

- **Border Patrol Agent**– A Border Patrol Agent's primary focus to prevent the entry of terrorist and terrorist weapons into the United States. Border Patrol Agents also detect and prevent the smuggling and unlawful entry of undocumented aliens into the United States, apprehend those people found to be in violation of the immigration laws, and interdict illegal drugs.
- **U.S. Capitol Police Officer** - The United States Capitol Police provide security for the United States Capitol Building complex. Their main focus is in protecting life and property; preventing, detecting, and investigating criminal acts; and enforcing traffic regulations throughout a large complex of congressional buildings, parks, and thoroughfares. Additionally, they are responsible for protecting Members of Congress, Officers of the Senate and the House of Representatives, and their families.
- **Customs and Border Inspection Officer** - Customs and Border Protection Officers are on duty at our nation's international airports, seaports or land border crossings. These ports of entry are the front line of defense against terrorist intrusion, as well as criminal activities, such as drug smuggling, money laundering, undocumented entry of individuals, weapons trafficking, smuggling of prohibited goods and a host of customs violations. CBP Officers interact with the traveling public arriving from overseas, as well as inspecting luggage and airborne cargo in international airports. This is an armed uniformed position.



- **Federal Protective Service Officer** - The United States Federal Protective Service is part of the U.S. Immigration and Customs Enforcement. FPS is charged with providing the vast federal communities controlled by General Services Administration with the necessary levels of protection to safeguard their tenant federal agencies and their people. Its personnel have full law enforcement authority to respond to criminal incidents and emergencies. Many of their officers are in uniform and perform traditional police services. They also maintain a small force of plainclothes special agents to investigate crimes occurring on federal properties.

### ***Comparison of Duties Between TSOs and Other LEOs***

Transportation Security Officers prepare individuals to enter the screening process, helping them correctly place their personal property onto x-ray conveyor belts and enter through metal detectors. TSOs prevent unauthorized individuals from entering through the exit lanes. They ensure that individuals who walk through the metal detector are screened appropriately. They conduct hand-held metal detector and full-body pat-down searches, operate x-ray device controls and monitors screen to detect prohibited items in personal property. TSOs conduct Explosive Trace Detection Inspection and physical baggage searches.

Transportation Security Officers do not carry weapons, conduct investigations, or have arrest, detention or deportation authority. As such, it is difficult to argue that their work is so different from other federal law enforcement officers and agents that they must be deprived of collective bargaining and whistleblower rights.

TSA's denial of the most basic labor rights, including the right to collective bargaining, have compromised the agency's ability to protect the flying public. A voice at work for TSOs will lead to an environment where the focus is on protecting the public, not one of fear and intimidation.

The attrition rate for TSOs is so high because people are treated very badly by management. The constant turnover means that TSOs with years of experience manning checkpoints, observing passenger behavior, operating screening devices and read x-rays are being replaced by new TSOs with only a few weeks of training and experience.

Airports are chronically understaffed. As a result, TSOs are required to work split-shifts and long hours. In addition, TSA does not have to pay overtime to part-time TSOs. Another result of chronic understaffing is that screening is not performed as Congress mandated. Discipline is harsh and unfair. Minimal problems are severely punished, while the wrongful actions of "friends of management" are given a slap on the wrist. Assurances from TSA management notwithstanding, these kinds of problems will not be solved by periodic "town

meetings” where employees are encouraged to speak up and high level agency managers promise to make improvements. These types of problems are only solved when there is a legal requirement to do so, established through the process of collective bargaining.

### ***Conclusion***

Since the inception of the agency, Transportation Security Officers have demonstrated their patriotism and their commitment to their work and the safety of the American public. It is time for Congress to recognize that because their responsibilities are so similar to those of other public safety officers with full labor rights, TSOs deserve to be rewarded with civil service and collective bargaining rights. It will help the employees, to be sure, but the benefit to the American people will be enormous as the agency’s workforce stabilizes.